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## GENERAL NOTICE

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### **NOTICE 567 OF 2013**

#### **DEPARTMENT OF MINERAL RESOURCES**

#### **NOTICE OF INTRODUCTION OF A BILL INTO PARLIAMENT**

The Minister of Mineral Resources intends introducing the following Bill into Parliament during June 2013: MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL, 2013. An explanatory summary of the Bill is hereby published in accordance with Rule 241 (1) (c) of the Rules of the National Assembly.

Subsequent to the introduction of the Bill, copies can be obtained from:

THE DEPARTMENT OF MINERAL RESOURCES

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**Ms. SUSAN SHABAMNGU (MP)**

**MINISTER OF MINERAL RESOURCES**

## **EXPLANATORY SUMMARY OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL, 2013**

### **1. OBJECTS OF THE AMENDMENT BILL 2013**

The main objective of the Bill is to amend the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) as amended by the Mineral and Petroleum Resources Development Amendment Act, 2008 (Act No. 49 of 2008) to provide for, inter alia, strengthening of existing provisions relating to the implementation of Social and Labour Plans (SLP's) to augment and substantially increase the socio-economic development impact through mining, enhance the provision relating to the beneficiation of minerals as outlined in the approved beneficiation strategy, streamlining and integrating administrative processes relating to the licensing of rights to provide regulatory certainty, as well as providing for the State's active participation in petroleum development.

The Bill seeks to amend the principal Act to facilitate the smooth implementation of the mining and minerals regulatory framework by aligning it with sound administrative practises and the objects of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

The Bill further seeks to amend the principal Act 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 remove ambiguities that may exist in the principal Act by amending certain definitions.

The Bill enhances integrated licensing currently resident in various departments of government and provides for optimal contribution of the mining industry towards national development priorities, such as energy security. The Bill further enhances provisions which promote mineral and petroleum resources development in a sustainable and equitable manner for the benefit of all South Africans. The Bill furthermore aims to improve the efficiency and efficacy of the legislation in achieving the primary object of creating a mining and minerals regulation regime that conforms to regulatory best practice.

## **SALIENT AMENDMENT PROPOSALS**

### **Definitions**

The following new definitions are added to the Act; appraisal operations, appraisal work programme, associated minerals, authorised person, concentration of rights, constitution, discovery, free carried interest, gasification, organ of state, strategic minerals, labour sending areas, and the definitions of beneficiation, mining area, land, residue stock piles and “this Act” are amplified with a view to provide clarity, certainty and remove any ambiguities and multiplicity of interpretation.

### **Invitation for applications.**

Section 9 of the Act which deals with the order of processing applications is amended by substituting the application process of first come first served with a process in terms of which the Minister reserves a right to periodically invite applications by notice in the Gazette. This invitation process will ensure coordinated quality approvals by the Department that meaningfully contribute towards the fulfillment of the objects of the Act. It will bring about certainty and transparency and further enhance optimal development of the nation’s mineral and petroleum resources.

### **Regional Mining Development and Environmental Committee**

RMDEC is established as statutory body by insertion of clauses 10A to G dealing with the composition, functions and management of RMDEC after section 10 of the Act.

### **Transfer and Partitioning of rights**

Section 11 of the Act is amended to provide for partitioning of rights, delete reference to close operations and remove reference to time frames and further correct grammatical errors. The rationale for these amendments is to afford the right holders a right to dispose of a portion of their right subject to the provisions of the Act. Further provide opportunity for public entities to mortgage rights without Ministerial consent.

### **Beneficiation**

Section 26 of the Act is amended to subject any export of minerals and petroleum resources to Minister's written consent and relevant conditions. Further amended to place an obligation on producers to offer a percentage of minerals or form of petroleum resource to local beneficiaries. To empower the Minister through a Gazette to determine both such percentage of production and the developmental pricing conditions at which it should be disposed of after taking into account national interests. Regulations and guidelines will be developed outlining the criteria to be used by the Minister in determining the levels of beneficiation, relevant percentages and developmental pricing conditions in respect of local beneficiation as provided for in this clause.

### **Designated Agency (PASA)**

In these sections reference to designated agency is substituted for Regional Manager. The designated agency is effectively dissolved and its functions are to be performed by the Regional Managers. The realignment of the functions of PASA is done in order to consolidate the regulation of petroleum resources under the auspices of the DMR, while the promotional aspect is vested with the Council for Geoscience.

It is understood that such realignment will result in the reallocation of both human and financial resources between these structures. The dissolution of the Petroleum Agency of South Africa (PASA) will be managed effectively to absorb all specialist skills into the regulatory and technical function of the DMR and CGS respectively. Furthermore the DMR will ensure best integration of support functions in PASA into the department and CGS and resultantly minimize unavoidable retrenchments and the associated financial implications.

### **State participation in petroleum development**

Sections 80 and 84 are amended to provide for the State participation in petroleum development. The State has a right to a free carried interest in all new exploration and production rights. Section 84 is further amended to include

State board participation in the holders of production rights. State participation, is not a new concept and is practiced in other jurisdictions in various forms as illustrated in the table below.

The State will exercise its rights and options having evaluated the applicable finance modalities to prioritise and optimise State participation in petroleum exploitation and in line with the national developmental priorities. The specific details regarding the extent of the State's free carried interests will be outlined in the regulations and the government Gazette.

<b>GOVERNMENT TAKE PER COUNTRY (Data Source: PetroSA)</b>	
Algeria	51% State participation.
Angola	50% State participation.
Brazil	30% State participation.
Cote d'Ivoire	45-60% State participation.
Gabon	66%-80% State participation.
Ghana	10% free carry + 15% State participation.
Indonesia	15%-25% after 3yrs & 30-35% by end of 5 years

### **Penalties.**

Section 99 of the Act is amended to provide for improved sanctions in respect of offences committed under the Act. The offences are now linked to a percentage of a person or right holder's annual turnover and exports during the preceding financial year. Further increased the amount in respect of penalties that may be imposed by a court. Provision is also made for administrative fines. The basis for these improvements is to deter non compliance with the Act.

### **Regulation of associated minerals**

Section 102 of the Act is amended to introduce subsection (3) which deals with the regulation of exploitation of associated minerals. The right holders are required to declare and account for the associated mineral/s discovered in the mining process.

### **Timeframes**

All reference to specific timeframes in the Act has been substituted with reference to time frames as prescribed. The time frames will be prescribed and fixed in the Regulations. These time frames will not detract from the standard practice of 30, 60 to 90 days where applicable. These will further and most importantly conform to the principles of lawfulness, reasonableness, and fairness consistent with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), while allowing for the requisite flexibility where necessary.

### **Mine Environmental Management Provisions**

The mine environmental management provisions i.e. sections 39 to 42 were repealed by Act 49 of 2008 and transferred to the National Environmental Management Act. In the Bill reference to environmental management programmes and plans has been substituted for reference to environmental authorisations to be issued in terms of NEMA.

The Minister of Mineral Resources is the competent authority to implement mine environmental management in terms of NEMA whereas the Minister of Environmental Affairs is the competent authority to develop, review and amend legislation, regulations and policies relating to mine environmental management. Processes are under way to give effect to this arrangement between the two departments regarding the mine environmental management function which include further refinement of both pieces of legislation to ensure that there is no duplication of mandates.

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