DOING BUSINESS IN SOUTH AFRICA

MINING AND MINERALS LAW

The branch of law relating to the legal requirements affecting minerals and mining.

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INDEX

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The publication is updated once a year (and not as and when legal developments occur). This edition reflects the legal position as at 2023.

This guide is published for general information purposes and is not intended to constitute legal advice. Our specialist legal advice should always be sought in relation to any particular situation.

This chapter is intended as a high-level legal overview of mining and minerals in South Africa.

Please feel free to contact us if you require more recent or detailed information regarding this particular area of law. ©

MINING AND MINERALS

Mining is a global business and mining and minerals industry transactions and disputes have an increasingly international dimension.

The Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) was enacted to repeal the Minerals Act 50 of 1991 (Minerals Act) and regulate state control of the granting, exercising and retention of all rights to mineral and petroleum resources with effect from 1 May 2004.

MINING PRIOR TO IMPLEMENTATION OF THE MPRDA

Under the Minerals Act the mining industry operated as follows:

- the right to apply for a mining licence for a mineral vested in the holder of the mineral right in that particular mineral and particular land; and
- the state, acting through the Department of Minerals and Energy, exercised some regulation over prospecting and mining.

CUSTODIANSHIP OF MINERAL AND PETROLEUM RESOURCES

The preamble to the MPRDA has as one of its objectives: "Acknowledging that South Africa's mineral and petroleum resources belong to the nation and that the state is the custodian thereof."

The state may grant, issue, refuse, control, administer and manage any reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit and exploration and production rights.

TRANSITION FROM THE OLD REGIME TO THE NEW REGIME

Once the policy had shifted from privatisation of mining rights to state control, the MPRDA had to make provision for the "new order" together with measures to regulate the transition from the "old order".

In terms of Schedule II of the MPRDA:

- Old order mining rights were rights in force immediately before the commencement of the MPRDA and remained valid for five years, subject to their terms. However, an unused old order right remained valid for a period not exceeding one year (the expiry date was 30 April 2005) and an old order prospecting right only remained valid for a period not exceeding two years (the expiry date was 30 April 2006). A holder of the old order mining right had to lodge the mining right for conversion within the five-year period at the office of the regional manager in whose region the land in question was situated.
- The holder of an unused old order right was provided with a preferential right during the period of validity to apply for a mining or prospecting right in respect of the unused old order right (the expiry date was 30 April 2005). The state, acting through the Department of Minerals and Energy (now the Department of Mineral Resources and Energy (DMRE)) exercised some regulation over prospecting and mining.

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- A holder of an old order prospecting right would have had to convert the right to a new order prospecting right within two years from the date of commencement (the expiry date was 30 April 2006). On conversion to new order rights, or failure to convert within the specific time periods, the old order rights ceased to exist. The specific time periods allowed for conversion of what would have been the shorter of the period of the old order right and the relevant period specified in the transitional provisions of the MPRDA.

AMENDMENT ACT

The Mineral and Petroleum Resources Development Amendment Act 49 of 2008 (Amendment Act) was assented to by the President on 19 April 2009 but its implementation was delayed.

The Amendment Act was drafted to:

- make the Minister of the DMRE (Minister) the responsible authority for implementing environmental matters in terms of the National Environmental Management Act 107 of 1998 (NEMA) and specific environmental legislation as it relates to prospecting, mining, exploration, production and related activities;
- align the MPRDA with NEMA to provide for one environmental management system;
- remove ambiguities;
- add functions to the Regional Mining Development and Environmental Committee;
- amend the transitional arrangements so as to further afford statutory protection to certain existing old order rights; and
- provide for matters connected therewith.

The President proclaimed, under Mineral and Petroleum Resources Development Amendment Act, 2008, Proclamation 14 of 2013, dated 23 May 2013, that the Amendment Act would come into operation on 7 June 2013. In terms of Proclamation 17 of 2013, dated 6 June 2013, the President amended Proclamation 14 of 2013, suspending the coming into operation of, among other things, section 11(1), sections 11(5), 38B, 47(1)(e) and 102(2) with the Amendment Act on 7 June 2013. Certain provisions of the Amendment Act relating to environmental matters came into operation on 7 December 2014.

SECTIONS 16 AND 22: APPLICATION FOR PROSPECTING OR MINING RIGHT

Any person wishing to apply to the Minister for a prospecting or mining right must simultaneously apply for an environmental authorisation and must lodge the applications:

- at the office of the regional manager in whose region the land is situated;
- in the prescribed manner; and

together with the prescribed, non-refundable application fee.

MINING AND MINERALS/ *continued*

The regional manager must accept the application if:

- the requirements are complied with;
- no other person holds a prospecting right, mining right, mining permit or retention permit in respect of the same mineral on the same land; and
- no prior application for a prospecting right, mining right, mining permit or retention permit has been accepted for the same mineral on the same land, and which application has neither been granted nor refused.

If the application fails to comply with these requirements, the regional manager must notify the applicant of such non-compliance within 14 days from the date of receipt of the application.

If the regional manager accepts the application they must, within 14 days from date of acceptance, notify the applicant in writing:

- to submit the relevant environmental reports required in terms of NEMA within 60 days from the date of notice; and
- to consult in the prescribed manner with the landowner, lawful occupier and any other interested and affected party and include the results thereof in the environmental reports.

SECTIONS 17 AND 18(5): GRANTING AND DURATION OF A PROSPECTING RIGHT

The Minister must grant a prospecting right within 30 days of receiving the application from the regional manager if:

- the applicant has access to financial resources and has the technical ability to conduct the proposed prospecting operation optimally in accordance with the prospecting work programme;
- the estimated expenditure is compatible with the proposed prospecting operation and duration of the prospecting work programme;
- the prospecting will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation has been issued;
- the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act 29 of 1996 (MHSA);
- the application is not in contravention of any relevant provision of the MPRDA; and
- the objects referred to in section 2(d) of the MPRDA have been given effect in respect of certain prescribed materials.

The Minister has an obligation to refuse the granting of a prospecting right within 30 days of receipt of the application from the regional manager if:

- the applicant has failed to meet the requirements stated above; and/or
- the granting of such right will result in the applicant and its associated companies obtaining control over a concentration of the mineral resources in question, thus possibly limiting equitable access to mineral resources.

If the application for a prospecting right relates to land occupied by a community, the Minister may impose such conditions as are necessary in order to promote the rights and interests of the community, including, but not limited to, conditions requiring the participation of the community.

MINING AND MINERALS/ *continued*

A prospecting right is subject to the MPRDA, any other relevant law and the terms and conditions stipulated in the right, and is valid for the period specified in the right, which may not exceed five years.

A prospecting right may be renewed only once, for a period not exceeding three years.

SECTIONS 23 AND 24(4): GRANTING AND DURATION OF A MINING RIGHT

The Minister must grant a mining right if:

- the mineral can be mined optimally in accordance with a mining work programme;
- the applicant has the financial resources and technical know-how to conduct the mining operation;
- the financing plan is adequate for the intended operation and duration thereof and such financing provides for the prescribed social and labour plan;
- the mining will not result in unacceptable pollution, ecological degradation, or damage to the environment and an environmental authorisation is issued;
- the applicant has provided for the prescribed social and labour plan; and
- the applicant has the ability to comply with the MHSA and will also not contravene any provisions of the MPRDA.

The applicant must also ensure that it has complied with the broad-based socio-economic empowerment objectives of the minerals and petroleum industry.

If the application for a mining right relates to land occupied by a community, the Minister may impose such conditions as are necessary in order to promote the rights and interests of the community, including, but not limited to, conditions requiring the participation of the community.

