

REPUBLIC OF SOUTH AFRICA

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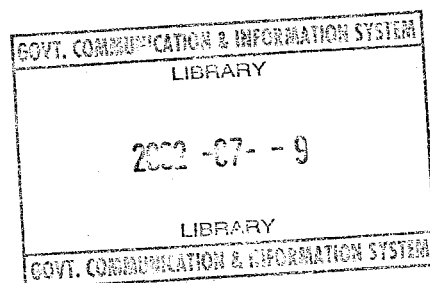
# MINERAL AND PETROLEUM RESOURCES DEVELOPMENT BILL

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*(As presented by the Portfolio Committee on Minerals and Energy (National Assembly))*  
*(The English text is the official text of the Bill)*

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(MINISTER OF MINERALS AND ENERGY)



[B 15B—2002]

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# BILL

To make provision for equitable access to and sustainable development of the nation's mineral and petroleum resources; and to provide for matters connected therewith.

## PREAMBLE

**RECOGNISING** that minerals and petroleum are non-renewable natural resources;

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

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

**RECOGNISING** the need to promote local and rural development and the social upliftment of communities affected by mining;

**REAFFIRMING** the State's commitment to reform to bring about equitable access to South Africa's mineral and petroleum resources;

**BEING COMMITTED** to eradicating all forms of discriminatory practices in the mineral and petroleum industries;

**CONSIDERING** the State's obligation under the Constitution to take legislative and other measures to redress the results of past racial discrimination;

**REAFFIRMING** the State's commitment to guaranteeing security of tenure in respect of prospecting and mining operations; and

**EMPHASISING** the need to create an internationally competitive and efficient administrative and regulatory regime,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## CHAPTER 1

### DEFINITIONS

#### Definitions

1. In this Act, unless the context indicates otherwise— 35
  - “block” means any area of land or sea, including the sea bed, identified as a block by co-ordinates on a map prepared by the designated agency and situated wholly or partly in the Republic or its exclusive economic zone and includes any part of such block;
  - “Board” means the Minerals and Mining Development Board established by section 57; 40
  - “broad based economic empowerment” means a social or economic strategy, plan, principle, approach or act which is aimed at—
    - (a) redressing the results of past or present discrimination based on race, gender or other disability of historically disadvantaged persons in the minerals and petroleum industry, related industries and in the value chain of such industries; and 45
    - (b) which is aimed at transforming such industries so as to assist in, provide for, initiate or facilitate—

- (i) the ownership, participation in or the benefiting from existing or future mining, prospecting, exploration or production operations;
  - (ii) the participation in or control of management of such operations;
  - (iii) the development of management, scientific, engineering or other skills of historically disadvantaged persons; 5
  - (iv) the involvement of or participation in the procurement chains of operations;
  - (v) the ownership of and participation in the beneficiation of the proceeds of the operations or other upstream or downstream value chains in such industries; 10
  - (vi) the socio-economic development of communities immediately hosting, affected by the of supplying labour to the operations; and
  - (vii) the socio-economic development of all historically disadvantaged South Africans from the proceeds or activities of such operations;
- “Chief Inspector” means the Chief Inspector of Mines appointed in terms of section 48(1) of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996); 15
- “community” means a coherent, social group of persons with interests or rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law;
- “contractual royalties” means any royalties or payment agreed to between parties in a mining or production operation; 20
- “day” means a calendar day and when any particular number of days are prescribed for the performance of any act, those days must be reckoned by excluding the first and including the last day, unless the last day falls on a Saturday, a Sunday or any public holiday, in which case the number of days must be reckoned by excluding the first day and also any such Saturday, Sunday or public holiday; 25
- “Department” means the Department of Minerals and Energy;
- “designated agency” means the organ, agency or company designated in terms of section 70;
- “development programme” means the development programme approved under the terms and conditions of the production right; 30
- “Director-General” means the Director-General of the Department;
- “employee” means any person who works for the holder of a reconnaissance permission, prospecting right, mining right, mining permit, retention permit, technical corporation permit, reconnaissance permit, exploration right and production right, and who is entitled to receive any remuneration, and includes any employee working at or in a mine, including any person working for an independent contractor; 35
- “environment” means the environment as defined in the National Environmental Management Act, 1998 (Act No. 107 of 1998); 40
- “environmental management plan” means a plan to manage and rehabilitate the environmental impact as a result of prospecting, reconnaissance, exploration or mining operations conducted under the authority of a reconnaissance permission, prospecting right, reconnaissance permit, exploration right or mining permit, as the case may be; 45
- “environmental management programme” means an approved environmental management programme contemplated in section 39;
- “exclusionary act” means any act or practice which impedes or prevents any person from entering the mineral and mining industry, or from entering any market connected with that industry, or from making progress within such industry or market; 50
- “exploration area” means the area comprising the block or blocks depicted in an exploration or production right;
- “exploration operation” means the re-processing of existing seismic data, acquisition and processing of new seismic data or any other related activity to define a trap to be tested by drilling, logging and testing, including extended well testing, of a well with the intention of locating a discovery; 55
- “exploration right” means the right granted in terms of section 80;
- “exploration work programme” means the approved exploration work programme indicating the petroleum operations to be conducted on the exploration area during the validity of the exploration right, including the details regarding the exploration activities, phases, equipment to be used and estimated expenditures for the different exploration activities and phases; 60

“financial provision” means the insurance, bank guarantee, trust fund or cash that applicants for or holders of a right or permit must provide in terms of sections 41 and 89 guaranteeing the availability of sufficient funds to undertake the agreed work programmes and to rehabilitate the prospecting, mining, reconnaissance, exploration or production areas, as the case may be;

5

“historically disadvantaged person” means—

(a) any person, category of persons or community, disadvantaged by unfair discrimination before the Constitution took effect;

(b) any association, a majority of whose members are persons contemplated in paragraph (a);

10

(c) any juristic person other than an association, in which persons contemplated in paragraph (a) own and control a majority of the issued capital or members' interest and are able to control a majority of the members' votes;

“holder”, in relation to a prospecting right, mining right, mining permit, retention permit, exploration right, production right, reconnaissance permit or technical co-operation permit, means the person to whom such right or permit has been granted or such person's successor in title;

15

“land” includes the surface of the land and the sea, where appropriate;

“mine”, when used as a verb, means any operation or activity for the purposes of winning any mineral on, in or under the earth, water or any residue deposit, whether by underground or open working or otherwise and includes any operation or activity incidental thereto;

20

“mineral” means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth or in or under water and which was formed by or subjected to a geological process, and includes sand, stone, rock, gravel, clay, soil and any mineral occurring in residue stockpiles or in residue deposits, but excludes—

25

(a) water, other than water taken from land or sea for the extraction of any mineral from such water;

(b) petroleum; or

30

(c) peat;

“mining area”—

(i) in relation to a mining right or a mining permit, means the area for which that right or permit is granted;

(ii) in relation to any environmental, health, social and labour matter and any latent or other impact thereto, includes—

35

(a) any adjacent or non-adjacent surface of land on which the extraction of any mineral and petroleum has not been authorised in terms of this Act but upon which related or incidental operations are being undertaken and, including—

40

(i) any area connected to such an area by means of any road, railway line, power line, pipeline, cable way, conveyor belt; and

(ii) any surface of land on which such road railway line, power line, pipeline, cable way is located; and

(b) all buildings, structure, machinery, mine dumps or object situated on or in that area which are used for the purpose of mining on the land in question;

45

“mining operation” means any operation relating to the act of mining and matters directly incidental thereto;

“mining permit” means a permit issued in terms of section 27(6);

50

“mining right” means a right to mine granted in terms of section 23(1);

“Mining Titles Office” means the Mining Titles Office contemplated in section 2 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967);

“mining work programme” means the planned mining work programme to be followed in order to mine a mineral resource optimally;

55

“Minister” means the Minister of Minerals and Energy;

“officer” means any officer of the Department appointed under the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“owner”, in relation to—

(a) land—

60

(i) means the person in whose name the land is registered; or

(ii) if it is land owned by the State, means the State together with the occupant thereof; or

- (b) the sea, means the State;
- "petroleum" means any liquid, solid hydrocarbon or combustible gas existing in a natural condition in the earth's crust and includes any such liquid or solid hydrocarbon or combustible gas, which gas has in any manner been returned to such natural condition, but does not include coal, bituminous shale or other stratified deposits from which oil can be obtained by destructive distillation or gas arising from a marsh or other surface deposit; 5
- "petroleum reservoir" means a geological formation containing petroleum;
- "prescribed" means prescribed by regulation;
- "processing", in relation to any mineral, means the winning, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification thereof; 10
- "production area" means any area which is subject to a production right;
- "production operation" means any operation, activity or matter that relates to the exploration, appraisal, development and production of petroleum; 15
- "production right" means a right granted in terms of section 84;
- "prospecting" means intentionally searching for any mineral by means of any method—
- (a) which disturbs the surface or subsurface of the earth, including any portion of the earth that is under the sea or under other water; or 20
- (b) in or on any residue stockpile or residue deposit, in order to establish the existence of any mineral and to determine the extent and economic value thereof; or
- (c) in the sea or other water on land;
- "prospecting area" means the area of land which is the subject of any prospecting right; 25
- "prospecting operations" mean any activity carried on in connection with prospecting;
- "prospecting right" means the right to prospect granted in terms of section 17(1);
- "prospecting work programme" means the planned prospecting work programme to be followed in order to establish the occurrence of any mineral resource in the prospecting area during the period applied for; 30
- "reconnaissance operation" means any operation carried out for or in connection with the search for a mineral or petroleum by geological, geophysical and photogeological surveys and includes any remote sensing techniques, but does not include any prospecting or exploration operation; 35
- "reconnaissance permit" means a permit issued in terms of section 75(1);
- "record" means recorded information regardless of form or medium;
- "regulation" means any regulation made under section 107;
- "Regional Manager" means the officer designated by the Minister in terms of section 8 as regional manager for a specified region; 40
- "Regional Mining Development and Environmental Committee" means a Regional Mining Development and Environmental Committee established in terms of section 64(1);
- "residue deposit" means any residue stockpile remaining at the termination, cancellation or expiry of a prospecting right, mining right, mining permit, exploration right or production right; 45
- "residue stockpile" means any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, beneficiation plant waste, ash or any other product derived from or incidental to a mining operation and which is stockpiled, stored or accumulated for potential re-use, or which is disposed of, by the holder of a mining right, mining permit or production right; 50
- "retention area" means the area of land which comprises the subject of a retention permit;
- "retention permit" means a permit issued in terms of section 32; 55
- "State royalties" means any royalty payable to the State in terms of an Act of Parliament;
- "sustainable development" means the integration of social, economic and environmental factors into planning, implementation and decision making so as to ensure that mineral and petroleum resources development serves present and future generations; 60
- "technical co-operation permit" means the technical co-operation permit issued in terms of section 77(1);



“the sea” means the water of the sea, as well as the bed of the sea and the subsoil thereof below the low-water mark as defined in the Seashore Act, 1935 (Act No. 21 of 1935), and within—

- (a) the territorial waters as contemplated in section 4 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), of the Republic, including the water and the bed of any tidal river and of any tidal lagoon; 5
  - (b) the exclusive economic zone as contemplated in section 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994); and
  - (c) the continental shelf as contemplated in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994); 10
- “this Act” includes the regulations and any term or condition to which any permit, permission, licence right, consent, exemption, approval, notice, closure certificate, environmental management plan, environmental management programme or directive issued, given, granted or approved in terms of this Act, is subject;
- “topsoil” means the layer of soil covering the earth which— 15
- (a) provides a suitable environment for the germination of seed;
  - (b) allows the penetration of water;
  - (c) is a source of micro-organisms, plant nutrients and in some cases seed; and
  - (d) is not of a depth of more than 0,5 metres or such other depth as the Minister may prescribe for a specific prospecting or exploration area or a mining area. 20

## CHAPTER 2

### FUNDAMENTAL PRINCIPLES

#### Objects of Act

2. The objects of this Act are to—
- (a) recognise the internationally accepted right of the State to exercise sovereignty over all the mineral and petroleum resources within the Republic; 25
  - (b) give effect to the principle of the State’s custodianship of the nation’s mineral and petroleum resources;
  - (c) promote equitable access to the nation’s mineral and petroleum resources to all the people of South Africa; 30
  - (d) substantially and meaningfully expand opportunities for historically disadvantaged persons, including women, to enter the mineral and petroleum industries and to benefit from the exploitation of the nation’s mineral and petroleum resources;
  - (e) promote economic growth and mineral and petroleum resources development in the Republic; 35
  - (f) promote employment and advance the social and economic welfare of all South Africans;
  - (g) provide for security of tenure in respect of prospecting, exploration, mining and production operations; 40
  - (h) give effect to section 24 of the Constitution by ensuring that the nation’s mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development; and
  - (i) ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating. 45

#### Custodianship of nation’s mineral and petroleum resources

3. (1) Mineral and petroleum resources are the common heritage of all the people of South Africa and the State is the custodian thereof for the benefit of all South Africans.
- (2) As the custodian of the nation’s mineral and petroleum resources, the State, acting through the Minister, may—
- (a) grant, issue, refuse, control, administer and manage any reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right and production right; and 55
  - (b) in consultation with the Minister of Finance, determine and levy, any fee or consideration payable in terms of any relevant Act of Parliament.

(3) The Minister must ensure the sustainable development of South Africa's mineral and petroleum resources within a framework of national environmental policy, norms and standards while promoting economic and social development.

#### **Interpretation of Act**

4. (1) When interpreting a provision of this Act, any reasonable interpretation which is consistent with the objects of this Act must be preferred over any other interpretation which is inconsistent with such objects. 5

(2) In so far as the common law is inconsistent with this Act, this Act prevails.

#### **Legal nature of prospecting right, mining right, exploration right or production right, and rights of holders thereof** 10

5. (1) A prospecting right, mining right, exploration right or production right granted in terms of this Act is a limited real right in respect of the mineral or petroleum and the land to which such right relates.

(2) The holder of a prospecting right, mining right, exploration right or production right is entitled to the rights referred to in this section and such other rights as may be granted to, acquired by or conferred upon such holder under this Act or any other law. 15

(3) Subject to this Act, any holder of a prospecting right, a mining right, exploration right or production right may—

(a) enter the land to which such right relates together with his or her employees, and may bring onto that land any plant, machinery or equipment and build, construct or lay down any surface, underground or under sea infrastructure which may be required for the purposes of prospecting, mining, exploration or production, as the case may be; 20

(b) prospect, mine, explore or produce, as the case may be, for his or her own account on or under that land for the mineral or petroleum for which such right has been granted; 25

(c) remove and dispose of any such mineral found during the course of prospecting, mining, exploration or production, as the case may be;

(d) subject to the National Water Act, 1998 (Act No. 36 of 1998), use water from any natural spring, lake, river or stream, situated on, or flowing through, such land or from any excavation previously made and used for prospecting, mining, exploration or production purposes, or sink a well or borehole required for use relating to prospecting, mining, exploration or production on such land; and 30

(e) carry out any other activity incidental to prospecting, mining, exploration or production operations, which activity does not contravene the provisions of this Act. 35

(4) No person may prospect for or remove, mine, conduct technical co-operation operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without— 40

(a) an approved environmental management programme or approved environmental management plan, as the case may be;

(b) a reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right or production right, as the case may be; and 45

(c) notifying and consulting with the land owner or lawful occupier of the land in question.

#### **Principles of administrative justice**

6. (1) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), any administrative process conducted or decision taken in terms of this Act must be conducted or taken, as the case may be, within a reasonable time and in accordance with the principles of lawfulness, reasonableness and procedural fairness. 50

(2) Any decision contemplated in subsection (1) must be in writing and accompanied by written reasons for such decision. 55

## CHAPTER 3

## ADMINISTRATION

**Division of Republic, territorial waters, continental shelf and exclusive economic zone into regions**

7. For the purposes of this Act the Minister must, by notice in the *Gazette*, divide the Republic, the sea as defined in section 1 of the Sea-shore Act, 1935 (Act No. 21 of 1935), and the exclusive economic zone and continental shelf referred to in sections 7 and 8 respectively, of the Maritime Zones Act, 1994 (Act No. 15 of 1994), into regions. 5

**Designation and functions of officer**

8. The Director-General must, subject to the laws governing the public service, designate an officer in the service of the Department as regional manager for each region contemplated in section 7 who must perform the functions delegated or assigned to him or her in terms of this Act or any other law. 10

## CHAPTER 4

## MINERAL AND ENVIRONMENTAL REGULATION

15

**Order of processing of applications**

9. (1) If a Regional Manager receives more than one application for a prospecting right, a mining right or a mining permit, as the case may be, in respect of the same mineral and land, applications received on—

- (a) the same day must be regarded as having been received at the same time and must be dealt with in accordance with subsection (2); 20
- (b) different dates must be dealt with in order of receipt.

(2) When the Minister considers applications received on the same date he or she must give preference to applications from historically disadvantaged persons.

