



S A K E L I G A
SELFSTANDIGE SAKEGEMEENSKAP

21 February 2020

To: The Minister of Minerals and Energy

Mr Samson Gwede Mantashe

For attention: Ms Sibongile Malie

By email: representations@dmr.gov.za

Dear Minister Mantashe

RE: Comment on the Draft Upstream Petroleum Resources Development Bill, 2019

Background

The following comment has been prepared following your request for comment on the Draft Upstream Petroleum Resources Development Bill, 2019.

Sakeliga is an independent business community representing more than 12 000 members across various sectors and industries in South Africa.

In principle, we welcome any steps taken by government and through the department towards freeing up the development of petroleum resources in South Africa. The extraction of petroleum resources, could, indeed, add to domestic economic output and economic progress, and create employment. Moreover, a domestic petroleum industry could spur on domestic and foreign direct investment, which, in our estimation, is sorely needed.

Petroleum Sector

The institution of new legislation is not a trivial undertaking. We want to encourage the department to take considerable care in the drafting of legislation for the petroleum sector. Moreover, technical legislative details notwithstanding, we urge the department to objectively and independently assess the likely impact and possible unintended consequences of any new legislation and regulations under its mandate.



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As always, we remind the department of the National Treasury's mandate, which requires new policy proposals to be subjected to SEIAs. We quote from the 2016 National Budget Review¹:

Socioeconomic impact assessments became compulsory in September 2015. Departments are required to define the issue that a proposed policy or regulatory change is intended to address, and to assess the consequences of any such change.

Concerns

In our reading of the bill, several issues of concern arose and we are taking the opportunity to present some initial concerns and a suggestion. Our brief recommendation is for the department to take the following feedback into consideration in the SEIA process that should accompany the bill.

Note also that we are aware of the fact that state participation in petroleum industries is not uncommon in other countries. However, in our view, that would not excuse the department from independently evaluating the impact of a) "state participation" in exploration and production rights with a 20% carried interest (cf. Section 39) and b) the application of B-BBEE in petroleum-related activities (cf. Section 38) in South Africa's current economic context.

Section 38:

38(1) Every exploration or production right must have a minimum of 10 percent participating interest by black persons which must include economic interest plus corresponding percentage of voting rights, per exploration right or production right.

Section 39:

39(1) The State has, through the PetroSA, a right to a 20 percent carried interest in exploration and production rights.

¹ National Budget Review (2016). National Treasury, Pretoria:
<http://www.treasury.gov.za/documents/national%20budget/2016/review/FullReview.pdf> [Date of access: 30 January 2020].



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We are keenly aware that the draft bill likely reflects official government policy. However, requirements such as the requirements in Section 38 and 39, we contend, may act as constraints to efficient petroleum development activities.

We agree with the old adage, which says there is no benefit without a cost. While the draft bill on face value seeks to ensure benefit to the state through a “carried interest” provision, and benefit for black South Africans through BEE, we do think that some trade-offs are likely involved.

Our question is whether the department has truly come to grips with these economic trade-offs. Such ownership requirements, in our view, would mean additional government-induced costs to petroleum exploration and production firms in a market that requires considerable up-front capital investment. Added cost (broadly speaking) on the margin likely means less investment and less production than could be possible in a more open and less interventionist petroleum market. Such requirements could therefore have knock-on effects for other government concerns, such as employment. If such interventions into the petroleum sector were to result in “deadweight losses” and other economic inefficiencies, the losses would likely be carried more broadly by society.

Our recommendation is for the department – as part of the SEIA process – to commission an independent economic modelling by recognised subject matter experts in economics on the likely effects of Section 38 and Section 39 and to report publicly on the findings.

Thank you for considering our comment.

Yours faithfully,

Gerhard van Onselen

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