

ENVIRONMENTAL LAW AND MINING & MINERALS ALERT

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INCORPORATING
KIETI LAW LLP, KENYA

IN THIS ISSUE

Landowner consent for an environmental authorisation for mining activities

The National Environmental Management Act 107 of 1998 (NEMA), 2014 Environmental Impact Assessment Regulations (EIA Regulations) were subject to a number of amendments which came into effect on 11 June 2021. One significant amendment to the EIA Regulations was the deletion of Regulation 39(2)(b) which exempted an applicant for an Environmental Authorisation for mining activities from having to obtain landowner consent. The CDH alert from [12 August 2021](#), unpacked the implications associated with this amendment in more detail.



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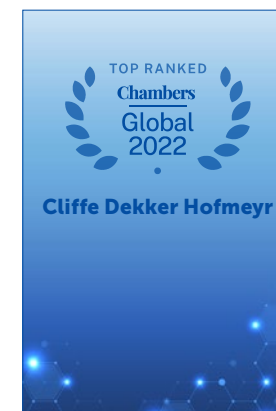
The Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) brought about significant changes in the mining sector, especially in relation to rights of landowners. Before the MPRDA came into effect, the owner of land was also the owner of the resources beneath the land and had the freedom to sell the rights to the resources to a third party, who in turn acquired a limited, yet real right to explore and extract resources on another person's land. The MPRDA moved away from this approach as the state now has custodianship of the nation's mineral and petroleum resources to address the inequalities of the past. The promotion of exploration and mining is critical to South Africa's dire need to generate employment and investment, particularly foreign direct investment. The MPRDA has the framework to facilitate the acceleration of mining projects.

The June 2021 amendment of the EIA Regulations was in direct conflict with the need to promote mining investment. In reconsideration, the Minister of Forestry, Fisheries and Environment published a notice on 3 March 2022, whereby the amendment resulting in the deletion of Regulation 39(2)(b) was withdrawn. The rationale for the withdrawal is stated to be premised on the lack of public consultation prior to the June 2021 amendment. Although Regulation 39(2)(b) has been reinstated with retrospective effect from 11 June 2021, as if the amendment had never occurred, it is noteworthy that landowner consent is still required for a water use licence (WUL). A landowner accordingly still has the ability to block mine development on his land as no mine can operate without such a WUL. The rationale for the withdrawal of the June 2021 amendment appears

debatable, and one can only hope that the deletion of Regulation 39(2)(b) will be placed on the back-burner and eventually forgotten.

CDH previously postulated that the deletion of Regulation 39(2)(b) may have been the death knell to the mining industry in South Africa, as such this withdrawal will be welcomed with open arms.

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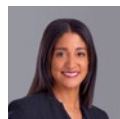
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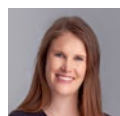
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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.

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