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GENERAL NOTICE

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DEPARTMENT OF MINERAL AND ENERGY

MINERAL DEVELOPMENT DRAFT BILL

The Mineral Development Draft Bill, 2000, is hereby published for public comment. Comments should be submitted in writing to:

The Director-General
Attention: Mr. Jacinto Rocha
Department of Minerals and Energy
Private Bag X 59
PRETORIA

Written comments may also be faxed to (012) 322-8955 or sent by e-mail to seczul@mepta.pwv.gov.za

Copies of the draft Bill can be obtained from:

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

Written comments must be received not later than 31 March 2001

EXPLANATORY NOTES TO THE MINERAL DEVELOPMENT BILL

Introduction

The preamble of the Bill, delineates the point of departure of the Bill.

The fundamental principles which underpins this Bill are -

- a. mineral resources is the common heritage of all South Africans and belongs collectively to all the peoples of South Africa;
- b. it is a universally recognised right of a State to exercise full and permanent sovereignty over all its natural resources;
- c. public trusteeship of South Africa's mineral resources;
- d. to redress the results of past racial discrimination and ensure the historically disadvantaged persons participate in the minerals and mining industry and benefit from the exploitation of the nation's mineral resources;
- e. security of tenure for prospecting and mining operations;
- f. environmental protection and sustainable development; and
- g. promotion of local and rural economic development and social upliftment of communities affected by mining.

The minerals and mining law dispensation proposed in the draft Bill is based on the universally accepted principle that mineral resources are part of South Africa's national patrimony and that the State is the custodian of the nation's mineral resources. It is from the aforementioned principles that the State derives its entitlements to control, administer, manage access to South Africa's mineral resources, to grant prospecting rights and mining rights and issue retention permits.

Therefore, on commencement of the new legislation, prospecting rights, mining rights, retention permits and permission to remove minerals will only be granted by the State.

As far as possible the Bill reduces ministerial discretion by ensuring that discretionary powers are exercised based on prescribed criteria.

Chapter 1- Definition

Defines certain terms and words in the Bill.

Chapter 2

This Chapter, amongst others, sets out the objectives of the Bill. The application, implementation and interpretation of this Bill, will be guided by it.

It further gives effect to the principle that mineral resources are a part of the national patrimony and the State is the custodian of the nation's mineral resources.

Chapter 3 - Administration

This Chapter deals with the administration of the Bill and empowers the Minister to divide the country into regions and to appoint the Director: Mineral Development.

Chapter 4 - Minerals Resources Management

Under the new dispensation, the State will play a pro-active role in the promotion of the development of the nation's mineral wealth and the regulation of the minerals and mining industry.

It provides measures to enable the State, as custodian of the nation's mineral resources, to manage the development of such resources.

It makes provision for specific measures to be taken by the Minister to-

- a. promote rural and local economic development;
- b. promote the participation of historically disadvantaged persons who wish to participate in the minerals and mining industry; and
- c. promote beneficiation and value adding to the nation's mineral resources.

It further deals with the submission of and access to exploration information.

It ensures that potential or actual retrenchments in the mining industry take place in terms of the provisions of the Bill to minimize social disruption.

Chapter 5: Mineral Regulation

Sets out the application procedure, consultation process and the criteria for granting or refusing prospecting rights or mining rights and issuing or refusing retention permits.

It also requires each mine to have a social plan which provides for the remediation of negative socio-economic impact of mines. Furthermore, it provides extensively for environmental management and control.

Generally it attempts to remove as much discretion as possible on matters relating to the granting and refusing of prospecting rights, mining rights and issuing of retention permits and guarantee automatic progression from prospecting into mining.

CHAPTER 6: MINERAL AND MINING DEVELOPMENT BOARD

The proposed Mineral and Mining Development Board will be established to serve the Minister in an advisory capacity.

CHAPTER 7: TRANSITIONAL ARRANGEMENTS

This Chapter ensures that active prospecting and mining operations continue to operate uninterrupted.

It provides for the replacement of all old order rights with either prospecting rights or mining rights granted in terms of the provisions of the Bill. Furthermore, opportunity is given to all holders of old order rights to comply with the provisions of the Bill.

