South Africa Takes Steps to Split Oil, Gas Laws From Mining

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- Separate bills planned for oil, gas exploration and transport
- Proposals `potentially helpful' on regulation, lawyer says

South Africa is planning a new law that will separate parts of its oil and gas rules from legislation governing the mining industry, Energy Minister Tina Joemat-Pettersson said.

“The plan involves separating from the mineral regulatory framework those elements that relate to the petroleum value chain,” she told lawmakers Wednesday in Cape Town. Exploration and gas concessions will fall under the Upstream Gas Bill, “which will be derived from” the process of separating out the current Mineral and Petroleum Resources Development Act, she said. A separate Gas Amendment Bill “will encompass the midstream elements of the gas value chain,” she said.

Upstream relates to exploring and producing oil and gas while midstream involves transporting the products.

Oil and gas companies operating in South Africa have been left in limbo as legislators have stalled the MPRDA that proposed giving the state a 20 percent free stake in all new energy ventures and enabling it to buy an unspecified additional share. While Parliament approved the bill in 2014, President Jacob Zuma declined to sign it because he said it may violate the constitution. The bill was referred back to the legislature in January 2015.

Helpful Regulation

Exxon Mobil Corp. and Total SA are among those that objected to law on the grounds it’s too vague and will undermine their businesses. The Chamber of Mines, which speaks for companies including Glencore Plc and AngloGold Ashanti Ltd., supported plans to cut oil and gas from the mineral-resources bill, saying the delays deter investment in the nation that’s the world’s biggest platinum producer.

“These proposals could potentially be very helpful from a regulatory perspective,” Peter Leon, partner at law firm Herbert Smith Freehills, said by phone from Cape Town. “The real solution is to transfer the regulation of upstream oil and gas to the Department of Energy and the removal from the Department of Mineral Resources.” The energy ministry only regulates the downstream, or retail, oil and gas industry and not exploration, which “does not make sense,” he said.

While South Africa had proven reserves of 15 million barrels of oil at the end of 2013, according to Oil & Gas Journal, there is no significant production. About 70 percent of the nation’s crude needs are met through imports with the balance processed from coal and gas.

The Upstream Bill “will take into account all the comments from the Integrated Energy Plan and the Ministerial Advisory Committee, but first, the MPRDA has to be withdrawn,” Joemat-Pettersson said in a separate interview.

More Laws

The department has proposed further legislation to revive and strengthen the country’s oil and gas industry, “which will either be introduced or concluded in the financial year,” Joemat-Pettersson said.

The Petroleum Agency of South Africa Establishment Bill will set up a separate upstream gas regulator that will govern licensing and exploitation of shale gas. The agency estimates the nation’s technically recoverable reserves from the Karoo region at 36 trillion cubic feet, while the U.S. Energy Information Administration sees the resource at 390 trillion cubic feet, potentially the world’s eighth-biggest.

The Petroleum Products Amendment Bill seeks to improve enforcement of rules for wholesalers and retailers in the liquid-fuels industry, and the IPP Office Establishment Bill will formally create the Independent Power Producer Office, and define both its role and mandate, Joemat-Pettersson said.

Through the work of the office, South Africa has obtained 6,377 megawatts of renewable energy and connected 44 projects with 2,021 megawatts capacity to the national grid, with private investment in the initiative exceeding 194 billion rand ($13 billion), she said.

Long Process

The ruling African National Congress backs splitting the legislation, as the country prepares for the “potential game-changer” of oil, gas and shale exploration, it said in a document that was discussed at its National General Council meeting in October.

“The minister is trying to manage massive push-back from the Department of Mineral Resources, who do not want to surrender control of the oil and gas sectors,” Gordon Mackay, energy spokesman for the main opposition party, the Democratic Alliance, said by phone from Cape Town. “However, the separation is a requirement of the ruling ANC and so it must be done.” As the legislative program stands, current amendments to the MPRDA must first be completed, then the oil and gas laws can be separated from this.

“It is still going to be a long process,” Mackay said.

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- Mishcon de Reya says Article 50 must be invoked by Parliament
- Firm is acting on behalf of anonymous group of clients

Mishcon de Reya, a top London law firm, said it’s representing a group of unidentified clients threatening legal action against the British government if it tries to initiate the process of leaving the European Union without consulting parliament.

Britain Votes for Brexit: Full Coverage

The formal start to Brexit talks is likely to be the triggering of Article 50 of the Lisbon Treaty. Mishcon de Reya said in a statement that this process can only begin with parliament’s consent. The U.K. government’s position is that it’s a decision for whoever is prime minister after David Cameron tendered his resignation.

“The result of the referendum is not in doubt, but we need a process that follows U.K. law to enact it,” Kasra Nouroozi, a partner at the firm, said in an e-mailed statement. “Everyone in Britain needs the government to apply the correct constitutional process and allow parliament to fulfill its democratic duty, which is to take into account the results of the referendum along with other factors and make the ultimate decision."

British voters chose to sever the country from the EU in a June 23 referendum that rocked markets, plunged the main political parties into turmoil and led to the resignation of Cameron. It’s not yet clear how and when the government will trigger Article 50 and start the two-year timeline to Britain’s exit.

‘Desperate Need’

“There is a desperate need here for legal clarity,” said Jeff King, a senior law lecturer at University College London. He said there is support in the legal and academic communities for the idea that only Parliament, as the U.K.’s legislative body, has the power to invoke Article 50. “I don’t think this will be batted out of court,” he said. “There seems to be a good chance of it going up to the Supreme Court.”

Any lawsuit would likely result in a judicial review, where judges assess the legality of the government’s actions, said King. He is still hopeful a political solution can be found without the need for judicial intervention.

Mishcon de Reya’s clients have included Diana Princess of Wales, during her divorce, celebrities who had their phones hacked by News Corp. newspapers and the former owner of a bankrupt Latvian lender.

Parliament Sovereignty

Mishcon de Reya hired barristers David Pannick, Tom Hickman, Rhodri Thompson and Anneli Howard to act in the matter. The law firm said it has been in touch with government lawyers since June 27 to “seek assurances that the government will uphold the U.K. constitution and protect the sovereignty of parliament in invoking Article 50.”

The firm declined to comment on the identity of its clients or why they needed to remain anonymous. Political blogger Guido Fawkes said this morning that Alex Chesterman, the millionaire co-founder of property website Zoopla, was involved in the legal fight.

“The action is being supported by a wide range of clients and hundreds of supporters including businessmen like Alex, academics and others who want to make sure that the correct constitutional process is followed and this is done right,” said Lawrence Hall, a Zoopla spokesman, who said the company itself isn’t involved.

David Cameron’s position is that the next Prime Minister should decide on how to trigger Article 50, according to Helen Bower, his spokeswoman. “He’s said we’ve now got to look at all the detailed arguments. Parliament will clearly have a role making sure we find the best way forward,” she said when asked about the Mishcon announcement.

In a separate legal action, London tax lawyer Jolyon Maugham has raised more than 10,000 pounds on a crowd-funding platform to examine what could be “the most important public law case in living memory,” according to the website. His team also plans to get the government’s position on whether there will be a Parliamentary vote.

“This issue is coming up from various angles,” said UCL’s King. “We probably want as many barristers involved as we can.”