

PHL023181



Ministério de Minas e Energia
Secretaria de Geologia, Mineração e Transformação Mineral
Gabinete do Secretário

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RELATÓRIO DE VIAGEM AO EXTERIOR Nº 01/2008

Brasília, 10 de outubro de 2008.

Assunto: relatório de viagem ao exterior, realizada por Maria Amélia Rodrigues da Silva Enríquez, Assessora da Presidência, matrícula 928071, para os países Quênia, cidade de Nairobi, e África do Sul, cidades de Johannesburgo Pretória.

Em atendimento ao Memo n.164/ASSUNI/2008, de 02 de outubro de 2008, cumpre informar o que se segue:

Período da viagem

Saída do Brasil – BSN/SP- 06/08/2008 – SP/JAN/NB – 07/08/2008
NB/JNB – 12/08/2008 – JNB/SP/BSB – 15/08/2008

Resultado da viagem

A viagem transcorreu conforme o previsto no planejamento. As passagens aéreas e as despesa em Nairobi foram custeadas pela organização do Congresso da *Internacional Society for Ecological Economics* (ISEE), e as três diárias para a visita técnica na África do Sul foram concedidas pela CPRM.

No Congresso da ISEE em Nairobi fiz apresentação oral de um *paper* (certificado em anexo) resultante de tese de doutorado que defendi em 2007, no Centro de Desenvolvimento Sustentável da UnB. O estudo, que contou com o apoio do DNPM, foi realizado em quinze cidades mineradoras, em oito estados brasileiros. A pesquisa trata do uso da renda mineral e o desenvolvimento de cidades dependentes da

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mineração, com enfoque especial sobre a CFEM. Durante o evento, tive oportunidade de dialogar e trocar experiências com outros autores e conhecer casos semelhantes em outros países, o que certamente contribuiu de forma bastante positiva para o aprimoramento do estudo que estamos continuando aqui no âmbito da SGM.

Na África do Sul estive no Serviço Geológico Nacional (*Council for Geoscience*) que fica localizado em Pretória. Lá fui recebida pelo diretor da Unidade de Desenvolvimento de Recursos Minerais, Dr. Stewart Foya (cartão anexo), foto 1, que me apresentou as linhas gerais do trabalho de levantamento geológico que é realizado no órgão, bem como me contactou com os responsáveis pelo planejamento da política minerária sul-africana.



Foto 1: Maria Amélia Enríquez, assessora da presidência da CPRM, acompanhada pelo Dr. Stewart Foya, diretor de Recursos Minerais do *Council for Geoscience* da África do Sul, durante visita técnica realizada em agosto de 2008.

Como o foco da visita técnica era o estudo da política tributária mineral sul-africana, em função desta estar passando por um profundo processo de reformulação, o diretor me encaminhou ao DME (*Department of Minerals and Energy*), foto 2, órgão equivalente ao DNPM, que trata das questões mais amplas da política minerária.

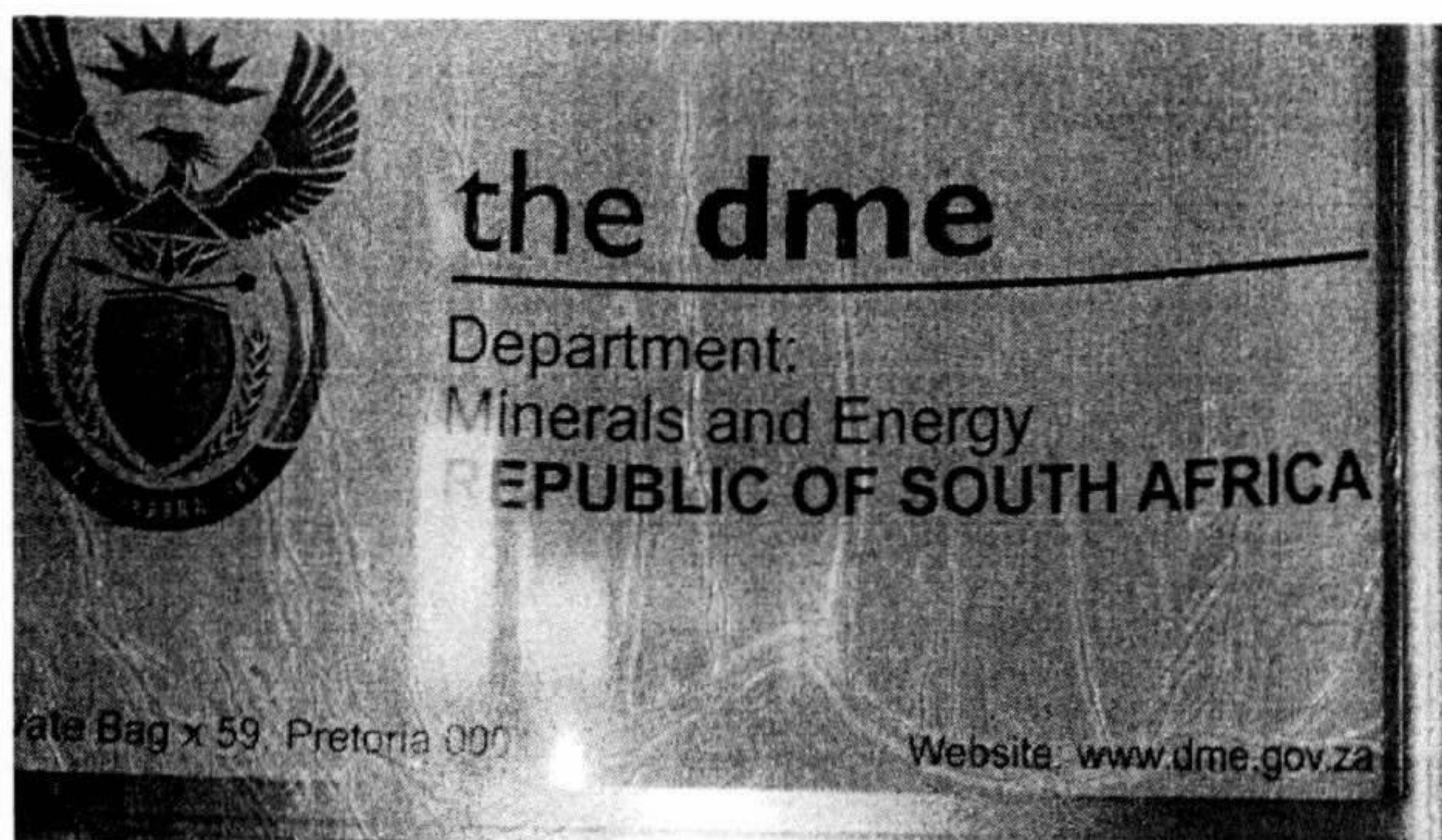


Foto 2: Destaque para o site do DME

A Missão do DME está explícita logo na entrada do órgão, foto 3.

