

MEMORANDUM ON OBJECTS OF THE AFRICAN EXPLORATION MINING AND FINANCE CORPORATION DRAFT BILL 2015

BACKGROUND

African Exploration Mining and Finance Corporation (Pty) Ltd (AEMFC), is a wholly owned subsidiary of the Central Energy Fund (Pty) Ltd (CEF), incorporated and registered on 26 October 1944 in terms of the Companies Act, 1926 (Act No.46 of 1926) as amended. CEF is a State owned entity reporting to the Department of Energy (DoE).

Cabinet approved the hiving-off of AEMFC from CEF as an independent State entity and authorised the Minister of Mineral Resources to develop modalities to this effect. A draft Bill establishing AEMFC as an independent State owned mining entity has been developed.

The main objectives of the corporation are to acquire and develop any mining permit, Mining interests granted to the corporation on behalf of the State; to ensure that mineral resources are developed in a sustainable manner to the best interest of the people South Africa and to give effect to the state participation, optimise socio-economic development and drive the Nations Development Imperatives through mining, such as industrialisation, beneficiation, infrastructure development, food security and security of energy supply as espoused in the National Development Plan.

The main purpose of the Bill is to provide for the establishment of the corporation through an Act of Parliament. The Minister, on behalf of the State, must sign the memorandum of incorporation and any other documents necessary in connection with the formation of the company. The Corporation must be registered at the Companies and Intellectual Property Commission and issued with a registration certificate in accordance with the Companies Act.

The Corporation will apply and be granted rights in terms of the MPRDA. All the processes procedures, criteria and terms and conditions prescribed in the Act will apply to the Corporation.

SUMMARY OF THE DRAFT BILL

- Clause 1 provides for definition of terms.
- Clause 2 deals with the object of the Act which is to establish the Corporation.
- Clause 3 provides for establishment of the Corporation as a juristic person.
- Clause 4 designates the State as the sole shareholder of the Corporation.
- Clause 5 outlines the objects of the Corporation.
- Clause 6 outlines the principles of co-operative governance for effective management of operations and to minimize the duplication of functions and procedures regarding the exercise of such functions.
- Clause 7 provides for the functions of the Corporation.
- Clause 8 provides for the exercise of powers of the Corporation outside the Republic.
- Clause 9 empowers the Corporation to create subsidiary companies in consultation with the Minister and the Board.
- Clause 10 to 16 provides for composition of Board, term of office of Board, meeting and committees of the Board, disqualification of members and vacation of office by members of the Board as well as remuneration and disqualification of members of the Board.
- Clause 17 provides for the appointment and functions of the Chief Executive Officer.
- Clause 18 provides for the staff of the Corporation.
- Clause 19 provides for funds of the Corporation.
- Clause 20 and 21 provides for accounting and reporting by the Corporation in terms of the PFMA.
- Clause 22 provides for judicial management of the Corporation.
- Clause 23 deals with delegations and assignments.
- Clause 24 empowers the Minister to make regulations.
- Clause 25 provides for the short title to the Act and the date of commencement thereof.

PARLIAMENTARY PROCEDURE

The State law advisors expressed a legal opinion that the Draft Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

Further, that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18 (1) (a) of the Traditional Leadership and Governance Act, 2003 9Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.