**Consultation with interested and affected parties**

25

10. (1) Within 14 days after accepting an application lodged in terms of section 16, 22 or 27, the Regional Manager must in the prescribed manner—

- (a) make known that an application for a prospecting right, mining right or mining permit has been received in respect of the land in question; and
- (b) call upon interested and affected persons to submit their comments regarding the application within 30 days from the date of the notice. 30

(2) If a person objects to the granting of a prospecting right, mining right or mining permit, the Regional Manager must refer the objection to the Regional Mining Development and Environmental Committee to consider the objections and to advise the Minister thereon. 35

**Transferability and encumbrance of prospecting rights and mining rights**

11. (1) A prospecting right or mining right or an interest in any such right, or a controlling interest in a company or close corporation, may not be ceded, transferred, let, sublet, assigned, alienated or otherwise disposed of without the written consent of the Minister, except in the case of change of controlling interest in listed companies. 40

(2) The consent referred to in subsection (1) must be granted if the cessionary, transferee, lessee, sublessee, assignee or the person to whom the right will be alienated or disposed of—

- (a) is capable of carrying out and complying with the obligations and the terms and conditions of the right in question; and 45
- (b) satisfies the requirements contemplated in section 17 or 23, as the case may be.

(3) The consent contemplated in subsection (1) is not required in respect of the encumbrance by mortgage contemplated in subsection (1) of right or interest as security

to obtain a loan or guarantee for the purpose of funding or financing a prospecting or mining project by—

- (a) any bank, as defined in the Banks Act, 1990 (Act No. 94 of 1990); or
- (b) any other financial institution approved for that purpose by the Registrar of Banks referred to in the Banks Act, 1990 (Act No. 94 of 1990), on request by the Minister,

if the bank or financial institution in question undertakes in writing that any sale in execution or any other disposal pursuant to the foreclosure of the mortgage will be subject to the consent in terms of subsection (1).

(4) Any transfer, cession, letting, subletting, alienation, encumbrance by mortgage or variation of a prospecting right or mining right, as the case may be, contemplated in this section must be lodged for registration at the Mining Titles Office within 30 days of the relevant action.

#### **Assistance to historically disadvantaged persons**

12. (1) The Minister may facilitate assistance to any historically disadvantaged person to conduct prospecting or mining operations.

(2) The assistance referred to in subsection (1) may be provided subject to such terms and conditions as the Minister may determine.

(3) Before facilitating the assistance contemplated in subsection (1), the Minister must take into account all relevant factors, including—

- (a) the need to promote equitable access to the nation's mineral resources;
- (b) the financial position of the applicant;
- (c) the need to transform the ownership structure of the minerals and mining industry; and
- (d) the extent to which the proposed prospecting or mining project meets the objects referred to in section 2(c), (d), (e), (f) and (i).

(4) When considering the assistance referred to in subsection (1), the Minister may request any relevant organ of State to assist the applicant concerned in the development of his or her prospecting or mining project.

#### **Application for reconnaissance permission**

13. (1) Any person who wishes to apply to the Minister for a reconnaissance permission must lodge the application—

- (a) at the office of the Regional Manager in whose region the land is situated;
- (b) in the prescribed manner; and
- (c) together with the prescribed non-refundable fee.

(2) The Regional Manager must accept an application for a reconnaissance permission if—

- (a) the requirements contemplated in subsection (1) are met; and
- (b) no person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land.

(3) If the application does not comply with the requirements of this section, the Regional Manager must notify the applicant in writing of that fact within 14 days of receipt of the application and return the application to the applicant.

#### **Issuing and duration of reconnaissance permission**

14. (1) Subject to subsections (1) and (2), the Minister must issue the reconnaissance permission if—

- (a) the applicant has access to financial resources and has the technical ability to conduct the proposed reconnaissance operations in accordance with the reconnaissance work programme;
- (b) the estimated expenditure is compatible with the proposed reconnaissance operation and duration of the reconnaissance work programme; and
- (c) the applicant is not in contravention of any relevant provision of this Act.

(2) The Minister must refuse to issue a reconnaissance permission if the applicant does not meet all the requirements referred to in subsection (1).

(3) If the Minister refuses to grant a reconnaissance permission, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision.

(4) The reconnaissance permission is valid for two years and is not renewable.

(5) A reconnaissance permission may not be transferred, ceded, let, sublet, alienated, disposed of or encumbered by mortgage.

### **Rights and obligations of holder of reconnaissance permission**

15. (1) A reconnaissance permission entitles the holder, on production of the reconnaissance permission and after consulting the land owner or lawful occupier thereof, to enter the land concerned for the purposes of conducting reconnaissance operations. 5

(2) A reconnaissance permission does not entitle the holder to—

- (a) conduct any prospecting or mining operations for any mineral in the land in question; or 10
- (b) any exclusive right to apply for or be granted a prospecting right or mining right.

### **Application for prospecting right**

16. (1) Any person who wishes to apply to the Minister for a prospecting right must lodge the application— 15

- (a) at the office of the Regional Manager in whose region the land is situated;
- (b) in the prescribed manner; and
- (c) together with the prescribed non-refundable application fee.

(2) The Regional Manager must accept an application for a prospecting right if—

- (a) the requirements contemplated in subsection (1) are met; and 20
- (b) no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land.

(3) If the application does not comply with the requirements of this section, the Regional Manager must notify the applicant in writing of that fact within 14 days of receipt of the application and return the application to the applicant. 25

(4) If the Regional Manager accepts the application, the Regional Manager must, within 14 days from the date of acceptance, notify the applicant in writing—

- (a) to submit an environmental management plan; and
- (b) to notify in writing and consult with the land owner or lawful occupier and any other affected party and submit the result of the consultation within 30 days from the date of the notice. 30

(5) Upon receipt of the information referred to in subsection (4)(a) and (b), the Regional Manager must forward the application to the Minister for consideration.

(6) The Minister may by notice in the *Gazette* invite applications for prospecting rights in respect of any land, and may specify in such notice the period within which any application may be lodged and the terms and conditions subject to which such rights may be granted. 35

### **Granting and duration of prospecting right**

17. (1) Subject to subsection (4), the Minister must grant a prospecting right if—

- (a) the applicant has access to financial resources and has the technical ability to conduct the proposed prospecting operation optimally in accordance with the prospecting work programme; 40
- (b) the estimated expenditure is compatible with the proposed prospecting operation and duration of the prospecting work programme;
- (c) the prospecting will not result in unacceptable pollution, ecological degradation or damage to the environment; 45
- (d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996); and
- (e) the applicant is not in contravention of any relevant provision of this Act.

(2) The Minister must refuse to grant a prospecting right if— 50

- (a) the application does not meet all the requirements referred to in subsection (1);
- (b) the granting of such right will—
  - (i) result in an exclusionary act;
  - (ii) prevent fair competition; or 55

- (iii) result in the concentration of the mineral resources in question under the control of the applicant.

(3) If the Minister refuses to grant a prospecting right, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision with reasons.

(4) The Minister may, having regard to the type of mineral concerned and the extent of the proposed prospecting project, request the applicant to give effect to the object referred to in section 2(d). 5

(5) The granting of a prospecting right in terms of subsection (1) becomes effective on the date on which the environmental management programme is approved in terms of section 39. 10

(6) A prospecting right is subject to this Act, any other relevant law and the terms and conditions stipulated in the right and is valid for the period specified in the right, which period may not exceed five years.

### **Application for renewal of prospecting right**

18. (1) Any holder of a prospecting right who wishes to apply to the Minister for the renewal of a prospecting right must lodge the application— 15

- (a) at the office of the Regional Manager in whose region the land is situated;
- (b) in the prescribed manner; and
- (c) together with the prescribed non-refundable application fee.

(2) An application for renewal of a prospecting right must— 20

- (a) state the reasons and period for which the renewal is required;
- (b) be accompanied by a detailed report reflecting the prospecting results, the interpretation thereof and the prospecting expenditure incurred;
- (c) be accompanied by a report reflecting the extent of compliance with the requirements of the approved environmental management programme, the rehabilitation to be completed and the estimated cost thereof; and 25
- (d) include a detailed prospecting work programme for the renewal period.

(3) The Minister must grant the renewal of a prospecting right if the application complies with subsections (1) and (2) and the holder of the prospecting right has complied with the— 30

- (a) terms and conditions of the prospecting right and is not in contravention of any relevant provision of this Act;
- (b) prospecting work programme; and
- (c) requirements of the approved environmental management plan.

(4) A prospecting right may be renewed once for a period not exceeding three years. 35

(5) A prospecting right in respect of which an application for renewal has been lodged shall, despite its stated expiry date, remain in force until such time as such application has been granted or refused.

### **Rights and obligations of holder of prospecting right**

19. (1) In addition to the rights referred to in section 5, the holder of a prospecting right has— 40

- (a) subject to section 18, the exclusive right to apply for and be granted a renewal of the prospecting right in respect of the mineral and prospecting area in question;
- (b) subject to subsection (2), the exclusive right to apply for and be granted a mining right in respect of the mineral and prospecting area in question; and 45
- (c) subject to the permission referred to in section 20, the exclusive right to remove and dispose of any mineral to which such right relates and which is found during the course of prospecting.

(2) The holder of a prospecting right must— 50

- (a) lodge such right for registration at the Mining Titles Office within 30 days of the date on which the right—
  - (i) becomes effective in terms of section 17(5); or
  - (ii) is renewed in terms of section 18(3);
- (b) commence with prospecting activities within 120 days from the date on which the prospecting right becomes effective in terms of section 17(5) or such an extended period as the Minister may authorise; 55
- (c) continuously and actively conduct prospecting operations in accordance with the prospecting work programme;

- (d) comply with the terms and conditions of the prospecting right, relevant provisions of this Act and any other relevant law;
- (e) comply with the requirements of the approved environmental management programme;
- (f) pay the prescribed prospecting fees to the State; and 5
- (g) subject to section 20, pay the State royalties in respect of any mineral removed and disposed of during the course of prospecting operations.

#### **Permission to remove and dispose of minerals**

20. (1) Subject to subsection (2), the holder of a prospecting right may only remove and dispose for his or her own account any mineral found by such holder in the course of prospecting operations conducted pursuant to such prospecting right in such quantities as may be required to conduct tests on it or to identify or analyse it. 10

(2) The holder of a prospecting right must obtain the Minister's written permission to remove and dispose for such holder's own account of bulk samples of any minerals found by such holder in the course of prospecting operations conducted pursuant to such prospecting right. 15

#### **Information and data in respect of reconnaissance and prospecting**

21. (1) The holder of a prospecting right or reconnaissance permission must—
- (a) keep proper records, at its registered office or place of business, of prospecting operations and the results and expenditure connected therewith, as well as borehole core data and core-log data, where appropriate; and 20
  - (b) submit progress reports and data, in the prescribed manner and at the prescribed intervals, to the Regional Manager regarding the prospecting operations.

(2) No person may dispose of or destroy any record, borehole core data or core-log data contemplated in subsection (1)(a) except in accordance with the written directions of the relevant Regional Manager. 25

#### **Application for mining right**

22. (1) Any person who wishes to apply to the Minister for a mining right must lodge the application— 30

- (a) at the office of the Regional Manager in whose region the land is situated;
- (b) in the prescribed manner; and
- (c) together with the prescribed non-refundable application fee.

- (2) The Regional Manager must accept an application for a mining right if—
- (a) the requirements contemplated in subsection (1) are met; and 35
  - (b) no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land.

(3) If the application does not comply with the requirements of this section, the Regional Manager must notify the applicant in writing of that fact within 14 days of the receipt of the application and return the application to the applicant. 40

(4) If the Regional Manager accepts the application, the Regional Manager must, within 14 days from the date of acceptance, notify the applicant in writing—

- (a) to conduct an environmental impact assessment and submit an environmental management programme for approval in terms of section 39, and
- (b) to notify and consult with interested and affected parties within 180 days from the date of the notice. 45

(5) The Minister may by notice in the *Gazette* invite applications for mining rights in respect of any land, and may specify in such notice the period within which any application may be lodged and the terms and conditions subject to which such rights may be granted. 50

#### **Granting and duration of mining right**

23. (1) Subject to subsection (4), the Minister must grant a mining right if—
- (a) the mineral can be mined optimally in accordance with the mining work programme;

- (b) the applicant has access to financial resources and has the technical ability to conduct the proposed mining operation optimally;
  - (c) the financing plan is compatible with the intended mining operation and the duration thereof;
  - (d) the mining will not result in unacceptable pollution, ecological degradation or damage to the environment; 5
  - (e) the applicant has provided financially and otherwise for the prescribed social and labour plan;
  - (f) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996); 10
  - (g) the applicant is not in contravention of any provision of this Act; and
  - (h) the granting of such right will further the objects referred to in section 2(d) and (f) and in accordance with the charter contemplated in section 100 and the prescribed social and labour plan.
- (2) The Minister may, having regard to the nature of the mineral in question, take into consideration the provisions of section 26. 15
- (3) The Minister must refuse to grant a mining right if the application does not meet all the requirements referred to in subsection (1).
- (4) If the Minister refuses to grant a mining right, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision and the reasons. 20
- (5) A mining right granted in terms of subsection (1) comes into effect on the date on which the environmental management programme is approved in terms of section 39(4).
- (6) A mining right is subject to this Act, any relevant law and the terms and conditions stated in the right the prescribed terms and conditions and is valid for the period specified in the right, which period may not exceed 30 years. 25

#### **Application for renewal of mining right**

24. (1) Any holder of a mining right who wishes to apply to the Minister for the renewal of a mining right must lodge the application—
- (a) at the office of the Regional Manager in whose region the land is situated;
  - (b) in the prescribed manner; and 30
  - (c) together with the prescribed non-refundable application fee.
- (2) An application for renewal of a mining right must—
- (a) state the reasons and the period for which the renewal is required;
  - (b) be accompanied by a report reflecting the extent of compliance with the requirements of the approved environmental management programme, the rehabilitation to be completed and the estimated cost thereof; and 35
  - (c) include a detailed mining work programme for the renewal period.
- (3) The Minister must grant the renewal of a mining right if the application complies with subsections (1) and (2) and the holder of the mining right has complied with the—
- (a) terms and conditions of the mining right and is not in contravention of any relevant provision of this Act or any other law; 40
  - (b) the mining work programme;
  - (c) requirements of the prescribed social and labour plan; and
  - (d) requirements of the approved environmental management programme.
- (4) A mining right may be renewed for further periods, each of which may not exceed 30 years at time. 45
- (5) A mining right in respect of which an application for renewal has been lodged shall despite its expiry date remain in force until such time as such application has been granted or refused.

#### **Rights and obligations of holder of mining right**

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25. (1) In addition to the rights referred to in section 5, the holder of a mining right has, subject to section 24, the exclusive right to apply for and be granted a renewal of the mining right in respect of the mineral and mining area in question.
- (2) The holder of a mining right must—
- (a) lodge such right for registration at the Mining Titles Office within 30 days of the date on which the right— 55
    - (i) becomes effective in terms of section 23(5); or
    - (ii) is renewed in terms of section 24(3);



- (b) commence with mining operations within one year from the date on which the mining right becomes effective in terms of section 23(5) or such extended period as the Minister may authorise;
- (c) actively conduct mining in accordance with the mining work programme;
- (d) comply with the relevant provisions of this Act, any other relevant law and the terms and conditions of the mining right; 5
- (e) comply with the requirements of the approved environmental management programme;
- (f) comply with the requirements of the prescribed social and labour plan;
- (g) pay the State royalties; and 10
- (h) submit the prescribed annual report, detailing the extent of the holder's compliance with the provisions of section 2(d) and (f), the charter contemplated in section 100 and the social and labour plan.

### Mineral beneficiation

26. (1) The Minister may initiate or prescribe incentives to promote the beneficiation of minerals in the Republic. 15

(2) If the Minister, acting on advice of the Board and after consultation with the Minister of Trade and Industry, finds that a particular mineral can be beneficiated economically in the Republic, the Minister may promote such beneficiation subject to such terms and conditions as the Minister may determine. 20

(3) Any person who intends to beneficiate any mineral mined in the Republic outside the Republic may only do so after written notice and in consultation with the Minister.

### Application for, issuing and duration of mining permit

27. (1) A mining permit may only be issued if—

- (a) the mineral in question can be mined optimally within a period of two years; 25
- and
- (b) the mining area in question does not exceed 1,5 hectares in extent.

(2) Any person who wishes to apply to the Minister for a mining permit must lodge the application—

- (a) at the office of the Regional Manager in whose region the land is situated; 30
- (b) in the prescribed manner; and
- (c) together with the prescribed non-refundable application fee.

(3) The Regional Manager must accept an application for a mining permit if—

- (a) the requirements contemplated in subsection (2) are met;
- (b) no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land. 35

(4) If the application does not comply with the requirements of this section, the Regional Manager must notify the applicant in writing of that fact within 14 days of the receipt of the application and return the application to the applicant.

(5) If the Regional Manager accepts the application, the Regional Manager must, within 14 days from the date of acceptance, notify the applicant in writing— 40

- (a) to submit an environmental management plan; and
- (b) to notify in writing and consult with the land owner and lawful occupier and any other affected parties and submit the result of the said consultation within 30 days from the date of the notice. 45

(6) The Minister must issue a mining permit if—

- (a) the requirements contemplated in subsection (1) are satisfied; and
- (b) the applicant has submitted the environmental management plan.

