

REPUBLIC OF SOUTH AFRICA

MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 29822 of 19 April 2007)
(The English text is the official text of the Bill)*

(MINISTER OF MINERALS AND ENERGY)

[B 10—2007]

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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 amend the Mineral and Petroleum Resources Development Act, 2002, so as to remove ambiguities in certain definitions; to harmonise environmental impact assessment requirements with national norms and standards set out in the National Environmental Management Act, 1998; to add functions to the Regional Mining Development and Environmental Committee; to amend the transitional arrangements so as to further afford statutory protection to certain existing old order rights; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 28 of 2002

1. Section 1 of the Mineral and Petroleum Resources Development Act, 2002 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the insertion before the definition of “block” of the following definitions:

“ ‘basic assessment report’ means a report contemplated in section 39 and prescribed by regulation;

‘beneficiation’, in relation to any mineral resource, means—

(a) a primary stage, which includes any process of winning, recovering, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification of the resource; 10

(b) a secondary stage, which includes any action of converting a concentrate or mineral resource into an intermediate product; 15

(c) a tertiary stage, which includes any action of further converting that product into a refined product suitable for purchase by minerals-based industries and enterprises; and

(d) a final stage, which is the action of producing properly processed, cut, polished or manufactured products or articles from minerals, accepted in the industry and trade as fully and finally processed or manufactured and value-added products or articles;” 20

(b) by the substitution in the definition of “broad based economic empowerment” for subparagraph (vi) of paragraph (b) of the following subparagraph:

“(vi) the socio-economic development of communities, immediately hosting, affected by [the of] supplying labour to [the] operations; and” 25

- (c) by the insertion after the definition of “contractual royalties” of the following definitions:
- “ ‘Council for Geoscience’ means the Council established by section 2 of the Geoscience Act, 1993 (Act No. 100 of 1993);
- ‘cumulative impact’, in relation to the environmental impact assessment of a proposed prospecting, mining, reconnaissance, exploration or production operation or related activity, means the impact of an operation or activity that in itself may not be significant but may become significant when added to the existing and potential impacts eventuating from similar or diverse activities or undertakings in the area;”;
- (d) by the substitution for the definition of “day” of the following definition:
- “ ‘day’ means a calendar day excluding a Saturday, Sunday or public holiday and when any particular number of days are prescribed for the performance of any act, those days must be reckoned by excluding the first and including the last day[, **unless the last day falls on a Saturday, a Sunday or any public holiday, in which case the number of days must be reckoned by excluding the first day and also any such Saturday, Sunday or public holiday**];”;
- (e) by the insertion after the definition of “environment” of the following definitions:
- “ ‘environmental authorisation’, in relation to the environmental impact assessment of a proposed prospecting, mining, reconnaissance, exploration or production operation or related activity, means an authorisation issued by the Minister in terms of section 39;
- ‘environmental impact assessment’, in relation to an application for an environmental authorisation to which a scoping must be applied, means the process of collecting, organising, analysing, interpreting and communicating information that is relevant to the consideration of that application;
- ‘environmental impact assessment report’ means a report contemplated in section 39 and prescribed by regulation;”;
- (f) by the substitution for the definition of “environmental management plan” of the following definition:
- “ ‘environmental management plan’, in relation to an application for a mining right or a production right or the right to conduct a related activity, means a plan contemplated in section 39 and prescribed by regulation;”
- (g) by the deletion of the definition of “environmental management programme”;
- (h) by the substitution for the definition of “exclusionary act” of the following definition:
- “ ‘exclusionary act’ means any act or practice which impedes or prevents any person from entering into or actively participating in the mineral and **[mining industry]** petroleum industries, or from entering into or actively participating in any market connected with **[that industry]** the mineral and petroleum industries, or from making progress within such industry or market;”;
- (i) by the substitution for the definition of “financial provision” of the following definition:
- “ ‘financial provision’ means **[the insurance, bank]** a financial guarantee, trust fund referred to in section 41A, [or] cash deposit to a trust fund controlled by the Minister, or any other method approved by the Director-General, that applicants for or holders of a right or permit must provide in terms of **[sections]** section 41 **[and 89]** guaranteeing the availability of sufficient funds to undertake the agreed work programmes **[and]**, to manage, rehabilitate [the] and remedy environmental impacts that result from prospecting, mining, reconnaissance, exploration or production areas, as the case may be;”;
- (j) by the substitution in the definition of “historically disadvantaged person” for paragraph (c) of the following paragraph:
- “(c) **[any]** a juristic person, other than an association, **[in]** which—
- (i) is managed and controlled by persons contemplated in paragraph (a) who, collectively or as a group, own and control a majority of the issued share capital or members’

- interest, and are able to control a majority of the members' votes; or
- (ii) is a subsidiary of a juristic person contemplated in subparagraph (i);”;
- (k) by the substitution for the definition of “mine” of the following definition: 5
 “ ‘mine’ means, when—
- (a) used as a noun—
- (i) any excavation in the earth, including any portion under the sea or under other water or in any residue deposit, as well as any borehole made for the purpose of searching for or winning a mineral; 10
- (ii) any place where a mineral resource is being extracted, including the mining area and all buildings, structures, machinery, residue stockpiles, access roads or objects situated on such area and which are used or intended to be used in connection with searching for, winning or extracting or processing such mineral resource; and 15
- (b) used as a verb, any operation or activity in the mining of any mineral, in or under the earth, water or any residue deposit, whether by underground or open working or otherwise in, on or under the relevant mining area;”;
- (l) by the insertion after the definition of “mineral” of the following definition: 20
 “ ‘Mineral and Petroleum Titles Registration Office’ means the Mineral and Petroleum Titles Registration Office established by section 2 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967);”;
- (m) by the substitution for the definition of “mining area” of the following definition: 25
 “ ‘mining area’—
- (a) in relation to a mining right or a mining permit, means the area in which the extraction of any mineral has been authorised and for which that right or permit is granted; 30
- (b) in relation to any environmental, health, social or labour matter and any residual, latent or other impact thereof, includes—
- (i) any land or surface adjacent or non-adjacent to the area referred to in paragraph (a) but upon which related or incidental activities or operations are being undertaken; 35
- (ii) any surface of land on which a road, railway line, power line, pipe line, cableway or conveyor belt is located, under the control of the holder of a mining right or a mining permit and which such holder is entitled to use in connection with the operations performed or to be performed under such right or permit; and 40
- (c) includes all buildings, structures, machinery, residue stockpiles or objects situated on or in the area referred to in paragraph (b);”;
- (n) by the deletion of the definition of “Mining Titles Office”; 45
- (o) by the substitution for the definition of “reconnaissance operation” of the following definition: 50
 “ ‘reconnaissance operation’ means any operation carried out for or in connection with the search for a mineral or petroleum by geological, geophysical and photogeological surveys and includes any remote sensing techniques, but does not include any prospecting or exploration operation other than acquisition and processing of new seismic data;”;
- (p) by the insertion after the definition of “Regional Mining Development and Environmental Committee” of the following definition: 55
 “ ‘Registrar’ means the registrar defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);”;
- (q) by the insertion after the definition of “retention permit” of the following definitions: 60
 “ ‘scoping report’, in relation to the assessment of the environmental impact of an application for a mining right or a production right or the right to conduct a related activity, means a report contemplated in section 39 and prescribed by regulation;

‘significant impact’, in relation to the assessment of the environmental impact of a prospecting, mining, reconnaissance, exploration or production operation or activity or related activity, means an impact that by its magnitude, duration, intensity or probability of occurrence may have a notable effect on one or more aspects of the environment; 5

‘specialised process’, in relation to the assessment of the environmental impact of a mining or production operation or activity or related activity, means a process to obtain information which—

- (a) is not readily available without undertaking the process; and
- (b) is necessary for informing an assessment or evaluation of the impact of such operation or activity, and 10

includes risk assessment and cost benefit analysis;

‘standard environmental management plan’, in relation to an application for a prospecting right, mining permit, reconnaissance permit, exploration right or related activity, means a plan contemplated in section 39 and prescribed by regulation;” 15

Amendment of section 2 of Act 28 of 2002

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) substantially and meaningfully expand opportunities for historically disadvantaged persons, including women, to enter into and actively participate in the mineral and petroleum industries and to benefit from the exploitation of the nation’s mineral and petroleum resources;” 20

Amendment of section 3 of Act 28 of 2002

3. Section 3 of the principal Act is hereby amended by the deletion in subsection (2) of paragraph (b). 25

Amendment of section 5 of Act 28 of 2002

4. Section 5 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) A prospecting right, mining right, exploration right or production right granted in terms of this Act and registered in terms of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), is a limited real right in respect of the mineral or petroleum and the land to which such right relates.”; 30

(b) by the insertion in subsection 3 after paragraph (c) of the following paragraph: 35

“(cA) subject to section 59B of the Diamonds Act, 1986 (Act No. 56 of 1986), dispose of any diamond found during the course of mining operations;”;

(c) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 40

“(a) **[an approved environmental management programme or approved environmental management plan, as the case may be]** an environmental authorisation;”; and

(d) by the substitution in subsection (4) for paragraph (c) of the following paragraph: 45

“(c) **[notifying and consulting with]** giving the land owner or lawful occupier of the land in question at least 21 days written notice.”.

