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MINING & MINERALS ALERT

IN THIS ISSUE

Extension of period within which to submit the first Mining Charter 2018 annual reports and other extended MPRDA time-frames

In September 2018 the Minister of Mineral Resources and Energy, Mr Gwede Mantashe (Minister), published the Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018, which became known as the Mining Charter 2018.

Amendments to the MPRDA Regulations published for implementation

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.

Extension of period within which to submit the first Mining Charter 2018 annual reports and other extended MPRDA time-frames

On 11 April 2020, the Minister gazetted Directions under the regulations of the National Disaster Management Act 57 of 2002 as part of the measures to address, prevent and combat the spread of COVID-19.

In September 2018 the Minister of Mineral Resources and Energy, Mr Gwede Mantashe (Minister), published the Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018, which became known as the Mining Charter 2018. The Mining Charter 2018 was amended on 20 December 2018 by Government Notice 1421, Gazette 42130 and was supplemented by the publication of the Implementation Guidelines on 19 December 2019.

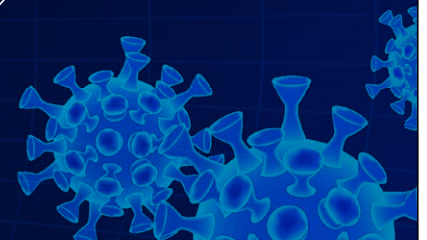
Despite Mining Charter 2018 becoming effective upon being gazetted in September 2018, section 8.9 of the amended Mining Charter 2018 provided that existing mining right holders, and existing licence and permit holders must implement the Mining Charter 2018 as from 1 March 2019. Section 6 then required mining right holders to report on their compliance with the prescripts of Mining Charter 2018 on or before 31 March 2020. This effectively required holders to report

on compliance before the expiry of the full first year under Mining Charter 2018. Given the onerous reporting obligations imposed by this charter, this would have posed an almost insurmountable hurdle to many mining companies.

Then Covid-19 intervened! On 11 April 2020, the Minister gazetted Directions under the regulations of the National Disaster Management Act 57 of 2002 as part of the measures to address, prevent and combat the spread of COVID-19. These Directions provide extensions to certain time periods stipulated in the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) and the MPRDA Regulations. For purposes of compliance reporting under the Mining Charter 2018, Direction 5.3(a) is the critical Direction. This provides that "(T)he date for submission of the first annual report on the Broad Based Socio- Economic Empowerment Charter for the Mining and Minerals Industry, is hereby extended from 31 March 2020 to 1 June 2020".

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Extension of period within which to submit the first Mining Charter 2018 annual reports and other extended MPRDA time-frames...continued

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This extension of time, although not as lengthy as many mining companies would have preferred, comes as a welcome relief to an already embattled industry.

The further Directions provide that:

5.1 Directions relating to permissions, rights and permits as contemplated in the MPRDA

- a) *The following timeframes are hereby extended, or deemed to be extended, by the number of days of the duration of the lockdown period of the national state of disaster declared for the COVID-19 pandemic:*
 - (i) *Timeframes prescribed in terms of the MPRDA in relation to applications for and processing of permissions, rights and permits, which periods fall within the duration of the lockdown period of the national state of disaster;*
 - (ii) *Timeframes applicable to renewal of permissions, rights and permits which fall either within the duration of the lockdown period of the national state of disaster or within a period of 60 days from 27 March 2020 ("days" means calendar days, excluding Saturdays, Sundays and public holidays); and*

(iii) *Timeframes relating to appeals prescribed under Regulation 74 of the Regulations promulgated under the MPRDA as amended.*

- b) *An extension of a time period granted by a functionary referred to in paragraph 4.1(a), the period of which falls between 27 March 2020 and the termination of the lockdown period of the national state of disaster is hereby extended, or deemed to be extended, by the number of days of the duration of the lockdown period of the state of national disaster declared for the COVID-19 pandemic.*

5.2 Directions relating to directives, notices, orders and instructions

- a) *Timeframes stipulated in directives, notices, orders and instructions issued in terms of the MPRDA and which falls within the duration of the lockdown period of the national state of disaster, are hereby extended, or deemed to be extended, by the number of days of the duration of the lockdown period of the national state of disaster declared for the COVID-19 pandemic.*

Extension of period within which to submit the first Mining Charter 2018 annual reports and other extended MPRDA time-frames...continued

The date for submission of the first annual report on the Broad Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, is hereby extended from 31 March 2020 to 1 June 2020.

