

ALEKKOR LIMITED AMENDMENT ACT 2001

ACT

(As introduced in the National Assembly as a Section 75 Bill, published in Government Gazette No. 2000) (The English text is the official text of the Bill)
(MINISTER OF PUBLIC ENTERPRISES)

B-2001

GENERAL EXPLANATORY NOTE

[] Words in **bold** type in square brackets indicate omission from existing enactments
words underlined with a solid line indicate insertions in existing enactment

BILL

To amend the Alexkor Limited Act no 116 of 1992, so as to insert definitions, to constitute Alexkor Limited as a holding company of Alexander Bay Mining and Alexander Bay Trading, to provide for the incorporation of Alexander Bay Mining and Alexander Bay Trading, to alter the requirements for the disposal of shares held by the State in Alexkor, to provide for the disposal of social infrastructure and to provide for matters connected therewith.

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

1. AMENDMENT OF SECTION 1 OF ACT 116 OF 1992.

1. Section 1 of the Alexkor Limited Act, 1992 (hereinafter referred to as the Principal Act) is hereby amended by the insertion after the definition of "company" of the following definitions:

1.1 "**ABM**" means Alexander Bay Mining, a business unit of Alexkor Limited to be constituted out of the Mining business of Alexkor Limited and held by Alexkor Limited through a separate wholly owned subsidiary company.

1.2 "**ABT**" means Alexander Bay Trading, a business unit of Alexkor Limited to be constituted out of the non-mining business of Alexkor Limited and held by Alexkor Limited through a separate wholly owned subsidiary company.

1.3 "**Alexkor Holdings Limited**" means a holding company of "Alexander Bay Mining" and "Alexander Bay Trading"

1.4 "**Act**" means the Alexkor Limited Act, no 116 of 1992.

2. INSERTION OF SECTION 3A OF ACT 116 OF 1992.

The following sections are hereby inserted in the Alexkor Act, 1992 herein after referred to as the Principal Act.

- a. Alexkor Limited is constituted as a holding company of Alexander Bay Mining and Alexander Bay Trading
- b. From a date determined by the Minister in the Government Gazette, Alexander Bay Mining and Alexander Bay Trading, shall be incorporated as public companies in terms of the Companies Act, known as Alexander Bay Mining and Alexander Bay Trading Limited respectively, having a share capital as described in section 19 of the Companies Act and with Alexkor holdings Limited as the sole

shareholder. The registrar shall for the purpose of incorporation dispense with the provisions of section 32, 54(2), 63(1), 64, 65, 172(1), 172(3)(a), 172(5), and 344(b) of the Companies Act.

- c. The incorporated companies shall be substituted as contracting parties for Alexkor Limited on the date referred to in subsection (b) in all pending litigation, including arbitration, as if the incorporated companies had been the litigant from the beginning, which identity will be assumed by ABM for all mining related activities and, ABT for all non-mining related activities in respect of which Alexkor Limited was a contracting party.
- d. The incorporated companies shall be substituted as contracting parties for Alexkor Limited on the date referred to in subsection (b) in all contracts as if the incorporated companies had been the contracting parties from the beginning, which substitution will assume the form of making ABM the contracting party for all mining related contracts, and ABT for all non-mining related contracts in the place of Alexkor Limited.
- e. Subject to the provisions of this Act, the provisions of the Companies Act apply to the incorporated companies with effect from the date of incorporation.
- f. For as long as the State is the sole or majority shareholder in Alexkor Holdings Limited, section 60, 66, 190 and 344(d) of the Companies Act do not apply to the incorporated companies.
- g. Alexkor Limited shall be entitled to transfer assets for mining and non-mining business to Alexander Bay Mining and Alexander Bay Trading respectively, without the liability for payment of any transfer duties.
- h. Alexkor Limited may transfer to its incorporated companies, any servitudes or other similar rights, arising out of such incorporation, by way of a deed of cession attested by a notary, after consultation with the right holder.
- i. The relevant registrar of deeds must make such entries or endorsement, in or on any relevant register, title deed or other document in the registrar's office or submitted to the registrar as the registrar considers necessary to give effect to the provisions of this subsection.
- j. No office fees or other levies are payable in respect of such entry or endorsement.
- k. The registrar of Companies, appointed in terms of section 7 of the Companies Act, must on the date of incorporation of Alexander Bay Mining and Alexander Bay Trading, register the memorandum and the articles of association of the incorporated companies in terms of Section 63 (1) of the Companies Act, but no fee is payable in respect of such registration.
- l. The articles of association of the incorporated companies must be as determined by Alexkor Limited.
- m. Alexkor Limited shall ensure proper apportionment of liability and benefit between Alexander Bay Mining and Alexander Bay Trading in all those areas where services have been shared prior to incorporation.
- n. All persons, who immediately prior to the date referred to in subsection (b) were in the employ of Alexkor Limited, shall without any distinction and interruption to their term of service, including all their rights and obligations, be redeployed to the incorporated companies distinctively according to the needs for their services by such companies.

3. INSERTION OF SECTION 4A OF ACT 116 OF 1992

The Alexkor Limited shall, subject to the requirements of section 54 of the Public Finance Management Act 1999 (Act no 1 of 1999) be entitled to transfer, cede, lease, pledge, mortgage, dispose of, exchange, cultivate, develop, build upon, improve, sell and encumber any of its assets to any person whether natural, juristic or non juristic, as shall enable such assets to be maintained efficiently and effectively, in so being transferred, ceded, leased, pledged, sold, mortgaged, encumbered, disposed of, exchanged, cultivated, developed, built upon and improved.

4. SUBSTITUTION OF SECTION 4 OF THE ACT 116 OF 1992

Section 4 of the Principal Act is hereby amended by the substitution for subsection 3(b) (i – iv) of the following subsections:

The Minister may, with the concurrence of the Minister of Finance, sell to any person or otherwise dispose of shares of which the State is the shareholder. Provided that:

- i. Such selling or disposal of the shares shall have been determined by government, in terms of its programme on restructuring of State –owned assets, from time to time.
- ii. The requirements as to shareholding by any person or institution, whether directly or indirectly shall be determined by government, in terms of its programme on restructuring of State-owned assets, from time to time, and shall to an extent that is necessary, be incorporated in the Memorandum and Articles of Association of the Company.

5. INSERTION OF SECTION 5A OF ACT 116 OF 1992

Alexkor Limited and its incorporated companies shall be entitled for the purpose of restructuring their affairs or privatisation:

- a. to form companies in terms of the Companies Act, subject to compliance with Section 38 (m) of the Public Finance Management Act 1999 (Act no 1 of 1999)
- b. to divide its activities into business units, and to transfer to such companies all or some of such units, or parts thereof, including assets, liabilities, rights and obligations, and
- c. to acquire fully paid up shares in those companies as consideration thereof.

6. INSERTION OF SECTION 6A OF ACT 116 OF 1992

- a. The Minister may from time to time make regulations or issue directives and authorise such deviations therefrom as he may consider necessary for the efficacious implementation of this Bill
- b. Alexander Bay Mining and Alexander Bay Trading may retain the patents, designs and copyrights of Alexkor Limited, after incorporation.

7. INSERTION OF SECTION 6B OF ACT 116 OF 1992

Short title and Commencement – this Bill shall be called the Alexkor Limited Amendment Bill, 2001, and the provisions thereof shall come into operation on a date fixed by the State President by Proclamation in the Gazette.