Amendment of section 9 of Act 28 of 2002

5. Section 9 of the principal Act is hereby amended by the addition of the following subsection: 50

“(3) Any subsequent applications for a reconnaissance permission, prospecting right, mining right, or mining permit in respect of the same mineral and land must be processed at least 40 days after the applications contemplated in subsection (1) have been rejected or refused.”.

Amendment of section 10 of Act 28 of 2002

6. Section 10 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

- “(a) make known that an application for a prospecting right, mining right or mining permit has been **[received]** accepted in respect of the land in question; and”.

Amendment of section 11 of Act 28 of 2002

7. Section 11 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) A prospecting right or mining right or an interest in any such right, or **[a controlling]** an interest in a company or close corporation, may not be ceded, transferred, let, sublet, assigned, alienated or otherwise disposed of without the written consent of the Minister, except in the case of change of controlling interest in listed companies.”; and
- (b) by the substitution for subsection (4) of the following subsection:
- “(4) Any transfer, cession, letting, subletting, alienation, encumbrance by mortgage or variation of a prospecting right or mining right, as the case may be, contemplated in this section must be lodged for registration at the **[Mining Titles Office]** Mineral and Petroleum Titles Registration Office within **[30]** 60 days of the relevant **[action]** transaction.”.

Amendment of section 13 of Act 28 of 2002

8. Section 13 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) together with the prescribed non-refundable application fee.”; and
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) If the application does not comply with the requirements of this section, the Regional Manager must reject the application and notify the applicant in writing **[of that fact]** within 14 days of the receipt of the application **[and return the application to the applicant]**.”.

Amendment of section 14 of Act 28 of 2002

9. Section 14 of the principal Act is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection—
- “(3) If the Minister refuses to grant a reconnaissance permission, the Minister must, within 30 days of the decision, **[in writing]** notify the applicant **[of the]** in writing of such decision.”; and
- (b) by the substitution for subsection (4) of the following subsection:
- “(4) The reconnaissance permission is valid for **[two years]** one year and is not renewable.”.

Amendment of section 15 of Act 28 of 2002

10. Section 15 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) A reconnaissance permission issued in terms of section 14 entitles the holder, **[on production of the reconnaissance permission and after consulting the land owner or lawful occupier thereof,]** to enter the land **[concerned]** in question for the purposes of conducting reconnaissance operations.”; and
- (b) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:
- “(a) conduct any prospecting or mining operations for any mineral in or on the land in question; or
- (b) any exclusive right to apply for or be granted a prospecting right **[or]**, mining right or mining permit in respect of the land to which such reconnaissance permission relates.”.

Amendment of section 16 of Act 28 of 2002

11. Section 16 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
 - “(2) The Regional Manager must accept an application for a prospecting right if—
 - (a) the requirements contemplated in subsection (1) are met; and
 - (b) no other person holds a prospecting right, mining right, mining permit or retention permit for **[the same]** any mineral and on the same land.”;
- (b) by the substitution for subsection (3) of the following subsection:
 - “(3) If the application does not comply with the requirements of this section, the Regional Manager must ~~reject the application and~~ notify the applicant in writing **[of that fact]** within 14 days of receipt of the application **[and return the application to the applicant].**”;
- (c) by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs:
 - “(a) to apply for an environmental authorisation, lodge within 60 days from the date of notification a basic assessment report and a standard environmental management plan; and
 - (b) to notify in writing and consult with the land owner or lawful occupier and to include the result of this consultation in the basic assessment report.”;
- (d) by the deletion of subsection 6.

Amendment of section 17 of Act 28 of 2002

12. Section 17 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 - “**[Subject to subsection (4), the]** The Minister must grant a prospecting right if—”;
- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
 - “(c) **[the prospecting will not result in unacceptable pollution, ecological degradation or damage to the environment]** an environmental authorisation is issued;”;
- (c) by the addition to subsection (1) of the following paragraph:
 - “(f) in respect of prescribed minerals, the applicant has given effect to the objects referred to in section 2(d).”;
- (d) by the substitution in subsection (2) (b) for subparagraph (iii) of the following subparagraph:
 - “(iii) result in the concentration of **[the mineral resources in question]** rights granted under the control of the applicant.”;
- (e) by the substitution for subsection (3) of the following subsection:
 - “(3) If the Minister refuses to grant a prospecting right, the Minister must, within 30 days of the decision, **[in writing]** notify the applicant in writing of [the] such decision [with reasons].”;
- (f) by the substitution for subsection (5) of the following subsection:
 - “(5) The granting of a prospecting right in terms of subsection (1) becomes effective on the date on which—
 - (a) **[the environmental management programme is approved in terms of section 39]** the environmental authorisation is issued; and
 - (b) the right is executed.”.

Amendment of section 18 of Act 28 of 2002

13. Section 18 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
 - “(c) be accompanied by a report reflecting—

- (i) the extent of compliance with the requirements of the **[approved]** standard environmental management **[programme]** plan, the rehabilitation to be completed and the estimated cost thereof; and
 - (ii) compliance with the conditions of the environmental authorisation; and; and 5
- (b) by the addition to subsection (2) of the following paragraph:
“(e) include a written confirmation issued by the Council for Geoscience that all prospecting information as prescribed has been submitted.”.

Amendment of section 19 of Act 28 of 2002 10

- 14.** Section 19 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for paragraphs (a), (e) and (g) of the following paragraphs:
 - “(a) lodge such right for registration at the **[Mining Titles Office within 30 days of the date on which the right—** 15
 - (i) becomes effective in terms of section 23(5); or**
 - (ii) is renewed in terms of section 24(3)];**Mineral and Petroleum Titles Registration Office within 60 days after the right has become effective.”;
 - (e) comply with the requirements of the **[approved]** standard environmental management **[programme]** plan and the conditions of the environmental authorisation; 20
 - (g) subject to section 20 and in terms of any relevant law, pay the State royalties in respect of any mineral removed and disposed of during the course of prospecting operations. 25
 - (b) by the addition to subsection (2) of the following paragraph:
 - “(h) submit progress reports and data of prospecting operations to the Council for Geoscience.”.

Amendment of section 20 of Act 28 of 2002

- 15.** Section 20 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 30
- “(2) The holder of a prospecting right must obtain the Minister’s written permission to remove and dispose for such holder’s own account of diamonds and bulk samples of any other minerals found by such holder in the course of prospecting operations **[conducted pursuant to such prospecting right]**.”. 35

Amendment of section 21 of Act 28 of 2002

- 16.** Section 21 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:
 - “(a) keep proper records, at **[its]** the registered office or place of business of the holder, of reconnaissance or prospecting operations and the results and expenditure connected therewith, as well as borehole core data and core-log data, where appropriate; and 40
 - (b) submit progress reports and data, in the prescribed manner and at the prescribed intervals, to the **[Regional Manager]** Council for Geoscience regarding the reconnaissance or prospecting operations.”; and 45
 - (b) by the substitution for subsection (2) of the following subsection:
 - “(2) No person may dispose of or destroy any record, borehole core data or core-log data contemplated in subsection (1)(a) except in accordance with the written directions of the relevant Regional Manager in consultation with the Council for Geoscience.”. 50

Amendment of section 22 of Act 28 of 2002

- 17.** Section 22 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection: 55

- “(2) The Regional Manager must accept an application for a mining right if—
- (a) the requirements contemplated in subsection (1) are met; and
 - (b) no other person holds a prospecting right, mining right, mining permit or retention permit for **[the same]** any mineral and on the same land.”;
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) If the application does not comply with the requirements of this section, the Regional Manager must reject the application and notify the applicant in writing **[of that fact]** within 14 days of the receipt of the application **[and return the application to the applicant].**”;
- (c) by the substitution in subsection (4) for paragraph (a) of the following paragraph:
- “(a) to **[conduct an environmental impact assessment and submit an environmental management programme for approval in terms of section 39, and]** apply for an environmental authorisation as contemplated in section 39;”;
- (d) by the addition to subsection (4) of the following paragraph:
- “(c) to lodge—
- (i) a scoping report within 30 days of such notification; and
 - (ii) an environmental impact assessment report and an environmental management plan within 120 days of such notification.”.

