

REPUBLIC OF SOUTH AFRICA

AFRICAN EXPLORATION MINING AND FINANCE CORPORATION BILL

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

(MINISTER OF MINERAL RESOURCES)

[B — 2015]

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BILL

To provide for the establishment of the African Exploration Mining and Finance Corporation to acquire and develop permits, rights (prospecting and/mining) and any other interest granted to the Corporation in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) on behalf of the State; to provide for the objects and functions of that Corporation; to provide for the constitution of its board and the management thereof; to provide for its finances; to provide for appointment of its chief executive officer and staff and to provide for matters connected therewith.

PREAMBLE

ACKNOWLEDGING that South Africa's mineral resources belong to the nation and that the State is the custodian thereof;

RECOGNISING the need to maximise the nation's economic benefit from exploitation of mineral resources;

BEING COMMITTED to the realisation of the nation's developmental imperatives through mining, such as industrialisation, beneficiation, infrastructure development, food security and security of energy supply as espoused in the National Development Plan;

EMPHASISING the government's role to fast track socio-economic development for all the people of South Africa; and

AFFIRMING the State's obligation to protect the environment for the benefit of present and future generations, to ensure ecologically sustainable development of mineral resources and to promote economic growth and social development,

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

ARRANGEMENT OF ACT

1. Definitions
2. Objects of Act
3. Establishment of Corporation
4. Shareholding of Corporation
5. Objects of Corporation
6. Co-operative governance
7. Functions of Corporation
8. Exercise of powers of Corporation outside Republic
9. Establishment of subsidiary companies
10. Establishment and composition of board
11. Term of office of members of board

12. Meetings of board
13. Committees of board
14. Disqualification of members of board
15. Vacation of office by members of board
16. Remuneration of members of board
17. Chief executive officer of Corporation
18. Staff of Corporation
19. Funds of Corporation
20. Accounting by Corporation
21. Reporting by Corporation
22. Judicial management and liquidation of Corporation
23. Delegations and assignments
24. Regulations
25. Short title and commencement

Definitions

1. In this Act, unless the context indicates otherwise—

"board" means the African Exploration Mining and Finance Corporation Board established by section 11(1);

"chief executive officer" means the person appointed in terms of section 18(1) as the chief executive officer of the Corporation;

"chief financial officer" means the chief financial officer of the Corporation appointed in terms of section 19(1);

"Companies Act" means the Companies Act, 2008 (Act No. 71 of 2008);

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Corporation" means the African Exploration Mining and Finance Corporation SOC Limited established by section 3(1);

"employee" means an employee of the Corporation appointed in terms of section 19(2), and includes the chief financial officer and, except for section 19, the chief executive officer;

"financial year" means the financial year of the Corporation referred to in section 21(3);

"Mineral and Petroleum Resources Development Act" means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

"Minister" means the Minister responsible for mineral resources;

"organ of state" means an organ of state as defined in section 239 of the Constitution;

"prescribed" means prescribed by regulation;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"this Act" includes the regulations made thereunder.

Objects of Act

2. The objects of this Act are to provide for the—
- (a) establishment of the Corporation.

Establishment of Corporation

3. (1) There is hereby established a juristic person to be known as the African Exploration Mining and Finance Corporation SOC Limited.
- (2) Despite the Companies Act, the Minister, on behalf of the State, must sign the memorandum of incorporation and all other documents necessary in connection with the formation and incorporation of the Corporation.
- (3) The Companies and Intellectual Property Commission must register and issue to the Corporation a registration certificate in accordance with the Companies Act.

Shareholding of Corporation

4. (1) Despite the Companies Act, the State is the sole shareholder of the Corporation.
- (2) The rights attached to the shares in the Corporation, of which the State is the holder, must be exercised by the Minister on behalf of the State.

Objects of Corporation

5. The objects of the Corporation are to—
- (a) acquire and develop any mining permit, mining right or mining interest granted to the Corporation on behalf of the State;
 - (b) ensure that mineral resources are developed in a sustainable manner to the best interest of the people of South Africa; And
 - (c) to give effect to state participation, optimise socio-economic development and drive the nation's developmental imperatives through mining, such as industrialisation, beneficiation, infrastructure development, food security and security of energy supply as espoused in the National Development Plan

Co-operative governance

6. (1) In order to give effect to the principles of co-operative government and inter-governmental relations contemplated in Chapter 3 of the Constitution, all organs of state must co-operate with one another in order to—
- (a) ensure the effective management of the operations of the Corporation;
 - (b) ensure the effective overseeing of the operations of the Corporation;
 - (c) co-ordinate the performance of the functions of the Corporation;
 - (d) avoid unnecessary duplication in the performance of the functions of the Corporation; and
 - (e) promote consistency in the performance of the functions of the Corporation.

- (2) The Corporation may conclude a co-operation agreement with any relevant organ of state to give effect to the co-operation contemplated in subsection (1).
- (3) The Minister may, after consultation with the board and with the concurrence of the Minister responsible for the relevant organs of state, make regulations regarding—
- (a) the period of time and procedures, including procedures for public participation and mechanisms for dispute resolution, in respect of the conclusion of any co-operation agreement referred to in subsection (2); and
- (b) matters that must be provided for in a co-operation agreement, including provision for—
- (i) the period of time for the implementation of the co-operation agreement;
- (ii) the co-ordination of the functions referred to in subsection (1) in a manner that avoids unnecessary duplication, omissions and the issuing of conflicting instructions;
- (iii) measures to be taken in the event of non-compliance with a co-operation agreement; and
- (iv) dispute resolution in respect of the interpretation or application of a co-operation agreement referred to in subsection (2).

Functions of Corporation

7. The functions of the Corporation are to—
- (a) apply for prospecting rights, mining rights and reconnaissance permissions, and undertake prospecting, mining and reconnaissance operations, in terms of the Mineral and Petroleum Resources Development Act or this Act;
 - (b) acquire and develop prospecting rights, mining rights and any interests granted to the Corporation in terms of the Mineral and Petroleum Resources Development Act or this Act on behalf of the State;
 - (c) acquire, by written agreement, and hold rights or interests in any undertaking, enterprise or project related to prospecting or mining operations in terms of the Mineral and Petroleum Resources Development Act;
 - (d) acquire shares or other interests in any company or undertaking engaged in prospecting or mining operations in terms of the Mineral and Petroleum Resources Development Act;
 - (e) carry out its business, operations and activities, whether as a principal agent, contractor or otherwise, and either alone or in conjunction with any other persons, company or body corporate;
 - (f) enter into any agreement, including a joint venture or production sharing agreement, with any company or persons in order to develop and sustain the State's interests in such operations;
 - (g) purchase, hire, possess or otherwise acquire movable and immovable property and let, encumber or dispose of such property;

- (h) maximise the nation's economic benefit from exploitation of mineral resources through energy security, industrialisation, food security and infrastructure development;
- (i) create opportunities for and promote beneficiation of mineral resources; and
- (j) contribute to social and economic development.

Exercise of powers of Corporation outside Republic

8. The Corporation may, at the request or with the approval of the Minister, in any territory outside the Republic—

- (a) apply for prospecting rights or mining rights, or the equivalence thereof;
- (b) enter into any written agreement related to prospecting or mining activities with any company, government or administration;
- (c) acquire, by written agreement, shares or other interests in any undertaking, enterprise or project related to prospecting or mining activities ,

subject to the Companies Act and the relevant laws of that territory.

Establishment of subsidiary companies

9. (1) For purposes of achieving its objects, the Corporation may, subject to the Public Finance Management Act and with the approval of the board acting with the concurrence of the Minister and the Minister of Finance, establish one or more subsidiary companies in terms of the Companies Act.

(2) A subsidiary company may, on behalf of the Corporation, perform such functions as the Corporation may assign to it, subject to such conditions as the Corporation may impose.

