

**12 JUNE 2008**

**CHAMBER OF MINES  
OF SOUTH AFRICA**

**COMMENTS TO THE  
PORTFOLIO COMMITTEE  
ON PUBLIC WORKS**

**ON THE EXPROPRIATION  
BILL B16-2008**

## CHAMBER OF MINES OF SOUTH AFRICA

### SUBMISSIONS ON THE EXPROPRIATION BILL B16 - 2008

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#### INTRODUCTION

The Chamber of Mines of South Africa thanks the Portfolio Committee for the opportunity to make submissions on the above Bill. The Chamber's members are materially interested in and affected by the Bill because in connection with their mining operations they own land, hold prospecting, mining and mineral rights, and hold other forms of registered and unregistered rights such as leases and servitudes, which constitute property as described in the Bill.

Our comments are in three parts:

**Part A** deals with main issues.

**Part B** deals with clause by clause comments.

**Part C** supports the comments by Anglo American South Africa Limited.

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**PART A: MAIN ISSUES****First Issue: The Bill Does Not Properly Take Account of the Mineral and Petroleum Resources Development Act, 2002 and Similar Legislation**

The third and fifth preambles in the Bill refer to the imperatives in s25 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), firstly to bring about equitable access to all South Africa's natural resources, and secondly to bring about land, water and related reform in order to redress the results of past racial discrimination. The Chamber wholeheartedly supports these imperatives both as reflected in the Constitution and as referred to in the Bill.

- However, the Bill does not take into account that in fact significant legislative reforms have already occurred in regard to mineral and petroleum resources (in the Mineral and Petroleum Resources Development Act, 2002, which is hereinafter referred to as "the MPRDA"), in regard to water (in the National Water Act, 1998), and in regard to the environment (in the National Environmental Management Act, 1998). These Acts have brought about a new legal system whereby mineral and petroleum resources, water, and the environment, fall within the custodianship of the State, whereby they are no longer attached to land ownership, and whereby rights or authorisations in relation thereto are granted to applicants by the State by virtue of the State's custodianship. In the context of mineral and petroleum resources, expropriation of the old forms of prospecting, mining and mineral rights has in fact already been achieved upon the enactment of the MPRDA, and will hence not occur in terms of the new Expropriation Act once enacted.
  
- In the case of mineral and petroleum resources, the problem to which the Bill gives rise relates to those rights (being both the old order, OP26, and surface use rights which continue in force in terms of Schedule II to the MPRDA, and the new forms of rights, permits and permissions which are granted or issued in terms of the MPRDA) which are not registered or not registered yet at the date of expropriation of the land, and which by virtue of clause 13(1)(b) of the Bill will be deemed to have been simultaneously expropriated on date of expropriation of the land. Although in terms of s5(1) of the MPRDA rights granted in terms thereof are stated to be rights in the mineral and the land to which the right relates, the MPRDA has in fact brought about

a mineral and petroleum system which is not linked to ownership of the land as was previously the case by virtue of Roman Dutch law. The fact therefore that the land is expropriated should not affect rights, permits or permissions granted or issued in terms of the MPRDA at all, irrespective of whether or not they are registered, unless they are expressly stated in the notice of expropriation to be the subject of that particular expropriation.

- The MPRDA makes provision not only for rights (being prospecting, exploration, mining, and production rights) but also for various types of permits or permissions (reconnaissance permits and permissions, mining permits, retention permits, and technical co-operation permits). In accordance with their nomenclature, they are not *rights* in land but nevertheless fall to be taken into account for purposes of expropriation. This raises the issue that although certain statutory instruments are labelled as permits or permissions, their true juristic nature is that they are rights. A permit, permission or licence is a statutory instrument whereby authorisation is granted to do something which the applicant already has the right to do. A good example of this was the structure of the now repealed Minerals Act, 1991 whereby it appeared from ss5(1) and (2) that a mining licence was an instrument which authorised the exercise of a previously acquired mining or mineral right (see *Balmoral Investments (Edms) Bpk v Minister van Minerale en-Energie & Andere* 1995 (9) BCLR 1104 (NC) at 1109H-1110H). In contrast, the grant of a right by the State occurs where the applicant does not already hold the right at the time of the application. This accordingly exemplifies that even though a short-term mining instrument in the MPRDA is labelled a mining permit and not a mining right, it legally constitutes a right.
- The foregoing submission also indicates that there are other forms of licence, such as water use licences available in terms of the National Water Act, 1998, the legal nature of which goes beyond being merely *licences* and which in fact constitute *rights* to water, although they are not called rights. The Chamber members similarly have an interest in such water use licences in that in order to use water for purposes of mining, they must hold water use licences in terms of that Act. As in the case of minerals and petroleum, water and rights to water have legally been separated from land ownership, although in fact they are still rights relating to land. Again, it is therefore essential that such licences, being unregistered rights, are not automatically

expropriated in terms of clause 13(1)(b) of the Bill when the land itself is expropriated.

- Although not as clearly the case, the above problems could also arise in regard to environmental authorisations issued in terms of the National Environmental Management Act, 1998.
- In the above circumstances, the Chamber urges that a new clause be inserted into Chapter 7 of the Bill, along the following lines:

*"Notwithstanding anything to the contrary:*

- (1) no prospecting right, exploration right, mining right, production right, reconnaissance permission, retention permit, mining permit, reconnaissance permit, or technical co-operation permit, all as defined or referred to in the Mineral and Petroleum Resources Development Act, 2002, no old order right or OP26 right as defined in and which continues in force in terms of Schedule II to that Act, or any reservation, permission or right to the use of surface of land as envisaged in item 9 in the said Schedule II, or any lease or sublease of any of the foregoing, all whether registered or unregistered, and no application for or for conversion of any of the foregoing, shall be expropriated, be deemed to be included in an expropriation, or otherwise be adversely affected by an expropriation, unless it has been expressly referred to in the notice of expropriation as being expropriated, and no such notice of expropriation shall expressly so refer save with the prior written consent of the Minister of Minerals and Energy;*
- (2) no existing water use, or water use licence, as defined or referred to in the National Environmental Management Act, 1998, whether registered or unregistered, and no application for such licence, shall be expropriated, be deemed to be included in an expropriation, or otherwise be adversely affected by an expropriation, unless it has been expressly referred to in the notice of expropriation as being*

*expropriated, and no such notice of expropriation shall expressly so refer save with the prior written consent of the Minister of Water Affairs and Forestry;*

- (3) *no environmental authorisation as defined or referred to in the National Environmental Management Act, 1998, whether registered or unregistered, and no application for such authorisation, shall be expropriated, be deemed to be included in an expropriation, or otherwise be adversely affected by an expropriation, unless it has been expressly referred to in the notice of expropriation as being expropriated, and no such notice of expropriation shall expressly so refer save with the prior written consent of the Minister of Environmental Affairs and Tourism."*

There may be other types of rights and authorisations, such as flowing from the National Environmental Management : Protected Areas Act, 2003, which also need to be considered similarly, but that is beyond the Chamber's remit.

