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# ENVIRONMENTAL LAW AND MINING & MINERALS ALERT

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With existing rights holders in the mining industry required to comply with the 2015 Financial Provisioning (FP) Regulations for Prospecting, Exploration, Mining or Production (2015 FP Regulations) by June 2021, the Minister of Forestry, Fisheries and Environment (Minister) published a proposed 12-month extension (Proposed Extension) to this compliance deadline on 22 April 2021 – truly in the nick of time taking into account that a 30-day commenting period will first have to run its course before the actual extension can be finally promulgated.



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## Further extension of Financial Provisioning Regulations' compliance deadline still leaves industry in the dark

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When the 2015 FP Regulations were first enacted on 20 November 2015, they were severely criticised for their potential to cripple the mining industry. The 2015 FP Regulations require a substantial increase in financial provision needed for rehabilitation under the Mineral and Petroleum Resources Development Act 28 of 2002, as they are far more onerous and require financial provision to be provided for annual concurrent rehabilitation and, more significantly, the remediation of latent or residual environmental impacts which may become known in the future. Owing to this and various regulatory ambiguities and contradictions across the 2015 FP Regulations, the initial deadline for compliance for existing rights holders was extended from February 2017 to February 2019.

Following two years of regulatory uncertainty, an overhaul of the financial provision regime was proposed with publication of the *Proposed Regulations pertaining to the Financial Provision for Prospecting, Exploration, Mining or Production Operations* (2017 Proposed FP Regulations) on 10 November 2017. Whilst

still riddled with some uncertainties, the 2017 Proposed FP Regulations did appear to have considered the criticism levelled against the 2015 FP Regulations.

Despite their promulgation being considered a matter of priority, a final set of the 2017 Proposed FP Regulations was never published. Instead, in September 2018, industry was given a further extension until February 2020 to comply with the 2015 FP Regulations.

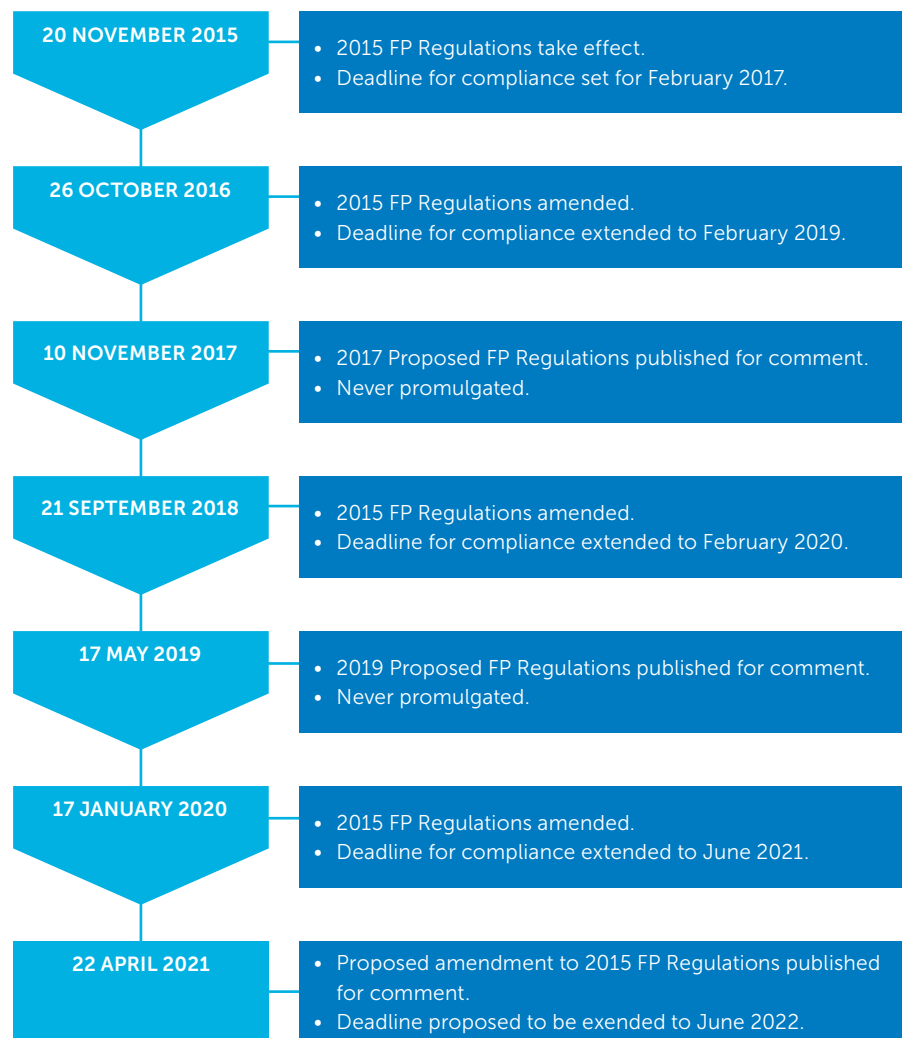
Following this, a further set of draft regulations – the *Proposed Regulations pertaining to Financial Provisioning for the Rehabilitation and Remediation of Environmental Damage caused by Reconnaissance, Prospecting, Exploration, Mining or Production Operations* (2019 Proposed FP Regulations) – was published in May 2019. The 2019 Proposed FP Regulations would have required industry to again acquaint themselves with further proposed changes to the financial provision regime, however, these proposed regulations did not cater for an extension of the February 2020 deadline. At a workshop held with the then Department of Environment, Forestry and Fisheries in June 2019 regarding the 2019 Proposed FP Regulations, it was made clear that no further extensions would be considered or provided.

