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# MINING & MINERALS ALERT

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### How to appeal an administrative decision by the DMRE: A discussion of the amended regulations

On 27 March 2020, the Minister of Mineral Resources and Energy (Minister) published, for implementation, the Amendments to the Mineral and Petroleum Resources Development Regulations (Amended Regulations) in Government Notice R420 in Government Gazette 43172. Although some time has passed since the Amended Regulations were implemented, due to our recent experiences, we believe it is necessary to highlight certain aspects of the amended procedure to be followed in submitting an appeal against an administrative decision made in terms of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA). A discussion of the process to be followed following the submission of an appeal falls outside the scope of this Alert.

## How to appeal an administrative decision by the DMRE: A discussion of the amended regulations

If an administrative decision was made by a Regional Manager of the Department of Mineral Resources and Energy, such appeal must be submitted to the relevant Regional Office of the DMRE and be addressed to the relevant Director-General of the DMRE.

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### When can an appeal be submitted?

In terms of section 96(1) of the MPRDA, where the rights or legitimate expectations of any person have been materially and adversely affected or where a person has been aggrieved by any administrative decision made in terms of the MPRDA, such person may submit an appeal against such decision in the manner prescribed in regulation 74 of the Amended Regulations.

Pursuant to regulation 74(2) of the Amended Regulations, an appeal must now be submitted within 30 days of the date on which the appellant became aware

of the administrative decision (not 30 days from the date on which any such decision was made, as was the position prior to the Amended Regulations).

### Who must an appeal be addressed to and who must be notified?

If an administrative decision was made by a Regional Manager (RM) of the Department of Mineral Resources and Energy (DMRE), such appeal must be submitted to the relevant Regional Office of the DMRE (Regional Office) and be addressed to the relevant Director-General of the DMRE (DG).

If an administrative decision was made by a DG (or any other officer to whom the particular power in question has been delegated), such appeal must be submitted to the relevant Regional Office and be addressed to the Minister.

Furthermore, pursuant to regulations 74(1)(b) and 74(1)(c) of the Amended Regulations:

- an appeal must also be served in writing on any other persons who, in the opinion of the appellant, may have their rights affected by the outcome of the appeal, and such persons must also be made aware of their rights in terms of the Amended Regulations; and
- the relevant DG or the Minister (as the case may be) must be sent written notification that an appeal has been lodged at the relevant Regional Office, together with a copy of such appeal.

## How to appeal an administrative decision by the DMRE: A discussion of the amended regulations...*continued*

As the changes brought about in the Amended Regulations are still relatively new, we recommend that guidance be sought prior to submitting appeals against administrative decisions made under the MPRDA. It is crucial that the amended requirements are complied with in order to prevent situations where appeals may be potentially dismissed due to the failure to comply with the Amended Regulations.

### **The notice of appeal, affidavit and ancillary documentation to be submitted.**

The Amended Regulations require that a notice of appeal be submitted, which notice must be accompanied by an affidavit. In terms of regulation 74(5) of the Amended Regulations, the affidavit must:

- clearly state the administrative decision to which the appeal relates;
- set out the grounds on which the appeal is based, and provide all ancillary information and documentation in support thereof;
- list the affected parties contemplated in terms of regulation 74(1)(b) of the Amended Regulations; and
- be accompanied by any supporting documentation referred to in the affidavit.

The requirement to set out the abovementioned information in the form of an affidavit is a substantial change brought about in the Amended Regulations. It is essential that any individual who deposes to an affidavit in this regard has intimate knowledge of the history of the matter and all relevant facts relating thereto. We note that in circumstances where an appellant is a corporate entity (particularly larger organisations), we have found

that it is difficult to single out one representative who is comfortable making such a declaration and taking on this responsibility. It is unclear how an appellant should proceed in these circumstances, as it may be impossible for any one individual representing an appellant to have personal knowledge of all relevant facts. We recommend that the DMRE provide guidance in this regard.

Proof of payment of the non-refundable appeal fee must either accompany the notice of appeal, or be submitted within 14 days of the notice of appeal being lodged.

An appellant must also submit proof that the notice of appeal has been served upon the relevant Regional Office to the relevant DG or the Minister (as the case may be).

