

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN NATIONAL PETROLEUM COMPANY BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 51390
of 14 October 2024)
(The English text is the official text of the Bill)*

(MINISTER OF MINERAL AND PETROLEUM RESOURCES)

BILL

To provide for the establishment of the South African National Petroleum Company; to provide for the objects and functions of the Company; to provide for the consolidation and transfer of assets to the Company; to provide for the appointment and composition of the Board of the Company and the management thereof; to provide for its finances; to provide for the appointment of the Chief Executive Officer, Chief Financial Officer and staff of the Company; to provide for transitional arrangements for the transfer of human resources and assets from the South African Gas Development Company (iGas), Strategic Fuel Fund (SFF) and Petroleum Oil and Gas Corporation of South Africa (PetroSA) to the Company; and to provide for matters connected therewith.

PREAMBLE

ACKNOWLEDGING that South Africa's petroleum resources belong to the nation and the State is the custodian thereof;

ACKNOWLEDGING FURTHER that the Company is a state-owned company, with the South African Government as the sole shareholder and the Minister as shareholder representative, acting on behalf of the Government to fulfil its obligations relating to the functions of the Company;

RECOGNISING the need to optimise the nation's economic benefit from the exploitation of petroleum and renewable energy resources;

BEING COMMITTED to the realisation of the nation's developmental imperatives to drive economic growth through exploration and exploitation of petroleum and renewable energy resources and support industrialisation, infrastructure development and security of energy supply;

EMPHASISING the Government's role to accelerate socio-economic development for all the people of South Africa; and

AFFIRMING the State's obligation to protect the environment for the benefit of present and future generations and to ensure sustainable development of petroleum resources,

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

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Definitions

1.	In this Act, unless the context indicates otherwise—	25
	“ Board ” means the Board of the Company established in terms of section 13;	
	“ CEF ” means Central Energy Fund SOC Ltd, registration number 1976/001141/30, a state-owned company incorporated in accordance with the laws of the Republic of South Africa;	
	“ Chief Executive Officer ” means the Chief Executive Officer of the Company appointed in terms of section 22;	30
	“ Companies Act ” means the Companies Act, 2008 (Act No. 71 of 2008);	
	“ Company ” means the South African National Petroleum Company established in terms of section 4;	
	“ Department ” means the Department responsible for Mineral and Petroleum Resources;	35
	“ employee ” means an employee of the Company appointed in terms of section 24;	
	“ financial year ” means “financial year” as defined in section 1 of the Public Finance Management Act;	
	“ gas ” means any naturally occurring mixture of hydrocarbons in gaseous state, principally methane with varying quantities of ethane, propane, butane and other gases used as fuel or feedstock excluding condensate, whether—	40
	(a) pressurised to be transported and distributed through pipelines, lateral lines and spur line;	
	(b) compressed in special cylinders or vessels, to be efficiently transported or stored as Compressed Natural Gas (CNG) by special trucks or ships; or	45
	(c) liquefied using special facilities, to be efficiently transported as Liquefied Natural Gas (LNG);	
	“ iGas ” refers to the South African Gas Development Company SOC Limited, a subsidiary of CEF Group SOC Limited with registration number 2000/024548/30, and a company incorporated in accordance with the laws of the Republic of South Africa;	50
	“ Minister ” means the Minister responsible for Mineral and Petroleum Resources;	
	“ organ of state ” means “organ of state” as defined in section 239 of the Constitution of the Republic of South Africa, 1996;	55
	“ person ” means an individual, corporation, company or trust;	
	“ petroleum ” means “petroleum” as defined in the Upstream Petroleum Resources Development Act;	
	“ petroleum infrastructure ” includes all infrastructure for the exploration, production, processing, transmission and distribution of petroleum;	60

- “**PetroSA**” refers to the Petroleum Oil and Gas Corporation of South Africa SOC Limited, a subsidiary of CEF Group SOC Limited with registration number 1970/008130/30, and a company incorporated in accordance with the laws of the Republic of South Africa;
- “**prescribed**” means prescribed by regulation; 5
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “**Public Service Act**” means the Public Service Act 1994, (Proclamation No.103 of 1994);
- “**renewable energy**” means “renewable energy” as defined in section 1 of the National Energy Act, 2008 (Act No. 34 of 2008); 10
- “**SFF**” refers to the Strategic Fuel Fund Association, a subsidiary of CEF Group SOC Limited with registration number 1964/010277/08, and a non-profit company incorporated in accordance with the laws of the Republic of South Africa;
- “**this Act**” includes the regulations made thereunder; and 15
- “**Upstream Petroleum Resources Development Act**” means the Upstream Petroleum Resources Development Act, 2024 (Act No. 23 of 2024).