(3) The board and the Minister may approve the establishment of a subsidiary company only if the subsidiary company will bear no financial or other risk to the Corporation.

Establishment and composition of board

10. (1) The African Exploration Mining and Finance Corporation Board is hereby established to perform the functions of the Corporation in terms of this Act.

(2) The board consists of—

- (a) a chairperson;
- (b) the chief executive officer, by virtue of holding that office;
- (c) the chief financial officer, by virtue of holding that office; and
- (d) six other persons with appropriate expertise in economics, finance, law, mining or geological disciplines.

(3) The members of the board referred to in subsection (2)(a) and (d) must be appointed by the Minister in accordance with subsection (4) and with the approval of the Cabinet, taking into account, among other things, the appropriate representation of race and gender in society.

(4) (a) Before appointing the members of the board referred to in subsection (2)(a) and (d), the Minister must, by notice in two newspapers

published and circulating nationally, invite nominations for membership of the board.

(b) The notice must specify a period of at least 30 days for nominations to be submitted to the Minister.

(c) A nomination must contain at least the following information:

- (i) The personal details of the nominee;
- (ii) the nominee's qualifications and experience; and
- (iii) any other information that may be prescribed.

(d) After appointing the members of the board, the Minister must, by notice in two newspapers published and circulating nationally, publish the names of the persons appointed and the dates of commencement of their terms of office.

(e) If the Minister receives no nominations or an insufficient number of nominations within the period specified in the invitation, the Minister may, with the approval of the Cabinet, taking into account, among other things, the appropriate representation of race and gender in society, appoint the required number of persons.

(5) The members of the board must, at their first meeting, elect a deputy chairperson from amongst their number.

(6) The Minister may, whenever he or she deems it necessary or expedient, appoint an alternate member for any member of the board.

(7) The Minister may, from time to time, reserve any matter provided for in this Act as a matter in respect of which a decision of the board is subject to the approval of the Minister.

(8) The board is—

- (a) the accounting authority for the Corporation as contemplated in section 49(2)(a) of the Public Finance Management Act; and
- (b) responsible for the general management and control of the Corporation.

Term of office of members of board

11. (1) A member or alternate member of the Board, except the chief executive officer and the chief financial officer, holds office for such period as the Minister may determine at the time of his or her appointment, which period may not exceed three years.
- (2) Any person whose term of office as member or alternate member of the board has expired is eligible for reappointment for one additional term not exceeding three years.
- (3) If a member or an alternate member of the board for any reason vacates his or her office, the Minister may appoint another person in the place of such member or alternate member for the unexpired period of his or her term of office.

Meetings of board

12. (1) The chairperson or, in his or her absence, the deputy chairperson of the board presides over the meetings of the board.

(2) The board meets at such times and places determined by itself, but the first meeting of the board must be held at a time and place determined by the chairperson.

(3) The chairperson may at any time, or must at the request of not less than two thirds of the members of the board in office at the time, convene a special meeting of the board, and must determine the time and place of the meeting.

(4) The quorum for a meeting of the board is the majority of its members.

Committees of board

13. (1) The board may establish a committee or committees, which must, subject to the directions of the board, during the periods between meetings of the board perform such functions of the board as the board may determine from time to time.

(2) A committee is not competent, except in so far as the board may otherwise direct, to set aside or vary a decision of the board.

(3) A committee consists of the chairperson of the board and as many, but no less than two, other members of the board as the board may determine.

(4) The chairperson or, in his or her absence, the deputy chairperson of the board is the chairperson of the committee.

(5) The board is not discharged from responsibility for the performance of any function entrusted to the committee in terms of this section.

(6) The board may vary or set aside any decision of the committee.

Disqualification of members of board

- 14.** No person may be appointed as a member of the board if he or she—
- (a) has been declared by a court to be mentally ill or disordered;
 - (b) is an unrehabilitated insolvent;
 - (c) is not a citizen of or permanently resident in the Republic; or
 - (d) has been convicted of an offence and has been sentenced therefore to imprisonment without the option of fine.