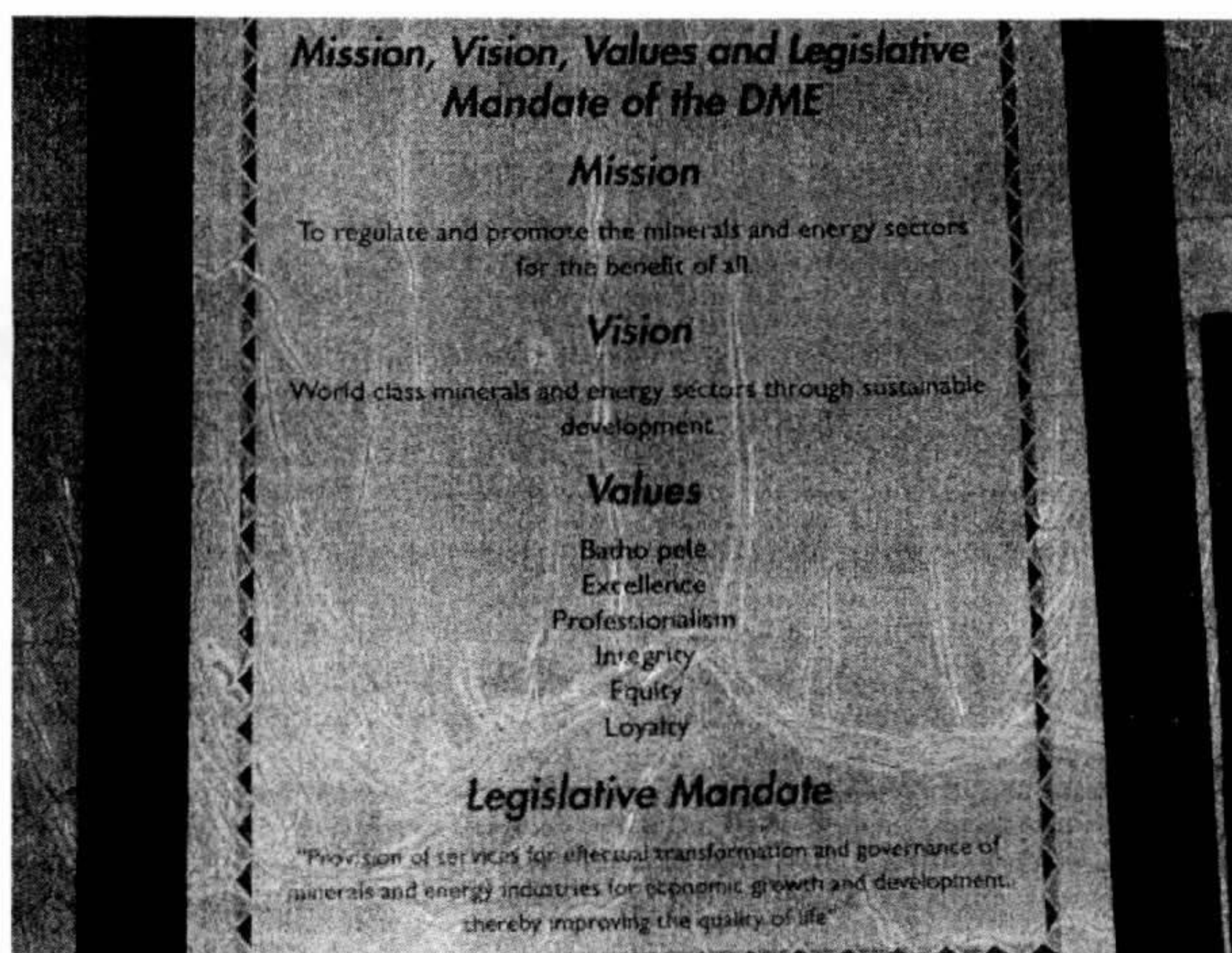


Foto 3: Missão do DME

No DME me reuni com a Chefe de Mineração e Assuntos Minerários Sra. Lindwe Mekwe (cartão anexo) que, juntamente com outros diretores do DME, muito gentilmente me forneceu as informações atuais sobre o processo de mudança na legislação mineral sul-africana, sobre a passagem da “velha para a nova ordem”, bem como sobre os dispositivos legais que regulamentam a atual política de *royalties* sobre os bens minerais, cuja legislação (anexa) foi recentemente aprovada.

A handwritten signature in blue ink, located at the bottom right of the page.

O material obtido na África do Sul já está sendo de grande utilidade para subsidiar as análises comparativas que estão embasando as propostas para o novo marco regulatório da mineração no Brasil, bem como servindo de insumo para as análises sobre a tributação do setor mineral e de seus efeitos sobre a competitividade da indústria mineral brasileira, tema que está sendo tratado pelo Grupo de Trabalho que estou coordenando no âmbito da SGM.

Nestes termos, submeto o documento à avaliação superior.

Brasília, 10 de outubro de 2008

Maria Amélia Enríquez

Maria Amélia Enríquez
Assessora/SGM/MME

ps

Certificate of Participation



ISEE 2008 NAIROBI
APPLYING ECOLOGICAL ECONOMICS FOR
SOCIAL AND ENVIRONMENTAL SUSTAINABILITY

Issued to

Maria Amélia Enríquez
Of
Universidade Federal do Para

Issued this 11th day of August 2008



Peter May, President
International Society for Ecological Economics



the dme

Department
Minerals and Energy
REPUBLIC OF SOUTH AFRICA

MS LINDIWE MEKWE
Chief Director: Mining and Mineral Policy

Private Bag X59, Pretoria, 0001
Mineralia Centre, 234 Visagie Street, 0002
Tel: (+27 12) 317 8365 / 8682 Fax: (+27 12) 320 1982
Cell: 082 885 9903
E-mail: Lindiwe.Mekwe@dme.gov.za / Mabore.Rakgole@dme.gov.za



Council for Geoscience

Private Bag X112 Pretoria 0001 SOUTH AFRICA 280 Pretoria Street Silverton Pretoria
Reception: +27 (0)12 841 1911 Internet address: <http://www.geoscience.org.za>

Stewart Foya
Ph.D., Pr.Sci.Nat
Manager
Mineral Resources Development Unit

Tel: +27 (0)12 841 1101
Fax: +27 (0)86 512 0277
Cell: +27 (0)73 635 7491
E-mail: sfoya@geoscience.org.za

REPUBLIC OF SOUTH AFRICA

MINERAL AND PETROLEUM RESOURCES ROYALTY BILL

*(As introduced in the National Assembly (proposed money Bill))
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 59—2008]

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BILL

To impose a royalty on the transfer of mineral resources and to provide for matters connected therewith.

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

ARRANGEMENT OF SECTIONS

<i>Section</i>		
1.	Definitions	5
2.	Imposition of royalty	
3.	Determination of royalty	
4.	Royalty formulae	
5.	Earnings before interest and taxes	
6.	Gross sales	10
7.	Small business exemption	
8.	Exemption for sampling	
9.	Rollover relief for disposals involving going concerns	
10.	Transfer involving body of unincorporated persons	
11.	Arm's length transactions	15
12.	General anti-avoidance rule	
13.	Conclusion of fiscal stability agreements	
14.	Terms and conditions of fiscal stability agreements	
15.	Foreign currency	
16.	Transitional credits	20
17.	Act binding on State and application of other laws	
18.	Short title and commencement	
	Schedule 1	
	Schedule 2	
Definitions		25
1.	(1) In this Act, unless the context indicates otherwise—	
	“ Administration Act ” means the Mineral and Petroleum Resources Royalty (Administration) Act, 2008;	
	“ earnings before interest and taxes ” means earnings before interest and taxes mentioned in section 5;	30
	“ extractor ” means a person mentioned in section 2;	
	“ gross sales ” means gross sales mentioned in section 6;	
	“ Income Tax Act ” means the Income Tax Act, 1962 (Act No. 58 of 1962);	
	“ Mineral and Petroleum Resources Development Act ” means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);	35
	“ mineral resource ” means a mineral or petroleum as defined in section 1 of the Mineral and Petroleum Resources Development Act, regardless of whether that	

mineral or petroleum undergoes processing (as defined in section 1 of that Act) or manufacturing;

“person” includes an insolvent estate, the estate of a deceased person and a trust;

“refined mineral resource” means a mineral resource—

- (a) listed solely in Schedule 1; or 5
- (b) listed in Schedule 1 and Schedule 2 that has been refined to or beyond the condition specified in Schedule 1 for that mineral resource;

“Republic” means the Republic of South Africa and includes the sea as defined in section 1 of the Mineral and Petroleum Resources Development Act;

“royalty” means the royalty imposed by this Act; 10

“transfer” means—

- (a) the disposal of a mineral resource;
- (b) the export of a mineral resource; or
- (c) the consumption, theft, destruction or loss of a mineral resource, other than by way of flaring or other liberation into the atmosphere during exploration or production, 15

if that mineral resource has not previously been disposed of, exported, consumed, stolen, destroyed or lost;

“unrefined mineral resource” means a mineral resource—

- (a) listed solely in Schedule 2; or 20
- (b) listed in Schedule 1 and Schedule 2 that has not been refined to or beyond the condition specified in Schedule 1 for that mineral resource;

(2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Administration Act bears that meaning for purposes of this Act.

Imposition of royalty 25

2. A person that wins or recovers a mineral resource from within the Republic must pay a royalty for the benefit of the National Revenue Fund in respect of the transfer of that mineral resource.

Determination of royalty

3. (1) The royalty mentioned in section 2 in respect of the transfer of a refined mineral resource is determined by multiplying the gross sales of the extractor in respect of that mineral resource during the year of assessment by the percentage determined in accordance with the formula in section 4(1). 30

(2) The royalty mentioned in section 2 in respect of the transfer of an unrefined mineral resource is determined by multiplying the gross sales of the extractor in respect of that mineral resource during the year of assessment by the percentage determined in accordance with the formula in section 4(2). 35

Royalty formulae

4. (1) The percentage mentioned in section 3(1) is—
 $0.5 + [\text{earnings before interest and taxes}/(\text{gross sales in respect of refined mineral resources} \times 12.5)] \times 100.$ 40

(2) The percentage mentioned in section 3(2) is—
 $0.5 + [\text{earnings before interest and taxes}/(\text{gross sales in respect of unrefined mineral resources} \times 9)] \times 100.$

(3)(a) The percentage determined in terms of subsection (1) must not exceed 5 per cent. 45

(b) The percentage determined in terms of subsection (2) must not exceed 7 per cent.

