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6 September 2013

The Portfolio Committee on Mineral Resources
Parliament of South Africa
Attention: Ms Ayanda Boss
PO Box 15
Cape Town, 8000

Sent via electronic mail:

aboss@parliament.gov.za

Dear Ms Boss,

MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL, 2013 [B 15 – 2013]

1. Shell South Africa Upstream B.V. ("Shell") welcomes the opportunity to provide input on the Mineral and Petroleum Resources Development Amendment Bill (draft MPRDA), published on the 21st of June 2013.
2. These comments are aligned with Shell's submission to the Department of Mineral Resources and form part of our continuing engagement with government, to arrive at legislation (MPRDA) that will enable Shell to fast-track investments in the oil and gas industry, that will grow and develop the economy, such that it provides a balance between providing commercial returns and meaningfully contributing to addressing the key challenges facing South Africa, namely unemployment, poverty and inequality.
3. Investment in the exploration for and development of oil and gas resources is extremely costly and financially risky: such investments are long-term, large-scale and up-front, and the financial exposure during the exploration phase is particularly high. The financial risk is caused by geological and technical uncertainty around the presence and ability to produce oil and gas resources. For a country to attract investment in the exploration and production of oil and gas, the financial risks need to be balanced with stable and transparent legislation that provides benefits to investors and meets the country's aspirations. In the case of exploration success, the anticipated

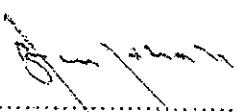
profits for petroleum resource developers need to be predictable and adequate to incentivise investors to take these risks. Amendments to the Act therefore should encourage investment and provide stability in the oil and gas sector, such that it facilitates, and affords business the opportunity to expand its operations enabling it to contribute and join government in addressing the key challenges facing the country.

4. Shell is concerned that the combined effect of uncertainty in the scope of terms such as free carry for the State, the absence of detail on the commercial terms for further participation and the absence of clarifying regulation setting limits in these areas, could lead to significant delays in planned investment by the oil and gas industry.
5. We are confident however that the current ongoing dialogue on the MPRDA and related issues with the Mineral Resources Portfolio Committee and other government departments, will lead to a positive outcome for all stakeholders, as a clear and objective MPRDA is critical for the efficient and effective operation of a vibrant oil and gas industry.
6. Shell is supportive of government initiatives and proposals that encourage business to invest in South Africa. In this regard, we believe the proposed MPRDA lays the foundation to achieve that. There are however certain provisions in the current draft that still remain to be addressed. These provisions, in our view, are not conducive to giving companies the clarity and confidence to invest and conduct their operations.
7. Shell's main concerns centre on the following three aspects in the current draft MPRDA:
 - Lack of clarity in the relation between equity ownership provisions of the Mining Charter, State Participation and Free Carry and its application to the oil and gas industry;
 - Absence of regulations accompanying the draft MPRDA that indicate how the legislation will be implemented;
 - The degree of Ministerial discretion in the implementation of the MPRDA; and
8. **Free carry, State Interest and Transformation** – Shell is unequivocal in its supports of the principles of State participation and broad based black economic empowerment. However, the current draft MPRDA is unclear on the interplay between these three aspects, and how they will be managed and implemented so as to meet the government's objectives and provide long term confidence to investors.
9. **Absence of Regulations** – without regulations it is very difficult to assess the actual impact of the draft MPRDA. Regulations outline how the MPRDA will be administered to give effect to the objectives of the legislation, and it is crucial that companies understand what is meant and how clauses will be implemented.
10. **Discretionary powers** - The draft proposes that the Minister and officials of the Department of Mineral Resources be given the discretion to determine a number of factors which may fundamentally affect the long term economics of oil and gas production projects, as well as the

time-limits within which various administrative decisions must be made. This dilutes confidence in the stability, transparency, consistency and responsiveness of the legislative and regulatory framework within which the oil and gas production projects must operate. And that confidence is a prerequisite for any decision to commit to projects of this scale and nature.

11. The attached schedule in Annexure 1 is a summary of Shell's questions for clarity and comments that relate to specific amendments.
12. We look forward to engaging further with the Portfolio Committee on Mineral Resources on this important legislation as it is crucial to the ongoing viability and sustainability of the oil and gas industry in South Africa.

Kind regards,



Bonang Mohale
Chairman

Annexure 1: MPRD Amendment Bill of 2013 Comments (B15-2013)

Item	2002 Act Section no.	2013 draft update	Comments / Queries
1	1 Definitions “beneficiation”	1(b)	How will beneficiation be applied to petroleum resources including gas? For example would the treatment i.e. transport, processing and the supply chain of goods and services, of gas or oil be construed as beneficiation? The DMR needs to clarify what it foresees to be beneficiation of petroleum resources i.e. which processes. Cross referenced to Section 26 (item 19) – see below.
2	“designated agency”	1(g)	When will the Regulations be made available for comment? We need to understand how the new and existing licensing administration will function given the proposal to replace the designated agency.
3	“commercial discovery”	1(e)	Which Regional Manager will have competence for offshore operations (i.e. Western Cape)? Will the Karoo project have one Regional Manager or will we have a Regional Manager for each province / region?
4	“developmental pricing conditions”	1(i)	How will “commercial” discovery be tested? How will the pricing methodology be calculated and when will the relevant regulations be available for comment?
5	“designated minerals”	1(i)	What is the process which will be followed to determine “designated minerals” and when will the relevant regulations be available for comment? How will ‘as and when the need arises’ be determined?
6	“free carried interest”	1(k)	How will the share be collected i.e. will this be treated as a tax / royalty and if so which government department / agency will collect it? What is the definition of Net profit? Will this be net income before tax (NIBT) or net income after tax (NIAT)? It appears that the free carry will amount to no more than an additional layer of tax? please clarify.
7	“strategic minerals”	1(y)	What is the process which will be followed to determine “strategic minerals” and when will the relevant regulations be available for comment? How will “as and when the need arises” be determined?

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8	"this Act"	1(zA)	the Mining Charter needs to be issued in terms of its applicability to the oil and gas sector.
11	9 Order of processing applications	5	Can applications only be made on invitation or can applications be made by own initiative of the applicant?
			Will preference be given to prior accepted applications submitted in response to a call for applications?
12	11	8	Please clarify that this does not apply to the sale / transfer of shares.
13	26	Mineral beneficiation	In the absence of the necessary regulations, it is unclear how these provisions will apply to petroleum resources and what the anticipated process and rationale would be to determine the appropriate beneficiary levels.
14	32 - 35	25 - 27	What is meant by a market development programme?
			How will it be possible to "prove commerciality"? This is a very subjective provision. Drafting of this section needs to be looked at to create a more objective or measurable requirement.
15	37	Environmental management principles	How will the interim situation be governed pending any such NEMA amendments i.e. the 'suspended' transfer of powers from the Department of Environment to the Department of Mineral Resources. Will this be rectified in the upcoming NEMA amendments?
16	43	Closures (closure certificates)	What is the intent of this amendment? What is intended to be achieved through the issuing of a closure certificate in relation to liability if such liability remains after issuing of a closure certificate? How will this section be applied with the NEMA provisions relating to closure?
			Will corresponding amendments to NEMA be made to align the closure requirements and liabilities? How will this process be managed?

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			What is meant by the terms legally and formally abandoned (S 43(14))?
17	48	35	What constitutes "invasive operations"? How will the new subsection 14 interact with the preceding liability provisions?
18	56	42	How is the "portion to be retained" in terms of Section 43(6) going to be determined?
19	69	45	Could you explain the specific inclusion of the words 'town planning scheme' when there is already existing, possibly conflicting, legislation governing this concept?
20	70 Designated agency	46	Section is amended to delete "(a) it expires", what is the purpose of this deletion?
			The reference to S 64 in S 69 is incorrect as the former has been repealed. Please can this be corrected?
			How will the transition be dealt with i.e. will PASA process existing / pre-amendment applications or will this be transferred to the RMS immediately upon the Bill coming into effect?
			Which Regional Manager Office will process offshore operations?
			How will this proposed change be applied to petroleum operations and / or shale gas?
			In instances where multiple regions are affected will a single National Regional Manager be appointed?
21	79 – 80 Exploration rights	53 - 54	Sections 79(4) (c) and 80(1) (g) how will it be determined whether or not an applicant has the ability to comply with the relevant provisions of the National Water Act? Will this be at the discretion of the DMR or the Department of Water Affairs? Section 79(4) (c) is a duplication of existing obligations in terms of the National Water Act, 2008.
			80(2): In what instances is it envisaged that the Minister will exercise the proposed discretion? How will this discretion be applied?

