CHAMBER OF MINES OF SOUTH AFRICA

SUBMISSIONS TO THE NATIONAL COUNCIL OF PROVINCES: SELECT COMMITTEE ON LAND AND MINERAL RESOURCES ON THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL B15D-2013

The Chamber thanks the Select Committee on Land and Mineral Resources for the invitation to make these submissions.

ABOUT THE CHAMBER OF MINES

The Chamber of Mines is a voluntary employer organisation which supports and promotes the South African mining industry. It provides strategic support and advisory input.

The Chamber on behalf of its members undertakes advocacy and lobbying but has no executive authority over its members.

The Chamber's members comprise 38 major mining companies, 32 junior mining companies, and four associations (the Aggregate and Sand Producers Association of South Africa (ASPASA), the South African Diamond Producers Organisation (SADPO), the Association of Shaft Sinkers and South African Mining Contractors, and the Clay Brick Association of South Africa (CASA)).

The Chamber's member companies represent more than 90% of South Africa's mineral production by value, contribute approximately R11,3 billion in taxes per annum, and employ approximately 400 000 people directly.

All Chamber members are required to sign and adhere to a Membership Compact. The Compact is a mandatory code of ethical business conduct to which members of the Chamber subscribe. The members are obliged to conduct their business according to the agreed Chamber values which dictate the minimum standards of conduct required of them.

PART A: CONSTITUTIONAL ISSUES

1 Introduction

1.1 In terms of s79(1) of the Constitution of the Republic of South Africa, 1996 ("*the Constitution*"), the President of the Republic of South Africa referred back the Bill to Parliament on two substantive grounds of unconstitutionality, namely:

> "*a. The definition of "This Act" is likely unconstitutional in that the amended definition elevates the Codes of Good Practice for the South African Minerals Industry, the Housing and Living Conditions Standards for the Minerals Industry and the Amended Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry to the status of national legislation. In addition, in terms of Section 74 of the Amended Act, the Minister is given the power to amend or repeal these instruments as and when the need arises effectively by-passing the constitutionally mandated procedures for the amendment of legislation;*
>
> *b. As amended, Sections 26(2B) and 26(3) appear to be inconsistent with South Africa's obligations under the General Agreement on Trade and Tariffs (GATT) and the Trade, Development and Cooperation agreement (TDCA) insofar as they appear to impose*

quantitative restrictions on exports in contravention of GATT and TDCA and in doing so render the state vulnerable to challenges in international fora;".

1.2 The National Assembly has however dismissed the abovementioned Presidential reservations.

1.3 The Chamber submits that the above Presidential reservations were correct, for the reasons which follow below and has obtained opinions from Adv CDA Loxton SC and Adv D Unterhalter SC on such reservations agreeing with the views of the President. If the Bill remains unchanged in these respects the President should in terms of s79(4)(b) of the Constitution refer the Bill to the Constitutional Court for a decision on the Bill's constitutionality. The need for this would be avoided if the Bill were amended in the manner suggested by the Chamber below.

2 **Clauses 1(zD), 20(e), apparently newly proposed 35(b), and 74 of the Bill: "*this Act*" and related issues**

2.1 The above clauses of the Bill respectively deal with the following sections of the Mineral and Petroleum Resources Development Act, 2002 ("*MPRDA*").

(1) Clause 1(zD) proposes to amend the definition of "*this Act*" in s1 of the MPRDA so as to include the Codes of Good Practice, the Housing and Living Conditions Standards, and the Mining Charter.

(2) Clause 20(e) proposes to insert a new s25(2)(fA) into the MPRDA so as to provide that holders must comply with the requirements of the Charter.

(3) The apparently newly proposed clause 35(b) proposes to insert a new s47(1)(f) into the MPRDA so as to provide that the Minister may suspend or cancel a right if the holder has contravened the Charter and the Standards.

(4) Clause 74 of the Bill proposes to insert new ss100(3) and (4) into the MPRDA whereby the Minister must:

(a) when granting applications for prospecting rights and mining rights impose the Standards, the Codes and the Charter; and

(b) as and when the need arises amend or repeal the Standards, the Codes and the Charter.

2.2 In regard to the above clauses the Chamber submits the following.

(1) The inclusion of the Codes, the Standards and the Charter into the definition of "*this Act*" in s1 of the MPRDA would transform these instruments as developed by the Minister into Parliamentary legislation thus offending against the constitutionally enshrined separation of powers between the legislature and the executive, and cannot elevate them to even subordinate legislation let alone Parliamentary legislation.