(7) The holder of a mining permit—

- (a) may enter the land to which such permit relates together with his or her employees, and may bring onto that land any plant, machinery or equipment and build, construct or lay down any surface or underground infrastructure which may be required for purposes of mining; 50
- (b) subject to the National Water Act, 1998 (Act No. 36 of 1998), may use water from any natural spring, lake, river or stream situated on, or flowing through, such land or from any excavation previously made and used for prospecting or mining purposes, as the case may be, or sink a well or borehole required for use relating to prospecting or mining, as the case may be, on such land; and 55

- (c) must pay the State royalties;
- (d) may mine, for his or her own account on or under that mining area for the mineral for which such permit relates.
- (8) A mining permit—
  - (a) is valid for the period specified in the permit, which may not exceed a period of two years, and may be renewed for three periods each of which may not exceed one year; 5
  - (b) may not be transferred, ceded, let, sublet, alienated or disposed of, in any way whatsoever, but may be encumbered or mortgaged only for the purpose of funding or financing of the mining project in question with the Minister's consent. 10

### Information and data in respect of mining or processing of minerals

28. (1) The holder of a mining right or mining permit must, at its registered office or place of business, keep proper records of mining activities and proper financial records in connection with the mining activities. 15
- (2) The holder of a mining right or mining permit, or the manager of any processing plant operating separately from a mine, must submit to the Director-General—
- (a) prescribed monthly returns with accurate and correct information and data; and
  - (b) an audited annual financial report or financial statements reflecting the balance sheet and profit and loss account; 20
  - (c) an annual report detailing the extent of the holder's compliance with the provisions of section 2(d) and (f), the charter contemplated in section 100 and the social and labour plan.

### Minister's power to direct submission of specified information or data 25

29. The Minister may, in order to achieve the objects of this Act and to fulfil any of the functions in terms of this Act, direct in writing that specified information or data be submitted by—
- (a) an applicant for a prospecting right, mining right, retention permit or mining permit, as the case may be; 30
  - (b) any holder of a prospecting right, mining right, retention permit or mining permit; or
  - (c) any owner or lawful occupier of land which is the subject of a prospecting right, mining right, retention permit or mining permit, or which is the subject of an application for such a right or permit or of a prospecting or mining operation. 35

### Disclosure of information

30. (1) Subject to subsection (2), any information or data submitted in terms of section 21, 28 or 29 may be disclosed to any person—
- (a) in order to achieve any object referred to in section 2(c), (d) or (e); 40
  - (b) in order to give effect to the right of access to information contemplated in section 32 of the Constitution;
  - (c) if such information or data is already publicly available; or
  - (d) if the relevant right, permit or permission has lapsed or been cancelled, or the area to which such right or permission relates has been abandoned or relinquished. 45
- (2) No information or data may be disclosed to any person if it contains information or data supplied in confidence by the supplier of the information or data.
- (3) Any person submitting information or data in terms of section 21, 28 or 29 must inform the Regional Manager concerned and indicate which information and data must be treated as confidential and may not be disclosed. 50
- (4) Neither the State nor any of its employees—
- (a) liable for the *bona fide* or inadvertent release of information or data submitted in terms of this Act; and
  - (b) guarantee the accuracy or completeness of any such information or data or interpretation thereof. 55

### Application for retention permit

31. (1) Any holder of a prospecting right who wishes to apply to the Minister for a retention permit must—

- (a) must lodge the application at the office of the Regional Manager in whose region the land is situated; 5
  - (b) must lodge the application in the prescribed manner;
  - (c) must lodge the application together with the prescribed non-refundable application fee;
  - (d) in the application state the reasons and period for which the retention permit is requested, and 10
  - (e) submit a report reflecting the extent of compliance with the section 32(1).
- (2) The Regional Manager must accept an application for a retention permit, if—
- (a) the requirements contemplated in subsection (1) are met; and
  - (b) the applicant is the holder of the prospecting right in question.

### Issuing and duration of retention permit 15

32. (1) The Minister may issue a retention permit if the holder of the prospecting right has—

- (a) prospected on the land to which the application relates;
- (b) completed the prospecting activities and a feasibility study;
- (c) established the existence of a mineral reserve which has mining potential; 20
- (d) studied the market and found that the mining of the mineral in question would be uneconomical due to prevailing market conditions; and
- (e) complied with the relevant provisions of this Act, any other relevant law and the terms and conditions stipulated in the prospecting right.

(2) A retention permit issued under subsection (1) suspends the terms and conditions of the prospecting right held in respect of the land to which the retention permit relates and if the prospecting period has not expired, the duration of the prospecting right in question runs concurrently with that of the retention permit. 25

(3) Despite subsection (2), the environmental management programme approved in respect of the prospecting right remains in force as if the prospecting right had not lapsed. 30

(4) A retention permit is valid for the period specified in the permit, which period may not exceed three years.

### Refusal of application for retention permit

33. The Minister may refuse to issue a retention permit if, after having regard to the information submitted under section 32(1) and research conducted by the Board at the request of the Minister, it is established that— 35

- (a) the mineral to which the application relates can be mined profitably;
- (b) the applicant has not completed the prospecting operations and feasibility study in relation thereto; or 40
- (c) the issuing of such permit will—
  - (i) result in an exclusionary act;
  - (ii) prevent fair competition; or
  - (iii) result in the concentration of mineral in the hands of the applicant.

### Application for renewal of retention permit 45

34. (1) An application for the renewal of a retention permit must be lodged in the same manner as an application for a retention permit contemplated in section 31(1) and must include—

- (a) an updated report of the circumstances which prevailed at the time of issuing of the retention permit; and 50
  - (b) the period and reasons for the renewal being sought.
- (2) A retention permit may only be renewed if—
- (a) the holder has complied with the relevant provisions of this Act, any other relevant law and the terms and conditions of the retention permit; and
  - (b) the market conditions contemplated in section 32(1)(d) still prevail. 55
- (3) A retention permit may be renewed once for a period not exceeding two years.

### **Rights and obligations of holder of retention permit**

35. (1) Subject to subsection (2), the holder of a retention permit has the exclusive right to be granted a mining right in respect of the retention area and mineral in question.

(2) The holder of a retention permit must—

- (a) give effect to the approved environmental management programme and pay the prescribed retention fees; and 5
- (b) submit a six monthly progress report to the Regional Manager indicating—
  - (i) the prevailing market conditions, the effect thereof and the need to hold such retention permit over the mineral and land in question; and
  - (ii) efforts undertaken by such holder to ensure that mining operations commence before the expiry period referred to in section 32(4) or 34(3), as the case may be. 10

### **Retention permit not transferable**

36. A retention permit may not be transferred, ceded, let, sub-let, alienated, disposed of, mortgaged or encumbered in any way whatsoever. 15

### **Environmental management principles**

37. (1) The principles set out in section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998)—

- (a) apply to all prospecting and mining operations, as the case may be, and any matter relating to such operation; and 20
- (b) serve as guidelines for the interpretation, administration and implementation of the environmental requirements of this Act.

(2) Any prospecting or mining operation must be conducted in accordance with generally accepted principles of sustainable development by integrating social, economic and environmental factors into the planning and implementation of prospecting and mining projects in order to ensure that exploitation of mineral resources serves present and future generations. 25

### **Integrated environmental management and responsibility to remedy**

38. (1) The holder of a reconnaissance permission, prospecting right, mining right, mining permit or retention permit— 30

- (a) must at all times give effect to the general objectives of integrated environmental management laid down in Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- (b) must consider, investigate, assess and communicate the impact of his or her prospecting or mining on the environment as contemplated in section 24(7) of the National Environmental Management Act, 1998 (Act No. 107 of 1998); 35
- (c) must manage all environmental impacts—
  - (i) in accordance with his or her environmental management plan or approved environmental management programme, where appropriate; and 40
  - (ii) as an integral part of the reconnaissance, prospecting or mining operation, unless the Minister directs otherwise;
- (d) must as far as it is reasonably practicable, rehabilitate the environment affected by the prospecting or mining operations to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and 45
- (e) is responsible for any environmental damage, pollution or ecological degradation as a result of his or her reconnaissance prospecting or mining operations and which may occur inside and outside the boundaries of the area to which such right, permit or permission relates. 50

(2) Notwithstanding the Companies Act, 1973 (Act No. 61 of 1973), or the Close Corporations Act, 1984 (Act No. 69 of 1984), the directors of a company or members of a close corporation are jointly and severally liable for any unacceptable negative impact on the environment, including damage, degradation or pollution advertently or inadvertently caused by the company or close corporation which they represent or 55 represented.

### Environmental management programme and environmental management plan

39. (1) Every person who has applied for a mining right in terms of section 22 must conduct an environmental impact assessment and submit an environmental management programme within 180 days of the date on which he or she is notified by the Regional Manager to do so. 5

(2) Any person who applies for a reconnaissance permission, prospecting right or mining permit must submit an environmental management plan as prescribed.

(3) An applicant who prepares an environmental management programme or an environmental management plan must—

- (a) establish baseline information concerning the affected environment to determine protection, remedial measures and environmental management objectives; 10
- (b) investigate, assess and evaluate the impact of his or her proposed prospecting or mining operations on—
  - (i) the environment; 15
  - (ii) the socio-economic conditions of any person who might be directly affected by the prospecting or mining operation; and
  - (iii) any national estate referred to in section 3(2) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999), with the exception of the national estate contemplated in section 3(2)(i)(vi) and (vii) of that Act; 20
- (c) develop an environmental awareness plan describing the manner in which the applicant intends to inform his or her employees of any environmental risks which may result from their work and the manner in which the risks must be dealt with in order to avoid pollution or the degradation of the environment; 25
- (d) describe the manner in which he or she intends to—
  - (i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation;
  - (ii) contain or remedy the cause of pollution or degradation and migration of pollutants; and 30
  - (iii) comply with any prescribed waste standard or management standards or practices.

(4) (a) Subject to paragraph (b), the Minister must, within 120 days from the lodgement of the environmental management programme or the environmental management plan, approve the same, if— 35

- (i) it complies with the requirements of subsection (3);
- (ii) the applicant has complied with section 41(1); and
- (iii) the applicant has the capacity, or has provided for the capacity, to rehabilitate and manage negative impacts on the environment.

(b) The Minister may not approve the environmental management programme or the environmental management plan unless he or she has considered— 40

- (i) any recommendation by the Regional Mining Development and Environmental Committee; and
- (ii) the comments of any State department charged with the administration of any law which relates to matters affecting the environment. 45

(5) The Minister may call for additional information from the person contemplated in subsection (1) or (2) and may direct that the environmental management programme or environmental management plan in question be adjusted in such way as the Minister may require.

(6) (a) The Minister may at any time after he or she has approved an environmental management programme or environmental management plan and after consultation with the holder of the reconnaissance permission, prospecting right, mining right or mining permit concerned, approve an amended environmental management plan or environmental management programme. 50

(b) For the purposes of paragraph (a), subsection (4) applies with the necessary changes. 55

(7) The provisions of subsection (3)(b)(ii) and the subsection (3)(c) do not apply to the applications for reconnaissance permissions, prospecting rights or mining permits.

### Consultation with State departments

40. (1) When considering an environmental management plan or environmental management programme in terms of section 39, the Minister must consult with any State department which administers any law relating to matters affecting the environment.

(2) The Minister must request the head of a department being consulted, in writing, to submit the comments of that department within 60 days from the date of the request. 5

### Financial provision for remediation of environmental damage

41. (1) An applicant for a prospecting right, mining right or mining permit must, before the Minister approves the environmental management plan or environmental management programme in terms of section 39(4), make the prescribed financial provision for the rehabilitation or management of negative environmental impacts. 10

(2) If the holder of a prospecting right, mining right or mining permit fails to rehabilitate or manage, or is unable to undertake such rehabilitation or to manage any negative impact on the environment, the Minister may, upon written notice to such holder, use all or part of the financial provision contemplated in subsection (1) to rehabilitate or manage the negative environmental impact in question. 15

(3) The holder of a prospecting right, mining right or mining permit must annually assess his or her environmental liability and increase his or her financial provision to the satisfaction of the Minister.

(4) If the Minister is not satisfied with the assessment and financial provision contemplated in this section, the Minister may appoint an independent assessor to conduct the assessment and determine the financial provision. 20

(5) The requirement to maintain and retain the financial provision remains in force until the Minister issues an certificate in terms of section 43 to such holder, but the Minister may retain such portion of the financial provision as may be required to rehabilitate the closed mining or prospecting operation in respect of latent or residual environmental impacts. 25

### Management of residue stockpiles and residue deposits

42. (1) Residue stockpiles and residue deposits must be managed in the prescribed manner on any site demarcated for that purpose in the environmental management plan or environmental management programme in question. 30

(2) No person may temporarily or permanently deposit any residue stockpile or residue deposit on any site other than on a site contemplated in subsection (1).

### Issuing of a closure certificate

43. (1) The holder of a prospecting right, mining right, retention permit or mining permit remains responsible for any environmental liability, pollution or ecological degradation, and the management thereof, until the Minister has issued an closure certificate to the holder concerned. 35

(2) On written application by the holder of a prospecting right, mining right or mining permit in the prescribed manner, the Minister may transfer such environmental liabilities and responsibilities as may be identified in the environmental management plan or the environmental management programme and any prescribed closure plan to a person with such qualifications as may be prescribed. 40

(3) The holder of a prospecting right, mining right, retention permit or mining permit or the person contemplated in subsection (2), as the case may be, must apply for an closure certificate upon— 45

- (a) the lapsing, abandonment or cancellation of the right or permit in question;
- (b) cessation of the prospecting or mining operation;
- (c) the relinquishment of any portion of the prospecting of the land to which a right, permit or permission relate; or
- (d) completion of the prescribed closing plan to which a right, permit or permission relate. 50

(4) An application for an closure certificate must be made to the Regional Manager in whose region the land in question is situated within 180 days of the occurrence of the lapsing, abandonment, cancellation, cessation, relinquishment or completion contem- 55

plated in subsection (3) and must be accompanied by the prescribed environmental risk report.

(5) No closure certificate may be issued unless the Chief Inspector and the Department of Water Affairs and Forestry have confirmed in writing that the provisions pertaining to health and safety and management of potential pollution to water resources have been addressed. 5

(6) When the Minister issues a certificate he or she must return such portion of the financial provision contemplated in section 41 as the Minister may deem appropriate to the holder of the prospecting right, mining right, retention permit or mining permit in question, but may retain any portion of such financial provision for latent and or residual environmental impact which may become known in the future. 10

#### **Removal of buildings, structures and other objects**

44. (1) When a prospecting right, mining right, retention permit or mining permit lapses, is cancelled or is abandoned or when any prospecting or mining operation comes to an end, the holder of any such right or permit may not demolish or remove any building, structure or object— 15

- (a) which may not be demolished or removed in terms of any other law;
- (b) which has been identified in writing by the Minister for purposes of this section; or
- (c) which is to be retained in terms of an agreement between the holder and the owner or occupier of the land, which agreement has been approved by the Minister in writing. 20

(2) The provision of subsection (1) does not apply to *bona fide* mining equipment, which may be removed.

#### **Minister's power to recover costs in event of urgent remedial measures** 25

45. (1) If any prospecting, mining, reconnaissance or production operations cause or results in ecological degradation, pollution or environmental damage which may be harmful to the health or well-being of anyone and requires urgent remedial measures, the Minister may direct the holder of the relevant right, permit or permission to—

- (a) investigate, evaluate, assess and report on the impact of any pollution or ecological degradation; 30
- (b) take such measures as may be specified in such directive; and
- (c) complete such measures before a date specified in the directive.

(2) (a) If the holder fails to comply with the directive, the Minister may take such measures as may be necessary to protect the health and well-being of any affected person or to remedy ecological degradation and to stop pollution of the environment. 35

(b) Before the Minister implements any measure, he or she must afford the holder an opportunity to make representations to him or her.

(c) In order to implement the measures contemplated in paragraph (a), the Minister may by way of an *ex parte* application apply to a High Court for an order to seize and sell such property of the holder as may be necessary to cover the expenses of implementing such measures. 40

(d) In addition to the application in terms of paragraph (c), the Minister may use funds appropriated for that purpose by Parliament to fully implement such measures.

(e) The Minister may recover an amount equal to the funds necessary to fully implement the measures from the holder concerned. 45

#### **Minister's power to remedy environmental damage in certain instances**

46. (1) If the Minister directs that measures contemplated in section 45 must be taken to prevent pollution or ecological degradation of the environment or to rehabilitate dangerous occurrences but establishes that the holder of the relevant reconnaissance permission, prospecting right, mining right, retention permit or mining permit, as the case may be, or his or her successor in title, is deceased or cannot be traced or, in the case of a juristic person, has ceased to exist, has been liquidated or cannot be traced, the Minister may instruct the Regional Manager concerned to take the necessary measures to prevent further pollution or degradation, or to make the area safe. 50 55

(2) The measures contemplated in subsection (1) must be funded from the financial provision made by the holder of the relevant reconnaissance permission, prospecting right, mining right, retention permit or mining permit in terms of section 41, where appropriate, or if there is no such provision or if it is inadequate, from money appropriated by Parliament for that purpose. 5

(3) (a) Upon completion of the measures contemplated in subsection (1), the Regional Manager must apply to the registrar concerned that the title deed of the land in question be endorsed to the effect that such land had been remedied.

