



CHAMBER OF MINES
of South Africa

**PRESENTATION TO THE PARLIAMENTARY SELECT
COMMITTEE ON LAND AND MINERAL RESOURCES
PUBLIC HEARINGS ON THE MINERAL AND PETROLEUM RESOURCES
DEVELOPMENT AMENDMENT BILL B15D-2013**

28 JUNE 2017



**SUBMISSIONS TO THE PARLIAMENTARY SELECT
COMMITTEE ON LAND AND MINERAL RESOURCES ON
THE MINERAL AND PETROLEUM RESOURCES
DEVELOPMENT AMENDMENT BILL**

B15D-2013

Chamber of Mines - Who we are



- Voluntary employer organisation that supports and promotes the SA mining industry - provides strategic support and advisory input
 - Advocacy and lobbying - no executive authority over its member companies
 - Members comprise:
 - 38 major mining companies
 - 32 junior mining companies
 - 4 associations - Aggregates, Sands Producers Association of Southern Africa (ASPASA), South African Diamond Producers Organisation (SADPO), Association of Shaft Sinkers and SA Mining Contractors, Clay Brick Association of South Africa (CASA)
 - Chamber member companies:
 - represent more than 90% of SA's mineral production by value
 - contribute around R11.3 billion in taxes per annum
 - employ around 400,000 people directly
-

Contents

A. CONSTITUTIONAL ISSUES

- Introduction
- “*this Act*” and Related Issues
- Beneficiation and Related Issues

B. OTHER KEY ISSUES

- Introduction
- Other Key Issues
- Chamber Request

C. DEPARTMENT OF MINERAL RESOURCES TABLE OF OTHER PROPOSED AMENDMENTS

- Introduction
 - Amendments in Table
-

A. CONSTITUTIONAL ISSUES

□ INTRODUCTION

- PRESIDENTIAL RESERVATIONS
 - “*this Act*” (ss1 and 100(4), MPRDA)
 - Beneficiation (ss26(2B) and (3), MPRDA)

 - NATIONAL ASSEMBLY DIFFERS

 - CHAMBER SUPPORTS PRESIDENT
-

A. CONSTITUTIONAL ISSUES (contd.)

□ “*this Act*” AND RELATED ISSUES

○ BILL PROPOSALS

- s1, “*this Act*”: to include Codes, Standards and Charter
 - s25(2)(fA): obligation to comply with Charter
 - s47(1)(f): suspension or cancellation on contravention of Charter and Standards
 - s100(3): Standards, Codes and Charter as conditions
 - s100(4): amendment and repeal of Standards, Codes and Charter
-

A. CONSTITUTIONAL ISSUES (contd.)

○ CHAMBER SUBMISSIONS

- Transformation of Codes, Standards and Charter into Parliamentary Legislation
- Offends against separation of powers between legislature and executive
 - Means Minister could amend or repeal Parliamentary legislation
 - Parliament cannot delegate its functions to make plenary legislation
 - Codes, Standards and Charter are not designed to be legislation
 - Punitive provisions in the MPRDA would apply without Parliament having control over the Codes, Standards and Charter

(Western Cape Legislature, 1995 and 2000; Akani)

○ CHAMBER REQUEST

- Above clauses be deleted
-

A. CONSTITUTIONAL ISSUES (contd.)

□ BENEFICIATION AND RELATED ISSUES

○ BILL PROPOSALS

- s1, “*mine gate price*”: price at mine gate
- s26(2B): producers obliged to offer prescribed percentage of production in prescribed quantities, qualities and timelines at mine gate price or agreed price
- S26(3): no exports (other than by producers who have so offered) without Ministerial approval

○ CHAMBER’S SUBMISSIONS

- Producers suffer loss between export price (higher) and mine gate price (lower)
 - Expropriation of part of producer’s income per s25(2), Constitution
 - Property (loss of income)
 - Acquisition (by the State)
- (Agri)
-

A. CONSTITUTIONAL ISSUES (contd.)

- State will have to compensate for such expropriation per s25(3), Constitution and MPRDA Schedule II Item 12
 - Claims for compensation under bilateral investment treaties
 - Broad definitions of “*investment*” and of “*expropriation*”
 - Survival of claims notwithstanding termination
(*Foresti*)
 - Deterrent to investment
- Unconstitutionality for inconsistency with RSA’s international trade obligations
- Restricts the quantity of minerals available for export
 - s233 of the Constitution recognises international law:
 - in interpretation of legislation
 - in determination of legality of subordinate legislation
 - ss7(2) and 39(1)(b) of the Constitution (State’s obligation to give effect to the Bill of Rights) requires consideration and implementation of international law:
 - by the executive (the Minister) in tabling a Bill, and
 - by the legislature in enacting legislation
(*Progress Office Machines; Glenister*)
-

A. CONSTITUTIONAL ISSUES (contd.)

- Parliament in enacting ss26(2B) and (3) would violate SA's international law obligations (the only way in which the Minister could implement these provisions would violate such obligations)
 - International agreements which would be contravened:
 - GATT, 1994
 - WTO Agreement on Subsidies and Countervailing Measures
 - WTO Agreement on Trade Related Investment Measures
 - SA/EU Agreement on Trade, Development and Co-Operation, 1999
 - Southern African Development Community Trade Protocol, 1996
 - SA/EU Economic Partnership Agreement, 2016
 - Abovementioned Bilateral Investment Treaties (Fair and Equitable Treatment clauses)
 - Related to the above: ss26(2B) and (3) will cause producers to breach their long-term contracts
 - Therefore:
 - Ss26(2B) and (3) entail restrictions on quantities of exports
-