(2) The same applies to the proposed new ss25(2)(fA) and 100(3) in the MPRDA and the apparently newly proposed s47(1)(f), the effect of which would be to elevate what are only guidelines into a form of subordinate legislation.

(3) The above issues are, as the President pointed out, exacerbated by the proposed s100(4) which would, read with the proposed new definition of "*this Act*", empower the Minister to amend or repeal the Parliamentary legislation now by definition constituted by the Codes, the Standards and the Charter.[1]

(4) In terms of ss44, 55 and 239 of the Constitution, national legislative authority is vested in Parliament, including to amend legislation, and the definition of national legislation includes subordinate legislation made in terms of Parliamentary legislation, and

[1] The Constitutional Court in *Executive Council, Western Cape Legislature & Others v President of the Republic of South Africa & Others* 1995 (4) SA 877 (CC) declared a provision in terms whereof the President was empowered to amend an Act of Parliament and its schedules by proclamation, unconstitutional and invalid.

Parliament may delegate its power to make delegated legislation to the executive. However, Parliament may not delegate its function to make national legislation.[2]

(5) The Chamber reiterates the comments which it initially made on the draft Bill in regard to the definition of "*this Act*" namely that the Supreme Court of Appeal has criticised attempts to give policy the force of legislation.[3] The Chamber there also pointed out that given the vagueness and ambiguity of the Codes, Standards and Charter, these instruments as developed by the Minister were not designed to constitute legislation, and if that were done it would offend against the rule of law principle in s1(c) of the Constitution since laws must be clear and comprehensible by those governed by them.

(6) The effect of the proposed inclusion of the Codes, Standards and Charter in the definition of "*this Act*" is that the use of the term "*this Act*" in punitive provisions[4] will mean that the contravention of "*this Act*" would apply also to the Code, the Standards and the Charter, irrespective of what the content of these Ministerially developed instruments is, thus evidencing that the legislature would have no control or oversight and would delegate its legislative obligations by giving a blank cheque to the executive to determine such instruments, and then imposing obligations and sanctions for contravention on non-compliance with such undetermined instruments.

2.3 The Chamber therefore respectfully requests the Select Committee to recommend that the above clauses be deleted from the Bill.

3 Clauses 1(q) and 21(c) and (d) of the Bill: proposed definition of "*mine gate price*" and ss26(2B) and (3) on beneficiation

3.1 The above clauses respectively deal with the following sections of the MPRDA.

(1) Clause 1(q) would insert into s1 of the MPRDA a new definition of mine gate price meaning the price (excluding VAT) of the mineral or mineral product at the time that the mineral or mineral product leaves the area of the mine or the mine processing site, and excludes charges such as transport and delivery charges from the mine area or the mine processing site to the local beneficiator.

(2) Clause 21(c) would insert a new s26(2B) into the MPRDA requiring every producer of designated minerals to offer to local beneficiators a prescribed percentage of its production of minerals or mineral products in prescribed quantities, qualities and time lines at the mine gate price or agreed price.

(3) Clause 21(d) would amend s26(3) of the MPRDA to provide that no person other than a producer (or an associated company of such producer) in respect of its own production and who has complied with section 26(2B) may export designated minerals or mineral products without the Minister's prior written approval.

3.2 The definition of "*mine gate price*" arguably does not allow for export parity pricing, so that the producer will suffer a loss by being compelled to subsidise local beneficiators. The Chamber submits that the exercise of the Minister's powers in terms of these provisions will constitute an expropriation of property within the meaning of ss25(2) and (3) of the Constitution and hence oblige the state to pay compensation to the holder in respect of the resultant loss of income.

(1) In terms of s5(1) of the MPRDA, a registered mining right is a limited real right in respect of the mineral and the land. Such mining right, including income derived from the exercise of such mining right, constitutes property.

---

[2] The Constitutional Court in the above 1995 *Western Cape Legislature* case, Para 51 stated that there is difference between delegating authority to make subordinate legislation within the framework of a statute under which the delegation is made, and assigning plenary legislative power to another body. See also *Executive Council, Western Cape v Minister of Provincial Affairs and Constitutional Development & Another, Executive Council Kwa-Zulu Natal v President of the Republic of South Africa & Others* 2000 (1) SA 661 (CC) Para 124 where the court noted that the enquiry is whether the Constitution authorises the delegation of the power in question.