A mining right is subject to the MPRDA, any relevant law, the terms and conditions stated in the right, and the prescribed terms and conditions. It is valid for the period specified in the right, which may not exceed 30 years. A mining right may be renewed for further periods, each of which may not exceed 30 years at a time.

Implicit in the objectives of the MPRDA is the development of a broad-based socio-economic transformation strategy. The MPRDA makes provisions for charters to be developed and adopted by the mineral and petroleum industry. In addition, the Broad-Based Economic Empowerment Act 53 of 2003 (BEE Act), which commenced on 21 April 2004, established a broader legislative framework for the promotion of black economic empowerment (BEE).

SECTION 5: LEGAL NATURE OF PROSPECTING RIGHT, MINING RIGHT, EXPLORATION OR PRODUCTION RIGHT AND RIGHTS OF HOLDERS

The holders of the above rights may, together with their employees:

- enter the land;
- bring plant, machinery and equipment onto the land;
- build, construct or lay down infrastructure required

MINING AND MINERALS/*continued*

for the purposes of prospecting and mining;

- prospect and mine;
- use water and develop boreholes; and
- carry out activities incidental to prospecting, mining, exploration and production operations.

However, the above rights are subject to the holder:

- having an approved environmental management programme or plan or environmental authorisation;
- having in their possession the necessary right and permits or permission; and
- providing the landowner or lawful occupier of the land in question with at least 21 days' written notice.

Mining rights registered in the Mineral and Petroleum Titles Registration Office constitute limited real rights in the land covered by the mining right.

SECTION 11: TRANSFERABILITY AND ENCUMBRANCE OF RIGHTS UNDER THE MPRDA

A prospecting right, 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 (except in the case of a change of controlling interest in listed companies).

The Minister's consent must be granted if the person who is receiving the right is capable of carrying out and complying with the obligations and the terms and conditions of the right in question, and certain provisions of the MPRDA.

Any cession, transfer, letting, subletting, alienation, encumbrance by mortgage or variation of a right must be lodged for registration at the Mineral and Petroleum Titles Registration Office within 60 days of the relevant action.

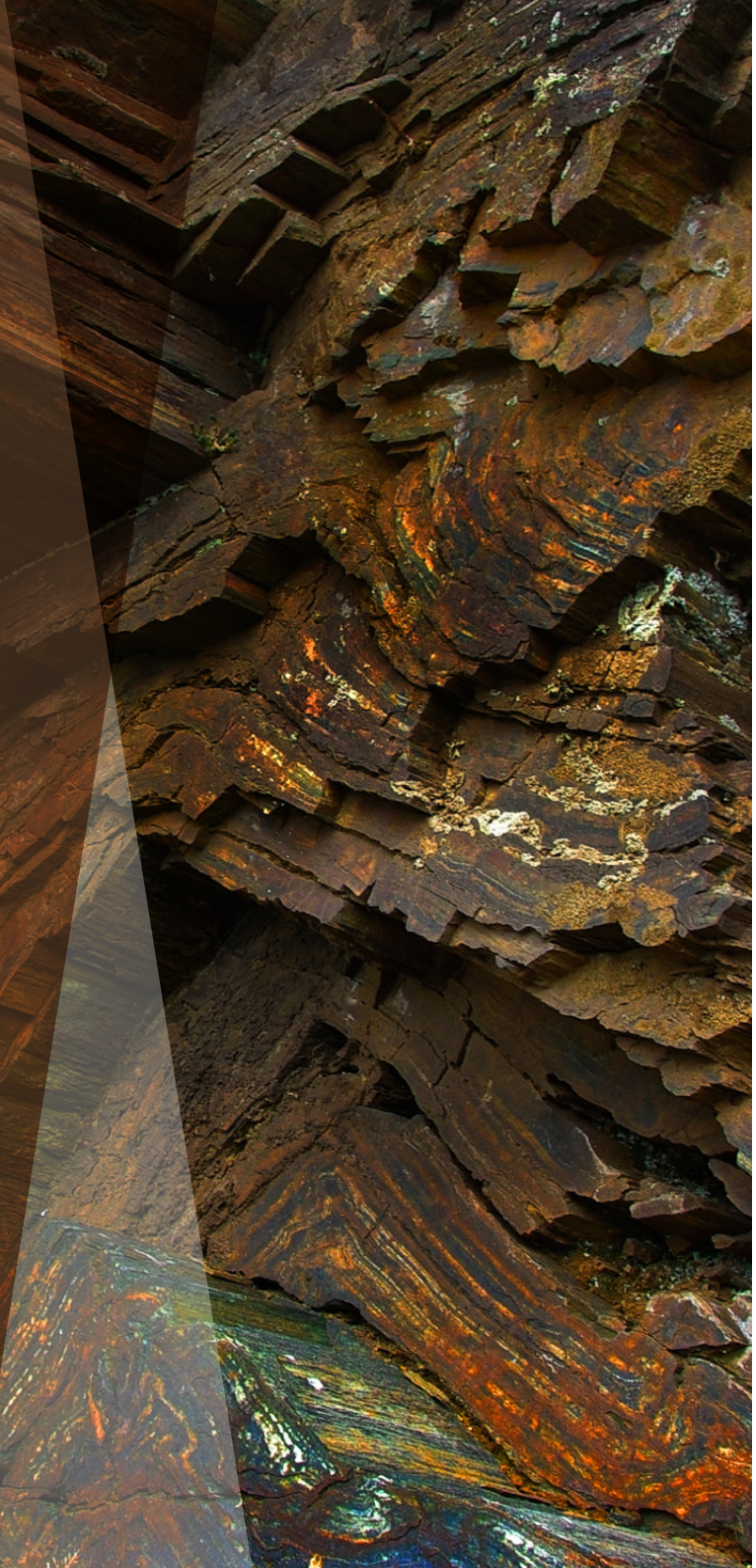
The provisions of section 11 of the MPRDA are not consistently applied and it is therefore recommended that advice be sought in each particular transaction.

SECTION 53: USE OF LAND SURFACE RIGHTS CONTRARY TO THE OBJECTS OF THE MPRDA

The importance of the mining industry in South Africa is emphasised by section 53 of the MPRDA. This section provides, subject to certain limited exceptions, that any person who intends to use the surface of any land in any way which may be contrary to the objects of the MPRDA, or which is likely to impede any such object, must apply to the Minister for approval in the prescribed manner.

The scope of section 53 is broad, with most potential land uses *prima facie* falling within the ambit of the section as they may notionally sterilise minerals or impede the exploitation thereof.

Although the section is somewhat ambiguous and unclear, the Minister's approval is required for the use of the surface of land throughout South Africa for any developments or projects, including projects within the renewable energy industry.



MINING AND MINERALS/ *continued*

APPEAL OF ADMINISTRATIVE DECISIONS: CHANGES BROUGHT ABOUT BY THE AMENDMENTS TO THE MPRDA REGULATIONS

On 27 March 2020, the 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 became effective on the date of publication (27 March 2020). The Amended Regulations provided for a number of amendments to the Mineral and Petroleum Resources Development Regulations (published under GN R527 in GG 26275 of 23 April 2004) (MPRDA Regulations), including the amendment of Part II of the MPRDA Regulations that relate to social and labour plans, new consultative requirements in relation to the MPRDA (discussed in greater detail in the section titled RIGHTS OF COMMUNITIES below), as well as amendments to the internal appeal process.

We believe it is necessary to highlight certain aspects of the amended procedure to be followed in submitting an appeal against an administrative decision made in terms of the MPRDA, brought about by the Amended Regulations.