### **Second Issue: Deemed Expropriation of Unregistered Rights**

The above discussion leads on to the topic of unregistered rights. Although the Chamber agrees with the recognition accorded in the Bill to unregistered rights for purposes of payment of compensation, it submits that the Bill should go further in its recognition of unregistered rights also for purposes of the expropriation itself. In contrast, clause 13(1)(b) does not provide for separate expropriation of unregistered rights, but rather provides that all unregistered rights are simply expropriated with the property on the date of expropriation of the property.

- The first issue discussed above is illustrative of deemed expropriations of unregistered rights. It seems clear to the Chamber that the draftspersons of the Bill did not realise the consequences of such deemed expropriations insofar as unregistered rights, permits and permissions granted or which continue in force in terms of the MPRDA, are concerned. There may well be other unintended consequences and hence unintended expropriations.

- In terms of s25(2)(a) of the Constitution, property may be expropriated only for a public purpose or in the public interest. However, where the expropriating authority does not in fact know what unregistered rights it is purporting to expropriate, it cannot have formed any intention either to expropriate such rights or that the expropriation thereof will be for a public purpose or in the public interest. In fact, it may be the case, as would be so in regard to the rights, permits and permissions envisaged in the MPRDA, that a more important public purpose may be served or it may be more in the public interest, that the relevant unknown unregistered right not be expropriated. The Chamber therefore submits that clause 13(1)(b) in its deemed expropriation of all unregistered rights, is unconstitutional when regard is had to the requirements of s25(2)(a) of the Constitution, and should be replaced by provisions that even a specific unregistered right must be the subject of a separate notice of expropriation or must be expressly mentioned in specific terms in the notice of expropriation which relates to the land. Clause 14 would need to be adapted consequentially.
- Even were clause 13(1)(b) retained, it should be amplified to empower an expropriating authority expressly to exclude in the notice of expropriation such unregistered rights as the expropriating authority does not want or intend to expropriate. A wording suggestion in order to achieve this is made in Part B where comment has been raised on clause 13(1)(b).

### **Third Issue: Involvement of the Department of Minerals and Energy**

- In paragraph 4 of the Memorandum on the objects of the Bill, mention is made that the Department of Public Works specifically liaised with the Departments of Land Affairs and of Justice and Constitutional Development in regard to the Bill, and from which it may be inferred that no specific liaison occurred with the Department of Minerals and Energy. That omission is indeed unfortunate because in terms of s3 of the MPRDA it is the Minister of Minerals and Energy who implements the State's custodianship of mineral and petroleum resources. Had such liaison occurred, the first issue discussed above might have been identified at an earlier stage.
- The Chamber submits that in order for the Department of Minerals and Energy to be able to comment from the point of view of the State's custodianship of mineral and

petroleum resources, on expropriations proposed by the Minister of Public Works or other organs of state, notice needs to be given at all stages envisaged in Chapter 4 of the Bill, in regard to a proposed or actual expropriation, so that wherever in clauses 10 to 14 provision is made for notices to be given to, or information obtained from, organs of state or other persons, wording should be added that notices should also be given to, and information should also be sought from, the relevant Regional Manager of the Department of Minerals and Energy.

- As mentioned in the first issue above, the Chamber believes that no expropriation affecting rights, permits, permissions or applications referred to in the MPRDA should be capable of being made without the prior written consent of the Minister of Minerals and Energy.
- The Chamber incidentally mentions that in terms of s55 of the MPRDA the Minister of Minerals and Energy has powers of expropriation for purposes of prospecting and mining.
- The need for the involvement of the Department of Minerals and Energy perhaps becomes clearer when regard is had to s53 of the MPRDA, in terms whereof any person who intends to use the surface of any land in any way which might be contrary to any object of the MPRDA (which objects include mineral and petroleum resource development and expansion of opportunities for historically disadvantaged persons to enter the mineral and petroleum industries and to benefit from the exploitation of South Africa's mineral and petroleum resources) or which is likely to impede any such object must obtain the approval thereto of the Minister of Minerals and Energy (although this does not apply to farming or uses incidental thereto or to land within an approved town-planning scheme which already has such approval); and whereby the Minister of Minerals and Energy may of own volition cause an investigation to be conducted if it is alleged that a person intends to use the surface of land in any way (i.e. even including farming or within a town-planning scheme) that could result in the mining of mineral resources being detrimentally affected.

**Fourth Issue: Bill Should Not Empower Organs Of State Save Where Organs Of State Are Empowered In Other Legislation**

- The Chamber submits that intentionally or unintentionally, the Bill seems to empower organs of state generally to exercise powers of expropriation in terms of the Bill, this due to the reference to organs of state in the definition of "*expropriating authority*" in clause 1 read with clause 2(1), whereby an expropriating authority may expropriate property for a public purpose or in the public interest, generally.
  
- As alluded to in clause 2(1)(b) of the Bill, the Bill should, apart from according substantive powers of expropriation to the Minister of Public Works in terms of clauses 3 and 4, only set forth expropriation *procedures*, i.e. it should not confer *substantive* expropriation powers on organs of state. In other words, it is only where substantive expropriation powers have been accorded to specific organs of state in other legislation, that the procedures as contained in the Bill for implementing such substantive powers of expropriation, should be rendered applicable. The reason for this is that the definition of "*organ of state*" in s239 of the Constitution is extremely wide, including Departments of State and other functionaries and institutions. Were the Bill itself to confer substantive powers of expropriation on each and every organ of state, this would have the result that any organ of state could expropriate for *any* public purpose or in *any* public interest, notwithstanding that the *particular* purpose or interest falls wholly outside of the underlying ambit of jurisdiction of that particular organ of state. Therefore the Chamber is of the view that clause 2(1)(a) should be clarified to refer to organs of state being empowered to expropriate only where the organ of state has been empowered or authorised to do so by underlying legislation and for the specific public purposes or specific public interests which are contemplated in such underlying legislation. Were that not to be the case, i.e. that any organ of state may now, even where it has no powers of expropriation in terms of its own legislation, expropriate in terms of the Bill, this would not accord with the fundamental values of human dignity, equality, human rights and freedoms, and the rule of law, as contained in ss1(a) and (b) of the Constitution. On the contrary, it would reflect a culture of expropriation rather than a culture of sanctity of property. In that regard it is as well to bear in mind that once land, water, and related reform has occurred, the persons for whose benefit such reforms have been taken, will

themselves be owners of property or holders of rights and hence themselves will be vulnerable to the expropriation provisions of the Bill.

