BIZCOMMUNITY

Mining companies need to adapt to a greener economy and more stringent transformation targets

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New policy documents and draft legislation relevant to the mining industry have been introduced, including initiatives to improve the process of resettlement and increase exploration investment, transitioning to a greener economy, and more stringent employment equity targets. Some proposals are controversial and will require the industry to give input to the government.

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New exploration strategy

South Africa's exploration strategy, published in April 2022, outlines an economic recovery plan to unlock the country's full mineral potential.

The priorities identified in the strategy are to improve the availability of geoscientific data, revise the licensing regime and attract exploration investment. It identifies certain barriers which will require changes to regulation and policy.

Importantly, it states that the "first come, first served" principle in the allocation of rights has promoted mediocrity. The intention is to replace this with a meritocratic system that aptly considers national development initiatives which will entail an amendment to the Mineral and Petroleum Resources Development Act, 2002 (MPRDA). However, we believe the proposed amendments, which have previously been tabled, would increase legislative uncertainty and the potential for corruption.

Sections of the MPRDA are also expected to be revised in relation to transformation, following the ruling on the dispute between the government and the industry over aspects of the Mining Charter which left it open for the legislature to amend the MPRDA to achieve the objects of transformation.

The strategy proposes to use Sections 54 and 55 of the MPRDA more extensively to deal with the practical issues of gaining landowner consent to access privately-owned land and provide for dispute resolution when landowners refuse access. S55 allows the minister to expropriate land for prospecting or mining.

The strategy deals with inactive prospecting rights which are said to be sterilising mineral potential and proposes to reintroduce the "use it or lose it" principle and address issues such as lack of funding and technical skill by establishing a R200m IDC fund on which we await more detail. While many prospecting rights have lapsed in law, those areas remain unavailable to new applicants on the DMRE's system requiring the DMRE to implement an up-to-date mining cadastre system that is updated in real-time in relation to lapsing rights, etc.

Responsible Minerals Initiative cuts ITSCI from approved traceability list

Helen Reid 1 Nov 2022

Resettlement guidelines

The mine resettlement guidelines, published in March 2022, outline the process for applicants and holders of mining rights to physically displace or resettle landowners, lawful occupiers, mine communities and host communities, where necessary. Illegal squatters would not be subject to these processes. Given the nature of mining, i.e., that it is site specific as the minerals are where they are, operations may sometimes result in persons having to be resettled.

It is important to note that although these are guidelines, and therefore not law, stakeholders and the regulator will expect these processes to be followed. The guidelines set out fundamental principles for resettlement including:
(i) meaningful consultation and conditions relating to meetings (and we would advise clients to keep documentary proof of the process followed);
(ii) equality;
(iii) the protection of existing rights;
(v) minimising or avoiding resettlement; and
(vi) using HDSA service providers.
The golden thread throughout the guidelines is to ensure proper engagement, have a sufficient flow of clear and necessary information, and to protect the rights of those being resettled.

Whilst the guidelines include many features throughout the resettlement process, which starts at the planning stages and ends even after resettlement with continued support, one of the most contentious parts of the guidelines is that it provides that mining cannot commence without a resettlement agreement in place.

We welcome these guidelines which reflect some of the global principles surrounding resettlement laid out by bodies such as the ICMM, and contextualise them within the South African framework, however certain issues remain. We will await to see how the DMRE deals with resettlement, especially resettlement agreements in the wake of these guidelines.

Gold Fields bets on solar to cut costs and carbon

Helen Reid 17 Oct 2022

Decarbonising the South African economy

In September 2022, a just transition framework was approved by Cabinet. It sets out a climate-resilient development pathway for South Africa, which affects every sector, with a focus on improving lives, preserving jobs, being people-centric and ensuring resilience. The concept of a just transition requires a contextual look at the needs of a country and this framework provides a South Africa-specific definition of the just transition.

The recently introduced Carbon Tax Act is intended to incentivise businesses to decarbonise their operations. The tax has been introduced in three phases, with the first phase being extended to 31 December 2025. The proposal by National Treasury is to increase the rate of carbon tax in dollars which will inevitably lead to businesses being hard hit.

Whilst government recognises that not every business is in a position to reduce its carbon footprint completely, it is vital for government to be in alignment with the commitment to the Paris Agreement. It is, therefore, imperative for businesses to invest in projects which will enable it to reduce its carbon tax liability in the most sustainable way possible. Business is, therefore, encouraged to invest in carbon offset projects which will allow it to reach its net-zero goal.

Skills development for life after mines should focus on economic participation and growth

Jacques Farmer 23 Sep 2022

The Employment Equity Amendment Bill

The Employment Equity Amendment Bill, which we expect will become law in September 2023, provides for the minister of labour to identify national sectors and, after consultation (not necessarily agreement) with those sectors, impose numerical sector targets to ensure equitable representation of suitably qualified people from designated groups.

These sector targets are hard-coded, with punitive measures for non-compliance, and it could be argued that they amount to quotas, which could open them to Constitutional challenge.

Employers that are declared non-compliant can raise justifiable grounds for non-compliance, but this is cold comfort. Firstly, there will still be a finding of non-compliance and the director-general or minister has the discretion to rule on it.

Secondly, non-compliance is absolute. An employer that is 99% compliant will be treated in the same way as one that is only 5% compliant. The penalty for non-compliance will be a fine, as laid out in the Employment Equity Act.

ABOUT THE AUTHOR

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