

**MEMORANDUM ON THE OBJECTS OF THE MINERAL AND
PETROLEUM RESOURCES DEVELOPMENT AMENDMENT
BILL, 2007**

1. OBJECTS OF THE BILL

1. The main objects of the Bill are to remove ambiguity that may exist in the principal Act by amending certain definitions, to promote and enhance co-operative governance between organs of state; to make the Minister of Minerals and Energy the responsible authority for implementing environmental policy and legislative requirements in terms of NEMA, 1998, as it relates to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration and production area.
- 1.2 The Bill seeks to promote and allow for efficient and effective administration of the country's mineral resources and to enhance co-operative governance between organs of state as well as confirming sound environmental management principles. The Bill seeks to amend the principal Act to facilitate the smooth implementation of the new minerals and mining dispensation by aligning it with sound administrative practices and the objects of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000). Ambiguities that exist in the principal Act regarding certain definitions are addressed and certain new definitions have been inserted to specifically harmonize the principal Act with definitions pertaining to environmental management in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998). The Bill further seeks to confirm the separation of powers between the Minister of Minerals and Energy, who is authorized to levy certain fees in terms of the principal Act and the Minister of Finance, who must determine state royalties in terms of another Act of Parliament (the Mining Royalty Bill).
- 1.3 The Bill also seeks to enhance the promotion of HDSA participation including the community in the mining industry whilst at the same time preventing the occurrence of fronting, share manipulation and dilution and exploitation of BEE.

The Bill empowers the Minister, where the application relates to the land occupied by a community, to impose conditions as are necessary to promote the rights and interests of the community, including conditions requiring the participation of the community.

The Bill further strengthens the manner of consultation with the landowner, lawful occupier and interested and affected parties by prescribing in the regulation the manner in which the landowner, lawful occupier and interested and affected parties must be consulted.

The Bill also seeks to attract foreign and local investment in the country in that it makes all geological data and prospecting information of the country's mineral resources available at the Council for Geoscience.

- 1.4 The Bill encourages beneficiation of minerals, in that it empowers the Minister to set the levels of beneficiation by regulation.

The Bill also seeks to ensure that the holder of a mining right informs the Minister about possible retrenchments of employees and that the Minister through the Advisory Board takes immediate corrective measures to mitigate the impact of retrenchments.

The Bill promotes co-operative governance in that the Regional Mining Development and Environmental Committee will be able to consider recommendations to the Minister on environmental objections received from other state departments and not only upon the application stage.

The Transitional Chapter in the principal Act is amended to rectify certain omissions of existing old order rights, such as “mynpachten” and tributing agreements.

2. DEPARTMENTS/PARTIES CONSULTED

The following Departments and statutory bodies were consulted on the Bill:

The National Treasury
Department of Land Affairs
Department of Environmental Affairs and Tourism
Department of Water Affairs

3. FINANCIAL IMPLICATION FOR STATE

In terms of the Bill, fees such as prospecting, retention and application fees, will be payable to the state on commencement of this Bill, whereas royalties will be payable once a separate Act of parliament has been promulgated.

4. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Minerals and Energy are of the opinion 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.

The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.