Objects of Act

2. The objects of this Act are to provide for the—
- (a) establishment of the South African National Petroleum Company; 20
 - (b) governance of the Company; and
 - (c) consolidation and transfer of assets to the Company.

Conflict with other legislation

3. In the event of any conflict between the provisions of this Act and other legislation, specifically relating to the functions of the Company, the provisions of this Act prevail. 25

Establishment of Company

4. The South African National Petroleum Company is hereby established as a state-owned company as defined in section 1 of the Companies Act.

Incorporation and legal status of Company

5. (1) The Minister must take all steps that are necessary for the incorporation of the Company in accordance with the Companies Act. 30
- (2) The Company is a national public entity as defined in section 1 of the Public Finance Management Act.

Share capital of Company

6. (1) The State is the sole shareholder of the Company upon its incorporation. 35
- (2) The Minister is the State’s sole shareholder representative of the Company.
- (3) The rights attached to the shares in the Company are to be exercised by the Minister.

Objects of Company

7. The objects of the Company are to— 40
- (a) be the State’s petroleum champion and facilitator of petroleum infrastructure across the energy value chain with functions including, but not limited to the following:
 - (i) Management of the State’s exploration and production rights, interests acquired and exercised in terms of the Upstream Petroleum Resources Development Act, and interests in terms of this Act or the common law, on behalf of the State; 45
 - (ii) ensuring that petroleum resources are developed in a sustainable manner and in the best interest of the people of South Africa;
 - (iii) facilitating the development of petroleum infrastructure; 50
 - (iv) providing for storage and distribution of petroleum products;

- (v) undertaking commercial aspects of petroleum in the upstream, mid-stream and downstream operations including, but not limited to aggregation, marketing and trading;
- (vi) undertaking renewable energy projects in terms of the country's decarbonisation agenda; and 5
- (vii) providing for the acquisition, generation, manufacturing, marketing or distribution of petroleum;
- (b) be financially sustainable and independent and carry out its business, operations and activities in a sustainable manner whilst pursuing opportunities through legally acceptable business practices; 10
- (c) ensure energy security to support economic development and growth; and
- (d) contribute to greater socio-economic development and prosperity.

Cooperation agreements

8. The Company may conclude a cooperation agreement with any organ of state to—
- (a) ensure the effective management of the operations of the Company; 15
 - (b) ensure effective oversight of the operations of the Company;
 - (c) coordinate the performance of the functions of the Company provided for in section 9;
 - (d) minimise duplication of functions and procedures between the Company and other organs of state; and 20
 - (e) promote consistency in the performance of the functions of the Company within the parameters of the cooperation agreement.

Functions of Company

9. The functions of the Company are to—
- (a) ensure that the objects of the Company are achieved, to hold exploration and petroleum rights, and reconnaissance permits, in terms of the Upstream Petroleum Resources Development Act; 25
 - (b) manage and control the State's participation and interest, including the country's share of petroleum received in kind or in cash as provided for in the Upstream Petroleum Resources Development Act; 30
 - (c) manage and control, on behalf of the State, any other interests acquired and exercised by the Company as provided for in the Upstream Petroleum Resource Development Act;
 - (d) manage the State's strategic stocks and commercialise storage facilities;
 - (e) acquire, by agreement, and hold equity rights or interests in any undertaking, enterprise or project related to exploration or production operations in terms of the Upstream Petroleum Resources Development Act; 35
 - (f) carry out its business, operations and activities, whether as a principal agent, contractor or otherwise, either alone or in conjunction with any other person;
 - (g) purchase, hire, possess or otherwise acquire movable and immovable property and let, encumber or dispose of such property; 40
 - (h) maximise the State's economic benefit from the exploitation of petroleum resources;
 - (i) investigate and propose new upstream, midstream and downstream investment joint ventures locally and internationally; 45
 - (j) develop in-depth expertise in the petroleum industry, including facilitating skills development and training for South Africans through collaboration with partners;
 - (k) manage the State's upstream petroleum exploration, production rights and pursue carried interest defined and referred to in section 1 and section 34 of the Upstream Petroleum Resources Development Act, and various forms of legally and commercially acceptable modalities to safeguard national energy interests; 50
 - (l) be a developer, operator and owner of major petroleum infrastructure across the oil and gas value chain for market entry and transmission and to pursue Liquefied Natural Gas (LNG) regasification, gas transmission through various forms of legally and commercially acceptable practices; 55

- (m) be a developer, operator and owner of major refined products infrastructure for market entry and transfer, with trading and distribution for refined products;
- (n) champion the aggregation of products to ensure security of energy supply; and
- (o) perform any other function as the Minister may direct in support of security of energy supply. 5

Exercise of powers of Company outside Republic

10. The Company may undertake various investments and strategic joint partnerships to support national economic imperatives and security of energy supply across the petroleum value chain outside the Republic of South Africa subject to the Public Finance Management Act. 10

Establishment of subsidiary companies

11. (1) To achieve the objects of the Company, the Board may, subject to the Public Finance Management Act, establish one or more subsidiary companies which must be incorporated in accordance with the Companies Act. 15

(2) A subsidiary company may perform such functions as the Board may delegate to it.