[3] *Akani Garden Route (Pty) Ltd v Pinnacle Point Casino (Pty) Ltd* 2001 (4) SA 501 (SCA) Para 7.

[4] See for example ss17(1)(e), 23(1)(g), 47(1)(a), 93 and 98(a)(viii) of the MPRDA.

(2) The Constitutional Court has held[5] that a one-size-fits-all determination of what acquisition for purposes of expropriation is, is inappropriate and that a case by case determination is necessary by reference *inter alia* to the source, nature and content of the affected rights. The above provisions deal with the enforced diversion of income from the holder of the mining right to another (being the local beneficiator) in promotion of the state's industrial and economic policies. It follows that when the Minister prescribes by regulation the aspects dealt with in the above provisions, an expropriation will result, and for which, in terms of Item 12 in Schedule II to the MPRDA read with ss25(2) and (3) of the Constitution, the state will have to pay compensation to the holder of the mining right for the loss suffered by such holder in being forced to sell at a price lower than export parity price. In other words, the state will in any event ultimately pay for the subsidisation of local beneficiaters.

(3) In addition, investors who enjoy the benefit of bilateral investment treaties (BITs) will still have claims for compensation in terms of now non-renewed or terminated BITs to which South Africa was a party.[6] BITs tend to contain a broad definition of "*investment*" and of "*expropriation*". Notwithstanding such non-renewal and withdrawal by South Africa, BITs normally contain a provision that in respect of investments made while the BIT was in force its provisions continue in effect with respect to such investment for a period such as 20 years after termination.[7]

(4) All of the above of course also constitutes a considerable deterrent to investment in the mining industry in South Africa.

3.3 The Chamber further submits that the proposed ss26(2B) and (3) would indeed, in accordance with the President's reservations in that regard, be unconstitutional as being inconsistent with South Africa's international trade obligations.

(1) The Chamber submits that the effect of these provisions is that a quantity of designated minerals would have to be made available for local beneficiation, the result being that there is a quantitative limit which is placed on the designated minerals which are available for export.

(2) The Supreme Court of Appeal has held[8] by reference to s233 of the Constitution[9] that:

(a) when interpreting any legislation the courts must prefer any reasonable interpretation which is consistent with international law over any alternative interpretation which is inconsistent with international law,

(b) international law is a basis for determining the legality of subordinate legislation.[10]

(3) The Constitutional Court has also held[11] that the state's obligation in s7(2) of the Constitution to protect and fulfil the Bill of Rights in the Constitution requires that the executive in initiating legislation (i.e. by tabling a Bill) and Parliament when enacting legislation, must give effect to the obligations of the state in terms of s7(2)[12] of the Constitution to promote and fulfil the rights in the Bill of Rights; and that this includes a duty to consider international law and the obligations undertaken by South Africa under

[5] In *Agri South Africa v Minister for Minerals and Energy* 2013 (4) SA 1 (CC) Para 64.
[6] See for example Article 5(1) of the UK/SA BIT, 1994 which provides that investments of nationals or companies of either contracting party may not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (referred to as "*expropriation*") in the territory of the other contracting party except for a public purpose related to the internal needs of that party or on a non-discriminatory basis and against prompt, adequate and effective compensation which must amount to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, must include interest, and must be made without delay. See also *Piero Foresti & Others v Republic of South Africa,* ICSID Case ARB (AF) 07/01 relating to BITs between RSA and Italy and Belgo-Luxembourg.
[7] See for example Article 14 of the UK/RSA BIT, 1994 to that effect.
[8] In *Progress Office Machines cc v South African Revenue Services & Others* 2008 (2) SA 13 (SCA).
[9] Section 233 of the Constitution provides that when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.
[10] *Progress Office Machines,* Para 11.
[11] In *Glenister v President of the Republic of South Africa & Others* 2011 (3) SA 347 (CC).
[12] Section 7(2) of the Constitution provides that the state must respect, protect, promote and fulfil the rights in the Bill of Rights in the Constitution.

international law; and that the state having bound itself under international law must take reasonable measures to implement international law where such is required to protect and fulfil the Bill of Rights.[13]

(4) The consequences of the above are that international law obligations restrain the exercise of executive power that is inconsistent with them; and that such obligations may give rise to a duty on the state to take reasonable measures to give effect to such obligations. The scheme proposed by ss26(2B) and (3) would therefore be open to challenge since it violates South Africa's trade obligations as detailed below, since the only manner in which the Minister would be able to exercise his powers would be to violate international law since the exercise of such powers would result in a quantitative restriction on exports of minerals.

(5) South Africa is a member of the World Trade Organisation (WTO) which provides international measures in regard to export restrictions for member countries by way of *inter alia*:

(a) the General Agreement on Tariffs and Trade, 1994, Article XI: 1 of which limits the ability to impose export restrictions.[14]

(b) the WTO Agreement on Subsidies and Countervailings Measures, Article 3 in Part II of which outlaws the requirement to use domestic over imported goods, if the downstream beneficiation would mean that imported goods were likely to be less favoured.[15]

(c) The WTO Agreement on Trade-Related Investment Measures, Article 2(2) read with the Annex to which provide an illustrative list of Trade-Related Investment Measures (TRIMs) inconsistent with Article XI of the above GATT, 1994.[16]

(6) South Africa and the European Union entered into an Agreement on Trade, Development and Co-Operation, 1999 which came into force in 2004, Article 19 of which prohibits quantitative restrictions on exports.**[17]** In terms of Article I of GATT, 1994,**[18]** the provisions of the European Union reservation are also applicable to other non-EU WTO Members.

(7) South Africa is also a party to the Southern African Development Community Trade Protocol, 1996 which in Article 6 prohibits trade barriers.[19] Article 8 also prohibits quantitative restrictions on exports.

---

[13] *Glenister*, Paras 189 to 202 referring to s39(1)(b) in the Bill of Rights in the Constitution, whereby when interpreting the Bill of Rights a court must consider international law.

[14] Article XI: 1 provides: "*No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.*".

[15] Article 3 provides: "*Part II: Prohibited Subsidies Article 3: Prohibition 3.1 except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited: (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I; (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods. 3.2 a Member shall neither grant nor maintain subsidies referred to in paragraph 1.*".

[16] The annex in Para 2(c) refers to: "*2. TRIMs that are inconsistent with the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict: . . . (c) the exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production.*".

[17] Article 9 provides: "*1. Quantitative restrictions on imports or exports and measures having equivalent effect on trade between South Africa and the Community shall be abolished on the entry into force of this Agreement. 2. No new quantitative restrictions on imports or exports or measures having equivalent effect shall be introduced in trade between the Community and South Africa. 3. No new customs duties or imports or exports or charges having equivalent effect shall be introduced, nor shall those already applied be increased, in the trade between the Community and South Africa from the date of entry into force of this Agreement.*".

[18] Article I: 1 provides: "*1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.*".

[19] Article 6 provides: "*NON-TARIFF BARRIERS Except as provided for in this Protocol Member State shall, in relation to intra-SADC trade: (a) adopt policies and implement measures to eliminate all existing forms of NTBs. (b) Refrain from imposing any new NTBs.*".

(8) South Africa and the European Union entered into an Economic Partnership Agreement, 2016, Article 39 of which read with GATT, 1994, prohibits quantitative export restrictions.

(9) Also of relevance are the abovementioned BITs since they normally contain a "*fair and equitable treatment*" clause which prohibits subjecting investors or investments to unjustified, unreasonable or discriminatory measures.[20] This has been held in international arbitration cases to encompass transparency and non-discrimination in regulatory processes;[21] full protection and security for foreign investments;[22] acting in good faith and in a non-arbitrary manner towards foreign investors;[23] not undermining the legitimate expectations taken into account by foreign investors in making their investments.[24] As already mentioned above, the fact that South Africa has not renewed or has terminated its BITs does not stop the BITs remaining in force in regard to existing investments made during the currency of the BIT.

(10) Also relevant to this is that ss26(2B) and (3) would cause some producers to have to breach their long-term export contracts.

(11) From the above it follows that the proposed ss26(2B) and (3) would violate South Africa's abovementioned international trade agreements.

(12) In conclusion therefore:

(a) the proposed amendments entail quantitative restrictions on exports;

(b) such export restrictions breach South Africa's international law obligations;

(c) South Africa's international law obligations are of Constitutional relevance in that:

(i) they must be considered for the purpose of interpreting legislation;

(ii) international law obligations discipline the exercise of powers granted under primary legislation to make subordinate legislation; and

(iii) where an empowering statute compels the exercise of powers in a manner that breaches international law, the challenge lies against the statute itself whereby a challenge to a statute under the Bill of Rights in the Constitution recognises the importance of international law because in terms of s7(2) of the Constitution the state is under an obligation to respect its binding commitments under international law.

