



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 442

Pretoria, 19 April 2002

No. 23325



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GENERAL NOTICE

NOTICE 541 OF 2002

MINERALS AND PETROLEUM RESOURCES DEVELOPMENT BILL

The draft Minerals and Petroleum Resources Development Bill, 2002, is hereby published for public comment. Comments should be submitted in writing to:

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Copies of the draft Bill can be obtained from:

- Government Printers (Pretoria);
- Regional Offices of the Department of Minerals and Energy;
- Communications Chief Directorate of the Department at the Head Office;
- Department's website (www.dme.gov.za)

Written comments must be received no later than 19 May 2002.

REPUBLIC OF SOUTH AFRICA

MINERAL AND PETROLEUM RESOURCES DEVELOPMENT BILL

*(As introduced in the National Assembly as a section 75 Bill, explanatory
summary of Bill published in Government Gazette No. 23316 of 2002)
(The English text of the Bill is the official text)*

MINISTER OF MINERALS AND ENERGY

BILL

To make provision for the 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;

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;

Be IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

INTRODUCTION

Definitions

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

"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 Petroleum Agency and situated wholly or partly in the Republic and includes any part of such block;

"Board" means the Minerals and Mining Development Board established by section 54;

"CEF (Proprietary) Limited" means CEF (Proprietary) Limited referred to in section 1 of the Central Energy Fund Act, 1977 (Act No. 38 of 1977);

"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);

"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;

"day" means a calendar day and when any particular number of days are prescribed for the doing of any act, those days shall 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 shall be reckoned by excluding the first day and also any such Saturday, Sunday or public holiday;

"Department" means the Department of Minerals and Energy;

"development programme" means the development programme approved under the terms and conditions of the production right;

"Director-General" means the Director-General of the Department;

"employee" means any person who works for the holder of a prospecting right, mining right,

mining permit or retention permit and who is entitled to receive any remuneration, but does not include an independent contractor, professional advisor or any agent of such holder;

"environment" means the environment as defined in the National Environmental Management Act, 1998 (Act No. 107 of 1998);

"environmental management programme" means an approved environmental management programme contemplated in section 36;

"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;

"exploration right" means the right granted in terms of section 75;

"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;

"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;

"financial guarantee" means the surety that applicants for, or holders of, exploration and production rights must provide to the Petroleum Agency in terms of section 84 guaranteeing the availability of sufficient funds to undertake the agreed work programmes and to rehabilitate exploration or production areas;

"financial provision" means the financial provision contemplated in section 38;

"historically disadvantaged person" means—

(a) any person or category of persons disadvantaged by unfair discrimination before the

Constitution took effect;

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

"initial environmental impact assessment" means the document resulting from a preliminary assessment undertaken in order to—

- (a) assimilate information concerning the status of the environment prior to prospecting or mining;
- (b) identify the extent of the anticipated impacts and their consequences on the environment, taking into consideration any sensitivity or limitations that may exist on or in respect of the area;
- (c) identify alternatives and to propose the most appropriate approach and procedure to plan and develop the proposed prospecting or mining project and its environmental management requirements;
- (d) record the initial views and concerns of relevant authorities affected and other parties; and
- (e) identify the extent of any further investigation required;

"mine", when used as a verb, means any operation or activity directed at extracting any mineral from any mineral resource 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;

"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—

- (a) water, other than water taken from land or sea for the extraction of any mineral from such water;
- (b) petroleum; or
- (c) topsoil and peat;

"mining area" means the area which comprises the subject of a mining right or mining permit, including—

- (a) any adjacent surface of land;
- (b) any non-adjacent surface of land, if it is connected to such area by means of any road, railway line, power line, pipeline, cableway or conveyor belt; and
- (c) any surface of land on which such road, railway line, power line, pipeline, cableway or conveyor belt is located, under the control of the holder of such mining right or mining permit and which he or she is entitled to use in connection with such mining operations under such right or permit until an exoneration certificate is issued under section 40;

"mining operation" means any operation associated with or connected to the act of mining;

"mining permit" means a permit issued in terms of section 24(5);

"mining right" means a right to mine granted in terms of section 20(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;

"Minister" means the Minister of Minerals and Energy;

"money bill" means a Bill, enacted into law by Parliament after this Act, which provides for the payment of royalties in respect of minerals and petroleum;

"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—

(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 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;

"Petroleum Agency" means the South African Agency for Promotion of Petroleum Exploration and Exploitation (Propriety) Limited;

"petroleum reservoir" means a geological formation containing petroleum;

"prescribed" means prescribed by regulation in terms of this Act;

"processing", in relation to any mineral, means winning, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification thereof;

"production right" means a right granted in terms of section 79;

"production operation" means any operation, activity or matter that relates to the exploration, appraisal, development and production of petroleum;

"production area" means any area which is subject to a production right;

"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

(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;

"prospecting area" means the area of land which is the subject of any prospecting right;

"prospecting operations" mean any activity carried on in connection with prospecting;

"prospecting right" means the right to prospect granted in terms of section 14(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;

"reconnaissance permit" means the permit issued in terms of section 70(1);

"reconnaissance operation" means any operation carried out for or in connection with the search for petroleum by geological, geophysical and photogeological surveys and includes any remote sensing techniques, but does not include any exploration operation;

"record" means recorded information regardless of form or medium;

"regulations" means the regulations made under section 99;

"Regional Manager" means the officer designated by the Minister in terms of section 8 as regional manager for a specified region;

"Regional Mining Development and Environmental Committee" means the Regional Mining Development and Environmental Committee established in terms of section 60;

"residue deposit" means any residue stockpile remaining at the termination, cancellation or expiry of a prospecting right, mining right, mining permit or production right;

"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;

"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 29;

"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;

"technical co-operation permit" means the technical co-operation permit issued in terms of section 72(1);

"this Act" includes the regulations and any term or condition to which any permit, right, consent, exemption, approval, notice, exonerating certificate, environmental management programme or directive issued, given, granted or approved in terms of this Act, are subject;

"topsoil" means the layer of soil covering the earth which—

- (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) covers a depth of 0,5 metres or such other depth as the Minister may prescribe for a specific prospecting or mining area.