Consolidation and transfer of assets and rights to Company

12. (1)(a) The assets and rights issued or held or deemed to have been issued or held by iGas, PetroSA and SFF must be consolidated and transferred to the Company. 20

(b) The assets and rights issued or held or deemed to have been issued or held by iGas, PetroSA and SFF as a result of a joint venture with any other organ of state in terms of any legislation may, with the written concurrence of the Minister responsible for the organ of state concerned, be consolidated and transferred to the Company.

(2) The transfer and consolidation referred to in subsection (1) must comply with the relevant legislation. 25

Composition of Board

13. (1) The Board consists of the following persons:

- (a) Eight persons with skills in law, finance, petroleum geology, petroleum engineering, environmental management and business management; 30
- (b) the Chief Executive Officer by virtue of holding that office;
- (c) the Chief Financial Officer of the Company by virtue of holding that office; and
- (d) one representative from the Department with appropriate experience.

(2) The Minister must appoint the persons referred to in subsection (1)(a) after following a fair and competitive selection process. 35

(3) The Minister must appoint one member of the Board from amongst the members referred to in subsection (1)(a) as chairperson and another as deputy chairperson of the Board.

(4) When appointing the members of the Board, the Minister must ensure that the Board is broadly representative of society, with due regard to race, gender and disability. 40

Powers and duties of Board

14. (1)(a) The Board is responsible for managing the affairs of the Company.

(b) The Board may, except to the extent that this Act or the Company's Memorandum of Incorporation provides otherwise, oversee the performance of the functions of the Company. 45

(2) The Board must—

- (a) submit to the Minister an annual work programme, a budget, an annual report and audited financial statements; 50
- (b) approve items of income and expenditure in the budget;

- (c) appoint arbitrators in the settlement of disputes or claims affecting the Company and, in general, take an appropriate action of a legal nature to safeguard the Company's interests;
- (d) administer the rights and powers vested in the Company by this Act;
- (e) perform any other act, not inconsistent with this Act or any other law, as may be expedient or necessary for the achievement of the objects of the Company; and 5
- (f) appoint the Company's secretary in accordance with section 86 of the Companies Act.

Term of office of members of Board 10

15. (1) A member of the Board, except the Chief Executive Officer and the Chief Financial Officer, holds office for such period as the Minister may determine at the time of his or her appointment, which period may not exceed three years.

(2) A member of the Board whose term of office has expired is eligible for reappointment for one additional term not exceeding three years. 15

(3) If a member of the Board, for any reason, vacates his or her office, the Minister may appoint another person in the place of such member or alternate member for the unexpired period of his or her term of office.

Disqualification of persons to be members of Board

16. A person is disqualified from being appointed as a member of the Board if he or she— 20

- (a) is prohibited in terms of any legislation to be a director of a company;
- (b) has been removed from an office of trust on the grounds of misconduct involving dishonesty;
- (c) is an unrehabilitated insolvent; 25
- (d) was declared by a court of law to be a delinquent director in terms of section 162 of the Companies Act; or
- (e) was convicted of any offence and sentenced to imprisonment without the option of a fine, and a period of five years since the completion of the sentence has not lapsed. 30

Vacation of office by members of Board

17. (1) A member of the Board must vacate office if he or she—

- (a) becomes disqualified in terms of section 16;
- (b) in the case of an official in the service of the State appointed in terms of the Public Service Act, ceases to be such an official; 35
- (c) becomes incapacitated and is unable to perform his or her functions;
- (d) has been absent, without leave of the chairperson, from more than two consecutive meetings of the Board;
- (e) resigns; or
- (f) is removed from office by the Minister in terms of subsection (2). 40

(2) The Minister may remove or suspend a member of the Board from office if the member has—

- (a) neglected, or been derelict in, the performance of his or her functions; or
- (b) engaged in an activity that undermines the integrity of the Board, which activity may include— 45
 - (i) an activity with regard to a matter in respect of which that member has a financial or personal interest and with regard to which the member is subject to an investigation, hearing or decision;
 - (ii) making private use of, or profiting from, information obtained as a result of performing his or her functions as a member of the Board; or 50
 - (iii) except as required by or under this Act or the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), divulging information referred to in subparagraph (ii) to a third party without the permission of the Board.