b) *Despite the provisions of sub-paragraph (a), directives, notices, orders and instructions issued as urgent measures to prevent imminent harm or damage to persons, animals, the environment or property, must be complied with within the timeframes stipulated therein.* (These would include stoppage instructions and notices under sections 54 and/or 55 of the Mine Health and Safety Act 29 of 1996, certain MPRDA section 93 directives, National Environmental Management Act 107 of 1998 notices and directives (directive in terms of section 28(4) to cease operations and commence taking certain measures within a specified period of time; directive in terms of section 30(6) in respect of the control of an incident; directive in terms of section 30A in respect of an emergency incident; compliance notice in terms of section 31L), directive in terms of section 16(3) of the National Environmental Management: Waste Act 59 of 2008 to address

the consequences for failure to observe the general duty of care, directive in terms of section 22A(4) of the National Environmental Management: Air Quality Act 39 of 2004 resulting from conducting an activity without a provisional atmospheric emission licence or an atmospheric emission licence, directives in terms of the National Water Act 36 of 1998 and issued under section 19 for the prevention and remedying effects of pollution; section 20 for the control of an emergency incident; or section 118 for control measures for a dam with a safety risk).

5.3 Directions relating to submission of reports

a) *The date for submission of the first annual report on the Broad Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, is hereby extended from 31 March 2020 to 1 June 2020.*

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Extension of period within which to submit the first Mining Charter 2018 annual reports and other extended MPRDA time-frames...continued

With a little over a month to go before the first annual report on compliance with the Mining Charter 2018 must be submitted, mining right holders should be cognizant of their obligations to progressively align their existing targets with those of the Mining Charter 2018.

- b) *Save for the report referred to in sub-paragraph (a), timeframes for submission of reports to be submitted in terms of the MPRDA and which falls within the duration of the lockdown period of the national state of disaster, are hereby extended, or deemed to be extended, by the number of days of the duration of the lockdown period of the national state of disaster.*

With a little over a month to go before the first annual report on compliance with the Mining Charter 2018 must be submitted, mining right holders should be cognizant of their obligations to progressively align their existing targets with those of the Mining Charter 2018.

The Ownership element provides for a five-year transition period, from date of grant, for applications that were pending on 27 September 2018, to comply with the new 30% Black Economic Empowerment (BEE) shareholding target. No specific annual targets have been set. New mining rights that were not pending on 27 September 2018 must comply fully with the 30% BEE shareholding requirements. Detailed provisions for reporting on the Ownership element have been set out in the Implementation Guidelines. Holders are referred to Tables A to G of these guidelines.

The Inclusive Procurement element provides a five-year transition period for Mining Goods (the first-year target is set at 10% of the procurement budget, second

year 20% of the procurement budget, 35% of the procurement budget by third year, 50% of the procurement budget by fourth year and 70% of the procurement budget by fifth year) and a two-year period for Mining Services (the first-year target is set at 70% of the procurement budget and second year 80% of the procurement budget). In terms of the Implementation Guidelines, if mining right holders utilise contractors to undertake extraction and/or processing (crushing and concentration) of minerals on their behalf, any goods and services used by the contractors will be deemed to have been used by the mining right holder. Consequently, mining right holders will need to obtain procurement spend data from their contractors for purposes of reporting on the procurement element. Mining right holders are required to report compliance annually in respect of inclusive procurement, supplier and enterprise development in accordance with Tables H, I, J, K, L and M contained in the Implementation Guidelines.

The Employment Equity element also provides a five-year period for progressive implementation of the targets, without stipulating annual targets to be achieved. However, holders were required to have submitted a five-year plan indicating progressive implementation of the provisions of Employment Equity element targets within a period of six months from the date of publication of the Mining Charter, 2018. In terms of the Implementation Guidelines, mining right holders must submit annual reports setting out the information specified in Table T of

Extension of period within which to submit the first Mining Charter 2018 annual reports and other extended MPRDA time-frames...continued

Given the scope and the complexity of the compliance reporting required under the Mining Charter 2018 and the phased return to economic activity that will follow the national lockdown, it is likely that the current extension of time may be insufficient for mining companies to fully meet their reporting obligations.

the Implementation Guidelines (pages 45 and 46) in numerical form. Furthermore, the categories/levels of employment must be broken down in detail (including salary bands and grading) in accordance with the income differential template provided in Table U of the Implementation Guidelines (pages 47 and 48).