- To take the consequences of this to their ultimate conclusion, the Bill could then give rise to various organs of state successively expropriating property for their own differing public purposes or from the point of view of their own differing focus on public interest.
- The Chamber thus urges that the Bill, and in particular the definition of "*expropriating authority*" in clause 1, and clause 2(1)(a), be clarified to provide that organs of state may only expropriate if they are separately authorised or empowered to do so by legislation other than the Bill, and then only in accordance with the powers of expropriation accorded to them in such other legislation.

#### **Fifth Issue: Secrecy and Confidentiality**

Various provisions in *inter alia* clause 10 permit access to information or documents. The Bill however contains no secrecy or confidentiality provision in regard to information or documents so provided, notwithstanding that such may constitute information which would otherwise be protected in terms of Chapter 4 of the Promotion of Access to Information Act, 2000, for example in that it constitutes commercial information. The Chamber therefore urges that a new clause be inserted into Chapter 7 of the Bill, providing such a secrecy or confidentiality provision. As an example of such a clause, the Chamber refers to s4 of the Income Tax Act, 1962 and to clause 18 in the fourth draft of the proposed Mineral and Petroleum Resources Royalty (Administration) Bill, 2008 which was released by the National Treasury on 3 June 2008.

**Sixth Issue: Determination of Compensation by Expropriating Authority Rather than by a Court**

- Section 25(2)(b) of the Constitution provides that property may be expropriated:

*"subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court" (our underlining).*

- From the various explanatory memoranda on, or which preceded, the Bill, it is clear that the draftspersons of the Bill have in mind that the compensation will be determined not by a Court but by the expropriating authority. Thus clauses 15(2), 15(3)(b) and 20(2) refer to determination by the expropriating authority itself of the amount of compensation, culminating in the references in clauses 18(4) and 19(3)(a) to the ultimate determination by the *expropriating authority* being final.
- The crystallisation of the above occurs in clause 24(1), which expressly states that the compensation to be paid and the time and manner of payment must, in the absence of agreement, be determined by the *expropriating authority*. This is in stark contrast to the above-quoted wording from s25(2)(b) of the Constitution, which refers to these matter being decide or approved by a *Court*.
- The Court's two-fold role appears from clauses 24(2) and (3) of the Bill, namely that it may review a decision to expropriate, and may approve the compensation and the time and manner of payment thereof. It is this second role that the Chamber submits does not accord with the requirements of s25(2)(b) of the Constitution in that it does not have the effect of the compensation or the time and manner of payment thereof being "*decided or approved*" by a Court. The expropriated owner would not be applying to Court to approve of the determination by the expropriating authority of the compensation and the time and manner of payment thereof, but rather for the disapproval, i.e. the setting aside, thereof. The consequence of such non-approval is then in terms of clauses 24(3)(c) and (e) that the matter is referred back to the expropriating authority, i.e. the Court does not itself decide these matters. After the expropriating authority has reconsidered, the matter may again be referred to the Court for the procedure to be repeated, and so on *ad infinitum*. There is in fact no

way in which finality might ever be reached, and no way in which the compensation and the time and manner of payment thereof might ever be decided or approved by the Court or indeed by anyone else. The Bill does not propose what should occur in the circumstances of such a stalemate.

- The Chamber thus submits that the above provisions in the Bill are unconstitutional. Its reasons for this submission are the following.

- The Bill contains no provision for a reasonable opportunity of the owner to make representations (and possibly also to appear in person) before the final determination by the expropriating authority in terms of s18, contrary to the requirements of ss3(1), (2), and (3), of the Promotion of Administrative Justice Act, 2000 ("PAJA") and s33 of the Constitution, it being clear from clause 18 that what is therein referred to as an "*offer of compensation*" is in fact a final determination and not an offer at all.
- More fundamentally however, the procedure contravenes s25(2)(b) in that the compensation and time and manner of payment thereof are neither decided or approved by a Court, and instead are determined by the expropriating authority.
- The determination by the expropriating authority of the compensation and the time and manner of payment thereof constitutes administrative action which in terms of s6 of PAJA (read with s33 of the Constitution) would normally be subject to judicial review. It should be subject to judicial appeal. The procedure in clause 24 of the Bill ousts the right to judicial review and judicial appeal insofar as the decision concerning compensation is concerned, which attempt is unconstitutional. Furthermore, even if judicial review were not ousted (which it is), judicial review, unlike judicial appeal, does not, save in exceptional circumstances, give rise to a decision of the court on the compensation or on the time or manner of payment thereof because the orders which a court can make in terms of s8 of PAJA in proceedings for judicial review do not allow the Court to substitute or vary the determination save in exceptional circumstances. The reason for this is that judicial review is to correct a procedural error, not to determine the merits or substance of the

underlying matter, unlike as would be the case were an appeal to the Court to lie from an administrative action. In any event, the courts powers in terms of clause 24 are expressly limited to approval, so that the normal powers of the court in judicial review (in terms of s8 of PAJA) let alone in judicial appeal, would not apply.

- The proposed procedure in the Bill would contravene s169 of the Constitution whereby a High Court is empowered to decide on constitutional matters, the determination of compensation and the time and manner of payment thereof being constitutional matters due to the reference thereto in s25(2)(b) of the Constitution. The Bill's provisions thus constitute an unconstitutional ouster of the jurisdiction of the High Court.
- The procedure in the Bill contravenes the constitutional right in s34 of the Constitution whereby everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a Court or, where appropriate, another independent and impartial tribunal or forum. The expropriating authority is not a Court. Nor is it independent or impartial since it is one of the parties to the dispute. In colloquial terms, it would be judge, jury and executioner in its own cause. Nor is it "appropriate" that the dispute be decided by the expropriating authority, which may not necessarily have the requisite legal qualifications.
- The Chamber submits that the factors required in s36 of the Constitution for limitation of the foregoing constitutional rights in ss25(2)(b), 33, 169, and 34, of the Constitution, do not exist in the circumstances of the Bill. The attempted ouster of the jurisdiction of the Court is not reasonable or justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account the relevant factors of expropriation, including the nature of the constitutional rights in question, and considering that such ouster can never be justified by the importance or purpose of the ouster, the nature and extent of the ouster, the relationship between the ouster and its purpose, and the fact that the purpose of the Bill can fully be achieved by giving effect to the abovementioned rights in the Constitution.