Amendment of section 23 of Act 28 of 2002

- 18.** Section 23 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) an environmental authorisation is issued;”;
 - (b) by the substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) the applicant has provided **[financially and otherwise]** for the prescribed social and labour plan;”;
 - (c) by the substitution for subsection (4) of the following subsection:

“(4) If the Minister refuses to grant a mining right, the Minister must, within 30 days of the decision, **[in writing]** notify the applicant in writing of [the] such decision [and the reasons].”;
 - (d) by the substitution for subsection (5) of the following subsection:

“(5) A mining right granted in terms of subsection (1) **[comes into effect]** becomes effective on the date on which—

 - (a) **[the environmental management programme is approved in terms of section 39(4)]** the environmental authorisation is issued; and
 - (b) the right is executed.”.

Amendment of section 24 of Act 28 of 2002

- 19.** Section 24 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) be accompanied by a report reflecting—

 - (i) the extent of compliance with the requirements of the approved environmental management **[programme]** plan, the rehabilitation to be completed and the estimated cost thereof; and
 - (ii) compliance with the conditions of the environmental authorisation; and”;
 - (b) by the substitution for subsection (4) of the following subsection:

“(4) A mining right may be renewed for further periods, each of which may not exceed 30 years at a time.”.

Amendment of section 25 of Act 28 of 2002

20. Section 25 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
 - “(a) lodge such right for registration at the **[Mining Titles Office within 5**
 - 30 days of the date on which the right—**
 - (i) becomes effective in terms of section 23(5); or**
 - (ii) is renewed in terms of section 24(3)];**
 - Mineral and Petroleum Titles Registration Office within 60 days
 - after the right has become effective.”; 10
- (b) by the substitution in subsection (2) for paragraph (e) of the following paragraph:
 - “(e) comply with the requirements of the **[approved]** environmental
 - management **[programme]** plan and the environmental
 - authorisation;”; and 15
- (c) by the substitution in subsection (2) for paragraph (g) of the following paragraph:
 - “(g) in terms of any relevant law, pay the State royalties; and”.

Amendment of section 26 of Act 28 of 2002

21. Section 26 of the principal Act is hereby amended— 20

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) The Minister may initiate or **[prescribe incentives to]** promote
 - the beneficiation of minerals in the Republic.”;
- (b) by the insertion after subsection (2) of the following subsection:
 - “(2A) In promoting beneficiation, the Minister may prescribe the
 - levels required for beneficiation.”; and 25
- (c) by the substitution for subsection (3) of the following subsection:
 - “(3) Any person who mines a mineral in the Republic and intends to
 - beneficiate such mineral outside the Republic must obtain approval from
 - the Minister.”. 30

Amendment of section 27 of Act 28 of 2002

22. Section 27 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 - “(b) the mining area in question does not exceed **[1.5]** 5.0 hectares in 35
 - extent.”;
- (b) by the substitution in subsection (3) for paragraph (b) of the following paragraph:
 - “(b) no other person holds a prospecting right, mining right, mining
 - permit or retention permit for **[the same]** any mineral and on the
 - same land.”; 40
- (c) by the addition to subsection (3) of the following paragraph:
 - “(c) the granting of a permit will not result in the applicant being granted
 - more than one mining permit on the same or adjacent land.”; 45
- (d) by the substitution for subsection (4) of the following subsection:
 - “(4) If the application does not comply with the requirements of this
 - section, the Regional Manager must reject the application and notify the
 - applicant in writing **[of that fact]** within 14 days of the receipt of the
 - application **[and return the application to the applicant].**”; 50
- (e) by the substitution in subsection (5) for paragraphs (a) and (b) of the following paragraphs:
 - “(a) to apply for an environmental authorisation, lodge within 60 days of
 - such notification a basic assessment report and a standard environ-
 - mental management plan; and
 - (b) to notify in writing and consult with the land owner or lawful 55
 - occupier and to include the result of this consultation in the basic
 - assessment report.”;

- (f) by the substitution in subsection (6) for paragraph (b) of the following paragraph:
 “(b) **[the applicant has submitted the environmental management plan] the environmental authorisation is issued; and**”;
- (g) by the addition to subsection (6) of the following paragraph: 5
 “(c) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996).”;
- (h) by the substitution in subsection (7) for paragraph (c) of the following paragraph:
 “(c) in terms of any relevant law, must pay the State royalties;”;
- (i) by the addition to subsection (7) of the following paragraph: 10
 “(e) must submit the mining permit for recording at the Mineral and Petroleum Titles Registration Office within 60 days after the permit has been issued.”.

Amendment of section 28 of Act 28 of 2002 15

23. Section 28 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The holder of a mining right or mining permit must, at **[its] the** registered office or place of business of such holder, keep proper records of mining activities and proper financial records in connection with the mining activities”; and 20
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “The holder of a mining right or mining permit, or the manager of any mineral processing plant operating separately from a mine, must submit to the Director-General—”. 25

Amendment of section 30 of Act 28 of 2002

24. Section 30 of the principal Act is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection:
 “(3) Any person submitting information or data in terms of **[section 21]** sections 28 or 29 must inform the Regional Manager concerned and indicate which information and data must be treated as confidential and may not be disclosed.”; and 30
- (b) by the addition of the following subsection:
 “(5) Any data, information or reports lodged with the Council for Geoscience in terms of section 21 will be kept confidential until such time as the right, permit or permission has lapsed, is cancelled or terminated, or the area to which such right, permit or permission relates has been abandoned or relinquished.”. 35

Amendment of section 31 of Act 28 of 2002 40

25. Section 31 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a), (b) and (c), respectively, of the following paragraphs:

- “(a) **[must]** lodge the application at the office of the Regional Manager in whose region the land is situated;
- (b) **[must]** lodge the application in the prescribed manner; 45
- (c) **[must]** lodge the application together with the prescribed non-refundable application fee;”.

Amendment of section 32 of Act 28 of 2002

26. Section 32 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 50

- “(3) Despite subsection (2), the environmental **[management programme approved]** authorisation issued in respect of the prospecting right remains in force as if the prospecting right had not lapsed.”.

Amendment of section 33 of Act 28 of 2002

27. Section 33 of the principal Act is amended by the substitution in paragraph (c) for subparagraph (iii) of the following subparagraph:

- “(iii) result in the concentration of **[mineral in the hands]** rights granted under the control of the applicant.”.

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Amendment of section 35 of Act 28 of 2002

28. Section 35 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) give effect to the **[approved]** standard environmental management [programme] plan and the environmental authorisation and pay the prescribed retention fees; and”;

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- (b) by the substitution in subsection (2)(b) for subparagraph (i) of the following subparagraph:

“(i) the prevailing market conditions, the effect thereof and the need to hold such retention permit **[over]** in respect of the mineral and land in question; and”; and

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- (c) by the addition to subsection (2) of the following paragraph:

“(c) submit the retention permit for recording at the Mineral and Petroleum Titles Registration Office within 60 days after the permit has been issued.”.

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Amendment of section 37 of Act 28 of 2002

29. Section 37 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

- “(a) apply to all prospecting and mining operations, as the case may be, and any matter or activity relating to such operation; and”.

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Amendment of section 38 of Act 28 of 2002

30. Section 38 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The holder of a **[reconnaissance permission,]** prospecting right, mining right, mining permit **[or]**, retention permit, reconnaissance permit, exploration right, production right or right to conduct related operations or activities—

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- (a) must at all times give effect to the general objectives of integrated environmental management laid down in **[Chapter 5]** section 23 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

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- (b) must **[consider,]** investigate, assess and communicate the impact of his or her prospecting **[or]**, mining, reconnaissance, exploration or production operations and related activities on the environment **[as contemplated in terms of section 24(7) of the National Environmental Management Act, 1998 (Act No. 107 of 1998)]**;

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- (c) must manage all environmental impacts—

- (i) in accordance with his or her standard environmental management plan or environmental management plan **[or approved environmental management programme, where appropriate; and]**, as the case may be, and in accordance with the environmental authorisation;

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- (ii) as an integral part of the reconnaissance, prospecting **[or]**, mining, exploration or production operation, unless the Minister directs otherwise;

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- (d) must monitor and audit compliance with the requirements of the standard environmental management plan or environmental management plan, as the case may be, and the conditions of the environmental authorisation, as prescribed;

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- [(d)](e) must as far as it is reasonably practicable, rehabilitate the environment affected by the prospecting or mining operations to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and
- [(e)] (f) is responsible for any environmental damage, pollution, pumping and treatment of extraneous water or ecological degradation as a result of his or her **[reconnaissance]** prospecting or mining operations or related mining activities and which may occur inside and outside the boundaries of the prospecting or mining area to which such right[,] or permit [or permission] relates.”.

