Concepts for the Regulations Pertaining to the Financial Provision for Prospecting, Exploration, Mining or Production Operations

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Environmental Advisory Services
Content

• Recap of what was provided for in MPRDA
• Motivation for change
• Overall Principles
• Specific amendments – represents a departure
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• Way forward
Background

• Sections 41 and 43 of the MPRD Act required the owner to make financial provision for all mining related environmental liabilities
• 23 April 2004 - Mineral and Petroleum Resources Development Regulations issued
  • Part III
    • 53 – Method of financial provisioning
    • 54 – Quantum of financial provision -
      • Guideline published by DMR including itemisation of actual costs for Premature closure/ Decommissioning and final closure/ Post closure management of residual and latent environmental impacts
    • Annual update of the quantum
      • As identified in EMP or EMPR or
      • As determined by the Minister
    • Inadequacies to be rectified in amendments to the EMP or EMPR
      • Or as determined by the Minister
• As at 2008 - 5 906 abandoned mines, 1 730 were classified by the CGS as high-risk mines – most prior to 2002 when MRPD can into force
Motivation for change

• One Environmental System – environmental function of mining managed through NEMA
  • Prior to 8 December 2014 - environmental aspects of mining activities were regulated in terms of the MPRDA
  • In 2008 - agreement to align the environmental function of mining
  • Related to financial provision - the agreement entailed
    ✓ Environmental function of mining to be regulated under NEMA
  – Changes were made to NEMA
    ✓ 24P – Financial provision for remediation of environmental damage
    ✓ 24R - 24R was related to mine closure moved to NEMA
Evaluation - Environmental Governance framework in the Mining sector- Study Findings

• Adequacy of the Guideline for the determining FP
  – considered insufficient for calculating the costs of rehabilitation
  – out-dated, too generic, does not include underground or surface water liabilities, which is a large % of liability

• Effectiveness of institutional mechanisms to promote good governance
  – Currently limited closure certificates are issued – 2013/2014 (575 were under review - 159 were issued)
  – Under MPRD DMR reluctant to close mines as liability transfers to State
  – Guideline for FP is insufficient – only 60% of operational mines in 2012-2013 had adequate financial provision
Principles

• Amounts determined by actual calculation
• Every mine to have a rehabilitation fund
• Incentivise annual rehabilitation & risk reduction
• Transparency – using EMPR
• Third party checking – auditing and publishing
• Amount adequate for specified time
• Limit discretion
• Formalise care and maintenance – can occur in a controlled manner
• Preference for guarantees and insurance products – risk reduction
• Auditing
• CEO accountability
• Board accountability
• Guidance on plans
• Funds for long term liability – incentivise closure
• Enable rehabilitation without reliance on closure certificate
Departure from MPRD regulations

• Scope of financial provision
  – Various risks associated with various phases
    • Annual rehabilitation and remediation;
    • decommissioning and closure activities at the end of operations
    • remediation & management of latent or residual impacts
  – Intended to be risk based deduct annual rehab each year based on survey reduce overall risk over time

• Method for determining financial provision –
  – detailed itemisation of activities and actual surveyed related costs and risk determination
  – For closure – sliding scale of accuracy required
    • 30 years from closure accuracy of ± 50%, 30 or less but more than 10 = 70%; 10 year or less but more than 5 = 90%
Departure from MPRD regulations

• Availability of funds
  – Ensure that all mines had adequate funds available at all times – same provisions for all mines
    • Decided on a 10 year timeframe as there would be time required to finalise arrangements should a mine terminate unexpectedly

• Vehicle for payment – one or a combination
  – Removed provisions which were based on agreements – transparency and made exceptions
    • Move toward financial guarantee from a bank or from an insurance company – registered encourage risk reduction and clear manner of release of funds
    • deposit into an account administered by the Minister of DMR
    • contribution to a trust fund – only for latent defect portion of the calculation and if it’s a mine right holder – cede to DMR on closure
Departure from MRPD regulations

– Procedures in the event of the bank or insurer wanting to withdraw the financial guarantee
  • Where the insurer intends to withdrawn insurance – must notify DMR and DEA
  • DMR **must** call on the financial guarantee and deposit the funds in a bank account until alternative arrangements can be made

– General requirements
  • Specialists to determination of the financial provision as well as the sum and the annual review – reduces burden on DMR
Departure from MRPD regulations

• Determination of the financial provision by the applicant
  – The applicant must submit the plans and calculations of the financial provision to the Minister DMR as part of the application for EA information – calculation is transparent

• Review, assessment & adjustment of the financial provision
  – Must review all plans annually and adjust accordingly
    • Calculated by specialists
    • Defer annual rehab against final closure
  – The review of the adequacy of the financial provision including the proof of payment must be independently audited – transparency and third party check
    • included in the audit of the EMPR as required by the EIA regs (five years) – transparency
Departure from MPRD regulations

• Preparation and submission of plans
  – The sum including the manner in which the sum was calculated must appear in the EMPR required in terms of EIA regulations – transparency
  – The assessment of adequacy of the financial provision and proof of making the adjustment must be accompanied by a declaration signed by an independent auditor reconciling the financial provision submitted and any update thereof with the estimates of exposure and liability in the financial statements of the holder – third party check board knowledge of arrangements

• Responsibilities of right or permit holder
  – EMPR must be made available to the public
    • Website of holder
    • Site office of the mine
    • On request
Departure from MPRD regulations

– Identified the responsibility of the CEO to implement plans, ensure FP etc. – accountability and liability

  • All documentation submitted to the DMR must be signed off by the CEO and the independent auditor – accountability and liability

• Powers of the Minister of DMR

  – May only grant EA after arrangements have been made for financial provision and proof is provided
Departure from MPRD regulations

• Care and Maintenance
  – Holder must apply to be put on Care and Maintenance – formalise and an offense not to have permission
  – Review approval every five years – determine the necessity to remain on C&M
  – Care and maintenance plan – ensure management while on care and maintenance
  – Continue to maintain, review and audit FP during C&M
Concerns raised

- Concerns raised - seem to have done a lot wrong
  - Removal of trust fund as a vehicle other than latent
    - Attract tax on withdrawal
    - Removal of ability for tax benefit
    - Reduces the amount of rehabilitation fund
  - Removal of MOAs
  - 10 year paid up is raised as a concern
  - Auditor signing off on plans
  - Appendix requires stakeholder consultation for the final rehabilitation plan – should not apply to operating mines
  - Concern that for mines that are unable to do annual rehabilitation the funds set aside for 10 years may not be sufficient should premature closure occur
  - Overstepped the NEMA mandate with respect to C&M
Way forward

- Engage with Treasury around trust funds
- Clarification note to be released
- Correction notice to regulations expected towards the end of the year
Thank you for your attention