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 resources within the Republic;
- (b) give effect to the principle of the State's custodianship of the nation's mineral resources;
- (c) promote equitable access of the nation's mineral resources to all the people of South Africa;
- (d) expand opportunities for historically disadvantaged persons to enter the mineral industry and to benefit from the exploitation of the nation's mineral resources;
- (e) promote economic growth 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 resources are developed in an orderly and ecologically sustainable manner; and
- (i) ensure that holders of mining rights contribute towards the socio-economic development of the areas in which they are operating.

Custodianship of nation's mineral resources

3. (1) Mineral 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 resources, the State, acting through the Minister may—

- (a) grant, refuse, control, administer and manage prospecting rights, mining rights, mining permits, retention permits and permission to remove and dispose of any minerals; and

(b) in consultation with the Minister of Finance, determine any fee and consideration payable in terms of this Act.

(3) The Minister must ensure the sustainable development of South Africa's mineral 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.

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

Legal nature of prospecting right or mining right and rights of holder thereof

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

(2) The holder of a prospecting right or mining 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.

(3) Subject to this Act, any holder of a prospecting right or a mining 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 and equipment and build, construct and lay down any surface or underground infrastructure which may be required for the purposes of prospecting or mining, as the case may be;
- (b) prospect or mine, as the case may be, for his or her own account on or under that land for the mineral for which such right has been granted;

- (c) subject to section 17, remove and dispose of any such mineral found during the course of prospecting or mining, as the case may be; and
- (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 or mining purposes, or sink a well or borehole required for use relating to prospecting or mining on such land.

(4) No person may prospect or mine for any mineral or commence with any work incidental thereto on any prospecting area or mining area without—

- (a) an approved environmental management programme; and
- (b) a prospecting right or mining right, as the case may be.

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.

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

CHAPTER 3

ADMINISTRATION

Division of Republic, territorial waters and continental shelf 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 continental shelf referred to in section 8 of the Maritime Zones Act, 1994 (Act No.15 of 1994), into regions.

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.

CHAPTER 4**MINERAL AND ENVIRONMENTAL REGULATION****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);
- (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

10. (1) Within 14 days after accepting an application lodged in terms of section 13, 19 or 24, 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.

(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.

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 the holder of any such right or interest, may not be ceded, transferred, let, sub-let, assigned, alienated or otherwise disposed of without the written consent of the Minister.

(2) The consent referred to in subsection (1) must be granted if the cessionary, transferee, lessee, sub-lessee, 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;
- (b) is capable of complying with the obligations of the social plan in the case of a mining right;
- (c) satisfies the requirements contemplated in section 14 or 20, as the case may be; and
- (d) is capable of carrying out, and agrees to comply with, all the environmental obligations of the previous holder.

(3) The consent contemplated in subsection (1) is not required in respect of an encumbrance by mortgage of any such right or interest as security for any loan or guarantee by any bank or other financial institution recognised by the Republic if the bank or financial institution in question undertakes in writing that any sale in execution pursuant to the foreclosure of the mortgage will be subject to the consent in terms of subsection (1).

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

Assistance to historically disadvantaged persons

12. (1) The Minister may, with the concurrence of the Minister of Finance, out of money appropriated for that purpose by Parliament, give financial or any other assistance to any historically disadvantaged person to conduct prospecting or mining activities.

(2) The assistance referred to in subsection (1) may be provided subject to such terms and conditions as the Minister may determine and becomes a debt due to the State by the person who has been assisted.

(3) Before giving the assistance referred to 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; and
- (c) the need to transform the ownership structure of the minerals and mining industry.

Application for prospecting right

13. (1) Any person who wishes to apply to the Minister for a prospecting 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
- (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
- (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.

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

- (a) to submit an initial environmental impact assessment within 30 days from the date of the notice; and

- (b) to consult with any interested and affected parties.

Granting and duration of prospecting rights

14. (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;
- (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 irreparable 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);
- (f) the applicant is not in contravention of any relevant provision of this Act; and
- (g) the granting of such right will further the objects referred to in section 2(d) and (f).

(2) The Minister must refuse to grant a prospecting right if the application does not meet all the requirements referred to in subsection (1);

(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 and the reasons therefor.

(4) 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 36(3).

(5) A prospecting right is subject to prescribed terms and conditions and is valid for the period specified in the right, which period may not exceed five years.

Application for renewal of prospecting right

15. (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—

- (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—

- (a) state the 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
- (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—

- (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 programme.

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

Rights and obligations of holder of prospecting right

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

- (a) subject to section 15, 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
- (c) subject to the permission referred to in section 17, the exclusive right to remove and dispose of any mineral, to which such right relates, found during the course of prospecting.

(2) The holder of a prospecting right must—

- (a) register such right at the Mining Titles Office within 30 days of the date on which the right—
 - (i) becomes effective in terms of section 14(4); or
 - (ii) is renewed in terms of section 15(3);
- (b) commence with prospecting activities within 90 days from the date on which the prospecting right becomes effective in terms of section 14(4);
- (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 and relevant provisions of this Act;
- (e) comply with the requirements of the approved environmental management programme;
- (f) pay the prescribed prospecting fees to the State.

Permission to remove and dispose of minerals

17. (1) Subject to subsection (2), the holder of a prospecting right may remove and dispose of any mineral in such quantities as may be required to conduct tests on it or to identify or analyse it.