Substitution of section 39 of Act 28 of 2002

31. The following section is hereby substituted for section 39 of the principal Act:

“Environmental authorisations

39. (1) Every person who has applied for a prospecting right, mining permit, reconnaissance permit, exploration right or the renewal of such right or permit or the right to conduct any related activity or operation, and whose application has been accepted in terms of this Act must apply for an environmental authorisation in the prescribed manner and must submit a basic assessment report and a standard environmental management plan, as prescribed.

(2) Every person who has applied for a mining right, production right or the renewal thereof or the right to conduct any related activity or operation, and whose application has been accepted in terms of this Act must apply for an environmental authorisation in the prescribed manner and must submit—

- (a) the scoping report;
- (b) the environmental impact assessment report;
- (c) specialist reports and reports on specialised processes; and
- (d) the environmental management plan.

(3) The Minister must prescribe procedures, requirements and timeframes for the consideration of and decision-making on the—

- (a) application for an environmental authorisation;
- (b) basic assessment report;
- (c) standard environmental management plan;
- (d) scoping report;
- (e) environmental impact assessment report;
- (f) environmental management plan; and
- (g) specialist reports and reports on specialised processes.

(4) (a) Subject to paragraph (b), the Minister must, within 120 days from the date of submission of reports and plans referred to in subsections (1) and (2), approve same and issue an environmental authorisation if—

- (i) the applicant has complied with section 41(1); and
- (ii) the applicant has the capacity, or has provided for the capacity, to rehabilitate and manage negative impacts on the environment.

(b) The Minister may not issue the environmental authorisation unless he or she has considered—

- (i) any recommendation by the Regional Mining Development and Environmental Committee; and
- (ii) the comments of any State department charged with the administration of any law which relates to matters affecting the environment.

(5) The Minister may call for additional information from any applicant for or holder of a permit or right in terms of this Act and may direct that any report or plan in question be adjusted in such a way as the Minister may require.

(6) The Minister may at any time after he or she has issued an environmental authorisation and after consultation with the holder of the prospecting right, mining right, mining permit, reconnaissance permit, exploration right or production right concerned, issue an amended environmental authorisation.”.

Amendment of section 40 of Act 28 of 2002

32. Section 40 of the principal Act is hereby amended—

- (a) by the substitution for subsection 1 of the following subsection:

“(1) When considering **[an environmental management plan or environmental management programme in terms of section 39]** 5
environmental reports, plans or authorisations referred to in section 39,
 the Minister must consult with any State department which administers
 any law relating to matters affecting the environment.”;
- (b) by the substitution for subsection 2 of the following subsection:

“(2) Any State department consulted in terms of subsection (1) must 10
submit comments within 30 days from the date on which the Minister
informs such State department, in writing, to do so.”; and
- (c) by the addition of the following subsection:

“(3) If any State department contemplated in subsection (1) objects to 15
the contents of any environmental report, plan or authorisation, the
Minister must refer the objections to the Regional Mining Development
and Environmental Committee for consideration and recommendation.”.

Amendment of section 41 of Act 28 of 2002

33. Section 41 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2), respectively, of the following 20
 subsections:

“(1) An applicant for a prospecting right, mining right or mining
 permit must, before the Minister **[approves the environmental man-
 agement plan or environmental management programme in terms of
 section 39(4)]** issues the environmental authorisation, make the pre- 25
 scribed financial provision for the rehabilitation **[or]** and management of
[negative] environmental impacts.

(2) If the holder of a prospecting right, mining right or mining permit
 fails to rehabilitate or manage, or is unable to undertake such
 rehabilitation or to manage any **[negative]** impact on the environment, 30
 the Minister may, upon written notice to such holder, use all or part of the
 financial provision contemplated in subsection (1) to rehabilitate or
 manage the **[negative]** environmental impact in question.”;
- (b) by the substitution for subsection (3) of the following subsection:

“(3) The holder of a prospecting right, mining right or mining permit 35
 must annually assess his or her environmental liability and **[increase]**
adjust his or her financial provision to the satisfaction of the Minister.”;
- (c) by the substitution for subsection (4) of the following subsection:

“(4) (a) If the Minister is not satisfied with the assessment and 40
 financial provision contemplated in this section, the Minister may
 appoint an independent assessor to conduct the assessment and
 determine the financial provision.

(b) Any costs in respect of such assessment must be borne by the
holder of the prospecting right, mining right or mining permit.”;
- (d) by the addition of the following subsection: 45

“(6) The Insolvency Act, 1936 (Act No. 24 of 1936), does not apply to
any form of financial provision contemplated in subsection (1) and all
amounts arising from that provision.”.

Insertion of section 41A in Act 28 of 2002

34. The following section is hereby inserted in the principal Act after section 41: 50

“Trust funds for financial provision

41A. (1) If a holder of a prospecting right, mining right or mining permit
 makes financial provision through the use of a trust fund, the trust fund
 must—

- (a) be solely in respect of the right or permit granted;

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- (b) maintain a quantum of funds sufficient to rehabilitate and manage the full extent of environmental impacts within the prospecting or mining area covered by such right or permit;
- (c) hold assets solely as permitted in subsection (2); and
- (d) make distributions solely as permitted in subsection (3). 5
- (2) The trust fund contemplated in subsection (1) may only hold—
- (a) financial instruments issued by any—
 - (i) collective investment scheme regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002); 10
 - (ii) long-term insurer regulated in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998);
 - (iii) bank regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990); or
 - (iv) mutual bank regulated in the Mutual Banks Act, 1993 (Act No. 124 of 1993); 15
- (b) financial instruments of a company listed on an exchange as defined in section 1 and licensed under section 10 of the Securities Services Act, 2004 (Act No. 36 of 2004), unless—
 - (i) those shares (or depository receipts) are issued from the holder of that trust fund; or
 - (ii) those shares (or depository receipts) are issued from a person that is directly or indirectly a connected person as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), with respect to the holder of that trust fund; or 20
- (c) financial instruments issued by any sphere of government in the Republic. 25
- (3) The trust fund contemplated in subsection (1) may only make distributions from the fund for the management and rehabilitation of environmental impacts. 30
- (4) If the Minister is satisfied that the environmental impacts in the prospecting or mining area contemplated in subsection (1)(b) have been managed and rehabilitated as required and has issued a closure certificate in respect of the area concerned, the trust fund with respect to that area must be wound-up or liquidated and its assets remaining after the satisfaction of its liabilities must be transferred to— 35
- (a) another trust fund established under this section by or for the benefit of the holder of that wound-up or liquidated trust fund; or
- (b) if no such trust fund has been established, to a trust fund controlled by the Minister. 40
- (5) If the Minister is satisfied that a trust fund will be able to rehabilitate and manage the environmental impacts as required, that trust fund may transfer the excess to another trust fund contemplated in this section.
- (6) The instrument establishing a trust fund contemplated in subsection (1) must incorporate the provisions of this section. 45
- (7) The holder of a right or permit contemplated in subsection (1) must—
- (a) appoint a registered auditor contemplated in section 1 of the Auditing Profession Act, 2005 (Act No. 26 of 2005), to audit the trust fund in question annually in the manner contemplated in the said Act; and
- (b) annually forward the audit report to the relevant Regional Manager.” 50

Amendment of section 42 of Act 28 of 2002

35. Section 42 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Residue stockpiles and residue deposits must be—
- (a) managed in the prescribed manner on any site or facility demarcated for that purpose in the standard environmental management plan or environmental management plan **[or environmental management programme in question]**, as the case may be, and in accordance with the conditions of the environmental authorisation; 55
 - (b) monitored in the prescribed manner for compliance with, and adequacy of, the requirements in the standard environmental 60

management plan or environmental management plan and the conditions of the environmental authorisation; and
 (c) decommissioned and closed as prescribed.”.