(b) The registrar concerned must, on receipt of an application contemplated in paragraph (a), make such endorsements as he or she may deem necessary so as to give effect to provisions of that paragraph, and no office fee or other charge is payable to the registrar in respect of such endorsement. 10

#### **Minister's power to suspend or cancel rights, permits or permissions**

47. (1) Subject to subsections (2), (3) and (4), the Minister may cancel or suspend any reconnaissance permission, prospecting right, mining right, mining permit or retention permit if the holder thereof— 15

(a) is conducting any reconnaissance, prospecting or mining operation in contravention of this Act;

(b) breaches any material term or condition of such right, permit or permission;

(c) is contravening the approved environmental management programme; or 20

(d) has submitted inaccurate, incorrect or misleading information in connection with any matter required to be submitted under this Act.

(2) Before acting under subsection (1), the Minister must—

(a) give written notice to the holder indicating the intention to suspend or cancel the right; 25

(b) set out the reasons why he or she is considering suspending or canceling the right;

(c) afford the holder a reasonable opportunity to show why the right, permit or permission should not be suspended or cancelled; and

(d) notify the mortgagor, if any, of the prospecting right, mining right or mining permit concerned of his or her intention to suspend or cancel the right or permit. 30

(3) The Minister must direct the holder to take specified measures to remedy any contravention, breach or failure.

(4) If the holder does not comply with the direction given under subsection (3), the Minister may act under subsection (1) against the holder after having— 35

(a) given the holder a reasonable opportunity to make representations; and

(b) considered any such representations.

(5) The Minister may by written notice to the holder lift a suspension if the holder—

(a) complies with a directive contemplated in subsection (3); or 40

(b) furnishes compelling reasons for the lifting of the suspension.

#### **Restriction or prohibition of prospecting and mining on certain land**

48. (1) Subject to section 20 of the National Parks Act, 1976 (Act No. 57 of 1976), and subsection (2), no reconnaissance permission, prospecting right, mining right or mining permit may be issued in respect of— 45

(a) land comprising a residential area;

(b) any public road, railway or cemetery;

(c) any land being used for public or government purposes or reserved in terms of any other law; or

(d) areas identified by the Minister by notice in the *Gazette* in terms of section 49. 50

(2) A reconnaissance permission, prospecting right, mining right or mining permit may be issued in respect of the land contemplated in subsection (1) if the Minister is satisfied that—

(a) having regard to the sustainable development of the mineral resources involved and the national interest, it is desirable to issue it; 55

(b) the reconnaissance, prospecting or mining will take place within the framework of national environmental management policies, norms and standards; and



- (c) the granting of such rights or permits will not detrimentally affect the interests of any holder of a prospecting right or mining right.

### Minister's power to prohibit or restrict prospecting or mining

49. (1) Subject to subsection (2), the Minister may, after inviting representations from relevant stakeholders, from time to time by notice in the *Gazette*, having regard to the national interest and the need to promote the sustainable development of the nation's mineral resources, prohibit or restrict the granting of any reconnaissance permission, prospecting right, mining right or mining permit in respect of land identified by the Minister for such period and on such terms and conditions as the Minister may determine. 5 10

(2) A notice contemplated in subsection (1) does not affect prospecting or mining in, on or under land which, on the date of the notice, is the subject of a reconnaissance permission, prospecting right, a mining right, a retention permit or a mining permit.

(3) The Minister may from time to time by notice in the *Gazette*—

- (a) lift a prohibition or restriction made in terms of subsection (1) if the circumstances which caused the Minister so to prohibit or restrict no longer exist; or 15
- (b) amend the period, term or condition applicable to any prohibition or restriction made in terms of subsection (1) if the circumstances which caused the Minister so to prohibit or restrict have changed. 20

### Minister may investigate occurrence, nature and extent of mineral resources

50. (1) The Minister may cause an investigation to be conducted on any land to establish if any mineral or geological formation occurs in, on or under such land and, if so, to establish the nature and extent thereof.

(2) (a) The Minister must compensate the owner of the land in question if any loss or damage is caused during an investigation contemplated in subsection (1). 25

(b) The Minister and the owner of the land may agree upon the compensation to be paid.

(c) If no agreement is reached, the amount of compensation must be fixed by arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), or by a competent court. 30

(3) No investigation may be conducted under subsection (1) unless—

- (a) the Minister has published a notice in the *Gazette*—
  - (i) indicating an intention to conduct the investigation;
  - (ii) inviting written comments on the proposed investigation, specifying an address to which and the date before which comments must be submitted; and 35
  - (iii) calling on the owner, occupier or person in control of such land to furnish the Minister with his or her particulars, if such owner, occupier or person is not known to the Minister; 40
- (b) the Minister has considered any comments received; and
- (c) a period of 30 days has lapsed after the Minister published the notice.

(4) (a) No person may for the purposes of an investigation contemplated in subsection (1) enter upon land unless the owner, occupier or person in control of such land has been notified in writing of the intention to enter and to conduct the investigation. 45

(b) If the owner, occupier or person in control of the land in question cannot be traced, a copy of the notice contemplated in paragraph (a) must be affixed at a prominent place on the land before the investigation may be conducted.

(5) Any investigation in terms of this section must be conducted in a manner which limits or prevents any detrimental effect to the land and the environment. 50

### Optimal mining of mineral resources

51. (1) Subject to subsection (2), the Board may recommend to the Minister to direct the holder of a mining right to take corrective measures if the Board establishes that the minerals are not being mined optimally in accordance with the mining work programme or that a continuation of such practice will detrimentally affect the objects referred to in section 2(f). 55

(2) Before making the recommendation, the Board must consider whether the technical and financial resources of the holder of the mining right in question and the prevailing market conditions justify such recommendation.

(3) (a) If the Minister agrees with the recommendation, he or she must, within 30 days from date of receipt of the recommendation of the Board, in writing notify the holder that he or she must take such corrective measures as may be set out in the notice and must remedy the position within the period mentioned in the notice. 5

(b) The Minister must afford the holder the opportunity to make representations in relation to the Board's findings within 60 days from the date of the notice and must point out that non-compliance with the notice might result in suspension or cancellation of the mining right. 10

(4) The Minister may, on the recommendation of the Board, suspend or cancel a mining right if—

(a) the holder of that mining right fails to comply with a notice contemplated in subsection (3); or 15

(b) having regard to any representations by the holder, the Minister is convinced that any act or omission by the holder justifies the suspension or cancellation of the right.

(5) The Minister may, on the recommendation of the Board, lift the suspension of a mining right if the holder in question— 20

(a) complies with the notice contemplated in subsection (3); or

(b) furnishes compelling reasons for the lifting of the suspension.

#### **Notice of profitability and curtailment of mining operations affecting employment**

52. (1) The holder of a mining right must, after consultation with any registered trade union or affected employees or their nominated representatives where there is no such trade union, notify the Board in the prescribed manner— 25

(a) where prevailing economic conditions cause the profit to revenue ratio of the relevant mine to be less than six per cent on average for a continuous period of 12 months; or

(b) if any mining operation is to be scaled down or to cease with the possible effect that 10 per cent or more of the labour force or more than 500 employees, whichever is the lesser, are likely to be retrenched in any 12-month period. 30

(2) The Board must, after consultation with the relevant holder, investigate—

(a) the circumstances referred to in subsection (1); and

(b) the socio-economic and labour implications thereof and make recommendations to the Minister. 35

(3) (a) The Minister may, on the recommendation of the Board and after consultation with the Minister of Labour and any registered trade union or affected persons or their nominated representatives where there is no such trade union, direct in writing that the holder of the mining right in question take such corrective measures subject to such terms and conditions as the Minister may determine. 40

(b) The holder of the mining right must comply with the directive and confirm in writing that the corrective measures have been taken.

(c) If the directives contemplated in paragraph (a) are not complied with, the Minister may provide assistance to or apply to a court for judicial management of the mining operation. 45

#### **Use of land surface rights contrary to objects of Act**

53. (1) Subject to subsection (2), any person who intends to use the surface of any land in any way which may be contrary to any object of this Act or which is likely to impede any such object must apply to the Minister for approval in the prescribed manner. 50

(2) Subsection (1) does not apply to—

(a) farming or any use incidental thereto; or

(b) the use of any land which lies within an approved town-planning scheme which has applied for and obtained approval in terms of subsection (1); or

(c) any other use which the Minister may determine by notice in the *Gazette*. 55

(3) Despite subsection (1), the Minister may of his or her own volition cause an investigation to be conducted if it is alleged that a person intends to use the surface of any land in any way that could result in the mining of mineral resources being detrimentally affected.

(4) When an investigation is conducted in terms of subsection (3), the Regional Manager must—

- (a) by written notice served on the person concerned, notify the person of the allegation and of the Minister's intention to issue a directive to take corrective measures;
- (b) set out the measures to be taken in order to rectify the matter; and
- (c) offer that person the opportunity to respond within 30 days.

(5) After considering the results of the investigation contemplated in subsection (3), and any representations contemplated in subsection (4)(c), the Minister may direct the person concerned to take the necessary corrective measures within a period specified in the directive.

#### **Compensation payable under certain circumstances**

54. (1) The holder of a reconnaissance permission, prospecting right, mining right or mining permit must notify the relevant Regional Manager if that holder is prevented from commencing or conducting any reconnaissance, prospecting or mining operations because the owner or the lawful occupier of the land in question—

- (a) refuses to allow such holder to enter the land;
- (b) places unreasonable demands in return for access to the land; or
- (c) cannot be found in order to apply for access.

(2) The Regional Manager must, within 14 days from the date of the notice referred to in subsection (1)—

- (a) call upon the owner or lawful occupier of the land to make representations regarding the issues raised by the holder of the reconnaissance permission, prospecting right, mining right or mining permit;
- (b) inform that owner or occupier of the rights of the holder of a right, permit or permission in terms of this Act;
- (c) set out the provisions of this Act which such owner or occupier is contravening; and
- (d) inform that owner or occupier of the steps which may be taken, should he or she persist in contravening the provisions.

(3) If the Regional Manager, after having considered the issues raised by the holder under subsection (1) and any written representations by the owner or the lawful occupier of the land, concludes that the owner or occupier has suffered or is likely to suffer loss or damage as a result of the reconnaissance, prospecting or mining operations, he or she must request the parties concerned to endeavor to reach an agreement for the payment of compensation for such loss or damage.

(4) If the parties fail to reach an agreement, compensation must be determined by arbitration in accordance with the Arbitration Act, 1965 (Act No. 42 of 1965), or by a competent court.

(5) If the Regional Manager, having considered the issues raised by the holder under subsection (1) and any representations by the owner or occupier of land and any written recommendation by the Regional Mining Development and Environmental Committee, concludes that any further negotiation may detrimentally affect the objects of this Act referred to in section 2(c), (d), (f) or (g), the Regional Manager may recommend to the Minister that such land be expropriated in terms of section 55.

(6) If the Regional Manager determines that the failure of the parties to reach an agreement or to resolve the dispute is due to the fault of the holder of the reconnaissance permission, prospecting right, mining right or mining permit, the Regional Manager may in writing prohibit such holder from commencing or continuing with prospecting or mining operations on the land in question until such time as the dispute has been resolved by arbitration or by a competent court.

(7) The owner or lawful occupier of land on which reconnaissance, prospecting or mining operations will be conducted must notify the relevant Regional Manager if that owner or occupier has suffered or is likely to suffer any loss or damage as a result of the prospecting or mining operation, in which case this section applies with the changes required by the context.

#### **Minister's power to expropriate property for purpose of prospecting or mining**

55. (1) If it is necessary for the achievement of the objects referred to in section 2(d), (e), (f), (g) and (h) the Minister may, in accordance with section 25(2) and (3) of the

Constitution, expropriate any land or any right therein and pay compensation in respect thereof.

(2) (a) Sections 6, 7 and 9(1) of the Expropriation Act, 1975 (Act No. 63 of 1975), apply to any expropriation in terms of this Act.

(b) Any reference in the sections referred to in paragraph (a) to "the Minister" must be construed as being a reference to the Minister defined in this Act. 5

### **Lapsing of right, permit, permission and licence**

56. Any right, permit, permission or licence granted or issued in terms of this Act shall lapse, whenever—

- (a) it expires; 10
- (b) the holder thereof is deceased and there are no successors in title;
- (c) a company or close corporation is deregistered in terms of the relevant Acts and no application has been made or was made to the Minister for the consent in terms of section 11 or such permission has been refused;
- (d) save for cases referred to in section 11(3), the holder is liquidated or 15  
sequestrated;
- (e) it is cancelled in terms of section 47; or
- (f) it is abandoned.

## **CHAPTER 5**

### **MINERALS AND MINING DEVELOPMENT BOARD**

20

#### **Establishment of Minerals and Mining Development Board**

57. The Minerals and Mining Development Board is hereby established.

#### **Functions of Board**

58. (1) The Board—

- (a) must advise the Minister on— 25
  - (i) any matter which must be referred to the Board by or under this Act;
  - (ii) the sustainable development of the nation's mineral resources;
  - (iii) the transformation and downscaling of the minerals and mining industry; and
  - (iv) dispute resolution; 30
- (b) must, in consultation with the Mining Qualifications Authority, ensure the promotion of human resource development in the minerals and mining industry; and
- (c) may—
  - (i) report to the Minister on any matter relating to the application of this Act; 35  
and
  - (ii) enquire into and report to the Minister on any matter concerning the objects of this Act.

(2) The Board must give priority to matters referred to it by the Minister.

#### **Composition of Board**

40

59. (1) The Board consists of no fewer than 14 and no more than 18 members, and must reflect the gender and racial composition in the Republic.

(2) The Minister must appoint as members of the Board—

- (a) a Chairperson;
- (b) the Chief Inspector; 45
- (c) three persons representing any relevant State department,
- (d) three persons representing organized labour,
- (e) three persons representing organised business,
- (f) at least one person representing any relevant non-governmental organisation;
- (g) two persons representing relevant community-based organisations; and 50
- (h) at least two other persons with appropriate experience, expertise or skill to enhance the Board's capability of performing its functions more effectively.

(3) The members of the Board must elect a deputy chairperson from amongst their number at their first meeting.

### Disqualification of members

60. (1) No person may be appointed as member of the Board—
- (a) unless he or she is a South African citizen who resides in the Republic permanently; or 5
  - (b) if he or she—
    - (i) is an unrehabilitated insolvent;
    - (ii) has been declared to be of unsound mind by a court of the Republic; or
    - (iii) has been convicted of an offence committed after the date of commencement of the Constitution, and sentenced to imprisonment without the option of a fine, unless the person has received a grant of amnesty or a free pardon before the date of his or her appointment. 10

### Vacation of office

61. (1) A member of the Board must vacate his or her office if he or she— 15
- (a) becomes subject to any disqualification contemplated in section 60 or, in the case of an official in the service of the State, ceases to be such an official;
  - (b) has been absent from more than two consecutive meetings of the Board without the Board's leave;
  - (c) tenders his or her resignation in writing to the Minister and the Minister accepts the resignation; or 20
  - (d) is removed from 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 properly; or 25
  - (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 30
    - (iii) divulging any information referred to in paragraph (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). 35

### Term of office and filling of vacancies

62. (1) A member of the Board holds office for a period not exceeding three years.
- (2) The Minister may reappoint any member of the Board at the expiry of his or her term of office for another period not exceeding three years.
- (3) If a member of the Board vacates office or dies, the Minister may fill the vacancy by appointing a person in accordance with section 59(2) for the unexpired portion of the term of office of his or her predecessor. 40

### Meetings of Board

63. (1) The Chairperson or, in the absence of the Chairperson, the Minister must convene meetings of the Board. 45
- (2) The Minister may, if he or she deems it necessary, call a special meeting of the Board.
- (3) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson presides at meetings of the Board.
- (4) If both the Chairperson and Deputy Chairperson are absent from a meeting, the attending members must nominate one of their number as acting chairperson for that meeting. 50
- (5) The quorum for any meeting of the Board is fifty percent of the appointed members.

(6) The decision of the majority of the members of the Board present at a meeting constitutes a resolution of the Board, and in the event of an equality of votes on any matter the person presiding at the meeting in question has a casting vote.

(7) The Chairperson must submit any recommendation of the Board to the Minister within seven days after such resolution has been passed by the Board. 5

(8) A member of the Board must recuse himself or herself from participating in any investigation, hearing or decision concerning a matter in respect of which that member has a financial or personal interest.

### **Committees of Board**

64. (1) The Board must establish a Regional Mining Development and Environmental Committee in such manner as may be prescribed for each region contemplated in section 7. 10

(2) The Board may establish such other permanent or ad hoc committee as it deems necessary to assist it in the performance of its functions, and any such committee may include members who are not members of the Board. 15

(3) A committee established under subsection (2) may, subject to the approval of the Board, establish ad hoc working groups to assist it in the performance of its functions, and any such working group may include persons who are not members of such committee or the Board.

