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MINING & RESOURCES

Mining for industries of the future

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In his opening address at the Investing in African Mining Indaba 2023, the Minister of Mineral Resources and Energy, Mr Gwede Mantashe, said that South Africa has renewed its frontier status as an exploration destination. He indicated that our country's exploration landscape is increasingly becoming more fertile for the discovery of world class deposits of minerals of the future such as lithium, rare earth minerals, copper, nickel and the expansion of mineral systems of the manganese fields of high-grade quality.

These minerals provide a solid base for industries of the future.

Much can be done to improve South Africa's regulatory framework to enable access, particularly by junior miners and investors, into the mining industry.

The primary mining legislation in **South Africa is the Mineral and Petroleum Resources Development Act, 2002**. This act requires a person, including juristic persons, intending to undertake prospecting or mining activities to apply for and obtain a prospecting right in terms of section 17 of the MPRDA or a mining right in terms of section 23 of the MPRDA.

In addition to the requirement to be the holder of mining title in order to explore and exploit the country's mineral resources, section 5A of the MPRDA states that no one may prospect for or mine a mineral resource without an environmental authorisation issued in terms of the **National Environmental Management Act, 1998** ("NEMA").

Section 24(2) of NEMA empowers the Minister of Environmental Affairs to identify and publish listed activities which may not commence or be undertaken without an environmental authorisation. The Minister published these listed activities in the Environmental Impact Assessment Regulations, 2014 ("EIA Regulations") and three Listing Notices as GN R982, GN R983, GN R984 and GN R985 of Government Gazette 38282 in 2014. The effect of this publication is that it is an offence to undertake a listed activity without the requisite environmental authorisation.

Section 24G of NEMA provides for the rectification of the unlawful commencement with listed activities without an environmental authorisation. A rectification application carries an administrative penalty of up to R5 million. This administrative fine is to be increased to R10 million on a date to be proclaimed by the President.

Aside from the requirements of NEMA, an entity looking to undertake mining operations in South Africa would also require a water use licence in terms of the **National Water Act, 1998**. Other environmental laws which would be triggered by the proposed mining activities include the National Environmental Management: Waste Act, 2008, the National Environmental Management: Air Quality Act, 2004; the National Environmental Management: Biodiversity Act, 2004 and the National Heritage Resources Act, 1999.

In 2014, certain amendments to the NEMA were introduced in section 24P in relation to financial provision for the rehabilitation of the environment pursuant to the prospecting or mining activities. These amendments culminated in the Financial Provision Regulations, 2015. These Regulations require financial provision to be made for (i) annual or ongoing rehabilitation; (ii) closure or decommissioning liability; and (iii) residual or latent environmental impacts which may become known in future, which include water treatment liability.

In 2022, the **Department of Mineral Resources and Energy** ("DMRE") published the Exploration Strategy for the Mining Industry of South Africa (the "Strategy"). This Strategy acknowledges that with the declining gold resources, the appeal of the South African mining industry lies in the minerals of the future. The Strategy is anchored on three critical pillars, being (i) economic growth; (ii) social benefits; and (iii) environmental care through good governance.

The Strategy acknowledges some of the weaknesses or barriers which have hampered the growth of South Africa's mining and exploration industries. These weaknesses include the current energy instability which has been in part due to an aging infrastructure, such as the national grid and coal-fired power stations which have to be decommissioned as they are nearing the end of their lifespan. Another weakness is that while South Africa has developed world-class legislative frameworks to govern the mining industry, implementation of these laws remains a concern and hinders growth of mineral exploration.

Illegal mining, the 'zama zamas' and the Law

The Strategy asserts that South Africa should take advantage of the opportunities presented by the growing demand for minerals needed by the internet era with a high reliance on battery storage, artificial intelligence, robotics, electric vehicles and clean energy with a growing market demand globally. The country's deposits of minerals such as copper, nickel, lithium, rare earth metals, graphite and cobalt remain largely under-explored.

A real opportunity presents itself for mining companies and investors looking to develop projects involving these minerals. In order to take advantage of this opportunity, the government aims to provide more direct support to junior exploration companies and aims to **attract a 5% share of global exploration expenditure by 2025**, which will amount to approximately US$0.9 Billion.

While the Strategy is ambitious and the Minister's speech at the Mining Indaba has been hailed as being optimistic, the true test of the Strategy will be in the implementation of its provisions. Competition for global capital is continuously increasing and South Africa has a real opportunity to address the challenges identified in the Strategy to promote more access to the mining industry.