

# DISPUTE RESOLUTION AND MINING AND MINERALS

# ALERT



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### DEREGISTRATION OF A LEGAL ENTITY DOES NOT RESULT IN THE IRREVOCABLE LAPSE OF MINERAL OR PETROLEUM RIGHTS

In the case of *Palala Resources v Minister of Mineral Resources and Energy* (479/15) [2016] ZASCA 80 the Supreme Court of Appeal (SCA) on 30 May 2016 held that the deregistration of a company holding a prospecting right for minerals does not imply that such right automatically lapses in terms of s56(c) of the Mineral and Petroleum Resources Development Act, No 28 of 2002, as amended (MPRDA). The court held that the reference to "deregistration" in terms of s56(c) of the MPRDA must be read in conjunction with the Companies Act, No 71 of 2008 (Companies Act) which provides for a company to apply for the restoration of registration.

# DEREGISTRATION OF A LEGAL ENTITY DOES NOT RESULT IN THE IRREVOCABLE LAPSE OF MINERAL OR PETROLEUM RIGHTS

*Restoration of registration operates retrospectively and ex post facto validates all the company's corporate activities (including its mineral prospecting rights).*

*This decision by the SCA should be welcomed by holders of mineral or petroleum rights who were prejudiced by deregistration for non-payment of annual returns.*



In the case of *Palala Resources v Minister of Mineral Resources and Energy* (479/15) [2016] ZASCA 80 the Supreme Court of Appeal (SCA) on 30 May 2016 held that the deregistration of a company holding a prospecting right for minerals does not imply that such right automatically lapses in terms of s56(c) of the Mineral and Petroleum Resources Development Act, No 28 of 2002, as amended (MPRDA). The court held that the reference to "deregistration" in terms of s56(c) of the MPRDA must be read in conjunction with the Companies Act, No 71 of 2008 (Companies Act) which provides for a company to apply for the restoration of registration.

In principle the court found that:

- Restoration of registration operates retrospectively and ex post facto validates all the company's corporate activities (including its mineral prospecting rights), even to the detriment of third parties.
- The legislature is presumed to know the law and when it enacted s56(c) of the MPRDA it must have been aware that companies and close corporations that had been deregistered could be restored to the register with automatic retrospective effect. Yet it did not qualify its reference to "whenever a company or close corporation is deregistered" as a trigger for the lapsing of rights under the MPRDA, by stating that the right would not be restored if the company or close corporation was restored to the register. Had it wished to ensure the finality of the lapsing of a right on deregistration, it could easily have done so.

- The legislature could have excluded rights under the MPRDA from the rights restored to a company or close corporation on being restored to the register.

This decision by the SCA should be welcomed by holders of mineral or petroleum rights who were prejudiced by deregistration for non-payment of annual returns which the company was reasonably unaware of due to either the administrative oversight of the Companies and Intellectual Property Commission or other reasonable grounds in support of a restoration application.

The decision has a number of practical implications for the Department of Mineral Resources (DMR) and may well open the DMR to review applications in respect of mineral or petroleum rights which were not given effect to despite the fact that restoration of companies holding such rights were done on the same or similar grounds of the Palala Resources matter.

# DEREGISTRATION OF A LEGAL ENTITY DOES NOT RESULT IN THE IRREVOCABLE LAPSE OF MINERAL OR PETROLEUM RIGHTS

CONTINUED

*The decision of the SCA to some extent aligns with the proposed amendments to the MPRDA insofar as the continued existence of rights is concerned.*



It should also be noted that in terms of the current wording of the Mineral and Petroleum Resources Development Amendment Bill (Amendment Bill), s56 will be amended to change "deregistered" to "finally deregistered" and further clarify that mineral rights or petroleum rights do not lapse in the event of the holder thereof being "liquidated and finally deregistered or sequestrated", but such rights will fall within the insolvent estate of the liquidated company or sequestrated person.

The decision of the SCA to some extent aligns with the proposed amendments to the MPRDA insofar as the continued existence of rights is concerned.

The DMR may, however, wish to reconsider the proposed amendments to s56 in order to ensure it is aligned with other pieces of legislation such as the Companies Act to ultimately ensure that the current interpretation by the court of "deregistration" does not create an administrative burden for it. The DMR still has recourse to the Constitutional Court should its counsel be of the view there is a constitutional argument to be made out in terms of the application of s56(c) of the MPRDA.

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