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OIL & GAS ALERT



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PART 4

Draft Upstream Petroleum Resources Development Bill, 2019: The establishment and role of the Petroleum Development and Environmental Committee

In part four of our series of articles on the draft Upstream Petroleum Resources Development Bill, 2019 (the Petroleum Bill) we focus on the establishment and role of the Petroleum Development and Environmental Committee, as provided for in sections 29 to 35.

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In part four of our series of articles on the draft Upstream Petroleum Resources Development Bill, 2019 (the Petroleum Bill) we focus on the establishment and role of the Petroleum Development and Environmental Committee, as provided for in sections 29 to 35.

As discussed in the previous article in this series, section 28 of the Petroleum Bill introduces a requirement for public consultation in respect of exploration right applications lodged in terms of section 46 and production right applications lodged in terms of section 51. The Petroleum Development and Environmental Committee (the Committee) is established in section 29 and it is proposed that the Committee has two functions under the Petroleum Bill, namely to:

- consider any objections lodged against the granting of an exploration or production right application which are referred to it by the Petroleum Agency and advise the Minister of Mineral Resources and Energy (the Minister) thereon; and

- make recommendations to the Minister in terms of section 80(5). The current draft of the Petroleum Bill does not contain a section 80(5) and as such, the authorising provision in relation to this particular function of the Committee i.e. section 30(b) of the Petroleum Bill would benefit from correction.

Section 31 sets out the composition of the Committee and requires members appointed to the Committee to have expertise in petroleum environmental management and petroleum resource exploration and production. Members of the Committee will be appointed by the Minister and will include the Chief Executive Officer of the Petroleum Agency as the chairperson, the Principal Inspector responsible for upstream petroleum operations and representatives from the departments of Environmental Affairs, Forestry and Fisheries, Human Settlements, Water and Sanitation, Cooperative Governance and Traditional Affairs, Agriculture, Rural Development and Land Affairs and Transport in the

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Section 32 of the Petroleum Bill sets out the instances in which a person is disqualified from becoming a member of the Committee.

province to which the application relates. This Committee will consist of up to 14 members. However, the Minister is also empowered to appoint a representative from any relevant public entity when deemed necessary. Membership on the Committee is for a period not exceeding three years and the Minister may reappoint any member of the Committee at the expiry of his term for another period not exceeding three years.

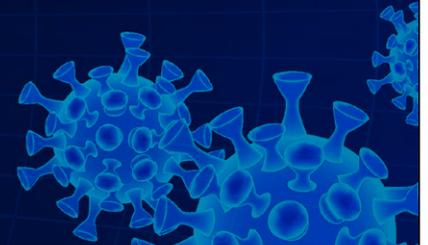
Based on the composition of the Committee enunciated in the Petroleum Bill, we anticipate that the nature of objections considered by the Committee would be those which require input from an array of stakeholders and various government departments. Section 28 of the Petroleum Bill is the provision which provides for the consultation

with interested and affected parties currently provided for under section 10 of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA). Given the information which is required to be disclosed under an MPRDA section 10 notice, and consequently, which information would then be available to an interested or affected party for the purposes of the Petroleum Bill, we anticipate that the Committee will receive and consider objections in relation to conflicting rights and or interests.

Section 32 of the Petroleum Bill sets out the instances in which a person is disqualified from becoming a member of the Committee. The Minister may not appoint a person as a member (a) unless he is a South African citizen who resides in the Republic permanently or (b) if he is

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an unrehabilitated insolvent and has been declared to be of unsound mind by a court of the Republic or has been convicted of an offence committed after the date of commencement of the Constitution and sentenced to imprisonment without the option of a fine, unless the person has received a grant of amnesty or a free pardon before the date of his appointment.

The requirement for a member of the Committee to vacate their office is provided for in section 33 of the Petroleum Bill. In this regard, the provisions provide that a member of the Committee must vacate his office if he (i) is disqualified or ceases to be an official in the service of the State, (ii) has been absent for more than two consecutive meetings without leave of the Committee (iii) tenders his resignation or (iv) is removed from office by the Minister due to misconduct or incompetence. Section 33(2) of the Petroleum Bill sets out the instances in which a Minister may remove a member from the Committee.

These are namely (i) misconduct or failure to perform his functions of office properly or engaging in any activity which that may undermine the integrity of the committee. These activities include, *inter alia*, participating in an investigation, hearing or decision which concerns a matter that the member has a financial or personal interest in, making private use of or profiting from

any confidential information obtained as a result of performing functions as a member of the Committee or divulging any confidential information to any party, except when this is required by in terms of the Upstream Petroleum Resources Development Act (when promulgated) or the Promotion of Access to Information Act 2 of 2000.

Finally, the Petroleum Bill contains reporting obligations for the Committee. In this regard, the Committee is required to submit a report to the Minister annually, setting out its activities in the previous year as well as a business plan for the following year.

The establishment of the Petroleum Development and Environmental Committee is a noteworthy development in relation to upstream petroleum exploration and may result in a unified inter-governmental approach to the consideration and granting of applications for exploration and production rights which would lend more certainty to the sector.

In our next article in this series we will be discussing the participation of black persons and State participation in exploration and production rights.

Megan Rodgers, Sthembile Shamase and Kirsten Felix

OUR TEAM

For more information about our Oil & Gas sector and services, please contact:



Megan Rodgers
Sector Head
Director
Oil & Gas
T +27 (0)21 481 6429
E megan.rodgers@cdhlegal.com



Gasant Orrie
Cape Managing Partner
Director
Corporate & Commercial
T +27 (0)21 405 6044
E gasant.orrie@cdhlegal.com



Shameegh Allen
Associate
Corporate & Commercial
T +27 (0)21 481 6399
E shameegh.allen@cdhlegal.com



Sthembile Shamase
Associate
Corporate & Commercial
T +27 (0)21 481 6431
E sthemobile.shamase@cdhlegal.com

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

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