Earnings before interest and taxes

5. (1) For purposes of the formula in section 4(1), “earnings before interest and taxes” in respect of a year of assessment means the aggregate of— 50

- (a) the gross sales of the extractor during that year in respect of refined mineral resources; and

A base de rendimento do royalty é a venda bruta

*- Bruto
venda Bruta * % (12,5)
- US Refinado
venda bruta * % (9)*

As aliquotas são progressivas, com o decréscimo de a pagar de 12,5 para a paga + 9

Aliquota máx 5% H que a pagar e 7% H que a pagar

*Concepto de ganancia
antes del IR.*

(b) so much of the amount allowed to be deducted from income in terms of the Income Tax Act (whether in that year or a previous year of assessment) in respect of the use of assets, or expenditure incurred, directly in respect of mineral resources transferred on or after 1 May 2009 to win, recover and develop those mineral resources to the condition specified in Schedule 1, as is included in the income of the extractor during that year of assessment in terms of section 8(4) of that Act (disregarding the exception in respect of section 15(a) of that Act), but not including an amount that is received or accrued from the disposal of assets the cost of which has in whole or in part been included in capital expenditure taken into account as mentioned in the definition of "capital expenditure incurred" in section 36(11) of that Act, less any amount which in terms of that Act is allowed to be deducted from the income of the extractor during that year of assessment in respect of assets used or expenditure incurred directly to win, recover and develop those refined mineral resources to the condition specified in Schedule 1 for those mineral resources.

(2) For purposes of the formula in section 4(2), "earnings before interest and taxes" in respect of a year of assessment means the aggregate of—

- (a) the gross sales of the extractor during that year in respect of unrefined mineral resources; and
- (b) so much of the amount allowed to be deducted from income in terms of the Income Tax Act (whether in that year or a previous year of assessment) in respect of the use of assets, or expenditure incurred, directly in respect of mineral resources transferred on or after 1 May 2009 to win, recover and develop those unrefined mineral resources, as is included in the income of the extractor during that year of assessment in terms of section 8(4) of that Act (disregarding the exception in respect of section 15(a) of that Act), but not including an amount that is received or accrued from the disposal of assets the cost of which has in whole or in part been included in capital expenditure taken into account as mentioned in the definition of "capital expenditure incurred" in section 36(11) of that Act,

less any amount which in terms of that Act is allowed to be deducted from the income of the extractor during that year of assessment in respect of assets used or expenditure incurred directly to win, recover and develop those unrefined mineral resources to the condition specified in Schedule 2 for those mineral resources.

(3) For purposes of subsections (1) and (2), "earnings before interest and taxes" is determined without regard to—

- (a) any deduction in respect of a financial instrument as defined in section 1 of the Income Tax Act (other than an instrument that is an option contract, forward contract or other instrument the value of which is derived directly or indirectly with reference to mineral resources);
- (b) any deduction allowed in terms of section 11(a) of the Income Tax Act in respect of the royalty;
- (c) (i) in the case of mineral resources refined to the condition specified in Schedule 1 for those mineral resources, any deduction for expenditure incurred in respect of transport, insurance and handling of those refined mineral resources after those mineral resources were refined to that condition or any amount received or accrued to effect the disposal of that mineral resource; or
(ii) in the case of mineral resources brought to the condition specified in Schedule 2 for those mineral resources, any deduction for expenditure incurred in respect of transport, insurance and handling of those unrefined mineral resources after those mineral resources were brought to that condition or any amount received or accrued to effect the disposal of that mineral resource;
- (d) any balance of assessed loss mentioned in section 20(1)(a) of the Income Tax Act, unless the balance of assessed loss arises in respect of capital expenditure taken into account for purposes of paragraph 5(1) of the Tenth Schedule of the Income Tax Act;
- (e) any deduction allowed in terms of section 24I of the Income Tax Act;
- (f) any determination in respect of an impermissible tax avoidance arrangement contemplated in Part IIA of the Income Tax Act; or
- (g) any deductions contemplated in paragraph 5(2) of the Tenth Schedule to the Income Tax Act.

(4) (a) For purposes of determining "earnings before interest and taxes" in the case of a composite of refined mineral resources and unrefined mineral resources, the refined and unrefined proportions of the composite mineral resource must be determined in accordance with a method of reasonable apportionment that is consistently applied.

(b) For purposes of determining "earnings before interest and taxes", if the value of the refined proportion of a composite mineral resource as determined in terms of subsection (1) does not exceed 10 per cent of the total value of that composite mineral resource, that composite mineral resource may be treated solely as an unrefined mineral resource, and if the value of the unrefined proportion of a composite mineral resource as so determined does not exceed 10 per cent of the total value of that composite mineral resource, that composite mineral resource may be treated solely as a refined mineral resource.

(5) For purposes of this section, if "earnings before interest and taxes" is a negative amount that amount is deemed to be nil.

Gross sales

6. (1) Gross sales in respect of a refined mineral resource transferred—

(a) as mentioned in paragraph (a) of the definition of "transfer" in section 1 in the condition specified for that mineral resource in Schedule 1 is the amount received or accrued during the year of assessment in respect of the transfer of that mineral resource;

(b) as mentioned in paragraph (a) of the definition of "transfer" in section 1 in a condition other than that specified for that mineral resource in Schedule 1 is the amount that would have been received or accrued during the year of assessment in respect of the transfer of that mineral resource had that mineral resource been transferred in the condition specified in Schedule 1 for that mineral resource in terms of a transaction entered into at arm's length; and

(c) as mentioned in paragraph (b) or (c) of the definition of "transfer" in section 1 is the amount that would have been received or accrued during the year of assessment in respect of the transfer of that mineral resource had that mineral resource been transferred in the condition specified in Schedule 1 for that mineral resource in terms of a transaction entered into at arm's length.

(2) Gross sales in respect of an unrefined mineral resource transferred—

(a) as mentioned in paragraph (a) of the definition of "transfer" in section 1 in the condition specified in Schedule 2 for that mineral resource is the amount received or accrued during the year of assessment in respect of the transfer of that mineral resource;

(b) as mentioned in paragraph (a) of the definition of "transfer" in section 1 in a condition other than that specified for that mineral resource in Schedule 2 is the amount that would have been received or accrued during the year of assessment in respect of the transfer of that mineral resource had that mineral resource been transferred in the condition specified in Schedule 2 for that mineral resource in terms of a transaction entered into at arm's length; and

(c) as mentioned in paragraph (b) or (c) of the definition of "transfer" in section 1 is the amount that would have been received or accrued during the year of assessment in respect of the transfer of that mineral resource had that mineral resource been transferred in the condition specified in Schedule 2 for that mineral resource in terms of a transaction entered into at arm's length.

(3) (a) For purposes of subsection (1), gross sales is determined without regard to any amount received or accrued in respect of transport, insurance and handling of a refined mineral resource after that mineral resource was refined to the condition specified in Schedule 1 for that mineral resource or any amount received or accrued to effect the disposal of that mineral resource.

(b) For purposes of subsection (2), gross sales is determined without regard to any amount received or accrued for the transport, insurance and handling of an unrefined mineral resource after that mineral resource was brought to the condition specified in Schedule 2 for that mineral resource or any amount received or accrued to effect the disposal of that mineral resource.

(4) (a) If no amount can be quantified in respect of a refined mineral resource transferred as mentioned in subsection (1)(a), gross sales in respect of that transfer is the amount that would have been received or accrued during the year of assessment in respect of that transfer had that mineral resource been transferred in the condition

specified in Schedule 1 for that mineral resource in terms of a transaction entered into at arm's length.

(b) If no amount can be quantified in respect of an unrefined mineral resource transferred as mentioned in subsection (2)(a), gross sales in respect of that transfer is the amount that would have been received or accrued during the year of assessment in respect of that transfer had that mineral resource been transferred in the condition specified in Schedule 2 for that mineral resource in terms of a transaction entered into at arm's length.