		How will pending applications be dealt with i.e. transitional arrangements?	
		Section 80(3)(b): how is this provision relating to concentration of rights relevant to the granting of an exploration right when the definition of concentration of rights limits applies only to situations where the granting of 'prospecting right(s), mining right(s) and / or mining permit(s)' will defeat the objects of 2(d)? Is this an error? It appears that the concept of concentration of rights is only applicable to the Mining industry and as such this subsection should be deleted to avoid confusion.	
		Section (80)(7): The proposed amendment relating to free carried interest is a significant change from the existing concept of "State participation", the latter which is supported.	
22	82 Rights and obligations of holder	56	How will applications for revised environmental authorizations and environmental authorisations be processed in the case where there is a rig already in place and

	of exploration right	appraisal operations will immediately follow exploration operations (in respect of discoveries).	Comment: Based on industry experience it is our suggestion that there should be no distinction between appraisal and exploration.		
		section 82(2)(h) requires the holder of an exploration right to pay the royalties in respect of any petroleum removed and disposed of during the course of exploration activities – does this include necessary flaring etc? This provision should be qualified in that the royalties are only payable if disposed of for commercial gain i.e. for profit / income. Furthermore how will the royalty be calculated?	Comment: Section 82 (2) (h) is an irrelevant and redundant provision as; unless it is to be anticipated that some further (separate) legislation is to be anticipated, liability for royalty is determined in terms of the Royalty Act. Even if such further legislation were to emerge, it must be expected to contain provisions establishing terms for liability.		
23	New section 82A	57	Comment: At present the legislation does not allow longer term production testing in the absence of a production right. Longer term testing is critical for Unconventional Exploration prior to a decision being made with regards to commercial production. This new section provides that a holder of an exploration right must first obtain the prior written permission of the Minister prior to conducting any form of tests that involve producing petroleum and any such removal will be subject to such conditions as the Minister may determine.	How will the ‘conditions’ be determined i.e. by regulation or as part of license conditions?	Comment: Operationally this is not feasible to implement e.g. production testing for an offshore well etc. We propose that short term operational testing be distinguished

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			from long term pilot testing and that only the latter be subject to Ministerial permission(s).
24	83 Application for production right	58	Section 83(4)(c) is a duplication of the existing obligations in terms of the Water Act, 1998.
25	84 Granting of production right	59	<p>Section 84(1) (i) Which authority will determine whether or not an applicant has the ability to comply with the National Water Act? How will this 'ability' be determined?</p> <p>Will this be at the discretion of the DMR or the Department of Water Affairs?</p> <p>Comment: The proposed sections 84(6) and (7) will have a considerable negative impact on the investment climate in South Africa and substantial redrafting will be required to provide certainty as well as investment attractiveness. In its current form it is unworkable. From our experience alignment in the venture is very important i.e. similar risk similar rewards and appropriate alignment in costs is essential!</p> <p>Shell sees value in State participation on the basis of equal funding; however significant redrafting will be required to render this proposed amendment to be workable taking into account current companies law as well as future investment.</p> <p>What are "specified terms"? Will these be the subject of further regulation? What is the difference between "specified terms" and "prescribed terms"?</p> <p>What are "special shares" as these are not provided for in the Companies Act of 2008.</p> <p>Which authority will collect dividends, the DMR or the Minister of Finance / Treasury?</p> <p>How will the dividend payment be calculated? Which entity will be liable for, if applicable, dividends tax?</p>
26	85(2)	60	Section 85(2)(a) currently provides "An application for renewal of a production right must state the reasons period for which the renewal is required". This section is not amended by the 2008 nor 2012 Amendment Bills however its meaning is unclear in its current form. Please clarify.