(4) If a committee or working group consists of more than one member, the Board must designate a member of such committee or working group as chairperson thereof. 20

(5) A committee or working group of the Board is accountable to the Board.

(6) The assistance contemplated in subsections (2) and (3) does not absolve the Board from its responsibility under this Act.

### **Funding of Board**

25

65. The expenses of the Board must be defrayed from money appropriated by Parliament to the Department for that purpose.

### **Remuneration of members of Board, committees and working groups**

66. A member of the Board, a committee or working group, except a member who is a full-time employee of the State, must be appointed on such conditions, including conditions relating to the payment of remuneration and allowances, as the Minister may determine with the concurrence of the Minister of Finance. 30

### **Reports of Board**

67. In addition to any specific report which the Minister may request from the Board from time to time, the Board must before 31 March of each year submit a report to the Minister setting out the activities of the Board during the year preceding that date and must include a business plan for the ensuing year. 35

### **Administrative functions**

68. The administrative functions of the Board must be performed by officers of the Department who are designated by the Director-General for that purpose. 40

## **CHAPTER 6**

### **PETROLEUM EXPLORATION AND PRODUCTION**

#### **Application of Chapter**

69. (1) This Chapter provides for the granting of exploration rights and production rights and the issuing of technical co-operation permits and reconnaissance permits. 45

(2) (a) For the purposes of this Chapter, sections 9, 10, 11, 12, 23, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52, Chapter 7 and Schedule II apply with the necessary changes.

(b) Any reference in the provisions referred to in paragraph (a) to—

- (i) minerals, must be construed as a reference to petroleum;
- (ii) mining, must be construed as a reference to production;
- (iii) mining area, must be construed as a reference to production area;
- (iv) mining rights, must be construed as a reference to production rights;
- (v) prospecting, must be construed as a reference to exploration; 5
- (vi) prospecting area, must be construed as a reference to exploration area;
- (vii) prospecting rights, must be construed as a reference to exploration rights; and
- (viii) reconnaissance permission, must be construed as a reference to reconnaissance permit.

#### **Designated agency 10**

70. The Minister may designate an organ of State or a wholly owned and controlled agency or company belonging to the State to perform the functions referred to in this Chapter.

#### **Functions of designated agency**

71. The designated agency must— 15
- (a) promote onshore and offshore exploration for and production of petroleum;
  - (b) receive applications for reconnaissance permits, technical co-operation permits, exploration rights and production rights in the prescribed manner;
  - (c) evaluate such applications and make recommendations to the Minister;
  - (d) monitor and report regularly to the Minister in respect of compliance with such permits or rights; 20
  - (e) receive, maintain, store, interpret, evaluate, add value to, disseminate or deal in all geological or geophysical information relating to petroleum submitted in terms of section 88;
  - (f) bring to the notice of the Minister any information in relation to the exploration and production of petroleum which is likely to be of use or benefit to the State; 25
  - (g) advise and recommend to the Minister on the need to by itself, through contractors or through any other state enterprise carry out on behalf of the State reconnaissance operations in connection with petroleum; 30
  - (h) collect the prescribed fees and considerations in respect of reconnaissance permits, technical co-operation permits, exploration rights and production rights;
  - (i) review and make recommendations to the Minister with regard to the approval of environmental management plans, environmental management programmes, development programmes and amendments thereto; and 35
  - (j) perform any other function, in respect of petroleum, which the Minister may determine from time to time. 40

#### **Funding of designated agency**

72. (1) The designated agency is funded by money appropriated by Parliament. 40
- (2) The designated agency may, with the approval of the Minister provide technical and consulting services and assistance to equivalent agencies of other countries.

#### **Invitation for applications**

73. (1) The Minister may by notice in the *Gazette* invite applications for exploration and production rights in respect of any block or blocks, and may specify in such notice the period within which any application may be lodged with the designated agency and the terms and conditions subject to which such rights may be granted. 45
- (2) The designated agency may otherwise directly receive applications for exploration and production rights in respect of such blocks, which are not subject to an invitation as contemplated in subsection (1). 50
- (3) The designated agency must inform the Minister about an application within 7 days of the receipt thereof.

### Application for reconnaissance permit

74. (1) Any person who wishes to apply to the Minister for a reconnaissance permit must lodge the application—
- (a) at the office of the designated agency;
  - (b) in the prescribed manner; and
  - (c) together with the prescribed non-refundable application fee.
- (2) The designated agency must accept an application for a reconnaissance permit if—
- (a) the requirements contemplated in subsection (1) are met; and
  - (b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over any part of the area.
- (3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant in writing of that fact within 14 days of receipt of the application, provide reasons and return the application.
- (4) If the designated agency accepts the application, the designated agency must, within 14 days from the date of acceptance, notify the applicant in writing—
- (a) to submit an environmental management plan in accordance with section 39 within a period of 30 days from the date of the notice; and
  - (b) to notify and consult with any affected party.

### Issuing and duration of reconnaissance permit

75. (1) Subject to subsection (4), the Minister must issue a reconnaissance permit if—
- (a) the applicant has access to financial resources and has the technical ability to conduct the proposed reconnaissance survey;
  - (b) the estimated expenditure is compatible with the intended reconnaissance operation and duration of the reconnaissance programme;
  - (c) the reconnaissance will not result in unacceptable pollution, ecological degradation or damage to the environment;
  - (d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996); and
  - (e) the applicant is not in contravention of any relevant provision of this Act.
- (2) The Minister must refuse to issue a reconnaissance permit if the application does not meet all the requirements contemplated in subsection (1).
- (3) If the Minister refuses to issue a reconnaissance permit, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision and the reasons therefor.
- (4) A reconnaissance permit issued in terms of subsection (1) is—
- (a) subject to prescribed terms and conditions;
  - (b) valid for a period not exceeding one year;
  - (c) not an exclusive right;
  - (d) not transferable; and
  - (e) not renewable.
- (5) The holder of the reconnaissance permit must—
- (a) actively conduct reconnaissance operations in respect of petroleum on the relevant area in accordance with the reconnaissance programme;
  - (b) comply with the terms and conditions of the reconnaissance permit, and the relevant provisions of this Act and any other law; and
  - (c) pay the prescribed reconnaissance fee to the designated agency.

### Application for technical co-operation permit

76. (1) Any person who wishes to apply to the Minister for a technical co-operation permit must lodge the application—
- (a) at the office of the designated agency;
  - (b) in the prescribed manner; and
  - (c) together with the prescribed non-refundable application fee.
- (2) The designated agency must accept an application for a technical co-operation permit if—
- (a) the requirements contemplated in subsection (1) are met; and
  - (b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over any part of the area.



(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant in writing of that fact within 14 days of receipt of the application and return the application.

#### **Issuing and duration of technical co-operation permit**

77. (1) Subject to subsection (4), the Minister must issue a technical co-operation permit if— 5

- (a) the applicant has access to financial resources and has the technical ability to conduct the proposed technical co-operation study;
- (b) the estimated expenditure is compatible with the intended technical co-operation study and duration of the technical co-operation programme; and 10
- (c) the applicant is not in contravention of any relevant provision of this Act.

(2) The Minister must refuse to issue a technical co-operation permit if the application does not meet all the requirements referred to in subsection (1).

(3) If the Minister refuses to issue a technical co-operation permit, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision and the reasons therefor. 15

(4) A technical co-operation permit issued in terms of subsection (1) is—

- (a) subject to prescribed terms and conditions;
- (b) valid for a period not exceeding one year;
- (c) not transferable; and 20
- (d) not renewable.

#### **Rights and obligations of holder of technical co-operation permit**

78. (1) The holder of a technical co-operation permit has, subject to section 79, the exclusive right to apply for and be granted an exploration right in respect of the area to which the permit relates. 25

(2) The holder of a technical co-operation permit must—

- (a) actively carry out the technical co-operation study in accordance with the technical co-operation work programme; and
- (b) comply with the terms and conditions of the technical co-operation permit, the relevant provisions of this Act and any other law. 30

#### **Application for exploration right**

79. (1) Any person who wishes to apply to the Minister for an exploration right must lodge the application—

- (a) at the office of the designated agency;
- (b) in the prescribed manner; and 35
- (c) together with the prescribed non-refundable application fee.

(2) The designated agency must accept an application for an exploration right if—

- (a) the requirements contemplated in subsection (1) are met; and
- (b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over any part of the area. 40

(3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant in writing of that fact within 14 days of receipt of the application and the reasons therefor, and must return the application.

(4) If the designated agency accepts the application, the designated agency must, within 14 days from the date of acceptance, notify the applicant in writing— 45

- (a) to notify and consult with any affected party; and
- (b) to submit an environmental management programme in terms of section 39 within a period of 120 days from the date of the notice.

(5) Any technical co-operation permit in respect of which an application for an exploration right has been lodged in terms of subsection (1) shall, notwithstanding its expiry date, remain in force until such application has been granted or refused. 50

#### **Granting and duration of exploration right**

80. (1) The Minister must grant an exploration right if—

- (a) the applicant has access to financial resources and has the technical ability to conduct the proposed exploration operation optimally in accordance with the exploration work programme;
  - (b) the estimated expenditure is compatible with the intended exploration operation and duration of the exploration work programme; 5
  - (c) the Minister has approved the environmental management programme in terms of section 39(4);
  - (d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);
  - (e) the applicant is not in contravention of any relevant provision of this Act; 10
  - (f) the applicant has complied with the terms and conditions of the technical co-operation permit, if applicable; and
  - (g) the granting of such right will further the objects referred to in section 2(d) and (f).
- (2) The Minister after taking into account the need for and extent of exploration the project may request that the applicant gives effect to section 2(d). 15
- (3) The Minister must refuse to grant an exploration right if the application does not meet all the requirements referred to in subsection (1).
- (4) If the Minister refuses to grant an exploration right, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision and the reasons therefor. 20
- (5) An exploration right is subject to prescribed terms and conditions and is valid for the period specified in the right, which period may not exceed three years.

#### Application for renewal of exploration right

81. (1) Any holder of an exploration right who wishes to apply to the Minister for the renewal of an exploration right must lodge the application— 25
- (a) at the office of the designated agency;
  - (b) in the prescribed manner; and
  - (c) together with the prescribed non-refundable application fee.
- (2) An application for renewal of an exploration right must— 30
- (a) state the reasons and period for which the renewal is required;
  - (b) be accompanied by a detailed report reflecting the exploration results, the interpretation thereof and the exploration expenditure incurred;
  - (c) be accompanied by a report reflecting the extent of compliance with the requirements of the approved environmental management programme, the rehabilitation to be completed and the estimated cost thereof; and 35
  - (d) include a detailed exploration work programme for the renewal period.
- (3) The Minister must grant the renewal of an exploration right if the application complies with subsections (1) and (2) and the holder of the exploration right has complied with the— 40
- (a) terms and conditions of the exploration right is not in contravention of any relevant provision of this Act or any other law;
  - (b) exploration work programme; and
  - (c) requirements of the approved environmental management programme.
- (4) An exploration right may be renewed for a maximum of three periods not exceeding two years each. 45
- (5) An exploration in respect of which an application for renewal has been lodged shall, notwithstanding its expiry date, remain in force until such time as such application has been granted or refused.

#### Rights and obligations of holder of exploration right

82. (1) In addition to the rights referred to in section 5, the holder of an exploration right—
- (a) subject to subsection (2), has the exclusive right to apply for and be granted a production right in respect of the petroleum and the exploration area in question; 55
  - (b) subject to section 81, has the exclusive right to apply for and be granted a renewal of an exploration right in respect of petroleum and the exploration area in question;

- (c) has the exclusive right to remove and dispose of any petroleum samples found during the course of exploration, subject to section 20; and
- (d) may only transfer and encumber the exploration right, subject to section 11.
- (2) The holder of an exploration right must—
  - (a) lodge such right for registration at the Mining Titles Office within 30 days of the date on which the right—
    - (i) becomes effective; or
    - (ii) is renewed in terms of section 81(3);
  - (b) continuously and actively conduct exploration operations in accordance with the approved exploration work programme; 10
  - (c) comply with the terms and conditions of the exploration right, the relevant provisions of this Act and any other law;
  - (d) comply with the requirements of the approved environmental management plan;
  - (e) pay the prescribed exploration fees to the designated agency; and 15
  - (f) commence with exploration activities within 90 days from the effective date of the exploration right or such extended period as the Minister may authorise.

### **Application for production right**

- 83. (1) Any person who wishes to apply to the Minister for a production right must lodge the application— 20
  - (a) at the office of the designated agency;
  - (b) in the prescribed manner; and
  - (c) together with the prescribed non-refundable application fee.
- (2) The designated agency must accept an application for a production right if—
  - (a) the requirements contemplated in subsection (1) are met; and 25
  - (b) no other person holds a technical co-operation permit, exploration right or production right for petroleum over any part of the area applied for.
- (3) If the application does not comply with the requirements of this section, the designated agency must notify the applicant in writing of that fact within 14 days of receipt of the application, and return the application. 30
- (4) If the designated agency accepts the application, the designated agency must, within 14 days from the date of acceptance, notify the applicant in writing to—
  - (a) notify and consult with interested and affected parties;
  - (b) conduct an environmental impact assessment and submit an environmental management programme for approval within 180 days from the date of the notice in terms of section 39. 35

### **Granting and duration of production right**

- 84. (1) The Minister must grant a production right if—
  - (a) the applicant has access to financial resources and has the technical ability to conduct the proposed production operation optimally; 40
  - (b) the estimated expenditure is compatible with the intended production operation and duration of the production work programme;
  - (c) the production will not result in unacceptable pollution, ecological degradation or damage to the environment;
  - (d) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996); 45
  - (e) the applicant is not in contravention of any relevant provision of this Act;
  - (f) the applicant has complied with the terms and conditions of the exploration right, if applicable;
  - (g) the applicant has provided financially and otherwise for a prescribed social and labour plan; 50
  - (h) the petroleum can be produced optimally in accordance with the production work programme;
  - (i) the granting of such right will further the object referred to in section 2(d) and (f) and in the accordance with the charter contemplated in section 100 and the prescribed land and labour plan. 55
- (2) The Minister must refuse to grant a production right if the application does not meet all the requirements referred to in subsection (1).

(3) If the Minister refuses to grant a production right, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision and the reasons therefor.

(4) A production right is subject to prescribed terms and conditions and is valid for the period specified in the right, which periods, each of which may not exceed 30 years. 5

(5) A production right granted in terms of subsection (1) comes into effect on the date on which the environmental management programme is approved in terms of section 39(4).

### **Application for renewal of production right**

85. (1) Any holder of a production right who wishes to apply to the Minister for the renewal of a production right must lodge the application— 10

- (a) at the office of the designated agency;
- (b) in the prescribed manner; and
- (c) together with the prescribed non-refundable application fee.

(2) An application for renewal of a production right must— 15

- (a) state the reasons period for which the renewal is required;
- (b) be accompanied by a detailed report reflecting the production results, the interpretation thereof and the production expenditure incurred;
- (c) be accompanied by a report reflecting the extent of compliance with the requirements of the approved environmental management programme, the rehabilitation to be completed and the estimated cost thereof; and 20
- (d) include a detailed production work programme for the renewal period.

(3) The Minister must grant the renewal of a production right if the application complies with subsections (1) and (2) and the holder of the production right has complied with the— 25

- (a) terms and conditions of the production right is not in contravention of any relevant provision of this Act or any other law;
- (b) production work programme;
- (c) the requirements of the prescribed social and labour plan; and
- (d) requirements of the approved environmental management programme. 30

(4) A production right may be renewed for further periods each of which shall not exceed 30 years at a time.

(5) A production right in respect of which an application for renewal has been lodged, shall dispute its expiry date, remains in force until such time as such application has been granted or refused. 35

### **Rights and obligations of holder of production right**

86. (1) In addition to the rights referred to in section 5, the holder of a production right—

- (a) subject to subsection (2), has the exclusive right to apply for and be granted renewal of the production right in respect of the petroleum area in question; 40
- (b) has the exclusive right to remove and dispose of any petroleum found during the course of production; and
- (c) may only transfer and encumber the production right, subject to section 11.

(2) The holder of a production right must—

- (a) lodge such right for registration at the Mining Titles Office within 30 days of the date on which the right— 45
  - (i) becomes effective; or
  - (ii) is renewed in terms of section 85(3);
- (b) continuously and actively conduct production operations in accordance with the approved production work programme; 50
- (c) comply with the terms and conditions of the production right, the relevant provisions of this Act and only other law;
- (d) comply with the requirements of the approved environmental management programme and the prescribed social labour plan;
- (e) pay the State royalties; 55
- (f) commence with production operations within one year from the date on which a production right becomes effective in terms of section 84(5) or such extended period as the Minister may authorise; and

- (g) comply with the environmental management programme and the social and labour plan.

### Development of petroleum reservoir as unit

87. If an exploration right or a production right has been granted over an area which geologically forms part of the same petroleum reservoir to which any other exploration or production rights exist, the holders of such rights must prepare a scheme for the development of the petroleum reservoir as a unit and must submit such scheme to the designated agency for approval by the Minister in accordance with the terms and conditions of their respective exploration or production rights. 5

### Information and data 10

88. (1) The holder of any permit or right who conducts reconnaissance operations, technical co-operation studies, exploration operations or production operations must submit such information, data, reports and interpretations to the designated agency as may be prescribed.