Remuneration of members of Board

18. A member of the Board or a committee of the Board, who is not in the full-time employment of the State, must be paid remuneration at such rates as determined by the Minister of Finance.

Meetings of Board

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19. (1) The chairperson or, in his or her absence, the deputy chairperson of the Board presides over the meetings of the Board.

(2) The Board meets at such times and places determined by itself, but the first meeting of the Board must be held at a time and place determined by the chairperson.

(3) The meetings of the Board must be held on written notice to the members and the notice must state the agenda for the meeting. 10

(4) The notice must be delivered to each member of the Board at least seven days prior to the meeting unless a majority of the members of the Board decide to waive the seven-day period requirement.

(5) The minutes of the meetings of the Board must be— 15

(a) recorded and kept in a manner that cannot be altered or tampered with;

(b) submitted to the next meeting of the Board for consideration and, if adopted, signed by the chairperson; and

(c) kept by the Company's secretary referred to in section 14(2)(f).

(6) The chairperson— 20

(a) may at any time; or

(b) must at the request of not less than two-thirds of the members of the Board in office at the time,

convene a special meeting of the Board and must determine the time and place of the meeting. 25

(7) The quorum for a meeting of the Board is the majority of its members present at the meeting.

(8) The Board may adopt rules not inconsistent with this Act for the proper conduct of its meetings.

Conflict of interest of members of Board

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20. (1) A member of the Board may not have a conflict of interest with the Company.

(2) A member of the Board who has a direct or indirect financial, personal or other interest in any matter which is to be discussed at a meeting, and which entails or may entail a conflict or possible conflict of interest, must, before or during such meeting, declare the interest. 35

(3) Any person may, in writing, inform the chairperson of a meeting, before a meeting, of a conflict or possible conflict of interest of a member of the Board of which such person may be aware.

(4) A Board member referred to in subsections (2) and (3) is obliged to recuse himself or herself from the meeting during the discussion of the matter and the voting thereon. 40

Committees of Board

21. (1) The Board may establish a committee or committees, which must, during the periods between meetings of the Board, perform such functions of the Board as the Board may determine from time to time.

(2) Except to the extent that the Memorandum of Incorporation of the Company or a resolution establishing a committee provides otherwise, a committee consists of any members of the Board as the Board may determine. 45

(3) Each committee must appoint its own chairperson from amongst its members.

(4) If the chairperson of a committee is absent, the members present must elect another member of the committee to chair the meeting of the committee whilst ensuring the quorum is in place. 50

(5) The Board is not discharged from the responsibility for the performance of a function entrusted to a committee in terms of this section.

(6) The Board may vary or set aside a recommendation of the committee.

Appointment of Chief Executive Officer of Company

- 22.** (1) The Board must appoint a fit and proper person with suitable qualifications as Chief Executive Officer of the Company.
- (2) A person may not be appointed as or remain the Chief Executive Officer if he or she is disqualified in terms of section 16. 5
- (3) The Chief Executive Officer is appointed for a period not exceeding five years and may be reappointed at the expiry of his or her term of office for one additional term of five years.
- (4) The Board may remove or suspend the Chief Executive Officer from office if he or she— 10
- (a) fails to perform the functions of his or her office efficiently; or
 - (b) has neglected, or been derelict in, the performance of his or her functions.
- (5) If the Chief Executive Officer is, for any reason, unable to perform any of his or her functions, the chairperson of the Board must appoint an employee of the Company to act as Chief Executive Officer until the Chief Executive Officer is able to resume the performance of his or her functions. 15
- (6) An Acting Chief Executive Officer may exercise all powers and must perform all the duties of the Chief Executive Officer as delegated by the Board.