Insertion of section 42A in Act 28 of 2002

36. The principal Act is hereby amended by the insertion of the following section: 5

“Monitoring and performance assessments

42A. As part of the general terms and conditions for a prospecting right, mining right, mining permit and an environmental authorisation, the holder of such right, permit or authorisation must conduct monitoring and performance assessments of the standard environmental management plan or environmental management plan as prescribed.” 10

Amendment of section 43 of Act 28 of 2002

37. Section 43 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 15
 “(1) The holder of a prospecting right, mining right, retention right or mining permit remains responsible for any environmental liability, pollution, **[or]** ecological degradation, the pumping and treatment of extraneous water, and the management and sustainable closure thereof, until the Minister has issued **[an]** a closure certificate to the holder concerned.”; 20
- (b) by the substitution for subsection (2) of the following subsection:
 “(2) On written application by the holder of a prospecting right, mining right or mining permit in the prescribed manner, the Minister may transfer such environmental liabilities and responsibilities as may be identified in the standard environmental management plan or environmental management plan **[or the environmental management programme]**, the environmental authorisation and any prescribed closure plan to a person with such qualifications as may be prescribed.”; 25
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 30
 “The holder of a prospecting right, mining right, retention permit or mining permit or the person contemplated in subsection (2), as the case may be, must apply for **[an]** a closure certificate upon—”;
- (d) by the substitution for subsection (4) of the following subsection: 35
 “(4) An application for **[an]** a closure certificate must be made to the Regional Manager in whose region the land in question is situated within 180 days of the occurrence of the lapsing, abandonment, cancellation, cessation, relinquishment or completion contemplated in subsection (3) and must be accompanied by the **[prescribed environmental risk report]** environmental plans and reports as prescribed.”; 40
- (e) by the substitution for subsection (5) of the following subsection:
 “(5) No closure certificate may be issued unless the Chief Inspector and **[the Department of Water Affairs and Forestry]** each government department charged with the administration of any law which relates to any matter affecting the environment have confirmed in writing that the provisions pertaining to health and safety and management of potential environmental impacts, pollution to water resources and the pumping and treatment of extraneous water have been addressed.”; 45
- (f) by the addition of the following subsection after subsection (6): 50
 “(7) The holder of any permit or right granted in terms of this Act must plan for, manage and execute procedures and requirements on mine closure as prescribed.
 (8) The holder of a prospecting right, mining right, retention permit or mining permit operating within an area with a cumulative impact must amend the environmental authorisation and the standard environmental management plan or environmental management plan accordingly or submit a closure plan which is aligned with closure strategies for such 55

areas as published by the Minister from time to time by notice in the *Gazette*.

(9) No closure certificate may be issued unless—

- (a) the Council for Geoscience has confirmed in writing that complete and correct prospecting reports in terms of section 21(1) have been submitted to the Council for Geoscience; or 5
- (b) the complete and correct records, borehole core data or core-log data that the Council for Geoscience may deem relevant have been lodged with the Council for Geoscience; or 10
- (c) in the case of the holder of a mining permit or mining right, complete and correct surface and relevant underground geological plans have been lodged with the Council for Geoscience.”. 15

Amendment of section 44 of Act 28 of 2002

38. Section 44 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 20

“When a prospecting right, mining right, retention permit or mining permit lapses, is cancelled or is abandoned or when any prospecting or mining operation **[comes to an end]** ceases, the holder of any such right or permit may not demolish or remove any building, structure or object—”; and
- (b) by the substitution for subsection (2) of the following subsection: 25

“(2) The provision of subsection (1) does not apply to **[bona fide]** mining equipment[,] which may be removed lawfully.”.

Amendment of section 46 of Act 28 of 2002

39. Section 46 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 30

- “(1) If the Minister **[directs that measures contemplated in section 45 must be taken to prevent pollution or ecological degradation of the environment or to rehabilitate dangerous occurrences but]** establishes that the holder of **[the relevant]** a reconnaissance permission, prospecting right, mining right, retention permit or mining permit, as the case may be, or his or her successor in title, is 35
deceased or cannot be traced or, in the case of a juristic person, has ceased to exist, has been liquidated or cannot be traced, the Minister may instruct the Regional Manager concerned to take the necessary measures to prevent **[further]** pollution or environmental degradation or to rehabilitate dangerous occurrences or to make the area safe.”. 40

Amendment of section 47 of Act 28 of 2002

40. Section 47 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 45

“(c) is contravening **[the approved]** any requirements in the standard environmental management plan or environmental management [programme] plan and any condition in the environmental authorisation; or”; and
- (b) by the substitution in subsection (2) for paragraph (d) of the following paragraph: 50

“(d) notify the **[mortgagor]** mortgagee, if any, of the prospecting right, mining right or mining permit concerned of his or her intention to suspend or cancel the right or permit.”.

Amendment of section 49 of Act 28 of 2002

41. Section 49 of the principal Act is hereby amended —

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsection (2), the Minister may **[after inviting representations from relevant stakeholders,]** from time to time by notice in the *Gazette*, having regard to the national interest, the strategic nature of the mineral in question and the need to promote the sustainable development of the nation’s mineral resources, prohibit or restrict the granting of any reconnaissance permission, prospecting right, mining right or mining permit in respect of land identified by the Minister for such period and on such terms and conditions as the Minister may determine.”; and

(b) by the addition of the following subsection after subsection (3):

“(4) Subject to subsection (2)(b), the Minister may by notice in the *Gazette* invite applications for a prospecting right, mining right or mining permit in respect of any mineral or land, and may specify in such notice the period within which an application may be lodged and the terms and conditions subject to which such right or permit may be granted.”.

Amendment of section 52 of Act 28 of 2002

42. Section 52 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The holder of a mining right must, after consultation with any registered trade union or affected employees or their nominated representatives where there is no such trade union, notify the **[Board]** Minister in the prescribed manner—

(a) where prevailing economic conditions cause the profit to revenue ratio of the relevant mine to be less than six per cent on average for a continuous period of **[12] 3** months; or

(b) if any mining operation is to be scaled down or to cease with the possible effect that **[10 per cent or more of]** the labour force **[or more than 500 employees, whichever is the lesser, are]** is likely to be retrenched **[in any 12-month period]**.”; and

(b) by the addition of the following subsection after subsection (3):

“(4) The holder of a mining right remains responsible for the implementation of the processes provided for in the Labour Relations Act, 1995, pertaining to the management of downscaling and retrenchment, until the Minister has issued a closure certificate to the holder concerned.”.

Amendment of section 53 of Act 28 of 2002

43. Section 53 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Despite subsection (1) the Minister may **[of his or her own volition]** cause an investigation to be conducted if it is alleged that a person intends to use the surface of any land in any way that could result in the mining of mineral resources being detrimentally affected;”.

Amendment of heading to section 56 of Act 28 of 2002

44. Section 56 of the principal Act is hereby amended by the substitution for the heading of the following heading:

“Lapsing of right, permit[,] and permission [and licence]”

Amendment of section 56 of Act 28 of 2002

45. Section 56 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Any right, permit[, or permission [or licence] granted or issued in terms of this Act shall lapse, whenever—”.

Amendment of heading to Chapter 5 of Act 28 of 2002

46. Chapter 5 of the principal Act is hereby amended by the substitution for the heading of the following heading:

“MINERALS AND [MINING DEVELOPMENT] PETROLEUM BOARD”.

Amendment of section 57 of Act 28 of 2002

47. The following section is hereby substituted for section 57 of the principal Act:

“Establishment of Minerals and [Mining Development] Petroleum Board

57. The Minerals and [Mining Development] Petroleum Board is hereby established.”.

Amendment of section 58 of Act 28 of 2002

48. Section 58 of the principal Act is hereby amended by the substitution in subsection (1)(a) for subparagraphs (ii), (iii) and (iv) of the following subparagraphs:

- “(ii) the sustainable development of the nation’s mineral and petroleum resources;
- (iii) the transformation and downscaling of the minerals and **[mining industry]** petroleum industries, and;
- (iv) **[dispute resolution]** objections referred to the Minister by the Board.”.

Amendment of section 59 of Act 28 of 2002

49. Section 59 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) The Board consists of no fewer than **[14]** 17 and no more than **[18]** 20 members, and must reflect the gender and racial composition in the Republic.”; and

- (b) by the addition to subsection (2) of the following paragraph after paragraph (h):

“(i) at least one person from a designated agency.”.

Amendment of section 61 of Act 28 of 2002

50. Section 61 of the principal Act is hereby amended by the deletion in subsection (2)(a) of subparagraph (i).

Amendment of section 63 of Act 28 of 2002

51. Section 63 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) The Chairperson or, in the absence of the Chairperson, the Minister must convene **[meetings]** the first meeting of the Board.”; and

- (b) by the substitution for subsection (4) of the following subsection:

“(4) If both the chairperson and deputy chairperson are absent from a meeting the attending members must nominate one of their **[number]** members as acting chairperson for that meeting.”.

Amendment of section 69 of Act 28 of 2002

52. Section 69 of the principal Act is hereby amended by the substitution for paragraph (a) in subsection (2) of the following paragraph:

“(a) For the purpose of this Chapter, section 9, 10, 11, 12, 23, 29, 30, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52, Chapter 7 and Schedule II apply with the necessary changes.”.

Amendment of section 71 of Act 28 of 2002

53. Section 71 of the principal Act is hereby amended by the substitution for paragraph (i) of the following paragraph:

- “(i) review and make recommendations to the Minister with regard to the acceptance of environmental reports and plans and the conditions of environmental authorisations [**the approval of environmental plans, environmental management programmes, development programmes**] and amendments thereto; and”.