Small business exemption

7. (1) An extractor is exempt from the royalty in respect of a year of assessment if—

- (a) gross sales of that extractor in respect of all mineral resources transferred does not exceed R10 million during that year;
- (b) the royalty in respect of all mineral resources transferred that would be imposed on the extractor for that year does not exceed R100 000;
- (c) the extractor is a resident as defined in section 1 of the Income Tax Act throughout that year; and
- (d) the extractor is registered for that year pursuant to section 2 of the Administration Act.

(2) An extractor is not exempt from the royalty as mentioned in subsection (1) if—

- (a) the extractor at any time during that year holds the right to participate (directly or indirectly) in more than 50 per cent of the share capital, share premium, current or accumulated profits or reserves of, or is entitled to exercise more than 50 per cent of the voting rights in, any other extractor;
- (b) any other extractor at any time during that year holds the right to participate (directly or indirectly) in more than 50 per cent of the current or accumulated profits of the extractor;
- (c) any other person at any time during that year holds the right to participate (directly or indirectly) in more than 50 per cent of the profits of the extractor and more than 50 per cent of the current or accumulated profits of any other extractor; or
- (d) the extractor is a registered person mentioned in section 4 of the Administration Act.

Exemption for sampling

8. An extractor is exempt from the royalty imposed in respect of mineral resources won or recovered by the extractor for purposes of testing, identification, analysis and sampling mentioned in section 20 of the Mineral and Petroleum Resources Development Act pursuant to a prospecting right or an exploration right as defined in section 1 of that Act if the gross sales in respect of those mineral resources does not exceed R100 000 during a year of assessment.

Rollover relief for disposals involving going concerns

9. (1) For purposes of this Act a disposal of a mineral resource by an extractor that forms part of the disposal of a going concern, or of a part of a going concern which is capable of separate operation, by that extractor to any other extractor is deemed not to be a disposal.

(2) For purposes of this Act an extractor that acquires a mineral resource in terms of a disposal mentioned in subsection (1) is deemed to be the extractor that won or recovered the mineral resource.

Transfer involving body of unincorporated persons

10. (1) Notwithstanding any other provision in this Act, an unincorporated body that is registered as a person under the Administration Act—

- (a) is deemed to be an extractor while that registration remains in effect; and
- (b) is subject to the royalty as if that body were an extractor separate from its members, in respect of mineral resources won, recovered or transferred by that unincorporated body after taking into account any earnings before interest and taxes associated with those minerals as well as the application of any other

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*Projeção futura = 150
 Venda Bruta =
 22 milhões de reais/ano
 20,2 "
 - Menor que 1 ano
 e 100 mil*

*a maioria são isent
 u pode ultrapassar
 20 milhões a.a.*

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provision of this Act bearing on the royalty determination in respect of those mineral resources.

(2) Notwithstanding any other provision in this Act, to the extent that any member of an unincorporated body mentioned in subsection (1) is acting in a capacity other than as a member of that body, that member is subject to the royalty as if that member were an extractor separate from that body in respect of mineral resources won, recovered or transferred by that unincorporated body after taking into account any earnings before interest and taxes associated with those minerals as well as the application of any other provision of this Act bearing on the royalty determination in respect of those mineral resources.

(3) On the date of the election made in terms of section 4(1) of the Administration Act, the members of an unincorporated body mentioned in that section are deemed to have transferred the mineral resources to be disposed of by that body, which had been won or recovered by those members.

(4) On the date on which an unincorporated body terminates the election in terms of section 4(6) of the Administration Act, the unincorporated body is deemed to have transferred the mineral resources won or recovered by the unincorporated body to the members of that unincorporated body.

Arm's length transactions

11. (1) To the extent that the earnings before interest and taxes determined in terms of section 5 differ from the earnings that an extractor would have taken into account if those earnings had been derived from transactions entered into at arm's length, the Commissioner may adjust the earnings to reflect the earnings that would have been taken into account.

(2) To the extent that the gross sales determined in terms of section 6(1)(a) or section 6(2)(a) differ from the gross sales that an extractor would have taken into account if the gross sales had been derived from transactions entered into at arm's length, the Commissioner may adjust the gross sales to reflect the gross sales that would have been taken into account.

General anti-avoidance rule

12. (1) Notwithstanding anything to the contrary in this Act, if the Commissioner is satisfied that a disposal, transfer, operation, scheme or understanding (whether entered into or carried out before or after the commencement of this Act)—

- (a) has been entered into or carried out, which has the effect of avoiding or postponing liability for the royalty, or of reducing the amount thereof;
- (b) having regard to the circumstances under which the disposal, transfer, operation, scheme or understanding was entered into or carried out—
 - (i) was entered into or carried out—
 - (aa) in the case of a disposal, transfer, operation, scheme or understanding in the context of business, in a manner which would not normally be employed for *bona fide* business purposes, other than the obtaining of a royalty benefit; and
 - (bb) in the case of any other disposal, transfer, operation, scheme or understanding not falling within the provisions of item (aa), by means or in a manner which would not normally be employed in the entering into or carrying out of a disposal, transfer, operation, scheme or understanding of the nature of the disposal, transfer, operation, scheme or understanding in question; or
 - (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length under a disposal, transfer, operation, scheme or understanding of the nature of the disposal, transfer, operation, scheme or understanding in question; and
- (c) was entered into or carried out solely or mainly for the purposes of obtaining a royalty benefit,

the Commissioner must determine the liability for the royalty, and the amount thereof, as if the disposal, transfer, operation, scheme, or understanding had not been entered into or carried out, or in such manner as the Commissioner in the circumstances deems appropriate for the prevention or diminution of avoidance, postponement or reduction.

(2) A decision of the Commissioner under subsection (1) is subject to objection and appeal mentioned in section 18(1)(d) of the Administration Act, and whenever in proceedings relating thereto it is proved that the disposal, transfer, operation, scheme or understanding in question would result in the avoidance or postponement of liability for the royalty, or in the reduction of the amount thereof, it is presumed, until the contrary is proved, in the case of any such disposal, transfer, operation, scheme or understanding, that it was entered into or carried out solely or mainly for the purposes of the avoidance or the postponement of such liability, or the reduction of the amount of such liability. 5

(3) For purposes of this section, "royalty benefit" includes any avoidance, postponement or reduction of the liability for payment of the royalty mentioned in section 2. 10

Conclusion of fiscal stability agreements

13. (1) The Minister of Finance may conclude a binding agreement with an extractor—

(a) in respect of the extractor's mineral resource right; or 15

(b) in anticipation of the extractor acquiring a mineral resource right, that guarantees that the terms and conditions contemplated in section 14 apply in respect of the right for as long as the extractor holds the right (and for all participating interests subsequently held by the extractor in respect of the right).

(2) A binding agreement relating to the anticipated acquisition of a mineral resource right contemplated in subsection (1)(b) has no force and effect unless the mineral resource right is granted within one year after the date on which the Minister of Finance concludes the binding agreement. 20

(3) If an extractor disposes of a prospecting right or an exploration right granted under the Mineral and Petroleum Resources Development Act to another person, and the right is subject to a binding agreement mentioned in subsection (1) on the date of the disposal, the extractor may assign all the rights held by the extractor under the agreement to the other person. 25

(4) If an extractor disposes of a mining right or a production right granted under the Mineral and Petroleum Resources Development Act to another person, and the right is subject to a binding agreement mentioned in subsection (1) on the date of the disposal, the extractor may assign all the rights held by the extractor under the agreement to the other person, if both the extractor and the other person form part of the same group of companies (as defined in section 1 of the Income Tax Act) on the date of the disposal. 30

(5) An extractor that concludes a binding agreement mentioned in subsection (1) may unilaterally terminate the agreement at any time with effect from the day after the last day of the year of assessment during which the extractor terminated the agreement. 35

(6) For purposes of this section—

(a) a prospecting right, a renewal of the prospecting right and an initial mining right converted from a prospecting right or renewal thereof held by an extractor; and 40

(b) an exploration right, a renewal of the exploration right and an initial production right converted from an exploration right or renewal thereof held by an extractor,

are, to the extent that those rights relate to the same geographical area, all deemed to be one and the same mineral resource right in the hands of the extractor. 45

(7) The powers conferred and the duties imposed upon the Minister of Finance by the provisions of this section may be exercised or performed by the Minister personally or delegated by the Minister to the Director-General of the National Treasury and the Director-General may in turn delegate the powers and duties so delegated to him or her to any officer or person under his or her control, direction or supervision. 50