A. CONSTITUTIONAL ISSUES (contd.)

- Ss26(2B) and (3) breach SA's international trade law obligations
 - SA's international law obligations are of constitutional relevance to:
 - Interpretation of legislation
 - Exercise of subordinate powers
 - Parliament's making of legislation
 - CHAMBER'S REQUEST
 - The above clauses be deleted from the Bill
-

B. OTHER KEY ISSUES

□ INTRODUCTION

- CHAMBER SUPPORTS VARIOUS CLAUSES ON OTHER KEY ISSUES

□ OTHER KEY ISSUES

- INVITATIONS FOR APPLICATIONS (s9)
 - Dual system: Ministerial invitations, and retention of voluntary applications
 - Chamber requests reinstatement of s9(5) (preference)
 - TRANSFERS OF PARTS OF RIGHTS (s11 (2A))
 - Facility for transfer of parts of rights coupled with applications for amendment (s102) and for new right (ss16 or 22)
 - EXTENSION OF AREAS (s102 (2)(a))
 - Extension of not greater than the existing area
 - Such limitation not applicable to consolidations of existing adjacent rights
 - ASSOCIATED MINERALS (ss102(2)(c), (3) and (4))
 - Facility for mining, declaration, and addition, of associated minerals
-

B. OTHER KEY ISSUES (cont'd)

- ENVIRONMENTAL LEGISLATION (ss37, 38B and 43)
 - Accords with existing move to NEMA under Minister of Mineral Resources
 - Reflects transitional arrangements in NEMA
 - Residues also to be governed by NEMA not Waste Act
 - Case-by-case evaluation of post-closure financial provision (amount and period)
 - Chamber supports, but suggests further alignment of s38B with the transitional provisions in the National Environmental Management Laws Amendment Bill B14-2017
- HISTORIC RESIDUE STOCKPILES
 - Ownership for two years
 - Within mining area: holder must amend mining work programme
 - Outside mining area: owner has two years to apply for mining right or mining permit

□ **CHAMBER REQUEST**

- RETENTION AND ENACTMENT OF ABOVE CLAUSES AS AMENDED PER TABLE OF AMENDMENTS
-

C. DEPARTMENT OF MINERAL RESOURCES TABLE OF OTHER PROPOSED AMENDMENTS



□ INTRODUCTION

- TABLE OF PROPOSED AMENDMENTS
- CHAMBER SUBMISSION ON SOME AMENDMENTS

□ AMENDMENTS IN TABLE

- s1: “*EFFECTIVE DATE*”
 - Table proposal
 - Prescribed period for issue or execution of permit or right
(*Mawetse*)
 - Chamber request
 - Commencement on issue or execution of permit or right
-

C. DEPARTMENT OF MINERAL RESOURCES TABLE OF OTHER PROPOSED AMENDMENTS (cont'd)



- Ss9(2) and (5): DUAL INVITATION/APPLICATION SYSTEM WITH PREFERENCE TO APPLICANT
 - Table Proposal
 - Retention of Voluntary Application System: Chamber supports
 - Delete s9(5) (preference)
 - Chamber request
 - Retain s9(5) (preference)
-

C. DEPARTMENT OF MINERAL RESOURCES TABLE OF OTHER PROPOSED AMENDMENTS (cont'd)



- s17(2)(b): CONCENTRATION
 - Table Proposal
 - Delete: Chamber supports
 - Chamber Request
 - Delete both ss17(2)(b) and 33(c)

 - s25(2)(fA): COMPLIANCE WITH CODES, STANDARDS AND CHARTER
 - Table Proposal
 - Insert reference to Standards
 - Chamber Request
 - Delete s25(2)(fA) for unconstitutionality: see A above
-

C. DEPARTMENT OF MINERAL RESOURCES

TABLE OF OTHER PROPOSED AMENDMENTS (cont'd)



- s27(1)(c): MINING PERMITS
 - Table Proposal
 - Reserve mining permits for Black owned and controlled companies
 - Chamber Request
 - Delete since:
 - Chamber members, whether Black owned and controlled or not, need mining permits
 - The Mining Charter empowerment ownership target is 26% (or increased % in the Reviewed Mining Charter) which should remain applicable to mining permits
 - The proposal is unconstitutional in contravening:
 - the right to equality (s9, Constitution)
 - the right to freedom of trade, occupation and profession (s22, Constitution)
 - Parliamentary procedure (s76, Constitution and the Joint Rules of Parliament)

C. DEPARTMENT OF MINERAL RESOURCES TABLE OF OTHER PROPOSED AMENDMENTS (cont'd)



- S47(1)(f): CONTRAVENTION OF CODES, STANDARDS AND CHARTER
 - Table Proposal
 - Suspension or cancellation on contravention of Codes, Standards and Charter
 - Chamber Request
 - Delete s47(1)(f) for:
 - Unconstitutionality: see A above
 - Unconstitutional Parliamentary procedure (s76, Constitution, and the Joint Rules of Parliament)
 - S80(2A): EXPLORATION RIGHTS
 - Table Proposal
 - Applicants to comply with Mining Charter
 - Chamber Request
 - Replace with reference to Petroleum Charter
-

THANK YOU