In January 2020, just over a month before the February 2020 deadline, the Minister again amended the 2015 FP Regulations to introduce a further extension for compliance to June 2021. Following this, industry was faced with having to deal with the impacts of the COVID-19 pandemic, which took priority over the dialogue surrounding financial provision.

## Further extension of Financial Provisioning Regulations' compliance deadline still leaves industry in the dark...continued

Further extension of Financial Provisioning Regulations compliance deadline still leaves industry in the dark.

Given the various moving parts and ever moving compliance deadline, the above regulatory development is summarised in the infographic below:



## Further extension of Financial Provisioning Regulations' compliance deadline still leaves industry in the dark...*continued*

As the June 2021 deadline drew closer, questions regarding the way forward began to emerge.

As the June 2021 deadline drew closer, questions regarding the way forward began to emerge. With the 2015 FP Regulations ultimately still being in effect and almost two years having lapsed since the circulation of the 2019 Proposed FP Regulations for comment, industry was, despite indications of a further extension, still left in a position of having to prepare for complying with challenging (albeit necessary) regulations. As most anticipated, the Proposed Extension was published for comment, proposing to push the compliance deadline to June 2022.

Taking into account what has been nothing short of a regulatory rollercoaster ride, with industry continuously having to prepare for the rigour of the 2015 FP Regulations, the breathing space offered by the extensions does not

provide the comfort or certainty required by industry. Moreover, with comments being due by 22 May 2021, the Proposed Extension is anticipated to take effect less than a month before the expiry of the current deadline of 19 June 2021. More timely notice of the Proposed Extension could have assisted in not only providing some certainty, but also avoiding the incurrance of costs in preparing for regulatory changes that will in all likelihood eventually be revised.

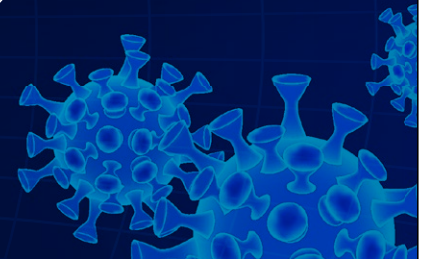
Ultimately, the use of the extensions as a last-minute mechanism to provide some "relief" continues to leave industry in the dark, with the no indication on the timeframes for finalisation of a much-needed regulatory overhaul that has been on the cards since November 2017.

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*Alecia Pienaar*

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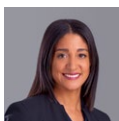


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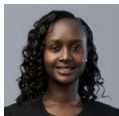
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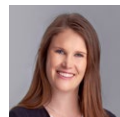
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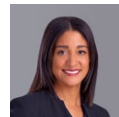
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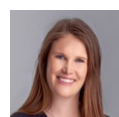
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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