Appointment of Chief Financial Officer of Company

- 23.** (1) Subject to subsection (4), the Chief Executive Officer must, in consultation with the Board, appoint a fit and proper person with suitable qualifications as Chief Financial Officer. 20
- (2) A person may not be appointed as or remain the Chief Financial Officer if he or she is disqualified in terms of section 16.
- (3)(a) The Chief Financial Officer is appointed for a period not exceeding five years. 25
- (b) The Chief Financial Officer may be reappointed upon the expiry of the term of his or her office for one additional term of five years.
- (c) The terms and conditions of service of the Chief Financial Officer are determined by the Board.
- (4) The Board may remove or suspend the Chief Financial Officer from office— 30
- (a) if the Chief Financial Officer fails to perform the functions of his or her office;
 - (b) if, due to a physical or mental illness or disability, the Chief Financial Officer becomes incapable of performing the functions of his or her office or performs them inefficiently; or
 - (c) on account of serious misconduct. 35
- (5) If the Chief Financial Officer is, for any reason, unable to perform any of his or her functions, the chairperson of the Board must appoint an employee of the Company to act as Chief Financial Officer until the Chief Financial Officer is able to resume the performance of his or her functions.
- (6) An Acting Chief Financial Officer may exercise all powers and must perform all the duties of the Chief Financial Officer as delegated by the Board. 40
- (7) If the Chief Financial Officer is, for any reason, unable to resume the performance of his or her functions as contemplated in subsection (5) resulting in the position becoming vacant, the Chief Executive Officer must embark on a new appointment process. 45

Appointment of staff of Company

- 24.** (1) The Chief Executive Officer must appoint members of the executive and other employees of the Company or, as may be necessary to perform the work arising from or connected with the Company's functions, receive on secondment persons for such period and on such conditions as the Board may determine. 50
- (2) The employees must be paid remuneration, allowances and benefits as may be approved by the Board from time to time.

Funds of Company

- 25.** (1) The funds of the Company consist of—
- (a) money that accrues to the Company from exploration and production operations or activities; 55

- (b) interest on investments of the Company;
 - (c) income derived from any other source;
 - (d) money that accrues to the Company through a carried interest in petroleum rights as provided for in section 34 of the Upstream Petroleum Resources Development Act; 5
 - (e) income received from technical, commercial, engineering or any other related services rendered by the Company to external parties; and
 - (f) funding sourced from lending institutions or Government.
- (2) The Company must utilise its funds to pay the expenses incurred in the performance of its functions under this Act. 10
- (3) The Chief Executive Officer must, with the approval of the Board—
- (a) open an account in the name of the Company with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990), or other recognised registered financial institutions; and
 - (b) deposit into the account all money received in terms of subsection (1). 15
- (4) The Chief Executive Officer may invest, on behalf of the Company, any money received in terms of subsection (1) which is not required for immediate use with any institution approved by the Board.
- (5) The Company may use interest derived from the investment referred to in subsection (4) to pay expenses in connection with the performance of its functions. 20
- (6) The Company may, when it considers it necessary—
- (a) authorise the establishment of reserve funds; and
 - (b) deposit such funds in the account opened in terms of subsection (3)(a).
- (7) The Company must in each financial year, on or before a date determined by the Minister, submit a statement of its income and estimated expenditure for the following financial year to the Minister for approval. 25

Government advances and grants

- 26.** (1) The Minister of Finance may, from time to time, approve advances and grants to the Company out of money provided for that purpose.
- (2) Subject to applicable legislation, the Minister of Finance may approve special levies to provide funds for the Company after the establishment of the Company. 30

Reporting by Company

- 27.** (1) The Board must, in accordance with the Public Finance Management Act, prepare and submit to the Minister an annual report on the performance of the Company under this Act. 35
- (2) The Board must submit the annual report referred to in subsection (1) to the Minister within three months after the end of the financial year concerned.
- (3) The Minister must table the annual report submitted to him or her in terms of subsection (1) in Parliament in accordance with the Public Finance Management Act.

Delegation and assignment of powers 40

- 28.** (1) The Board may, subject to such conditions as the Board may determine, in writing—
- (a) delegate to—
 - (i) the chairperson or deputy chairperson;
 - (ii) any other member of the Board, including the Chief Executive Officer; 45
 - (iii) any other employee of the Company; or
 - (vi) a committee established under section 21,
 any power conferred upon the Board by or under this Act; or
 - (b) authorise—
 - (i) the chairperson or deputy chairperson; 50
 - (ii) any other member of the Board, including the Chief Executive Officer;
 - (iii) any other employee of the Company; or
 - (vi) a committee established under section 21,
 to perform any duty assigned to the Board by or under this Act.
- (2) The Chief Executive Officer may, subject to such conditions as he or she may determine and with the approval of the Board, in writing— 55

- (a) delegate to an employee of the Company any power conferred upon the Chief Executive Officer by or under this Act in his or her capacity as Chief Executive Officer; or
- (b) authorise an employee of the Company to perform any duty assigned to the Chief Executive Officer by or under this Act in his or her capacity as the Chief Executive Officer. 5
- (3) The Board or the Chief Executive Officer may, at any time—
 - (a) withdraw a delegation or authorisation made in terms of subsection (1) or (2); or
 - (b) withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned to him or her in terms of subsection (1) or (2). 10
- (4) The Board and the Chief Executive Officer are not absolved or exempted from any duty delegated or assigned in terms of subsection (1) or (2).