Amendment of section 73 of Act 28 of 2002

54. Section 73 of the principal Act is hereby amended by the deletion of subsection (3).

Amendment of section 74 of Act 28 of 2002

55. Section 74 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:
- “(a) the requirements contemplated in subsection (1) are met; **[and]**
 (b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over **[any part of]** the same mineral, land and area; and”;
- (b) by the addition to subsection (2) of the following paragraph:
- “(c) no prior application for an exploration right, production right, or technical co-operation permit has been accepted for the same mineral, land and area.”;
- (c) by the substitution for subsection (3) of the following subsection:
- “(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant **[of that fact]** in writing within 14 days of the receipt of the application and **[return the application to the applicant]** request the applicant to comply with such requirements within seven days from the date of the notice.”; and
- (d) by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs:
- “(a) to submit **[an environmental management plan in accordance with section 39 within a period of 30 days, from the date of the notice]** reports and plans in accordance with the provisions of sections 38 and 39, where applicable.
 (b) to notify in writing and consult with any affected party.”.

Amendment of section 75 of Act 28 of 2002

56. Section 75 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) the applicant has access to financial resources and has the technical ability to conduct the proposed reconnaissance **[survey]** operation”;
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) If the Minister refuses to issue a reconnaissance permit, the Minister must within 30 days of the decision, **[in writing]** notify the applicant in writing of the decision **[and the reasons therefor]**.”.

Amendment of section 76 of Act 28 of 2002

57. Section 76 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:
 - “(a) the requirements contemplated in subsection (1) are met; **[and]** 5
 - (b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over **[any part of]** the same mineral, land and area[.]; and”;
- (b) by the addition to subsection (2) of the following paragraph:
 - “(c) no prior application for an exploration right, production right, or technical co-operation permit has been accepted for the same mineral, land and area.”; and 10
- (c) by the substitution for subsection (3) of the following subsection:
 - “(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant **[of that fact]** in 15 writing within 14 days of the receipt of the application **[and return the application to the applicant].**”.

Amendment of section 78 of Act 28 of 2002

58. Section 78 of the principal Act is hereby amended by the addition to subsection (2) of the following paragraph: 20

- “(c) submit a technical co-operation permit for recording in the Mineral and Petroleum Titles Registration Office.”.

Amendment of section 79 of Act 28 of 2002

59. Section 79 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 25
 - “(b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over **[any part of]** the same mineral, land and area applied for.”; 30
- (b) by the addition to subsection (2) of the following paragraph:
 - “(c) no prior application for a technical co-operation permit, exploration right or production right over the same mineral, land and area applied for has been accepted.”; 35
- (c) by the substitution for subsection (3) of the following subsection:
 - “(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant **[of that fact]** in 35 writing within 14 days of the receipt of the application **[and return the application to the applicant].**”; 40
- (d) by the substitution in subsection (4) for paragraph (b) of the following paragraph:
 - “(b) to submit **[an environmental management programme in terms of section 39 within a period of 120 days from the date of the notice]** reports and plans in accordance with section 38, where applicable, and section 39 ;”;
- (e) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 45
 - “(a) to notify in writing and consult with any affected party; and” and
- (f) by the substitution for subsection (5) of the following subsection:
 - “(5) Any technical co-operation permit in respect of which an application for an exploration right has been lodged in terms of subsection (1) shall, notwithstanding its expiry date, remain in force until such **[application]** right has been granted or refused.”. 50

Amendment of section 80 of Act 28 of 2002

60. Section 80 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 55
 - “(c) to submit **[an environmental management programme in terms of section 39 within a period of 120 days from the date of the notice]** reports and plans in accordance with section 38, where applicable, and section 39 ;”;

- “(c) the **[Minister has approved the environmental management programme in terms of section 39(4)]** environmental authorisation has been issued;”
- (b) by the substitution for subsection (2) of the following subsection:
 - “(2) The Minister may, having regard to the type of petroleum resource concerned and the [after taking into account the need for the] extent of the exploration [the] project, request that the applicant gives effect to section 2(d).”;
- (c) by the addition of the following subsection after subsection (5):
 - “(6) The granting of an exploration right in terms of subsection (1) becomes effective on the date on which—
 - (a) the environmental authorisation is issued; and
 - (b) the right is executed.”.

Amendment of section 81 of Act 28 of 2002

- 61.** Section 81 of the principal Act is hereby amended—
 - (a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
 - “(c) be accompanied by a report reflecting the extent of compliance with the requirements of the **[approved] standard** environmental management **[programme] plan**, the rehabilitation to be completed and the estimated cost thereof and the conditions of the environmental authorisation; and”;
 - (b) by the substitution in subsection (3) for paragraph (c) of the following paragraph:
 - “(c) requirements of the **[approved] standard** environmental management **[programme] plan** and the conditions of the environmental authorisation.”.

Amendment of section 82 of Act 28 of 2002

- 62.** Section 82 of the principal Act is hereby amended in subsection (2) for paragraph (a) of the following paragraph:
 - “(a) lodge such right for registration at the **[Mining Titles Office] Mineral and Petroleum Titles Registration Office** [within 30 days of the date on which the right—
 - (i) become effective; or**
 - (ii) is renewed in terms of section 81(3);]**”.

Amendment of section 83 of Act 28 of 2002

- 63.** Section 83 of the principal Act is hereby amended—
 - (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 - “(b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over **[any part of] the same mineral, land and area applied for.**”;
 - (b) by the addition in subsection (2) of the following paragraph:
 - “(c) no prior application for a technical co-operation permit, exploration right or production right over the same mineral, land and area applied for has been accepted.”;
 - (c) by the substitution for subsection (3) of the following subsection:
 - “(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant **[of that fact]** in writing within 14 days of the receipt of the application **[and return the application to the applicant].**”;
 - (d) by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs:
 - “(a) notify in writing and consult with interested and affected parties;
 - (b) to **[conduct an environmental impact assessment and submit an environmental management programme for approval within 180 days from the date of the notice in terms of section 39]** submit reports and plans in accordance with section 39;”.

Amendment of section 84 of Act 28 of 2002

64. Section 84 of the principal Act hereby amended —

- (a) by the substitution in subsection (1) for paragraph (i) of the following paragraph:
 - “(i) the granting of such right will further the object referred to in section 2(d) and (f) and in accordance with the Charter contemplated in section 100 and the prescribed **[land]** social and labour plan.”;
- (b) by the substitution for subsection (3) of the following subsection:
 - “(3) If the Minister refuses to grant a production right, the Minister must, within 30 days of the decision, **[in writing]** notify the applicant in writing of [the] such decision [and the reasons therefor];”;
- (c) by the substitution for subsection 5 of the following subsection:
 - “(5) The granting of a production right in terms of subsection (1) becomes effective on the date on which—
 - (a) the environmental authorisation is issued; and
 - (b) the right is executed.”

Amendment of section 85 of Act 28 of 2002

65. Section 85 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection: 20

- “(5) A production right in respect of which an application for renewal has been lodged, shall **[dispute]** despite its expiry date, **[remains]** remain in force until such time as such application has been granted or refused.”.

Amendment of section 86 of Act 28 of 2002

66. Section 86 of the principal Act is hereby amended— 25

- (a) by the substitution in subsection (2) for paragraphs (a), (c), (d) and (e) of the following paragraphs:
 - “(a) lodge such right for registration at the **[Mining Titles Office]** **[within 30 days of the date on which the right—**
 - (i) **become effective; or**
 - (ii) **is renewed in terms of section 85(3);]** Mineral and Petroleum Titles Registration Office;
 - (c) comply with the terms and conditions of the production right, the relevant provisions of this Act and [only] any other law;
 - (d) comply with the requirements of the **[approved]** environmental management **[programme]** plan, the conditions of the environmental authorisation and the prescribed social and labour plan;
 - (e) in terms of any relevant law, pay the State royalties; and”;
- (b) by the deletion in subsection (2) of paragraph (g).

Amendment of section 92 of Act 28 of 2002 40

67. Section 92 of the principal Act is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of the following words:
 - “Any authorised person may **[during office hours]**, without a warrant—”;
- (b) by the substitution for paragraph (b) of the following paragraph:
 - “(b) require the holder of the right, permit or permission **[or]** in question or the person in charge of such area or place or any person carrying out or in charge of the carrying out such activities, process or operations to produce any book, record, statement or other document including electronic documents, information or data relating to matters dealt with in this Act for inspection, or for the purpose of obtaining copies thereof or extracts therefrom.”.

