

Office of the Chairperson

Ad-hoc Committee on the Mineral and Petroleum Resources Development Amendment Bill

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NEGOTIATING MANDATE

To : The Chairperson: Select Committee on Land and Mineral Resources

Name of the Bill : Mineral and Petroleum Resources Development Amendment Bill

Number of the Bill : [B15D- 2013]

Date of Deliberation : 20 October 2017

Vote of the Legislature :

The Ad-hoc Committee on the Mineral and Petroleum Resources Development Amendment Bill (the Committee) supports the Mineral and Petroleum Resources Development Amendment Bill [B15D - 2013] (the Bill), and confers on the permanent delegate representing the Province of Mpumalanga in the National Council of Provinces, the mandate to vote in favour of the Bill, with amendments as proposed below:

CLAUSE	PAGE	LINE	PROPOSED AMENDMENT
Clause 1.	3.	After line 26.	<p>To insert after the definition of "beneficiation" the following definition:</p> <p><u>"Black persons" is a generic term which means Africans, Coloureds and Indians-</u></p> <p><u>(a) Who are citizens of the Republic of South Africa by birth or descent; or</u></p> <p><u>(b) Who became citizens of the Republic of South Africa by naturalisation:</u></p> <p><u>(i) before 27 April 1994; or</u></p> <p><u>(ii) On or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date;</u></p> <p><u>(c) a juristic person which-</u></p> <p><u>(i) is managed and controlled by a person contemplated in paragraph (a) and (b) and the persons collectively or as a group own and control a majority of the issued share capital or members' interest, and are able to control the majority of the members' vote;</u></p>
Clause 1	3	Before line 28.	<p>To insert before the definition of "community" the following definition:</p> <p><u>"carried interest" means the interest allocated to the State in an exploration or production right, which interest shall inure exclusively to the benefit of the State and the costs of which shall be borne by the non-state holder and shall be recoverable by such holder in accordance with the terms and conditions determined in accordance with section 86A".</u></p>
Clause 1	4	Before line 1.	<p>To insert after the definition of "controlling interest" the following definition:</p> <p><u>"corresponding production right" in relation to an exploration right means the production right for which a holder of an exploration right shall apply covering the</u></p>

			area relating to such exploration right”.
Clause 1	4	Before line 14.	<p>After the definition of “discovery” to amend the definition of “effective date” as inserted by section 1 of Act 49 of 2008 as follows:</p> <p>“‘effective date’ means the <u>prescribed timeframe [date on] within</u> which the relevant permit is issued or the relevant right is executed;”.</p>
Clause 1	4	Before line 14.	<p>To insert before the definition of “exploration work programme” the following definition:</p> <p><u>“‘existing exploration right’ means an exploration right granted in terms of section 80 prior to the commencement of Act [Number of MPRD Amendment Bill B15-B2015];”.</u></p>
Clause 1	4	From line 16 to 18.	<p>To delete the definition of “free carried interest”. [“free carried interest” means interest allocated to the State in exploration or production operations without any financial obligation on the State;]</p>
Clause 1	4	From line 22 to 43.	<p>To delete the definition of [“historically disadvantaged South Africans” refers to South African citizens, a category of persons or a community, disadvantaged by unfair discrimination before the Constitution of the republic of South Africa, 1993 (Act No. 200 of 1993), came into operation which should be representative of the demographics of the country.]</p>
Clause 1	5	After line 56.	<p>To insert the definition of “pending application” after the definition of “organ of state”:</p> <p><u>“‘pending application’ means an application in terms of section 79 of the Act that was submitted –</u> <u>before the commencement of Act [Number of MPRDA Amendment Bill]; or</u> (a) <u>after the commencement of the [Number of MPRDA Amendment Bill] provided the applicant is the holder of a valid technical co-operation</u></p>