Regulations

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- 29.** The Minister may, by notice in the *Gazette*, make regulations regarding—
- (a) any matter that is permitted or required to be prescribed in terms of this Act; or
 - (b) any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act. 20

Transitional provisions and savings

- 30.** (1) All persons who immediately prior to the commencement of this Act, were in the employ of iGas, PetroSA and SFF are deemed to have been transferred to the service of the Company on that date without any interruption in their service, on terms and benefits no less favourable than those enjoyed by them immediately prior to their transfer. 25
- (2) All assets, rights, liabilities and obligations which, on the date this Act takes effect, vest in the entities referred to in subsection (1), pass to the Company.
- (3) For the purpose of the Income Tax Act, 1962 (Act No. 58 of 1962), iGas, PetroSA, SFF and the Company are deemed to be the same employer in relation to the transfer of employees contemplated in subsection (1). 30

Short title and commencement

- 31.** This Act is called the South African National Petroleum Company Act, 2026, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 35

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN NATIONAL PETROLEUM COMPANY BILL, 2026

1. BACKGROUND

On the 10 June 2020, the Cabinet, after being briefed on the ongoing work to rationalise all petroleum subsidiaries of the Central Energy Fund (“CEF”), decided that the CEF must establish a single South African National Petroleum Company (the “Company”) by merging the—

- (a) South African Gas Development Company SOC Limited (“iGas”);
- (b) Petroleum Oil and Gas Corporation of South Africa SOC Limited (“PetroSA”); and
- (c) Strategic Fuel Fund (“SFF”).

2. OBJECTS OF BILL

The main purpose of the Bill is to provide for the establishment of the Company to actively participate in the exploration and production operations in order to ensure security of energy supply, to enter into and execute concession agreements with other governments, including other strategic partners; to provide for the acquisition of interests in petroleum refining, storage, marketing, aggregation and trading of petroleum and petroleum products; to develop, participate, operate and acquire energy infrastructure, including, but not limited to, transmission pipelines and to deal with matters incidental thereto; to provide for the objects and functions of the Company; to provide for the composition of the Board of the Company (the “Board”) and the management thereof; to provide for its finances; to provide for the appointment of the Chief Executive Officer, Chief Financial Officer and staff of the Company; to provide for transitional arrangements for the transfer of human resources and assets from iGas, the SFF and PetroSA to the Company; and to provide for matters connected therewith.

3. CLAUSE-BY-CLAUSE ANALYSIS

3.1 Clause 1

Clause 1 provides for definitions of certain words and concepts that are used in the Bill to remove ambiguity and to aid understanding of the provisions of the Bill.

3.2 Clause 2

Clause 2 provides for the objects of the Bill, which are to establish the Company and to provide for the governance of the Company and consolidation and transfer of assets to the Company.

3.3 Clause 3

Clause 3 deals with conflict with other legislation and provides that the provisions of the Bill will prevail where there is conflict with provisions of other legislation specifically relating to the functions of the company.

3.4 Clause 4

Clause 4 provides for the establishment of the Company as a state-owned company.

3.5 Clause 5

Clause 5 provides for the incorporation and legal status of the Company.

3.6 Clause 6

Clause 6 provides for the shareholding of the Company, where the State is the sole shareholder of the Company and the Minister is the sole shareholder representative of the State.

3.7 Clause 7

Clause 7 provides for the objects of the Company which are, amongst other things, to be the State's energy champion and facilitator of energy infrastructure across the energy value chain, and to be independent and carry out its business, operations and activities in a sustainable manner whilst pursuing business opportunities through legally acceptable business practices.

3.8 Clause 8

Clause 8 deals with cooperation agreements and empowers the Company to conclude cooperation agreements with any organ of state to, amongst other things, ensure effective management and oversight of the operations of the Company.

3.9 Clause 9

Clause 9 provides for the functions of the Company which, amongst other things, are to hold exploration and petroleum rights, and reconnaissance permits in terms of the Upstream Petroleum Resources Development Act, 2024 (Act No. 23 of 2024), and to manage and control the State's participation and interests, including the State's share of petroleum received in kind as provided for in the Upstream Petroleum Resources Development Act, 2024.

3.10 Clause 10

Clause 10 provides that the Company may undertake various investments and strategic joint partnerships to support national economic imperatives and security of energy supply across the energy value chain outside the Republic of South Africa in terms of the relevant laws.

3.11 Clause 11

Clause 11 provides that the Board of the Company may establish one or more subsidiary companies to achieve the objects of the Company.