Pursuant to Regulation 74(2) of the Amended Regulations, an appeal must now be submitted within 30 days of the date on which the appellant became aware of the administrative decision (not 30 days from the date on which any such decision was made, as was the position prior to the Amended Regulations).

If an administrative decision was made by a regional manager of the DMRE, the appeal must be submitted to the relevant regional office of the DMRE and be addressed to the relevant Director-General of the DMRE (DG). If an administrative decision was made by a DG (or any other officer to whom the particular power in question has been delegated), the appeal must be submitted to the relevant regional office and be addressed to the Minister. Furthermore, pursuant to Regulations 74(1)(b) and 74(1)(c) of the Amended Regulations, an appeal must also be served in writing on any other persons who, in the opinion of the appellant, may have their rights affected by the outcome of the appeal, and these persons must also be made aware of their rights in terms of the Amended Regulations and the relevant DG or the Minister (as the case may be) must be sent written notification that an appeal has been lodged at the relevant regional office, together with a copy of such appeal.

The Amended Regulations require that a notice of appeal be submitted, which must be accompanied by an affidavit (the affidavit must contain the information specified in Regulation 74(5) of the Amended Regulations. The requirement to set out such information in the form of an affidavit is a substantial change brought about in the Amended Regulations. It is essential that any individual who deposes to an affidavit in this regard has intimate knowledge of the history of the matter and all relevant facts relating thereto. We note that in circumstances where an appellant is a corporate entity (particularly larger organisations), we have found that it is difficult to single out one representative who is comfortable making such a declaration and taking on this responsibility. In such circumstances, confirmatory affidavits should be filed in support of the main affidavit.

BLACK ECONOMIC EMPOWERMENT UNDER THE MINING CHARTER

In this section we deal with both the previous Mining Charter (the 2010 Mining Charter) as well as the latest Mining Charter (the 2018 Mining Charter) due to the fact that one or the other, or both, may be applicable to certain mining companies. Applications for new mining rights are governed only by the 2018 Mining Charter.

On 13 September 2010, the Amendment of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry was released (2010 Charter) in terms of section 100(2) of the MPRDA.

The intention behind the 2010 Charter was to clarify certain ambiguities that existed under the original 2002 Broad Based Socio-Economic Empowerment Charter for the South African Mining Industry (2002 Charter) and to provide more specific targets than the 2002 Charter had done.

There is uncertainty as to whether the 2010 Charter replaced the 2002 Charter or if the charters were intended to be read in conjunction. We believe that the 2010 Charter was intended to replace the 2002 Charter.

Mining operations are capital intensive, at the mercy of foreign exchange rates and international resources prices, and are not for the faint-hearted or those with limited means. Investing in a mining company can involve significant funding requirements. Mining companies with interests in South Africa have the additional necessity to comply with local (BEE) requirements and the new mineral rights regime.

There are many different ways to structure a transaction to allow the most financially beneficial option for the transacting parties. Whichever structure is implemented, it is important to bear in mind the potential risks involved and the ways to mitigate or obviate such risks to ensure that all parties are adequately protected. In most empowerment transactions to date, historically disadvantaged South African shareholders have acquired their equity at significant discounts to the prevailing market value. The securities required for funding such a transaction need to be structured in such a way as to avoid the BEE benefits of the deal being obviated in the event that the security is ever called on by a funder.

Accordingly, companies need to consider their options and strategies carefully when contemplating a merger or acquisition transaction in the mining sector.

Black economic empowerment was launched by the South African Government to redress the inequalities of apartheid by giving previously disadvantaged groups of South African citizens economic privileges previously not available to them.

The MPRDA defines a historically disadvantaged person to mean:

- any person, category of persons or community, disadvantaged by unfair discrimination before the Constitution took effect;

BLACK ECONOMIC EMPOWERMENT UNDER THE MINING CHARTER/ *continued*

- any association, a majority of whose members are persons contemplated in the paragraph above; and
- any juristic person other than an association, which (i) is managed and controlled by a person contemplated in the first bullet and that the persons collectively or as a group own and control a majority of the issued share capital or members' interest, and are able to control the majority of the members' vote, or (ii) is a subsidiary, as defined in section 1(e) of the now repealed Companies Act 61 of 1973, as a juristic person who is a historically disadvantaged person by virtue of the provisions of (i).

The 2010 Charter used the term historically disadvantaged South Africans (HDSA), which it defined as "South African citizens, category of persons or community, disadvantaged by unfair discrimination before the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) came into operation which should be representative of the demographics of the country".

An HDSA company under the 2010 Charter was one owned or controlled by HDSAs.

The scorecard for the 2010 Charter required the holder of a new order right to achieve HDSA equity ownership of 26% by 1 March 2015. When evaluating compliance with the 2010 Charter, the level of HDSA ownership is scrutinised down to the natural individual shareholder on a "flow-through" principle basis. In terms of the 2002 Charter, companies that were embarking on a transaction with the intention of ensuring that they would qualify as an HDSA company would have needed to ensure that their HDSA shareholders were entrenched in the company until at least 30 April 2014, the tenth anniversary of the MPRDA. This date was then extended by the Amended Charter to the end of March 2015, with no indication that the BEE compliance would be done away with after that.

HDSA participation extends beyond ownership levels to management and procurement spending.

These factors need to be borne in mind in future planning for a mining company.

On 29 April 2009, the Codes of Good Practice for the Minerals Industry (Mining Code) was published in accordance with the requirements of section 100(1)(b) of the MPRDA. The publishing of the Mining Code led to much debate in the mining industry.

The Mining Code has also not been amended to reflect the provisions of the 2010 Charter and is generally considered to be legally unenforceable. The Mining Code is a policy guideline and as such should be advisory and not legally binding. The 2010 Charter also provides that non-compliance with the provisions of the 2010 Charter will amount to a breach of the MPRDA that may result in the suspension or cancellation of a holder's prospecting or mining right under section 47 of the MPRDA, although this has been rejected by the courts.

There are aspects of the 2010 Charter which posed challenges to deal-making within the mining sector.

BLACK ECONOMIC EMPOWERMENT UNDER THE MINING CHARTER/*continued*

These aspects include:

- Deal participants were required to engage with financiers in order to determine the percentage of cash flow to be used to service the funding of the structure and the amount to be paid to BEE beneficiaries (barring any unfavourable market conditions). There was therefore a requirement that a percentage of cash flow must be paid to the BEE shareholder prior to the financing having been paid, thereby extending the funding term and the financier's risk. This resulted in many financiers being less enthusiastic to conclude BEE transactions.
- BEE beneficiaries are required to have full shareholder rights. This may conflict with the Companies Act 71 of 2008 (Companies Act) in certain deal structures as a company can only issue shares that are fully paid up and this may also limit structuring flexibility. In comparison to the 2002 Charter, Mining Code and the Stakeholders' Declaration on Strategy for the Sustainable Growth and Meaningful Transformation of South Africa's Mining Industry (the Declaration), signed on 30 June 2010 by the Department of Mineral Resources, the National Union of Mine Workers, Solidarity, the United Association of South Africa, the South African Mineral Development Association and the Chamber of Mines (now the Minerals Council South Africa), a few key amendments are made to the scorecard for the 2010 Charter, with regard to:
    - ownership:
    - procurement and enterprise development;
    - beneficiation;
    - employment equity;
    - human resources; and
    - sustainable development and growth of the mining industry.

The Broad-Based Black Economic Empowerment Amendment Act 46 of 2013 (BEE Amendment Act), which came into operation on 24 October 2014, among other matters, amended the BEE Act to make the BEE Act the overriding legislation in South Africa with regard to BEE (trumping provisions) and, from 24 October 2015, required all governmental bodies to apply the Mining Codes or other relevant code of good practice when procuring goods and services or issuing licenses or other authorisations under any other laws, and penalise fronting or misrepresentation of BEE information.

