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THE PRESIDENCY

No. 437

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It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 49 of 2008: Mineral and Petroleum Resources Development
Amendment Act, 2008.**



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Act No. 49, 2009

MINERAL AND PETROLEUM RESOURCES
DEVELOPMENT AMENDMENT ACT, 2008**GENERAL EXPLANATORY NOTE:**

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 19 April 2009.)

ACT

To amend the Mineral and Petroleum Resources Development Act, 2002, so as to make the Minister the responsible authority for implementing environmental matters in terms of the National Environmental Management Act, 1998 and specific environmental legislation as it relates to prospecting, mining, exploration, production and related activities or activities incidental thereto on a prospecting, mining, exploration or production area; to align the Mineral and Petroleum Resources Development Act with the National Environmental Management Act, 1998 in order to provide for one environmental management system; to remove ambiguities in certain definitions; to add functions to the Regional Mining Development and Environmental Committee; to amend the transitional arrangements so as to further afford statutory protection to certain existing old order rights; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 28 of 2002

1. Section 1 of the Mineral and Petroleum Resources Development Act, 2002 Act (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion before the definition of “block” of the following definition:

“ ‘beneficiation’, in relation to any mineral resource, means the following—

- (a) primary stage, which includes any process of the winning, recovering, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification thereof;
- (b) secondary stage, which includes any action of converting a concentrate or mineral resource into an intermediate product;
- (c) tertiary stage, which includes any action of further converting that product into a refined product suitable for purchase by minerals-based industries and enterprises; and

- (d) final stage, which is the action of producing properly processed, cut, polished or manufactured products or articles from minerals accepted in the industry and trade as fully and finally processed or manufactured and value added products or articles;”;
- (b) by the substitution in the definition of ‘broad based economic empowerment’ for sub-paragraph (b) (vi) of the following sub-paragraph— 5
 “(vi) the socio-economic development of communities immediately hosting, affected by **[the of]** supplying labour to operations; and”
 and
- (c) by the substitution for the definition of ‘community’ of the following definition: 10
 “ ‘community’ means a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: Provided that, where as a consequence of the provisions of this act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affect by mining on land occupied by such members or part of the community;”;
- (d) by the insertion before the definition of “day” of the following definition: 20
 “ ‘Council for Geoscience’ means the Council established by the Geoscience Act, 1993 (Act No. 100 of 1993);”;
- (e) by the substitution for the definition of ‘day’ of the following definition: 25
 “ ‘day’ means a calendar day excluding a Saturday, Sunday or public holiday and when any particular number of days are prescribed for the performance of any act, those days must 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 must be reckoned by excluding the first day and also any such Saturday, Sunday or public holiday,]**”; 30
- (f) by the insertion after the definition of the “Director-General” of the following definition:
 “ ‘effective date’ means the date on which the relevant permit is issued or the relevant right is executed;
- (g) by the insertion after the definition of environment of the following definitions: 35
 “ ‘**environmental authorisation**’ has the meaning assigned to it in section 1 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- (h) by the deletion of the definition of ‘environmental management plan’, 40
 (i) by the deletion of the definition of ‘environmental management programme’,
 (j) by the substitution for the definition of ‘exclusionary act’ of the following definition:
 “ ‘exclusionary act’ means any act or practice which impedes or prevents any person from entering into or actively participating in the mineral and 45
[mining] petroleum industry, or entering into or actively participating in any market connected with **[that]** the mineral and petroleum industries **[industry]**, or from making progress within such industry or market;”;
- (k) by the deletion of the definition of “financial provision”;
- (l) by the substitution for paragraph (c) of the definition of ‘historically disadvantaged persons’ of the following paragraph: 50
 (c) **[any]** a juristic person, other than an association, **[in]** which—
 (i) is managed and controlled by a person contemplated in paragraph (a) and that the persons collectively or as a group own and control a majority of the issued share capital or 55
members’ interest, and are able to control the majority of the members’ vote; or
 (ii) is a subsidiary, as defined in section 1(e) of the Companies Act, 1973, as a juristic person who is a historically disadvantaged person by virtue of the provisions of paragraph (c)(i);”; 60

- (m) by the substitution for the definition of ‘mine’ of the following definition:
- “ ‘mine’ means, when—
- (a) used as a noun—
- (i) any excavation in the earth, including any portion under the sea or under other water or in any residue deposit, as well as any borehole, whether being worked or not, made for the purpose of searching for or winning a mineral; 5
- (ii) any other place where a mineral resource is being extracted, including the mining area and all buildings, structures, machinery, residue stockpiles, access roads or objects situated on such area and which are used or intended to be used in connection with such searching, winning or extraction or processing of such mineral resource; and 10
- (b) used as a verb, in the mining of any mineral, 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, in, on or under the relevant mining area;”;
- (n) by the substitution for the definition of ‘mining area’ of the following definition:
- “mining area; — 20
- (a) in relation to a mining right or a mining permit, means the area on which the extraction of any mineral has been authorised and for which that right or permit is granted;
- (b) in relation to any environmental, health, social and labour matter and any residual, latent or other impact thereto, including— 25
- (i) **[adjacent surface of land or any non-adjacent surface land]** any land or surface adjacent or non-adjacent to the area as contemplated in subsection (i) but upon which related or incidental operations are being undertaken;
- (ii) **[area connected to such area by means of any road, railway line, power line, cable way or conveyor belt]** any surface of land on which such road, railway line, powerline, pipe line, cableway or conveyor belt is located, under the control of the holder of such a mining right or a mining permit and which such holder is entitled to use in connection with the operations performed or to be performed under such right or permit; and 30
- (iii) all buildings, structures, machinery, residue stockpiles, or objects situated on or in the area as contemplated in subsections (ii)(a) and (ii)(b).”; 35
- (o) by the substitution for the definition of “Mining Titles Office” of the following definition: 40
- “ **[Mining Titles Office] Mineral and Petroleum Titles Registration Office’ means the [Mining Titles Office] Mineral and Petroleum Titles Registration Office** contemplated in section 2 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967);”;
- (p) by the insertion after the definition of ‘Minister’ of the following definition: 45
- “ ‘National Environmental Management Act, 1998’ means the National Environmental Management Act, 1998 (Act No. 107 of 1998);”
- (q) by the insertion after the definition of “owner” of the following definition: 50
- “ ‘owner of works’ has the meaning contemplated in paragraph (b) of the definition of “owner” in section 102 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);”;
- (r) by the substitution for the definition of “reconnaissance operation” of the following definition:

- “ ‘reconnaissance operation’ means any operation carried out for or in connection with the search for a mineral or petroleum by geological, geophysical and photo geological surveys and includes any remote sensing techniques, but does not include any prospecting or exploration operation other than acquisition and processing of new seismic data;”; 5
- (s) by the insertion after the definition of ‘retention permit’ of the following definitions:
 “ ‘Registrar’ means the registrar of deeds as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);”; 10
- (t) by the substitution for the definition of ‘residue deposit’ of the following definition:
 “ ‘residue deposit’ means any residue stockpile remaining at the termination, cancellation or expiry of a prospecting right, mining right, mining permit, exploration right **[or]**, production right or an old order right;”; and 15
- (u) by the substitution for the definition of ‘residue stockpile’ of the following definition:
 “ ‘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 or an old order right;”. 20

Amendment of section 2 of Act 28 of 2002

- 2.** Section 2 of the principal Act is hereby amended by the substitution for paragraphs 25
 (d) and (e) the following paragraphs respectively,—
 “(d) substantially and meaningfully expand opportunities for historically disadvantaged persons, including women and communities, to enter into and actively participate in the mineral and petroleum industries and to benefit from the exploitation of the nation’s mineral and petroleum resources; 30
 (e) promote economic growth and mineral and petroleum resources development in the Republic, particularly development of downstream industries through provision of feedstock, and development of mining and petroleum inputs industries;”.

Amendment of section 3 of Act 28 of 2002

- 3.** Section 3 of the principal Act is hereby amended—
 (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 “(b) in consultation with the Minister of Finance, **[determine]** prescribe and levy, any fee **[or consideration]** payable in terms of **[any relevant Act of Parliament.]** this Act.”; and 40
 (b) by the addition of the following subsection:
 “(4) The State royalty must be determined and levied by the Minister of Finance in terms of an Act of Parliament.”.

Amendment of section 5 of Act 28 of 2002

- 4.** Section 5 of the principal Act is hereby amended—
 (a) by the substitution for subsection (1) of the following subsection:
 “(1) A prospecting right, mining right, exploration right or production right granted in terms of this Act and registered in terms of the Mining Titles Registration Act, 1967, (Act No. 16 of 1967), is a limited real right in respect of the mineral or petroleum and the land to which such right relates.”; and 50
 (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph: