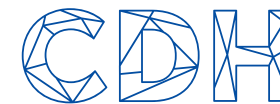


Mining & Minerals

ALERT | 28 May 2025



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Draft Mineral Resources Development Bill indicates clear policy direction on interpretation of “*controlling interest*”

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MINING & MINERALS ALERT

Draft Mineral Resources Development Bill indicates clear policy direction on interpretation of "controlling interest"

One of the major issues of contention for mineral right holders when transacting in the mining sector by way of a share purchase agreement, joint venture or co-development arrangement amongst others, is whether ministerial consent is required in terms of section 11 of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) to transfer the mineral rights in the event of an direct or indirect change of control.

Section 11(1) of the MPRDA provides that:

"A prospecting right or mining right or an interest in any such right, or a controlling interest in a company or close corporation, may not be ceded, transferred, let, sublet, assigned, alienated or otherwise disposed of without the written consent of the Minister [of Mineral and Petroleum Resources], except in the case of change of controlling interest in listed companies."

The MPRDA in its current form is silent on the definition of a "controlling interest" and this determination is left to the discretion of the Minister of Mineral and Petroleum Resources (Minister). This uncertainty has led to considerable debate in the market, prompting transactors to seek guidance from the courts to determine what constitutes a "controlling interest".

This issue was most recently considered in the case of *Vantage Goldfields (Pty) Ltd v Arqomanzi (Pty) Ltd* (733/2022) [2023] ZASCA 106 (27 June 2023), where the Supreme Court of Appeal (SCA) established that section 11 of the MPRDA must be interpreted as including both direct and indirect cessions, transfers or leases as well as other forms of changing control including by means of the issue of new shares/dilution of interests in a company which directly or indirectly holds the mining right. The SCA adopted a purposive approach, looking beyond the formal shareholding structure to the substance of the arrangements between the parties. It held that "controlling interest" should be interpreted to include situations where a party, through contractual arrangements or other means, is able to direct the affairs of the company, even in the absence of majority shareholding.



Chambers Global 2025 Results

Mining & Minerals

Chambers Global 2017–2025 ranked our Mining & Minerals sector in:
Band 2: Energy & Natural Resources: Mining.

Allan Reid ranked by
Chambers Global 2017–2025 in
Band 2: Energy & Natural Resources: Mining.

Vivien Chaplin ranked by
Chambers Global 2025 in
Band 2: Energy & Natural Resources: Mining.



MINING & MINERALS ALERT

On 20 May 2025, the Minister published the draft Mineral Resources Development Bill (Draft Bill), which, amongst other significant amendments to the MPRDA, introduces a definition of "controlling interest".

The Draft Bill has inserted the definition of "controlling interest" as follows:

"**Controlling interest**", in relation to:

- (a) a company, means the majority of the voting rights attaching to all classes of shares in the company;
- (b) any other business other than a company referred to in paragraph (a), means any interest which enables the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the business."

This definition evidently broadens the concept of controlling interest beyond the traditional majority shareholding or voting rights. In terms of the Draft Bill, a controlling interest is defined to include not only direct or indirect ownership of more than 50% of the issued share capital or voting rights in a company, but also the ability to materially influence the policy or management of a company, whether through agreements, arrangements, or otherwise.

This expanded definition will capture a wider range of control scenarios, including those where a party may not hold a majority of shares but is nonetheless able to exercise decisive influence over the company's affairs. The proposed amendment potentially has far-reaching consequences for stakeholders in the mining sector, as the practical effect is that many transactions or arrangements previously considered outside the scope of section 11 now fall within its ambit.

The amendment signals a clear policy direction towards greater scrutiny of transactions that may affect control over mineral rights in terms of the MPRDA and we predict that it is likely to elicit extensive comments from the mining industry. In this regard it is important to note that all interested and affected parties should provide comments to the amendments in the Draft Bill by 13 August 2025.

Vivien Chaplin and Sandile Shongwe



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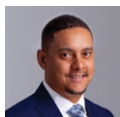
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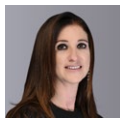
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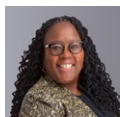
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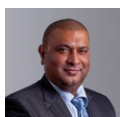
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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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