No transition period is mentioned for Human Resource Development. The Implementation Guidelines set out reporting templates that mining right holders must complete and submit on an annual basis for purposes of proving compliance in respect of essential skills development activities, graduate training programmes, and research and development initiatives. Holders are referred to (i) Table Q on page 40 of the Implementation Guidelines for the template relating to reporting Human Resources Development in respect of employees and to (ii) Table R on page 41 of the Implementation Guidelines for the template relating to reporting human resources development in respect of non-employees. In addition to the information that is required to be reported in terms of Tables Q and R, mining right holders must also submit a table demonstrating how the leviable amount has been calculated.

In regard to Mine Community Development, mining right holders must submit annual reports to the DMR to account for the extent of their compliance with their SLP commitments. Such reports must take the form of the template in Table S of the Implementation Guidelines (refer to Table S on pages 43 and 44 of the Implementation Guidelines for an indication of the information that is required).

Reporting on Housing and Living Conditions is governed by Table W on page 51 of the Implementation Guidelines. Mining right holders must ensure maintenance of single units, family units and any other arrangements agreed upon with workers. Furthermore, mining rights holders must submit certified copies of any housing and living conditions agreements that do not form part of a collective agreement.

Given the scope and the complexity of the compliance reporting required under the Mining Charter 2018 and the phased return to economic activity that will follow the national lockdown, it is likely that the current extension of time may be insufficient for mining companies to fully meet their reporting obligations.

Allan Reid

Amendments to the MPRDA Regulations published for implementation

The Amended Regulations have retained certain features of and made necessary changes to the Draft Amendments to the Mineral and Petroleum Resources Development Regulations, 2019, which were published for public comment on 28 November 2019.

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.

The Amended Regulations have retained certain features of and made necessary changes to the Draft Amendments to the Mineral and Petroleum Resources Development Regulations, 2019 (Draft Amendments), which were published for public comment on 28 November 2019 and are discussed in a [previous article](#) written by Cliffe Dekker Hofmeyr. These retentions and noteworthy changes to the Draft Amendments as well as the key amendments to the former Mineral and Petroleum Resources Development Regulations (MPRDA Regulations) published in terms of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) are set out below.

Consultation obligations

The Amended Regulations have included a definition for "mine community" which refers to communities where mining takes place, major labour sending areas or adjacent communities within a local municipality, metropolitan municipality or district municipality. This definition is used in the substituted definition for "interested and affected persons" in the Amended Regulations. However, we note that the definition is not aligned with the definition of "community" in the MPRDA, nor with the definition of "host community" in the Mining Charter, which may cause confusion.

The original MPRDA Regulations' definition of "interested and affected persons" referred to natural or juristic persons or an association of persons with a direct interest in the proposed or existing operation or who may be affected by the proposed or existing operation. As previously mentioned, the Draft Amendments expanded upon this definition of "interested and affected persons" to refer specifically to host communities, landowners (both traditional and title deed owners), traditional authorities, land claimants, lawful land occupiers, holders of informal rights, the Department of Agriculture, Land Reform and Rural Development, any person (including on adjacent and non-adjacent properties) whose socio-economic conditions may be directly affected by the proposed prospecting or mining operation, the Local Municipality and the relevant Government Departments, agencies and institutions responsible for the various aspects of the environment and for infrastructure which may be affected by the proposed project. This expanded definition has been substituted in the Amended Regulations for an even wider definition with whom applicants for prospecting rights, mining rights and mining permits must consult. The revised definition now includes the newly defined term of "mine communities" and further includes the Department of Co-operative Governance and Traditional Affairs, the Department of Human Settlements, Water and Sanitation as well as "civil society" which has not been defined and is therefore extremely broad.

Amendments to the MPRDA Regulations published for implementation...*continued*

The Amended Regulations have retained the definition of “*meaningful consultation*” that was included in the Draft Amendments with a minor amendment.

The Amended Regulations have retained the definition of “*meaningful consultation*” that was included in the Draft Amendments with a minor amendment. This definition envisages an applicant in good faith facilitating participation in such a manner that reasonable opportunity is given to landowners, lawful occupiers or interested and affected parties in respect of the land subject to the application to provide comments about the impact the prospecting and mining activities would have to his or her right of use of the land and that this should be done by availing all relevant information pertaining to the proposed activities, enabling these parties to make an informed decision regarding the impact of the proposed activities. Unlike in the Draft Amendments, the definition of “*meaningful consultation*” is now used throughout the Amended Regulations.

