

“MINERAL RIGHTS IN SOUTH AFRICA”

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Mineral Rights and Title

“Mineral Rights” entitle a person or entity explore and produce minerals, rocks, oil and gas found below the surface. A mining right typically allows the owner of such right to perform mining operations within a demarcated area. Mining rights are usually only granted after some form of prospecting has been performed.

According to *Section 3 (2) of the Mineral and Petroleum Resources Development Act, 28 of 2002 (“MPRDA”)*, the State is the custodian of all South Africa’s mineral and petroleum resources, and therefore is administered by the Department of Mineral Resources (“DMR”).

Ownership of mineral and petroleum resources vests in the State in South Africa and in most countries, in cases where the land on which the minerals have been identified is privately owned land, the owner of such land will only have surface rights and not any rights to the minerals, unless they have applied to the DMR and have been granted the requisite mining rights.

Any mining right holder may seek to purchase the surface rights, if the surface rights are not purchased the MPRDA grants a limited real right to the mineral rights holder over the land and the minerals. In terms of the principals of common law the surface right holder must do whatever is reasonable to allow the holder of the mineral right to act on its rights, and the mineral right holder must have due regard to the surface rights holder.

MPRDA on the other hand extends a number of rights to the right holder such as the right to enter the land, and bring any employees, machinery, plant and equipment onto the land for the purpose of exploration or mining. This does not mean however that the right holder does not have any obligation to the surface right holder, in terms of MPRDA the holder of the right must compensate the landowner or lawful occupier for loss or damage suffered as a result of the mining, prospecting or exploration.

Requirements for Acquisition of Mineral Rights

Prospecting Right

Prospecting rights relate to the search for mineral resources within a specific area, by performing geographical investigations to determine if the identified land contains minerals of an economic value.

In order to go about prospecting for such minerals the applicant must apply to the DMR for a prospecting right, to procure the right to prospect the Applicant must apply for the requisite environmental authorization, consult with all interested and affected parties, including the landowner/s, alternatively lawful occupiers, as set out in Section 16 of the MPRDA.

Such application must be made at the office of the Regional Manager in whose region the land is situated and in the prescribed manner together with the prescribed fee. A Prospecting Right is valid for the period as specified in the right, but not exceeding 5 years.

Mining Right

Any person who wishes to acquire a mining right over a specific piece of land, must apply for such right in terms of the provisions of MPRDA, the Applicant must lodge an application for the requisite environmental authorization and consult with affected and interested parties, including landowners. The Minister must grant such a right if the following requirements are met:

- (a) The mineral can be mined optimally;
- (b) The Applicant has access to financial resources and technical ability;
- (c) The mining will not result in unacceptable pollution, ecological degradation or damage to the environment;
- (d) The Applicant has to lodge a mining work programme and a detailed social labor plan.

A mining right is granted for a period not exceeding 30 years. The right holder is entitled to apply for a renewal of the mining right for a period of not more than 30 years.

Exploration

Exploration relates to the search for petroleum, that is, liquid, solids hydrocarbons or combustible gas, but excludes coal and bituminous shale. In order for an applicant to successfully secure exploration rights it must, in accordance with Section 80 of MPRDA:

- (a) have access to financial resources and the technical abilities to conduct the proposed exploration optimally and in accordance with the work exploration work program;

- (b) Have the estimated expenditure is aligned with the intended exploration operation and duration of the exploration work programme;
- (c) have an approved environmental management programme;
- (d) have the ability to comply with the *Mine Health and Safety Act, No 29 of 1996*;
- (e) not be in contravention of the MPRDA;
- (f) have complied with the terms and conditions of any technical permit;
- (g) show that granting of such right would further the objects of substantially and meaningfully expanding opportunities for historically disadvantaged persons;

Registration of Mineral Rights

The office for registration of all mineral and petroleum titles and all other related rights, deed and documents is that of the Mineral and Petroleum Title Registration office, which is regulated by the *Mining Titles Registration Act No 16 of 1967*. Documents held at such office are not freely available to the public, application for access to any document held at the registration office must be done so in accordance with the *Promotion of Access to Information Act 2 of 2002 (PAIA)*.

The Minister may cancel or suspend any reconnaissance permission, prospecting right, mining right, mining permit or retention permit in terms of Section 47 of the MPRDA.

Restrictions on Transferability

There are restrictions placed on the transferability of any mineral right. All mining permits and mining, exploration, prospecting and production rights may only be transferred, ceded, let, sublet, alienated, disposed of, or encumbered by mortgage with the consent of the Minister of the DMR (“Minister”).

The Minister is obliged to consent to such transfer if the transferee satisfies all the requirements for the grant of such right in the first instance.

The Mining Charter 2018

Compliance with BEE requirements are essential for the acquisition of mineral rights. The Mining Charter 2018 (the “Charter”) specifically requires a minimum of 30% of BEE shareholding, which refers to historically disadvantaged individuals (HDI), enterprises with at least 51% shareholding to HDI’s, communities and qualifying employees.

Pending applications lodged and accepted before the commencement of the Charter, must comply with the 26% BEE shareholding as specified under the 2010 Mining Charter, but must increase BEE shareholding to a minimum of 30% within 5 years of the enactment of the Charter. Existing mining rights,

which are compliant with the 26% BEE shareholding, will be deemed compliant for the remainder of the duration of the mining right.

The purpose of the Charter is to deal with the issue of transformation of the mining industry, specifically to ensure the entrance of historically disadvantaged South Africans who were systemically marginalized and prevented from ownership and participation in the mainstream economy. Therefore, the primary objective of both MPRDA as well as the Charter is to rectify historical socio- economic inequalities and ensure meaningful participation of HDI’s within the mining sector.

There are no requirements for foreign ownership or foreign applicants in South Africa. Compliance with the same provisions of the Act and the Regulations thereto are required.

Rehabilitation of Mine

Mining is a temporary use of the mining, prospecting or exploration area. On completion of the mining activities the right holder has an obligation to rehabilitate the land, it is therefore a further requirement to right holders to ensure that they hold sufficient capital for the rehabilitation process, in addition to having the requisite financial capabilities for the mining operation itself.

Rehabilitation is the process of transformation of the land from its original condition to a new beneficial condition, thus reestablishing the land to a suitable repair capable of supporting permanent productive use. It is important to note that the rehabilitation plan must be recorded in the mine plan and post-mining use plan.

The introduction of the rehabilitation process has created empowerment opportunities for the communities who were once left with land degradation and no prospect of further use of the land. Through the rehabilitation process communities now have farming, water and manufacturing opportunities. For rehabilitation, mine closure is the ultimate goal, to the point that the land is environmentally, socially and financially sustainable within the post-mining landscape.