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In *Mining Alert 2/2013* and *3/2013* we discussed the Cabinet approval of the Mineral and Petroleum Resources Development Bill 2012, at the end of May 2013, for tabling in Parliament, and some of the more important proposed amendments.

In this *Alert*, we highlight the amendments in the Mineral and Petroleum Resources Development Bill (MPRDA Bill) that have been approved. This *Alert* is not meant to be exhaustive, in any manner, and readers are encouraged to seek advice in respect of the proposed amendments and the potential consequences.

Following the commencement of certain of the provisions of the Mineral and Petroleum Resources Development Amendment Act 49 of 2008 (the 2008 MPRDA Amendment Act), the Cabinet approved the MPRDA Bill at the end of May 2013, for tabling in Parliament. The draft Bill was published for comment in December 2012.

The MPRDA Bill was approved by the National Portfolio Committee (NCOP) on Mineral Resources on 6 March 2014, and Parliament approved the MPRDA Bill on 12 March 2014.

The MPRDA Bill will now be sent to the State President to sign. After the State President has signed the MPRDA Bill, the date for the commencement of the amendments will be published in the Government Gazette.

This *Alert* focuses on certain of the key amendments that will affect the mining sector and will therefore not address the amendments in the MPRDA Bill in respect of the petroleum sector.

STATED PURPOSE OF THE BILL

The stated purpose of the MPRDA Bill is to amend the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) as amended by the 2008 MPRDA Amendment Act; so as to remove ambiguities that exist within the Act; to provide for the regulation of associated minerals; partitioning of rights and enhance provisions relating to beneficiation of minerals; to promote national energy security; to streamline administrative processes; to align the MPRDA with the Geoscience Act, 1993; to provide for enhanced sanctions, to improve the regulatory system; and to provide for matters connected therewith.

ASSOCIATED MINERALS

The amendments aim to improve the situation regarding associated minerals. The definition of "associated mineral" includes any mineral that occurs in mineralogical association with and in the

same core deposit as the primary mineral being mined in terms of the mining right, where it is physically impossible to mine the primary mineral without also mining the mineral associated therewith.

However, the ability to lawfully mine associated minerals is subject to compliance with the requirements set out in the amendments to section 102 of the MPRDA. The amendments include the insertion of section 102(3), which provides that any right holder mining any mineral under a mining right may, while mining such mineral, also mine and dispose of any other mineral in respect of which such holder is not the right holder, but which must of necessity be mined with the first mentioned mineral provided that the right holder declares such associated mineral or any other mineral discovered in the mining process.

The MPRDA Bill inserts section 102(4) of the MPRDA, which provides that the right holder contemplated in section 102(3) must within 60 days from the date of making the declaration of the associated mineral apply for an amendment of its right to include the mineral that has been declared, failing which a third party may apply in terms of section 16, 22 or 27 of the MPRDA as the case may be for such associated mineral.

INCLUSION OF HISTORICAL "DUMPS", RESIDUE STOCKPILES AND RESIDUE DEPOSITS

The amendments are aimed at firmly including residue stockpiles and residue deposits, under the ambit of the MPRDA, together with historic "dumps".

The amendments include changes to the definition of "land", which will include residue deposits and residue stockpiles. The proposed amendments to the term "mine" also include specific reference to residue deposits and residue stockpiles.

The term "residue stockpiles" is also included in the definition of "mining operation".

In addition to specifically incorporating residue stockpiles and residue deposits in the various definitions, section 42A(1) provides that all historic residue stockpiles and residue deposits currently not regulated under the MPRDA belong to the owners thereof and continue in force for a period of two years from the date on which the MPRDA Bill is promulgated.

This means that current owners of residue stockpiles and residue deposits will remain the owners for two years, during which they are required, in the case where the residue deposit or residue stockpile is on a mining area, to apply for amendment of the mining right to include the residue stockpile, and in the case where the residue deposit or residue stockpile falls outside of the mining area, to apply for a mining right or mining permit.

BENEFICIATION

The term "beneficiation" is to be amended to mean the transformation, value addition or downstream beneficiation of a mineral to a higher value product, over baselines to be determined by the Minister, which can either be consumed locally or exported.

Section 26 of the MPRDA will be amended to provide that the Minister must, in order to regulate the mining industry to meet national development imperatives and to bring optimal benefits for the Republic, initiate or promote the beneficiation of mineral resources in the Republic to, among others, develop local capacity, designated certain minerals as "designated minerals". The Minister is also required to publish conditions in the *Government Gazette* to ensure security of supply of mineral resources for local beneficiation in the prescribed manner.

Once minerals have been designated for local beneficiation, the producer of the designated minerals must offer a prescribed percentage of its production of minerals or mineral products in prescribed quantities, qualities and timelines at the mine gate price or agreed price, to the local beneficiaries. The "mine gate price" is defined to mean the price (excluding VAT) of the mineral or mineral product at the time that the mineral or mineral product leaves the area of the mine or the mine processing site, and excludes charges such as transport and delivery charges from the mine area or the mine processing site to the local beneficiary.

In terms of section 26(d), no person other than a producer or an associated company of the producer, in respect of its own production and who has offered to local beneficiaries a prescribed percentage of its production of minerals or mineral products in prescribed quantities, qualities and timelines at the mine gate price or agreed price, may export any designated minerals or mineral products without the Minister's prior written approval. This effectively means that third party exporters may not export designated minerals without ministerial approval.

In summary, section 26 is amended to require the Minister to designate mineral or mineral products for local beneficiation, and once a mineral or mineral product is designated, producers of the designated minerals must offer a prescribed percentage of its production of minerals or mineral products in the prescribed quantities, qualities and timelines, at the mine gate price or the agreed price, to local beneficiaries. Third party exporters, persons who do not actually produce the minerals or mineral products, may not export designated minerals or mineral products, without ministerial consent.

THE PRINCIPLE "FIRST COME FIRST SERVED" WILL NO LONGER APPLY

The MPRDA Bill proposes the deletion of section 9 of the MPRDA, which provides for the "first come first served" principle in relation to applications for rights, and its substitution with a provision that the Minister may by notice invite applications for rights. The Minister will be granted the right to periodically invite applications by notice in the Gazette. The stated purpose is that the invitation process will ensure coordinated quality approvals by the department that meaningfully contribute towards the fulfilment of the objects of the MPRDA.

PARTITIONING OF RIGHTS AND MINISTERIAL CONSENT – SECTION 11 AND 102 OF THE MPRDA

The MPRDA Bill substitutes section 11(1) of the MPRDA with a new subsection, which provides that a right or a part of a right (prospecting right or mining right), may be ceded, transferred,

encumbered, let, sublet, assigned or alienated with ministerial consent, and subject to such conditions as the Minister may determine. The current provisions of section 11(1) of the MPRDA do not make provision for partitioning of rights.

In addition to the partitioning of rights, section 11(1) of the MPRDA will require ministerial consent in the event of any cession, transfer, etc of an interest in any prospecting or mining right or in an unlisted company or a controlling interest in a listed company, where such unlisted company or listed company holds the prospecting right or mining right, or an interest in any such right.

The MPRDA Bill inserts section 11(2)A, which provides that the transfer of a part of a prospecting right or mining right must be granted if the application for such transfer is accompanied by an application in terms of section 102 to vary the right, the transferee has simultaneously lodged an application in terms of section 16 (prospecting right) or 22 (mining right), as the case may be, the applicant has complied with the requirements contemplated in section 17 (prospecting rights) or 23 (mining rights), as the case may be, and the applicant has been granted a prospecting right or a mining right to which the transfer relates.

The MPRDA Bill amends section 102(1) of the MPRDA by the substitution of a new subsection that includes a requirement for ministerial consent for the amendment or variation of an approved Social and Labour Plan or an Environmental Authorisation (which is substituted for Environmental Management Programmes), and includes any application for amendment or variation for the extension of the area covered by the relevant right or by the addition of minerals, or a share or shares or seams, mineralised bodies or strata, which are not at the time the subject thereof.

The MPRDA Bill inserts section 102(2) of the MPRDA, which provides that the amendment or variation referred to in section 102(1) of the MPRDA shall not be made if the effect of such amendment or variation is to (a) extend an area or a portion of an area within an area or portion of an area greater than the area for which the right has been granted for, or (b) add a share or shares of the mineralised body, unless the omission of such area or share was a result of the administrative error, or (c) addition of a mineral other than an associated mineral subject to subsection (3) and (4).

INCREASED SANCTIONS

The MPRDA Bill amends section 99 of the MPRDA, and changes from specified fines, to fines based on a percentage of the right holder's annual turnover in the Republic and its exports from the Republic during the preceding financial year. The percentages are between five and ten percent, depending on the nature of the offence.

Where it is not possible to establish the recent annual turnover of any offender, maximum fines are specified.

TIME FRAMES

Relevant time frames in the MPRDA will be amended, to reflect time frames as prescribed by the Minister, from time to time. The MPRDA Bill states that the time frames will be prescribed and fixed in the Regulations. It also states that the time frames will not detract from the standard practice of 30, 60 and 90 days, where applicable.

CONSENT FOR CHANGE OF CONTROL

The MPRDA exempts listed mining companies from obtaining ministerial consent if the listed company undergoes a change in control. In terms of the MPRDA Bill, ministerial consent will be required in relation to listed mining companies, if there is a change in control. In addition, ministerial consent will be required if there is any change in shareholding for non-listed companies that hold mining rights or exercise control of such holders.

The MPRDA Bill has now included a definition of "controlling interest" in two parts, namely in relation to a company, where a "controlling interest" means the majority of the voting rights attaching to all classes of shares in the company, and in relation to any other business, any interest which enables the holder to exercise directly or indirectly any control whatsoever over the activities or assets of the business.

COMMUNITY INVOLVEMENT

The MPRDA Bill provides that if the mining right application relates to land occupied by a community, as defined, the Minister may impose conditions that the Minister believes are necessary to promote the rights and interests of the community.

INTEGRATED LICENSING APPROACH

The MPRDA Bill promotes an integrated licensing approach in respect of mining rights, environmental authorisations and licenses for the use of water.

The MPRDA Bill confirms that the Minister (of Mineral Resources) is the competent authority to implement mine environmental management in terms of the National Environmental Management Act, while the Minister of Environmental Affairs is the competent authority to develop, review and amend legislation, regulations and policies relating to mine environmental management.

OBJECTIONS AND APPEALS

The MPRDA Bill makes provision for objections to the granting of a prospecting right, mining right, or mining permit. If an objection is received, the objection must be referred to the Regional Mining Development and Environmental Committee (REMDEC) to consider the objections and to advise the Minister thereon. If an objection is received, the objection may also be referred to the applicant with an instruction to consult with the objecting person and if agreement is reached, the agreement must be recorded in writing.

Further, if a person appeals against the granting of a right or the approval of an environmental authorisation, and provided that the appeal has been lodged within the prescribed period, the notarial deed of granting shall not be executed until such appeal has been finalised.

This effectively means that, even where a right or an environmental authorisation has been granted, if an appeal is lodged, the holder of the right cannot commence the prospecting or mining operations.

SUMMARY AND CONCLUSION

The MPRDA Bill makes far reaching changes, impacting on all aspects of mining operations and must be carefully considered by shareholders.

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