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27	88 Information and Data	63	Section 21 is made applicable to petroleum operations under section 69, resulting in a duplication of requirements. Will the drafting duplications be rectified?
28	89 Financial guarantee	64	This section provides "in addition to section 5(4)". Section 5(4) has been deleted by the coming into force of the 2008 MFRDAA.
29	94	67	The Bill amends S 94 by deleting SS2. But neither the existing Act nor the 2008 Act have a SS2. Please clarify.
30	96 New 2A		Currently provides that "Any pending administrative decision in terms of this Act, which, in the opinion of the Minister may affect the outcome of an appeal in terms of subsection (1), must be suspending pending the finalization of the appeal. Comment: The word order of the above section appears incorrect - would it not be that any decision which may be affected by the outcome of an appeal should be suspended rather than a decision affecting an appeal? What are the limitations, if any, of this section i.e. to what degree must the appeal / decision be similar in nature at least? At present this section appears vague and unfettered.
			Any decision is capable of appeal which means that ALL decisions must be suspended. This would impede any and all progress across the industry.
31	98 and 99 Offences	69 – 70	There appears to a misalignment between the allocations of the financial penalties prescribed and redrafting may be necessary.
32	102 Amendments of rights etc	72	Who will be the competent authority to amend an environmental authorisation?
33	107	74	How will the provisions of S 102(4) practically be applied? The proposed amendment to Section 107 allows the Minister to make regulations regarding "(jA) guidelines for determination of national interest in relation to beneficiation of mineral and petroleum resources as contemplated by section 26". The use of the word 'guidelines' within the section dealing with 'Regulations' is confusing - will these 'guidelines' be legally enforceable or will holders be required

		only to endeavour to achieve them? Please clarify.
34	Miscellaneous	<p>How will "national interest" be determined and by which government body?</p> <p>Will transitional arrangements be provided for as none have been included in the 2013 Draft?</p> <p>Does the term "new" include renewals of permits, rights etc?</p> <p>How will concurrent mandates between different Ministries be harmonized?</p> <p>The 2013 Bill makes provision for the submission of "relevant environmental reports required in terms of Chapter 5 of the National Environmental Management Act, 1998"</p> <ul style="list-style-type: none"> - within 120 days from the being notified of the acceptance of an application for an exploration right (section 79(4)); and - within 180 days of being notified of the acceptance of an application for a production right (section 83(4)). <p>Of concern is that both the basic assessment and environmental impact assessment processes are time consuming processes which must meet the public participation requirements of NEMA and the EIA Regulations. These processes are also subject to consultation and feedback from the competent authority (as well as possibly other governmental departments) and decision-making processes which tend not to run in accordance with prescribed timeframes.</p> <p>Therefore, it is highly improbable that all relevant environmental documents will be able to be submitted within the timeframes described above, which will be out of the control of the applicant. Given the time-consuming EIA process and multitude of reports that are to be submitted in terms of Chapter 5 of NEMA, these timeframes appear unrealistic. Which of the "environmental reports" will be required to be submitted within the defined timeframes, and how will the applicant meet these</p>

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<input type="checkbox"/>	timeframes? Will it be possible to apply for an extension of these timeframes?
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The Department of Mineral Resources

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7 February 2013

Dear Sir

DRAFT MINERAL AND PETROLEUM RESOURCES DEVELOPMENT BILL, 2012 GN 1066 OF 2012

1. Shell South Africa Upstream B.V. ("Shell") welcomes the opportunity to provide input on the Draft Mineral and Petroleum Resources Development Bill ("the Bill"), published on the 27th of December 2012.
2. The MPRDA is critical in driving an efficient and effective Upstream oil and gas industry in South Africa. Compared to other countries in the world, South Africa's geology is unexplored and only a few discoveries have been developed over the last 3 decades.
3. Investment in the exploration for and development of oil and gas resources is extremely costly and financially risky: investments are long term, large-scale and up-front and in the exploration phase carry significant financial risk. The financial risk is caused by geological and technical uncertainty around the presence and producibility of potential oil and gas resources. For a country to attract investment in the exploration and production of oil and gas resources, the financial risks need to be balanced with stable, transparent and attractive terms and regulations and with a transparent market and pricing mechanism for the oil and gas. In the case of exploration success, the anticipated profits for petroleum resource developers need to be predictable and adequate to incentivize investors to take these risks. Amendments therefore should encourage investment and provide stability in the Oil and Gas sector, such that it facilitates, and affords business the opportunity to expand its operations and thereby contribute and join government in addressing the key challenges facing our country, notably unemployment, poverty and inequality.