			<u>permit in respect of the proposed exploration area prior to commencement of the [Number of MPRDA Amendment Bill]”.</u>
Clause 1	6.	From 1 to 12.	<p>To substitute the definition of “prospecting area” with the following definition:</p> <p><u>“‘prospecting area’</u></p> <p><u>(a) in relation to a prospecting right, means the area for which the prospecting right is granted; or</u></p> <p><u>(b) in relation to any environmental, health and safety, social and labour matter and any residual, latent or other impact thereto, includes any land or surface within, adjacent or non-adjacent to the area as contemplated in paragraph (a) but upon which related or incidental operations are being undertaken and impacting on the environment”</u></p>
Clause 1	6	After line 31.	<p>To insert after the definition of “residue stockpile” the following definition:</p> <p><u>“‘right of pre-emption’ means the right of the State in the event of a sale of participating interest, to purchase the participating interest to be disposed of by the holder on terms and conditions equal to those offered by the purchaser selected by the holder, which right shall expire unless accepted by the designated state entity within a period of 90 days following delivery of a notice setting out the final terms and conditions of the proposed transaction”.</u></p>
Clause 1	6	From line 37 to 43.	<p>To substitute the definition of “State participation” for the following definition:</p> <p><u>“‘State participation’ means the right of the State to participate in petroleum exploration and production operations, including through:</u></p> <p><u>(a) participating interest in exploration and production rights and may include production sharing agreements; and</u></p> <p><u>(b) representation at the joint operating committee of the exploration or production operation</u></p>

			<u>commensurate with the State's proportionate participating interest"</u> .
Clause 5	8	From line 5 to 8.	To substitute subsection (2) for the following subsection: <u>"(2) Any person may, after identifying an area of land, block or blocks and the type of mineral, mineral product or form of petroleum in or on such area of land, block or blocks, apply to the Minister for reconnaissance permission, reconnaissance permit, prospecting right, exploration right, mining right, technical co-operation permit, production right and mining permits. An application in terms of this subsection shall be processed in terms of this Act and granted upon compliance with the terms and conditions of the Act and is not subject to the invitation process contemplated in subsection (1).</u>
Clause 5	8	From line 19 to 20.	To delete subsection (5). [(5) The Minister shall, when processing applications, give preference to an application lodged by a person referred to in subsection (2)."]
Clause 8	10	Line 29.	To insert the word <u>prior</u> before the words "written consent of the Minister".
Clause 12	12	After line 34.	To delete subsection (2) paragraph (b) which was substituted by Act 49 of 2008 as follows; ["(b) the granting of such right will- Result in the concentration of the mineral resources in question under the control of the applicant and their associated companies with the possible limitation of equal access to mineral resources";]
Clause 12	12	Before line 35.	To include amend section 17 (4A) inserted by Act 49 of 2008 as follows: "(4A if the application relates to land occupied by a community, the Minister may impose such conditions as are necessary to promote the rights and interests of the community. [, including

			conditions requiring the participation of the community".]
Clause 18	15	Line 23.	To insert after the word "Industry" the following words " <u>and the Housing and Living Conditions Standards</u> ";
Clause 20	17	Line 10.	To insert after the word "Industry" the following words " <u>and the Housing and Living Conditions Standards</u> ";
Clause 22	17	After line 58.	To insert after the word "and" paragraph (c) as follows: <u>(c) The applicant is a 50+1% Black Owned South African company.</u>
Clause 22	18	From line 55 to 60.	To substitute subsection (9) paragraph (a) and (b) for the following subsection: <u>"(9) A mining permit issued in terms of subsection (6) shall-</u> <u>(a) Come into effect on the effective date; and</u> <u>(b) Where an appeal against the issuing of the mining permit or approval of the environmental authorisation has been lodged within the prescribed period, the mining permit shall not be executed until such appeal has been finalised"</u>
Clause 35	24	After line 20.	To insert paragraph " <u>(f) has contravened the provisions of the Broad Based Black Economic Empowerment Charter for the South African Mining and Minerals Industry and the Housing and Living Conditions Standards Contemplated in section 100 of the Act</u> ".
Clause 47	29	From line 25 to 29.	To omit the proposed amendments to section 70 of the Act.
Clause 48	29	From line 32 to 38.	To omit the proposed amendments to section 71 of the Act.