Amendment of section 93 of Act 28 of 2002

68. Section 93 of the principal Act is hereby amended by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words:

“any term or condition of any right, permit, authorisation or permission [**or any other law**] granted or issued or any [**environmental management programme or**] environmental management plan approved in terms of this Act or standard environmental management plan and environmental management authorisation issued, has occurred or is occurring on the relevant reconnaissance, exploration, production, prospecting, mining or retention area or place where prospecting operations or mining operations or processing operations are being conducted, such a person may—”.

Amendment of section 96 of Act 28 of 2002

69. Section 96 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Any person whose rights or legitimate expectations have been materially and adversely affected or who is aggrieved by any administrative decision in terms of this Act may appeal within 30 days of becoming aware of such decision in the prescribed manner to—

(a) the Director-General, if it is an administrative decision taken by a Regional Manager or [**an officer**] any officer to whom the power has been delegated or a duty has been assigned by or under this Act; or

(b) the Minister, if it is an administrative decision taken by the Director-General or the designated agency.”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) (a) An appeal in terms of subsection (1) does not suspend the administrative decision, unless it is suspended by the Director-General or the Minister, as the case may be.

(b) Any subsequent application in terms of this Act must be suspended pending the finalisation of the appeal referred to in paragraph (a).”.

Amendment of section 98 of Act 28 of 2002

70. Section 98 of the principal Act is hereby amended—

(a) by the substitution in paragraph (a) for subparagraphs (i), (iii) and (iv) of the following subparagraphs:

“(i) section 5(4) [**20(2), 19**] or 28

(iii) section 35 or 38(1)(c);

(iv) section 42(1) [**or**], (2) or (3)”;

(b) by the substitution for paragraph (c) of the following paragraph:

“(c) fails to [**provide a written notice or consult with**] obtain approval from the Minister in terms of section 26(3).”.

Amendment of section 100 of Act 28 of 2002

71. Section 100 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) To ensure the attainment of the Government’s objectives of redressing historical, social and economic inequalities as stated in the Constitution, the Minister must within six months from the date on which this Act takes effect develop a broad-based socio-economic empowerment Charter that will set the framework, targets and time-table for effecting the entry into and active participation of historically disadvantaged South Africans [**into**] in the mining industry, and allow such South Africans to benefit from the exploitation of the mining and mineral resources and the beneficiation of such mineral resources.”.

Substitution of section 101 of Act 28 of 2002

72. The following section is hereby substituted for section 101 of the principal Act:

“Appointment of contractor

101. If the holder of a right, permit or permission appoints any person or employs a contractor to perform any work within the boundaries of the reconnaissance, mining, prospecting, exploration, production or retention area, as the case may be, such holder remains responsible for compliance with this Act.”. 5

Substitution of section 102 of Act 28 of 2002

73. The following section is hereby substituted for section 102 of the principal Act: 10

“Amendment of rights, permits, programmes and plans

102. A reconnaissance permission, prospecting right, mining right, mining permit, retention permit, technical corporation permit, reconnaissance permit, exploration right, **[and]** production right, prospecting work programme[;], exploration work programme, production work programme, mining work programme, [environmental management programme, and] standard environmental management plan or environmental management plan and environmental authorisation may not be amended or varied (including by extension of the area covered by it or by the additional of minerals or a share or shares or seams, mineralised bodies or strata, which are not at the time the subject thereof) without the written consent of the Minister.”. 15 20

Amendment of section 103 of Act 28 of 2002

74. Section 103 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph: 25

“(b) withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned in terms of subsection (1), (2) or (3), as the case may be: Provided that no existing rights of any person shall be affected by such withdrawal and amending of a decision.”.

Amendment of section 105 of Act 28 of 2002 30

75. Section 105 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who has applied for a right, permit or permission in terms of this Act must notify the Regional Manager if the landowner or lawful occupier of the land concerned— 35
(a) cannot be readily traced; or
(b) is deceased and no successor in title can be readily traced.”.

Amendment of section 106 of Act 28 of 2002

76. Section 106 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 40

“(2) Despite subsection (1), the organ of state so exempted must submit **[an environmental management programme for approval in terms of section 39 (4)]** reports and plans as contemplated in section 39 to obtain an environmental authorisation.”.

Amendment of section 107 of Act 28 of 2002 45

77. Section 107 of the principal Act is hereby amended—

(a) by the substitution in subsection (1)(a) for subparagraphs (v), (vi) and (viii) of the following subparagraphs:

- “(v) pecuniary provision by the holder of any right, permit or permission for the carrying out of an environmental management **[programme]** plan and standard environmental plan;
- (vi) the establishment of accounts in connection with the carrying out of an environmental management **[programme]** plan and standard environmental plan and the control of such accounts by the Department;
- (viii) the monitoring and auditing of environmental management **[programmes]** plans and standard environmental plans;”;
- (b) by the substitution in subsection (1) for paragraph (g) of the following paragraph:
 - “(g) the form, conditions, issuing, renewal, abandonment, suspension or cancellation of any environmental management **[programme]** plan, permit, licence, certificate, permission, receipt or other document which may or have to be issued, granted, approved, required or renewed in terms of this Act;”;
- (c) by the insertion in subsection (1) of the following paragraphs after paragraph (j):
 - (jA) the manner in which a claim for compensation may be lodged;
 - (jB) steps to be taken before submitting an application for environmental authorisation;
 - (jC) the contents of a basic assessment report and a standard environmental management plan;
 - (jD) the contents of a scoping report, environmental impact assessment report, specialist reports and reports on specialised processes and the draft environmental management plan;”.

Amendment of item 1 of Schedule II to Act 28 of 2002

78. Item 1 of Schedule II to the principal Act is hereby amended—

- (a) by the substitution for the definition of ‘old order mining right’ of the following definition:
 - “‘old order mining right’ means any mining lease, mynpachten, consent to mine, permission to mine, claim licence, mining authorisation or right listed in Table 2 to this Schedule in force immediately before the date on which this Act took effect and in respect of which mining operations are being conducted;”;
- (b) by the substitution for the definition of ‘OP26 mining lease’ of the following definition:
 - “‘OP26 mining lease’ means **[the]** any mining lease granted **[to Moss gas (Pty) Ltd under]** in terms of clause 22 of **[the OP26 prospecting lease]** prospecting lease OP26 or the portions held under Deed of Cession 1/1996, registered in terms of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967);”;
- (c) by the substitution for the definition of ‘OP26 sublease’ of the following definition:
 - “‘OP26 sublease’ means those parts of the OP26 mining lease which are held under Cessions 1/1999 and 1/2002, registered as such at the Mineral and Petroleum Titles Registration Office on 8 September 1999 and 30 September 2002, respectively;”;
- (d) by the substitution for the definition of ‘OP26 right’ of the following definition:
 - “‘OP26 right’ means prospecting lease OP26 and the portions ceded under Deed of Cession 1/1996, registered in terms of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), or an OP26 sublease or OP26 mining lease;”.

Amendment of item 3 of Schedule II to Act 28 of 2002

79. Item 3 of Schedule II to the principal Act is hereby amended by the substitution for subitem (4) of the following subitem:

- “(4) If the environmental management programme does not meet **[with]** the requirements of this Act, the Regional Manager in whose

region the land to which the environmental management programme relates is situated must direct the holder concerned to submit the outstanding information.”.

Amendment of item 4 of Schedule II to Act 28 of 2002

80. Item 4 of Schedule II to the principal Act is hereby amended— 5

(a) by the substitution for subitem (5) of the following subitem:

“(5) The holder must lodge the right converted under subitem (3) within 90 days from the date on which he or she received notice of conversion at the **[Mining Titles Office] Mineral and Petroleum Titles Registration Office** for deregistration and simultaneously at the Deeds office or the **[Mining Titles Office] Mineral and Petroleum Titles Registration Office** for registration of the OP26 sub-lease as the case may be.”; and 10

(b) by the substitution for subitem (6) of the following subitem:

“(6) The registration contemplated in subitem (5) must occur within six months from the date on which the sublease has been converted and must be done at the same time as the deregistration of the sublease at the **[Mining Titles Office] Mineral and Petroleum Titles Registration Office**.”. 15

Amendment of item 5 of Schedule II to Act 28 of 2002

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81. Item 5 of Schedule II to the principal Act is hereby amended—

(a) by the substitution for subitem (5) of the following subitem:

“(5) The holder must lodge the right converted under subitem (3) within 90 days from the date on which he or she received notice of conversion at the **[Mining Titles Office] Mineral and Petroleum Titles Registration Office** for registration and simultaneously at the Deeds office or **[for] the [Mining Titles Office] Mineral and Petroleum Titles Registration Office** for deregistration of OP26 lease, as the case may be.”; and 25

(b) by the substitution for subitem (7) of the following subitem:

“(7) Upon the conversion of the lease and the registration of the production right into which it was converted, the **[sublease] lease** ceases to exist.”. 30