(2) The holder of a prospecting right must obtain the Minister's written permission to remove and dispose of bulk samples of any mineral found or to remove and dispose of any prescribed minerals during the course of prospecting operations.

Information and data in respect of prospecting

18. (1) The holder of a prospecting right must—

- (a) keep proper records, at a place in the Republic, of prospecting operations and results and expenditure connected therewith, as well as borehole core and core-log data; and
- (b) submit progress reports, 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 or core-log data contemplated in subsection (1)(a) except in accordance with the written directions of the relevant Regional Manager.

Application for mining right

19. (1) Any person who wishes to apply to the Minister for 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
- (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
- (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.

(4) If the Regional Manager accepts the application, the Regional Manager must, within 14 days from the date of the acceptance, notify the applicant in writing to submit an initial environmental impact assessment report within 30 days from the date of the notice.

Granting and duration of mining right

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

- (a) the mineral resource 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 irreparable pollution, ecological degradation or damage to the environment;
- (e) the applicant has provided for the prescribed social 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);
- (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).

(2) The Minister must refuse to grant a mining right if the application does not meet all the requirements referred to in subsection (1).

(3) 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 therefor.

(4) The granting of a mining right in terms of subsection (1) becomes effective on the date on which the environmental management programme is approved in terms of section 36(3).

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

Application for renewal of mining right

21. (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
- (c) together with the prescribed non-refundable application fee.

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

- (a) state 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
- (d) 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;
- (b) commitments under the mining work programme;
- (c) requirements of the prescribed social 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.

Rights and obligations of holder of mining right

22. (1) In addition to the rights referred to in section 5, the holder of a mining right has, subject to section 21, 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) register such right at the Mining Titles Office within 30 days of the date on which the right—
 - (i) becomes effective in terms of section 20(4); or

- (ii) is renewed in terms of section 21(3);
- (b) commence with mining operations within one year from the date on which the mining right becomes effective in terms of section 20(4);
- (c) actively conduct mining in accordance with the mining work programme;
- (d) comply with the terms and conditions of the mining right and the relevant provisions of this Act;
- (e) comply with the requirements of the approved environmental management programme;
- (f) comply with the requirements of the prescribed social plan.

Mineral beneficiation

23. (1) The Minister and the Ministers of Finance and Trade and Industry may agree upon incentives to promote the beneficiation of minerals in the Republic.

(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.

(3) Any person who intends to beneficiate any mineral mined in the Republic outside the Republic must obtain the written permission of the Minister.

Application for, issuing and duration of mining permit

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

- (a) the mineral resource in question can be mined optimally within a period of two years; and
- (b) the mining area in question does not exceed 0,5 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;

- (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.

(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.

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

- (a) the requirements contemplated in subsection (1) are satisfied.; and
- (b) the prescribed environmental management programme is approved in terms of section 36(3).

(6) 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 and equipment and build, construct and lay down any surface or underground infrastructure which may be required for purposes of mining; and
- (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.

(7) A mining permit —

- (a) is valid for the period specified in the permit, which may not exceed a period of two years but which may be renewed, once, for a further period of one year; and
- (b) may not be transferred, ceded, let, sub-let, alienated, disposed of, mortgaged or encumbered in any way whatsoever.

Information and data in respect of mining or processing of minerals

25. (1) The holder of a mining right or mining permit must, at a place in the Republic, keep proper records of mining activities and proper financial records in connection with the mining activities.

(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.

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

26. The Minister may, in order to achieve the objects 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;
- (b) any holder of a prospecting right, mining right, retention permit or mining permit; or
- (c) any owner of land which is the subject of a prospecting right, mining right, retention permit or mining permit, or an application therefor.

Disclosure of information

27. (1) Subject to subsection (2), any information or data submitted in terms of section 18, 25 or 26 may be disclosed to any person—

- (a) in order to achieve any object referred to in section 2(c), (d) or (e);
- (b) in order to give effect to the right of access to information contemplated in section 32 of the Constitution; or
- (c) if such information or data is already publicly available.

(2) No information or data may be disclosed to any person if—

- (a) it contains scientific or technical information or data which constitutes a trade secret or is the intellectual property of the supplier of the information or data;
- (b) the disclosure of the information or data is likely to cause harm to the commercial or financial interests of the supplier of the information or data; or
- (c) it contains information or data supplied in confidence by the supplier of the information or data and the disclosure of the information or data is likely to—
 - (i) put the supplier at a disadvantage in contractual or other negotiations; or
 - (ii) prejudice the supplier in commercial competition.

(3) Any person submitting information or data in terms of section 18, 25 or 26 must inform the Regional Manager concerned and indicate which information and data must be treated as confidential and may not be disclosed.

Application for retention permit

28. (1) Any holder of a prospecting right who wishes to apply to the Minister for a retention permit 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 application fee.

- (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

29. (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;
- (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.

(2) Upon the issuing of a retention permit the prospecting right in respect of the mineral and land in question lapses.

(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.

(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

30. The Minister may refuse to issue a retention permit if, having regard to the information submitted under section 29(1) and research conducted by the Board at the request of the Minister, it is established that—

- (a) the mineral resource to which the application relates can be mined profitably;

- (b) the applicant has not completed the prospecting activities and feasibility study in relation thereto;
or
- (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 resources in the hands of the applicant.

Application for renewal of retention permit

31. (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 28(1) and must include—

- (a) an updated report of the circumstances which prevailed at the time of issuing of the retention permit; and
- (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 and the terms and conditions of the retention permit; and
- (b) the situation contemplated in section 29(1)(d) still prevails.

(3) A retention permit can be renewed, once, for a period not exceeding two years.

Rights and obligations of holder of retention permit

32. (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
- (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 29(4) or 31(3), as the case may be.