4. Shell appreciates the efforts invested in preparing the draft Bill that attempts to address the challenges as outlined in the opening summary of the draft Bill. Our comments aim to provide objective and constructive commentary and to seek clarity where we consider aspects of the Bill are unclear. The amendments should ensure a stable legislative environment that allows business to invest and grow, in compliance with South Africa's transformation agenda that seeks to address the inequalities of the past. We feel however that more work is required to clarify some aspects of transformation and how it relates to state equity in the petroleum /oil and gas sector. In the area of BB-BEE and state participation, the proposed amendments are a significant deviation from the current wording. Shell in principle supports State participation and the promotion of BB-BEE however significant uncertainty is created by the proposed language. In our experience, in order to achieve good governance, it is important that the parties involved in the exploration and production activities are aligned in their exposure to both the risks and potential rewards.
5. The Bill proposes changes in the area of pricing and exports of oil and gas. In our view, it is important to consider that if successfully developed, petroleum resources, and in particular natural gas could help to provide South Africa with a stable, affordable and sustainable energy source. The proposed amendments related to beneficiation as they are currently drafted lead to uncertainty and ambiguity for potential investors. South Africa, through a supportive and transparent legislative and regulatory environment, should continue to offer encouragement to international investors and developers that the market for energy in South Africa will continue to develop in line with international energy markets.
6. In terms of key criteria for successful gas market development, first and foremost we believe that gas prices should be determined by free-market competition. Within this competitive environment, we believe that individual contract prices should be determined by arms-length negotiations between willing buyers and willing sellers, reflecting a free-market approach, on terms that allow the buyer and seller to reflect their individual risk appetites and requirements. Any applicable legislation and/or regulatory system should retain adequate incentives for investor and developers, especially with regard to exploration risks. The anticipated profits for petroleum resource developers need to be predictable and adequate to incentivize investors to take these risks.

The Bill introduces the definition of "Concentration of Rights" and the Minister has been empowered to reject the application for exploration rights or production rights if in the opinion of the Minister, the granting of production or exploration right will result in Concentration of Rights. The proposed text is ambiguous and in our view should be clarified or even reconsidered. The concern should not be about a company potentially having a dominant position, but abusing that

position. Potential abuse of a dominant position is governed under the Competition Act of 1998. The Competition Act provides for situations where per se anti-competitive behavior is lawful due to technical or efficiency reasons.

7. The Bill proposes a wide degree of discretion to be given to the Minister and officials of the Department of Mineral Resources ("DMR") as well as undefined time-limits within which to make administrative decisions which creates concerns relating to the application of principles of administrative law. In our view, these administrative decisions and processes should be aligned with the requirements of the Promotion of Administrative Just Act of 2000 ("PAJA"), that is already well established and understood.
8. Significant input is required with regards to provisions relating to transitional arrangements to ensure industry stability and minimal disruption, as current dispensations are replaced by these draft amendments once approved.
9. Most aspects of the MPRDA are aimed at the (conventional) mining sector, whilst the new and growing oil and gas sector (especially unconventional oil and gas) operates under vastly different conditions, hence we believe the department should explore the viability of different regulations for the oil and gas sector (vs. the mining sector). In this regard Shell would welcome the opportunity to work with the department.
10. The attached schedule is a summary of Shell's questions for clarity and comments that relate to specific amendments. We feel rather than respond directly on some of the issues, where we are not sure, it is better to first engage the department directly to get clarity AND THEN provide a meaningful response to take the issue forward.

We look forward to engage the department and its stakeholders on the draft Bill, and in this regard Mr. Ivan Collair of our Government Relations department, will be in contact with you to facilitate this.

Kind Regards,

Jan Willem Eggink
General Manager
Shell South Africa Upstream B.V.