However, should the holder of an old order right not comply with the provisions of this Chapter, the old order right will, nevertheless, lapse at the end of a predetermined period.

The various transition periods to allow holders of old order rights to change over to the new dispensation are as follows:

- a. Five years in respect of old order rights held in connection with any active mining operation;
- b. Two years in connection with old order rights held in connection with any active prospecting operations; and
- c. One year in respect of old order rights not held in connection with any active prospecting or mining operations. These holders are given an opportunity to present to the Minister plans on how such holders intend develop the mineral resources related to such rights. Failure to do so entitles the Minister to grant prospecting or mining rights to other applicants.

Subject to the provision contained in this Chapter, approved environmental management programmes, surface rights permits held in connection with mining operations and permissions to remove and dispose of any mineral will continue to be in force.

CHAPTER 8: TRADE IN DIAMONDS

This Chapter repeals the Diamond Act, 1975 and transfers all the functions of the Diamond Board to the Director-General: Minerals and Energy or the Commissioner of the South African Revenue Services.

CHAPTER 9: PETROLEUM EXPLORATION AND PRODUCTION

Certain aspects of the upstream petroleum industry (exploration and production), are specifically provided for in this Chapter. It stipulates the functions of the South African Agency for the Promotion of Petroleum Exploration and Exploitation, a subsidiary of the Central Energy Fund ('CEF') and sets out the regulatory framework for the upstream petroleum industry.

CHAPTER 10: GENERAL AND MISCELLANEOUS

Deals with matters of general and varied nature, which will assist, in the administration, implementation and enforcement of the provisions of this Bill.

DRAFT

MINERAL DEVELOPMENT BILL

To give effect to the principle that mineral resources are the common heritage of all South Africans, provide for the recognition of the State as the custodian of the nation's mineral resources; provide for a legislative framework within which the nation's mineral wealth can be developed to its fullest potential; to promote economic growth through the development of mineral resources within a framework of sustainable development, co-operative governance and national environmental policy; to regulate orderly prospecting for and mining of mineral resources, to regulate the possession, trade in and processing of diamonds, to provide for the exploration and production of petroleum and to provide for matters connected therewith.

PREAMBLE

Recognising that mineral resources are a non-renewable national asset;

Acknowledging that South Africa's mineral resources belong to the nation;

Bearing in mind that the State is the custodian of the nation's mineral resources;

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

Desiring to promote local and rural economic development and social upliftment of communities affected by mining;

Reaffirming the State's commitment to bring about equitable access to all South Africa's mineral resources;

Considering the State's obligation under the Constitution to take legislative measures to redress the results of past racial discrimination;

Reaffirming the State's commitment to guarantee 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 ENACTED by the Parliament of the Republic of South Africa, as follows:-

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CHAPTER 1

INTRODUCTION

1. Definitions

(1) In this Act, unless the context shows that another meaning is intended?

- i. **?applicant?** means the person who has applied for a prospecting right, mining right or retention permit;
- ii. **?associated mineral?** means any mineral which occurs in mineralogical association with, and in? the same ore deposit as the primary mineral being mined, where it is physically impossible to mine the primary mineral without also mining the mineral associated therewith;
- iii. **?Board?** means the Minerals and Mining Development Board established in terms of section 76;
- iv. **?Chief Inspector?** means the Chief Inspector appointed in terms of section 48 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);
- v. **?community?** means any group historically disadvantaged persons? who share common heritage and is under the jurisdiction of a traditional leader;
- vi. **?Constitution?** means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- vii. **?Committee for Environmental Co-ordination?** means the committee referred to in section 7 of the National Environmental Management Act, 1998 (Act No.107 of 1998);
- viii. **?the department?** means the Department of Minerals and Energy;
- ix. **?Director: Mineral Development?** means any senior officer appointed in terms of section (8)(1) of this Act;
- x. **?Director-General?** means the Director-General of the Department of Minerals and Energy;
- xi. **?environment?** means the surroundings within which humans exist and that are made up of -
 - a. the land, natural resources and the atmosphere of the earth;
 - b. micro-organisms, plant and animal life;
 - c. any part or combination of (a) and (b) and the relationships among and between them; and
 - d. the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;
- xii. **?environmental management programme?** means the approved environmental management programme referred to in section 67(3)(b) in which the impacts on the environment generated by the prospecting or mining operations are recorded and it is demonstrated when and how such impacts will be managed by the holder through the satisfactory prevention or remediation of such impacts and includes any amendments thereto made in accordance with the requirements of this Act;
- xiii. **?employee?** means -
 - a. any person, excluding an independent contractor, who works for the holder of a prospecting right or mining right or retention permit and who receives, or is entitled to receive, any remuneration; and
 - b. any other person who in any manner assists in carrying on or conducting? the business of the holder;
- xiv. **?exclusionary act?** means any act or practice that impedes or prevents any person from entering into, or expanding within the mineral and mining industry or a market;
- xv. **?exploration?** means any operation, including but not limited to prospecting? undertaken to collect information or data with the main purpose? to ultimately search for any mineral, and includes ?
 - a. geological, geophysical, geochemical, palaeontological, aerial, magnetic, gravity or seismic surveys and the appraisal of such surveys