(2) Subject to the Promotion of Access to Information Act, 2002 (Act No. 20 of 2002), all information, data, reports and interpretations thereof submitted to the designated agency must be kept confidential by the agency for a period— 15

- (a) not exceeding four years from date of acquisition; or
- (b) ending on the date on which the permit or rights to which such information, data, reports and interpretations thereof relate have lapsed are cancelled or terminated, or the area to which such permits or rights relate have been abandoned or relinquished. 20

(3) Neither the State nor any of its employees—

- (a) is liable for the *bona fide* or inadvertent release of information or data submitted in terms of this Act; and 25
- (b) guarantee the accuracy or completeness of any such information or data or interpretation thereof.

### Financial guarantee

89. In addition to section 5(4), no exploration operation or production operation may commence unless the holder of the rights concerned has provided for a financial provision acceptable to the designated agency guaranteeing the availability of sufficient funds for the due fulfilment of all exploration and production work programmes by the holder. 30

### Minister's power to suspend or cancel permits or rights

90. The Minister may cancel or suspend any reconnaissance permit, technical co-operation permit, exploration right or production right in accordance with the procedure contemplated in section 47. 35

## CHAPTER 7

### GENERAL AND MISCELLANEOUS PROVISIONS

#### Power to enter prospecting area, mining area or retention area 40

91. (1) The Minister may designate any member of the Board, the Regional Manager or any officer, as an authorised person, who can carry out the functions contemplated in subsection (4) and in section 92.

(2) An authorised person must be furnished with a certificate signed by the Minister stating that he or she has been authorised under subsection (1). 45

(3) An authorised person must, at the request of any person, exhibit the certificate referred to in subsection (2) to such a person.

(4) An authorised person may, on the authority of a warrant issued in terms of subsection (5)—

- (a) in order to obtain evidence, enter any reconnaissance, prospecting, mining, exploration production or retention area or any place where prospecting 50

operations or mining operations are been conducted where he or she has reason to believe that any provision of this Act has been, is being or will be contravened;

- (b) direct the person in control of or any person employed at such area—
  - (i) to deliver or furnish any information, including books, records or other documents, in the possession of or under the control of that person that pertains to the investigation; and
  - (ii) to render such assistance as the authorised person requires in order to enable him or her to perform his or her functions under this Act;
- (c) inspect any book, record, statement or other document including electronic records, documents or data and make copies thereof or excerpts therefrom;
- (d) examine any appliance or other material or substance found in such area;
- (e) take samples of any material or substance and test, examine, analyse and classify such samples; and
- (f)
  - (i) seize any material, substance, book, record, statement or other document including electronic records, documents or data which might be relevant to a prosecution under this Act and keep it in his or her custody;
  - (ii) the person from whom the control of any book, record or document including electronic records or data has been taken, may, at his or her own expense and under the supervision of the authorised person make copies thereof or excerpts therefrom.

(5) A warrant referred to in subsection (4) must be issued by a magistrate who has jurisdiction, in the matter and may only be issued if he or she is satisfied that there are reasonable grounds to believe that any material, substance, appliance, book, record, statement or document or electronic information, documents or data that may relate to a contravention of this Act, is in the respective area, or in the possession of a person in the respective area against whom such a warrant is sought.

(6) (a) If no criminal proceedings are instituted in connection with any item seized in terms of subsection (4), or if it appears that such item is not required for the purpose of evidence or of any court proceedings that item must be returned as soon as possible to the person from whom it was seized.

(b) After the conclusion of criminal proceedings any item seized in terms of subsection (4) and which served as an exhibit in proceedings in which a person was convicted must be handed over to the authorised person to be destroyed or otherwise dealt with as ordered by the court.

### **Routine inspections**

92. Any authorised person may during office hours, without a warrant—

- (a) enter any reconnaissance, prospecting, mining production or exploration or retention area or any place where prospecting, or mining, exploration or production are being conducted in order to inspect any activity, process or operation carried out in or upon the area or place in question; and
- (b) require the holder of the right, permit or permission or in question or the person in charge of such area or place or any person carrying out or in charge of the carrying out such activities, process or operations to produce any book, record, statement or other document including electronic documents, information or data relating to matters dealt with in this Act for inspection, or for the purpose of obtaining copies thereof or extracts therefrom.

### **Orders, suspensions and instructions**

93. (1) If an authorised person finds that a contravention or suspected contravention of, or failure to comply with—

- (a) any provision of this Act; or
- (b) term or condition of any right, permit or permission or any other law granted or issued or any environmental management programme or environmental management plan approved terms of this Act, has occurred or is occurring on the relevant reconnaissance, exploration, production, prospecting mining or retention area or place where prospecting operations or mining operations or processing operations are being conducted, such a person may—
  - (i) order the holder of the relevant right permit or permission, or the person in charge of such area, any person carrying out or in charge of the

carrying out of such activities or operations or the manager, official, employee or agent of such holder or person to, take immediate rectifying steps; or

- (ii) order that the reconnaissance, prospecting, exploration, mining, production or processing operations or part thereof be suspended or terminated, and give such other instructions in connection therewith as may be necessary. 5

(2) The Director-General must confirm or set aside any order contemplated in subsection (1)(a) or (b).

(3) The Director-General must notify the relevant holder or other person contemplated in subsection (1) in writing within 60 days after the order referred to in subsection (1)(a) or (b) has been set aside or confirmed, failing which such order shall lapse. 10

#### **Prohibition of obstruction, hindering or opposing of authorised person**

94. No person may obstruct, hinder or oppose any authorised person or any other person in the performance of his or her duties or the exercise of his or her powers and functions in terms of this Act. 15

#### **Prohibition of occupational detriment against employee**

95. (1) The holder of a right, permit or permission may not subject any of his or her employees to any occupational detriment on account, or partly on account, of any such employee disclosing information to the Minister, the Director-General or any authorised person— 20

- (a) regarding the failure by such holder to comply with any provision of this Act;
- (b) to the effect that such holder is conducting his or her prospecting or mining operation, as the case may be, in a manner which is contrary to the objects contemplated in section 2(e) and (f) and contrary to the social and labour plan; 25
- or
- (c) that any activity or operation which is being conducted by such holder does not comply with any provision of this Act, any term or condition of such right or any other law.

(2) For the purposes of this section, occupational detriment means “occupational detriment” as defined in section 1 of the Protected Disclosures Act, 2000 (Act No. 26 of 2000). 30

#### **Internal appeal process and access to courts**

96. (1) Any person whose rights or legitimate expectations have been materially and adversely affected or who is aggrieved by any administrative decision in terms of this Act may appeal in the prescribed manner to— 35

- (a) the Director-General, if it is an administrative decision by a Regional Manager or an officer; or
- (b) the Minister, if it is an administrative decision by the Director-General or the designated agency. 40

(2) An appeal in terms of subsection (1) does not suspend the administrative decision, unless it is suspended by the Director-General or the Minister, as the case may be.

(3) No person may apply to the court for the review of an administrative decision contemplated in subsection (1) until that person has exhausted his or her remedies in terms of that subsection. 45

(4) Sections 6, 7(1) and 8 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), apply to any court proceedings contemplated in this section.

#### **Serving of documents**

97. (1) Save as is otherwise provided for in this Act, any notice, order, directive or other document which is required in terms of this Act to be served on or given to any person, must be regarded as having been duly served or given if— 50

- (a) it is delivered by hand to that person; or
- (b) it is sent by registered mail to that person's last known business, postal or residential address.

(2) Any notice, order, directive or any other document issued in terms of this Act is valid according to the terms thereof, despite any want of form or lack of power on the part of any officer who issues or authenticates it as long as such power is subsequently validly conferred upon the officer.

## Offences

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98. Any person is guilty of an offence if he or she—

- (a) contravenes or fails to comply with—
  - (i) section 5(4), 20(2), 19 or 28;
  - (ii) section 92, 94 or 95;
  - (iii) section 38(1)(c); 10
  - (iv) section 42(1) or (2);
  - (v) section 44;
  - (vi) any directive, notice, suspension, order, instruction or condition issued, given or determined in terms of this Act;
  - (vii) any direction contemplated in section 29; or 15
  - (viii) any other provision of this Act;
- (b) submits inaccurate, incorrect or misleading information in connection with any matter required to be submitted under this Act; or
- (c) fails to provide a written notice or consult with the Minister in terms of section 26(3). 20

## Penalties

99. (1) Any person convicted of an offence in terms of this Act is liable—

- (a) in the case of an offence referred to in section 98(a)(i), to a fine not exceeding R100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; 25
- (b) in the case of an offence referred to in section 98(a)(ii), to the penalty that may be imposed for perjury;
- (c) in the case of an offence referred to in section 98(a)(iii) to a fine not exceeding R500 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment; 30
- (d) in the case of an offence referred to in section 98(a)(v), to the penalty that may be imposed in a magistrate's court for a similar offence;
- (e) in the case of an offence referred to in section 98(a)(vi) and (vii), to a fine not exceeding R10 000;
- (f) in the case of an offence referred to in section 98(c), to a fine not exceeding R500 000 for each day that such person persists in contravention of the said provisions. 35
- (g) in the case of any conviction of an offence in terms of this Act for which no penalty is expressly determined, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment; and 40

(2) Despite anything to the contrary in any other law, a magistrate's court may impose any penalty provided for in this Act.

## Transformation of minerals industry

100. (1) The Minister must, within five years from the date on which this Act took effect— 45

- (a) and after consultation with the Minister for Housing, develop a housing and living conditions standard for the minerals industry; and
- (b) develop a code of good practice for the minerals industry in the Republic.

(2) (a) To ensure the attainment of Government's objectives of redressing historical, social and economic inequalities as stated in the Constitution, the Minister must within six months from the date on which this Act takes effect develop a broad-based socio-economic empowerment Charter that will set the framework, targets and time-table for effecting the entry of historically disadvantaged South African into the mining industry, and allow such South Africans to benefit from the exploitation of mining and mineral resources. 50

(b) The Charter must set out, amongst others how the objects referred to in section 2(c), (d), (e), (f) and (i) can be achieved. 55



### Appointment of contractor

101. If the holder of a right, or permission appoints any person or employs a contractor to perform any work within the boundaries of the reconnaissance, mining, prospecting, exploration production or retention area, as the case may be, such holder remains responsible for compliance with this Act.

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### Amendment of rights, permits, programmes and plans

102. A reconnaissance permission, prospecting right, mining right, mining permit, retention permit, technical corporation permit, reconnaissance permit, exploration right and production right work programme; mining work programme, environmental management programme, and environmental management plan may not be amended or varied (including by extension of the area covered by it or by the addition of minerals or a share or shares or seams, mineralised bodies, or strata, which are not at the time the subject thereof) without the written consent of the Minister.

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### Delegation and assignment

103. (1) The Minister may, subject to such conditions as he or she may impose, in writing delegate any power conferred on him or her by or under this Act, except a power to make regulations or deal with any appeal in terms of section 96, and may assign any duty so imposed upon him or her to the Director-General, the Regional Manager or any officer.

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(2) The Minister may, in delegating any power or assigning any duty under subsection (1), authorise the further delegation of such power and the further assignment of such duty by a delegatee or assignee.

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(3) The Director-General, the Regional Manager or any other officer to whom a power has been delegated or to whom a duty has been assigned by or under this Act, may in writing delegate any such power or assign any such duty to any other officer.

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(4) The Minister, Director-General, Regional Manager or officer may at any time—

(a) withdraw a delegation or assignment made in terms of subsection (1), (2) or (3), as the case may be; and

(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), (2) or (3), as the case may be.

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(5) The Minister, Director-General, Regional Manager or officer is not divested of any power or exempted from any duty delegated or assigned by him or her.

### Preferent prospecting or mining right in respect of communities

104. (1) Any community who wishes to obtain the preferent right to prospect or mine in respect of any mineral and land which is registered or to be registered in the name of the community concerned, must lodge such application to the Minister.

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(2) The Minister must grant such preferent right if the community can prove that—

(a) the right shall be used to contribute towards the development and the social upliftment of the community concerned;

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(b) the community submits a development plan, indicating the manner in which such right is going to be exercised;

(c) the envisaged benefits of the prospecting or mining project will accrue to the community in question; and

(d) the community has access to technical and financial resources to exercise such right.

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(3) The preferent right, granted in terms of this section is—

(a) valid for a period not exceeding five years and can be renewed for further periods not exceeding five years; and

(b) subject to prescribed terms and conditions.

50

(4) The preferent right referred to in subsection (1), shall not be granted in respect of areas, where a prospecting right, mining right, mining permit, retention permit, production right, exploration right, technical operation permit or reconnaissance permit has already been granted.

### Landowner or lawful occupier of land cannot be traced

105. (1) If the applicant for a right, permit or permission, who must notify and consult with the landowner or lawful occupier of the land to which the application relates in terms of the relevant provisions of this Act, notify the Regional Manager that, the landowner or lawful occupier of the land concerned—

- (a) cannot be readily traced; or
- (b) is deceased and no successor entitled can be readily traced.

(2) Notwithstanding any other law, the Regional Manager, on application in writing from such applicant and on payment of the prescribed application fee, may—

- (a) grant consent to such a person to install a notice on a visible place on the land and enter the land to which the application relates to; and
- (b) subject such a person to such other terms and conditions as the Regional Manager may determine.

### Exemptions from certain provisions of Act

106. (1) The Minister may by notice in the *Gazette*, exempt any organ of state from the provisions of sections 16, 20, 22 and 27 in respect of any activity to remove any mineral for road construction, building of dams or other purpose which may be identified in such notice.

(2) Despite subsection (1), the organ of state so exempted must submit an environmental management programme for approval in terms of section 39(4).

(3) Any landowner or lawful occupier of land who lawfully, takes sand, stone, rock, gravel or clay for farming or for effecting improvements in connection with such land or community development purposes, is exempted from the provisions of in subsection (1) as long as the sand, stone, rock, gravel or clay is not sold or disposed of.

### Regulations

107. (1) The Minister may, by notice in the *Gazette*, make regulations regarding—

- (a) (i) the conservation of the environment at or in the vicinity of any mine or works;
- (ii) the management of the impact of any mining operations on the environment at or in the vicinity of any mine or works;
- (iii) the rehabilitation of disturbances of the surface of land where such disturbances are connected to prospecting or mining operations;
- (iv) the prevention, control and combating of pollution of the air, land, sea or other water, including ground water, where such pollution is connected to prospecting or mining operations;
- (v) pecuniary provision by the holder of any right, permit or permission for the carrying out of an environmental management programme;
- (vi) the establishment of accounts in connection with the carrying out of an environmental management programme and the control of such accounts by the Department;
- (vii) the assumption by the State of responsibility or co-responsibility for obligations originating from regulations made under subparagraphs (i), (ii), (iii) and (iv) of this paragraph; and
- (viii) the monitoring and auditing of environmental management programmes;
- (b) the exploitation, processing, utilization or use of or the disposal of any mineral;
- (c) procedures in respect of appeals lodged under this Act;
- (d) fees payable in relation to any right, permit or permission issued or granted in terms of this Act;
- (e) fees payable in relation to any appeal contemplated in this Act;
- (f) the form of any application which may or have to be done in terms of this Act and of any consent or document required to be submitted with such application, and the information or details which must accompany any such application;
- (g) the form, conditions, issuing, renewal, abandonment, suspension or cancellation of any environmental management programme, permit, licence, certificate, permission, receipt or other document which may or have to be issued, granted, approved, required or renewed in terms of this Act;

- (h) the form of any register, record, notice, sketch plan or information which may or shall be kept, given, published or submitted in terms of or for the purposes of this Act;
  - (i) the prohibition on the disposal of any mineral or the use thereof for any specified purpose or in any specified manner or for any other purpose or in any other manner than a specified purpose or manner; 5
  - (j) the restriction or regulation in respect of the disposal or use of any mineral in general;
  - (k) any matter which may or must be prescribed for in terms of this Act; and
  - (l) any other matter the regulation of which may be necessary or expedient in order to achieve the objects of this Act. 10
- (2) No regulation relating to State revenue or expenditure may be made by the Minister except with the concurrence of the Minister of Finance.
- (3) Any regulation made under this section may provide that any person contravening such regulation or failing to comply therewith, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months. 15

#### **Proof of facts**

108. In any legal proceedings in terms of this Act any statement, entry or information in or on any book, plan, record or other document is admissible as *prima facie* evidence of the facts in or on it by the person who made, entered, recorded or stored it. 20

#### **Act binds State**

109. This Act binds the State save in so far as criminal liability is concerned.

#### **Repeal and amendment of laws, and transitional provisions**

110. Subject to Schedule 2, the laws mentioned in Schedule 1 are hereby repealed or amended to the extent set out in the third column of Schedule 1. 25

#### **Short title and commencement**

111. (1) This Act is called the Mineral and Petroleum Resources Development Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may so be fixed in respect of different provisions of this Act. 30

## SCHEDULE I

## REPEAL OR AMENDMENT OF LAWS

## (Section 110)

No. and year of Act	Short Title	Extent of repeal or amendment
Act No. 47 of 1937	Deeds Registries Act, 1937	<ol style="list-style-type: none"> <li>1. The repeal of sections 3(1)(m), (n), (o), 17(5)(b), 70 to 74ter, 84, 85 and 90(1)(a), (c) and (e).</li> <li>2. The amendment of section 67 by the deletion of the words "or in a deed of cession of rights to minerals".</li> <li>3. The amendment of section 90(a) by the deletion of the words "right to minerals".</li> <li>4. The amendment of section 102 by— <ol style="list-style-type: none"> <li>(a) the deletion of paragraph (a) in the definition of "immovable property"; and</li> <li>(b) the deletion of the definition of "prospecting contract".</li> </ol> </li> </ol>
Act No. 50 of 1956	General Laws Amendment Act, 1956	The repeal of sections 3 and 4.
Act No. 96 of 1969	Expropriation of Mineral Rights (Township) Act, 1969	The whole.
Act No. 29 of 1996	Mine Health and Safety Act, 1996	<ol style="list-style-type: none"> <li>1. Amendment of section 102 by the substitution of the following definition for the definition of "mining area";  " 'mining area' means a prospecting area, mining area, retention area, exploration area and production area as defined in section 1 read with section 65(2)(b) of the Petroleum and Mineral Resources Development Act, 2002 (Act No. .... of 2002).</li> </ol>
Act No. 57 of 1976	National Parks Act, 1976	The deletion of any reference to mineral right in sections 2A, 2C, 2D, 3 and 3A.
Act No. 39 of 1979	Bophuthatswana Land Control Act, 1979	The deletion of section 16(1).
Act No. 6 of 1986	Venda Land Control Act, 1986	The deletion of section 16(1).