Retention permit not transferable

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

Environmental management principles

34. (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;
- (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 recognised standards 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.

Integrated environmental management and responsibility to remedy

35. The holder of a prospecting right, mining right, retention permit or mining permit must—

- (a) 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); and
- (b) 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);

- (c) manage all environmental impacts—
 - (i) in accordance with his or her approved environmental management programme; and
 - (ii) as an integral part of the prospecting or mining operation, unless the Minister directs otherwise;
- (d) 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 concept of sustainable development; and
- (e) is responsible for any environmental damage, pollution or ecological degradation caused by his or her prospecting or mining operations and which may occur inside and outside the boundaries of the area to which such right or permit relates.

Environmental management programme

36. (1) Every person who has applied for a prospecting right, mining right or mining permit in terms of section 13, 19 or 24 must lodge an environmental management programme within 120 days of the date on which he or she is notified by the Minister to do so.

(2) An applicant who prepares an environmental management programme must—

- (a) establish baseline information concerning the affected environment to determine protection, remedial measures and environmental management objectives;
- (b) investigate, assess and evaluate the impact of his or her proposed prospecting or mining operations on the —
 - (i) environment;
 - (ii) socio-economic conditions of any person who might be directly affected by the prospecting or mining operation; and
 - (iii) the national estate as defined 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.
- (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;

(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
- (iii) comply with any prescribed waste standard or management standards or practices.

(3) (a) Subject to paragraph (b), the Minister must, within 120 days from the lodgement of the environmental management programme approve the environmental management programme, if—

- (i) it complies with the requirements of subsection (2);
- (ii) the applicant has complied with section 38(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 unless he or she has considered—

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

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

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

(b) For the purposes of paragraph (a), subsection (3) applies with the necessary changes.

Consultation with State departments

37. (1) When considering an environmental management programme in terms of section 36, 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 so being consulted in writing to submit the comments of that department within 60 days from the date of the request.

Financial provision for remediation of environmental damage

38. (1) The holder of a prospecting right, mining right or mining permit must, before the Minister approves the environmental management programme in terms of section 36(3), make the prescribed financial provision for the rehabilitation or management of negative environmental impacts.

(2) If the holder 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.

(3) If the financial provision contemplated in subsection (1) or any part thereof has been used as contemplated in subsection (2), or if the Minister concludes that in view of the damage caused or likely to be caused the financial provision is insufficient, the holder concerned must make a further amount available, calculated by the holder and approved by the Minister, for the purpose of this section.

(4) The requirement to maintain and retain financial provision remains in force until

the Minister issues an exoneration certificate in terms of section 40 to such holder.

Management of residue stockpiles and residue deposits

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

(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).

Exoneration certificate

40. (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 exoneration certificate to the holder concerned.

(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 programme and any prescribed closure plan to a person with such qualifications as may be prescribed.

(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 exoneration certificate upon—

- (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 or mining area; or
- (d) completion of the prescribed closing plan of the prospecting or mining area.

(4) An application for an exoneration 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 rehabilitation contemplated in subsection (3) and must be accompanied by the prescribed environmental risk report.

(5) No exoneration 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.

(6) When the Minister issues an exoneration certificate he or she must return such portion of the financial provision contemplated in section 38 as may be unused to the holder of the prospecting right, mining right, retention permit or mining permit concerned.

Removal of buildings, structures and other objects

41. 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—

- (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.

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

42. (1) If any prospecting or mining operation causes 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 or permit to—

- (a) investigate, evaluate, assess and report on the impact of any pollution or ecological degradation;

- (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.

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

(c) The Minister may use funds appropriated for that purpose by Parliament to implement the measures contemplated in paragraph (a).

(d) The Minister must recover the funds used in terms of paragraph (c) from the holder concerned.

Minister's power to remedy environmental damage in certain instances

43. (1) If the Minister directs that measures contemplated in section 42 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 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.

(2) The measures contemplated in subsection (1) must be funded from the financial provision made by the holder of the relevant prospecting right, mining right, retention permit or mining permit in terms of section 38 or, if there is no such provision or if it is inadequate, from money appropriated by Parliament for that purpose.

(3) (a) Upon completion of the measures contemplated in subsection (1), the Regional Manager contemplated in that subsection 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 as contemplated in subsection (1).

(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.

Minister's power to suspend or cancel prospecting right, mining right, mining permit or retention permit

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

- (a) is conducting any prospecting or mining operation in contravention of this Act;
- (b) breaches any material term or condition of such right or permit;
- (c) is not prospecting for or mining the mineral resource optimally in accordance with the prospecting or mining work programme;
- (d) is contravening the approved environmental management programme; or
- (e) 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;
- (b) set out the reasons why he or she is considering suspending or canceling the right; and
- (c) afford the holder a reasonable opportunity to show why the mining or prospecting right should not be suspended or canceled.

(3) The Minister may 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—

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

Restriction or prohibition of prospecting and mining on certain land

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

- (a) land comprising a township;
- (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) on areas identified by the Minister by notice in the *Gazette* in terms of section 46.

(2) A 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;
- (b) the 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

46. (1) Subject to subsection (2), the Minister may from time to time by notice in the

Gazette, having regard to the national interest and the need to promote the sustainable development of mineral resources, prohibit or restrict the granting of any 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.

(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 prospecting right, a mining right, a retention permit or a mining permit.

Minister may investigate occurrence, nature and extent of mineral resources

47. (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).

(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 if the owner so prefers.

(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

(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;

- (b) the Minister has considered any comments received; and
- (c) a period of 30 days has lapsed after the Minister has 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.

(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.

Optimal mining of mineral resources

48. (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 and that a continuation of such practice will detrimentally affect the objects referred to in section 2(f).

(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.

(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.

(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); and
- (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—

- (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

49. (1) The holder of a mining right must notify the Board in the prescribed manner—

- (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; and
- (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 greater, are likely to be retrenched in any 12 month period.

(2) The Board must investigate the socio-economic and labour implications of the circumstances contemplated in subsection (1) and make recommendations to the Minister.

(3) (a) The Minister may, on the recommendation of the Board and after consultation with the Minister of Labour, 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.

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

Use of land surface rights contrary to objects of Act

50. (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.

(2) Subsection (1) does not apply to—

- (a) farming or any use incidental thereto;
- (b) the use of any land which lies within an approved town planning scheme;
- (c) the use of land in terms of any condition, servitude, mortgage bond or other right registered against the title of that land; or
- (d) any other use which the Minister may determine by notice in the *Gazette*.

(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 as a result of which the mining of mineral resources might be 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 a period specified in the notice, which period may not be shorter than 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

51. (1) The holder of a prospecting right, mining right or mining permit must notify the relevant Regional Manager if that holder is prevented from commencing or conducting any 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), call upon the owner or lawful occupier of the land—

- (a) to make representations regarding the issues raised by the holder of the prospecting right, mining right or mining permit;
- (b) inform that owner or occupier of the rights of the holder of a prospecting right, mining right or mining permit referred to in sections 5, 16, 22 and 24(6);
- (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 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 if one of the parties so prefers.

(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 52.

(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 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.

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

52. (1) If it is necessary for the achievement of the objects referred to in section 2(e), (f), (g) and (h) of this Act 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 said sections to "Minister" must be construed as being a reference to the Minister.

CHAPTER 5

MINERALS AND MINING DEVELOPMENT BOARD

Establishment of Minerals and Mining Development Board

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

Functions of Board

54. (1) The Board—

(a) must advise the Minister on—

(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.
- (b) must, in consultation with the Mining Qualifications Authority, ensure the promotion of human resources 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; 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

55. (1) The Board consists of no less than 14 and no more than 18 members.

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

- (a) a Chairperson;
 - (b) the Chief Inspector;
 - (c) no more than 12 persons representing any relevant department of State, organised labour, organised business, any relevant non-governmental organisation and any relevant community based organisation; and
 - (d) no more than four 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

56. (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
- (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 of the Republic of South Africa, 1993 (Act No. 200 of 1993), 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.

Vacation of office

57. (1) A member of the Board must vacate his or her office if he or she—

- (a) becomes subject to any disqualification contemplated in section 56 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
- (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
- (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
- (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).

Term of office and filling of vacancies

- 58.** (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 55(2) for the unexpired portion of the term of office of his or her predecessor.

Meetings of Board

- 59.** (1) The Chairperson must convene meetings of the Board.
- (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.
- (5) The quorum for any meeting of the Board is eight 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.

Committees of Board

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

(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.

(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.

(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

61. The expenses of the Board must be defrayed from money appropriated by Parliament to the Department of Minerals and Energy for that purpose.

Remuneration of members of Board, committees and working groups

62. 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.

Reports of Board

63. 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.

Administrative functions

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

CHAPTER 6

PETROLEUM EXPLORATION AND PRODUCTION

Application of Chapter

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

(2) (a) For the purposes of this Chapter, Chapter 2, sections 9, 10, 11, 12, 23, 34, 35, 36, 37, 40, 41, 42, 43, 44, 45, 46, 47, 50, 51 and 52 and Chapter 7 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;
- (vi) prospecting area, must be construed as a reference to exploration area; and
- (vii) prospecting rights, must be construed as a reference to exploration rights.

Functions of Petroleum Agency

66. The Petroleum Agency must—

- (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;
- (c) evaluate such applications and make recommendations to the Minister;
- (d) issue reconnaissance and technical co-operation permits on behalf of the Minister;
- (e) monitor and report regularly to the Minister in respect of compliance with such permits or rights;
- (f) receive, maintain, store, interpret, evaluate, add value to, disseminate and deal in all geological and geophysical information relating to petroleum submitted in terms of section 83;
- (g) 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;
- (h) advise and recommend to the Minister on the need to carry out on behalf of the State reconnaissance operations in connection with petroleum;
- (i) collect the prescribed fees and considerations in respect of reconnaissance permits, technical co-operation permits, exploration rights and production rights;
- (j) review and make recommendations to the Minister with regard to the approval of environmental management programmes and development programmes; and

- (k) perform any other function, in respect of petroleum, which the Minister may determine from time to time.

Funding of Petroleum Agency

67. (1) The Petroleum Agency is funded as provided for in the money bill.

(2) Any shortfall in the funding of the Agency must be funded by CEF (Proprietary) Limited in terms of section 1(2)(a)(iA) of the Central Energy Fund Act, 1977 (Act No. 38 of 1977).

Invitation for applications

68. (1) The Minister may by notice in the *Gazette* invite applications for petroleum rights in respect of any block or blocks, 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.

(2) The Petroleum Agency may otherwise directly receive applications for petroleum rights in respect of such blocks which are not subject to an invitation as contemplated in subsection (1).

Application for reconnaissance permit

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

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

(2) The Petroleum 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 the same area.

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

(4) If the Petroleum Agency accepts the application, the Petroleum Agency must, within 14 days from the date of the acceptance, inform the applicant in writing—

- (a) to submit an environmental management programme in accordance with section 36 within a period of 120 days from date of such notice; and
- (b) to consult with any interested and affected party.

Issuing and duration of reconnaissance permit

70. (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 irreparable 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
- (f) 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 in writing notify the applicant of the decision and the reasons therefor within 30 days of the decision.

(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.

Application for technical co-operation permit

71. (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 Petroleum Agency;
- (b) in the prescribed manner; and
- (c) together with the prescribed non-refundable application fee.

(2) The Petroleum Agency must accept an application for a technical co-operation permit if—

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

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

Issuing and duration of technical co-operation permit

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

- (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
- (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 in writing notify the applicant of the decision and the reasons therefor within 30 days of the decision.

(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
- (d) not renewable.

Rights and obligations of holder of technical co-operation permit

73. (1) The holder of a technical co-operation permit has subject to section 76, the exclusive right to apply for and be granted an exploration right in respect of the area of the permit during the tenure of the permit.

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

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

Application for exploration right

74. (1) Any person or holder of a technical co-operation permit who wishes to apply to

the Minister for an exploration right must lodge the application—

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

(2) The Petroleum 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 the same area.

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

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

- (a) to submit an environmental management programme in terms of section 36 within a period of 120 days from the date of such notice; and
- (b) to consult with any interested and affected party.

Granting and duration of exploration right

75. (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;
- (c) the Minister has approved the environmental management programme in terms of section 36(3);
- (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;
- (f) 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 object referred to in section 2(d) and (f).

(2) The Minister must refuse to grant an exploration right if the application does not meet all the requirements referred to in subsection (1).

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

(4) 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

76. (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—

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

(2) An application for the renewal of an exploration right must—

- (a) state the 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
- (d) include a detailed exploration work programme for the renewal period.

(3) The Minister must grant an application for 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—

- (a) terms and conditions of the exploration right and is not in contravention of any relevant provision of this Act;
- (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.

Rights and obligations of holder of exploration right

77. (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 petroleum over the area in question;
- (b) has the exclusive right to remove and dispose of any petroleum found during the course of exploration; and
- (c) may transfer and encumber the exploration right, in which case section 11 apply with the necessary changes.

(2) The holder of an exploration right must—

- (a) register such right at the Mining Titles Office within 30 days of the date on which the right—
 - (i) becomes effective; and
 - (ii) is renewed in terms of section 76(3);
- (b) continuously and actively conduct exploration operations in accordance with the approved exploration work programme;
- (c) comply with the terms and conditions of the exploration right and relevant provisions of this Act;
- (d) comply with the requirements of the approved environmental management programme; and
- (e) pay the prescribed exploration fees to the Petroleum Agency.

Application for production right

78. (1) Any person or holder of an exploration right who wishes to apply to the Minister for a production right must lodge the application—

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

(2) The Petroleum Agency must accept an application for a production 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 the same area.

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

(4) If the Petroleum Agency accepts the application, the Petroleum Agency must, within 14 days from the date of the acceptance, notify the applicant in writing to submit an environmental management programme in terms of section 36, within a period of 120 days from the date of such notice and consult with any interested and affected party.

Granting and duration of production right

79. (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;
- (b) the estimated expenditure is compatible with the intended production operation and duration of the production work programme;

- (c) the Minister has approved the environmental management programme in terms of section 36(3);
- (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;
- (f) the applicant has complied with the terms and conditions of the exploration right, if applicable;
- (g) the applicant has provided for a prescribed social plan; and
- (h) the granting of such right will further the object referred to in section 2(f).

(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 in writing notify the applicant of the decision and the reasons therefor within 30 days of the decision.

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

Application for renewal of production right

80. (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—

- (a) at the office of the Petroleum 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—

- (a) state the 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

(d) estimated cost thereof; and

(d) include a detailed production work programme for the renewal period.

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

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

(4) A production right may be renewed for further periods not exceeding 30 years.

Rights and obligations of holder of production right

81. (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 petroleum over the area in question;
- (b) has the exclusive right to remove and dispose of any petroleum found during the course of production; and
- (c) may transfer and encumber the production right, in which case section 11 applies with the necessary changes.

(2) The holder of a production right must—

- (a) register such right at the Mining Titles Office within 30 days of the date on which the right—
 - (i) becomes effective; and
 - (ii) is renewed in terms of section 80(3);
- (b) continuously and actively conduct production operations in accordance with the approved production work programme;
- (c) comply with the terms and conditions of the production right and relevant provisions of this Act;

- (d) comply with the requirements of the approved environmental management programme; and
- (e) pay the prescribed production fees to the Petroleum Agency.

Development of petroleum reservoir as unit

82. 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 Minister in accordance with the terms and conditions of the exploration or production rights.

Information and data

83. (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 Petroleum Agency as may be prescribed.

(2) All information, data, reports and interpretations thereof submitted to the Petroleum Agency must be kept confidential by all parties for a period—

- (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 relates has been canceled, terminated or the area relinquished.

(3) Neither the State, the Petroleum Agency nor any of their employees is liable for the accuracy or completeness of any data and interpretations thereof and other information provided to any person in respect of any application for a permit or right applied for in terms of this Chapter.

Financial guarantee

84. (1) Subject to section 5(4), no exploration operation or production operation may commence unless the holder of the rights concerned has provided for—

- (a) an insurance policy in terms of which the Petroleum Agency and Minister are co-assured by an institution of international stature providing minimum coverage acceptable to the Petroleum Agency and Minister for the rehabilitation and management of any environmental impact;
- (b) a guarantee acceptable to the Petroleum Agency and the Minister for due fulfilment of all of exploration and production work programmes by the holder of the right in question; or
- (c) an approved financial guarantee.

Minister's power to suspend or cancel permits or rights

85. The Minister may cancel or suspend any reconnaissance permit, technical co-operation permit, prospecting right or production right in accordance with the procedure contemplated in section 44.

CHAPTER 7**GENERAL AND MISCELLANEOUS PROVISIONS****Power to enter prospecting area, mining area or retention area**

86. (1) The Minister may authorise any member of the Board, the Regional Manager or any officer, in this Chapter referred to as an authorised person, to carry out the functions contemplated in subsection (4) and in section 87.

(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).