On 30 October 2015 the Minister of Trade, Industry and Competition exempted the DMRE from applying the trumping provisions for a period of 12 months on the basis that the alignment of the 2010 Charter with the BEE Act and the Mining Code was still ongoing. Generally speaking, the amended Codes of Good Practice (Amended Codes), which have been effective since 1 May 2015, make BEE-compliance more onerous to achieve.

The trumping provisions require 51% of a company to be held and controlled by HDSAs to qualify it as a "black-controlled company" and hence a qualified BEE entity. The Amended Codes are substantially different from the 2010 Charter and, if they were to apply to the mining industry, would impose more onerous obligations on the industry.

BLACK ECONOMIC EMPOWERMENT UNDER THE MINING CHARTER/ *continued*

Accordingly, there is a risk that all of the industry-specific transformation charters, including the 2010 Charter and the Broad-Based Socio-Economic Empowerment Charter for the

Mining and Minerals Industry, 2018 (2018 Charter) under which mining companies may have agreed targets with the DMRE and against which such companies currently measure their compliance through the charter scorecards, may be superseded, in which case they would be required to comply with the criteria set forth under the BEE Act and any new or further revised Codes of Good Practice.

2018 MINING CHARTER

On 27 September 2018, the Minister repealed the 2010 Charter and published the 2018 Charter for implementation. Certain provisions of the 2018 Charter were subsequently amended on 20 December 2018. The 2018 Charter must be read together with the Implementation Guidelines to the 2018 Charter, published on 19 December 2018. Amongst other things, the 2018 Charter sets out new and revised targets to be achieved by mining companies, the most pertinent being the revised BEE ownership requirements.

On 27 March 2019, the Minerals Council South Africa announced that it had launched review proceedings against the Minister to set aside certain provisions of 2018 Mining Charter. Essentially the review concerned a requirement in the 2018 Mining Charter that mining firms re-empower themselves in order to renew mining licenses or transfer mining rights, contrary to the so-called 'once empowered, always empowered' principle. Judgment in favour of the Minerals Council South Africa (Minerals Council Judgment) was handed down on 21 September 2021 but the DMRE has indicated that it may introduce legislative amendments to counter the effects of the judgment. The court confirmed the 'once empowered, always empowered' principle, confirmed that the 2018 Mining Charter was a policy document and not subordinate legislation and held that a breach of the 2018 Mining Charter, of itself, could not result in cancellation of a mining right.

This section deals with the 2018 Mining Charter as amended by the Minerals Council Judgment. Readers are advised to seek legal advice as to legislative amendments to BEE ownership criteria from time to time.

BLACK ECONOMIC EMPOWERMENT UNDER THE MINING CHARTER/*continued*

Ownership Requirements

In terms of the 2018 Charter, mining rights applied for and granted after the commencement of the 2018 Charter are required to have a minimum of 30% BEE shareholding.

The 2018 Charter further provides for the recognition of the 'once empowered, always empowered' principle (which contemplates that a mining company can continue to be recognised as compliant with BEE ownership requirements after the exit of an empowerment shareholder) in relation to the holders of existing mining rights, in that existing rights holders (i) who achieved a minimum of 26% BEE shareholding; and (ii) who achieved a minimum of 26% BEE shareholding and whose BEE partners exited the structure prior to the commencement of the 2018 Charter are recognised as compliant for the duration of the mining right, including the renewal or transfer thereof.

Other Requirements for BEE Shareholding

The ownership element of the 2018 Charter refers to giving effect to "meaningful economic participation".[1]

"Effective ownership"[2] is required in relation to the shareholding to be held by the BEE shareholders.

BEE shareholding may be concluded at holding company level, mining right level, on units of production, shares or assets, and where BEE shareholding is concluded at any level other than at the mining right level, the "flow-through principle"[3] will apply.

The 2018 Charter sets deadlines by which the BEE shareholding must "vest" for new mining rights, namely a minimum of 50% BEE shareholding must vest within two-thirds of the duration of a mining right.

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[1] In terms of the 2018 Charter, the term "meaningful economic participation" refers to the following key attributes: (i) clearly identifiable partners in the form of HDPs, including women as well as qualifying employees and host communities; (ii) a percentage of unencumbered net value based upon the time graduation factor which has accrued to BEE shareholders; (iii) a percentage of dividends declared, or other monetary distributions or trickle dividends paid to BEE shareholders, subject to the provisions of relevant legislation; (iv) BEE shareholders with vested interest that has vested can leverage equity in proportion to such vested interest over the life of the transaction to reinvest in other mining projects; and (v) BEE shareholders with full shareholder rights entitling them to full participation at annual general meetings, exercising of voting rights in all aspects, including but not limited to, trading and marketing of the commodity herein affected, and anything incidental thereto regardless of the legal form of the instrument used.

[2] In terms of the 2018 Charter, the term "effective ownership" means the meaningful participation of HDPs in (i) the unencumbered net value ownership; (ii) voting rights attaching to an equity instrument owned by or held for a participant measured using the flow-through principle or control principle; (iii) economic interest representing a return on ownership of the entity similar in nature to a dividend right, measured using the flow-through principle; and (iv) management control of mining operations.

[3] The "flow-through principle" traces ownership measurement through the chain of ownership to a natural black person (and not a black-owned company), whereas the modified flow-through principle allows for the participation of non-black participants at one tier of ownership.

BLACK ECONOMIC EMPOWERMENT UNDER THE MINING CHARTER/*continued*

Exit of BEE Shareholders

For mining rights applied for and granted after the 2018 Charter came into force, the 2018 Charter provides that in circumstances where a BEE shareholding or part thereof is disposed of "below the prescribed minimum shareholding", that mining right holder's empowerment credentials will be recognised for the duration of the mining right, provided that:

- at the time of the disposal, the mining right holder is compliant with the requirements of the 2018 Charter;
- the BEE shareholder must have held the empowerment shares for a minimum period equivalent to a third of the duration of the mining right, and an unencumbered "net value"[4] must have been realised;
- the recognition of empowerment credentials shall only be applicable to measured effective ownership which has vested to BEE shareholding; and
- an agreement detailing exit mechanisms and the BEE shareholders' remaining financial obligations constituting a contract between the mining right holder and the BEE shareholders is submitted to the DMRE.

Mining right holders will not be able to claim recognition for the consequences of previous deals against future mining rights.

Other Elements of the 2018 Charter

The 2018 Charter also sets a number of other targets for mining companies to comply with and these also apply to the holders of existing mining rights. The other elements are as follows:

Beneficiation

Mining right holders may claim the equity equivalent (as defined above) as a beneficiation offset.

Existing mining right holders who had claimed the 11% beneficiation offset prior to the publication of the 2018 Charter are entitled to retain the 11% offset for the duration of the mining right.

Employment Equity

A right holder must achieve a minimum threshold of HDPs which is reflective of the provincial or national demographics as follows:

- Board – a minimum of 50% are HDPs, 20% of which must be women.
- Executive Management – a minimum of 50% are HDPs at the executive director level as a percentage of all executive directors proportionally represented, 20% of which must be women.
- Senior Management – a minimum of 60% are HDPs proportionally represented, 25% of which must be women.

[4] In terms of the 2018 Charter, the term "net value" refers to the value of equity which accrues to shareholders over time.

BLACK ECONOMIC EMPOWERMENT UNDER THE MINING CHARTER/*continued*

- Middle Management – a minimum of 60% are HDPs, proportionally represented, 25% of which must be women.
- Junior Management – a minimum of 70% are HDPs proportionally represented, 30% of which must be women.
- Employees with Disabilities – a minimum of 1,5% employees with disabilities as a percentage of all employees, reflective of national or provincial demographics.
- Core and Critical Skills – a mining right holder must ensure that a minimum of 60% HDPs are represented in the mining right holder's core and critical skills by diversifying its existing pools (representative of demographics). Core and critical skills must include science, technology, engineering and mathematical skills representation across all organisational levels. To achieve this, a right holder must identify and implement its existing pools in line with the approved social and labour plan.

Mining right holders must develop and implement a career progression plan (aligned with its social and labour plan) consistent with the demographics of South Africa, and this plan must provide for:

- career development matrices of each discipline (inclusive of minimum entry requirements and timeframes);
- individual development plans for employees;
- identifying a talent pool to be fast tracked in line with needs; and
- providing a comprehensive plan with targets, timeframes and how the plan would be implemented.

Human Resource Development

Mining right holders must invest 5% of the leviable amount[5] on essential skills development (excluding the mandatory statutory skills levy), invested on essential skills development activities such as science, technology, engineering, mathematic skills as well as artisans, internships, learnerships, apprentices, bursaries, literacy and numeracy skills for employees and non-employees (community members), graduate training programmes, research and development of solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation, as well as environmental conservation and rehabilitation.

[5] The term "leviable amount" has the same meaning as in the Skills Development Levies Act 9 of 1999.

BLACK ECONOMIC EMPOWERMENT UNDER THE MINING CHARTER/*continued*

The skills and research investment contemplated above must be apportioned in line with national or provincial demographics.

Directors and executives cannot be regarded as employees for purposes of human resource development.

Mine Community Development

Mining right holders must meaningfully contribute towards mine community development with biasness towards mine communities both in terms of impact as well as in keeping with the principles of the social license to operate.

In consultation with relevant municipalities, mine communities, traditional authorities and affected stakeholders, mining right holders must identify developmental priorities of mine communities and make provision for such priorities in prescribed and approved social and labour plans.

Mining right holders that operate in the same area may collaborate on certain identified projects to maximise the socio-economic development impact in line with social and labour plans.

Mining right holders must implement 100% of their social and labour plan commitments in any given financial year of the mining right holder. Any amendments and/or variations to commitments set out in social and labour plans (including budgets) shall require approval in terms of section 102 of the MPRDA, and right holders will be required to consult with mine communities.

Housing and Living Conditions

Holders must improve the standards of housing and living conditions for mine workers as stipulated in the Housing and Living Conditions Standards, developed in terms of section 100(1)(a) of the MPRDA, including:

- decent and affordable housing;
- provision for home ownership;
- provision for social, physical and economic integration of human settlements;
- secure tenure for the employees in housing institutions;
- proper healthcare services;
- an affordable, equitable and sustainable health system; and
- balanced nutrition.

Holders must submit housing and living conditions plans to be approved by the DMRE after consultation with organised labour and the Department of Human Settlements.

To provide clear targets and timelines for purposes of implementing these housing and living condition principles, the Housing and Living Conditions Standard Guidelines shall be reviewed. Pending the finalisation of the reviewed Housing and Living Conditions Standards, a right holder must comply with those Housing and Living Conditions Standards that are in force and ensure that it maintains single units, family units and any other agreement which has been reached with workers.

BLACK ECONOMIC EMPOWERMENT UNDER THE MINING CHARTER/*continued*

Regime for Junior Miners

The 2018 Charter now makes provision for junior mining companies, who meet the qualifying criteria, and grants such companies exemption from certain elements/targets set out in the 2018 Charter.

The regime for junior mining companies is limited to mining right holders who, either through holding a single or multiple mining rights, have a combined annual turnover of less than R150 million.

Mining right holders who have a turnover of less than R10 million per annum are:

- exempt from the following elements/targets set out in the 2018 Charter: employment equity targets (if they have less than 10 employees); inclusive procurement targets; as well as enterprise and supplier development targets; and
- required to only comply with the following elements/targets set out in the 2018 Charter: ownership element; employment equity targets (if they have more than 10 employees); human resource development targets; and mine community development targets.

Mining right holders who have a turnover of between R10 million and R150 million per annum are required to comply with the following elements/targets set out in the 2018 Charter: ownership element; human resource development targets; inclusive procurement targets; employment equity targets (at group level); and mine community development targets.

Applicability of the 2018 Charter

The 2018 Charter will apply to existing mining rights, pending mining right applications and new mining rights.

For mining right holders, the ownership and mine community development elements are ring-fenced and require 100% compliance at all times.

The 2018 Charter also contains a scorecard which sets out the weighting applicable to each element and to the extent that the compliance falls below a certain level, then the holder of the right is considered to be non-compliant with the 2018 Charter. The 2018 Charter states that this would constitute a breach of the MPRDA which could result in (i) directives being issued by the DMRE in terms of section 93; and/or (ii) the suspension or cancellation of the relevant mining right in terms of section 47, and should be considered in light of sections 98 and 99 of the MPRDA dealing with offences and penalties. This was rejected by the Minerals Council Judgment.

DIRECTORS' LIABILITY ARISING IN TERMS OF THE MPRDA

Section 38(2) of the MPRDA previously stated that notwithstanding the Companies Act, or the Close Corporations Act 69 of 1984, the directors of a company or the members of a close corporation are jointly and severally liable for any unacceptable negative impact on the environment, including damage, degradation or pollution advertently or inadvertently caused by the company or close corporation which they represent or represented. This section was repealed by the Amendment Act and any potential liability of directors relating to environmental matters is now dealt with under NEMA.

In the Companies Act, directors would be liable if they committed fraud or traded recklessly, whereas in terms of NEMA, liability is based on strict liability.

If there was unacceptable, negative impact on the environment, then the directors would be liable.

Certain commentators have remarked that all mining operations have a negative impact on the environment and that, consequently, this section creates a strict and absolute liability for directors.

The use of the term "jointly and severally liable" means that any one director can be held liable for the entire amount. The expression "which they represent or represented" implies that this liability extends to past and present directors and could also mean that a director need not have been a director of the company at the time when the pollution occurred.

While the constitutionality of this section is questionable, as long as it remains in its present form, company directors would be well-advised to ensure that their due diligence investigations of intended targets include properly considered environmental enquiries.

STOCK EXCHANGE LISTING REQUIREMENTS

Requirements, as amended by the Johannesburg Stock Exchange (JSE) Bulletin 4 of 2008, which took effect on 15 October 2008, and the JSE Bulletin 1 of 2010, set out the obligations that a mining/mineral company must comply with to list on the JSE.

Accordingly, the following points, including the Bulletin 4 and Bulletin 1 amendments, should be considered:

- Companies must comply with the disclosure requirements as set out in the South African Code for Reporting of Mineral Resources and Mineral Reserves (SAMREC Code), including the guidelines contained therein, section 12 and parts of Table 1 of the JSE listing requirements, and are required to disclose the stipulated details on an attributable beneficial interest basis.
- The listing requirements apply to both mineral companies and non-mineral companies with substantial mineral interests.
- The Competent Person's Report must comply with the relevant provisions of both the SAMREC Code and the South African Mineral Asset Valuation Code (SAMVAL), including the guidelines contained therein as amended from time to time, and it must comply with the timetable for submission of the Competent Person's Report. A Competent Person's Report must also contain an executive summary.
- Companies must disclose the full name, address, professional qualifications and relevant experience of the Lead Competent Person and must include a statement that they have written confirmation from the Lead Competent Person that the information disclosed is compliant with the SAMREC Code and, where applicable, the relevant section 12 and Table 1 requirements.

In terms of 12.13(iii) of the JSE listings requirements, mining companies listed on the JSE have an obligation to disclose the following information annually, where applicable, for the financial year/period under review, as part of their annual reports:

- a brief description of any exploration activities, exploration expenditures, exploration results and feasibility studies undertaken;
- a brief description of the geological setting and geological model;
- a brief description of the type of mining and mining activities, including a brief history of the workings or operations;

STOCK EXCHANGE LISTING REQUIREMENTS/ *continued*

- production figures, including a comparison with the previous financial year/period;
- a statement that the company has the legal entitlement to the minerals being reported upon together with any known impediments;
- the estimated mineral resources and mineral reserves (mineral resource and reserve statement);
- a description of the methods and the key assumptions and parameters by which the mineral resources and mineral reserves were calculated and classified;
- a comparison of the mineral reserve and mineral resource estimates with the previous financial year/period's estimates together with explanations of material differences;
- whether or not the inferred mineral resource category has been included in feasibility studies and, if so, the impact of such inclusion;
- any material risk factors that could impact on the mineral resource and reserve statement;
- a statement by the directors on any legal proceedings or other material conditions that may impact on the company's ability to continue mining or exploration activities, or an appropriate negative statement;
- appropriate locality maps and plans; and
- a summary of environmental management and funding.

In terms of 12.13(iv) of the JSE listings requirements, in addition to the disclosure requirements in 12.13(iii), exploration companies listed on the JSE have an obligation to disclose the following information annually, where applicable, for the financial year/period under review, as part of their annual reports:

- summary information of previous exploration work done by other parties on the property;
- summary information on the data density and distribution; and

STOCK EXCHANGE LISTING REQUIREMENTS/*continued*

- exploration results not incorporated in the mineral resource and reserve statement including the following, where applicable, or a qualified negative statement:
    - the relationship between mineralisation true widths and intercept lengths;
    - data and grade compositing methods and the basis for mineral equivalent calculations;
    - for poly-metallic mineralisation or multi-commodity projects, separate identification of the individual components;
    - the representivity of reported results;
    - other substantive exploration data and results;
    - comment on future exploration work;
    - the basic tonnage/volume, grade/quality and economic parameters for the exploration target; and
    - sample and assay laboratory quality assurance and quality control procedures.

CONTRACTUAL ROYALTIES

The obligation to pay contractual royalties is distinct from the obligation to pay state royalties.

The interpretation of the MPRDA is governed by section 4, which requires that any reasonable interpretation that is consistent with the objects of the MPRDA must be preferred over any other interpretation which is inconsistent with such objects.

The objects of particular importance when dealing with considerations to be paid to communities are expressed in section 2(d) and (i):

- Section 2(d): substantially and meaningfully expand opportunities for HDPs, including women, to enter the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources.
- Section 2(i): ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.

The term community is defined in section 1 of the MPRDA as "a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law: provided that, where as a consequence of the provisions of this act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affect by mining on land occupied by such member or part of the community."

The term community is defined in section 1 of the Communal Land Rights Act 11 of 2004 to mean "a group of persons whose rights to land are derived from shared rules determining access to land held in common by such group."

The term communal land is defined in terms of section 1 and section 2 to include, among others, certain state land, land to which the KwaZulu-Natal Ingonyama Trust Act 3 of 1994 applies, land acquired by or for a community whether registered in its name or not, and any other land, including land that provides equitable access to land to a community as contemplated in section 25(5) of the Constitution, which is or is to be occupied or used by members of the community subject to the rules or customs of that community.

An old order right is defined in Schedule 2 Item 1(v) of the MPRDA to mean "an old order mining right, old order prospecting right or unused old order right, as the case may be." The term old order mining right is defined in terms of Schedule 2 Item 1(iii) of the act to mean "any mining lease, consent to mine, permission to mine, claim licence, mining authorisation or right listed in Table 2 to this Schedule in force immediately before the date on which this act took effect and in respect of which mining operations are being conducted."

The term contractual royalties is defined in section 1 of the MPRDA to mean "any royalties or payments agreed to between the parties in a mining or production operation."

CONTRACTUAL ROYALTIES/ *continued*

Consideration for surface use is included in the definition of consideration and continues to accrue in terms of Item 11(1) of the MPRDA.

Item 11 of Schedule 2 of the MPRDA deals with the continuation of accrual of consideration or royalty payable to communities.

Item 11(1) states that "notwithstanding the provisions of Item 7(7) and 7(8), any existing consideration, contractual royalty or future consideration ... which accrued to any community immediately before this act took effect, continues to accrue to such community."

Item 7(7) states that on conversion the old order right ceases to exist and Item 7(8) provides that if a holder fails to lodge for the conversion of an old order right within the five-year period, then the old order right ceases to exist.

Accordingly, the accrual of consideration or royalty payable to the community continues despite the provisions of Items 7(7) and 7(8) of Schedule 2 of the MPRDA.

The transitional arrangements of the MPRDA provide for continued accrual or payment of consideration to a community. Notwithstanding conversion of an old order right, a community's contractual royalty continues to remain payable in accordance with the terms on which such royalty was agreed and the MPRDA.

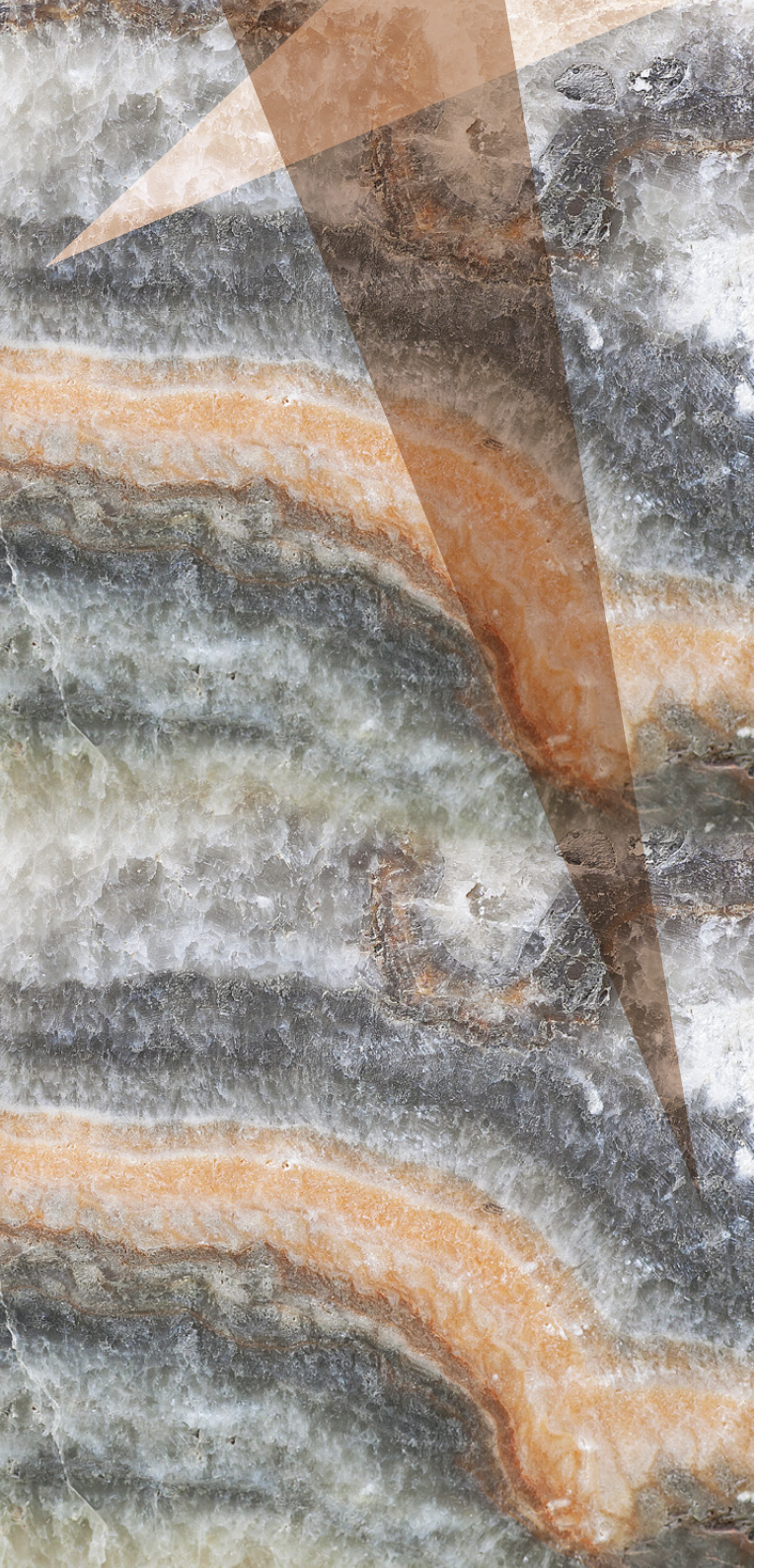
STATE ROYALTIES: MINERAL AND PETROLEUM RESOURCES ROYALTY ACT

In terms of the Mineral and Petroleum Resources Royalty Act 28 of 2008 (Royalty Act), which came into operation on 1 March 2010, royalties on gross sales are to be paid to the National Revenue Fund by holders of the various forms of rights granted by the Minister under the MPRDA. Essentially, the Royalty Act imposes a tax on the value of a mineral extracted and transferred.

A mineral producer must register to pay royalties. In terms of the Mineral and Petroleum Resources Royalty (Administration) Act 29 of 2008, which came into operation on 1 May 2009, a person had to apply to register with the commissioner by 28 February 2010 or within 60 days after the day on which that person qualifies for registration.

The Royalty Act grants exemptions in respect of small businesses and if the mineral resource is extracted for the purpose of sampling. The exceptions can be granted, provided the requirements for an exemption in terms of the Royalty Act are fulfilled.

In terms of the structure of the Royalty Act, a person is liable to pay the royalty in respect of the transfer of a mineral resource. Given the nature of the formula in that it refers to earnings before interest and taxes on the one hand and gross sales in respect of unrefined mineral resources on the other, these concepts may need to be considered in closer detail.



STATE ROYALTIES

The following items, among others, are not claimable as deductions:

- financial instruments or interest that has been incurred;
- the state royalty itself is also not claimable; and
- any expenditure incurred in respect of the transport, insurance and handling of the unrefined mineral resource after it has been brought to that condition or an amount received or accrued to effect the disposal of the mineral resource.

The formula that applies for the transfer of refined mineral resources is set out in section 4(1) of the Royalty Act.

This percentage is:

- 0,5 + [earnings before interest and taxes/(gross sales in respect of refined mineral resources x 12,5)] x 100.
- The percentage determined in terms of section 4(1) must not exceed 5% (section 4(3)(a)).
- The formula that applies for the transfer of unrefined mineral resources is set out in section 4(2) of the Royalty Act.

This percentage is:

- 0,5 + [earnings before interest and taxes/(gross sales in respect of unrefined mineral resources x 9)] x 100.
- The percentage determined in terms of section 4(2) must not exceed 7% (section 4(3)(b)).

BENEFICIATION

In June 2011, the Government adopted a beneficiation strategy for the minerals industry.

The beneficiation strategy provides a framework that seeks to translate the country's sheer comparative advantage inherited from mineral resources endowment to a national competitive advantage.

The strategy is aligned to a national industrialisation programme, which seeks to enhance the quantity and quality of exports, and promote creation of decent employment and diversification of the economy.

It is anchored on a range of legislation and policies such as the Minerals and Mining Policy for South Africa (1998). It will also advance the objectives of the MPRDA, the 2010 Charter and the 2018 Charter, the Precious Metals Act 37 of 2005, the Diamonds Amendment Act 29 of 2005, the energy growth plan as well as compliance with environmental protocols.

The strategy outlines 10 key mineral commodities, from which five value chains were selected, namely;

- energy commodities;
- iron and steel;
- pigments and titanium metal production;
- autocatalytic converters and diesel particulate filters; and
- jewellery manufacturing.

The value chains are intended to indicate the inherent value for South Africa in embracing beneficiation for all strategic mineral commodities.

The DMRE briefed the Parliamentary Portfolio Committee on Mineral Resources on 26 February 2013. The DMRE advised that it is in the process of drawing up a consolidated implementation framework that covers all value chains. Although little has come in regard to a consolidated strategy, government and the private sector have launched initiatives that cover many elements of a national resource-based industrialisation endeavour, including the establishment of the new Mandela Mining Precinct (a public–private partnership involving the State, the Mining Council South Africa and supply chain organisations aimed at rebuilding the country's mining technology and supply- chain capacity). It also saw the formation of the Mining Equipment Manufacturers of South Africa industrial cluster, which works with the South African Mineral Processing Equipment Cluster and the South African Capital Equipment Export Council to grow the supply-chain, as well as the implementation of downstream initiatives focused on platinum-group- metal beneficiation.

BENEFICIATION/ *continued*

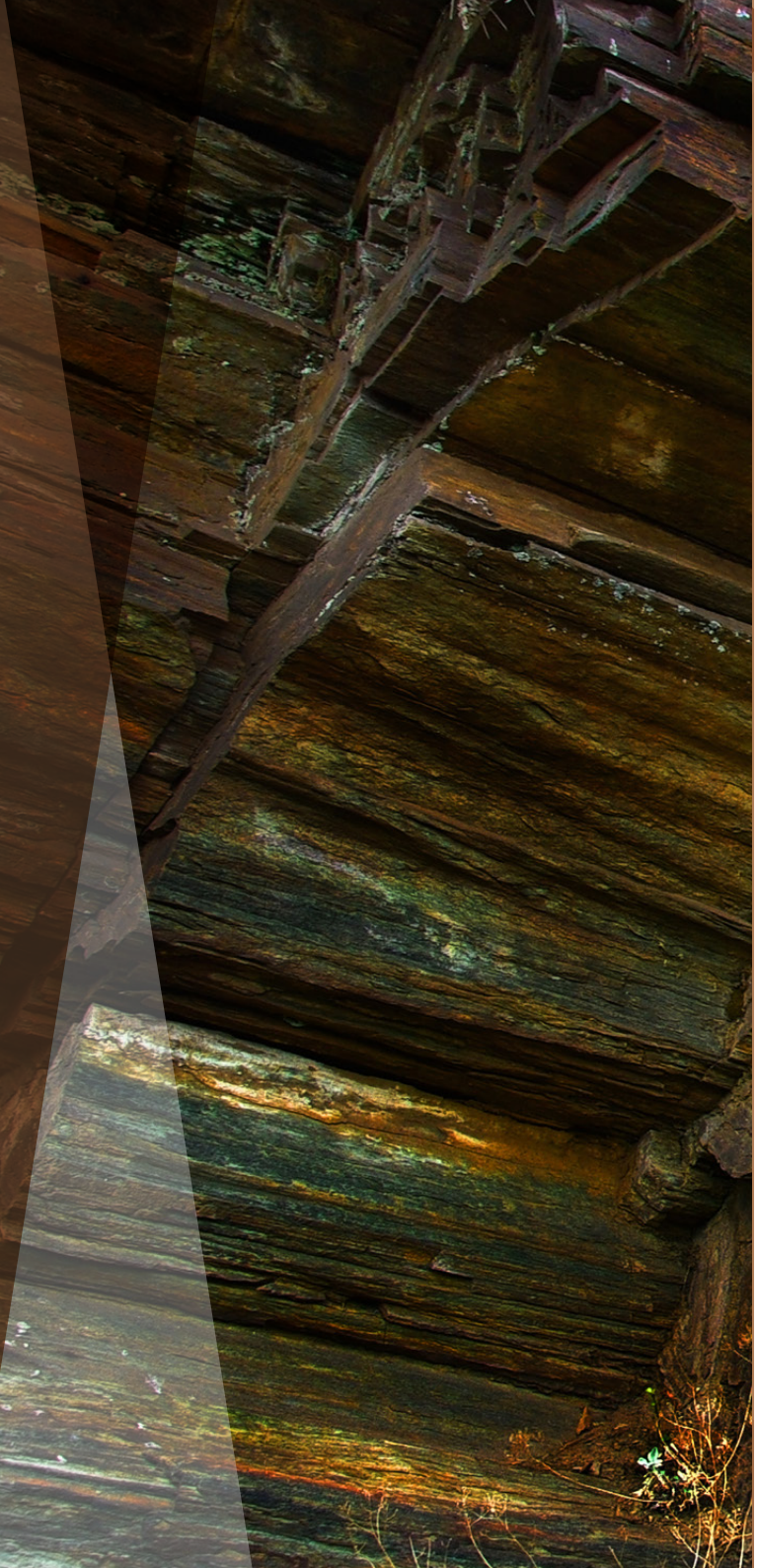
REZONING

The obligation to rezone land has an impact on mining and prospecting rights in South Africa.

In April 2012 the South African Constitutional Court, in two decisions, ruled that mining operations cannot take place until the land in question is appropriately rezoned for mining use. The Western Cape High Court extended this obligation to prospecting operations when it interdicted a company from prospecting until the land had been rezoned for prospecting purposes.

Notwithstanding the granting of a mining or prospecting right, until the area covered by such right has been appropriately rezoned, mining or prospecting operations are, in fact, carried out unlawfully.

If this obligation is ignored and the land is not correctly zoned, it may well lead to the forced legal closure of mining or prospecting operations by municipal authorities or other affected parties, which will have severe financial and contractual consequences on the holder and could ultimately lead to the termination or cancellation of the right or permit. It should be noted that generally only landowners are authorised to apply for rezoning but land may also be rezoned at the instance of a provincial or local government.



RIGHTS OF COMMUNITIES

With regards to any communities which may have rights to the land upon which mining takes place (or shall take place), whether formal or informal, the recent Constitutional Court judgment in *Grace Masele (Mpane) Maledu and Others v Itereleng Bakgatla Mineral Resources (Proprietary) Limited and Another* [2018] ZACC (Maledu Judgment) needs to be borne in mind. The Constitutional Court recognised informal land rights held by communities in terms of the Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA) and held that the MPRDA must be read in conjunction with the IPILRA.

The IPILRA requires that the holder of an informal land right must be consulted and give his or her consent before being deprived of that right. As a consequence of the Maledu Judgment mining right holders:

- Must ensure that all consultative requirements prescribed by the MPRDA are fully complied with. Mining companies must now place greater importance on identifying whether any individuals/communities hold occupational rights over a piece of land in terms of IPILRA, and if so, not only will they need to be notified and consulted with pursuant to the provisions of the MPRDA, but surface lease agreements may need to be concluded with such individuals/communities in order to ensure that they are not deprived of their land without their explicit consent. Attention should be placed on establishing the true identities of such individuals/communities. It will no longer be sufficient to consult with and reach an agreement with traditional leaders within communities, or those who claim to have authority to act on behalf of a community. Mining companies must be in a position to prove that all owners and/or lawful occupiers of a piece of land have been notified and consulted.
- Can no longer bypass the internal mechanisms expressly set out in section 54 of the MPRDA and approach courts for relief instead.
- May no longer commence operations pending the finalisation of the processes contemplated in section 54 of the MPRDA. All consultative processes and potential disputes regarding access to land and/or compensation must be finalised prior to the commencement of operations, unless the rightful communities negotiate in bad faith to subvert the aims of the MPRDA.

In *Baleni and Others v Minister of Mineral Resources and Others* (73768/2016) [2018] ZAGPPHC 829; [2019] 1 All SA 358 (GP); 2019 (2) SA 453 (GP) (22 November 2018) (Baleni Judgment) the High Court clarified the rights that interested and affected parties (I&APs) as contemplated in the MPRDA have to request and be provided with copies of mining right applications in terms of sections 10(1) and 22(4) of the MPRDA. The community in this matter sought a court determination on whether I&APs have the right to be furnished with copies of mining right applications upon requesting same from the regional manager of the DMRE pursuant to sections 10 and 22(4) of the MPRDA.

RIGHTS OF COMMUNITIES/*continued*

The community's contention was that in order to give I&APs the opportunity to have meaningful and timeous consultations with mining right applicants, owing to the myriad flaws and delays in the Promotion of Access to Information Act 2 of 2000 (PAIA) request process, I&APs should have the right to be automatically furnished with a copy of a mining right application upon requesting same from the regional manager of the DMRE.

The court held that subject to the right of an applicant and/or the DMRE to redact financially sensitive aspects of a mining right application, I&APs are entitled to be furnished with a copy of an application for a mining right as contemplated by section 22 of the MPRDA upon requesting same from the regional manager of the DMRE. In coming to its conclusion, the court highlighted the importance of meaningful public participation and consultation throughout the processes contemplated in the MPRDA and affirmed the contention of the community stating "the case for the applicants is that the relevant sections (10 and 22(4)), properly interpreted, mean that they are entitled to a copy on request from the regional manager and they do not have to go through the PAIA process, which is very long. I have already agreed with their understanding of these sections. The whole consultation process is intended to advance the objects of the MPRDA. The applicants, as occupiers have a direct interest because they have rights which they are legally entitled to enforce."

It is therefore evident from the Maledu Judgment and the Baleni Judgment that South African courts are placing increasing importance on the need for applicants for mineral rights to consult with I&APs and communities in relation to what takes place on their land/land on which they have an interest.

Furthermore, the Amended Regulations clarified obligations of the part of applicants for mineral rights and permits to consult with interested and affected person. In this regard, in terms of the Amended Regulations:

- in all circumstances where the MPRDA requires that applicants consult with I&APs (as defined in the Amendment Regulations), such consultations must take place meaningfully and in accordance with the public participation process described in the Environmental Impact Assessment Regulations, promulgated in terms of section 24(5) of NEMA;
- the definition of "interested and affected persons" for purposes of the MPRDA, has been extended to mean a natural or juristic person 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, including but not limited to:
- mine communities (defined as communities where mining takes place, major labour sending areas, adjacent communities within a local municipality, metropolitan municipality or district municipality);

RIGHTS OF COMMUNITIES/*continued*

- landowners;
- land claimants who have lodged claims in terms of the Restitution of Land Rights Act 22 of 1994 which have not been rejected or settled in terms thereof; and
- holders of informal rights in terms of the IPILRA; and
- the term "meaningful consultations" is defined as meaning that "the applicant, has in good faith facilitated participation in such a manner that reasonable opportunity was given to provide comment by the landowner, lawful occupier or interested and affected party in respect of the land subject to the application about the impact that the prospecting or mining activities would have to his right of use of the land by availing all the information pertaining to the proposed activities enabling these parties to make an informed decision regarding the impact of the proposed activities."

MINING AND MINERALS LAW

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