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MINING & RESOURCES

Junior Mining Indaba 2022

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The Junior Indaba took place on 1 and 2 June 2022 at the Johannesburg Country Club for junior miners. The discussions this year include a focus on the global economic and geopolitical environmental and the impact on junior mining as well as the regulatory environment.

This conference follows the Investing in African Mining Indaba 2022 ("the African Mining Indaba") which took place at the Cape Town International Convention Centre on 8 May 2022 until 12 May 2022. At the African Mining Indaba, the Minister of Mineral Resources and Energy, Mr Gwede Mantashe ("the Minister") stated that there is a renewed focus on sustainability by the investment community and the developed world which is driving the development of ESG (Environmental, Social Governance) assets, which are estimated to exceed $50 trillion by 2025, representing more than a third of the projected $140.5 trillion in global assets under management.

Environmental Provisions

Junior miners should be mindful of the current applicable legal framework. In particular, the National Environmental Management Act, 1998 which empowers the Minister of Forestry, Fisheries and the Environment to publish listed activities which may not commence without an environmental authorisation. Pursuant to these empowering provisions, the Minister published the Environmental Impact Assessment Regulations and three Listing Notices. These EIA Regulations list prospecting and mining projects as activities which may not commence without an environmental authorisation.

Certain specialist studies must be undertaken as part of the application process for an environmental authorisation. In a recent judgment of ***Earthlife Africa Johannesburg v Minister of Environmental Affairs and Others***, the High Court held that the specialist studies to be undertaken may include climate change impact assessments in line with South Africa's commitments under international treaties such as the Paris Agreement and Kyoto Protocol.

The President also signed the Carbon Tax Act 15 of 2019 into law on 22 May 2019, which legislation imposes a carbon tax on emitters of greenhouse gases, which may include certain mining operations.

Finally, junior miners ought to be aware of the provisions of the National Water Act, 1998 which require a water use licence for the undertaking of water uses for mining activities which impact on water resources.

Social Licence to Operate

ESG also requires mining companies to take cognisance of the importance of the "social licence to operate" which requires mining projects to ensure that their activities are not undertaken to the detriment of the livelihoods of surrounding mining communities.

Mining communities are often the most affected by mining activities. It is these communities which are most impacted by noise, vibrations and blasting activities which emanate from mining projects. These communities are also the most impacted by any environmental pollution or degradation which originates at mines. The investment community is recognising that it is imperative for these communities to be included in any discussions pertaining to the development of the mining industry.

However, a *lacuna* (or gap) still exists in the legal framework regarding which communities should be consulted by mining companies. Mining communities may group themselves in a number of formal structures, which include: the registration of community trusts, community companies or communal property associations (or CPAs). There may also be traditional authorities, traditional leaders or traditional councils who have jurisdiction over a particular mining community.

Lastly, there may be divisions or factions within the community itself – with part of the community supporting a mining project and another portion of the community opposing the mining project. This often gives rise to the question: to what extent should a mining company undertake consultation with a community and most importantly, with whom?

This issue of community consultation should be considered in light of the developing jurisprudence around community consultations, with the courts in the ***Baleni and Others v Minister of Mineral Resources and Others*** and ***Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Ltd and Another*** cases deciding that in addition to consultation, the consent of the community must be obtained by mining title applicants where the community holds informal land rights under the Interim Protection of Informal Land Rights Act, 1996.

A difficulty then arises regarding whose consents should be obtained for purposes of complying with this requirement, in light of the diverse nature of mining communities.

The Impact of Illegal Mining

It remains to be seen how junior mining companies will be impacted by the recently published Artisanal and Small Scale Mining Policy 2022 ("the Policy"), which aims to address the critical challenge of illegal mining in the South African mining and minerals industry.

This policy proposes amendments to the Mineral and Petroleum Resources Development Act, 2002, with new mining titles aimed at small scale miners and artisanal miners. This may be an opportunity for some junior mining companies to obtain mining titles without being subjected to the current onerous (and costly) permitting process.

The strength of the Policy lies in its implementation in order for it to achieve its intended objectives.