3.4 In the Chamber's submissions on the Bill it had at all times submitted that the proposed ss26(2B) and (3) are unconstitutional. During the consultative process undertaken by the Department of Mineral Resources the Chamber reserved its position on unconstitutionality while discussing the wording of ss26(2B) and (3). Although therefore the wording was discussed, this was subject to the Chamber's reservation of its position on unconstitutionality as outlined above and which has now again come to the fore due to the President's reservations on constitutionality of these provisions as mentioned in paragraph 1.3 above.

3.5 The Chamber therefore respectfully requests the Select Committee to recommend that the above clauses be deleted from the Bill.

PART B: OTHER KEY ISSUES

4 Introduction

[20] See Article 2.3 of the Italy/RSA BIT and Article 3(1) of the Belgo-Luxembourg/RSA BIT and the *Foresti* arbitration (supra).
[21] *Metalclad Corp v United Mexican States, ICSID (NAFTA)* Case ARB (AF) 97/1.
[22] *Ronald S. Lauder v the Czech Republic*, UNCITRAL Final Award of 3 September 2001.
[23] *Occidental Exploration and Production Company v Republic of Ecuador* (London Court of International Arbitration, Administered Case UN 3467), 1 July 2004.
[24] *Tecmed SA v United Mexican States*, ICSID Case ARB (AF) /00/2, 29 May 2003.

The Chamber wishes to indicate its support to the Select Committee of the following key issues as reflected in the undermentioned clauses of the Bill.

5 **Clauses relating to key issues and which the Chamber supports**

5.1 Clause 5 in the Bill: Invitations for applications (substituted s9)

(1) The current "*first come, first served*" order of processing of applications will be replaced with a system of Ministerial invitations.

(2) The invitation system will allow for third parties to approach the Minister and request that the Minister invite applications in respect of identified minerals and land. This is now apparently proposed to be modified to provide that any person may, after identifying an area of land and the type of mineral or petroleum, apply to the Minister for a relevant right, permit or permission and which application will be processed in terms of the MPRDA and granted upon compliance with the terms and conditions of the MPRDA and will not be subject to the Ministerial invitation process.

(3) An essential element of the new system is that the Minister, when processing applications, would be obliged to give preference to an application lodged by a person who had applied as contemplated in paragraph 5.1(2) above. The reason for such preference was to give security to persons who had incurred the costs of identifying such land and mineral or petroleum so that such persons would be first in line for a right. Without such a provision it is very unlikely that such persons would risk undertaking the operations. The Chamber therefore submits that the new s9(5) referring to such preference should be retained. See also Paragraph 9 of Part C below.

5.2 Clause 8 in the Bill: Ministerial approval for changes in shareholding of companies (s11)

(1) As far as a change of controlling interest in a listed company is concerned, Ministerial consent will be required prior to such change.

(2) As far as an unlisted company is concerned, Ministerial consent will be required to any change in interest.

(3) More detail in regard to precisely when such Ministerial consent would be required and a period for the furnishing of such consent will be set out in regulations.

5.3 Clause 75(b) in the Bill: Extension of areas (s102)

The limitation on extending an area or portion of an area with no more than an area or portion of an area than the area for which the right had been granted will not apply where the purpose of the extension is to consolidate existing adjacent rights.

5.4 Clauses 28, 29 and 30 in the Bill: Environmental legislation (ss37, 38B and 43)

(1) Environmental issues in the mining industry are now regulated in terms of the National Environmental Management Act, 1998 ("*NEMA*") with the Minister of Mineral Resources being the implementing authority. Appeals will be heard by the Minister of environmental affairs. Clause 28 in the Bill therefore reflects the changes which have already been brought about in terms of the MPRDA Amendment Act, 2008 and the NEMA Amendment Act, 2008.

(2) The transitional provisions in the proposed s38B reflect what is already contained in NEMA.

(3) Residue stockpiles and residue deposits were to be regulated under NEMA and not under the National Environmental Management: Waste Act, 2008, an aspect which is currently being addressed by the Department of Environmental Affairs.

(4) Regarding the retention of financial provision for post-closure liabilities, individual evaluation will be made both of the amount and of the period, and no fixed period is set out in the Bill.

5.5 Clause 30 in the Bill: Historic residue stockpiles and residue deposits

(1) Ownership of historic residue stockpiles and deposits will continue for two years from commencement of the Amendment Act.

(2) The holder of a mining right or mining permit which owns historic residue stockpiles or deposits within the mining area will merely need to amend the mining work programme so as to include such stockpiles or deposits.