### **Recommendations**

As the changes brought about in the Amended Regulations are still relatively new, we recommend that guidance be sought prior to submitting appeals against administrative decisions made under the MPRDA. It is crucial that the amended requirements are complied with in order to prevent situations where appeals may be potentially dismissed due to the failure to comply with the Amended Regulations.

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*Ben Cripps and Allan Reid*

## OUR TEAM

For more information about our Mining & Minerals sector and services, please contact:



**Allan Reid**  
Joint Sector Head  
Director  
Corporate & Commercial  
T +27 (0)11 562 1222  
E [allan.reid@cdhlegal.com](mailto:allan.reid@cdhlegal.com)



**Emil Brincker**  
National Practice Head  
Director  
Tax & Exchange Control  
T +27 (0)11 562 1063  
E [emil.brincker@cdhlegal.com](mailto:emil.brincker@cdhlegal.com)



**Rishaban Moodley**  
Director  
Dispute Resolution  
T +27 (0)11 562 1666  
E [rishaban.moodley@cdhlegal.com](mailto:rishaban.moodley@cdhlegal.com)



**Fiona Leppan**  
Joint Sector Head  
Director  
Employment  
T +27 (0)11 562 1153  
E [fiona.leppan@cdhlegal.com](mailto:fiona.leppan@cdhlegal.com)



**Willem Jacobs**  
National Practice Head  
Director  
Corporate & Commercial  
T +27 (0)11 562 1555  
E [willem.jacobs@cdhlegal.com](mailto:willem.jacobs@cdhlegal.com)



**Ben Cripps**  
Senior Associate  
Corporate & Commercial  
T +27 (0)11 562 1242  
E [ben.cripps@cdhlegal.com](mailto:ben.cripps@cdhlegal.com)



**Mmatiki Aphiri**  
Director  
Corporate & Commercial  
T +27 (0)11 562 1087  
E [mmatiki.aphiri@cdhlegal.com](mailto:mmatiki.aphiri@cdhlegal.com)



**Aadil Patel**  
National Practice Head  
Director  
Employment  
T +27 (0)11 562 1107  
E [aadil.patel@cdhlegal.com](mailto:aadil.patel@cdhlegal.com)



**Margo-Ann Werner**  
Senior Associate  
Corporate & Commercial  
T +27 (0)11 562 1560  
E [margo-ann.werner@cdhlegal.com](mailto:margo-ann.werner@cdhlegal.com)



**Jackwell Feris**  
Director  
Dispute Resolution  
T +27 (0)11 562 1825  
E [jackwell.feris@cdhlegal.com](mailto:jackwell.feris@cdhlegal.com)



**Mark Linington**  
Director  
Tax & Exchange Control  
T +27 (0)11 562 1667  
E [mark.linington@cdhlegal.com](mailto:mark.linington@cdhlegal.com)



**Alecia Pienaar**  
Associate  
Corporate & Commercial  
T +27 (0)11 562 1017  
E [alecia.pienaar@cdhlegal.com](mailto:alecia.pienaar@cdhlegal.com)



**Verushka Pillay**  
Director  
Corporate & Commercial  
T +27 (0)11 562 1800  
E [verushka.pillay@cdhlegal.com](mailto:verushka.pillay@cdhlegal.com)



**Deon Wilken**  
National Practice Head  
Director  
Finance & Banking  
T +27 (0)11 562 1096E  
E [deon.wilken@cdhlegal.com](mailto:deon.wilken@cdhlegal.com)



**Laura Wilson**  
Associate  
Corporate & Commercial  
T +27 (0)11 562 1563  
E [laura.wilson@cdhlegal.com](mailto:laura.wilson@cdhlegal.com)



**Nonhla Mchunu**  
Director  
Corporate & Commercial  
T +27 (0)11 562 1228  
E [nonhla.mchunu@cdhlegal.com](mailto:nonhla.mchunu@cdhlegal.com)

### BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

### PLEASE NOTE

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### JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.  
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E [jhb@cdhlegal.com](mailto:jhb@cdhlegal.com)

### CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.  
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E [ctn@cdhlegal.com](mailto:ctn@cdhlegal.com)

### STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.  
T +27 (0)21 481 6400 E [cdh Stellenbosch@cdhlegal.com](mailto:cdh Stellenbosch@cdhlegal.com)

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