(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 prospecting area, mining area or retention area where he or she has reason to believe that any provision of this Act has been or is being contravened;
- (b) direct the person in control of or any person employed at such area—
 - (i) to deliver any book, record or other document that pertains to the investigation and is in the possession or under the control of that person;
 - (ii) to furnish such information as he or she has with regard to that matter; and
 - (iii) 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 and make copies thereof or excerpt therefrom;
- (d) examine any appliance or other material or substance found upon or in such area;
- (e) take samples of any material or substance and test, examine, analyse and classify such samples; and
- (f) seize any material, substance, book, record, statement or other document which might be relevant to a prosecution under this Act and keep it in his or her custody, but the person from whose possession or control any book, record or document has been taken, may, at his or her own expense and under supervision of the inspector, make copies thereof or excerpts therefrom.

(5) A warrant referred to in subsection (4) must be issued by a magistrate who has jurisdiction, and may only be issued if it appears from information on oath that there are reasonable grounds to believe that any material, substance, appliance, book, statement or document that may relate to a contravention of this Act, is upon or in such area.

(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 at any trial for the purpose of evidence or an order of court, 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

87. Any authorised person may during office hours, without a warrant, enter any prospecting area, mining area or retention area in order to inspect any activity or process carried out in or upon the area in question and may require the holder of the prospecting right, mining right, retention permit or mining permit in question to produce any book, record, statement or other document 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

88. (1) If an authorised person finds that a contravention or suspected contravention or failure to comply with any provision of this Act or condition of any prospecting right, mining right, mining permit, retention permit or environmental management programme granted or approved in terms of this Act, has occurred or is occurring on the relevant prospecting area or mining area, such person may—

- (a) order the holder of the relevant right or permit, or the manager, official, employee or agent of such holder, to take immediate rectifying steps; or
- (b) order that the prospecting or mining operations or part thereof be suspended, and give such other instructions in connection therewith as may be necessary.

(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 in writing within 60 days after the order referred to in subsection (1)(a) or (b) has been set aside or confirmed by him or her.

Prohibition of obstruction, hindering or opposing of authorised person

89. No person may obstruct, hinder or oppose any authorised person in the performance of his or her functions in terms of this Act.

Prohibition of occupational detriment against employee

90. (1) The holder of a prospecting right, mining right, mining permit or retention permit 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—

- (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); or
- (c) that any activity or operation which is being conducted by such holder does not comply with any provision of this Act or any term or condition of such right.

(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).

Internal appeal process and access to the courts

91. (1) Any person whose rights or legitimate expectation 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—

- (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 Petroleum Agency;

(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 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.

(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

92. (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—

- (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

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

(a) contravenes or fails to comply with—

(i) section 5(3)(d), 5(4), 17(2), 18, 23(3), 25, or 40(3);

(ii) section 87, 89 or 90;

(iii) section 35(c) or (e);

(iv) section 39(1) or (2);

(v) section 41;

(vi) any directive, notice, suspension, order, instruction or condition issued, given or determined in terms of this Act;

(vii) any direction contemplated in section 26; or

(viii) any other provision of this Act; or

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

Penalties

94. (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 93(a)(i), to a fine not exceeding R100 000 or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment;

(b) in the case of an offence referred to in section 93(a)(ii), to the penalty that may be imposed for perjury;

(c) in the case of an offence referred to in section 93(a)(iii), the penalties contemplated in section..... the National Environmental Management Act;

(d) in the case of an offence referred to in section 93(a)(v), to the penalty which may be imposed by in a magistrate's court for a similar offence;

(e) in the case of an offence referred to in section 93(a)(vi) and 93(a)(vii), to a fine not exceeding R 10 000; and

(f) 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.

(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 and mining industry

95. The Minister must, within five years from the date on which this Act took effect—

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

Appointment of contractor

96. If the holder of a prospecting right, mining right or retention permit appoints any person or employs a subcontractor to perform any work within the boundaries of the mining area, prospecting area or retention area, as the case may be, such holder remains responsible for compliance with this Act.

Delegation and assignment

97. (1) The Minister may, subject to such conditions as he or she may impose, in writing delegate any power conferred on the Minister by or under this Act, except a power to make regulations or deal with any appeal in terms of section 91, and may assign any duty so imposed upon him or her to the Director-General, the Regional Manager or any officer.

(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.

(3) Director-General, 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.

(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.

(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.

Exemption from certain provisions of this Act

98. (1) The Minister may by notice in the Gazette, exempt any organ of state from the provisions of sections 13, 17, 19 and 24 in respect of any activity conducted to remove any mineral for the purposes of 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 36(3).

Regulations

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

- (a) any matter which may or must be prescribed in terms of this Act; and
- (b) any other matter which is necessary or expedient to prescribe for the effective implementation of the provisions of this Act.

(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.

Proof of facts

100. 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.

Act binds State

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

Repeal and amendment of laws, and transitional provisions

102. 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.

Short title and commencement

103. This Act is called the Mineral and Petroleum Resources Development Act, 2001, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE I
REPEAL OR AMENDMENT OF LAWS