Amendment of item 6 of Schedule II to Act 28 of 2002

82. Item 6 of Schedule II to the principal Act is hereby amended by the substitution for subitem (5) of the following subitem: 35

“(5) The holder must lodge the right converted under subitem (3) within 90 days from the date on which he or she received notice of conversion at the **[Mining Titles Office] Mineral and Petroleum Titles Registration Office** for registration and simultaneously at the Deeds Office or **[it] the [Mining Titles Office] Mineral and Petroleum Titles Registration Office** for deregistration of the old order prospecting right, as the case may be.”. 40

Amendment of item 7 of Schedule II to Act 28 of 2002

83. Item 7 of Schedule II to the principal Act is hereby amended—

(a) by the substitution for subitem (1) of the following subitem: 45

“(1) Subject to subitems (2) and (8), any old order mining right which was in force immediately before this Act took effect continues to be in force for a period not exceeding five years from the date on which this Act took effect or the period for which it was granted, whichever period is the shortest, subject to the terms and conditions under which it was granted or issued or was deemed to have been granted or issued.” 50

(b) by the substitution in subitem (2) for paragraphs (g) and (k) of the following paragraphs:

“(g) information as to whether or not the old order mining right is encumbered by any mortgage bond or other right registered at the 55

Deeds Office or **[Mining Titles Office]** Mineral and Petroleum
Titles Registration Office;

- (k) **[an undertaking that, and]** documentary proof of the manner in
which[,] the holder will give effect to the object referred to in
section 2(d) and 2(f).”; and

- (c) by the substitution for subitem (5) of the following subitem:

“(5) The holder must lodge the right converted under subitem (3)
within 90 days from the date on which he or she received notice of
conversion at the **[Mining Titles Office]** Mineral and Petroleum Titles
Registration Office for registration and simultaneously at the Deeds
Office or **[for]** the **[Mining Titles Office]** Mineral and Petroleum Titles
Registration Office for deregistration of the old order mining right, as the
case may be.”.

Amendment of item 8 of Schedule II to Act 28 of 2002

- 84.** Item 8 of Schedule II to the principal Act is hereby amended by the substitution
for subitem (1) of the following subitem:

“(1) Any unused old order right which was in force immediately before this Act
took effect, continues to be in force, subject to the terms and conditions under
which it was granted, acquired or issued or was deemed to have been granted or
issued, for a period not exceeding one year from the date on which this Act took
effect, or for the period for which it was granted, acquired or issued or was deemed
to have been granted or issued, whichever period is the shortest.”.

Amendment of Item 10 of Schedule II to Act 28 of 2002

- 85.** Item 10 of Schedule II to of the principal Act is hereby amended—

- (a) by the substitution for subitems (4) and (5) of the following subitems:

“(4) If the holder of an old order prospecting right or old order mining
right ceases the relevant prospecting or mining operation, the holder
must apply for **[an]** a closure certificate in terms of section 43.

(5) **[Section]** Sections 38, 41(2), 45 and 52 **[applies]** apply to a holder
of an old order prospecting right or old order mining right.”; and

- (b) by the insertion of the following subitem after subitem (4):

“(4A) If no application for a certificate contemplated in section 12 of the
Minerals Act has been made, the holder referred to in that section,
who remains liable for complying with the relevant provision of
that Act, must apply for a closure certificate in terms of section
43.”.

Amendment of Item 12 of Schedule II to Act 28 of 2002

- 86.** Item 12 of Schedule II to the principal Act is hereby amended—

- (a) by the substitution for subitem (4) of the following subitem:

“(4) Any claim for compensation must be lodged with the Director-
General and the Minister may prescribe—

(a) the manner in which such claim may be lodged;

(b) the procedure to be followed by the claimant and the Director-
General in respect of such claim; and

(c) the time when any legal proceedings may be instituted in respect of
the determination or payment of compensation as contemplated in
subitem (1).”; and

- (b) by the addition of the following subitems after subitem (4):

“(5) Despite the provisions of the Prescription Act, 1969 (Act No. 68
of 1969), prescription in respect of a claim for compensation shall only
commence to run—

(a) when the claimant has been informed in writing by the Director-
General that he or she has denied the validity of the claim and the
claimant has not appealed against such denial in terms of section 96;
or

(b) where a claimant decides to appeal the denial of the Director-
General in terms of section 96, when the claimant has been

- informed in writing by the Minister of the confirmation of the said denial; or
- (c) 180 days after the claimant has been informed in writing that the Director-General accepts the validity of the claim, or that the Minister upholds an appeal contemplated in subitem (b).
- (6) On the occurrence of any of the events described in subitems (5)(a) to (c)—
- (a) to the extent that they may be applicable, the provisions of sections 10(4), (5), (7) and (8), 14, 15, 19 and 21 of the Expropriation Act, 1975 (Act No. 63 of 1975), apply with the necessary changes to a claim made in terms of subitem (1); and
- (b) the claimant may issue proceedings in a court of law for the determination and payment of compensation, but not before.
- (7) The provisions of this item do not apply to expropriation of property in terms of section 55 of the Act.”.

Amendment of Table 2 of Act 28 of 2002

87. Table 2 of the principal Act is hereby amended—

- (a) by the substitution for Category 3 of the following:
- “A right to dig or to mine or [a] claim licence, a tributing agreement or a mynpachten referred to in section 47 of the Minerals Act and the common law mineral right attached thereto, together with a mining authorisation obtained in connection therewith under section 47(1)(e) in terms of section 9(1) of the Minerals Act.”; and
- (b) by the substitution for Category 4 of the following:
- “A right to dig or to mine referred to in section 47(5) of the Minerals Act or any right to dig or mine acquired under a tributing agreement as defined in section 1 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), or any sub-grant acquired by virtue of the first mentioned right and the common law mineral right attached thereto, together with a mining authorisation obtained in connection therewith in terms of section 9(1) of the Minerals Act.”.

Amendment of Table 3 of Act 28 of 2002

88. Table 3 of the principal Act is hereby amended by the substitution for Category 10 of the following:

- “A right to dig or to mine referred to in section 47(5) of the Minerals Act or any right to dig or mine acquired under a tributing agreement as defined in section 1 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), or any sub-grant acquired by virtue of the first mentioned right and the common law mineral right attached thereto, together with a mining authorisation obtained in connection therewith by virtue of section 47(1)(e) of the Minerals Act and in terms of section 9(1) of the Minerals Act.”.

Short title and commencement

89. (1) This Act is called the Mineral and Petroleum Resources Development Amendment Act, and comes into operation on a date fixed by the President by proclamation in the *Gazette* .

(2) Despite subsection (1), section 87 is deemed to have come into operation on 1 May 2004.

MEMORANDUM ON THE OBJECTS OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL, 2007

1. OBJECTS OF BILL

The main object of the Bill is to remove ambiguity that may exist in the principal Act by amending certain definitions, to promote and enhance co-operative governance between organs of state, to harmonise national norms and standards on environmental management in general and on environmental impact assessment (EIA) specifically with those in the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), to confirm sound environmental management principles and to further protect certain existing rights.

The Bill seeks to amend the principal Act to facilitate the smooth implementation of the new minerals and mining dispensation by aligning it with sound administrative practices and the objects of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

The Bill furthermore harmonises national norms and standards on environmental management in general and on EIA specifically as being applied in terms of NEMA, 1998. The Bill therefore removes certain inconsistencies in the principal Act, such as the requirements for environmental management plans and environmental management programmes as the case may be. In accordance with acceptable environmental management principles, the Act is further amended so as to provide for the continuation of current departmental policy concerning the provision of financial guarantees. It also provides clarity on the financial instruments required for Trust Funds.

The Bill makes provision for addressing cumulative impacts emanating from mines and provides for appropriate closure procedures in this regard.

To facilitate co-operative governance, the Bill further confirms the separation of powers between the Minister of Minerals and Energy, who is authorised to levy certain fees in terms of the principal Act, and the Minister of Finance, who must determine state royalties in terms of another Act of Parliament.

The Bill further promotes co-operative governance in that it seeks to amend section 40 of the principal Act so that REMDEC will be able to make recommendations to the Minister on environmental objections received from other state departments.

The Transitional Chapter in the principal Act is amended to rectify certain omissions of existing old order rights, such as mynpachten and tributing agreements.

2. DEPARTMENTS/PARTIES CONSULTED

The following Departments and statutory bodies were consulted on the Bill:

National Treasury
Department of Land Affairs
Department of Environmental Affairs and Tourism
Department of Water Affairs

3. FINANCIAL IMPLICATION FOR STATE

In terms of the Bill, fees such as prospecting, retention and application fees will be payable to the State on commencement of this Bill, whereas royalties will be payable once a separate Act of Parliament has been promulgated.

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.

The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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