

MP13/035



Industrial Development Corporation

19 Fredman Drive, Sandown 2196
PG Box 784055, Sandton 2146, South Africa
Tel: +27 11 269 3000
Fax: +27 11 269 3116
www.idc.co.za

Ayanda Boss
Portfolio Committee on Mineral Resources
Parliament of RSA
P.O. Box 15
Cape Town
8000

BY ELECTRONIC MAIL: aboss@parliament.gov.za

06 September 2013

Dear Ayanda.Boss

COMMENT ON THE *MINERAL AND PETROLEUM RESOURCES DEVELOPMENT BILL, 2013*

1 Introduction

- 1.1 The *Mineral and Petroleum Resources Development Bill, 2013 (Bill)*, which was made available for public comments refers.
- 1.2 Set out below are comments and concerns regarding the aforementioned Bill from the perspective of Industrial Development Corporation of South Africa Limited (**IDC**) as a parastatal and state-owned financial institution.
- 1.3 IDC wishes to express its gratitude for the opportunity afforded to it, to comment on the Bill. In general IDC supports the proposed amendments in the Bill but wishes to make comments on specific sections of the *Mineral and Petroleum Resources Development Act, 2002 (MPRDA)* proposed by the Bill.

2 General background

- 2.1 As you may be aware, IDC was established in 1940 with an aim of developing South African industries in terms of the *Industrial Development Corporation Act, 1940 (IDC Act)*.
- 2.2 The vision of IDC is to be the primary driving force for commercially sustainable industrial development and innovation to the benefit of the Republic of South Africa (**South Africa**), the Southern Africa region and the rest of the African continent.
- 2.3 IDC is a self-financing national development finance institution and its primary objectives are to contribute to the generation of balanced, sustainable economic growth in Africa and to the economic empowerment of the South African population, thereby promoting the economic prosperity of all citizens.
- 2.4 The objectives of IDC include amongst other things the facilitation, promotion, guidance and assistance in the financing of:

Industrial Development Corporation of South Africa Limited Reg.No. 1940/014201/06

Directors: M W Hlahla (Chairman), M G Qhena (Chief Executive Officer), G S Gouws (Alternate) (Chief Financial Officer), P Mhethwa, L I Bethlehem,

J A Copelyn, B Dames, L L Dhlamini, R M Godsell, B A Mabuza, S K Mapeta, L R Pilot, S M Rensburg, Z Vavi, N E Zalk

Group Corporate Secretary: E Moeti-Molhamme

- (1) new industries and industrial, or ancillary or related economic, undertakings; and
- (2) schemes for the expansion, better organisation and modernisation of and the more efficient carrying out of operations in existing industries and industrial, or ancillary or related economic, undertaking¹.
- 2.5 IDC is empowered, to amongst other things:
- (1) lend or advance money to any company or other person engaged in or proposing to establish or to expand or modernise any activity referred to in the IDC Act; and
- (2) in the case of a company specifically, to acquire an interest in it or to provide or, by underwriting or otherwise, to assist in the subscription of capital for it².
- 2.6 IDC achieves this by promoting entrepreneurship to the building of competitive industries and enterprises based on sound business principles. IDC supports investments which may otherwise not happen, in partnership with private sector companies and financiers. Its business model strives towards maximising financial/development returns while maintaining an acceptable risk profile.
- 3 **Operational background**
- 3.1 IDC provides funding to clients, with varying terms, depending on the requirements of the client and/or transaction in question.
- 3.2 Frequently, security is taken in respect of the funding. Security required by IDC in respect of funding is dependent on, amongst other things, the nature of the funding transaction, risk and assets owned or to be acquired by the borrower. Often this includes guarantees by shareholders of the borrower as well as pledges and cessions of shares and bonds over certain movable and immovable assets of the borrower or shareholders of the borrower.
- 3.3 IDC also frequently provides equity funding to clients by means of subscribing for preference shares. Although the terms of the preference shares vary from case to case, the funding is generally provided on the following basis-
- (1) the term is anything between three to seven years and sometimes longer depending on the nature of the transaction;
- (2) although dividends may be distributed to IDC during the term of the preference shares, often, the preference shares "roll-up" with the result that on the redemption date, a large "balloon" dividend is paid to IDC; and
- (3) as additional credit support, the ultimate owners of the issuer of the preference shares will provide a guarantee, suretyship or some other security to IDC.
- 3.4 As a development financing institution, IDC has extensive experience in financing and funding projects in the mining sector. IDC provides funding to the mining sector through its Mining and Mineral Beneficiation Strategic Business Unit (**Mining SBU**). IDC's financing capability and operations are directly affected by the MPRDA. IDC often requires and takes security for its funding.
- 3.5 The Mining SBU was formed by IDC for the specific purpose of financing mining-related projects, with its primary aim being the funding of small and medium sized mining and minerals beneficiation projects, which undertake viable operations with a significant development component. Finance provided by IDC through its Mining SBU ranges from as little as R1 million to amounts in excess of R1 billion.