(3) In regard to historic residue stockpiles and deposits which are located outside the mining area, the owner would have the exclusive right during the above two year period within which to apply for a mining right or mining permit, failing which the custodianship of such stockpile or deposit will fall to the state and in respect of which the Minister will be entitled to invite applications in terms of the new s9 which is discussed in paragraph 5.1 above.

6 Conclusion

The Chamber therefore respectfully requests the Select Committee subject to the qualification in paragraph 5.1 above, to recommend the retention and enactment of the above clauses.

PART C: TABLE OF OTHER PROPOSED AMENDMENTS PUT FORWARD BY THE DEPARTMENT OF MINERAL RESOURCES

7 Introduction

7.1 The Chamber understands that a table of other proposed amendments to the Bill has been put forward for consideration by the Provincial Legislatures.

7.2 The Chamber wishes to make submissions on certain of such proposed amendments and as detailed below.

8 Relevant proposed amendments in the table

8.1 Clause 1(i): Amended definition of "*effective date*" in s1 of the MPRDA

(1) In the *Mawetse* judgment[25] the Supreme Court of Appeal held that the duration of a right granted in terms of the MPRDA commences when the applicant receives notice from the Department of Mineral Resources of the grant of the applicant's application for such right, and not on the effective date as defined.

(2) The Chamber submits that the commencement date of the right should be on the effective date as currently defined, and that accordingly the definition of "*effective date*" should read:

" *'**effective date**' means the date on which the relevant permit is issued or the relevant right is executed, and on which date, notwithstanding the date of grant of the application for such permit or right or the date of notification to the applicant of such grant, the duration of the relevant permit or right shall commence and which issue or execution shall occur within a prescribed period after such notification;*".

8.2 Clause 5: Proposed deletion of proposed s9(5) in the MPRDA: invitations for applications

The Chamber refers to its comment on s9 in Part B, paragraph 5.1, above where, for the reasons there set forth, the Chamber requests the retention rather than the deletion of the proposed s9(5).

[25] *Minister of Mineral Resources v Mawetse (SA) Mining Corporation (Pty) Ltd* 2016 (1) SA 306 (SCA).

8.3 Clause 12(e): Deletion of s17(2)(b): concentration

The Chamber respectfully agrees with this clause but submits that a new sub clause needs to be inserted into clause 26 of the Bill to the effect that s33(c) of the MPRDA, which also refers to concentration, also be deleted.

8.4 Clause 20(c), Proposed s25(2)(fA) and the further proposed amendment thereto: codes, standards and Charter

For the reasons in Part A above, the Chamber submits that the proposed s25(2)(fA) should be deleted and hence also that the above further proposed amendment thereto not proceed.

8.5 Clause 22: Proposed s27(1)(c): Mining permits

The Chamber has members who are not all Black owned or controlled. Some of them, including the members of ASPASA (the Aggregate and Sand Producers Association of South Africa) for quarrying purposes and the members of the South African Diamond Producers Association (SADPO) for alluvial diamond digging purposes, sometimes do need to apply for mining permits since the minerals in question can be mined optimally within three years and the relevant mining areas do not exceed five hectares, within the meaning of s27(1) of the MPRDA.

An unintended consequence could be that if there is no Black owned or controlled company which his interested in applying for or is a qualifying applicant for the relevant mining permit, the mining opportunity will go to waste, which would not accord with the object in s2(e) of the MPRDA of promoting mineral resource development in South Africa.

The Chamber therefore does not agree that such permits should be reserved for black owned and controlled companies.

8.6 Clause 35: Proposed new s47(1)(f): Contravention of Codes, Standards or Charter

For the reasons in Part A above, the Chamber respectfully requests that this proposed amendment not be adopted.

8.7 Clause 57: Proposed new s80(2A): Exploration rights

The Chamber respectfully agrees with the proposed s80(2A) but submits that in clause 57(b) the reference in s80(2) to the Mining Charter needs to be replaced with a reference to the Petroleum Charter which is proposed in the new s100(5) in clause 74.

CONCLUSION

The Chamber again thanks the Select Committee for affording it the opportunity to make these submissions, and should be grateful for the opportunity to deliver these submissions orally at the hearings should the Select Committee convenes such for that purpose, and would be pleased to provide any further information which the Select Committee might request.

R Baxter
Chief Executive Officer
Chamber of Mines of South Africa

6 March 2017