

2 MARCH 2016

OIL AND GAS ALERT

IN THIS ISSUE

TRACTION ON AMENDMENTS TO MPRDA: JTM RE-CLASSIFICATION AND REFERRAL TO THE NATIONAL HOUSE OF TRADITIONAL LEADERS

The National Assembly and National Council of Provinces (NCOP) has recently announced the re-classification of the Mineral and Petroleum Resources Development Amendment Bill (Amendment Bill) by a Joint Tagging Mechanism (JTM) and its referral to the National House of Traditional Leaders. The National House of Traditional Leaders have been given 30 days to make any comments to the Amendment Bill.

TRACTION ON AMENDMENTS TO MPRDA: JTM RE-CLASSIFICATION AND REFERRAL TO THE NATIONAL HOUSE OF TRADITIONAL LEADERS

This provides some relief to the South African oil and gas community who have effectively been caught in a legislative stand-still amidst an uncertain regulatory future.

The President's reservation on procedural grounds targeted the NCOP and Provincial Legislature processes as not sufficiently facilitating public participation when passing the Amendment Act and a failure to refer the Amendment Bill to the National House of Traditional Leaders for comment.

The National Assembly and National Council of Provinces (NCOP) has recently announced the re-classification of the Mineral and Petroleum Resources Development Amendment Bill (Amendment Bill) by a Joint Tagging Mechanism (JTM) and its referral to the National House of Traditional Leaders. The National House of Traditional Leaders have been given 30 days to make any comments to the Amendment Bill.

This provides some relief to the South African oil and gas community who have effectively been caught in a legislative stand-still amidst an uncertain regulatory future.

When the Amendment Bill was originally introduced it was tagged a s75 bill, falling outside the ambit of the Traditional Leadership and Governance Framework Act. However, the recent flurry of Parliamentary announcements resulted in the Amendment Bill being re-classified as a bill falling within the ambit of the Traditional Leadership and Governance Framework Act, and its referral to the National House of Traditional Leaders for comment. Comments from the National House of Traditional Leaders are expected no later than 31 March 2016.

Indications that the Amendment Bill would be referred to the National House of Traditional Leaders surfaced early in 2015 when President Jacob Zuma, having considered the constitutionality and tagging of the Amendment Bill, took the view that the Amendment Bill does not pass constitutional muster. On 16 January 2015 the President, notified the National Assembly of his decision to refer the Amendment Bill back to the National Assembly in accordance with s79(1) of the Constitution.

The President's reservations on the Amendment Bill encompassed substantive grounds such as:

- certain provisions of the Amendment Bill allowed the Minister of Mineral Resources the power to amend national legislation, and in doing so effectively bypassed the constitutional mandated procedure for legislative amendments; and
- the quantitative restrictions imposed on exports by the Amendment Bill which the President viewed as inconsistent with the country's obligations under its trade agreements.

The President's reservation on procedural grounds targeted the NCOP and Provincial Legislature processes as not sufficiently facilitating public participation when passing the Amendment Act and a failure to refer the Amendment Bill to the National House of Traditional Leaders for comment.

The President's referral was promptly followed by a meeting of the Portfolio Committee of Mineral Resources (Committee) on 25 February 2015. The Committee determined that it would refer the Amendment Bill to National House of Traditional Leaders for comment and the NCOP to address the procedural reservations raised by the President. The

TRACTION ON AMENDMENTS TO MPRDA: JTM RE-CLASSIFICATION AND REFERRAL TO THE NATIONAL HOUSE OF TRADITIONAL LEADERS

CONTINUED

Too much time has been spent engaged in legislative processes, it is time for government to send oil companies back into the field - in fact this is long overdue.



Committee also decided that aside from suggesting time frames, it would not prescribe what the NCOP or National House of Traditional Leaders process should be so as to allow all substantive issues which may arise to be dealt with.

The Committee Chair, Sahulele Luzipho, concluded the Committee's discussions on the Amendment Bill by expressing the view that any substantive changes or concerns raised, resulting from this process would, to the best of his knowledge, be brought before the Committee for further deliberation.

One year later and these events finally culminated in tangible traction when the Parliamentary announcements were released this week. The consultative process which will unfold should focus on the most critical elements of the Amendment Bill, although the Amendment Bill may not be the prettiest by industry standard, the perception of beauty is ultimately subjective. Too much time has been spent engaged in legislative processes, it is time for government to send oil companies back into the field - in fact this is long overdue.

Megan Rodgers

2015 RANKED #1 BY DEALMAKERS FOR M&A DEAL FLOW 7 YEARS IN A ROW, 1st by General Corporate Finance Deal Flow.

2014 1st by M&A Deal Flow, 1st by M&A Deal Value, 1st by General Corporate Finance Deal Flow.

2013 1st by M&A Deal Flow, 1st by M&A Deal Value, 1st by Unlisted Deals - Deal Flow.

2012 1st by M&A Deal Flow, 1st by General Corporate Finance Deal Flow, 1st by General Corporate Finance Deal Value, 1st by Unlisted Deals - Deal Flow.

DealMakers

2013

HIGHEST RANKING

of Client Satisfaction amongst African Firms

Legal Week

NO.1

6

YEARS IN A ROW for client service excellence

#6YearsInARow

pmi
africa

2015

1ST
South African law firm and 12th internationally for Africa & Middle East by deal value

2ND
South African law firm and 2nd internationally for Africa & Middle East by deal count

1ST
South African law firm and 15th internationally for Europe buyouts by deal value

MERGERMARKET

IFLR
1000

FINANCIAL AND CORPORATE

RECOMMENDED FIRM

2016

OUR TEAM

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



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



Giovanni Cloete
Associate
T +27 (0)21 481 6431
E giovanni.cloete@cdhlegal.com



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



Craig Wilton
Associate
T +27 (0)21 481 6430
E craig.wilton@cdhlegal.com



Zahra Omar
Director
Projects and Infrastructure
T +27 (0)11 562 1144
E zahra.omar@cdhlegal.com

BBBEE STATUS: LEVEL TWO CONTRIBUTOR

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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

©2016 0935/MAR