(8) For purposes of this section "mineral resource right" means a prospecting right, exploration right, mining right or production right granted pursuant to the Mineral and Petroleum Resources Development Act, and includes any lease or sublease mentioned in section 11 of that Act in respect of such right. 55

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Terms and conditions of fiscal stability agreements

14. (1) An amendment of section 4 has no force and effect in respect of an extractor that is party to an agreement contemplated in section 13(1) if the amendment has the effect that the extractor becomes subject to a royalty which is greater than the royalty to which the extractor would otherwise have been subject. 5

(2) If the State fails to comply with the terms of an agreement contemplated in section 13(1) and the failure has a material adverse economic impact on the determination of the royalty payable by the extractor that is party to that agreement, the extractor is entitled to compensation in respect of the increase in the royalty caused by the failure (and interest at the prescribed rate calculated on the compensation from the date of the failure) or to an alternative remedy that eliminates the full impact of the failure. 10

Foreign currency

15. Any amount received by or accrued to, or expenditure or loss incurred by, an extractor in any currency other than the currency of the Republic must be translated to the currency of the Republic by applying the spot rate, as defined in section 1 of the Income Tax Act, on the date on which that amount was so received or accrued or expenditure or loss was so incurred. 15

Transitional credits

16. (1) There must be deducted from the royalty payable in respect of a mineral resource the amount of any lease, royalty or similar payment to the State in respect of that mineral resource in terms of any conditions imposed pursuant to the laws applicable in respect of an old order right or OP26 right mentioned in Schedule II of the Mineral and Petroleum Resources Development Act, as consideration for the removal or disposal of a mineral or petroleum. 20

(2) No deduction is allowed in terms of subsection (1) in respect of any lease mentioned in item 9(7) of Schedule II to the Mineral and Petroleum Resources Development Act. 25

(3) The amount to be deducted in terms of subsection (1) must not exceed the royalty mentioned in that subsection. 30

Act binding on State and application of other laws

17. This Act binds the State, and no provision in any other law is construed as applying or referring to this royalty unless the royalty is specifically mentioned in that provision.

Short title and commencement

18. (1) This Act is called the Mineral and Petroleum Resources Royalty Act, 2008. 35

(2) This Act comes into operation on 1 May 2009 and applies in respect of a mineral resource transferred on or after that date.

SCHEDULE 1

REFINED CONDITION OF MINERAL RESOURCES

Mineral resource name	Refined condition
Cobalt	Cobalt is refined once processed into cobalt metal or cobalt sulphate. 99.5 % refined
Copper	Copper is refined once processed into copper metal slabs, blister copper or cathode copper of at least 99.0 % purity.
Germanium	99.99% refined product
Gold	Refined and smelted to a 99.5 % purity
Lead	Lead is refined once processed into bars and billets containing at least 99.0 % pure lead.
Lithium	99.5% LiCO ₃ in concentrate (lithium carbonate)
Mercury	99.9% purity
Nickel (Base metal)	Nickel is refined once processed into a metal, or other form (e.g. ferro nickel, nickel metal or nickel sulphate). 99.5% purity
Platinum Group Metals (iridium, palladium, platinum, rhodium, ruthenium and osmium)	Refined and smelted to a 99.9 % purity
Molybdenum	99.99% refined product
Silicon	98.5% Si
Silver	Silver is refined once processed to silver metal or silver nitrate. 99.5% refined
Talc	98.5% and minus 325 µm mesh
Zinc	Zinc is refined once processed into zinc metal, plates or slabs containing at least 98.5 % pure zinc.

Mineral resource name	Refined condition
Oil and Gas	
Oil	At inlet of refinery
Gas	At inlet of refinery

SCHEDULE 2

UNREFINED CONDITION OF MINERAL RESOURCES

Mineral resource name	Unrefined condition
Aggregates	Bulk
Antimony	65% Sb content in the concentrate
Barite	Concentrates with 97% BaSO ₄
Beryllium	70% beryl concentrate
Chrome ore in lump, chips and fines	(i) 37% to 46% Cr ₂ O ₃ in concentrate; (ii) 4% to 10% SiO ₂ and a (iii) Cr/Fe ratio of 1.25 to 1.45 (chip and lump) or (iv) 0.8% to 6% SiO ₂ and (v) Cr/Fe ratio of 1.3 to 1.6 (fine < 1mm)
Clay used for bricks Kaolinite clay used by paper and ceramic sectors	Bulk
Coal	<u>Grade A:</u> <i>in situ</i> calorific value equal or greater than 27.5 GMJ/kg <u>Grade B:</u> <i>in situ</i> calorific value equal of greater than 26.5 GMJ/kg and less than 27.5 GMJ/kg <u>Grade C:</u> <i>in situ</i> calorific value equal or greater than 19.0GMJ/kg and less than 26.5 GMJ/kg <u>Grade D:</u> <i>in situ</i> calorific value less than 19.0 GMJ/kg
Cobalt	7% Co in a polymineralic matte
Copper	20% to 30% Cu
Diamond	Rough Diamonds
<u>Dimension stone:</u> Granite, Sandstone, Slate, Shale, Gneiss, Marble	Bulk
Fluorspar	80% concentrate
Graphite	86% carbon content
Iron ore	61% to 64% Fe content
Lead	Concentrate with a minimum of 50% Pb
Limestone	Concentrate with a minimum of 54% CaCO ₃
Manganese	Manganese ore: Mn 37% to Mn 48% and Si + Al less than 11%
Mica	48% concentrate
<u>Mineral Sand (Titanium)</u>	
Ilmenite	75% ilmenite concentrate
Rutile	53% Rutile concentrate
Zircon	85% Zircon concentrate
Nickel	1.4% Ni content

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Mineral resource name	Unrefined condition
Niobium	45% Ni ₂ O ₃ in concentrate
Platinum Group Metals (iridium, palladium, platinum, rhodium, ruthenium and osmium)	concentrate (150 ppm)
Sand	Bulk
Silver	800g/t Ag in polyminerale base metal
Tantalum	In concentrate 30% Ta ₂ O ₅ , Max 0.5% U ₃ O ₈ and ThO ₂ combined
Tin	80% cassiterite concentration
Tungsten (CaWO ₄) and Wolfram	Minimum 65% WO ₃ in concentrate
Uranium	80% uranium in concentrate. Oxide (yellow cake) and Uranium Hexafluoride.
Vanadium	Concentrate > 1% V ₂ O ₅ equivalent and less than 2% calcium and silica bearing gangue minerals (SiO ₂ + CaO)
Zinc (Base metal)	27% Zn in concentrate
Other Minerals not listed elsewhere	Concentrate or where the specific mineral is not rendered into a concentrate, bulk. e.g. Phosphate Rock, Vermiculite, Semi-precious gemstones (like rose quartz, tiger's eye; corundum: etc), Precious gemstones (like sugilite), Feldspar, Garnet, Peat, Perlite, Rare Earth Elements, Silica, Soda Ash, Wollastonite, Zeolite, etc.

REPUBLIC OF SOUTH AFRICA

**MINERAL AND PETROLEUM
RESOURCES ROYALTY
(ADMINISTRATION) BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 31164 of 19 June 2008) ←*
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 60—2008]

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BILL

To provide for the administration of matters in connection with the imposition of a royalty on the transfer of mineral resources and for matters connected therewith.