The new regulations proposed under the Draft Amendments regarding the obligation of applicants to consult and of holders to give notice of the intention to commence operations have been amended under the Amended Regulations and now contemplate the following:

- applicants for a prospecting right, mining right or mining permit are required to engage in meaningful consultation with landowners, lawful occupiers and interested and affected persons and such meaningful consultation shall be conducted in terms of the public participation process prescribed in the Environmental Impact Assessment Regulations (EIA Regulations)

promulgated in terms of section 24(5) of the National Environmental Management Act 107 of 1998 (NEMA). The office of the Regional Manager is also authorised to participate in the meaningful consultation process, as an observer, to ensure that the consultation by the applicant is meaningful and in accordance with the Amended Regulations; and

- in addition to holders of prospecting rights, mining rights and mining permits having to give landowners and lawful occupiers of the relevant land at least 21 days’ written notice of the commencement of operations in terms of section 5A(c) of the MPRDA, they are also required to submit such notice to the relevant Regional Manager within the 21-day period and must include proof of service to the landowner and lawful occupier.

Social and Labour Plans

The Draft Amendments envisaged an expansion to the objectives of social and labour plans (SLP/s) to include mining right holders contributing towards the socio-economic development of labour sending areas as well as areas in which they operate. Under the Draft Amendments, “*labour sending areas*” were defined as areas from which a majority of mineworkers, both historical and current, are or have been sourced, which was problematic. The definition of labour sending areas has been revised in the Amended Regulations to mean a local municipality in the Republic of South Africa from which a majority of mineworkers are from time to time permanently resident.

Amendments to the MPRDA Regulations published for implementation...*continued*

The Amended Regulations have placed further obligations on the holders of mining rights to convene a minimum of three meetings per annum with mine communities and interested and affected persons to update these stakeholders about the progress made in implementing the approved SLP.

In terms of the Amended Regulations, if a Regional Manager wishes to refer a SLP back to an applicant with proposals for amendments, this must be done within 60 days of receipt. The applicant will then need to re-lodge a revised SLP within a period specified by the Regional Manager, which may not exceed 60 days.

Similarly to the Draft Amendments, an applicant for a mining right must, within 180 days of receiving notification of the acceptance of the application from the Regional Manager, consult with various parties on the contents of the SLP to ensure that it addresses the relevant needs and is aligned with updated Integrated Development Plans. In terms of the Draft Amendments, an applicant was required to consult with communities and the relevant structures of the local, district and metropolitan municipalities as defined by the Local Government: Municipal Structure Act 117 of 1998. In terms of the Amended Regulations, an applicant is required to consult meaningfully with mine communities and interested and affected persons, as defined, and the meaningful consultation process prescribed in the Amended Regulations must take place in terms of the public participation process prescribed in the EIA Regulations. The use of the term interested and affected persons here results in an obligation to consult with a much broader audience than previously contemplated which could result in an even lengthier process than what is currently undertaken.

The Amended Regulations have confirmed the need for SLPs to be approved and have expanded on what was stated under the Draft Amendments by providing that approved SLPs are subject to periodic 5-year reviews. As such, subject to the periodic 5-year reviews, an approved SLP will remain valid until a closure certificate has been issued. It was envisaged under the Draft Amendments that any amendments or variations to an approved SLP would require the consent of the Minister in terms of section 102 of the MPRDA. The Amended Regulations have removed this reference to section 102 and therefore, any amendments to approved SLPs will only require the consent of the Minister, without reference to any enabling provision.

In addition to the annual report on compliance with the approved SLP which must be submitted to the relevant Regional Manager, the Amended Regulations have placed further obligations on the holders of mining rights to convene a minimum of three meetings per annum with mine communities and interested and affected persons to update these stakeholders about the progress made in implementing the approved SLP. The outcomes of these meetings are required to form part of the annual report. Given the broader definition of interested and affected persons, this requirement is likely to be onerous to implement.

Amendments to the MPRDA Regulations published for implementation...*continued*

The repeal of all regulations in the former MPRDA Regulations relating to environmental matters has been retained in the Amended Regulations, save for regulations 56, 57, 58, 59, 61 and 62, which have been amended.

