

Mining terminology: the difference between “accepted”, “granted” “executed” and “registered”

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Four of the most common words that one hears in conjunction with mining rights, prospecting rights are “**accepted**”, “**granted**”, “**executed**” and “**registered**”. Despite regular use of the aforesaid terminology in the mining industry, there is often confusion as to the specific legal meaning and interpretation of these words, which often results in uncertainty and ambiguity. The purpose of this article is to clarify the legal meaning of each of “**accepted**”, “**granted**”, “**executed**” and “**registered**” insofar as these words relate to a mining right,[1] or a prospecting right.[2] In this article, we will refer to the use of this terminology in conjunction with a mining right, however, we note that the same principles also apply to a prospecting right.

“Accepted”

If a person or entity (**Applicant**) wishes to obtain a [mining right](#) the Applicant must, as a first step, compile and thereafter lodge an application (**Application**) for a mining right with the Regional Manager (**RM**) of the Department of Mineral Resources and Energy (**DMRE**) in accordance with section 22 of the Mineral and Petroleum Resources Development Act 28 of 2002 (**MPRDA**) with the relevant regional office of the DMRE.

Once the RM has received an Application for a mining right he or she has 14 days within which to “**accept**” the Application, provided that the Application complies with section 22 of the MPRDA. An “accepted” mining right thus means that an Applicant has successfully lodged an Application for a mining right with the RM that complies with the statutory requirements in the MPRDA, and which position has been acknowledged by the RM. Conversely, if an Application does not comply with the requirements of section 22 of the MPRDA, the RM is obliged to “**reject**” the Application.

Section 22(4) of the MPRDA provides that if the Regional Manager accepts an Application the RM must within 14 days from the acceptance notify the Applicant in writing to (a) to submit the relevant environmental reports required in term of chapter 5 of the National Environmental Management Act, 1998 within 180 days of the notice and (b) consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the environmental reports. The Application thereafter remains to be processed.

It is important to note that reference to an “accepted mining right” does not mean that the Applicant has obtained a mining right under the MPRDA. It merely refers to the successful lodgement of an Application for mining right with the DMRE. The Applicant is accordingly not authorised to commence, *inter alia*, Mining Operations[3] until the mining right has been granted by the Minister. The Applicant also cannot sell the ‘accepted mining right’ to a third party as the Applicant will only obtain an asset (in the form of a real right) that is capable of being valued and sold once the ‘accepted mining right’ has been ‘**granted**’ by the Minister of the Department of Mineral Resources and Energy (**Minister**) and thereafter registered in the Mineral and Petroleum Titles Registration Office (**MPTRO**) in accordance with the Mining Titles Registration Act 16 of 1967 (**MTR Act**).

“Granted”

The Minister (or his delegate) will grant an Application if it (a) has been accepted and (b) complies with the provisions of section 23 of the MPRDA.[4] If an Application is granted by the Minister, then the Applicant becomes a mining right ‘holder’[5].

Notwithstanding the date on which a mining right is executed, the period of a granted mining right commences on the day that the Applicant receives written notification from the Minister that the Application has been granted.[6] Nevertheless, a mining

right holder cannot commence, *inter alia*, Mining Operations until the mining right has been executed. A mining right that is granted by the Minister in accordance with section 23(1) of the MPRDA comes into effect on the Effective Date.[7]

“Executed”

A mining right is **“executed”** when it has been signed by the Regional Manager and the ‘mining right holder’ in front of a Notary Public, who thereafter ‘executes’ the mining right.

The execution date of a mining right is important as the mining right holder must commence with Mining Operations within one year of the Effective Date of the executed mining right’.

“Registered”

An executed mining right must be registered with the MPTRO (in accordance with section 16 of the MTR Act) within 60 days of the Effective Date.[8] Once an executed mining right has been successfully registered with the MPTRO, the mining right holder obtains an asset in the form of a ‘limited real right’,[9] which is capable of being disposed of or encumbered to a third party.[10]

Renewals

Confusion usually arises when Applicants are required to determine the date on which their mining right lapses and they are uncertain as to whether the period is calculated from the date of ‘grant’ or ‘execution’. If calculated incorrectly a mining right could inadvertently lapse before the Applicant has lodged an application for its renewal.

If, for example, the Applicant received notification on 1 January 2022 that the Minister had granted it a mining right for a period of 5 years, the mining right will expire on 31 December 2026 even if the mining right is only executed a year later on 1 January 2023 and is stated to lapse on 31 December 2027 in the notarially executed right, unless an application for the renewal of the mining right is timeously lodged with the DMRE. The Applicant will accordingly only have four years from the date of execution of the mining right within which to mine the relevant minerals from the land, unless the renewal application is successfully ‘granted’ and ‘executed’.[11]

“Issued”: Mining Permits

Mining permits are slightly different to mining rights in that mining permits (although **accepted** as set out above) are **issued** by the Minister and are not **executed** or **registered**. Section 27 of the MPRDA states that a mining permit may only be issued if (a) the mineral in question can be mined optimally within a period of two years and (b) the mining area in question does not exceed 5 hectares in extent. An applicant for a mining permit will become a mining permit holder if the mining permit is issued to it/him by the Minister.

In addition, mining permits are not registered in the MPTRO, but must be **“recorded”** in the MPTRO within 60 days of the mining permit being **“issued”**.

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Conclusion

In summary, the legal meaning and interpretation of the words **“accepted”**, **“granted”**, **“executed”** and **“registered”**, is as follows –

- **‘accepted mining right’**– an application for a mining right that complies with Section 22 of the MPRDA and which has been accepted as a legitimate application for a mining right under the MPRDA;
- **‘granted mining right’** – the day on which the Applicant receives notification from the DMRE that the DMRE has granted the Application and the Applicant becomes a mining right holder;
- **‘executed mining right’**– effective date of the mining right which is date on which the mining right is signed by the Regional Manager and the mining right holder in the presence of a Notary Public; and
- **‘registered mining right’** – the date on which the mining right is registered in the MPTRO and accordingly becomes a limited real right under the MPRDA.

Footnotes

[1] A 'mining right' is defined in section 1 of the MPRDA as "*a right to mine granted in terms of section 23(1);*"

[2] A 'prospecting right' is defined in section 1 of the MPRDA as "*a right to prospect granted in terms of section 17(1);*"

[3] 'Mining Operation' is defined in section 1 of the MPRDA as "operation relating to the act of mining and matters directly incidental thereto

[4] Including Sections of MPRDA for prospecting rights and mining permits

[5] 'Holder' is defined in section 1 of the MPRDA as "*in relation to a prospecting right, mining right, mining permit, retention permit, exploration right, production right, reconnaissance permit or technical co-operation permit, means the person to whom such right or permit has been granted or such person's successor in title;*"

[6] *Minister Of Mineral Resources and Others V Mawetse (SA) Mining Corporation Proprietary Limited 2016 (1) SA 306 (SCA)*

[7] 'Effective Date' is defined in section 1 of the MPRDA as "*the date on which the relevant permit is issued or the relevant right is executed;*"

[8] [Mining Titles](#)

[9] Section 5(1) of the MPRDA

[10] Note that the prior written consent of the Minister of Mineral Resources and Energy under section 11 of the MPRDA is required if a mining right is to be sold to a third party

[11] Under section 18(5) of the MPRDA, a prospecting right in respect of which an application for renewal has been lodged shall, despite its stated expiry date, remain in force until such time as the renewal application has been granted or refused



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