3.12 Clause 12

Clause 12 provides that all assets and rights issued or held or deemed to have been issued or held by iGas, PetroSA and SFF as a result of a joint venture with any other organ of state in terms of any legislation may, with the written concurrence of the relevant Minister responsible for that organ of state or as agreed by the parties, be consolidated and transferred to the Company.

3.13 Clause 13

Clause 13 provides for the composition of the Board. The Minister must appoint persons to the Board after following a fair and competitive selection process.

3.14 Clause 14

Clause 14 sets out the powers and functions of the Board.

3.15 Clause 15

Clause 15 provides for the term of office of members of the Board.

3.16 Clause 16

Clause 16 provides for the disqualification of persons from being members of the Board and the instances in which a person would not be eligible to be appointed as a member of the Board.

3.17 Clause 17

Clause 17 provides for the vacation of office by members of the Board.

3.18 Clause 18

Clause 18 deals with the remuneration of members of the Board.

3.19 Clause 19

Clause 19 deals with the meetings of the Board and the process and procedure regarding the convening of such meetings.

3.20 Clause 20

Clause 20 provides for the handling of conflict of interest of the members of the Board.

3.21 Clause 21

Clause 21 empowers the Board of the Company to establish committees to perform such functions of the Board as the Board may determine from time to time. It also provides for the composition of such committees.

3.22 Clause 22

Clause 22 provides for the appointment of the Chief Executive Officer of the Company and the circumstances in which the Chief Executive Officer may be removed or suspended from office.

3.23 Clause 23

Clause 23 provides for the appointment of the Chief Financial Officer of the Company.

3.24 Clause 24

Clause 24 provides for the Chief Executive Officer to appoint executives and other employees of the Company.

3.25 Clause 25

Clause 25 makes provision for the sources of funding for the Company which consist of, amongst other things, the money that accrues to the Company as a result of exploration and production activities and money received from any other source with the approval of the Minister. It also provides for the utilisation and investment of the Company's funds and the Company's power to establish reserve funds.

3.26 Clause 26

Clause 26 provides for the Government advances and grants and empowers the Minister of Finance to approve, from time to time, advances and grants.

3.27 Clause 27

Clause 27 places a responsibility on the Board to prepare and submit an annual report on the performance of the Company to the Minister.

3.28 Clause 28

Clause 28 provides for the delegation and assignment of powers by the Board or the Chief Executive Officer of the Company.

3.29 Clause 29

Clause 29 confers upon the Minister the power to make regulations regarding any matter provided for in the Bill.

3.30 Clause 30

Clause 30 provides for transitional arrangements and savings.

3.31 Clause 31

Clause 31 provides for the short title and commencement of the Act.

4. DEPARTMENTS AND PARTIES CONSULTED

During the drafting of the Bill, consultations were undertaken with the CEF Group of Companies. All the comments received during these consultations were considered and incorporated into the Bill during drafting. The Bill was later presented to the following economic cluster Departments through the Economic Sectors Employment and Infrastructure Development (ESEID) cluster which supported the Bill being presented to Cabinet:

- (a) Department of Trade, Industry and Competition;
- (b) Department of Transport;
- (c) Department of Agriculture;
- (d) Department of Communications and Digital Technologies;
- (e) Department of Electricity and Energy;
- (f) Department of Employment and Labour;
- (g) Department of Forestry, Fisheries and the Environment;
- (h) Department of Land Reform and Rural Development;
- (i) Department of Public Works and Infrastructure;
- (j) Department of Science, Technology and Innovation;
- (k) Department of Small Business Development;
- (l) Department of Tourism;
- (m) Department of Water and Sanitation; and
- (n) The Presidency.

5. FINANCIAL IMPLICATIONS FOR STATE

The establishment of the Company will have financial implications, including costs associated with the transfer of human capital and assets of the merging companies and acquisition of other assets.