The Amended Regulations have also introduced the following new regulations, the majority of which were proposed under the Draft Amendments:

- the proposed new regulation under the Draft Amendments regarding the obligation of mining right holders to publish approved and consulted SLPs within 30 days of receiving approval has been retained. This publication must be in English and one other dominant official language commonly used within the mine community. The requirement for the approved SLP to be published in "local newspapers" has been removed in the Amended Regulations and the amended avenues for publication are set out in the amended regulation 46A(b);
- the proposed new regulations regarding the review of a SLP every five years have been retained in the Amended Regulations, albeit with a few minor changes. In terms of these new regulations, a SLP must be reviewed every five years, the first review being five years after the date upon which the SLP was approved. The review process may be initiated from the fourth year of the SLP and shall be done in meaningful consultation with mine communities and interested and affected persons. When reviewing a revised SLP, the Minister must

consider past compliance with the approved SLP, an assessment of annual compliance reports, input, comment and reports from the mining right holder, mine community and interested and affected persons and the changing nature of the relevant needs of the mine community as per Integrated Development Plans;

- the Amended Regulations require that collaboration on approved SLP projects must be transparent, inclusive and based on meaningful consultation with mine communities and interested and affected persons; and
- any amendment or variation to an approved SLP pursuant to collaboration requires the consent of the Minister.

Repeal of Environmental Regulations

The repeal of all regulations in the former MPRDA Regulations relating to environmental matters has been retained in the Amended Regulations, save for regulations 56 (Principles of mine closure), 57 (Application for closure certificate), 58 (Application to transfer environmental liabilities to competent person), 59 (Qualifications of person regarding transfer of environmental liabilities and responsibilities), 61 (Closure objectives) and 62 (Contents of closure plan), which have been amended.

Amendments to the MPRDA Regulations published for implementation...*continued*

The Amended Regulations no longer refer to the records of consultations in terms of section 189 of the Labour Relations Act 66 of 1995 having to be submitted, nor is there a need for a competent-persons report or a due-diligence report as envisaged under the Draft Amendments.

New regulations relating to section 52 of the MPRDA

The proposed new regulations under the Draft Amendments in relation to the notices to be sent to the Minister in terms of section 52(1) of the MPRDA have been amended under the Amended Regulations. In terms of section 52(1) of the MPRDA, such notices must be sent by mining right holders where (a) prevailing economic conditions cause the profit-to-revenue ratio of a mine to be less than 6% on average for a continuous period of 12 months, or (b) if any mining operation is to be scaled down or to cease with the possible effect that 10% or more of the workforce or more than 500 employees, whichever is the lesser, are likely to be retrenched in any 12-month period.

In terms of the Amended Regulations, a mining right holder must submit a notice contemplated in section 52(1) of the MPRDA to the Minister after the consultation envisaged in section 52(1) has taken place and such notice is required to "contain details of the prior consultation" and include "dates, times, attendance registers, minutes, considerations, proposals, resolutions, agreements, recommendations, reports and records relating to such consultation". The notice is also required to be accompanied by an affidavit by the holder of a mining right which confirms that "the factors contemplated in section 51(1) or (2) exist". We note that this should presumably be a reference to the factors contemplated in section 52(1)(a) or (b).

The Amended Regulations no longer refer to the records of consultations in terms of section 189 of the Labour Relations Act 66 of 1995 having to be submitted, nor is there a need for a competent-persons report or a due-diligence report as supporting documents as envisaged under the Draft Amendments. The removal of these requirements is welcomed and will assist in the process not being overburdensome from a timing and cost perspective.

The Draft Amendments contemplated that the Mining and Minerals Development Board (Board) must consult with the holder of the mining right before making recommendations to the Minister. This has been expanded in the Amended Regulations which require the Board to consult meaningfully with the holder of the mining right as well as organised labour, to conduct investigations and to make recommendations to the Minister within 60 days of the referral by the Minister.

The template form provided for section 52(1) notices still contains a provision stating that "the company acknowledges that the Minister may invoke the provisions of sections 52(3)(c), 93, 47, 99 and related provisions to ensure compliance with requirements of section 52", which is irregular as the applicability of particular sections is a question of law and not something which mining right holders should have to agree to or acknowledge.

Amendments to the MPRDA Regulations published for implementation...*continued*

The Draft Amendments proposed extensive changes to the former MPRDA Regulations relating to appeals against administrative decisions, many of which were problematic and created uncertainty.