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

ARRANGEMENT OF SECTIONS

<i>Section</i>		
	<i>Part I</i>	5
	<i>Interpretation</i>	
1.	Definitions	
	<i>Part II</i>	
	<i>Registration</i>	
2.	Registration	10
3.	Cancellation of registration	
4.	Election for unincorporated body of persons	
	<i>Part III</i>	
	<i>Payments and returns</i>	
5.	Payments in respect of estimated royalty	15
6.	Submission of return and final payment	
7.	Form, manner and place determined by Commissioner	
8.	Maintenance of records	
	<i>Part IV</i>	
	<i>Assessments</i>	20
9.	Notices of assessment	
10.	Reduced assessments	
11.	Withdrawal of notice of assessment	
12.	Time limit for notice of assessment	

*Part V**Refunds, penalty and interest*

- | | | |
|-----|--|---|
| 13. | Refunds | |
| 14. | Penalty for underestimation of royalty payable | |
| 15. | Adjustments of estimated royalty | 5 |
| 16. | Interest | |

*Part VI**Miscellaneous*

- | | | |
|-----|---------------------------------|----|
| 17. | Administration of Act | |
| 18. | Applicability of Income Tax Act | 10 |
| 19. | Reporting | |
| 20. | Regulations | |
| 21. | Short title and commencement | |

*Part I**Interpretation*

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Definitions

1. (1) In this Act, unless the context indicates otherwise—
- “**Commissioner**” means the Commissioner for the South African Revenue Service;
- “**financial year**” means a financial year as defined in section 1 of the Income Tax Act; 20
- “**notice of assessment**” means a notice of assessment mentioned in section 9;
- “**registered person**” means a person that qualifies for registration in terms of section 2;
- “**Royalty Act**” means the Mineral and Petroleum Resources Royalty Act, 2008; 25
and
- “**year of assessment**”, in relation to a registered person, means—
- (a) in the case of a natural person or trust, the period commencing on 1 March and ending on the last day of February of the following year; and
- (b) in the case of any other person, the period commencing on the first day of that person’s financial year and ending on the last day of that financial year, and if any financial year begins on any day other than the first day of a month, that financial year is deemed to begin on the first day of that month. 30
- (2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Royalty Act bears the meaning so assigned for purposes of this Act. 35

*Part II**Registration***Registration**

2. (1) A person qualifies for registration in terms of this Act if that person— 40
- (a) holds a prospecting right, retention permit, exploration right, mining right, mining permit or production right granted pursuant to the Mineral and Petroleum Resources Development Act or a lease or sublease mentioned in section 11 of the Mineral and Petroleum Resources Development Act in respect of such a right; or 45
- (b) wins or recovers a mineral resource from within the Republic.
- (2) A person that qualifies for registration as mentioned in subsection (1)—
- (a) on 1 May 2009 must apply to register with the Commissioner by 30 June 2009; or
- (b) after 1 May 2009 must apply to register with the Commissioner within 60 days after the day on which that person qualifies for registration. 50
- (3) The Commissioner must register a person that qualifies for registration and that registration takes effect from the beginning of the year of assessment during which the person qualifies for registration.

Cancellation of registration

3. (1) A person registered under this Act that no longer qualifies for registration (or anticipates not qualifying for registration from a specified date) may apply to the Commissioner for cancellation of registration.

(2) Upon receipt of an application mentioned in subsection (1), the Commissioner may cancel the registration of a person mentioned in subsection (1) with effect from the day after the last day of the year of assessment in which that person no longer qualified for registration as mentioned in subsection (1). 5

(3) The obligations and liabilities of a person under this Act and the Royalty Act in respect of anything done or omitted to be done by the person while a registered person are not affected by the cancellation of the registration of that person as mentioned in subsection (2). 10

Election for unincorporated body of persons

4. (1) Notwithstanding subsection (2), if an unincorporated body of persons—

(a) consists of two or more members; and 15

(b) holds a prospecting right, retention permit, exploration right, mining right, mining permit or production right granted pursuant to the Mineral and Petroleum Resources Development Act (or a lease or sublease mentioned in section 11 of the Mineral and Petroleum Resources Development Act in respect of such a right) in the name of that unincorporated body, 20

all the members of that unincorporated body may elect that the unincorporated body becomes a person that qualifies for registration in terms of section 2.

(2) On the day on which an unincorporated body qualifies for registration as mentioned in subsection (1)—

(a) all the members of that unincorporated body must elect a year of assessment in respect of that unincorporated body and that year of assessment must be the same year of assessment as that of a member of that unincorporated body; and 25

(b) section 10 of the Royalty Act applies to that unincorporated body for as long as that unincorporated body is registered in terms of section 2.

(3) If subsection (2) applies to an unincorporated body— 30

(a) the liabilities and duties imposed under this Act and the Royalty Act in respect of that unincorporated body must be applied and performed by that unincorporated body separately from the members of that unincorporated body; and

(b) any other actions that are permitted by a person registered under this Act in respect of that unincorporated body must be performed by that unincorporated body separately from the members of that unincorporated body. 35

(4) Each member of an unincorporated body mentioned in subsection (2) is liable jointly and severally with the other members of that unincorporated body for—

(a) the duties of that unincorporated body under this Act and the Royalty Act; and 40

(b) the royalty imposed under the Royalty Act on that unincorporated body in respect of all mineral resources transferred by that unincorporated body,

while the member was a member of that unincorporated body.

(5) If—

(a) an unincorporated body mentioned in subsection (2) is dissolved solely as a result of— 45

(i) the retirement, withdrawal or death of one or more members of that unincorporated body; or

(ii) the admission of a new member to that unincorporated body; and

(b) the new unincorporated body which is brought into being as a result of the dissolution mentioned in paragraph (a) satisfies the requirements of subsection (1)(a) and (b), 50

the registration of the dissolved unincorporated body remains in effect for purposes of the new unincorporated body notwithstanding that dissolution.

(6) All the members of an unincorporated body mentioned in subsection (1) may at any time elect to terminate the registration of that unincorporated body with effect from the day after the last day of the year of assessment in which that election was made. 55

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*Part III**Payments and returns***Payments in respect of estimated royalty**

5. (1) A registered person must submit an estimate of the royalty payable in respect of a year of assessment within six months after the first day of that year and must make a payment (together with such return for that payment as the Commissioner may prescribe) equal to one-half of the amount of the royalty so estimated. 5

(2) A registered person must submit an estimate of the royalty payable in respect of a year of assessment by the last day of that year and submit a payment (together with such return for that payment as the Commissioner may prescribe) equal to the amount of the royalty so estimated less the amount paid as mentioned in subsection (1). 10

Submission of return and final payment

6. (1) A registered person must submit a return (as the Commissioner may prescribe) for the royalty payable in respect of a year of assessment within six months after the last day of that year. 15

(2) If the amount of the royalty mentioned in subsection (1) that is payable in respect of a year of assessment exceeds the sum of the two payments made as mentioned in section 5, that excess must be paid within six months after the last day of that year.

Form, manner and place determined by Commissioner

7. All registrations, returns, forms and payments required in terms of this Act or the Royalty Act must be submitted in such form, manner (including electronically) and place as determined by the Commissioner in respect of any matter necessary to administer this Act or the Royalty Act. 20

Maintenance of records

8. (1) A registered person must retain such records as are necessary to satisfy the requirements of this Act and the Royalty Act, including— 25

- (a) particulars of "earnings before interest and taxes" as mentioned in section 5 of the Royalty Act with sufficient detail to identify all the gross sales, income and allowable deductions in respect of those earnings;
- (b) particulars of "gross sales" as mentioned in section 6 of the Royalty Act with sufficient detail to identify all transferred mineral resources in respect of those gross sales and the persons acquiring those transferred mineral resources; 30
- (c) the quantity of mineral resources extracted but not transferred and those transferred by that registered person with sufficient detail to identify those extracted and transferred mineral resources; 35
- (d) the accounting income with sufficient detail to identify the "earnings before interest and taxes" as mentioned in section 5 of the Royalty Act that relate to that accounting income;
- (e) a ledger, cash book, journal, cheque book, bank statement, deposit slip, paid cheque, invoice, other book of account or financial statement; and 40
- (f) any information required by the Commissioner.

(2) A registered person must retain the records mentioned in subsection (1) (either in their original form or in any other form permitted by the Commissioner) for five years after the date of the submission of the return to which those records relate.

*Part IV**Assessments***Notices of assessment****9. (1) If—**

- (a) the Commissioner has reason to believe that a registered person has failed to pay the royalty for which that registered person is liable as mentioned in section 6; 5
- (b) the registered person fails to furnish a return in respect of the royalty for which that registered person is liable as mentioned in section 6; or
- (c) the Commissioner is not satisfied with a return mentioned in paragraph (b) furnished by the registered person, 10

the Commissioner may issue to that person a notice of assessment of the royalty payable for the assessment period concerned, notwithstanding sections 81(5), 83(18) and 83A(12) of the Income Tax Act.

(2) If—

- (a) a registered person defaults in furnishing a return mentioned in subsection (1) or any information in respect of that return; 15
- (b) the Commissioner is not satisfied with the return or information mentioned in paragraph (a); or
- (c) the Commissioner is not satisfied with the amount of the royalty paid by that person as mentioned in subsection (1), 20

the Commissioner may estimate the amount in relation to which the return or information is required (or of the royalty otherwise properly chargeable under this Act) for purposes of the notice of assessment mentioned in subsection (1).