¹ Section 3 of the IDC Act.

² Section 4 of the IDC Act.

- 3.6 For the year ended 31 March 2012, the Mining SBU approved and provided funding for 11 transactions in an aggregate amount of R3.5 billion. During this past financial year, some of IDC's clients experienced financial difficulties due to current depressed market conditions and this led to an increased impairment figure of R54 million for this financial period.
- 3.7 IDC, as a parastatal and a development funder, provides funding to persons and companies that would not normally qualify for funding from commercial institutions and as a result, some of the projects funded by it are not repaid. IDC therefore, on occasion, also grants loans which are convertible into equity in order to give it a stake in the failed entity in the event that the loans are not timeously repaid.
- 3.8 Please see below certain comments and/or submissions of IDC regarding the proposed amendments to the MPRDA contained in the Bill.

4 Proposed amendments to the Bill

4.1 Ad section 1

- (1) The definition of "beneficiation" has been amended by the Bill. The proposed definition is restricted only to downstream beneficiation.
- (2) Promoting broad development of the industry is important and will ensure that the mining industry continues to develop and grow. To ensure such broad development, beneficiation should be extended to also include side-stream (mining research and mining technical skills development together with the development of critical proprietary mining intellectual property associated therewith) and upstream (manufacturing of mining equipment and supply of mining services).

4.2 Ad section 2

- (1) Section 2 of the Bill amends section 2 of the MPRDA. Save for the comment below, IDC is supportive of the proposed amendment.
- (2) Our comments in paragraph 4.1 above refer. IDC is of the view that beneficiation should provide for a wider scope of beneficiation by further including side-stream and upstream beneficiation. This extended scope of beneficiation would ensure that the holders of mining and production rights holistically contribute to the overall development of the mining industry and accessory industries.

4.3 Ad section 5

- (1) Section 5 of the Bill amends section 9 of the MPRDA in its entirety.
- (2) The proposed section 9(2) of the MPRDA has the effect of preventing prospective applicants from automatically being able to apply for reconnaissance permission, prospecting rights, exploration rights, mining rights, production rights and mining permits relating to any:
 - (a) land that has been relinquished or abandoned; or
 - (b) right or permit that has been cancelled, relinquished, abandoned or has lapsed,unless the Minister of Mineral Resources (**Minister**) has invited applications.
- (3) IDC is of the view that the proposed amendment may have the unintended consequence of unduly restricting the general development of the mining industry. Further, the proposed amendment is likely to place an onerous administrative burden on the Department of Mineral Resources (**DMR**). The effective execution of the requirements contemplated under the proposed section 9(2) of the MPRDA, require vigilant, informed and pro-active administration

and management. The DMR will have to increase its administrative capacity to ensure that prospecting and development of the mining industry is not beset or hamstrung by administrative red tape.

- (4) This section should be amended so that the rights are generally available for application unless the Minister places a moratorium on applications and specifically gazettes a particular mining right or permit or geological terrain or basin to be subjected to an invitation process. IDC further proposes that in those instances the reasons for the restrictions of those mining rights or permits or geological terrain or basins also be gazetted.

4.4 Ad section 8

- (1) Section 8 of the Bill amends section 11 of the MPRDA. We generally take no issue with the proposed amendments to section 11 of the MPRDA. IDC, as a state-owned financial institution and other parastatal institutions essentially provide funding and finance on terms similar to commercial banks³, albeit with a developmental imperative.
- (2) IDC is one of the largest providers of finance and funding for mining projects in South Africa in the mining sector and given its developmental imperative, takes on a far greater risk than commercial banks. In order to facilitate funding or financing of mining projects by commercial banks, IDC is often required to take up an equity interest in the project to improve the overall gearing of the project.
- (3) Further to the above, it must be noted that the primary business of IDC is providing finance and funding. Where IDC is called upon to take equity in a project or an entity, and does so, obtaining Ministerial consent every time it wishes to get out of the transaction affects its effective use of resources. Such delays result in IDC being unable to maximise its funds to fund other projects.
- (4) The effect of IDC taking up equity in projects or entities is that it ranks lower than other creditors (particularly debt providers) and has a higher risk exposure than other finance providers. The risk is exacerbated by share volatility. In order to limit its risk exposure to a shorter period, the obtaining of Ministerial consent should be foregone in such instances.
- (5) The exemption IDC requests, could be limited to only include instances where the shares taken up by IDC or any state-owned financial institution for purposes of financing or funding a mining project or entity, are re-acquired by the entity or taken up by one of the other existing shareholders of the entity or funding advanced.
- (6) Consequently, we propose that section 11 of the MPRDA be further amended to include a new section 11(3A) which would assist IDC provide equity finance to or for mining projects and thereby facilitating further funding by commercial banks as follows:

(3A) The consent contemplated in subsection (1) is not required in relation to a cession, transfer, assignment, alienation or other disposal of a right, part, or interest contemplated in subsection (1) by a state-owned financial institution referred to in subsection (3)(c) where the acquisition of such right, part or interest by the state-owned financial institution was to facilitate the funding or financing of a prospecting or mining project.

4.5 Ad section 21

- (1) Section 21 of the Bill amends section 26 of the Act. In terms of this proposed amendment, the Minister will have the ability to set prices and quotas on specific commodities.

³ As defined in the Banks Act, 1990.

- (2) IDC, as a state-owned financial institution mandated to promote the economic prosperity of all citizens through encouraging economic development across all industries, is concerned with this amendment. This proposal may inadvertently create a polarised industry, making it even harder for new market entrants and/or junior miners to effectively compete in the mining sector. The proposed amendment seems to favour well established mining companies which may be able to adjust their prices or quotas as required by the Minister without serious financial consequences.
- (3) IDC and other providers of finance to the mining industry may have to re-evaluate their funding models to cater for and price this risk as it may affect a company's liquidity and ability to repay any of its debts. Availability of developmental funding may, amongst other things, diminish as companies' liquidity and/or ability to repay any debts become uncertain.
- (4) This section may further create a situation where there is market dominance, essentially eliminating competition or hindering growth in an industry where competition is essential for industrial and economic growth.

4.6. **Ad section 36**

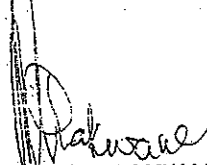
(1) Section 36 of the Bill amends section 49 of the Act.

(2) IDC seeks clarity on what the implication of this section will be in instances where this proposed amendment is enacted after a prospecting right has been acquired but prior to a mining right being obtained. Will a holder of such prospecting right still be in a position to apply for the mining right?

(3) The section is silent on how the holder of the prospecting right may or will be compensated in the event that a holder of such prospecting right is not in a position to apply for the mining right. The proposed amendments may create an impression of possible expropriation without fair compensation to the holder of the prospecting right.

5 We trust that the comments and concerns of the IDC will be given consideration when enacting the legislation. Please do not hesitate to contact me should you require any further information.

Yours faithfully



BASSY MAKWANE

Divisional Executive: General Counsel

Industrial Development Corporation of South Africa Limited

e-mail: bassvma@idc.co.za

