



MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL 15 OF 2013 (MPRDA)

NOVEMBER 2016



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PRESENTATION OUTLINE

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- Objects of the MPRDA Bill
- Proposed amendments
- Guided Ministerial discretionary powers
- Streamlining of Inter-Departmental processes
- Environmental management
- Additional proposals
- Concluding remarks



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INTRODUCTION

- The Mineral and Petroleum Resources Development Act, 2002:
 - ✓ Gave effect to the internationally accepted right of the State to exercise sovereignty over all its mineral and petroleum resources.
 - ✓ Vested custodianship of mineral and petroleum resources with the State. The Act separated surface rights (land ownership) from mineral rights ownership.
 - ✓ Large portions of land in South Africa is still owned and controlled by the previous advantaged South Africans and foreigners.
 - ✓ In the first decade of promulgation, the Act created an enabling environment for growth and transformation in the mining industry.
 - ✓ In 2008 the Act was amended to amongst others give effect to the “one environmental management system”.
 - ✓ Notwithstanding tremendous progress to date on the reform of the mining industry through the MPRDA, the first decade since promulgation of the Act has provided the benefit of jurisprudence on the basis of which inherent weaknesses are being addressed.



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STRATEGIC OBJECTS OF THE MPRDA BILL

- Improve the ease of doing business in the industry, including the streamlining and integration of mining, environmental and water authorisation processes i.t.o alignment with NEMA and the National Water Act.
- Strengthen its content, in order to further enhance and continue creating a conducive environment for investment, growth and job creation.
- To augment and substantially increase the socio- economic development impact through mining.
- Balance business needs with national development imperatives.
- Further entrench the principle of security of tenure and protection of the sanctity of investments as an integral part of South Africa's mining regulatory framework; and
- To provide for radical economic transformation in the mining, minerals and upstream petroleum industry
- To bring the administration of historical stockpiles created prior to the promulgation of the MPRDA into the ambit of the Act.



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OBJECTS OF THE AMENDMENTS CONT...

- Provide for the State's active participation in the development of petroleum resources.
- Provide for the designation of minerals for national developmental imperatives such as security of energy supply, food security and industrialisation.
- Enhance provisions relating to the regulation and implementation of Social and Labour Plans.
- Provide for partitioning of rights and enhanced sanctions.
- Entrench and embed transformation (the Mining Charter).
- Provide for enforcement of Housing and Living Conditions standards for mineworkers; and
- To address certain short comings identified in court cases including Macsand, Mawetse and Bengwenyama.



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PROPOSED AMENDMENTS: APPLICATION BY INVITATION (Sec 9)

- The Bill introduces a dual application system.
- The Minister is empowered to invite applications for a defined period through a Gazette on unknown terrains (where the State has generated the knowledge).
- Provision is also made for the first come first serve process on known terrains (where knowledge is independently generated).
- This process will ensure orderly and optimal development of the Country's mineral and petroleum resources.
- It will further optimise the transformation and developmental impact.



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PROPOSED AMENDMENTS: STAKEHOLDER CONSULTATION (Sec 10,16)

- The Bill proposes provisions aimed at strengthening consultation with affected communities, including traditional leaders.
- The Bill provides for separation of consultation for directly affected stakeholders and interested stakeholders.
- Further provides for DMR to facilitate the consultation process.
- The purpose of the consultation is to ensure that the applicant engages meaningfully with directly affected stakeholders.
- It further provides affected parties with an opportunity to submit their comments and objections.
- Further gives the RM powers to forward the comments and objection to the applicant for further consultation with affected stakeholders.



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PROPOSED AMENDMENTS: PARTITIONING OF RIGHTS (Sec 11)

- Section 11 is amended to provide for partitioning of rights by enabling holders thereof to dispose of part of their rights subject to the requirements of the Act.
- Ministerial prior consent is a requirement for the transfer of rights for both listed and unlisted companies as prescribed in the regulations.
- Mining companies are required to request the Minister's consent prior to the transfer of any interests in unlisted companies and change in controlling interests in listed companies.