(3) The Commissioner must, in a notice of assessment, give notice to a registered person that an objection to or appeal against that notice of assessment must be noted as described in sections 81, 83 and 83A of the Income Tax Act. 25

(4) A registered person that receives a notice of assessment must pay the amount of the royalty so assessed to the Commissioner within 30 days after the date of issue of that notice of assessment. 30

(5) A registered person that lodges an objection or appeal against a notice of assessment must pay the tax so assessed in respect of that notice of assessment within 30 days after the date of issue of that notice of assessment, and if that notice of assessment is not final by the last day of five years from the date of issue of that notice of assessment, that person must retain all records relevant to that objection or appeal until that notice of assessment becomes final. 35

Reduced assessments

10. (1) Notwithstanding the fact that an objection or appeal has not been noted, the Commissioner may reduce a notice of assessment—

- (a) to rectify a processing error made in issuing the notice of assessment; or 40
- (b) if it is proven to the satisfaction of the Commissioner that in issuing the notice of assessment any amount which—
 - (i) was taken into account by the Commissioner in determining the registered person's liability in respect of the royalty, should not have been taken into account; or 45
 - (ii) should have been taken into account in determining the registered person's liability in respect of the royalty, was not taken into account by the Commissioner:

Provided that such notice of assessment, wherein the amount was so taken into account or not taken into account, as mentioned in subparagraph (i) or (ii), as the case may be, was issued by the Commissioner based on information provided in the registered person's returns for the current or any previous year of assessment. 50

(2) The Commissioner may not issue a reduced notice of assessment mentioned in subsection (1)—

- (a) after the expiration of five years from the date of issue of the notice of assessment; or 55

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- (b) if the amount was assessed in terms of a notice of assessment which was made in accordance with the practice generally prevailing at the date of that notice and was accepted by the registered person.

Withdrawal of notice of assessment

- 11.** (1) The Commissioner may withdraw a notice of assessment that is— 5
 (a) issued to an incorrect person; or
 (b) issued in respect of an incorrect assessment period.
 (2) For purposes of this Act, any withdrawn notice of assessment mentioned in subsection (1) is deemed not to have been issued.

Time limit for notice of assessment 10

- 12.** (1) The Commissioner may not issue a notice of assessment in respect of a return more than five years after the date of submission of that return.
 (2) The five-year limit with respect to a notice of assessment mentioned in subsection (1) does not apply if the Commissioner has reason to believe that a registered person failed to pay the royalty to which that notice of assessment relates due to fraud, 15
 misrepresentation or non-disclosure of material facts.

Part V

Refunds, penalty and interest

Refunds

- 13.** (1) A registered person may claim a refund of any amount of royalty paid as 20
 mentioned in section 6 to the extent that the amount exceeds—
 (a) in the case where that amount was paid in respect of a notice of assessment,
 the amount so assessed; or
 (b) in any other case, the amount of royalty properly chargeable under the Royalty 25
 Act with respect to that registered person.
 (2) The Commissioner may not authorise a refund under subsection (1)(b) if—
 (a) the amount was previously paid in accordance with the practice generally
 prevailing at the date of the payment; or
 (b) that refund is claimed by that registered person after a period of five years 30
 from the date of the official receipt acknowledging the payment or, if more
 than one payment was made, the date of the official receipt acknowledging the
 latest of those payments.
 (3) The Commissioner may refuse to authorise a refund under subsection (1) if the
 registered person has failed to furnish—
 (a) a return in respect of a payment required in terms of section 6 until that person 35
 has furnished that return; or
 (b) the Commissioner in writing with particulars of that registered person's
 banking account or account with a similar institution to enable the
 Commissioner to transfer a refund, if any, to that account until that registered 40
 person has furnished the particulars as required.
 (4) If a refund contemplated in subsection (1) is due to a registered person that has
 failed to pay any amount required under this Act or any other Act administered by the
 Commissioner, within the period prescribed for payment of the amount, the Commis-
 sioner may set off against the amount which that registered person has failed to pay, any 45
 amount which has become refundable to that registered person under this section.

Penalty for underestimation of royalty payable

- 14.** (1) If the royalty mentioned in section 6(1) in respect of a year of assessment 50
 exceeds the amount paid as mentioned in section 5 in respect of that year and that excess
 is greater than 10 per cent of the royalty mentioned in section 6(1), the Commissioner
 may impose a penalty that may not exceed 20 per cent of that excess.
 (2) A penalty imposed as mentioned in subsection (1) is payable within 30 days from
 the date on which it was imposed.

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Adjustments of estimated royalty

15. (1) The Commissioner may require a registered person to justify any estimated amount paid by that person as mentioned in section 5 or to furnish particulars in respect of that amount and, if the Commissioner is dissatisfied with that amount, the Commissioner may substitute an estimate of an increased amount in lieu of the estimated amount paid as mentioned in section 5 to the extent that the Commissioner considers reasonable. 5

(2) If a registered person fails to submit any estimated amount as required by section 5, the Commissioner may estimate that amount.

(3) Any estimate made by the Commissioner under subsection (1) or (2) is deemed to take effect in respect of the year of assessment within which the estimated amount in respect of that estimate is required to be paid in terms of section 5. 10

Interest

16. (1) The Commissioner must pay interest calculated on a monthly basis in respect of an amount or royalty paid to the extent that that amount exceeds— 15

(a) in the case where that amount was paid in respect of a notice of assessment, the amount so assessed; or

(b) in any other case, the amount of royalty properly chargeable under the Royalty Act,

if that excess is not refunded within 30 days after the later of— 20

(i) the date which is six months after the last day of a year of assessment in respect of which the royalty giving rise to that excess is required to be paid as mentioned in section 6; or

(ii) the date of receipt of a refund claim mentioned in section 13 in respect of that excess. 25

(2) A registered person must pay interest calculated on a monthly basis—

(a) in respect of so much of the estimated amount that must be paid as mentioned in section 5(1) as is not paid on the day by which that payment was required to be made in respect of the six months after the first day that that estimated payment is due; 30

(b) in respect of so much of the estimated amount that must be paid as mentioned in section 5(2) as is not paid on the day by which that payment was required to be made in respect of the six months after the first day that that estimated payment is due; or

(c) in respect of so much of the amount that must be paid as mentioned in section 6 as is not paid on the day by which that payment was required to be made in respect of any period after the first day that that payment is due. 35

(3) Interest required under this section must be calculated at the rate mentioned in paragraph (b) of the definition of "prescribed rate" in section 1 of the Income Tax Act.

Part VI 40**Miscellaneous****Administration of Act**

17. (1) The Commissioner is responsible for administering this Act and the Royalty Act.

(2) For purposes of this section, "administering this Act and the Royalty Act" means— 45

(a) determining the correctness of a return, financial statement, document, declaration of facts, or notice of assessment relevant to this Act or the Royalty Act;

(b) determining and collecting any amounts due under this Act or the Royalty Act; 50

(c) ascertaining whether an offence has been committed under this Act or the Royalty Act; and

(d) performing any other administrative function necessary for carrying out this Act or the Royalty Act.

Applicability of Income Tax Act

18. (1) The provisions of the Income Tax Act relating to—
- (a) the exercise of powers and performance of duties;
 - (b) preservation of secrecy;
 - (c) the production of information, documents or things, enquiries, searches and seizures and evidence on oath; 5
 - (d) objections and appeals;
 - (e) settlement of disputes;
 - (f) the payment and recovery of tax, interest and penalties;
 - (g) offences; 10
 - (h) reporting of unprofessional conduct; and
 - (i) jurisdiction of courts as contained in section 105,

apply (with changes required by the context) to the royalty in terms of this Act and the Royalty Act.

- (2) Any person that is not satisfied with any decision given in writing by the Commissioner— 15

- (a) in terms of section 2 notifying that person of the Commissioner's decision to refuse to register a person that qualifies for registration in terms of this Act;
- (b) in terms of section 3 notifying that person of the Commissioner's decision to refuse to cancel that person's registration in terms of this Act; 20
- (c) in terms of section 9 in respect of a notice of assessment issued to that person;
- (d) in terms of section 10 in respect of the Commissioner's decision to refuse to reduce a notice of assessment;
- (e) in terms of section 11 in respect of the Commissioner's decision to refuse to withdraw a notice of assessment; 25
- (f) in terms of section 13 in respect of the Commissioner's decision to refuse to make a refund;
- (g) in terms of section 14 in respect of the Commissioner's decision to impose a penalty; or
- (h) in terms of section 15 in respect of the Commissioner's decision to substitute an estimate or to make an estimate, 30

may note an objection thereto as contemplated in subsection (1)(d) with the Commissioner.