- and drilling for appraisal purposes;
 - b. the study of the feasibility of any prospecting or mining operation to be carried out in such prospecting area or mining area;
- xvi. **?financial guarantee?** means the surety that applicants for or holders of prospecting right or mining right must provide to the Department, guaranteeing the availability of sufficient funds to rehabilitate prospecting or mining areas in the event that the responsible person or company fails to undertake such rehabilitation;
- xvii. **?historically disadvantaged?** means a person who
- a. is one of a category of individuals who, before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993, came into operation, were disadvantaged by unfair discrimination on the basis of race;
 - b. is an association, a majority of whose members are individuals referred to in paragraph (a);
 - c. is a juristic person other than an association, and individuals referred to in paragraph (a) own and control a majority of its issued capital or member's interest and are able to control a majority of its votes; or
 - d. is a juristic person or association, and persons referred to in paragraphs (a), (b) or (c) own and control a majority of its issued share capital or members interest and are able to control a majority of its votes.
- xviii. **?holder?** means, in relation to -
- a. a prospecting right or mining right or retention permit, the person to whom such right or permit has been granted or issued;
 - b. an old order right, the registered holder of such right or the person to whom such right was granted; or
 - c. a mine, the owner of a mine
- xix. **?mine?** means, when
- a. used as a noun -
 - aa. any excavation in the earth, including the portion under the sea or under any other water or in mine residue deposit whether being worked or not, made for the purpose of winning a mineral; or
 - bb. any other place where a mineral deposit is being exploited, including the mining area and all buildings, structures, machinery, mine residue deposit access roads or objects situated on such area and which are or intended to be used in connection with the winning, treating or preparing minerals or obtaining or extracting any mineral or metal by any mode or method or for the purpose of dressing mineral ores, but excluding a mine in respect of which an exoneration certificate has been issued in terms of section 73 of this Act;? and
 - b. used as a verb, the making of any excavation referred to in paragraph (a)(aa), or the exploitation of any mineral deposit in any other manner, for the purpose of winning a mineral, including any ongoing prospecting in connection with the winning of such a mineral;
- xx. **?mineral?** means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth, in or under water or in mine residue deposits and having been formed by or subjected to a geological process including sand, stone, rock, gravel and clay, as well as soil but excludes water, natural oil, petroleum, topsoil and peat;
- xxi. **?mine residue?** means any waste material, or mineral discard, whether in solid, liquid or gaseous form derived from a mining operation or a prospecting operation

- or processing of any mineral or ash produced from energy generation;
- xxii. **?mine residue deposit?** means a dam, dump, heap, pile, layer, accumulation or filling consisting of ?mine residue?;
- xxiii. **?mining area?** means the area which comprises the subject of a mining right;
- xxiv. **?mining right?** means a right to mine granted in terms of section 44(1);
- xxv. **?Minister?** means the Minister of Mineral and Energy;
- xxvi. **?officer?** means any person who has been appointed in terms? of the Public Service Act, 1994 (Proclamation No.103 of 1994);
- xxvii. **?offshore installation?** means an offshore- rig, production platform, sub-sea pipelines or any offshore structure or vessel used at sea in connection with exploration or prospecting for minerals or hydrocarbons, or? mining of minerals or productions of hydrocarbons;
- xxviii. **?owner?** means, in relation to -
- a. land -
 - aa. the person in whose name the land is registered; or
 - bb. if it is state owned land, the state together with the occupant thereof;
 - b. a mine -
 - aa. the holder of the prospecting right or mining right or retention permit concerned; or
 - bb. if such prospecting right or mining right or retention permit does not exist, the last person who worked the mine or his successor in title;
- xxix. **?person?** means, where appropriate a natural or juristic person;
- xxx. **?prescribed?** means, prescribed by this Act and any regulation promulgated in terms thereof;
- xxxi. **?processing?** means, in relation to any mineral, the recovering, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gassification thereof; and processed will have a corresponding meaning;
- xxxii. **?prospecting?** means intentionally searching for any mineral by any method which disturbs the surface or sub-surface of the earth, including the portion under the sea or under other water or of any mine residue deposit' necessary for the purpose of determining the extent and economic value of the mineral resource, and excludes mine when used as a verb;
- xxxiii. **?prospecting area?** means the area of land which comprises the subject of any prospecting right;
- xxxiv. **?prospecting right? ,?** means the right to prospect? granted in terms of section 32(1);
- xxxv. **?prospecting work programme?** means the approved prospecting work programme indicating the prospecting activities to be conducted on the prospecting area during the validity of the prospecting right, including the details regarding the prospecting activities, phases, equipment to be used and estimated expenditures for the different prospecting activities and phases to c over the period required for the prospecting right and any amendment thereto made in accordance with the provisions of this Act;
- xxxvi. **?record?** means any book of account or any recorded information regardless of form or medium, and includes-
- 1. (a) information contained in any computer storage medium or record which is or can be produced by means of computer equipment, which is used for the purpose of recording information; and
 - 2. (b) a part of a record or computer printout;
- xxxvii. **?rehabilitation?** means , the restoration to the satisfaction of the Director: Mineral Development, of the prospecting or mining area in accordance with the environmental management programme to, as far as is practicable, its natural state or to a safe, stable, predetermined condition and end use which is compatible with a healthy environment and with the principle of sustainable development;
- xxxviii. **?Republic? , ?**means the Republic of South Africa;

- xxxix. **Retention area** means the area of land which comprises the subject of a retention permit;
- xl. **Retention permit** means the permit issued in terms of section 53(1);
- xli. **Scoping report** means the document resulting from a preliminary assessment undertaken prior to the conducting of a comprehensive environmental impact assessment and the compilation of an environmental management programme 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 other parties; and
 - e. identify the extent of further investigation required;
- xlii. **sustainable development** means the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations;
- xliii. **this Act** includes the regulations and any condition to which any permit, right, consent, exemption, approval, notice, exonerating certificate, environmental management programme or guidelines thereanent, or directive is issued, given, granted or approved in terms of this Act;
- xliv. **topsoil** means that layer of soil covering the earth and which provides a suitable environment for the germination of seed allows the penetration of water, is a source of micro-organisms, plant nutrients and in some cases seed, and a depth of 0.5 metre or any other depth as may be determined by the Director: Mineral Development for each prospecting or mining area;
- xlv. **township or urban area** means a township as defined in section 102 (1) of the Deeds Registries Act, 1937 (Act No.47 of 1937);

(2) In this Act, where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have, unless the contrary intention appears from the relevant provisions, a corresponding meaning.

CHAPTER 2

FUNDAMENTAL PRINCIPLES

2. Objects of the Act

The objects of this Act are to -

- a. control and manage access to the nation's mineral resources in order to-
 - i. facilitate the entry of prospective investors in the industry; and
 - ii. give effect to sections 9(2) and 25(8) of the Constitution;
- b. give effect to the principle of State custodianship of the nation's mineral resources;
- c. promote economic growth and development of the nation's mineral resources;
- d. promote employment and advance the social and economic welfare of all South Africans;
- e. expand opportunities for historically disadvantaged persons to enter the mining and minerals industry or benefit from the exploitation of the nation's mineral resources;
- f. provide for security of tenure in respect of prospecting and mining operations;
- g. ensure that the nation's mineral resources are developed in an orderly and sustainable manner within a framework of national environmental policy, norms and

- standards to the benefit of all South Africans;
- h. ensure that holders of mining rights contribute towards the socio-economic development of the areas they are operating in;
- i. give effect to the universally accepted right of the State to exercise full permanent sovereignty over all mineral resources; and
- j. change the common law to the extent that it applies to mineral rights and ownership of a mineral.

3. Public trusteeship of the nation's mineral resources

(1) Mineral resources are the common heritage of all the peoples 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, has the right to -

- a. grant, control, administer and manage access to mineral resources;
- b. grant prospecting rights, mining rights, retention permits and permission to remove and dispose of any minerals;
- c. determine the fees and consideration payable in terms of this Act;
- d. exercise full permanent sovereignty over all the nation's mineral resources; and
- e. do all other things as the Act or any other law may empower or require the Minister to do.

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

(4) Subject to the provisions of this Act, when considering the granting of a prospecting or mining right, preference must be given to historically disadvantaged persons.

4. Interpretation of the Act

(1) Any interpretation of this Act must give effect to its objects.

(2) When interpreting a provision of this Act, any reasonable interpretation which is consistent with the object of this Act as stated in section (1) and international law, must be preferred over any alternative interpretation which is inconsistent with that object and international law.

(3) In so far as the common law is inconsistent with the provisions of this Act, the provisions of this Act shall prevail.

5. Entitlement to prospect, to mine and to dispose of minerals

(1) Subject to the provisions of this Act any holder of a prospecting right or a mining right is entitled to-

- i. enter the land to which such right relates;
- ii. prospect or mine for its own account on that land for the mineral or group of minerals for which such right has been granted; and
- iii. remove and dispose of any mineral or group of minerals found during the course of prospecting or mining.

(2) No person shall prospect or mine for any mineral or group of minerals without -

- i. an approved environmental management programme; and
- ii. a prospecting right or mining right granted to that person in terms of this Act.

(3) Subject to the provisions of this Act, the holder of a prospecting right is entitled to be granted a mining right in respect of the land and mineral concerned.

CHAPTER 3

ADMINISTRATION

6. Administration of the Act

(1) This Act shall be administered under the control of the Minister by the Director-General. The Director: Mineral Development must perform those functions assigned to the Director: Mineral Development in terms of this Act in accordance with and subject to the instructions and directives of the Director-General.

(2) The Director-General may exercise any power and perform any duty or function conferred upon or assigned to the Director: Mineral Development by or in terms of this Act or any other law.

7. Division of the Republic, territorial waters and continental shelf into regions

For the purpose 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 7 of the Territorial Waters Act, 1963 (Act No.87 of 1963), into regions, and the Minister may, from time to time, so amend the boundaries of such regions.

8. Appointment and functions of officer

(1) The Minister must, subject to the laws governing the public service, in respect of each region referred to in section 7, appoint an officer in the service of the Department with the appropriate qualifications and experience as Director: Mineral Development to exercise the powers and perform the duties conferred upon or assigned to the Director: Mineral Development by or in terms of this Act or any other law, and to carry out or comply with the instructions and directives which the Director-General may issue.

(2) The Director-General may designate senior managers in the service of the Department to assist the Director-General in exercising his or her powers or perform his or her functions in terms of this Act.

CHAPTE R 4

MINERAL RESOURCE MANAGEMENT

9. Powers of the Minister in case of prospecting or mining operations being conducted contrary to the objects of this Act

(1) If the holder of a prospecting right or mining right, conducts prospecting or mining operations in a manner which, in the opinion of the Minister, may detrimentally affect the objects of this Act, the Minister may-

- a. cause an investigation to be made into the matter; and
- b. after consideration of the findings of the investigation contemplated in paragraph (a), issue a written directive, ordering such holder to take such rectifying steps within a specified period as may be required by the Minister.

(2) Failure by the holder to comply with the directives referred to in subsection (1)(b) within the specified period, shall entitle the Minister to suspend or cancel such prospecting right or mining right.

(3) Before the Minister suspends or cancels the prospecting or mining right concerned, the Minister must request the holder for written reasons why he or she is conducting prospecting or mining activities contrary to the objects of this Act.

(4) In the event of the cancellation of a prospecting right or mining right, the Minister may by notice in the Government Gazette, call for applications for a prospecting or mining right in respect of the land and mineral concerned.

10. Powers of the Minister to suspend or cancel a prospecting right or mining right

(1) Subject to the provisions of this Act, the Minister may suspend or cancel any prospecting or mining right, if the holder thereof fails to-

- a. commence and continue with prospecting or mining operations within the period stated in the said prospecting right or mining right;
- b. provide the necessary finances for conducting such prospecting or mining operation;
- c. adhere to the terms and conditions of the prospecting right or mining right;
- d. conduct prospecting or mining operations in accordance with the provisions of this Act; or
- e. comply with the provisions of section 36 or 48.

(2) Before such prospecting right or mining right is suspended or can celled by the Minister in terms of subsection (1), due notice of the intention to suspend or cancel must be given to the holder thereof and the holder will be -

- a. required to give reasons in writing why the holder has failed to comply with the provisions of subsection (1); and
- b. allowed a maximum of ninety (90) days to remedy any action referred to in such notice.

(3) Should the holder fail to remedy such contravention or provide reasons acceptable to the Minister within the specified period, the prospecting right or mining right will be deemed to have been suspended or cancelled by the Minister with immediate effect.

(4) In the event of the cancellation of a prospecting right or mining right, the Minister may by notice in the Government Gazette, call for applications for a prospecting right or mining right in respect of the land and mineral concerned.

11. Powers of Minister to cause a special investigation to establish the occurrence, nature and extent of mineral resources in respect of land

(1) Notwithstanding anything to the contrary contained in this Act in relation to the granting of a prospecting right, the Minister may, if in his or her opinion it is necessary in the national interest, cause any investigation to be conducted on any land to establish if any mineral or geological formation occurs in or on such land, and if so, to establish the nature and extent thereof.

(2) Compensation in respect of any damage caused during the investigation referred to in subsection (1) may be agreed upon between the Minister and the owner of the land concerned or in the absence of such agreement, determined by arbitration in accordance with the Arbitration Act, 1965 (Act 42 of 1965), or by a competent court if the person concerned prefers the last-mentioned procedure, shall be payable by the Minister to any person in respect of any proven damage to the property of such person as a result of any investigation contemplated in subsection (1).

(3) No investigation will take place under this section prior to the expiry of a period of 30 days after publication in the Government Gazette of a notice of the intention to conduct such investigation.

(4) No entering upon land shall take place under this section before the owner or occupier or person in control of such land has been notified of the intention so to enter upon such land to conduct the investigation referred to in subsection (1).

12. Directions by Minister in relation to mining of minerals or group of minerals by holder of mining right

(1) Subject to the provisions of subsection (2), the Minister may -

- a. if any mineral or group of minerals to which a mining right relates is not won or mined and the Minister is satisfied that such mineral or group of minerals can be won or mined on a profitable basis; or

- b. having regard to, the technical and financial resources of the holder of such mining right and the prevailing marketability of any such mineral or group of minerals, if he or she is satisfied that such mineral or group of minerals, is not being won or mined at an optimal rate or in a manner calculated to effect such optimal rate, by notice in writing addressed to the holder of such mining right, direct such holder -
 - i. to take, within such period as may be specified in such notice, such steps as may be necessary and practicable to mine any such specified mineral or group of minerals;
 - ii. to mine such specified mineral or group of minerals, within such period as may be mentioned in the notice, at a specified rate, not exceeding, in the case of an increase, the capacity of the mining facilities of the holder of the mining right, as the Minister may specify in such notice; or
 - iii. to abandon, such mining right in accordance with the provisions of section 63.

(2) Before giving the direction under subsection (1) the Minister must ?

- a. in writing inform such holder of his or her intention to give a direction contemplated in subsection (1) -
 - i. setting out the reasons for such intention;
 - ii. requiring such holder to make within such period as may be specified in such notice representations to the Minister in relation to such reasons; and
- b. take into consideration any representations made by such holder.

13. Powers of the Minister in case of exercising surface rights contrary to the objects of this Act

(1) If any person in any manner uses or causes to be used or intends to use or to cause to be used the surface of any land or includes or cause it to be included or intends to include or to cause it to be included into any town planning scheme which may, in the opinion of the Minister, detrimentally affect the object of this Act, the Minister may -

- a. Cause an investigation to be made;
- b. After consideration of the comments contemplated in subsection (2), if any, and the results of the investigation contemplated in paragraph (a), issue a directive ordering such person to take such rectifying steps within a period specified in the directive as may be required by the Minister.

(2) Before any directive referred to in subsection 1(b) is issued, the Director: Mineral Development must serve written notices on the person referred to in that subsection, whereby it is notified of the steps being considered by the Minister and whereby it is given the opportunity to comment on the intention of the Minister regarding such steps within a period specified in the notice, which shall not be less than 30 days.

14. Power of Minister to prohibit or restrict prospecting or mining

The Minister may from time to time by notice in the Government Gazette having regard to the national or public interest, prohibit or restrict any prospecting or mining on any land identified by the Minister, excluding land which is the subject of a prospecting right or mining right or retention permit or any application therefor.

15. Power of Minister to expropriate any property for the purpose of prospecting or mining

(1) To achieve the objects of this Act, the Minister may expropriate any property or any right therein for public purposes or in the public interest: Provided that in determining the compensation amount, section 12 of the Expropriation Act, 1975 (Act 63 of 1975) read together with section 25(3) of the Constitution, shall *mutatis mutandis* apply as if an expropriation of property or the taking of a right has taken place in terms of the last-mentioned Acts.

(2) Any property or right therein expropriated under subsection (1), shall vest in the person at whose request it has been expropriated or if no person applied for such expropriation, it shall vest in the State.

16. Assistance to persons from historically disadvantaged groups

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

(2) The assistance referred to in subsection (1) will be on cost recovery basis.

17. Assistance to contribute to rural and local economic development

(1) Subject to the provisions of section 13 of the Public Finance Management Act, 1999 (Act 29 of 1999), the Minister may with the concurrence of the Minister of Finance and after consultation with the Minister of Provincial Affairs and Local Government, out of the royalties payable in terms of section 48(g) determine that consideration be paid for the benefit of any community or local government affected by mining, for the purpose of rural and local economic development and social upliftment.

(2) The consideration referred to in subsection (1) must be paid into a Local Economic Development Fund established for that purpose and administered by the Minister of Provincial Affairs and Local Government.

18. Powers of Minister to direct the submission of information or data

(1) The Minister may, in order to achieve the objects of this Act, direct in writing that information or data be submitted by -

- a. an applicant for a prospecting right or mining right;
- b. any holder of a prospecting right or mining right or retention permit granted or issued in terms of this Act; or
- c. any holder of a surface right in respect of land forming the subject of prospecting or mining operations or land in respect of which an application was lodged to obtain a prospecting or mining right.

19. Information and data in respect of exploration

Notwithstanding the provisions of this Act or any other law, any person who conducts exploration must in the prescribed manner in respect of such exploration operations -

- a. keep, at an address in South Africa, proper records of all activities and expenditure; and
- b. submit to the Director: Mineral Development concerned reports and financial records of expenditure.

20. Information and data in respect of boreholes and excavations

(1) Any person who proposes to drill a borehole or make any excavation for the purposes of prospecting from the surface of the land or to resume the drilling of such borehole or making such excavation, must ?

- a. give written notice to the Director: Mineral Development of his or her intention to drill such borehole or to resume such drilling or to make such excavation; and
- b. within six months after the completion of such borehole or excavation or discontinuation thereof, submit a full and correct borehole or excavation information report to the Director: Mineral Development.

(2) The information report must contain ?

- a. the exact location of the excavation or borehole
- b. the date of completion thereof;
- c. the depth thereof;
- d. the lithology and depth of the geological formation excavated or drilled through;

- e. the results of any test or analyses done on the minerals obtained from the excavation or borehole; and
- f. all other information gathered by the prospector in relation to the mineral or group of minerals, excavation or borehole.

(3) The Director: Mineral Development must submit the information referred to in subsection (1) to the Council for Geoscience established in terms of section 5 of the Geoscience Act, 1993 (Act No.100 of 1993).

(4) No core log or any information or data relating to any borehole referred to in subsection (1) may be disposed of without the prior written permission of the Minister.

21. Disclosure of information and data in respect of exploration

(1) Subject to the provisions of this Act, all information and data submitted in terms of this Act or any provision of prior legislation in relation to, exploration may be disclosed to the public: Provided that no such information or data may be disclosed -

- a. prior to the expiration of ninety (90) days after ?
 - i. the expiry, abandonment or cancellation of the prospecting right or mining right concerned unless the holder of the right concerned declared in writing that the information and data may be disclosed sooner; or
 - ii. the submission of any non-prospecting exploration information or data unless the supplier of the information and data declared in writing that the information and data may be disclosed sooner;
- b. if the holder of the prospecting right has applied for a mining right; or
- c. if the supplier of exploration information and data has applied for a prospecting right; or
- d. if the holder of a prospecting right or a mining right concerned has applied for a retention permit.

(2) No compensation is payable or can be claimed by any person who submitted information and data which are made available or disclosed in terms of this section.

22. Information and data in respect of mining, processing and marketing of minerals

(1) Any person who conducts mining must in the prescribed manner keep at an address in the Republic, proper records of all mining activities and financial records in relation thereto.

(2) The records referred to in subsection (1) must be available for inspection by the Director-General or any officer in the service of the Department authorised by the Director-General.

(3) Upon expiry, abandonment or cancellation of a mining right, the holder of such right must submit to the Director-General all records kept in terms of subsection (1) and records so submitted may be disclosed to the public.

(4) The holder of a mining right or manager of a mine or any processing plant operating separately from a mine or any person that markets any mineral or process a mineral must in the prescribed manner ?

- a. submit monthly returns with accurate information and data; and
- b. submit an audited annual financial report or financial statement reflecting a balance sheet and profit and loss account.

23. Notice of profitability and curtailment of mining operations affecting employment

(1) The holder of a mining right must notify the Director-General in writing ?

- a. where prevailing economic conditions have the effect that the profit to revenue ratio of the mine which is the subject of such right, is on average, less than 6 percent for a continuous period of twelve months; and

- b. if any mining operation is planned to be scaled down on a temporary or permanent basis or cessation of mining operations is imminent and will have the effect that more than five hundred employees or ten percent, whichever is the greater, of the labour force cumulatively in any twelve month period will be retrenched.

(2) The Minister may in respect of any notice given in terms of subsection (1)(b) and after consultation with the Minister of Labour, direct the holder of the mining right in writing to take remedial actions, subject to such terms and conditions the Minister may deem necessary to achieve the objects of this Act.

24. A. Promotion of mineral beneficiation within the Republic

(1) When considering the approval for granting a mining right, the Minister must consider whether the mineral or group of minerals for which the applicant intends to mine is capable of being beneficiated within the Republic or not.

(2) If, the Minister is of the opinion that such mineral can be beneficiated within the country, the Minister may give preference to the person who intends to beneficiate or intends to have such mineral beneficiated in the Republic.

(3) The Minister may, in order to promote the beneficiation of minerals in the Republic, on such conditions as he or she may determine, and after consultation with the Minister of Finance, decide that ?

- a. no royalties be paid by a holder of a mining right in terms of section 48(g);
- b. any royalties payable under section 48(g) be utilised for research in connection with the beneficiation of any mineral in the Republic; or
- c. any other incentive be created as the Minister, the Minister of Finance and the Minister of Trade and Industry may agree upon to encourage such beneficiation.

(4) If the Minister is of the opinion that any particular mineral commodity can economically be beneficiated further locally, he or she may instruct that such a mineral be further beneficiated according to the terms and conditions as may be determined by the Minister.

24. B. Regulation of the relationship between the landowner and holder of mining right.

(The essence of section 42 of the Minerals Act, 1991, will be incorporated)