

## MEMORANDUM OF PROPOSED FURTHER AMENDMENTS TO:

1. THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL 2013 ("the Mining Amendment Bill"); and
  2. THE AMENDED BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING AND MINERALS INDUSTRY ("the Mining Charter")
- 

### 1. BACKGROUND

- 1.1. South Africa is a world leader in mining. It has an abundance of mineral resources, accounting for a significant proportion of world production and reserves.
- 1.2. The mining industry was, for many years, the backbone of the South African economy in that it contributed immensely to South Africa's Gross Domestic Product and was also the largest employer of human capital. Over and above the industry's contribution to both the GDP and employment, it also helped in the development of various types skills aimed at servicing the industry. As the mines developed, so were the cities and towns around these mines. New businesses such as manufacturing and services businesses got established and thus creating wealth to many. Road, rail and ports infrastructure was developed to facilitate export of these mineral resources to international market. To this date mining remains the cornerstone of South Africa's economy, making a significant contribution to economic activity, job creation and foreign exchange earnings.
- 1.3. Although South Africa became wealthier, because of the policies pursued by successive apartheid, participation in the industry was confined to a minority and hence the enactment of the Minerals and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) and also the adoption of other policies such as the beneficiation strategy, mining charter etc.

## **2. RAIL TRANSPORTATION**

- 2.1. As early as 1910, the government then understood that rail transport was a critical element in economic development because it, among others, moved mining unprocessed raw materials (primarily minerals) to the coast for export.

## **3. SHIPPING**

- 3.1. The South African Ship Register was established in the 1840's. Ships registered were mainly those engaged in coastal shipping. The South African Marine Corporation (Safmarine) was formed in 1946 with a view to ensuring South African ships are engaged in international trade. With the National Party in government in 1948, Safmarine quickly became an extension of the government's ambition to gain autonomy in international trade rather than relying on British shipping services. Unfortunately Safmarine left the South African shores in 1991. It is therefore sad that currently, South Africa no longer has a trading ship flagged in its Ship Register. Consequently, South African mineral and petroleum resources are now shipped on the back of foreign flagged ships.
- 3.2. As a consequence of South Africa not having ships in its register:
  - 3.2.1. A variety of jobs, both skilled and semi-skilled, that were available in the once thriving South African shipping industry are all gone.
  - 3.2.2. South Africa is now in dire shortage of maritime skills in all subsectors of the maritime industry.
  - 3.2.3. South Africa loses billions of Rands annually to foreign jurisdictions due to the fact that the majority of procurement of logistics services, including shipping, is sourced from foreign marine service providers.
  - 3.2.4. Billions are further lost because South African exporters, especially of mineral resources, export Free on Board (FOB) instead of Cost, Insurance and Freight (CIF).
- 3.3. It is however gratifying that there are now programmes that are being put in place by government and other entities to attract trading ships back to the SA

Ship Register. These attempts are also aimed at aspiring South African ship owners.

#### **4. MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT 2002 AND ITS AMENDING ACT 2008 AND BILL 2013**

- 4.1. The **Mineral and Petroleum Resources Act, 2002**, aim *"To make provision for the equitable access to a sustainable development of the nation's mineral and petroleum resources and to provide for matter connected therewith"*.
- 4.2. The **Mineral and Petroleum Resources Amendment Act, 2008**, aim *"To amend the Minerals and Petroleum Resources Act, 2002, so as to make the Minister the responsible authority for the implementing environmental matters in terms of the environmental Management act, 1998 and specific environmental legislation as it relates to prospecting, mining, exploration, production and related activities or activities incidental thereto on a prospecting, mining, exploration or production area; to align the Mineral and Petroleum Resources Development Act with the National Environmental Management Act, 1998 in order for one environmental system; to remove ambiguities in certain definitions; 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"*.
- 4.3. The **Mineral and Petroleum Resources Amendment Bill, 2013**, aim is *"To amend the Mineral and Petroleum Resources Development Act, 2002, as amended by the Mineral and Petroleum Resources Development Act, 2008 (Act No. 49 of 2008); so as to remove ambiguities that exist within the Act; to provide for the regulation of associated minerals, partitioning of rights and enhance provisions relating to beneficiation of minerals; to promote national energy security; to streamline administrative processes; to align the Mineral and Petroleum Resources Development Act with the Geoscience Act, 1993 (Act No. 100 of 1993), as amended by the Geoscience Amendment Act, 2010 (Act No. 16 of 2010); to provide for enhanced sanctions; to improve the regulatory system; and to provide for matters connected therewith."*

- 4.4. Neither the principal Act, nor the 2008 Amending Act and now the Amending Bill 2013 deal with participation by South Africans in general, historically disadvantaged persons and women in the mineral and petroleum resources export value chain. The Act and the amending legislation do not also deal with International Commercial Terms (Incoterms).
- 4.5. SAMSA is therefore of the view that additional amendments to the Mineral and Petroleum Resources Development Act, 2002 should be made so as to, among others, make the Minister the responsible authority for the development of policies and the implementation of such policies in regards to the export of mineral and petroleum resources.

## 5. PROPOSED AMENDMENTS TO THE MINING AMENDMENT BILL

- 5.1. The following new definitions should be introduced for inclusion in the Mineral and Petroleum Resources Development Act, 2003 ("the Act"):

5.1.1. ***"logistics supply chain"*** means the entire chain of service providers providing transportation, storage and warehousing utilised by the mining industry and the petroleum industry, including all transportation of mineral and petroleum products by air, road, rail and sea;

5.1.2. ***"minerals industry"*** means the entire industry involved in the prospecting, mining, processing, production, beneficiation and trading of mineral products, including the logistics supply chain;

5.1.3. ***"petroleum industry"*** means the entire industry involved in the prospecting, mining, processing, production, beneficiation and trading of petroleum products, including the logistics supply chain;

5.1.4. ***"qualifying company"*** means a South African company whose majority of the voting rights attaching to all classes of shares in the company are owned by South African citizens

5.1.5. ***"qualifying ship"*** means a South African ship wholly owned and operated by a South African citizen or a ship owned by a South African company whose majority of the voting rights attaching to all classes of shares in the company are owned by South African citizens.

5.1.6. **“South African company”** has the meaning assigned to the expression by the Companies Act 2008.

5.1.7. **“South African ship”** has the meaning assigned to the expression by the Ship Registration Act, 1998.

5.2. By the insertion of new provisions *in section 2* of the principal act so as to cater for the expansion of opportunities to historically disadvantaged persons to enter into, actively participate and to benefit in the shipping of the nation’s mineral and petroleum resources.

5.3. By inserting in section 12 of the principal Act of a provision providing for assistance to a qualifying South African shipping company, such assistance to include long term contracts of affreightment to enable a company to raise capital off the strength of the offtake agreement.

5.4. In respect of new mineral rights, existing rights and renewal of such rights, wherever such appears in the principal Act, the terms and conditions must include the mineral and petroleum resources export development plan. Such plan must include shipment of the mineral and petroleum resources on the back of qualifying South African ships and the sourcing of logistics services from qualifying South African companies.

5.5. With regards to section 25 of the principal Act it is proposed that one of the obligations must be to ensure at least 40% of the rights holder’s minerals resources for export must –

5.5.1. be carried on board a qualifying South African ship; and that

5.5.2. services relating to export of such minerals are sourced from qualifying South African company.

5.6. Section 100 of the principal Act is hereby amended:

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

“(b) develop a code of good practice for the minerals industry and petroleum industry; and”

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

“(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 for targets and time table for effecting the entry into and active participation of historically disadvantaged South Africans into the [mining] minerals industry and petroleum industry, and allow such South Africans to benefit from the exploitation of the mining and mineral resources and petroleum products and the beneficiation of such mineral resources and petroleum products."

(3) by the insertion after subsection (2) of the following subsections:

"(3) The Minister must when granting applications in terms of section 17 and 23 impose the provisions of the housing and living conditions standard for the minerals industry, codes of good practice for the minerals industry and petroleum industry and the broad-based socio-economic empowerment charter."

"(4) The Minister shall as and when the need arises amend or repeal the housing and living conditions standard for the minerals industry, codes of good practice for the minerals industry and petroleum industry and the broad-based socio-economic empowerment charter."

## 6. PROPOSED AMENDMENTS TO THE MINING CHARTER

6.1. The same new definitions should be introduced for inclusion in the Mining Charter, alternatively some or all of the definitions in the Act and Mining Amendment Bill, including those set out in paragraph 5.1 should be incorporated by reference into the Mining Charter.

6.2. The introduction of new a sub-section (g) to section 1 (OBJECTIVES):

"(g) To substantially and meaningfully promote opportunities for HDSA to participate in the logistics supply chain by the leveraging of the logistics supply chain requirements of the minerals industry and petroleum industry."

- 6.3. The addition of the words "and petroleum industry" after the words "minerals industry" wherever they appear in the Mining Charter.

## 7. EFFECTS OF AMENDMENTS

In view of the lack of any reference to the logistics supply chain in the Act, the Mining Amendment Bill or the Mining Charter and the above proposed amendments, it is anticipated that –

- 7.1. the procurement targets set out in sub-section 2.2 of the Mining Charter will achieve the new proposed Objective (g) set out above.
- 7.2. an increase employment opportunities for South African seafarers will be realised;
- 7.3. the negative balance of payment impact of the maritime logistics sector will improve;
- 7.4. the development of peripheral industries such as ship maintenance and repair, insurance, financing etc.) will be enabled; and
- 7.5. South Africa's global maritime influence by virtue of its growing merchant navy will increase.

DATED IN PRETORIA THIS 6<sup>TH</sup> DAY OF SEPTEMBER 2013

---

**COMMANDER TSIETSE MOKHELE**

CEO – South African Maritime Safety Authority

Date:.....