(Section 104)

| No. and year of Act | Short Title | Extent of repeal or amendment |
|---------------------|--|---|
| Act No. 47 of 1937 | Deeds Registries Act, 1937 | 1. The repeal of sections 70 to 74 <i>ter</i> . 2. The amendment of section 102 by— (a) the deletion of paragraph (a) in the definition of "immovable property"; and (b) the deletion of the definition of "prospecting contract". |
| 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. 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). |
| 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 | <p>1. Amendment of section 1 by—</p> <p>(a) the deletion of paragraph (d) of the definition of "owner";</p> <p>(b) the substitution for the definition of "share" of the following definition:</p> <p>" 'share', in relation to land, [and rights to minerals] means an undivided share;"</p> |
| | | <p>2. Amendment of section 29 by—</p> <p>(a) the substitution in subsection (2) for paragraph (c) of the following paragraph:</p> <p>"(c) holders of real rights [other than a right to minerals] 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"</p> |
| | | <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, [or any rights to minerals in that piece of land] 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, [or any rights to minerals in respect of the land being surveyed] 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) "Minerals Act" means the Minerals Act, 1991 (Act No. 50 of 1991);
- (ii) "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;
- (iii) "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;
- (iv) "old order right" means an old order mining right, old order prospecting right or unused old order right, as the case may be;
- (v) "OP26-sublease" means any prospecting sub-lease, 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;
- (vi) "OP26 mining lease" means the mining lease granted to Mossgas (Pty) Ltd under clause 22 of the OP26 prospecting lease
- (vii) "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. (1) The objects of this Schedule 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 an opportunity to comply with this Act; and
- (c) promote equitable access to the nation's mineral and petroleum resources.

Continuation of 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 the corresponding section of this Act.

(2) If any application contemplated in subitem (1) does not meet the prescribed 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 prescribed information.

(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 36(1) 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 petroleum operations

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) The holder of a lease contemplated in subitem (1) must apply for a renewal in terms of section 76(1) or apply for a production right in terms of section 78 before the expiry of the said sublease.

(3) 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.

(4) The holder of a lease contemplated in subitem (3) must lodge it for a conversion in terms of subitem (5) before the expiry of the five year period.

(5) Any holder of a sublease or lease contemplated in subitem (1) or (3), who wishes to convert the sublease or lease into a production right in terms of this Act, must lodge an application at the office of the Regional Manager in whose region the area in question is situated 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 mining 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) a prescribed social plan in respect of a production operation;
- (f) information as to whether or not any mortgage bond is registered against the lease or sublease in question;
- (g) a statement setting out the terms and conditions which applies to the lease or sublease;

- (h) the original title deed of the land to which the lease or sublease relates, or a certified copy thereof;
- (i) the original lease or sublease, 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).

(6) The Minister must convert the lease if the holder—

- (a) has complied with the provisions of subitem (5);
- (b) is conducting mining in respect of the right in question;
- (c) indicates that he or she intends to continue to conduct such mining operations upon the conversion of such right; and
- (d) has paid the prescribed conversion fee.

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

(8) Any lease or sublease in respect of which the information required in terms of subitem (5) has been submitted, remains in force until such time as the production right to which it has been converted, is registered at the Mining Titles Office.

(9) The registration contemplated in subitem (7) must occur within six months from the date on which the lease or sublease has been converted and must be done at the same time as the deregistration of the lease or sublease at the Deeds Office or the Mining Titles Office, as the case may be.

(10) 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 or sublease, 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 this subitem, without payment of transfer duty, stamp duty, registration fees or charges.

(11) Upon the conversion of the lease or sublease and the registration of the production right into which it was converted, the lease or sublease ceases to exist.

(12) If the holder fails to lodge the lease or sublease for conversion before the expiry of the period referred to in subitem (3) the lease ceases to exist.

Continuation of old order prospecting right

5. (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 deemed to have been 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) a statement verifying that the holder conducted prospecting operations on the land to which the conversion relates immediately before this Act took effect and setting out the periods during which such prospecting operations had been conducted;
- (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; and
- (i) the original old order right or a certified copy thereof.

(3) The Minister must convert the old order 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 intends to 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 such right was converted for the deregistration of the old order prospecting right at the Deeds Office or the Mining Titles Office, as the case may be, which must be effected at the same time as the registration of the converted right.

(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 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

6. (1) Subject to subitems (2) and (8), any old order mining right in force when 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 deemed to have been 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 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 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 statement verifying that the holder conducted mining operations on the land to which the conversion relates immediately before this Act took effect and setting out the periods during which such mining operations had been 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 plan;
- (g) information 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, 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) of this Act.

(3) The Minister must convert the old order 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 intends to 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 term and condition applicable to the old order mining right remains in force if they are contrary to any provisions of the Constitution and this Act.

(5) The holder must lodge the right converted under subitem (3) within 90 days from the date on which such right was converted for the deregistration of the old order prospecting right at the Deeds Office or the Mining Titles Office, as the case may be, which must be effected at the same time as the registration of the converted right.

(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 old order mining right, the mining right into which it was converted must be registered 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 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

7. (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 deemed to have been 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 mineral 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

8. (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

(e) 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 or was deemed to have been granted or acquired or under which it continues to exist or remain in force.

(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, tribute, subdivided, amended or mortgaged, wholly or in part, immediately before this Act took effect may be ceded, transferred, let, sublet, tribute, 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 is 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 44 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

9. (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 therewith continues in force.

(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 exoneration certificate in terms of section 40 of this Act.

(5) Section 35 applies to a holder of an old order prospecting right or old order mining right.

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

10. (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.

(3) Any holder who wishes to be exempted as contemplated in subitem (1) must obtain a prescribed exemption certificate from the Minister.

Payment of compensation

11. (1) When claiming compensation for any expropriation of property, the claimant 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;
- (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) the extent of any State assistance and benefits received in respect of such property.

(2) In determining just and equitable compensation all relevant factors must be taken into account including, in addition to sections 25(2)(b) 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.

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

TABLE 1 (old order prospecting rights)**Category 1**

The common law mineral rights 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, 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 the 6(1) of the Minerals Act.

TABLE 2 (old order mining rights)**Category 1**

The common law mineral rights 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 rights 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 rights 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 rights 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.

TABLE 3 (unused old order rights)**Category 1**

A mineral right under the common law for which no a 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 together 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) and the common law mineral right attached thereto in respect of which a mining authorisation 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) 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.

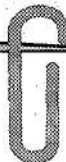
Category 10

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 Minerals Act.

Category 11

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.



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