



MINING & RESOURCES

Minority shareholders and disposals of “controlling interests”: The limits of Section 11 of the MPRDA

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Given that the Draft Mineral Resources Development Bill, 2025 is yet to be promulgated, there remains some uncertainty as to the interpretation of “controlling interest” and when a change in such “controlling interest” triggers the requirements of section 11 of the Mineral and Petroleum Resources Development Act, 2002 (“MPRDA”) to obtain ministerial consent prior to transfer of the controlling interest.

In the recent judgment of *Afrimat Iron Ore (Pty) Ltd v Minister of Mineral and Petroleum Resources and Others* (2026/089786) [2026] ZAGPPHC 403 (18 May 2026) (“**Afrimat Judgement**”)[1], Judge Millar provides important guidance on the interpretation of “controlling interest” under the MPRDA, specifically in the context of a minority shareholder having an ‘interest’ in the transfer of a mining right in terms of section 11 of the MPRDA.

Background

Section 11(1) of the MPRDA provides that

“A prospecting right or mining right or an interest in any such right, or a controlling interest in a company or close corporation, may not be ceded, transferred, let, sublet, assigned, alienated or otherwise disposed of without the written consent of the Minister, except in the case of change of controlling interest in listed companies.”

The dispute in the *Afrimat Judgement* was centred around whether the fifth respondent (Lungile Mlotshwa) had an interest in the mining right that required consideration before the Minister could consent in terms of section 11 of the MPRDA to the transfer of the mining right

from Ochre Shimmer Trade and Invest 78 Proprietary Limited ("**Ochre**") to Afrimat Iron Ore Proprietary Limited ("**Afrimat**")^[2].

The fifth respondent's late husband, to whom she was married in community of property, previously held 34% of the shareholding in Ochre. On his death, the fifth respondent, by operation of law, held an undivided half share in the community estate and thereby acquired 17% of her late husband's shares in Ochre, which she was entitled to claim transfer of into her name. The fifth respondent subsequently acquired the remaining 17% of the shares in Ochre by agreement with her late husband's estate, giving her 34% of the total issued shares in Ochre^[3]. The fifth respondent subsequently entered into separate agreements with the remaining two shareholders of Ochre (who each held 33% of the issued shares in Ochre) to sell her shares in Ochre to them (in different proportions), which agreements were concluded between May and October 2024 with an effective transfer date of 31 October 2024^[4]. After the conclusion of the abovementioned sale agreements, the remaining two shareholders acquired in different proportions the 34% shareholding of the fifth respondent and granting one of the remaining shareholders a majority in Ochre.

During February 2026, the fifth respondent became aware of a transaction between Ochre and Afrimat, in terms of which Ochre wished to dispose of its mining right to Afrimat and required section 11 ministerial consent under the MPRDA prior to effecting transfer of the mining right^[5]. The fifth respondent objected to the transfer of the mining right on the basis that she still held an interest in the mining right because the transfer of her shares to the remaining shareholders in October 2024 had not been approved by the Minister in terms of section 11 of the MPRDA, and contending that the transfer was void ab initio^[6].

Reinforcement of the Substance-Over-Form Approach

The court in the Afrimat Judgment endorsed a substance-over-form approach in its interpretation of whether there has been a change in the "*controlling interest*" requiring section 11 approval and specifically considered the judgements hand down in the *Mogale Alloys v Nuco Chrome Bophuthatshwana*^[7] and *Vantage Goldfields SA v Argomanz*^[8] which respectively considered what constituted an 'interest' and the disposal of a controlling interest in a mining right that would trigger the requirement of obtaining section 11 ministerial consent. Both judgments reiterated that if the effect of a disposal would be that the holder of a controlling interest would lose such control, then the disposal would require the Minister's consent, even if no-one else acquires that controlling interest.^[9]

The court in the Afrimat Judgement reiterated that an assessment of control should not be confined to legal ownership alone. Instead, regard must be had to the practical ability to direct the affairs of the company and to influence strategic decision-making^[10]. The court recognised that although the fifth respondent held one additional share (34% in contrast to the 33% held by each of the remaining two shareholders) she did not hold a sufficient shareholding for it to constitute a controlling interest, because any two of the three shareholders acting in concert would together hold a controlling interest and the remaining two shareholders jointly held 66% and control Ochre^[11]. The fifth respondent's 34% could only ever constitute part of a controlling interest when exercised together with one or the other of the shareholders^[12]. Furthermore, the court held that the fifth respondent erred in the interpretation of section 11(1) intimating that her 'interest' vested in the Mining Right. The Mining Right was held by Ochre and subject to the shareholding of Ochre Shimmer, therefore none of the shareholders in Ochre held a direct interest in the Mining Right itself^[13].

The court in the Afrimat Judgement further emphasised that section 11(1) of the MPRDA does not relate to the acquisition of a controlling interest in a right holder (which occurred when one of the original shareholders purchased the majority of the shares in Ochre from the fifth respondent), and only relates to the disposal of a controlling interest in a right holder^[14]. In the circumstances, section 11 ministerial consent was not required to give effect to the internal restructure of Ochre and the transfer of the fifth respondent's shares to the remaining shareholders of Ochre^[15].

Conclusion

The Afrimat Judgment reinforces the importance of undertaking a comprehensive regulatory assessment when structuring transactions involving mining rights. The decision serves as a timely reminder that the concept of control extends beyond the mere transfer of shares and that the requirement for the Minister's consent under section 11 of the MPRDA is triggered on the disposal of a controlling interest, not the acquisition of control. As mining transactions continue to become increasingly complex, given the current legislative framework, the judgment provides a useful guide for assessing when ministerial consent in terms of section 11 of the MPRDA is required and highlights the importance of aligning transaction structures with the objectives of the MPRDA.

^[1] *Afrimat Iron Ore (Pty) Ltd v Minister of Mineral and Petroleum Resources and Others* (2026/089786) [2026] ZAGPPHC 403 (18 May 2026) (hereinafter the "**Afrimat Case**").

[2] Afrimat Case para 2.

[3] Afrimat Case paras 11 and 17.

[4] Afrimat Case para 18.

[5] Afrimat Case paras 19–21.

[6] Afrimat Case para 21.

[7] Mogale Alloys (Pty) Ltd v Nuco Chrome Bophuthatswana (Pty) Ltd and Others 2011 (6) SA 96 (GSJ)

[8] Vantage Goldfields SA (Pty) Ltd and Another v Arqomanzi (Pty) Ltd and Others (733/2022) [2023] ZASCA 106 (27 June 2023)

[9] Afrimat Case paras 26 – 28

[10] Afrimat Case paras 26 and 27.

[11] Afrimat Case para 27.

[12] Afrimat Case para 29.

[13] Afrimat Case para 23

[14] Afrimat Case para 30.

[15] Afrimat Case paras 29 and 30.



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