- In accordance with the founding provision in s1(c) of the Constitution, that the Republic of South Africa is founded on the rule of law, s165 of the Constitution provides that the judicial authority is vested in the Courts; that the Courts are independent and subject only to the Constitution and the law; that no person or organ of state may interfere with the functioning of the Courts; and that organs of state through legislative and other measures must assist and protect the Courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the Courts. In contradistinction to these Constitutional provisions, clause 24(3)(c) of the Bill in purporting to dictate to the Court that it must enter reasons, detracts from the dignity of the Courts which in each and every judgment do give reasons without being told legislatively or executively to do so; and clauses 24(4)(a), 24(5) and 24(6) constitute interference with the functioning of the Courts in purporting to dictate to the Courts what the Courts must deal with on an urgent basis and hence regard as urgent, and in dictating to the Courts which Judges must be allocated to hear matters relating to expropriation. The function of deciding whether or not a matter is urgent normally vests in the presiding Judge, who is in a position to assess the urgency of the matter by reference to the facts then before him. It would be inequitable were an expropriation matter to be the cause of an actually urgent matter, such as an application for an interdict against abuse of spouses or children, or against spoliation, having to take second place. It would further normally be the preserve of the Judge President to decide on the allocation of Judges. Moreover, ss24(5) and (6) do not deal with the situation where no Judge who meets the criteria in s24(6) is available in a particular Division of the High Court, leading to the relevant expropriation matter not being capable of being heard at all, notwithstanding that Judges of great juristic capability who might not have specific experience or expertise in the field of expropriation law, are available for that purpose. It is submitted that the entire structure of clause 24, including clauses 24(3)(c), 24(4)(a), 24(5) and 24(6), offends against s165 read with s1(c) of the Constitution, and is for that reason unconstitutional.

- In all the above circumstances, the Chamber submits that the abovementioned provisions of the Bill are inconsistent with the Constitution and hence in terms of s2 of the Constitution are invalid.
- The Chamber therefore urges that clause 24 of the Bill be deleted and replaced by provisions similar to those in ss14 and 15 of the Expropriation Act, 1965, as was the case in an earlier draft of the Bill. The abovementioned clauses in the Bill would need to be adjusted consequentially.
- **Seventh Issue: Time Periods Too Short and Power to Extend**
- As appears from the detailed comment in Part B, many of the periods provided for a landowner to respond are far too short, for example to enable such owner in practice to obtain the necessary advice from expropriation law experts and professional valuers. Particularly where expropriations affect a large number of owners, such professionals will be inundated with instructions by a multitude of landowners, and will simply not be able properly to react within the short periods detailed in the Bill. This offends against the right in terms of s3 of PAJA read with s33 of the Constitution, to lawful, reasonable and procedurally fair administrative action. There is moreover no reason why expropriation needs to occur with such unseemly and unjustifiable haste. The Chamber therefore requests that the various periods in the Bill be amended to reflect what are reasonable and practical periods, and refers to its suggestions on specific periods in specific clauses in its comments in Part B below.
- Moreover, in order to provide a measure of flexibility, the Chamber suggests the insertion into Chapter 7 of a new clause providing that in all cases where periods are provided for a landowner, holder of an unregistered right, or claimant, to do things, such periods may on application by such owner, holder or claimant and on good cause shown, be extended from time to time by the expropriating authority or the Board, as the case may be, for such further periods as may be reasonable and practical in the circumstances.

**Eighth Issue: Departure from Publication and Service of Notice of Intention to Expropriate, Not Reasonable or Justifiable**

The Chamber submits that it can never, as contemplated by clause 11(6), be reasonable and justifiable for notice of intent to expropriate not to be published and served, or for such notice not to give full details of the expropriation, the property, the scheme, the compensation, and an invitation to lodge objections and submissions, or for negotiations thereafter not to be held. Thus the legislature is able already now to determine that the factors set forth in clause 11(6)(b) will never permit of a departure from the requirements of ss11(1) to (4). That being so, the Chamber submits that clause 11(6) falls to be deleted.

**PART B: CLAUSE BY CLAUSE COMMENTS**

**Fifth Preamble**

The fifth preamble does not accurately reflect s25(8) of the Constitution in that s25(8) is subject to a proviso that any departure from s25 must be in accordance with the provisions of s36(1) of the Constitution, namely that such departure (being a limitation of fundamental rights) must satisfy the criteria which are laid down in s36(1), and which proviso is not reflected in the fifth preamble in the Bill.

The Chamber thus suggests that the fifth preamble be amplified to refer to the proviso to s25(8) of the Constitution.

**Sixth Preamble**

The sixth preamble does not currently reflect s1 of the Constitution in that s1 of the Constitution indicates that it is the Republic of South Africa (not the Constitution itself as suggested in the sixth preamble to the Bill) which is founded on the values there mentioned.

The sixth preamble should therefore commence with the words:

*"provides that the Republic of South Africa".*

**Clause 1: Definition of "Court"**

There is only one High Court in South Africa, which consists of various divisions. It is therefore suggested that before the reference to "*High Court*" the words "*Division of the*" be inserted.

**Clause 1: Definition of "date of expropriation"**

- The date of expropriation cannot be earlier than the date on which the notice of expropriation is served on the owner. See also paragraph 7.2, last sentence, of the explanatory memorandum in General Notice 440 GG 30963 of 11 April 2008, which states that "*The property vests on an expropriating authority on the date the notice of expropriation is served*" (our underlining). The Chamber thus suggests that reference be made to the later of the date on which the notice of expropriation is served on the owner, and the date mentioned in the notice of expropriation.
- As mentioned in Part A above, it cannot be correct that all unregistered rights in respect of the property are expropriated along with the property itself. The notice of expropriation needs to indicate what unregistered rights are being expropriated, and then indeed such unregistered rights as so mentioned in the notice of expropriation are also expropriated. It cannot fulfil the requirement of an expropriation being in the public interest or for a public purpose if the expropriating authority does not know what unregistered rights it is purporting to expropriate. It is therefore suggested that after the reference to "*unregistered rights in respect thereof*" be inserted the words:

*"as are mentioned in the notice of expropriation"*.

See also the comment on clause 13(1)(b), below.