Reporting

19. (1) In respect of a year of assessment an extractor must annually submit to the Minister of Finance a report advising the Minister of— 35

- (a) the volume of mineral resources transferred by that extractor;
- (b) the gross sales of that extractor as mentioned in section 6(1) and (2) of the Royalty Act; and
- (c) the percentage determined in terms of section 4(1) and (2) of the Royalty Act. 40

(2) The Minister of Finance and every person employed or engaged by him or her must preserve and aid in preserving secrecy with regard to all matters that may come to his or her knowledge by virtue of subsection (1), and may not communicate any such matter to any person whatsoever other than the Minister or the registered person concerned or his or her lawful representative nor suffer or permit any such person to have access to any records in the possession of the Minister or person except in the performance of his or her duties as required by the laws of the Republic or by order of a competent court. 45

(3) Every person employed or engaged as contemplated in subsection (2) must, before acting under this section, take and subscribe before a magistrate or justice of the peace or a commissioner of oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed. 50

(4) The provisions of subsection (2) do not apply in respect of information relating to any person where that person has consented in writing that such information may be published or made known to any other person. 55

(5) Any person who contravenes the provisions of subsection (2) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

(6) Any person employed or engaged as contemplated in subsection (2) that carries out any of the provisions of this section before he or she has taken the prescribed oath 60

or solemn declaration is guilty of an offence and liable on conviction to a fine not exceeding R500.

(7) The provisions of this section may not be construed as preventing the Minister of Finance from disclosing to the Commissioner any information submitted under this section.

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Regulations

20. The Minister of Finance may make regulations—

- (a) to ensure that all foreign currency translations are consistently applied;
- (b) in respect of circumstances when a year of assessment may be shorter or longer than 12 months; or
- (c) with respect to any matter necessary to administer this Act or the Royalty Act.

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Short title and commencement

21. This Act is called the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, and comes into operation on 1 May 2009.

**MEMORANDUM ON THE OBJECTS OF THE MINERAL AND
PETROLEUM RESOURCES ROYALTY (ADMINISTRATION) BILL,
2008**

1. OBJECTS OF BILL

The Mineral and Petroleum Resources Royalty (Administration) Bill, 2008 (this Bill), accompanies and seeks to provide for administrative matters pertaining to the Mineral and Petroleum Resources Royalty Bill, 2008 (the Royalty Bill).

2. BACKGROUND

To ensure that South Africa receives just compensation for its non-renewable resources, it is envisaged that persons who extract mineral resources from within the Republic must pay a royalty on the first transfer of those mineral resources. All extractors would be liable for this royalty, whether they hold a mineral resource right under the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), or illegally extract mineral resources without such a right. This Bill seeks to provide that all extractors (companies or individuals) must register with the South African Revenue Service for purposes of payment of the royalty. Provision is made to pay the royalty twice per year (i.e. roughly every six months) with a final top-up (third) payment paid within six months after that year.

3. SUMMARY OF BILL

Definitions: Clause 1

Clause 1 provides definitions for terms used in this Bill. If a word has been defined in the Royalty Bill, it has the same meaning in this Bill.

Registration: Clause 2

Clause 2 seeks to provide that extractors that hold a mineral resource right as of 1 May 2009 or that are engaged in extracting mineral resources without such a right on or after that date must register with the Commissioner.

Cancellation of registration: Clause 3

Clause 3 seeks to provide for cancellation of a person's registration on application.

Election for unincorporated body of persons: Clause 4

Multiple parties sometimes hold various fractional percentage interests in one or more mineral rights. This joint holding can be in the form of a partnership, a pooling arrangement, a joint venture or some other unincorporated body. Without the incorporation of special provisions into this Bill, all mineral resource transfers by an unincorporated body would subject each member of the body to a royalty charge because each member would be an extractor that is subject to a royalty charge. To prevent the inadvertent triggering of a royalty charge in respect of each member of an unincorporated body, clause 4 seeks to provide that a jointly held unincorporated body is treated as a single extractor. Thus, the royalty in respect of mineral resources transferred by an unincorporated body is determined independently of any of the members of an unincorporated body.

Payments in respect of estimated royalty: Clause 5

In order to determine the royalty payable under the proposed Royalty Bill, an extractor must estimate its gross sales and earnings derived from those gross sales in respect of transferred mineral resources. A provisional payment system (similar to the provisional payment system contained in the Income Tax Act) is proposed to collect the royalty. Clause 5 of this Bill seeks to provide that an extractor must submit two estimates (two payments) in respect of the royalty payable for each year of assessment (i.e. roughly every six months).

Submission of return and final payment: Clause 6

Clause 6 seeks to provide that an extractor must submit one final top-up (third) payment in respect of the estimated payments paid for a year of assessment as mentioned in Clause 5.

Form, manner and place determined by Commissioner: Clause 7

Clause 7 proposes that the Commissioner of SARS administer the submission of returns, forms, and payments.

Maintenance of records: Clause 8

Clause 8 proposes that persons submitting 6-monthly returns must retain sufficient books and records for the Commissioner to verify compliance. These books and records must be maintained for a minimum of 5 years.

Notices of assessment: Clause 9

This Bill proposes a self-assessment system. If the Commissioner has reason to believe that sufficient tax has not been paid, this clause proposes a notice of assessment (in which the Commissioner may estimate the royalty payable) be sent to an extractor. This notice of assessment is subject to objection and appeal.

Reduced assessments: Clause 10

In clause 10 it is proposed that the Commissioner have the power to reduce assessments without the formal objection and appeal process. This power exists in the Income Tax Act, 1962 (Act No. 58 of 1962) and the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

Withdrawal of notices of assessment: Clause 11

Clause 11 proposes that the Commissioner has the power to withdraw notices of assessment without the formal objection and appeal process. This power exists in the Income Tax Act, 1962 (Act No. 58 of 1962) and the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

Time limit for notices of assessment: Clause 12

This Bill proposes a five-year time limit for notices of assessment. This five-year period begins to toll only after the submission of a return to which that assessment period relates. Thus, if a return is not submitted, the time limit for assessment continues indefinitely. Finally, if a return is submitted, the five-year time limit does not apply if the Commissioner has reason to believe that failure to pay the royalty stems from fraud, misrepresentation or non-disclosure of material facts.

Refunds: Clause 13

Clause 13 provides that refunds for overpayment of the royalty may be claimed within a five-year time limit.

Penalty for underestimation of royalty payable: Clause 14

For anti-avoidance purposes, clause 14 proposes that if the final payment of the royalty payable for a year exceeds the sum of the two payments for that royalty, and that excess (i.e. difference) is greater than 10 per cent of that final payment, the Commissioner may impose up to a 20 per cent penalty on that excess.

Adjustments of estimated royalty: Clause 15

For anti-avoidance purposes, clause 15 proposes that the Commissioner may increase an estimated amount of royalty paid or make an estimate of an estimated amount of royalty payable.

Interest: Clause 16

Clause 16 proposes that interest calculated on a monthly basis be payable on underpayments and overpayments (as the case may be). The interest rate will be determined in terms of section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962).

Administration of Act: Clause 17

Clause 17 proposes that the responsibility for administering this Bill and the Royalty Bill (when enacted) be conferred on the Commissioner.

Applicability of Income Tax Act: Clause 18

Clause 18 proposes that administrative processes falling within the purview of this Bill (when enacted) be covered by reference to the Income Tax Act, 1962 (Act No. 58 of 1962). Decisions by the Commissioner are subject to objection and appeal.

Reporting: Clause 19

Clause 19 proposes that for each year of assessment, a registered person must submit to the Minister of Finance a report advising the Minister of the volume of mineral resources that registered person transferred, its gross sales of mineral resources transferred and its rate (in percentage terms) in respect of the royalty payable.

Regulations: Clause 20

Clause 20 proposes that the Minister of Finance may prescribe regulations with respect to any matter necessary to administer this Bill and the Royalty Bill (when enacted).

Short title and commencement: Clause 21

Clause 21 provides for the short title and a commencement date of 1 May 2009.

4. PERSONS AND INSTITUTIONS CONSULTED

The provisions contained in this Bill were published for public comment on the National Treasury website. Comments were received from interested parties. These included professional bodies and business institutions.

5. FINANCIAL IMPLICATIONS FOR STATE

Financial implications for the State will be provided for in the budgetary process.

6. CONSTITUTIONAL IMPLICATIONS

None.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers, The National Treasury and the Department of Minerals and Energy are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, as it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies.

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.