New regulations relating to applications for the use of the surface of land contrary to the objects of the MPRDA

The Amended Regulations have retained the proposed new regulations under the Draft Amendments pertaining to applications for Ministerial approval in terms of section 53 of the MPRDA for persons who intend to use the surface of any land in a manner which may be contrary to the objects of the MPRDA or is likely to impede such objects.

Applicants will therefore be required to provide specific information to the relevant Regional Manager as per the form attached to the Amended Regulations which is substantially consistent with the template application form previously published by the Department of Mineral Resources and Energy.

Removal of new regulations relating to section 54 of the MPRDA

The Draft Amendments proposed new regulations regarding the manner in which disputes envisaged in section 54 of the MPRDA should be dealt with, however, these new regulations have not been retained in the Amended Regulations. This is likely due to the fact that the draft regulations envisaged a process which was inconsistent with what is set out in section 54 of the MPRDA and this is therefore positive.

Appeals

As previously stated, the Draft Amendments proposed extensive changes to the former MPRDA Regulations relating to appeals against administrative decisions, many of which were problematic and created uncertainty.

The Draft Amendments failed to make a distinction between appeals against administrative decisions submitted in terms of section 96(1)(a) and 96(1)(b) of the MPRDA and the proposed regulations seemed to only apply to appeals submitted in terms of section 96(1)(a) of the MPRDA. In terms of the Amended Regulations, the specific reference to section 96(1)(a) of the MPRDA has been removed and instead, reference is made to section 96 in general, which ultimately includes appeals in terms of both section 96(1)(a) and 96(1)(b).

The Draft Amendments also failed to provide for the responsibility of the Director-General to adjudicate appeals submitted in terms of section 96(1)(a) of the MPRDA and seemed to rather place this obligation on the Minister. The Amended Regulations have provided clarity in this respect and have accounted for the Director-General where applicable.

In terms of the Draft Amendments, a notice of intention to appeal a decision in terms of section 96(1)(a) of the MPRDA had to be submitted in writing within 30 days of the date of the administrative decision. This

Amendments to the MPRDA Regulations published for implementation...*continued*

The Amended Regulations have therefore provided certainty in relation to the instances when the Minister of Environmental Affairs is to be involved in the adjudication of appeals.

had the potential to create problems given that it is common for parties to become aware of an administrative decision to which these provisions apply after a period of 30 days has passed, thereby preventing such parties from appealing against an administrative decision due to no fault of their own. The Amended Regulations have done away with this proposed amendment and require that a notice of appeal be submitted within 30 days of the date of the appellant becoming aware of the decision in respect of which the appeal is lodged.

The proposed new regulations under the Draft Amendments required that a copy of the appeal be submitted to the Minister of Environmental Affairs *"for processing in relation to environmental matters in accordance with the procedure set out in section 96(1)(b)"*, and that the Minister and the Minister of Environmental Affairs *"shall co-ordinate the finalisation of simultaneous appeals in terms of section 96(1)(a) and (b) of the MPRDA respectively affecting the same administrative decision"*.

This proposed regulation failed to properly distinguish between the types of appeals submitted under section 96(1) and also meant that the Minister of Environmental Affairs would receive a copy of all appeals submitted, regardless of whether the appeal related to an environmental matter or not. The Amended Regulations have provided certainty in this regard through the inclusion of a new regulation 15, which provides that if appeals are received in terms of section 96(1) of the MPRDA and in terms of section 43(1A) of NEMA, that relate to decisions taken in respect of the same proposed prospecting or mining operation, that a copy of the appeal will be sent to the Minister of Environmental Affairs. The Amended Regulations have therefore provided certainty in relation to the instances when the Minister of Environmental Affairs is to be involved in the adjudication of appeals.

Giada Masina and Rowan Bromham

OUR TEAM

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



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



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



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



Giada Masina
Director
Corporate & Commercial
T +27 (0)11 562 1221
E giada.masina@cdhlegal.com



Fiona Leppan
Director
Employment
T +27 (0)11 562 1153
E fiona.leppan@cdhlegal.com



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



Lilia Franca
Director
Corporate & Commercial
T +27 (0)11 562 1148
E lilia.franca@cdhlegal.com



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



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



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



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



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



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



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



Verushca Pillay
Director
Corporate & Commercial
T +27 (0)11 562 1800
E verushca.pillay@cdhlegal.com



Mark Linington
Sector Head
Private Equity
Director: Tax & Exchange Control
T +27 (0)11 562 1667
E mark.linington@cdhlegal.com

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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

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

STELLENBOSCH

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

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