**Clause 1: Definition of "expropriating authority"**

As discussed more fully in Part A above, the definition is circular in that it defines expropriating authority as an organ of state authorised by the Act and in clause 2 empowers an expropriating authority to expropriate. The Chamber submits that the

definition should refer to the Minister, being the organ of state authorised by the Act, and to any other organ of state authorised by any other law. Thus the Minister may expropriate under this Act, and other organs of state may expropriate in accordance with the procedure determined in the Bill if they are substantively empowered to do so by the other statutes that govern them.

**Clause 1: Definition of "registered"**

- There is no longer an official holding the title of "*Registrar of Mining Titles*". It is suggested that the phrase "*or the Registrar of Mining Titles*" be deleted and replaced by the words "*in the Mineral and Petroleum Titles Registration Office established in terms of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967),*". Possibly definitions of "*deeds registry*" and of "*Mineral and Petroleum Titles Registration Office*" should be inserted into clause 1.
- The Mining Titles Registration Act, 1967 empowers the registration of rights and the recordal of various other forms of permit, permission and approval. It is therefore suggested that after the word "*registered*" be inserted the words "*or recorded*", that after the word "*rights*" be inserted the words "*permits, permissions, approvals, licences or other forms of statutory instrument*", and that before the word "*recorded*" in the third line be inserted the words "*registered or*".

**Clause 2: Powers of Expropriation**

- In relation to clause 2(1)(a), please see the comment above on the definition in clause 1 of "*expropriating authority*" and the discussion in Part A above.
- In order to ensure the constitutionality of clause 2(1)(a) it is suggested that at the end thereof, the following be inserted:

*", and provided that such expropriation otherwise accords with section 25 of the Constitution".*

**Clause 3: Power of Minister to Expropriate Property**

The preceding comment applies equally to clause 3.

**Clause 4: Expropriation of Property on Behalf of Juristic Persons**

In order to ensure the constitutionality of clause 4(1), it is suggested that at the end thereof be inserted the words:

*" , subject to compensation contemplated in section 25 of the Constitution and provided that such expropriation otherwise accords with section 25 of the Constitution".*

**Clause 5: Delegation of Functions by Minister**

In clause 5(1)(a) reference is made to ss11(5)(c) and 18(5), neither of which however exists, nor can the Chamber readily identify to which sections it is intended to refer.

**Clause 8: Functions of Board**

In clause 8(2) the reference to price is too restrictive in that what may be being acquired or disposed of might be a lease, the consideration in which would not be referred to as a price. Perhaps therefore after the reference to "*fair price of*" should be inserted the words "*or consideration for*".

**Clause 9: Appointment and Other Conditions of Service of Board Members**

Clause 9(1) refers to persons nominated in the prescribed manner. Since the regulations are not available the Chamber cannot at this stage comment on them but requests the opportunity to do so once the draft regulations become available. Already at this stage however, the Chamber requests that:

- it should be provided that persons eligible for nomination must hold suitable qualifications;

- the Chamber be permitted representation on the National Board and on all Regional Boards.

**Clause 10: Investigation and Gathering of Information for Purposes of Expropriation**

- In the first two lines of clause 10(1) reference is made to expropriation of property "*required for a public purpose or in the public interest*". It however follows from s25(2)(a) of the Constitution that expropriation *can only be* for a public purpose or in the public interest. The Chamber therefore suggest that the words "*required for a public purpose or in the public interest*" be deleted from the second line, and that a new clause 10(1)(a) be inserted before the existing clause 10(1)(a), reading:

*"(a) whether the requirement in terms of section 25 of the Constitution that the expropriation must be for a public purpose or in the public interest, is satisfied;"*.

- Clause 10(2)(b)(iv) does not correctly reflect s25(3)(d) of the Constitution, so that after the word "*acquisition*" should be inserted the words "*and beneficial capital improvement*". The separate reference in clause 10(2)(b)(v) does not remedy this because s25(3)(d) of the Constitution refers to the extent of State investment and subsidy in the beneficial capital improvement, not simply to whether or not there exists beneficial capital improvement on the property.
- Due to the fact that rights granted under MPRDA may not yet be registered at the time, the Chamber requests that after the reference in clause 10(1)(a) to the Land Claims Commission, a reference be inserted to "*the relevant Regional Manager of the Department of Minerals and Energy*".
- The foregoing comment applies equally to clause 10(2)(a).
- Although the Chamber wholeheartedly agrees with the imperative of redress as contained in s25(8) of the Constitution, it points out that that factor is not a relevant consideration envisaged in s25(3) of the Constitution in regard to determination of the amount, time or manner of payment, of the compensation. The Chamber

accordingly submits that the information sought in clause 10(2)(b)(vi) is not relevant and should be deleted.

- Clause 10(3)(c) refers to digging or boring, which might be interpreted to empower not only digging or boring for water, but even digging or boring which would constitute prospecting, mining, exploration or production as defined in s1 of, or investigating the occurrence, nature and extent of mineral or petroleum resources as contemplated in s50 read with s69(2), of the MPRDA. The Chamber submits that these matters are correctly governed by the MPRDA, and that clause 10(3)(c) should accordingly be amplified by the insertion at the end thereof of the words:

*"other than for purposes of prospecting, mining, exploration, production, or investigation, of mineral or petroleum resources, as contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)".*

- Clause 10(4) refers to a person conducting an investigation contemplated in s10(1), but it is not such person, but rather the Board, which is authorised to enter and perform the actions set out in s10(3). It therefore seems as if in clause 10(4) the words *"A person conducting an investigation contemplated in subsection (1)"* should be replaced with the words *"The Board or any person purporting to act on behalf of the Board"*, and that in the fourth line the words *"the expropriating authority or"* should consequentially be deleted. Alternatively, clauses 10(3) and 10(4) would need to be amplified to refer both to persons conducting an investigation contemplated in s10(1) and to the Board conducting an investigation as contemplated in ss10(2)(b) and (c), so that there can be no misinterpretation that the Board also must comply with the requirements of s10(4) in exercising its rights in terms of clause 10(3).
- Clause 10(4) should refer additionally to known holders of unregistered rights.
- In clause 10(4)(b), the reference to 72 hours is not reasonable or justifiable in that there can be no such urgency in finalising the investigation. The Chamber points out that in clause 5 of the Mineral and Petroleum Resources Development Amendment Bill B10D – 2007, it is proposed to provide that a new s5A(c) be inserted into the MPRDA which will require a person who wishes to commence with prospecting,

mining and incidental work, to give the landowner or lawful occupier at least 21 days written notice. The Chamber submits that 21 days would also be a reasonable period for purposes of clause 10(4)(b), and that accordingly the reference to 72 hours should be replaced with a reference to 21 days.

- In relation to clause 10(4) the Chamber refers to regulations 3.1.1 and 3.1.2 which remain in force in terms of Schedule 4 to the Mine Health and Safety Act, 1996 ("MHSA"). Regulation 3.1.1 provides that no unauthorised person (meaning a person authorised by the owner or manager of the mine) may enter a mine or works or any shaft or place or building where machinery has been erected. Regulation 3.1.2 provides that a notice to that effect must be posted up by the manager at all entrances to such places. These regulations were made in the interests of safety at mines. The Chamber therefore requests that the following proviso be added at the end of clause 10(4):

*"Provided however that where a mine or works as defined in section 102 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996) is situated on the property in question or on the land over which access to property is to be gained, the person must additionally obtain authorisation in terms of regulation 3.1.1 which is in force in terms of schedule 4 to the said Act, or in terms of any replacement regulation made in terms of that Act."*

- In regard to confidentiality and secrecy of information or documents made available in terms *inter alia* of clause 10, the Chamber refers to Part A above.

### **Clause 11: Intention to Expropriate**

- Although for purposes of clause 11(1)(b) the owner would be a person materially and adversely affected, the owner is the person most directly affected, so that express reference should be made to the owner.
- In relation to the reference in clause 11(1)(b) to the holders of unregistered rights, the Chamber refers to its second comment on the definition of date of expropriation in clause 1 in relation to only such unregistered rights being expropriated as are mentioned in the notice of expropriation.

- In accordance with the preceding two comments, the Chamber therefore suggests that the phrase "*including holders of unregistered rights*" where it appears in clause 11(1)(b) be replaced with the phrase "*including the owner of the property and holders of such unregistered rights therein as are intended to be expropriated*".
- The Chamber requests that clause 11(1)(c) require a copy of the notice also to be delivered to the relevant Regional Manager of the Department of Minerals and Energy. In that regard it refers to s53 of the MPRDA which provides for the approval of the Minister of Minerals and Energy to intended use by persons of the surface of land in any way which may be contrary to any object of the MPRDA or which is likely to impede any such object, one of such objects being, in terms of s2(e), development of South Africa's mineral and petroleum resources. Clause 11(1)(b) should then be amended consequentially to require the Regional Manager of the Department of Minerals and Energy to inform the expropriating authority of any rights granted or which remain in force or applications made in terms of the MPRDA that are likely to be affected by the intended expropriation. See also Part A above.
- The required content in terms of clause 11(3) of the notice of intention to expropriate does not comply in all respects with s3(2)(b) of PAJA, which refers *inter alia* to the "*nature and purpose*" of the proposed administrative action constituted by the expropriation. The reference in clause 11(3)(c) to a short description of the "*scheme*" (as defined in clause 1 to mean any undertaking or project) does not necessarily address the purpose of the intended expropriation.
- The period of 21 days given in terms of clause 11(3)(e) for objections and submissions is far too short, given that the affected persons must not only evaluate the expropriation but also the amount offered as compensation in terms of clause 11(3)(d), and for which purpose experts in expropriation law and professional valuers need to be appointed, and who are not necessarily immediately available. A period of 21 days does not constitute "a reasonable opportunity to make representations" within the meaning of s3(2)(b) of PAJA and hence does not give rise to administrative action that is lawful, reasonable and procedurally fair, within the meaning of s33(1) of the Constitution. The Chamber suggests a period of at least sixty days.

- For the same reason as indicated in the preceding comment, the period of 21 days allowed by clause 11(5) for the conclusion of an agreement, is far too short, and again suggests a period of at least sixty days.
- The Chamber submits that it can never, as contemplated by clause 11(6), be reasonable and justifiable for notice of intent to expropriate not to be published and served, or for such notice not to give full details of the expropriation, the property, the scheme, the compensation, and an invitation to lodge objections and submissions, or for negotiations thereafter not to be held. Thus the legislature is able already now to determine that the factors set forth in clause 11(6)(b) will never permit of a departure from the requirements of ss11(1) to (4). That being so, the Chamber submits that clause 11(6) falls to be deleted.

**Clause 12: notice of expropriation**

- The comment above on the definition of "*registered*" in clause 1 in relation to the reference to the Registrar of Mining Titles applies equally to the reference to the Registrar of Mining Titles in clause 12(2)(a), as does the comment there in regard to permits, permissions, approvals, licences and other statutory instruments. It is therefore suggested that clause 12(2)(a) might read:

*"(a) the Registrar of Deeds or the Mineral and Petroleum Titles Registration Office established in terms of the Mining Titles Registration Act, 1967 (Act No.16 of 1967) or any government office in which the expropriated property or rights, permits, permissions, licences, approvals or other statutory instruments in respect of the expropriated property are registered or recorded for public record; and".*

- The Chamber requests that a new clause 12(3)(d) be inserted reading:

*"(d) the relevant Regional Manager of the Department of Minerals and Energy".*

- In relation to the reference in clause 12(4)(b) to the notice having to state the date of expropriation the Chamber refers to its comment above on the definition of "*date of expropriation*" in clause 1, namely that the date of expropriation should be the later

of the date of service of the notice of expropriation, and the date mentioned in the notice of expropriation. Clause 12(4)(b) should therefore be amended to refer to the date of expropriation being stated in the notice to be the later of such dates.

- Clause 12(4)(c) should be amended to insert the following at the end thereof:

*", which date of possession shall however not be a date earlier than the date of expropriation".*

- The reference in clause 12(4)(d) to unregistered rights "*terminated or abated*" by the expropriation does not tie in with the concept in clause 13(1)(b) of all unregistered rights being "*similarly expropriated*". The Chamber submits that the words "*terminated or abated by the expropriation*" should be deleted.