No. and year of Act	Short Title	Extent of repeal or amendment
Act No. 50 of 1991	Minerals Act, 1991	The whole, except for the definitions of "precious metals" and "unwrought precious metal" in section 1 and Chapter XVI of the Mining Rights Act, 1967 and except the definition of "Sunday" in and section 9 of the Mines and Works Act, 1956
Act No. 47 of 1994	Mineral and Energy Laws Rationalisation Act, 1994	The whole
Act No. 3 of 1996	Land Reform (Labour Tenant's) Act, 1996	Deletion of reference to mineral rights in section 2(3)
Act No. 94 of 1998	Transformation of Certain Rural Areas Act, 1998	Section 6.
Act No. 107 of 1998	National Environmental Management Act, 1998	Amendment of section 36 by the deletion of the proviso to subsection (1).
Act No. 8 of 1997	Land Survey Act, 1997	1. Amendment of section 1 by— (a) the deletion of paragraph (d) of the definition of "owner"; (b) the substitution for the definition of "share" of the following definition: "1 'share', in relation to land, <b>[and rights to minerals]</b> means an undivided share;"
		2. Amendment of section 29 by— (a) the substitution in subsection (2) for paragraph (c) of the following paragraph: "(c) holders of real rights <b>[other than a right to minerals]</b> in the piece of land or in land contiguous thereto whose rights would be adversely affected by the position of the beacons or boundaries adopted; and";

No. and year of Act	Short Title	Extent of repeal or amendment
		<p>(b) by the substitution in subsection (2) for paragraph (ii) of the proviso to paragraph (d) of the following paragraph:</p> <p>“(ii) in respect of that piece of land, or any contiguous land, <b>[or any rights to minerals in that piece of land]</b> or any other real rights which are held by two or more owners or holders in shares, it shall be sufficient if the agreement is signed by the owners or holders of not less than three-fourths of the shares in the piece of land or the rights, as the case may be;” and</p>
		<p>(c) by the deletion in subsection (2) of paragraph (iii) of the proviso to paragraph (d).</p>
		<p>3. Amendment of section 34 by the substitution in subsection (2) for the proviso to paragraph (b) of the following proviso:</p> <p>“: Provided that in respect of that contiguous land, <b>[or any rights to minerals in respect of the land being surveyed]</b> or any other real rights which are held by two or more owners or holders in shares, it shall be sufficient if the agreement is signed by the owners or holders of not less than 75% share in that piece of land or those rights, as the case may be; and”.</p>

## SCHEDULE II

### TRANSITIONAL ARRANGEMENTS

#### Definitions

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

- (i) “holder” in relation to an old order right, means the person to whom such right was or is deemed to have been granted or by whom it is held or is deemed to be held, or such person’s successor in title before this Act came into effect;
- (ii) “Minerals Act” means the Minerals Act, 1991 (Act No. 50 of 1991);
- (iii) “old order mining right” means any mining lease, consent to mine, permission to mine, claim licence, mining authorisation or right listed in Table 2 to this Schedule in force immediately before the date on which this Act took effect and in respect of which mining operations are being conducted;
- (iv) “old order prospecting right” means any prospecting lease, permission, consent, permit or licence, and the rights attached thereto, listed in Table 1 to this Schedule in force immediately before the date on which this Act took effect and in respect of which prospecting is being conducted;
- (v) “old order right” means an old order mining right, old order prospecting right or unused old order right, as the case may be;
- (vi) “OP26 mining lease” means the mining lease granted to Moss gas (Pty) Ltd under clause 22 of the OP26 prospecting lease;
- (vii) “OP26 sublease” means any prospecting sublease, acquired in terms of clause 15.1 of the prospecting lease granted to Soekor (Pty) Ltd in terms of section 14(1)(b) of the Mining Rights Act, 1967 (Act No. 20 of 1967), and registered at the Mining Titles Office on 5 July 1967 under No. OP26 including any amendments thereof which continued in force in terms of section 44(1)(a)(ii) of the Minerals Act;
- (viii) “OP26 right” means an OP26 sublease or an OP26 lease;
- (viii) “unused old order right” means any right, entitlement, permit or licence listed in Table 3 to this Schedule in respect of which no prospecting or mining was being conducted immediately before this Act took effect.

#### Objects of Schedule

2. The objects of this Schedule are in addition to the objects contemplated in section 2 of the Act and are to—

- (a) ensure that security of tenure is protected in respect of prospecting, exploration, mining and production operations which are being undertaken;
- (b) give the holder of an old order right, and an OP26 right an opportunity to comply with this Act; and
- (c) promote equitable access to the nation’s mineral and petroleum resources.

#### Pending prospecting and mining applications

3. (1) Any application for a prospecting permit, mining authorisation, consent to prospect, consent to mine or permission to remove and dispose of any mineral lodged, but not finalised, in terms of section 6, 8 or 9 of the Minerals Act immediately before this Act took effect must be regarded as having been lodged in terms of section 13, 22, 27, 79 or 83 of this Act, as the case may be.

(2) If any application contemplated in subitem (1) does not meet the requirements of this Act, the Regional Manager in whose region the land to which the application relates is situated must direct the applicant to submit the outstanding information within 120 days of such direction.

(3) Any environmental management programme submitted for approval in terms of section 39(1) of the Minerals Act which had not been approved when this Act took effect must be regarded as having been lodged in terms of section 39 of this Act.

(4) If the environmental management programme does not meet with the requirements of this Act, the Regional Manager in whose region the land to which the environmental management programme relates is situated must direct the holder concerned to submit the outstanding information.

### Continuation of Exploration Operation

4. (1) Any OP26 sublease in force immediately before this Act took effect continues in force subject to the terms and conditions under which it was granted until it is terminated or expires or until 30 June 2007, whichever is the sooner.

(2) Any holder of a sublease contemplated in subitem (1) who wishes to convert the sublease into an exploration right in terms of this Act, must lodge such sublease for conversion at the office of the designated agency together with—

- (a) the prescribed particulars of the holder;
- (b) a sketch plan or diagram depicting the area for which the conversion is required, which area may not be larger than the area for which he or she holds the lease;
- (c) a statement setting out the period during which he or she conducted exploration operations before the date on which this Act took effect;
- (d) information as to whether or not the OP26 sublease is mortgaged or in any way encumbered by way of endorsement at the Title Deeds Office or the Mining Titles Office.
- (e) a statement setting out the terms and conditions which apply to the sublease;
- (f) the original sublease and the approved environmental management programme, or certified copies thereof;
- (g) an undertaking to the effect that, and a statement setting out the manner in which, the holder of the sublease will give effect to the object referred to in section 2(d) and 2(f); and
- (h) an affidavit verifying that the holder is conducting or has been conducting exploration operation on the area of land to which the conversion relates and setting out the periods during which such exploration operations were converted and the results thereof.

(3) The Minister must convert the sublease if the holder—

- (a) has complied with the provisions of subitem (2);
- (b) is conducting exploration in respect of the sublease in question;
- (c) indicates that he or she will continue to conduct exploration operations upon the conversion of such right; and
- (d) has paid the prescribed conversion fee.

(4) No terms and conditions applicable to the sublease remain in force if they are contrary to any provision of the Constitution or this Act.

(5) The holder must lodge the right converted under subitem (3) within 90 days from the date on which he or she received notice of conversion at the Mining Titles Office for registration and simultaneously at the Deeds office or the Mining Titles Office for deregistration of the OP26 sub-lease as the case may be.

(6) The registration contemplated in subitem (5) must occur within six months from the date on which the sublease has been converted and must be done at the same time as the deregistration of the sublease at the Mining Titles Office.

(7) Upon the conversion of the sublease and the registration of the exploration right into which it was converted, the sublease ceases to exist.

(8) If the holder fails to lodge the sublease for conversion before the expiry of the period referred to in subitem (1) the sublease ceases to exist.

### Continuation of Production Operations

5. (1) Any OP26 mining lease in force immediately before this Act took effect continues in force for a period of five years from the date on which this Act took effect, subject to the terms and conditions under which it was granted.

(2) Any holder of a lease contemplated in subitem (1) who wishes to convert the lease into a production right in terms of this Act, must lodge an application for the conversion of the lease at the designated agency together with—

- (a) the prescribed particulars of the holder;
- (b) a sketch plan or diagram depicting the area for which the conversion is required, which area may not be larger than the area for which he or she holds the lease;
- (c) a statement setting out the period during which he or she conducted production operations before the date on which this Act took effect;
- (d) a statement setting out the period for which the production right is required substantiated by a mining work programme;



- (e) an affidavit verifying that the holder is conducting production operations on the area of the land to which the conversion relates and setting out the period for which such production operation has been conducted;
  - (f) a prescribed social and labour plan;
  - (g) information as to whether or not the old order OP26 lease is encumbered by any mortgage bond or other right registered at the Deeds Office or Mining Titles Office;
  - (h) a statement setting out the terms and conditions which apply to the lease;
  - (i) the original lease and the approved environmental management programme, or certified copies thereof; and
  - (j) an undertaking to the effect that, and a statement setting out the manner in which, the holder of the lease or sublease will give effect to the object referred to in section 2(d) and 2(f).
- (3) The Minister must convert the lease if the holder—
- (a) has complied with the provisions of subitem (2);
  - (b) is producing petroleum in respect of the lease in question;
  - (c) indicates that he or she will continue to conduct production upon the conversion of such lease; and
  - (d) has paid the prescribed conversion fee.
- (4) No terms and conditions applicable to the lease remain in force if they are contrary to any provision of the Constitution or this Act.
- (5) The holder must lodge the right converted under subitem (3) within 90 days from the date on which he or she received notice of conversion at the Mining Titles Office for registration and simultaneously at the Deeds office or for the Mining Titles Office for deregistration OP26 lease, as the case may be.
- (6) If a mortgage bond has been registered in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), or the Mining Titles Registration Act, 1967 (Act No. 16 of 1967), over the lease, the production right into which it is converted must be registered subject to such mortgage bond, and the relevant registrar must make such endorsements on any relevant document and such entries in his or her registers as may be necessary in order to give effect to this subitem, without payment of transfer duty, stamp duty, registration fees or charges.
- (7) Upon the conversion of the lease and the registration of the production right into which it was converted, the sublease ceases to exist.
- (8) If the holder fails to lodge the lease for conversion before the expiry of the period referred to in subitem (1) the sublease ceases to exist.

### **Continuation of old order prospecting right**

6. (1) Subject to subitems (2) and (8), any old order prospecting right in force immediately before this Act took effect continues in force for a period of two years from the date on which this Act took effect subject to the terms and conditions under which it was granted or issued or was deemed to have been granted or issued.
- (2) A holder of an old order prospecting right must lodge the right for conversion within the period referred to in subitem (1) at the office of the Regional Manager in whose region the land in question is situated together with—
- (a) the prescribed particulars of the holder;
  - (b) a sketch plan or diagram depicting the prospecting area for which the conversion is required, which area may not be larger than the area for which he or she holds the old order prospecting right;
  - (c) the name of the mineral or group of minerals for which he or she holds the old order prospecting right;
  - (d) an affidavit verifying that the holder is conducting or has conducted prospecting operations immediately before this Act took effect on the area of that land to which the conversion relates and setting out the periods during which such prospecting operations were conducted and the results thereof;
  - (e) a statement setting out the period for which the prospecting right is required, substantiated by a prospecting work programme;
  - (f) information as to whether or not the old order prospecting right is encumbered by any mortgage bond or other right registered at the Deeds Office or Mining Titles Office;
  - (g) a statement setting out the terms and conditions which apply to the old order prospecting right;

- (h) the original title deed in respect of the land to which the old order prospecting right relates, or a certified copy thereof;
- (i) the original old order right or a certified copy thereof; and
- (j) all prospecting information and the results thereof to which the right relates.

(3) The Minister must convert the old order prospecting right into a prospecting right if the holder of the old order prospecting right—

- (a) complies with the requirements of subitem (2);
- (b) has conducted prospecting operations in respect of the right in question;
- (c) indicates that he or she will continue to conduct such prospecting operations upon the conversion of such right;
- (d) has an approved environmental management programme; and
- (e) has paid the prescribed conversion fee.

(4) No terms and conditions applicable to the old order prospecting right remain in force if they are contrary to any provision of the Constitution or this Act.

(5) The holder must lodge the right converted under subitem (3) within 90 days from the date on which he or she received notice of conversion at the Mining Titles Office for registration and simultaneously at the Deeds Office or at the Mining Titles Office for deregistration of the old order prospecting right, as the case may be.

(6) If a mortgage bond has been registered in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), or the Mining Titles Act, 1967 (Act No. 16 of 1967), over the old order prospecting right, the prospecting right into which it was converted must be registered in terms of this Act subject to such mortgage bond, and the relevant registrar must make such endorsements on every relevant document and such entries in his or her registers as may be necessary in order to give effect to this subitem, without payment of transfer duty, stamp duty, registration fees or charges.

(7) Upon the conversion of the old order prospecting right and the registration of the prospecting right into which it was converted, the old order prospecting right ceases to exist.

(8) If the holder fails to lodge the old order prospecting right for conversion before the expiry of the period referred to in subitem (1), the old order prospecting right ceases to exist.

### **Continuation of old order mining right**

7. (1) Subject to subitems (2) and (8), any old order mining right in force immediately before this Act took effect continues in force for a period not exceeding five years from the date on which this Act took effect subject to the terms and conditions under which it was granted or issued or was deemed to have been granted or issued.

(2) A holder of an old order mining right must lodge the right for conversion within the period referred to in subitem (1) at the office of the Regional Manager in whose region the land in question is situated together with—

- (a) the prescribed particulars of the holder;
- (b) a sketch plan or diagram depicting the mining area for which the conversion is required, which area may not be larger than the area for which he or she holds the old order mining right;
- (c) the name of the mineral or group of minerals for which he or she holds the old order mining right;
- (d) a affidavit verifying that the holder is conducting mining operations on the area of the land to which the conversion relates and setting out the periods for which such mining operations conducted;
- (e) a statement setting out the period for which the mining right is required substantiated by a mining work programme;
- (f) a prescribed social and labour plan;
- (g) information as to whether or not the old order mining right is encumbered by any mortgage bond or other right registered at the Deeds Office or Mining Titles Office;
- (h) a statement setting out the terms and conditions which apply to the old order mining right;
- (i) the original title deed in respect of the land to which the old order mining right relates, or a certified copy thereof;
- (j) the original old order right and the approved environmental management programme or certified copies thereof; and

- (k) an undertaking that, and the manner in which, the holder will give effect to the object referred to in section 2(d) and 2(f).
- (3) The Minister must convert the old order mining right into a mining right if the holder of the old order mining right—
  - (a) complies with the requirements of subitem (2);
  - (b) has conducted mining operations in respect of the right in question;
  - (c) indicates that he or she will continue to conduct such mining operations upon the conversion of such right;
  - (d) has an approved environmental management programme; and
  - (e) has paid the prescribed conversion fee.
- (4) No terms and conditions applicable to the old order mining right remain in force if they are contrary to any provision of the Constitution or this Act.
- (5) The holder must lodge the right converted under subitem (3) within 90 days from the date on which he or she received notice of conversion at the Mining Titles Office for registration and simultaneously at the Deeds Office or for the Mining Titles Office for deregistration of the old order mining right as the case may be.
- (6) If a mortgage bond has been registered in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), or the Mining Titles Act, 1967 (Act No. 16 of 1967), over the old order mining right, the mining right into which it was converted must be registered in terms of this Act subject to such mortgage bond, and the relevant registrar must make such endorsements on every relevant document and such entries in his or her registers as may be necessary in order to give effect to this subitem, without payment of transfer duty, stamp duty, registration fees or charges.
- (7) Upon the conversion of the old order mining right and the registration of the mining right into which it was converted the old order mining right ceases to exist.
- (8) If the holder fails to lodge the old order mining right for conversion before the expiry of the period referred to in subitem (1), the old order mining right ceases to exist.

#### **Processing of unused old order rights**

- 8. (1) Any unused old order right in force immediately before this Act took effect continues in force subject to the terms and conditions under which it was granted, acquired or issued or was deemed to have been granted or issued for a period not exceeding one year from the date on which this Act took effect.
- (2) The holder of an unused old order right has the exclusive right to apply for a prospecting right or a mining right, as the case may be, in terms of this Act within the period referred to in subitem (1).
- (3) An unused old order right in respect of which an application has been lodged within the period referred to in subitem (1) remains valid until such time as the application for a prospecting right or mining right, as the case may be, is granted and dealt with in terms of this Act or is refused.
- (4) Subject to subitems (2) and (3), an unused old order right ceases to exist upon the expiry of the period contemplated in subitem (1).

#### **Continuation of reservations, permissions and certain rights**

- 9. (1) Any reservation or permission for or right to the use of the surface of land granted or acquired or deemed to have been granted or acquired—
  - (a) in terms of section 75 of the Precious and Base Metals Act, 1908 (Act No. 35 of 1908), of the Transvaal;
  - (b) in terms of section 126(2) of the Precious Stones Act, 1964 (Act No. 73 of 1964);
  - (c) in terms of section 90, 91, 92, 93(4) or (7), 102, 103, 111, 113 or 116 of the Mining Rights Act, 1967 (Act No. 20 of 1967);
  - (d) in terms of section 127, 128 or 129 read with section 130 of the Mining Rights Act, 1967 (Act No. 20 of 1967); or
  - (f) by virtue of a reservation under section 158 of the Mining Rights Act, 1967 (Act No. 20 of 1967),
 as the case may be, and in force in terms of section 48 of the Minerals Act immediately before this Act took effect, remains in force subject to the terms and conditions under which it was granted or acquired and contained in the document or documents concerned under which it continues to exist or remain in force and in those cases where they were attached to old order rights will so remain in force notwithstanding the

cessation or existence of the relevant old order right to which they were attached if such old order right is replaced by a prospecting right or mining right in terms of items 6 or 7 and shall thereupon similarly attach to such permit or right, as the case may be.

(2) The holder, user or acquirer of any reservation, permission or right to use the surface of land contemplated in subitem (1) must register such reservation, permission or right in the Mining Titles Office within one year from the date on which this Act took effect.

(3) Any reservation, permission or right to use the surface of land contemplated in subitem (1) which could have been ceded, transferred, let, sublet, subdivided, amended or mortgaged, wholly or in part, immediately before this Act took effect may be ceded, transferred, let, sublet, subdivided, amended or mortgaged, wholly or in part, in terms of this Act, but the holder must lodge it at the Mining Titles Office within 90 days for the registration of such cession, transfer, letting, subletting, tributing, subdivision, amendment or mortgage.

(4) The owner of the land or any other person contemplated in section 48(2)(a) of the Minerals Act who was receiving compensation in terms of that section immediately before this Act took effect, or such owner's or person's successors in title, are entitled to continue receiving such compensation.

(5) (a) The holder of a reservation, permission or right contemplated in subitem (1) may abandon such reservation, permission or right, wholly or in part, by written notice to the relevant Regional Manager.

(b) The reservation, permission or right contemplated in paragraph (a), or such part thereof as may have been abandoned, must thereupon be regarded as having lapsed with effect from the date of such notice.

(6) The Director-General may cancel any reservation, permission or right if the holder thereof fails to comply with any term or condition of such right, reservation or permission, in which case section 47 applies with the necessary changes.

(7) Any lease of the State's interest in a mine in terms of section 74 of the Precious Stones Act, 1964 (Act No. 73 of 1964), which was in force immediately before this Act took effect in terms of section 47(1)(a)(iii) of the Minerals Act continues in force subject to the terms and conditions contained in the document under which it was granted or entered into.

#### **Continuation of approved environmental management programme**

10. (1) Any environmental management programme approved in terms of section 39(1) of the Minerals Act and in force immediately before this Act took effect and any steps taken in respect of the relevant performance assessment and duty to monitor connected with that environmental management programme continues to remain in force when this Act comes into effect.

(2) Subitem (1) does not prevent the Minister from directing the amendment of an environmental management programme in order to bring it into line with the requirements of this Act.

(3) Any person exempted in terms of section 39(2)(a) of the Minerals Act before this Act took effect and whose exemption does not otherwise remain in force in terms of this Act must apply for an exemption in terms of this Act within one year from the date on which this Act took effect, otherwise the exemption lapses.

(4) If the holder of an old order prospecting right or old order mining right ceases the relevant prospecting or mining operation, the holder must apply for an closure certificate in terms of section 43.

(5) Section 38 applies to a holder of an old order prospecting right or old order mining right.

#### **Consideration or royalty payable**

11. (1) Notwithstanding the provisions of item 7(7) and 7(8), any existing consideration, contractual royalty or future consideration, including any compensation contemplated in section 46(3) of the Minerals Act, which accrued to any community immediately before this Act took effect, continues to accrue to such community.

(2) The community contemplated in subitem (1) must annually, and at such other time as required to do so by the Minister, furnish the Minister with such particulars regarding the usage and disbursement of the consideration or royalty as the Minister may require.

(3) If the consideration or royalties contemplated in subitem (1) accrued to a natural person, it may continue to accrue to the person subject to such terms and conditions as the Minister may determine, if—

- (a) the discontinuation of such consideration or royalty will cause undue hardship to the person; or
- (b) the person uses such consideration or royalty for social upliftment.

(4) If it is determined that the consideration or royalties referred to in subitem (3) continues then the provision of subitem (2) apply to such a recipient.

(5) The recipients contemplated in subitems (1) and (3) must within five years from the date on which this Act took effect inform the Minister of their need to continue to receive such consideration or royalties and the reasons therefor, and furnish the Minister with the prescribed information.

(6) Any person who or community which receives any consideration or royalty by virtue of this item must—

- (a) keep prescribed records at an address in the Republic where they may be inspected by the Director-General; and
- (b) submit annual audited financial statements.

(7) The preservation contained in subitem (1) and continuation contemplated in subitem (4) when applied in respect of communities is subject to such terms and conditions as may be determined by the Minister which terms and conditions must, among others include—

- (a) the manner in which such royalty will be used for purposes of promoting rural, regional and local economic development and the social upliftment of a community;
- (b) proper financial control is in respect of such consideration or royalty;
- (c) a development plan, indicating the manner in which the consideration or royalty is being used and any projects sponsored therewith;
- (d) an undertaking that the consideration or royalty is being or will be used for the benefit of all the members of the community in question;
- (e) the right of the Minister to intervene, in the event that it is alleged that, the said consideration royalties is not being utilised for the purposes agreed to between, the Minister and the community concerned; and
- (f) the establishment of a trust, section 21 Company, Agency or other structure to administer the funds, on whose Board of Directors or trustees or Executive Committee there is representation by members of the community affected, the local authority or Municipality concerned and representatives of civic organisations in the area.

### **Payment of compensation**

12. (1) Any person who can prove that his or her property has been expropriated in terms of any provision of this Schedule may claim compensation from the State.

(2) When claiming compensation, a person must—

- (a) prove the extent and nature of actual loss and damage suffered by him or her;
- (b) indicate the current use of the property;
- (c) submit proof of ownership of such property;
- (d) give the history of acquisition of the property in question and price paid for it;
- (e) detail the nature of such property;
- (f) prove the market value of the property and the manner in which such value was determined; and
- (g) indicate the extent of any State assistance and benefits received in respect of such property.

(3) In determining just and equitable compensation all relevant factors must be taken into account, including, in addition to sections 25(2) and 25(3) of the Constitution—

- (a) the State's obligation to redress the results of past racial discrimination in the allocation of and access to mineral and petroleum resources;
- (b) the State's obligation to bring about reforms to promote equitable access to all South Africa's natural resources;
- (c) the provisions of section 25(8) of the Constitution; and
- (d) whether the person concerned will continue to benefit from the use of the property in question or not.

(4) Any claim for compensation must be lodged with the Director-General within five years from the date of commencement of this Act.

**Certain functions of Director: Mineral Development to be performed by Regional Manager or Minister**

**13.** (1) Until an officer is designated for a region in terms of section 8 as Regional Manager, the officer appointed as Director: Mineral Development for that region in terms of section 4 of the Minerals Act must—

- (a) be regarded as having been appointed as Regional Manager; and
- (b) must perform any function in the region for which he or she was appointed which the Regional Manager must perform under or in terms of this Act.

(2) The regions contemplated in section 3 of the Minerals Act remain in force until the Minister divides the Republic, the sea and continental shelf into regions in terms of section 7.

TABLE 1 (old order prospecting rights)

*Category 1*

The common law mineral right, together with a prospecting permit obtained in connection therewith in terms of section 6(1) of the Minerals Act.

*Category 2*

A consent to prospect in terms of section 6(1)(b) or 6(3) of the Minerals Act and the common law mineral right attached thereto, together with a prospecting permit obtained in connection therewith in terms of section 6(1) of the Minerals Act.

*Category 3*

A prospecting lease, prospecting permit, prospecting licence or prospecting permission referred to in section 44 of the Minerals Act, the common law mineral right attached thereto and a prospecting permit obtained in accordance with section 6(1) of the Minerals Act.

*Category 4*

Any permission to prospect in terms of section 16(1) of the Bophuthatswana Land Control Act, 1979 (Act No. 39 of 1979), section 16(1) of the Venda Land Control Act, 1986 (Act No. 6 of 1986), section 15 of the Lebowa Minerals Trust Act, 1987 (Act No. 9 of 1987), section 51(1) of the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987), or section 6 of the Transformation of Certain Rural Areas Act, 1998 (Act No. 94 of 1998), and the common law mineral right attached thereto together with a prospecting permit obtained in connection therewith in terms of section 6(1) of the Minerals Act.

*Category 5*

A temporary permit authorising the continuation of a prospecting operations on the land comprising the subject of a prospecting permit which had been authorised under such prospecting permit, as provided for in section 10 of the Minerals Act, 1991 (Act No. 50 of 1991).

TABLE 2 (old order mining rights)

*Category 1*

The common law mineral right, together with a mining authorisation obtained in connection therewith in terms of section 9(1) of the Minerals Act.

*Category 2*

A consent to mine granted in terms of section 9(1)(b) or 9(2) of the Minerals Act and the common law mineral right attached thereto, together with a mining authorisation issued in connection therewith in terms of section 9(1) of the Minerals Act.

*Category 3*

A right to dig or mine or a claim licence referred to in section 47 of the Minerals Act and the common law mineral right attached thereto, together with a mining authorisation obtained in connection therewith under section 47(1)(e) in terms of section 9(1) of the Minerals Act.

*Category 4*

A right to dig or to mine referred to in section 47(5) of the Minerals Act and the common law mineral right attached thereto, together with a mining authorisation obtained in connection therewith in terms of section 9(1) of the Minerals Act.

*Category 5*

Any permission to mine in terms of section 16(1) of the Bophuthatswana Land Control Act, 1979 (Act No. 39 of 1979), section 16(1) of the Venda Land Control Act, 1986 (Act No. 6 of 1986), section 15 of the Lebowa Minerals Trust Act, 1987 (Act No. 9 of 1987), section 51(1) of the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987), or section 6 of the Transformation of Certain Rural Areas Act, 1998 (Act No. 94 of 1998), and the common law mineral right attached thereto and a mining authorisation in terms of the Minerals Act.

*Category 6*

A temporary authorisation or permit authorising the continuation of a mining operations on the land comprising the subject of a mining authorisation which had been authorised under such mining authorisation or permit, as provided for in section 10 of the Minerals Act, 1991 (Act No. 50 of 1991).



TABLE 3 (unused old order rights)

***Category 1***

A mineral right under the common law for which no prospecting permit or mining authorisation was issued in terms of the Minerals Act.

***Category 2***

A mineral right under the common law for which a prospecting permit or mining authorisation was issued in terms of the Minerals Act.

***Category 3***

A consent to prospect in terms of section 6(1)(b) or 6(3) of the Minerals Act and the common law mineral right attached thereto in respect of which a prospecting permit was issued in terms of section 6(1) of the said Act.

***Category 4***

A consent to prospect in terms of section 6(1)(b) or 6(3) of the Minerals Act and the common law mineral right attached thereto in respect of which no prospecting permit was issued in terms of section 6(1) of the said Act.

***Category 5***

A prospecting lease, prospecting permit, prospecting licence or prospecting permission referred to in section 44 of the Minerals Act and the common law mineral right attached thereto in respect of which a prospecting permit was issued in terms of section 6(1) of the Minerals Act.

***Category 6***

A prospecting lease, prospecting permit, prospecting licence or prospecting permission referred to in section 44 of the Minerals Act and the common law mineral right attached thereto in respect of which no prospecting permit was issued in terms of section 6(1) of the Minerals Act.

***Category 7***

A consent to mine issued or granted in terms of section 9(1)(b) or 9(2) of the Minerals Act and the common law mineral right attached thereto in respect of which a mining authorisation was issued in terms of section 9(1) of the Minerals Act.

***Category 8***

A consent to mine granted in terms of section 9(1)(b) or 9(2) of the Minerals Act and the common law mineral right attached thereto in respect of which no mining authorisation was issued in terms of section 9(1) of the Minerals Act.

***Category 9***

A consent to mine issued or granted in terms of section 9(1)(a) or 9(2) of the Minerals Act and the common law mineral right attached thereto without a mining authorisation issued in terms of section 9(1) of the Minerals Act.

***Category 10***

A right to dig or mine referred to in section 47 of the Minerals Act and the common law mineral right attached thereto, together with a mining authorisation obtained in connection therewith by virtue of section 47(1)(e) of the Minerals Act and in terms of section 9(1) of the Minerals Act.

*Category II*

Any permission to prospect or mine in terms of section 16(1) of the Bophuthatswana Land Control Act, 1979 (Act No. 39 of 1979), section 16(1) of the Venda Land Control Act, 1986 (Act No. 6 of 1986), section 15 of the Lebowa Minerals Trust Act, 1987 (Act No. 9 of 1987), section 51(1) of the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987), or section 6 of the Transformation of Certain Rural Areas Act, 1998 (Act No. 94 of 1998), and the common law mineral right attached thereto and a prospecting permit or mining permit issued in terms of the Minerals Act.

## MEMORANDUM ON THE OBJECTS OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT BILL, 2002

### Background

In October 1998, Cabinet approved the White Paper on the Minerals and Mining Policy for South Africa. The Bill gives effect to Government's minerals and mining policy.

The minerals and petroleum law dispensation proposed in the Bill is based on the internationally recognised principle that mineral and petroleum resources are part of the national patrimony of a State and that the State is the custodian of such resources. It is, therefore, from the aforementioned principles that the Government derives its entitlements to control, administer and manage access to the nation's minerals and petroleum resources.

The Bill also seeks, among other things, to repeal the Minerals Act, 1991 (Act No. 50 of 1991).

### Objects of the Bill

The objects of the Bill are to—

- (a) recognise the internationally accepted right of the State to exercise sovereignty over all its mineral and petroleum resources;
- (b) give effect to the principle of the State's custodianship of the nation's mineral and petroleum resources;
- (c) promote equitable access to the nation's mineral and petroleum resources to all the people of South Africa;
- (d) expand opportunities for historically disadvantaged persons to enter the minerals and mining industry and to benefit from the exploitation of the nation's mineral resources;
- (e) promote economic growth and development in the Republic;
- (f) promote employment and advance the social and economic welfare of all South Africans;
- (g) provide for security of tenure in respect of prospecting and mining operations;
- (h) give effect to section 24 of the Constitution by ensuring that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner; and
- (i) ensure that holders of mining rights and exploration rights contribute towards the socio-economic development of the areas in which they are operating.

### Financial implications

The Department of Minerals and Energy has budgeted for most of the financial requirements for the implementation of the Bill. Item 11 of Schedule II to the Bill makes provision for the claiming of compensation if a person feels that his or her property has been expropriated. Budgetary allocations will be made in this regard.

### Consultation

The Minerals Development Bill (now the Mineral and Petroleum Resources Development Bill) was released for public comment on 18 December 2000. The public were requested to submit written comments by 31 March 2001. A series of discussions were held with stakeholders who wished to engage the Department on matters of concern to them. The draft Bill was tabled in Nedlac in April 2001. State departments such as the Department of Trade and Industry, the Department of Environmental Affairs and Tourism, the Department of Water Affairs and Forestry, the Department of Land Affairs, the Department of Agriculture and the National Treasury were consulted.

### Parliamentary procedure

The State Law Advisers and the Department of Minerals and Energy are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.