6. PARLIAMENTARY PROCEDURE

- 6.1 The Department and the State Law Advisers propose that the Bill be dealt with in accordance with the provisions of section 75 of the Constitution for the reasons hereunder.
- 6.2 It is apparent that the Constitution distinguishes between four categories of Bills as follows: Bills amending the Constitution (section 74); Ordinary Bills not affecting provinces (section 75); Ordinary Bills affecting provinces (section 76); and Money Bills (section 77). The aforesaid provisions require Parliament first to classify a Bill submitted to it to determine which procedure should be followed in enacting the Bill. Section 76(1) of the Constitution provides that when the National Assembly passes a Bill referred to in subsection (3), (4) or (5), the Bill must be referred to the National Council of Provinces and dealt with in accordance with the procedure set out in that section. Section 76(3) in turn provides that a Bill must be dealt with in accordance with the procedure established by either subsection (1) or (2) if it falls within a functional area listed in Schedule 4.
- 6.3 A Bill must, therefore, be correctly tagged otherwise it would be constitutionally invalid. In *Tongoane and Others v Minister of Agriculture and Land Affairs and Others*¹, the Constitutional Court (“CC”) dealt with the question of tagging and determined the proper test for tagging of the Communal Land Rights Act, 2004² (“the CLARA”). The CC analysed the provisions of the CLARA and found that it, in substantial measure, affects indigenous law, customary law and traditional leadership which are areas of concurrent national and provincial legislative competence, and are functional areas listed in Schedule 4 of the Constitution. The CC held in paragraph 58 of the judgment that:

“... What matters for the purposes of tagging is not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill “in substantial measure fall within a functional area listed in schedule 4”. This statement refers to the test to be adopted when tagging Bills. This test for classification or tagging is different from that used by this Court to characterise a Bill in order to determine legislative competence. This “involves the determination of the subject-matter or the substance of the legislation, its essence, or true purpose and effect, that is, what the [legislation] is about”.”. (Footnote omitted).

- 6.4 The CC held that the test for tagging must be informed by its purpose. Tagging is neither concerned with determining the sphere of government that has the competence to legislate on a matter, nor is the process concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how a Bill must be considered by the provinces and in the National Council of Provinces, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interests, concerns and capacities of the provinces, the more say the provinces should have on its content³. The CC further held as follows:

“[64] The purpose of tagging is therefore to determine the nature and extent of the input of provinces on the contents of legislation affecting them. Indeed, all the legislation mentioned in section 76(3) is legislation that substantially affects the interests of provinces.

[69] The tagging of Bills before Parliament must be informed by the need to ensure that the provinces fully and effectively exercise their appropriate role in the process of considering national legislation that substan-

¹. 2010 (8) BCLR 741 (CC).

². (Act No. 11 of 2004).

³. See fn 2 above at para [60].

tially affects them. Paying less attention to the provisions of a Bill once its substance, or purpose and effect, has been identified undermines the role that provinces should play in the enactment of national legislation affecting them. The subject-matter of a Bill may lie in one area, yet its provisions may have a substantial impact on the interests of provinces. And different provisions of the legislation may be so closely intertwined that blind adherence to the subject-matter of the legislation without regard to the impact of its provisions on functional areas in Schedule 4 may frustrate the very purpose of classification.

[71] ...; the 'substantial measure' test permits a consideration of the provisions of the Bill and their impact on matters that substantially affect the provinces. This test ensures that legislation that affects the provinces will be enacted in accordance with a procedure that allows the provinces to fully and effectively play their role in the law-making process. This test must therefore be endorsed.

[72] To summarise: any Bill whose provisions substantially affect the interests of the provinces must be enacted in accordance with the procedure stipulated in section 76. Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a)-(f), and second by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence.”.

- 6.5 To determine whether the provisions of the Bill, in a substantial measure, fall within a functional area listed in Schedule 4, the Bill was considered against the provisions of the Constitution relating to the tagging of Bills as well as against the functional areas listed in Schedules 4 and 5 to the Constitution.
- 6.6 The main purpose of the Bill may be ascertained from the long title thereof which states as follows: “To provide for the establishment of the South African National Petroleum Company; to provide for the objects and functions of the Company; to provide for the consolidation and transfer of assets to the Company; to provide for the appointment and composition of the Board of the Company and the management thereof; to provide for its finances; to provide for the appointment of the Chief Executive Officer, Chief Financial Officer and staff of the Company; to provide for transitional arrangements for the transfer of human resources and assets from the South African Gas Development Company (iGas), Strategic Fuel Fund (SFF) and Petroleum Oil and Gas Corporation of South Africa (PetroSA) to the Company and to provide for matters connected therewith”.
- 6.7 Accordingly, the Bill appears to be an ordinary Bill not affecting provinces and does not deal with a functional area listed in Schedule 4 or 5 to the Constitution. The Bill should, therefore, be tagged as a section 75 Bill.
- 6.8 To the extent that the question of the referral of the Bill to the House of Traditional and Khoi-San Leaders by Parliament is concerned, section 39 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019) (the “Traditional and Khoi-San Leaderships Act”). The Department and the State Law Advisers are of the opinion that it is not necessary for the Bill to be referred to the National House of Traditional and Khoi-San Leaders in terms of the Traditional and Khoi-San Leadership Act, 2019, since it does not contain provisions pertaining to traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities.