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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF MINERAL RESOURCES AND ENERGY

NO. 1938 **30 March 2022**

PUBLICATION OF THE ARTISANAL AND SMALL SCALE-MINING POLICY 2022 FOR IMPLEMENTATION

I, **SAMSON GWEDE MANTASHE, MP**, Minister of Mineral Resources and Energy, hereby publish the Artisanal and Small-Scale Mining Policy, 2022 for implementation in terms of the Mineral and Petroleum Resources Development Act 28 of 2002.

Artisanal and Small-Scale Mining Policy, 2022 will become effective on the date of publication in the gazette.

MR S G MANTASHE, MP
MINISTER OF MINERAL RESOURCES AND ENERGY
DATE: 28/03/2022

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mineral resources & energy

Department:
Mineral Resources and Energy
REPUBLIC OF SOUTH AFRICA

ARTISANAL AND SMALL-SCALE MINING POLICY 2022

FINAL V1, (2022)

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CHAPTER I

1. INTRODUCTION

The Artisanal and Small-Scale Mining industry (ASM) received official recognition following the ushering in of the democratic Government in 1994. Government introduced several interventions and support structures to drive the development of the ASM industry particularly to encourage the participation of Historically Disadvantaged Persons (HDP's) and to address challenges facing the sector. These interventions included the development of the White Paper: "A Minerals and Mining Policy for South Africa, 1998" (White Paper, 1998). This policy document has a dedicated chapter on the ASM industry. The policy propositions in the White Paper were later translated into legislation in the form of section 27 of the Mineral and Petroleum Resources Development Act, 2002 (MPRDA).

Despite these policy and legislative interventions and support structures post 1994, the ASM industry continues to experience challenges. The industry remains largely informal, despite an increase in the number of section 27 mining permits that have been issued by the Department. The extent of the industry in terms of the players involved, number of people employed, its socio-economic impact, investments, and contribution to the Gross Domestic Product (GDP), in the form of taxes and royalties is not properly documented.

Section 27 of the MPRDA which deals with the licensing regime for the ASM industry, has been seen largely as prohibitive to the development and growth of the sector. This is mainly because the Act does not define concepts. It does not cater for the Artisanal Mining industry. Small Scale Miners are virtually treated the same as Large Scale Miners in terms requirement for environmental management, water use, land use, health and safety and financial provisioning requirements.

Furthermore, the Act has restrictions on the transferability and encumbrance of a mining permit, the area in extent is limited to 5 hectares and this impacts on the permit holder's ability to obtain funding and overall sustainability of the operation. The mining permit applications are open for all and even some large players operate in this space. These factors, coupled with poor support mechanism from Government, in the form of funding and provision of extension services to the ASM industry, have contributed to the informality of the sector and constrained development. This has resulted in calls

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over the years for policy and legislative interventions by industry stakeholders and interested and affected parties.

The calls for Government to introduce policy and legislative reforms to formalise the ASM industry have intensified. Stakeholders want Government to have special focus on the ASM industry due to the potential of this industry to contribute to socio-economic development and improve the livelihoods of South Africans, in particular rural communities. Further to this there has been a call for alignment of the South African regulatory framework with regional and international mining jurisdiction on the formalisation and development of ASM industry.These calls are, in part, informed by the growth in incidences of illegal mining which is reportedly on the rise in the Country.

Illegal mining has a range of negative social and financial impacts on employees, companies, the mining sector and the country due to loss of revenue, taxes, employment opportunities, capital expenditure, exports, foreign exchange earnings and procurement, among others. It also presents a serious risk to the sustainability of the industry and its ability to contribute to a meaningful future for all South Africans.

The review of the ASM Policy framework as captured in the White Pater, 1998 is intended to address the above-mentioned challenges. The purpose of this policy review is to outline government's policy interventions to address these challenges and to support the sustainable development of the ASM industry. These policy interventions will create an enabling environment for the industry to meaningfully contribute to the mainstream economy, job creation and poverty alleviation.

This document is arranged in 10 chapters which address the following thematic issues:

I. Definition of terms and objectives of the ASM Policy, 2020;
II. Differentiation of concepts;
III. Licensing regime and administration;
IV. Institutional and support mechanisms;
V. Taxation and royalty regime;
VI. Environmental, health, safety, and water use considerations;
VII. Government policy stance on illegal mining;
VIII. Reporting and accountability;
IX. Policy implementation, enforcement, monitoring and evaluation; and
X. Policy Review.

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Under each chapter and theme, the Government's policy proposals are clearly outlined. The intention is ultimately to translate these policy interventions into dedicated enforceable legislation.

In terms of process, the policy review will be undertaken in a consultative manner and consider input from all industry stakeholders and social partners. There will be prior consultations on the objects and intention of the policy review before a draft ASM Policy document is submitted for Cabinet approval. Cabinet will approve draft policy proposals for public comments. After the public comment period, stakeholders and social partners will be further consulted on their substantive submissions and a final draft ASM Policy document will be resubmitted to Cabinet for approval to implement. The draft ASM Policy will also be subjected to a Socio-Economic Impact Assessment (SEIAS) process, in consultation with the Planning, Monitoring and Evaluation Unit in the Presidency.

2. OBJECTIVE OF THE ASM POLICY

The objective of the ASM policy is to foster the creation of a formalised Artisanal and Small-Scale Mining Industry that can operate optimally in a sustainable manner while contributing to the economy in the form of taxes and royalties and through job creation, and for the elimination of illegal ASM operations.

3. DEFINITIONS

"***Artisanal mining***" means traditional and customary mining operations using traditional or customary ways and means. This includes the activities of individuals using mostly rudimentary mining methods, manual and rudimentary tools to access mineral ore, usually available on surface, or at shallow depths.

"***Small scale mining***" means a prospecting activities or mining operation which does not employ specialised prospecting, mechanised mining technologies, chemicals including mercury and cyanide or explosives; or the proposed prospecting or mining operations, do not involve an investment or expenditure which exceed such amount as may be prescribed.

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"***Royalties***" means any royalty payable to the State in terms of an Act of Parliament.

"***South Africans***" in respect of natural persons means a person who has attained the age of majority (18 years), was born in South Africa or is a permanent resident. In respect of juristic persons means a company incorporated and registered in terms of the Companies Act, 2008, with operations in the country and subject to South African laws.

4. ABREVIATIONS

ABRREVIATIONS	DESCRIPTION
ASM	Artisanal and Small-Scale Mining.
CGS	Council for Geoscience.
COGTA	Department of Co-operative Governance and Traditional Affairs.
DFI's	Developmental Finance Institutions.
DMRE	Department of Mineral Resources and Energy.
DEFF	Department of Environmental Forestry and Fisheries.
Department	Department of Mineral Resources and Energy.
HDP's	Historically Disadvantaged Persons.
ITA	Income Tax Act, 1967
LSM	Large Scale Mining.
MPRDA	Mineral and Petroleum Resources Development Act, 2002.
MHSA	Mine Health and Safety Act, 1996.
MQA	Mining Qualifications Authority.
MHSC	Mine Health and Safety Council.
MPMT	Minerals and Precious Metals Theft Unit.
NEMA	National Environmental Management Act, 1998.
NCSMT	National Coordinating and Strategic Management Team established by Cabinet in 2010.
NWA	National Water Act 1998.
SAMRAD	South African Mineral Resources Administration System.

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SAPS	South African Police Service.
SBC	Small Business Corporation
TA	Tributing Agreement.
The DTIC	The Department of Trade and Industry and Competition.
TOT	Turn over Tax
VCC	Venture Capital Company
White Paper	White Paper encompassing a Policy for the South African Mining and Minerals Industry, 1998.

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CHAPTER II

5. COMPARATIVE STUDY RECOMMENDATIONS

In 2019 the Department undertook a comparative study of selected African ASM jurisdictions in Kenya, Ghana and Zambia. A standard questionnaire was developed and circulated to the respective Ministries' prior to each comparative study, to enable preparations and access to relevant information. The comparative study culminated into a report which was approved by Minister in March 2020.

In summary, this comparative study report recommended that the Department, in developing a dedicated policy and legislative framework for the South African ASM industry, should adopt aspects of the policy and legal framework of other jurisdictions (Kenya, Zambia and Ghana) which are not currently catered for in the MPRDA. These aspects include the following:

(a) *Reservation of ASM permits for locals:* in all the three jurisdictions ASM permits are reserved for locals. The dedicated policy framework should explore the possibility of introducing this requirement, considering the South African historical context of involvement of miners from neighbouring countries, in both legal and illegal operations.

(b) *Definition of concepts:* Artisanal Mining to be defined separately from Small Scale Mining, as is the case in Zambia.

(c) *Graduation provisions:* the policy and legislative framework to include clear graduation provisions from Artisanal Mining to Small Scale Mining and from Small Scale Mining to LSM.

(d) *Co-existence between ASM miners and LSM:* the policy and legislative framework to be clear about the relationship between ASM miners and LSM operations. LSM to be enabled by the law to allocate portions of the granted mining area to ASM operators, sign Tributing Agreements (TA's) to govern the relationship and co-existence.

(e) *Transferability and encumbrance:* considerations to revisit the limitation on the transferability of mining permits and adopt a Ghana like model where transfer is permissible with Ministers consent and to Ghanaian' citizens or other eligible ASM operators.

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(f) *Designation of areas for the ASM industry:* Minister should be empowered by legislation to reserve areas for the ASM industry. This can be done in collaboration with the Council of Geoscience (CGS), Mine Health and Safety Council (MHSC) and the Department of Environment ,Forestry and Fisheries (DEFF). The CGS should avail geological data to determine and support the designation. The other institutions to facilitate relevant information and data for the necessary authorisations (EIA's and MHS plans).

(g) *Limitation of ASM operations to surface mining:* This policy option should be investigated further as the limitation may be viewed as discriminatory, exclusionary, and counterproductive. It has been identified that there are already some illegal mining operations taking place underground.

(h) *Creation of district/regional mining offices:* Similar to Ghana, these offices should be geared towards facilitating licensing of ASM; Compiling a registers of existing and prospective ASM, specifying particulars that may be determined by the Minister; Supervise and monitor the operation and activities of these miners; advise and provide training facilities and assistance necessary for effective and efficient ASM operations; submit to the Department in a form and at intervals as directed, reports or other documents and information on ASM activities within the District/Region; and facilitate the formation of Artisanal and Small Scale Miners Association/s. Alternatively these functions should be allocated the Regional Managers or a capacitated Small Scale Mining Unit.

(i) *Formation of district Mining Committees:* Multi-stakeholder committees in each ASM designated area with representation from DMRE, DEFF, and COGTA etc. should be established in terms of the law.

(j) *Formation of ASM Associations:* ASM operators should be encouraged to organise themselves into legally recognised formations. Regional or National ASM Associations to be promoted and supported.

(k) *Financial assistance to ASM operations:* funding mechanisms to ASM projects should be made available provided for in the law.

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CHAPTER III

6. DIFFERENTIATION OF CONCEPTS

(a) Artisanal mining and small-scale mining

The MPRDA does not expressly define the terms "Artisanal" and "Small Scale" mining. In terms of the Act a mining permit may be issued for a period of 2 years covering an area of 5 hectares renewable for 3 periods each of which may not exceed 1 year. This provision has been interpreted to refer exclusively to small scale mining. The Act therefore does not provide for artisanal mining. This lack of definition of concepts has created regulatory gap and uncertainty in respect of artisanal operations. As a result, there has been a variety of definitions that have been used by the industry to try and close this regulatory loophole. These range from definition of ASM with reference to the Small Business Act, 2003, references to "emerging mining" or "junior mining" and also the conflation of artisanal mining with small scale mining as we all as illegal mining.

Government policy proposal:

To close the loophole with regards to the definition of terms, the following is proposed:

a) A definition of "*Artisanal Mining*" to mean traditional and customary mining operations using traditional or customary ways and means. This includes the activities of individuals or groups using mostly rudimentary mining methods, manual and rudimentary tools to access mineral ore, usually available on surface, or at shallow depths.

b) A definition of "*Small Scale Mining*" to mean a prospecting activities or mining operation which does not employ specialised prospecting, mechanised mining technologies, chemicals including mercury and cyanide or explosives; or the proposed prospecting or mining operations do not involve an investment or expenditure which exceed an amount as may be prescribed.

c) Thresholds in respect of amount of investments involved may be prescribed, a maximum of 1 Million Rands investments for Artisanal Miners and a

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Maximum of 10 Million Rands investments for Small Scale Miners is proposed.

d) Graduation provision: consideration will be made to allow an artisanal miner an opportunity to graduate to small scale mining, and for a small-scale miner to graduate to medium, junior or emerging miner considering production and investment thresholds.

In this manner Artisanal Mining is clearly distinguishable from Small Scale Mining and related concepts. The policy and legal framework will provide for an Artisanal Mining Permit and a Small-Scale Mining Permit each with its own unique requirements and obligations.

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CHAPTER IV

7. LICENSING REGIME AND ADMINISTRATION

The MPRDA legislative framework in the form of section 27 which only deals with small scale mining has proven to be inadequate to fully respond to the needs of the ASM industry. This framework was largely designed for large scale operations and has not taken into consideration the peculiarities of the ASM industry and is thus not suitable. Small scale miners have over the years experienced challenges with the current system including (i) accessibility and ease of use of the online SAMRAD application system (ii) resources requirements (iii) the locality of DMRE offices (iv) access to information (v) access to funding (vii) onerous compliance requirements and (viii) lack of support from government (institutional support, funding, capacity building, infrastructure, market, access to land, etc).

In terms of international good practice, an Artisanal and Small-Scale Mining policy and legal framework must be clear and rational. License categories should be workable with respect to tenure, duration, rights and obligations. The licensing criteria, processes and systems should be simple and clear to comprehend and use.

Government policy proposals:

In order to ensure that the licensing regime and administration for the Artisanal and Small-Scale mining industry conforms to international best practice and benefits the people of South Africa, Government proposes the following measures:

(a) Types of permits to be granted

The dedicated policy and legal regime will provide for two types of permits for 1) artisanal mining and 2) small-scale mining.

(i) An Artisanal Mining Permit.
(ii) A Small-Scale Mining Permit.

(b) Licensing method

A dual licensing process is proposed. The current first come first served application process will be retained as a default licensing method. However, Government will be

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empowered to invite applications for artisanal mining or small-scale mining in designated areas. This invitation system will be developed after consultation the Council for Geoscience (CGS).

(c) Licensing criteria

Licensing for ASM operations to be undertaken in a fair, equitable and transparent manner considering the need to:

(i) Fulfil the objective of the policy, in particular, the need to facilitate entry and meaningful participation by HDSA into the mining industry;
(ii) Contribute to socio-economic development, job creation and poverty alleviation;
(iii) Promotion of Co-operatives;
(iv) Prioritize the interest of women and vulnerable groups who are involved in the ASM industry;
(v) Prioritization of training and skilling of permit holders in mining operations;
(vi) Formalisation of the sector and compulsory affiliation to ASM Associations; and
(vii) Graduation of operations to medium and large-scale mining operations.

(d) Legal nature of the permit

The legal nature of an Artisanal Mining Permit and a Small-Scale Mining Permit must be clarified. These permits should be limited real rights granted and registered by the Department and capable of being transferred, mortgaged and capitalised, as is the case with mining rights granted in terms of the MPRDA. A permit holder should be able to enforce his rights in terms of the permit against third parties.

(e) Extent of a permit area in hectares

Considering the rudimentary nature of artisanal mining and particularities of small scale mining the duration and size of permits should be determined taking into consideration factors such as but not limited to the type on mineral being mined, technical and financial resources required and the environmental impacts associated with the extraction of that mineral.

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(f) Duration of an ASM operation in years

The determination of the duration of ASM permits should ensure the guarantee to security of tenure to permit holders. This should also include principles of sustainability and optimal exploitation of resources while benefits should accrue to permit holders as early as possible.

(g) Power to demarcate areas as ASM areas

The Minister will be empowered to designate or demarcate certain areas as artisanal or small-scale mining areas. The designation or demarcation will be informed and supported by geological data from the CGS and also by the prevalence of ASM activities in a given area. This approach will assist with optimisation and pooling of resources, sharing of risks and benefits amongst the players.

The Minister may also collaborate with the departments responsible for environment , Forestry and Fisheries and Water affairs to undertake feasibility studies on an identified area to determine the risks, potential impacts, water resources before a decision on reservation of an area for ASM is made.

(h) Reservation of permits to South Africans

Artisanal Mining Permit and a Small-Scale Mining Permit must be reserved for South Africans, as defined. The presence of illegal immigrants within the artisanal and small-scale mining space must be addressed through transitional provisions to eliminate illegal mining activities. A transitional period for all illegal miners to come forward and subject themselves to the process of formalisation must be explored. If the illegal miners do not take advantage of this transition window then law enforcement agencies will have to step in.

(i) Issuing of permits to individuals or Co-operatives

Although licensing to private individuals will not be prohibited, Government will prioritise the issuing of Artisanal Mining Permits and Small-Scale Mining Permits to co-operatives . Co-operatives are preferred due to their potential for a much wider impact

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to spread the economic benefits wider and ensuring sustainability through the sharing of risks.

(j) Restriction of ASM operations to the surface

Artisanal Mining operations and Small-Scale Mining operations should be limited to surface and open cast mining. Consideration will be made to design a risk-based system of mining considering the depth and mining methods to be used by artisanal and small-scale miners. This will be guided by health and safety aspects of operations together with environmental management and necessary rehabilitation measures.

(k) Transferability and encumbrance

A holder of an Artisanal Mining Permit and a Small-Scale Mining Permit should be afforded a right to transfer or encumber in part or whole the permit subject to the Ministers consent. This will assist permit holders in raising capital for the sustainability of operations and even to spread the benefits to other persons who have an interest in ASM. The transfer of permits should be done in a fair, equitable and transparent manner. The transferee must demonstrate their ability to carry out the mining operation and comply with the requirements of the permit.

(l) Sale and trading in minerals

The policy and legal framework should empower holders of ASM permits to add value to their minerals, trade in the open market and be involved in the complete value chain of mineral development. Consideration should be made for the establishment of a regulated market or a central buying agency to afford artisanal and small-scale miners a platform to legally sell and trade their mineral products in a transparent and protected environment. This will assist with elimination of unscrupulous syndicates who profit unduly from hard labour of artisanal and small-scale miners and the proliferation of underground/ black markets that undermine the financial systems.

(m) Co-existence with large operations

Co-existence between large scale operators and artisanal and small-scale operators should be enabled in the form of Tributing Agreements. These may include shedding and identifying land for ASM activities within the large-scale operator's concessions

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and exploring the potential for tribute and buy-back arrangements, sharing of liabilities and responsibilities, technical support, equipment leasing schemes and opportunities for ASM to process and refine their ores, thus making them part of supply chains.

Very important is that co-existence must only take place where the large operator still operates. This will ensure and protect the ASM operators against inheriting environmental liability which may have been incurred by the large operator. The framework should also provide for incentives and off-sets to encourage large scale operators to co-exist with artisanal and small-scale miners.

(n) Mining of tailings and mine dumps

A framework for ASM to have access to the mining of tailings dumps and historic residue deposits and stockpiles should be developed in line with existing jurisprudence as outlined by judicial decision on the matter. Owners of these tailings and dumps should be encouraged to work with artisanal and small-scale miners considering the applicable environmental management and water related legal instruments.

(o) Access to land

Access to land remains a contentious issue which requires collaboration with responsible Government departments. The process to obtain access to land from the landowners and lawful occupiers including holders of informal land rights must be clarified in line with the prevailing regulatory framework. Provision for access not to be unreasonably denied should be incorporated. In this regard the framework must provide for safeguards in the form of meaningful consultation requirements, negotiation of compensation for access land with landowners and lawful occupiers resettlement or relocation and dispute resolution mechanisms. This also include compliance with requirements for zoning of identified land for mining purposes as the case may be.

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CHAPTER V

8. INSTITUTINAL AND SUPPORT MECHANISMS

The approved structure of the Small-Scale Mining Directorate within the department of Mineral Resources and Energy is wholly inadequate to support the ASM industry. There is also lack of co-operation and co-ordination with other relevant Government Departments who may have a direct interest and can add value to the development of the ASM industry for example the Department of Trade Industry and Competition (theDTIC), Department of Small Business Development (DSBD), Cooperative Governance and Traditional Affairs (COGTA), Department of Environment Forestry and Fisheries (DEFF).

One of the major challenges for the ASM industry is lack of funding. This is despite the existence of a plethora of developmental funding institutions. There are no synergies between the mandate and activities of the Small Scale Mining Directorate and these DFI's. Government efforts in the past to improve institutional capacity have not yielded the desired results. The ASM industry is hugely fragmented and there are no recognisable associations or organised structures to address its issues.

Government policy proposals:

(a) Centralised/Regional mining offices

The Department should review the capacity of the Directorate Small Scale Mining and re-establish the unit with a fully capacitated and functional unit that is able to facilitate licensing and support of ASM industry, implement and enforce compliance and monitor and evaluate the effectiveness of the policies, laws and regulations.

The Department should formalise the institutional arrangements and multi-stakeholder co-ordination in relation to legislation. Provision for the establishment of this directorate within the office of the Regional Manager and the definition of the role of this office should be adopted for the artisanal and small-scale mining framework.

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(b) Formation of Co-operatives

The policy and legal framework should promote the formation of co-operatives and concessions. These co-operatives and concessions will be preferred when processing applications due to their potential in maximising and spreading the impact of the project whilst also sharing in the risks.

(c) Financial Assistance

ASM is mostly plagued by financial challenges hence the proliferation of illegal operations. The implementation of s27 of the MPRDA has identified challenges with the provision of financial assistance to Small Scale Mining (SSM) one of which is insufficient funds available. Although government may not be in position to provide finances, ASM should be assisted in strengthening their business case in order to approach various funding institutions for this assistance and investments into ASM operations through extended services.

(d) Training, Skills Development, and Innovation

One of the key challenges identified in respect of ASM is lack of training in various disciplines including business management and technical skills for efficient mining of mineral resources identified. Collaboration with institutions such as the MQA and MINTEC which has training programs to assist small scale miners including the HDSA entry miners support program and the ASM Mining School. These programs must be geared toward training in environmental management, health and safety and business management skills. This will be critical for the formalisation of the industry to ensure ASM is sustainable and able to comply with the necessary requirements.

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CHAPTER VI

9. FISCAL REGIME

The South African mining industry is required by law to pay taxes and royalties as follows:

(a) Payment of Royalties

The Mineral and Petroleum Royalty Act, 2008 sets out the revenue-based royalties' payable on mineral resources that are extracted within South Africa and transferred. The Royalty Act differentiates between refined and unrefined mineral resources. The mining royalty percentage is capped at 5 per cent for refined mineral resources and 7 per cent for unrefined mineral resources. The Royalty Act uses two variables to calculate the royalty liability, the value of the minerals and the royalty percentage rate, which is applied to the base.

(b) Taxes

Mining companies may also be subject to income tax, capital gains tax, withholding tax, transaction taxes such as VAT, transfer duty and securities transfer tax in terms of the Income Tax Act, 1967.

The Artisanal and Small-Scale mining industry is not absolved from the obligation to pay taxes and royalties and thus contribute to socio-economic growth. However, due to the informality of the sector, the ASM industries contribution to the revenue collection in largely unknown.

National Treasury has devised instruments and incentives to support small businesses. These include (i) the small business corporation incentive, (ii) turn over taxation regime and (iii) venture capital company tax regime. These instruments and incentives (discussed below) are available to artisanal and small-scale miners.

Small business corporation

The Small Business Corporation (SBC) incentive was introduced in 2001 in terms of section 12E of the Income Tax Act, 2001 (ITA). The incentive was introduced to contribute to small business development within the wider ambit of improving economic growth in South Africa. Small business enterprises play an important role

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in economic development and employment creation. The small business incentive regime offers graduated tax rates of 0%, 7%, 21% for initial proportions of taxable income earned by the company up to R550 000. The incentive is available to companies with a turnover that does not exceed R20 million. Currently there are about 100 000 SBC's benefiting from this tax incentive.

Table 1: **Small Business Corporations (SBC) graduated rates tax table**

Financial years ending on any date between 1 April 2020 and 31 March 2021:

Taxable Income (R)	Rate of Tax (R)
1 – 83 100	0% of taxable income
83 101 – 365 000	7% of taxable income above 83 100
365 001 – 550 000	19 733 + 21% of taxable income above 365 000
550 001 and above	58 583 + 28% of the amount above 550 000

Turnover tax

The turnover tax regime was introduced in 2008 in terms of the Sixth Schedule to the ITA. This regime is part of Government's broader mandate to encourage entrepreneurship and create an enabling environment for small businesses to survive and grow, and to reduce the tax compliance burden on businesses with an annual turnover of up to R1 million. Turnover tax is a simplified system aimed at making it easier for micro business to meet their tax obligations. The turnover tax system replaces income tax, VAT, provisional tax, capital gains tax and dividends tax for micro businesses with a qualifying annual turnover of R 1 million or less.

A micro business that is registered for turnover tax can, however, elect to remain in the VAT system (from 1 March 2012). Turnover tax is optional, meaning a micro business can decide if it wants to use this or the current tax system where businesses can deduct costs. It is available to sole proprietors (individuals), partnerships, close corporations, Co-operatives, and companies with effect from 1 March 2009.

Turnover tax is worked out by applying a tax rate to the taxable turnover of a micro business. The rates are applicable for any year of assessment ending during the

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period of 12 months ending on 28 February 2018. There are less than 10 000 companies using TOT. Take up is low because micro businesses are liable for tax even if making a loss (tax is based on turnover). If, however, the micro business was outside the turnover tax regime, they would have recorded an assessed loss which would have been carried over to the next period of assessment. Micro businesses also cannot deduct expenses like with SBC and, as a result, most small businesses opt for sole proprietor option (taxed as an individual) or SBC. The turnover tax rates set out in the Sixth Schedule of ITA are as following:

Turnover (R)	Rate of tax (R)
0 - 335 000	0%
335 001 - 500 000	1% of each R1 above 335 000
500 001 - 750 000	1 650 + 2% of the amount above 500 000
750 001 and above	6 650 + 3% of the amount above 750 000

Venture Capital Company (VCC)

Access to equity finance remains one of the main challenges to the economic growth of small and medium-sized businesses and junior mining exploration. In response to this challenge, in 2008, Government enacted the venture capital company (VCC) tax regime in terms of section 12J of the ITA with the aim of creating a pooling mechanism for investors to channel funds into small businesses and junior mining operations. The VCC itself (based on private equity model) is intended to act as an "angel investor" for such businesses by providing equity and supportive management services. The VCC is intended to be a marketing vehicle that will attract retail investors. It has the benefit of bringing together small investors as well as concentrating investment expertise in favour of the small business sector. Investors get deduction for equity investments in VCCs. Currently, there are over 100 VCCs registered.

Government policy proposals:

- Government should take immediate policy and legislative measures to formalise artisanal miners and small-scale miners so that they are part of the mainstream economy.
- Artisanal and Small-Scale Miners are to be encouraged to take advantage of the tax instruments and incentives as developed by National Treasury

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including (i) the small business corporation incentive, (ii) turn over taxation regime and (iii) venture capital company tax regime.

- Government must further consider reviewing existing schemes and provide for incentive schemes specifically aimed at supporting the ASM industry.
- Government (DMRE & SARS) should simplify the tax collection system for the ASM industry and embark on training and educational programmes on tax matters for the ASM operators.
- Government must deal decisively with illegal mining through regulatory provisions and promote formalisation of ASM.

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CHAPTER VII

10. ENVIRONMENTAL MANAGEMENT, HEALTH, SAFETY AND WATER USE CONSIDERATIONS

(a) National Environmental Management Act, 1998 and SEMA's

(b) Mine Health and Safety Act, 1998

(c) Water use licenses and National Water Act, 1998

Most ASM operations are not in position to comply with the environmental, water use and health and safety requirements. This is due to the informal nature of the industry, lack of capacity, knowledge, skills, the cost of services offered by Environmental Assessment Practitioners to implement these legislative requirements. These ASM operations do not conform to the requirement to rehabilitate the land and there is non-compliance with the mine closure requirements.

The introduction of the one environmental management system to streamline the licensing requirements in respect of water use, environmental management and mining activities has not had positive effect on ASM mining industry. The system has instead increased the costs of doing business for Artisanal and Small-Scale Miners. The licensing requirements including water, environmental management and financial cost by Environmental Assessment Practitioners requirements in terms of applicable laws present a barrier for many people who want to enter into the mining industry.

By way of example, the application fees for environmental authorisation applications are as follows:

a) Scoping/EIA - R10,000
b) BA - R2000
c) Amendment - R2,000 - Part 1 and Part 2
d) Integrated Permitting System - R5,000 or R1,000 discounted by 50% as cost is split with waste licence application.

It is noted that these are only application fees and not the actual costs of undertaking the EIA processes or obtaining environmental authorisation. Processes which require

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the appointment of an environmental assessment practitioner (EAP), assessment, consultation and often appointment of specialists to undertake specialist assessments.

The occupational health and safety requirements for a mining permit are almost as stringent as those for a mining right. The Mine Health and Safety Council (MHSC) has developed guidelines intended to cater for ASM specific considerations. However, the ASM industry still considers these requirements as prohibitive to the sector.

In respect of water use licenses, the responsible department has developed best practice guidelines that are designed to benefit artisanal and small-scale mining based on the level of impact of the operation. The Water Department follows an impact-based approach and classifies operations as:

a) *High impact*: requires a water use license, stringent requirements.
b) *Medium impact*: may require a water use license or a general authorization, less stringent requirements.
c) *low impact*: no water use license but a general authorization with less stringent requirements and at no cost.

Artisanal and Small-Scale Miners may fall under the category of low impact operations, but this depends on the nature of the mineral mined, size and scale of operations.

Government acknowledges the necessity for the ASM industry to operate in an orderly and sustainable manner and comply with the environmental, water use and health and safety prescripts. In this regard the ASM policy and legislative framework must be aligned and cross referenced to the principal legislation governing environment, water use and health and safety.

Government policy proposal:

a) Government working together with industry stakeholders (MHSC, MQA & Organised business), will devise interventions to train, empower and educate artisanal miners and small-scale miners on aspects of compliance with environmental management, water use and health and safety requirements.
b) The responsible departments to design accessible policy tools and guidelines that are tailored for the ASM industry including advocacy programmes targeting the artisanal and small-scale miners. The dedicated MHS Guidelines from the

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MHSC will be further reviewed to fully address the health and safety requirements for the ASM Industry.

c) Government to strengthen monitoring capacity and adopt an integrated approach to monitoring (joint interdepartmental or multi-stakeholder monitoring of compliance by the ASM industry).

d) Government to provide mechanisms for incentives and disincentives to ASM operators to encourage compliance with the environmental, health and safety and water use requirements.

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CHAPTER VIII

11. GOVERNMENTS POLICY STANCE ON ILLEGAL MINING

(a) Role of the NCSMT

(b) Creation of an Illegal Mining and Precious Metals Theft Unit

(c) Amendments to associated legislation

Illegal mining is a critical challenge in the South African mining and minerals industry. A significant number of people are currently estimated to be involved in illegal mining (directly and indirectly). Government always condemns the practice of illegal mining in South Africa and measures are being undertaken to combat these activities.

In the gold sector alone, it is estimated that over R70 billion per annum in revenue is lost through the smuggling of this commodity and similar negative impacts are also evident in other sectors, such as chrome, coal and diamonds. Communities are directly affected by the scourge of illegal mining activities in terms of environmental degradation, health risks, and gang violence emanating from rival illegal miners

Illegal mining should be distinguishable from Artisanal and Small-Scale mining by people who genuinely want to participate in the industry to improve their livelihoods, contribute to the economy and growth of the industry. Government has been taking decisive steps that will ensure that illegal mining practices are halted. All mining and mineral processing activities must be undertaken within the applicable legal framework. In this regard, a multi-departmental body, National Coordination and Strategic Management Team (NCSMT), was established which comprises of representatives from DMR, South African Police Service, Intelligence Services, and the Department of Home Affairs.

Government policy proposal:

a) The policy and legal framework must clearly distinguish illegal mining from ASM.
b) Government should strengthen the laws relating to criminalisation of illegal mining including the MPRDA, the Criminal Procedure Act, 1977, Precious

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Metals Act, 2005, Second Hand Goods Act, 2009, and the Prevention of Organised Crime Act, 1998 in terms of offences and penalties to deter illegal mining activities.

c) Government should establish a dedicated Minerals and Precious Metals Theft Unit (MPMTU) within the South Africa Police Service (SAPS).
d) The MPMTU should be a fully capacitated and trained detective unit to deal with mineral and precious theft related matters.
e) There is a need to further explore the creation of dedicated prosecutorial expertise in respect of illegal mining matters.

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CHAPTER VIX

12. REPORTING AND ACCOUNTABILITY

(a) Reporting obligations

(b) Differentiated reporting for ASM miners

The current MPRDA framework has sufficient provisions for reporting. Section 28 of the Act places an obligation on a holder of a mining permit to keep proper records of mining activities and proper financial records in connection with the mining activities. This section further requires a holder of a mining permit to submit to the Director-General prescribed monthly returns with accurate and correct information and data, audited annual financial report or financial statements reflecting the balance sheet and profit and loss account.

The section 28 requirement regarding record keeping and submission of information and data was intended to enable Government to have sufficient knowledge about the extent of Small-Scale mining activities in the Country. A challenge with the implementation this provision with respect to mining permits issued as the information required is not collected and captured. This would provide Government with accurate data regarding the number of Artisanal and Small-Scale Miners, employment levels and the industries' level of contribution to the economy and royalty payments. However, the extent of compliance by holders of mining permits with the record keeping and reporting obligations as required by this provision is questionable.

This is primarily due to the informality of the ASM sector, increase in incidences of illegal mining, level of education of the Artisanal and Small-Scale Miners, accessibility of reporting systems and mechanisms and the capacity, on the part of the Department to monitor implementation and enforce compliance.

Government policy proposal:

- The ASM policy and dedicated legal framework should have stringent reporting requirements.
- The Department should enforce the monthly, quarterly and annual reporting requirements by the ASM industry in terms of production, employment statistics and payment of area charges, taxes and royalties. This will assist Government

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to have readily available and reliable data about the sector and be in a position to assess progress.

- The Department should develop reporting systems that are tailored for the ASM industry and improve on internal capacity to analyse these reports.
- Explore differentiated reporting mechanisms (ASM to report separately from the LSM industry) in terms of production and related aspects.
- Introduce periodic industry-wide assessment of the impact of issued mining permits. Similar to the Mining Charter periodic assessment reports (5 years intervals).
- Government should introduce programmes to train Artisanal and Small-Scale miners on record keeping, reporting, information management, business management (extension services).
- Government should develop simple and implementable reporting tools and templates.

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CHAPTER X

13. POLICY IMPLEMENTATION, ENFORCEMENT, MONITORING AND EVALUATION

(a) Implementation timeframes, plans and strategies

The department has the main responsibility for oversight of the implementation of the ASM Policy. In carrying out this responsibility the Department should collaborate with other government departments and entities, industry stakeholders and social partners. The department must develop a policy implementation plan with timelines within which (a) capacity (institutional, financial) will be availed, (b) promulgation of legislation, regulations and guidelines and (c) implementation strategies.

(b) Enforcement, monitoring and evaluation

The Policy will be continuously monitored and progress reports evaluating its implementation produced on a regular basis. Such a process will facilitate achievement of the intended policy goals and objectives.

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CHAPTER XI

14. POLICY REVIEW

(a) Obligation to review and review intervals

The mining sector is dynamic and is affected by new developments emerging locally, regionally, or internationally. The Policy will thus be reviewed as and when the need arises to ensure that it remains relevant and conforms to the prevailing best practices in the industry.

LEGISLATIONS AND POLICIES REFERENCED

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(ii) The Mine Health and Safety Act, 1998.
(iii) The Mineral and Petroleum Titles Registration Amendment Act, 2003.
(iv) The Minerals and Petroleum Royalty Act, 2008.
(v) The National Environmental Management Act, 1998.
(vi) The Geoscience Amendment Act, 2010.
(vii) The Mineral Technology Act, 1987.
(viii) The National Water Act, 1998.
(ix) The Criminal Procedure Act, 1977.
(x) The Precious Metals Act, 2005.
(xi) The Secondhand Goods Act, 2009.
(xii) The Prevention of Organised Crime Act, 1998.
(xiii) National Small Business Act, 2003.
(xiv) Income Tax Act, 1967.
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