Clause 49	29	Line 40 to 46.	To omit insertion of section 71A".
Clause 49	30	From 1 to 9.	To omit the insertion of section 71A"
Clause 50	30	From line 10 to 11.	To omit the repeal of sections 72 and 73".
Clause 51	30	Line 21.	To omit the proposed amendment to section 74 (1) (a).
Clause 51	30	Line 34.	To substitute the words ["Regional Manager"] for <u>"designated agency"</u> .
Clause 51	30	Line 39.	To substitute the words ["Regional Manager"] for <u>"designated agency"</u> .
Clause 51	30	Line 43.	To substitute the words ["Regional Manager"] for <u>"designated agency"</u> .
Clause 51	30	From line 47 to 48.	To substitute the words ["Regional Manager"] for <u>"designated agency"</u> .
Clause 52	31	Line 21 and 22.	To omit the proposed amendment to section 75 (5) (c) of the Act.
Clause 53	31	From 37 to 50.	To substitute the words ["Regional Manager"] for <u>"designated agency"</u> .
Clause 56	32	From line 23 to 45.	To substitute the words ["Regional Manager"] for <u>"designated agency"</u> .
Clause 57	33	Line 17.	To substitute the words ["Regional Manager"] for <u>"designated agency"</u> .
Clause 57	33	After line 14.	To insert the following subsection (2A) as follows: <u>"(2A). The Minister shall when granting an exploration right determine the terms and conditions of a corresponding production right in terms of section 84 and shall record those terms and conditions on the exploration right"</u> .
Clause 58	33	Line 41.	To omit the proposed amendment to section 81 (1) (a).

Clause 58	33	After line 41.	<p>To include the following subsections (2A), (2B), (2C) and (2D) as follows:</p> <p><u>(2A) The holder of an exploration right shall during application for a renewal relinquish-</u></p> <p><u>(a) at the end of the initial term of the exploration right, 40 % of the contiguous initial area; and</u></p> <p><u>(b) at the end of each renewal period 10 % of the contiguous remaining area, or such lower percentage as the Minister may determine;</u></p> <p><u>(2B) The Minister must exempt the holder from the provisions of subsection (2A) if the holder demonstrates that he or she is in a position to explore a larger exploration area or has made a discovery or demonstrates that relinquishment in terms of sub-section (2A) may render the project uneconomic.</u></p> <p><u>(2C) If a holder makes a discovery which it does not wish to appraise (non-commercial discovery), the area of that discovery shall be included in the area to be relinquished in the next relinquishment.</u></p> <p><u>(2D) The States' equity must at all relevant times be maintained when contiguous areas are relinquished in terms of subsection (2A).</u></p>
Clause 59	34	Line 16.	To omit the proposed amendment to section 82 (2) (e) of the Act.
Clause 59	34	From line 20 to 24.	<p>To substitute paragraph (g) for the following paragraph:</p> <p><u>"(g) relinquish a contiguous portion of the area to which the right relates as prescribed in section 81".</u></p>
Clause 59	34	Line 33.	To insert the words <u>"where appropriate"</u> before the words "apply for".
Clause 61	35	From 9 to 22.	To substitute the words ["Regional Manager"] for <u>"designated agency"</u> .
Clause 61	35	From 26 to 27.	To substitute the words ["Regional Manager"] for <u>"designated agency"</u> .
Clause 62	35	After line 52.	<p>To insert the following subsection (1A) as follows:</p> <p><u>"(1A) The Minister shall when granting a production right</u></p>

			<u>under this section give effect to the terms and conditions agreed to in a corresponding exploration right that relates to the production right; and”.</u>
Clause 62	35	Line 55	To substitute the words ["Regional Manager"] for <u>“designated agency”.</u>
Clause 63	36	Line 14.	To omit the proposed amendment to section 85 (1) (a) of the Act.
Clause 63	36	Line 24.	To insert the following paragraph after subsection (2) paragraph (d) of the following paragraph: <u>“(e) the applicant and the Minister have concluded the negotiating process referred to in subsection (3A).”</u> <u>“(3A) Notwithstanding the provisions of section 84 (1A) and section 80 (2A), any application for renewal of a production right, shall initiate a negotiating process between the Minister and the applicant relating to technical, financial and commercial terms and conditions of the production project”.</u>
Clause 65	36 & 37	From line 49 to 55, and from line 1 to 9.	To substitute section 86A for the following section: <u>“86A. (1) The State has, through the designated organ of State, a right to a 20 percent carried interest in exploration and production rights, from the effective date of such rights.</u> <u>(2) In existing exploration rights and exploration rights granted in respect of pending applications, the State is in addition to the State carried interest referred to in subsection (1) and in accordance with terms and conditions agreed upon and recorded in the exploration right, entitled to a right of pre-emption in the event of a sale of a participating interest by the holder of an exploration or corresponding production right, entitling it to purchase the participating interest on terms and conditions equal to those offered by the purchaser selected by the holder.</u>

			<p><u>(3) The right of pre-emption shall within a period of 90 days from the date of delivery of a notice setting out the final terms and conditions of the proposed transaction expire, entitling the holder a right to offer such participation interest to a third party.</u></p> <p><u>(4) Where an exploration right application not contemplated in sub-section (2) is received after commencement of Act [Number of MPRD Amendment Bill B15-B2013], the State is, in the prescribed manner, entitled to an additional participation interest of up to 30 percent taking into account the size of the discovery and rate of production, in the form of—</u></p> <p><u>(a) carried interest;</u></p> <p><u>(b) acquisition at an agreed price; or</u></p> <p><u>(c) production sharing agreements.</u></p> <p><u>(5) The holder of a production right shall recover development costs of the State carried interest referred to in subsections (1) or (4) where applicable, from the proceeds generated from the production right, as may be prescribed in the terms and conditions of such right.</u></p> <p><u>(6) The State shall upon acquiring interest in terms of subsections (1) and or (4) enter into a joint operating agreement with the right holder or become a party to an existing joint operating agreement if one is in place in respect of such right.</u></p> <p><u>(7) The Minister must, acting on behalf of the State, appoint two representatives to the joint operating committee of the exploration or production operation to represent the interest of the State."</u></p> <p><u>(8) The State is entitled to exercise its rights held in the joint operating agreements through-</u></p>
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			<p><u>(a) representation as a non-voting participant in the joint operating committee in accordance with the joint operating agreement during exploration; and</u></p> <p><u>(b) corresponding percentage of voting rights to the interest held in the joint operating agreements during production.</u></p> <p><u>(9) Notwithstanding subsection (1), the Minister must before granting a production right in terms of section 84 and after consultation with the applicant and the Minister of Finance, determine whether the percentage or terms and conditions of the State carried interest referred to in subsection (1) may be adjusted downwards, taking into account-</u></p> <p><u>(a) the nature and scope of the project;</u></p> <p><u>(b) financial and economic profile of the project;</u></p> <p><u>(c) the degree of risk assumed by the holder throughout the projects; and</u></p> <p><u>(d) national interests.</u></p> <p><u>(10) The State carried interest shall not be adjusted below 10 percent.</u></p> <p><u>(11) The holder of an existing exploration right shall within a period of three years of the coming into effect of Act Number of MPRD Amendment Bill apply to the Minister for a determination of the terms and conditions which will be applicable to a corresponding production right, including State participation in the manner contemplated in subsection (9).</u></p> <p><u>(12) Notwithstanding anything to the contrary in Act [Number of MPRD Amendment Bill B15-B2015], the terms and conditions of an existing exploration right granted before the commencement of Act [Number of MPRD Amendment Bill B15-B2015] in respect of which</u></p>
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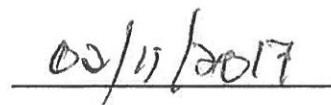
			<p><u>terms and conditions for a production right have been agreed to and attached in such exploration right shall, remain unchanged in as far as it relates to State participation and participation by historically disadvantaged South Africans.</u></p> <p><u>(13) Upon making the determination in terms of sub-section (11), the Minister shall record the terms and conditions of the corresponding production right determined in terms of subsection (11) in the exploration right".</u></p>
Clause 66	37	Line 17.	To omit the proposed amendment to section 87 of the Act.
Clause 67	27	Line 40.	To substitute the words ["Regional Manager"] for " <u>designated agency</u> ".
Clause 68	38	Line 1.	To omit the proposed amendment to section 89 of the Act.
Clause 71	38	Line 46.	To insert the words " <u>subject to subsection (1A)</u> " before the words "Any person".
Clause 71	39	Line 6.	<p>By the insertion after subsection (1) of the following subsection:</p> <p><u>(1A) (a) if the appeal in terms of subsection (1) is as a result of the performance by the Mining Company of South Africa SOC Limited, established by section 3(1) of the Mining Company of South Africa Act 2017, of any function performed by the Mining Company of South Africa SOC Limited in terms of section 7 of the said Act, that appeal must be heard by an appeals panel appointed by the Minister in terms of paragraph (b).</u></p> <p><u>(b) The Minister must appoint as members of the appeals panel-</u></p> <p>(i) <u>an advocate or attorney with at least ten</u></p>

			<p><u>years' experience; and</u></p> <p>(ii) <u>two persons with knowledge of mineral and environmental regulation.</u></p> <p>(c) <u>Whenever the Minister is required to nominate persons for appointment to the appeals panel in terms of paragraph (b), the Minister must-</u></p> <p>(i) <u>publish in the Gazette and by any other widely circulated means of communication, a notice calling for nominees and stating the criteria for nominations;</u></p> <p>(ii) <u>consider all nominations submitted in response to the notice and compile a short-list of nominees; and</u></p> <p>(iii) <u>appoint successful nominees as members of the appeals panel;</u></p> <p>(d) <u>Regulations made in terms of section 107 (1) (c) regarding the procedure in respect of appeals under this Act apply with the necessary changes required by the context to appeals by the appeals panel in terms of this subsection.</u></p> <p>(e) <u>The terms and conditions of appointment of members of the appeals panel must be prescribed by the Minister.</u></p> <p>(f) <u>The Minister may, in consultation with the Minister of Finance, determine the remuneration, allowances and other benefits of the persons contemplated in paragraph (b).</u></p>
Clause 71	39	Line 10.	To insert after the words "subsection (1) the following words <u>"or subsection (1A)".</u>
Clause 71	39	Line 11.	To insert after the words "the Minister" the following words <u>"or the appeals panel, as the case may be".</u>
Clause 71	39	Line 27.	To insert after the words "subsection (1)" the following words <u>"or subsection (1A)".</u>

Clause 74	41	Line 12.	<p>To insert the following subsection:</p> <p><u>"(5) The Minister must within six months from the date on which this Act [Number of MPRD Amendment Bill B15-B2015] took effect develop a Broad-Based Socio-Economic Empowerment Charter for the upstream petroleum industry which sets out the framework, targets and time frames effecting the entrance of black persons into the upstream petroleum industry."</u></p>
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HON SPD SKHOSANA KAMAHLANGU (MPL)



DATE

**CHAIRPERSON: AD-HOC COMMITTEE ON THE
MINERAL AND PETROLEUM RESOURCES DEVELOPMENT
AMENDMENT BILL**