

MINING AND MINERALS ALERT

IN THIS ISSUE

SUSPENSION OF THE IMPLEMENTATION OF MINING CHARTER 3 AND THE PROPOSED RESTRICTION ON THE GRANTING OF NEW MINERAL RIGHT APPLICATIONS

The Minister of Mineral Resources has suspended implementation of the controversial Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry, 2016, gazetted on 15 June 2017 (Mining Charter 3). On 14 July 2017, the Minister gave a written undertaking that neither he nor the Department of Mineral Resources (DMR) will implement or apply any of the provisions of Mining Charter 3 until a judgment is handed down in relation to the urgent interdict application brought by the Chamber of Mines to prevent the implementation of Mining Charter 3.

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Should the Minister or the DMR breach the undertaking, the Minister has agreed that the Chamber of Mines can set the urgent interdict application down for hearing on 48 hours' notice to the Minister.

Like Mining Charter 3, the Proposed Restriction is extremely worrying and would have far reaching negative consequences for the mining industry and investment.



The Minister of Mineral Resources (Minister) has suspended implementation of the controversial Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry, 2016, gazetted on 15 June 2017 (Mining Charter 3). On 14 July 2017, the Minister gave a written undertaking that neither he nor the Department of Mineral Resources (DMR) will implement or apply any of the provisions of Mining Charter 3 until a judgment is handed down in relation to the urgent interdict application brought by the Chamber of Mines to prevent the implementation of Mining Charter 3.

Although a specific hearing date for the Chamber's application is yet to be set, the parties have requested the Deputy Judge President of the High Court to allocate a hearing date during September 2017. Should the Minister or the DMR breach the undertaking, the Minister has agreed that the Chamber can set the urgent interdict application down for hearing on 48 hours' notice to the Minister.

On 19 July 2017, the Minister then gazetted a proposal in terms of s49 of the Mineral and Petroleum Resources Development Act, No 28 of 2002 (MPRDA) to restrict (Proposed Restriction):

- (i) the granting of any new applications for prospecting rights and mining rights;
- (ii) the processing of applications for the renewal of prospecting rights and mining rights; and
- (iii) the granting of any s11 applications to transfer prospecting rights or mining rights or interests therein.

The Proposed Restriction will be enforced throughout South Africa. The Proposed Restriction states that, "the intended restriction shall not be applicable to applications received and accepted before 19 July 2017, subject to the condition that such applications, if granted, shall not immediately upon granting subject the holder to the requirements of the Charter".

Consequently, the Proposed Restriction would only apply to applications made after 19 July 2017 and, although unclear, it appears as though all applications made before the said date will still be processed in the ordinary course, and if granted, will not be automatically subject to the provisions of Mining Charter 3.

The Minister has granted all interested and affected stakeholders until 4 August 2017 to submit written representations regarding the Proposed Restriction to the Deputy Director-General of Mineral Resources.

Like Mining Charter 3, the Proposed Restriction is extremely worrying and would have far reaching negative consequences for the mining industry and investment. Again, however, whether or not the actions of the Minister will legally pass muster is questionable. The Proposed Restriction goes beyond the scope of s49 of the MPRDA, in that it includes s11 approvals and does not set a time period for the restriction. The Minister can also only exercise his authority in terms of s49 if it is in the national interest to do so, which the Proposed Restriction clearly is not.

Once again, it appears that a legal challenge is inevitable.

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