Vacation of office by members of board

- 15.** (1) A member of the board must vacate his or her office if he or she—
- (a) becomes subject to any disqualification contemplated in section 15 or, in the case of an official in the service of the State, ceases to be such an official;
 - (b) has been absent for more than two consecutive meetings of the board without leave from the board;
 - (c) tenders his or her resignation, in writing, to the Minister and the Minister accepts the resignation; or
 - (d) is removed from the office by the Minister under subsection (2).
- (2) The Minister may remove any member of the board from office—
- (a) on account of misconduct or inability to perform the functions of his or her office effectively; or

- (b) if the member has engaged in any activity that may undermine the integrity of the board, which activities may include—
- (i) participation in any investigation, hearing or decision concerning a matter in respect of which that person has a financial or personal interest;
 - (ii) making private use of, or profiting from, any confidential information obtained as a result of performing his or her functions as a member of the board; or
 - (iii) divulging any information referred to in subparagraph (ii) to any third party, except as required by or under this Act or the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

Remuneration of members of board

16. A member or alternate member of the board, or any member of a committee of the board, who is not in the full-time employment of the State, must be paid such remuneration as the Minister may determine with the concurrence of the Minister of Finance.

Chief executive officer of Corporation

17. (1) The board must with the concurrence of the Minister appoint a person with suitable qualifications as chief executive officer of the Corporation.

- (2) A person is disqualified from being appointed as or remaining chief executive officer if he or she is disqualified in terms of section 15.
- (3) (a) The chief executive officer holds office for a period not exceeding five years.
- (b) The chief executive officer may be reappointed upon expiry of the term of his or her office for one additional term of five years.
- (c) The terms and conditions of service of the chief executive officer are determined by the board with the approval of the Minister acting with the concurrence of the Minister of Finance.
- (d) The appointment of a person as chief executive officer is subject to the conclusion of a written performance agreement entered into between that person and the board with the concurrence of the Minister.
- (4) The board may, at any time, with the concurrence of the Minister remove the chief executive officer from office—
- (a) if the chief executive officer fails to perform the functions of his or her office efficiently;
- (b) if, due to any physical or mental illness or disability, the chief executive officer becomes incapable of performing the functions of that office or performs them inefficiently; or
- (c) on account of serious misconduct, after affording him or her reasonable opportunity to be heard and subject to applicable legislation.
- (5) If the chief executive officer is for any reason unable to perform any of his or her functions for a period exceeding one month, the chairperson of the board must appoint an employee of the Corporation to act as chief executive

officer until the chief executive officer is able to resume the performance of those functions.

(6) An acting chief executive officer may exercise all the powers and must perform all the duties of the chief executive officer.

Staff of Corporation

18. (1) The chief executive officer must, with the concurrence of the board, appoint the chief financial officer of the Corporation for such period and on such terms and conditions of service as the board, with the approval of the Minister acting with the concurrence of the Minister of Finance, may determine.

(2) Subject to the directions and instructions of the board, the chief executive officer may appoint such persons as employees of the Corporation as are necessary to perform the work arising from or connected with the Corporation's functions.

(3) The Corporation may, in addition to employees referred to in subsection (2), be assisted in the performance of its functions by officers or employees in the public service who have been placed at the disposal of the Corporation in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(4) The terms and conditions of service of employees referred to in subsection (2) are determined by the board with the approval of the Minister acting with the concurrence of the Minister of Finance.

(5) The board must, with the approval of the Minister acting with the concurrence of the Minister of Finance, establish, manage and administer a pension or provident fund or medical scheme for the benefit of the employees.

(6) The employees must be paid such remuneration, allowances and benefits as the board may determine in accordance with a remuneration system approved, from time to time, by the Minister with the concurrence of the Minister of Finance.

Funds of Corporation

19. (1) The funds of the Corporation consist of moneys—

(a) appropriated by Parliament;

(b) received by way of grant, contribution, investment, donation or inheritance;

(c) that accrue as a result of prospecting and mining operations or activities; and

(d) from any other source with the approval of the Minister.

(2) The Corporation must utilise its funds to defray the expenses incurred in the performance of its functions under this Act;

(3) Moneys received by way of grant, contribution, donation or inheritance must be utilised in accordance with any conditions imposed by the grantor, contributor, donor or testator.

(4) The chief executive officer must—

- (a) open an account in the name of the Corporation with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
- (b) deposit therein all moneys received in terms of subsection(1).
- (5) The chief executive officer may, on behalf of the Corporation, invest any money received in terms of subsection (1) and which is not required for immediate use with any institution determined by the board and approved by the Minister with the concurrence of the Minister of Finance.
- (6) The Corporation may use interest derived from the investment referred to in subsection (5) to defray expenses in connection with the performance of its functions.
- (7) The Corporation may, when it considers it necessary, with the approval of the Minister acting with the concurrence of the Minister of Finance—
- (a) authorise the establishment of reserve funds; and
- (b) deposit such funds in the Corporation's bank account opened in terms of subsection (4).
- (8) The Corporation must in each financial year, on or before a date determined by the Minister, submit a statement of its income and estimated expenditure for the following financial year to the Minister for approval.

Accounting by Corporation

20. (1) The Corporation must perform its functions subject to and in accordance with the Public Finance Management Act.

- (2) The financial records of the Corporation must be audited by the Auditor General.
- (3) The financial year of the Corporation starts on the first day of April in each year and ends on the last day of March in the following year.

Reporting by Corporation

- 21.** (1) The Corporation must in accordance with the Public Finance Management Act produce and submit to the Minister an annual report on the performance of the Corporation under this Act, including any other matters that may be prescribed.
- (2) The board must submit the annual report referred to in subsection (1), as approved by it, to the Minister within three months after the end of the financial year concerned.
- (3) The Minister must table the annual report submitted to him or her in terms of subsection (2) in Parliament in accordance with the Public Finance Management Act.

Judicial management and liquidation of Corporation

- 22.** Despite any other law, the Corporation may not be placed under judicial management or in liquidation except if authorised by an Act of Parliament adopted especially for that purpose.

Delegations and assignments

- 23.** (1) The board may, subject to such conditions as the board may determine, in writing—
- (a) delegate to the chairperson, deputy chairperson, or any other member of the board, including the chief executive officer, or any other employee of the Corporation or to a committee established under section 14 any power conferred upon the board by or under this Act;
 - (b) authorise the chairperson, deputy chairperson or any other member of the board, including the chief executive officer, or any other employee of the Corporation or a committee established under section 14 to perform any duty assigned to the board by or under this Act.
- (2) The chief executive officer may, subject to such conditions as he or she may determine and with the approval of the board, in writing—
- (a) delegate to an employee of the Corporation any power conferred upon the chief executive officer by or under this Act in his or her capacity as chief executive officer;
 - (b) authorise an employee of the Corporation to perform any duty assigned to the chief executive officer by or under this Act in his or her capacity as chief executive officer.
- (3) The board or the chief executive officer may at any time—
- (a) withdraw a delegation or authorisation made in terms of subsection (1) or (2);

- (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) or (2).
- (4) The board and the chief executive officer is not divested of any power nor exempt from any duty delegated or assigned by the board or the chief executive officer in terms of subsection (1) or (2).

Regulations

24. The Minister may, by notice in the *Gazette*, make regulations regarding—

- (a) any matter that is permitted or required to be prescribed in terms of this Act;
- (b) the process to be followed before the lodgment by the Corporation of any application for prospecting rights, mining rights and reconnaissance permissions in terms of the Mineral and Petroleum Resources Development Act; and
- (c) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

Short title and commencement

25. This Act is called the African Exploration Mining and Finance Corporation Act, 2015, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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