### **Clause 13: Vesting of Expropriated Property in Expropriating Authority**

- In clause 13(1)(a), the reference to "*mortgagee*" (i.e. the financial institution holding the bond) should be a reference to the mortgagor (i.e. the owner of the property) or preferably to the property itself.
- In relation to clause 13(1)(b) the Chamber refers to Part A and to its comment on the definition of "*date of expropriation*" in clause 1, where it submitted that not all unregistered rights in the property can be simultaneously expropriated unless the relevant unregistered right is expressly mentioned in the notice of expropriation. Particularly in the context of the Chamber's members, it could fortuitously be the case that a prospecting, exploration, mining or production right has been granted or a lease thereof executed but which has not yet been registered on the date of expropriation. Furthermore, old order rights, OP26 rights or surface use rights, which continue in force in terms of Schedule II (transitional arrangements) to the MPRDA do not necessarily have to be registered, Schedule II not containing any requirement that a right be registered in order to enjoy recognition for purposes of Schedule II. It simply cannot be that the effect of an expropriation of the relevant land is that the unregistered new order or old order rights are deemed to have been expropriated simultaneously if the land itself is expropriated. Perhaps the best way of dealing with this issue would be for a new clause to be inserted in Chapter 7 to the

effect that notwithstanding anything to the contrary, no expropriation pursuant to the Bill will affect any right, permit or permission granted or which continues in force in terms of the MPRDA, unless such right, permit or permission is expressly referred to in the notice of expropriation; and that no such expropriation affects any application made or which can be made in terms of the MPRDA. The reference to an application which can be made arises out of the fact that in terms of ss19(1)(b) and 82(1)(a) of the MPRDA the holder of a prospecting right or exploration right has the exclusive right to be granted a mining right or production right, and out of the fact that all holders of rights have the right to be granted renewals thereof, this all being in fulfilment of the object in s2(g) of the MPRDA of providing security of tenure in respect of prospecting, exploration, mining and production operations. The reference to applications also relates to conversions and applications by holders of old order rights and OP26 rights in terms of Schedule II to the MPRDA, objects of which are, in terms of items 2(a) and (b) therein, of ensuring security of tenure and of affording holders of such rights the opportunity to acquire new rights in terms of the MPRDA. Were it indeed intended to expropriate such rights, a separate expropriation would thus be necessary, either by the Minister of Minerals and Energy in terms of s55 of the MPRDA, or by the Minister of Public Works in terms of clauses 3 or 4 of the Bill.

- Also in relation to clause 13(1)(b), even if the above submissions are not accepted, provision does need to be made in clause 13(1)(b) for the possibility that the expropriating authority might want to exclude the expropriation of specified unregistered rights. The expropriating authority therefore needs to be empowered to embody such exclusions in the notice of expropriation. It is therefore suggested that after the word "*rights*" in clause 13(1)(b) be inserted the words:

*"(except such unregistered rights as are expressly excluded in the notice of expropriation)".*

- As a consequence of the preceding comment, clause 13(1)(c) would need to refer not only to registered but also to unregistered rights.

**Clause 14: Consequences of Expropriation of Unregistered Rights and Duties of Expropriating Authority**

In view of the Chamber's submission in relation to clause 13(1)(b) that even unregistered rights must be expropriated by separate notice of expropriation, the Chamber submits that clause 14 would need to be amended consequentially to provide for such separate notice of expropriation.

**Clause 15 : Basis On Which Compensation Is To Be Determined**

- In clause 15(1), it is suggested that reference additionally be made to s25(2)(b) of the Constitution, so that the reference to "*section 25(3)*" would become a reference to "*sections 25(2)(b) and 25(3)*".
- Since the time and manner of payment of the compensation are relevant to the amount of the compensation, the Chamber suggests that a new clause 15(3)(a)(vii) be inserted as follows:

"(vii) *the time and manner of payment of the compensation if the expropriating authority makes a proposal in terms of section 12(4)(d) of postponed dates for payment of the compensation and any interest thereon and as ultimately agreed between the claimant and the expropriating authority or determined by a court in terms of section 20(4).*"

- Clause 15(3)(b) does not have an equivalent in s25(3) of the Constitution, and is in any event unnecessary since it is clear from clause 15(3)(a) that market value is but one of the factors in the determination of the amount of compensation. Moreover, on an application of the other factors in s25(3) of the Constitution and in clause 15(3)(a), it could be that compensation is determined that is *above* the market value. The Chamber thus suggests the deletion of clause 15(3)(b), alternatively that after the word "below" be inserted the words "or above". What could be considered in place of clause 15(3)(b) is guidance on how the determination in s25(3) of the Constitution (and hence in s15(3)(a) of the Bill) should be undertaken, namely in accordance with the judgment in *Du Toit v Minister of Transport* 2006(1) SA 297(CC) at paragraphs 35-37, namely that first the market value should be determined, and then other

relevant circumstances including the other circumstances mentioned in s25(3), should be considered so as to adjust the amount so determined, accordingly.

- The last paragraph of clause 15(3)(c) should be numbered (vi) and not (iv).

**Clause 17: Compensation Claim by Expropriated Owner and Expropriated Holder**

- The comment on the inadequacy of the 21 day period mentioned in clause 11(3)(e) applies equally to the 21 day period mentioned in clauses 17(1) and (2), the Chamber submitting that the practicalities of obtaining advice from an expropriation law expert and from a professional valuer dictate that a period of at least 60 days should be provided in clauses 17(1) and (2). In that regard clause 17(3)(b) in any event provides for compulsory extension of 21 days, therefore totalling 42 days, so that it would be less administratively onerous to provide for a total of at least 42 days initially.
- The Chamber suggests that the intention of clauses 17(3)(a) and (b) be clarified. They might be interpreted to mean that the expropriating authority may only extend the period if a request for extension is made before the expiry of the 21 day period, and then that the expropriating authority must extend for 21 days. In other words, the interpretation may be that the expropriating authority may not extend if a request is lodged after the expiry of the first 21 days, and that if the request is lodged before 21 days the extension may only be for 21 days and not more. The Chamber submits that all of that would be far too restrictive, and suggests that the intention be clarified simply by providing that the expropriating authority may at any time and from time to time extend the period of 21 days for a reasonable period which may not be less than a further period of 21 days calculated from the date of expiry of the initial period.
- From the experience of Chamber members, even the period of 21 days mentioned in clauses 17(4)(a) and (b) may be somewhat short and should be replaced by a period of 30 days.
- In the light of all the comments raised by the Chamber in regard to shortness of periods provided in the Bill, the Chamber suggests that a new clause be inserted into

chapter 7 to the effect that wherever a period is mentioned within which something must be done in terms of the Bill, the expropriating authority may, on written request and good cause shown by the relevant owner or holder or other interested or affected person, from time to time extend such period for a further period or periods as may be reasonable in the circumstances.

- The question of failure to comply with clauses 17(1) or (2) is dealt with in clause 18(2). Accordingly, clause 17(6) is unnecessary and perhaps confusing, and should be deleted.

### **Clause 18: Offers of Compensation**

Clause 18(4) read with clause 24 discloses what the Chamber submits to be a fundamental unconstitutionality. The Chamber has discussed this topic holistically in its comment in Part A above on clause 24.

### **Clause 20: Payment of Amount Offered as Compensation**

- The Chamber submits that clause 20(3) is not just or equitable in its provision that interest is payable only when the last outstanding payment of compensation is made. Interest up to the date of payment of each instalment of the compensation should be payable when that instalment is paid. The Chamber requests that clause 20(3) be amended accordingly.
- The reference in clause 20(4) to the time of payment of the compensation being determined by a court (which the Chamber submits is the correct formulation) conflicts with clause 24 (which the Chamber submits is, for the reasons in Part A above, the incorrect formulation).

### **Clause 21: Property Subject to Mortgage Bonds or Deeds of Sale**

Clause 21 refers only to *mortgage* bonds. No definition of mortgage bond appears in the Bill so that recourse must be had to the definition of mortgage bond in s102 of the Deeds Registries Act, 1937, which refers to a bond attested by the Registrar of Deeds specially hypothecating *immovable* property. However, the definition of property in

clause 1 of the Bill includes *movable* property. In terms of the definition of "*notarial bond*" in s102 of the Deeds Registries Act, 1937, the name given to a bond attested by a notary public hypothecating movable property generally or specially is a notarial bond. Accordingly, it is suggested that wherever in clause 21 or elsewhere in the Bill reference is made to a mortgage bond in a context which could apply not only to immovable but also to movable property, reference should additionally be made to notarial bonds.

**Clause 22: Payment of Municipal Property Rates and Other Charges out of Compensation Money**

- In clause 22(2) it is suggested that the word "deliver" (as defined in clause 1) be used both in regard to the expropriating authority informing the owner and in regard to the owner informing the expropriating authority, and that a period of 30 days would more equitable considering that the expropriating authority is not likely to be paying out the compensation before that time. It is therefore suggested that clause 22(2) read as follows:

"(2) *The expropriating authority must deliver a written notice to the expropriated owner indicating the amount so alleged by the municipality and if the expropriated owner does not deliver to the expropriating authority a written notice disputing the said amount within 30 days of the firstmentioned notice, the expropriating authority may utilise so much of the compensation money in question as is necessary for the payment, on behalf of the expropriated owner, of any municipal property rates or other charges contemplated in subsection (1).*"

- In the last line of clause 22(3)(c) the word "*expropriated*" should be "*expropriating*".

**Clause 24: Approval of Compensation by Court**

The Chamber should be grateful if reference could be made to what it has said in relation to clause 24 of the Bill in Part A above, and which it will not repeat here.

### **Clause 25: Withdrawal of Expropriation**

- In clause 25(2)(a), an alternative ground for authorisation by the Court of a withdrawal of an expropriation should be that the withdrawal would cause hardship or financial loss to the owner or holder. It is thus suggested that at the end of clause 25(2)(a) be inserted the words :

*"or on the ground that such withdrawal would cause hardship or financial loss to the owner or holder".*

- In clause 25(3):
  - after the reference to *"the Registrar of Deeds concerned"*, should be inserted the words:

*"Mineral and Petroleum Titles Registration Office, or other government office where such property is registered or recorded"; and*

- after the word *"registers"* in the last line should be inserted the words *"or records"*.
- A new clause 25(4) should be inserted, providing for payment of compensation by the expropriating authority for financial loss and expenses incurred by the affected owner and holders, in relation to the withdrawn expropriation or in relation to such withdrawal, or both.

### **Clause 26: Provisions Applicable to Provincial Roads**

- The Chamber wonders whether clause 26 should not additionally refer to the South African Roads Agency Limited and National Roads Act, 1998, which also envisages declarations of roads and, in s41, the taking of material for road purposes.
- The Chamber suggests that clause 26(2)(c) be amended as follows so as to encompass all the possible permutations covered by the MPRDA:

"(c) *all old order rights, OP26 rights, and reservations or permissions for or rights to the use of surface of land, all as contemplated in Schedule II to the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), and all prospecting rights, exploration rights, mining rights, production rights, reconnaissance permissions, retention permits, mining permits, reconnaissance permits, and technical co-operation permits, and any other rights, permits or permissions, existing in terms of the said Act, and any leases or subleases of any of the foregoing, continue to vest in the person in whom they vested prior to such declaration or taking; and "*

- As mentioned in Part A hereof, the Chamber submits that clause 26(2)(c) should apply not only in relation to provincial roads, but indeed universally, so as to preserve all rights, permits and permissions granted or which continue in force in terms of the MPRDA, from expropriations.
- As a matter of information, the Chamber mentions that s106 of the MPRDA deals with exemptions of organs of state which remove minerals for road construction, and that the National Roads Agency, and the Roads Agency Limpopo (Proprietary) Limited, are among the organs of state so exempted in terms of GNR 762 of 25 June 2004, GN 852 of 25 August 2006, and GNR 446 of 18 May 2007.

**Clause 27: Service and Publication of Documents and Language Used Therein**

- Clauses 27(1)(a) and 27(3)(b)(ii) should in the case of companies or close corporations refer to the registered office, registered place of business, and registered postal address, in accordance with the requirements of the Companies Act, 1973 or the Close Corporations Act, 1984, as reflected in the records of the Registrar of Companies.
- Clauses 27(4)(b) and (c) should refer, as does clause 27(1)(b), to pre-paid registered post.

**Clause 29: Expropriation Register**

After the word "*Department*" in clause 29(1) should be inserted the words "*and to the relevant Regional Manager of the Department of Minerals and Energy*".

**Clause 35: Transitional Arrangements**

As a matter of information, the Chamber records that it has been advised that the MPRDA effected expropriation of all old forms of prospecting, mining and mineral rights, and that such expropriation occurred immediately when the MPRDA took effect on 1 May 2004. The Chamber is thus of the view that such expropriation continues to be governed by the Expropriation Act, 1975 and will not be governed by the Bill once enacted and in force.

**Clause 36: Short Title**

The Chamber notes that the Act will commence operation immediately upon Presidential assent thereto.

**PART C: SUPPORT FOR COMMENTS BY ANGLO AMERICAN SOUTH AFRICA LIMITED**

Over and above the Chamber's own comments in Parts A and B above, the Chamber further supports and endorses the submissions made by Anglo American South Africa Limited in May 2008 on the Bill.

**CONCLUSION**

The Chamber again thanks the Portfolio Committee for allowing the Chamber to make these submissions, and offers its availability to answer any questions which the Portfolio Committee might have in regard to the Chamber's submissions and generally to assist the Portfolio Committee towards rendering the Bill into a form that will constitute good legislation.