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PROPOSED AMENDMENTS: CHANGE OF OWNERSHIP (Sec 11)

- The purpose of these provisions is to discourage the dilution of BEE ownership in mining companies.
- In granting a section 11 consent the Minister must reaffirm the rights and interests of affected groups including workers and communities.
- The Bill further provides for national development finance institutions like IDC to finance exploration, prospecting and mining projects through mortgage bonds without Minister's consent.



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PROPOSED AMENDMENTS: SLP's (Sec 23)

- The Bill provides for SLP's as follows:
 - ✓ Submission and approval within the prescribed timeframe.
 - ✓ Review of the approved SLP within a five year period for the duration of a mining right.
 - ✓ A percentage of the holders' contribution towards mine community development is accordingly prescribed in the reviewed mining charter 2016.
- The objects of the Act are amended to include labour sending areas.
- The concept of “labour sending areas” is defined.



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PROPOSED AMENDMENTS: BENEFICIATION (Sec 26)

- Minister is empowered to designate certain minerals in consultation with a relevant Minister for national developmental purposes in order to:
 - ✓ support national development imperatives such as industrialisation, energy security, food security, infrastructure development and fiscal stability and bring optimal benefit for the Country;
 - ✓ ensure transformation of the mining industry and related sectors; and
 - ✓ ensure cost competitive security of supply.
- In so doing the Bill requires mining operations to set aside a certain percentage of their production for local beneficiation.
- These resources are to be acquired by beneficiators at mine gate price or agreed price.
- Restrictions (Ministerial consent) on exports of designated minerals are introduced for non-producers.



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PROPOSED AMENDMENTS: BEE (Sec's 1, 17, 28)

- The Bill requires not merely the extent of the holder's compliance with the Amended Charter but actual compliance from right holders.
- Emphasis is on “effective Black ownership”, which marks a shift from the vaguely defined definition of BEE.
- Definition of this Act has been revised to expressly incorporate the Amended Charter into the ambit of the Act.
- BEE requirements have been extended to prospecting right applications.



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PROPOSED AMENDMENTS: STATE PARTICIPATION (Clause 86A)

- The Bill provides for the State's active participation in the petroleum industry;
- The State has a right to a 20 % free carried interest in all new exploration and production rights.
- The State is entitled to a further participation interest in the form of acquisitions at either agreed price or through production sharing agreements.
- The State has a right to board representation.



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PROPOSED AMENDMENTS: SANCTIONS (Sec 99)

- The Bill provides for enhanced sanctions.
- The sanctions are linked to a percentage of the annual turn over of the right holder consistent with the Competition Act.
- Provision is also made for administrative fines which will be payable to a designated fund and used to promote exploration activities and matters incidental thereto.
- These sanctions are intended to serve as sufficient deterrent to right holders and encourage compliance with the Act.



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GUIDED MINISTERIAL DISCRETIONARY POWERS (Sec 107 & 56)

In terms of the proposed Section 107, the Minister's discretionary powers are guided in the following manner:

- ✓ Minister must develop regulations relating to procedures applicable to invitation of rights in terms of section 9.
- ✓ Minister must consult with relevant stakeholders when developing terms and conditions applicable to both State participation and beneficiation.
- ✓ Minister must take into consideration the Council's advice when developing such terms and conditions.



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STREAMLINING OF INTER-DEPARTMENTAL PROCESSES

- In 2010, Minister of Mineral Resources adopted the “Strategy for Sustainable Growth and Meaningful Transformation of South Africa’s Mining Industry”
- The Strategy identified amongst others a fragmented licensing mechanisms as one of the key binding constraints to the global competitiveness of the industry;
- Consequently, the Ministers of DMR, DEA and DWA agreed on modalities to streamline licensing requirements for mining (in line with the 2008 amendment of the MPRDA).
- Joint PPC on Mineral Resources and Environmental Affairs was briefed prior to the commencement of the public hearings on the alignment of the MPRD Bill and the NEMLA Bill in 2013.
- After the conclusion of the public hearings a Joint PPC meeting was held to ensure that the necessary amendments have been effected to the various pieces of legislation.



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ENVIRONMENTAL MANAGEMENT Sec's 39, 40, 41 & 42

- Prior to 2008, mine environmental management was provided for under the MPRDA.
- Section 39 provided for the process for approval of mine environmental management plans and programmes (EMP's).
- Section 40 provided for consultation process with State departments on approval of EMP's.
- Section 41 provided for financial provision for EMP's.
- Section 42 provided for management of residue deposits and stock piles.
- Section 43 provided for mine closure.
- Applicants had to comply with these provisions in order to be granted rights and permits and in addition comply with the requirements of NEMA .



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ENVIRONMENTAL MANAGEMENT CONT...

- The requirement to comply with various pieces of legislation proved cumbersome and further contributed towards non-compliance with NEMA.
- Macsand Judgment reinforced the view that holders of mining rights must comply with all other relevant prescripts.



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Additional proposals cont... (Outcomes of Oceans Phakisa)

- Based on the outcomes of the Oceans Operation Phakisa, the Department has engaged the upstream petroleum industry to relook at clause 86A and find a win-win solution for the sector taking into account its frontier nature.
- In this regard clause 86A of the Bill has been reworked to propose the following:
 - ✓ 20% State carried interest;
 - ✓ A cost recovery mechanism of the carried interest during the production stage;
 - ✓ Downward adjustment at production stage in consultation with the Minister of Finance;



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Additional proposals cont...(Outcomes of Oceans Phakisa)

- Certainty of project terms by providing for the determination of terms for both exploration and production rights for the duration of the right;
- Renegotiation of terms when renewing a production right;
- Relinquishment of contiguous portions of exploration rights at the renewal stage;
- Minister to be given powers to develop a Petroleum Charter to make provision for transformation issues for the oil and gas sector.
- The proposal is to provide for a 10% BEE shareholding.
- It is proposed that these additional amendments to the Bill and related proposals be included in finalising the Bill to provide regulatory certainty.



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Additional proposals

- DMR has identified loopholes relating to the application of small scale mining and thus proposes that the applicability of small scale mining be limited to 50+1% South African owned company's.
- It is proposed that the definition of historically disadvantaged South Africans be replaced with the definition of black persons as per the alignment of the transformation policies in line with the BBBEEA and the generic codes.
- It is further proposed that non compliance with sec 100 be included in sec 47, so as to empower the Minister to suspend and/or cancel rights should the applicant fail to comply with the requirements of the mining charter and the housing and living conditions standards.
- An amendment of the definition of “effective date” is proposed so as to give effect to the Mawetse judgment.



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Additional proposals (technical errors)

- DMR has, post adoption of the Bill by Parliament, identified grammatical errors in the Bill.
- These errors are found in the definition of prospecting right and clarity is also provided in the proposed section 9 to clarify the dual application system.
- Clause 22, section 27 grammatical errors are also corrected to provide clarity that the section refers to mining permits.
- An amendment is further proposed to section 100, clause 74 to empower Minister with powers to develop a petroleum charter.
- An amendment is proposed to section 9 to provide for the dual application system.



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Additional proposals (technical errors)

- A further amendment is proposed to the mining right granting section (s23) and rights and obligations of the mining right holder (s25) to include compliance with the housing and living conditions standards in order to ensure that the standards are a condition of the mining right.
- It is proposed that Section 27 (small scale mining) be amended to limit its application to qualifying 51% Black South African persons owned.
- It is also proposed that the proposed amendments in the Bill relating to the replacement of the designated agency (PASA) with Regional Manager be omitted.
- An amendment is proposed to section 96 to provide for the appointment of an appeals panel relating to the processing of an appeal involving the State owned mining company.



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CONCLUDING REMARKS

- The proposed amendments and the additional proposals to the MPRDA will:
 - ✓ Strengthen the architecture of the mining and minerals regulatory framework and direct a shift towards local mineral value addition.
 - ✓ Contribute towards national developmental imperatives.
 - ✓ Streamline licensing processes.
- Provide for State participation in the petroleum sector.
- Significantly boost the energy security programme through extractive industries that span mining, minerals and upstream petroleum industry.



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