

# Minister tries new tactic to push through Mining Charter

After reaching a [legal stalemate](#) with the Chamber of Mines (CoM) over the Mining Charter III, the minister of mineral resources, Mosebenzi Zwane, has published a [notice](#) in the *Government Gazette* on his intention to impose a moratorium on prospecting and mining rights.



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The moratorium applies to:

- the granting of any new application for a prospecting right and mining right in terms of sections 16 and 22 of the Mineral and Petroleum Resources Development Act (MPRDA);
- the processing of applications for renewal of a prospecting right and renewal of a mining right in terms of sections 18 and 24 of the MPRDA; and
- the granting of applications in terms of section 11 of the MPRDA.

This moratorium will, however, not apply to applications for new rights, renewal of existing rights and applications under section 11 of the MPRDA, received and accepted before 19 July 2017, subject to the condition that such applications, if granted, will not immediately be subject to the requirements of Mining Charter III.

The minister has granted interested and affected stakeholders until 4 August 2017 to submit representations to his deputy director general.

Section 49(1) of the MPRDA stipulates that the minister may, after inviting representations from relevant stakeholders:

- "prohibit or restrict the granting of any reconnaissance permission, prospecting right, mining right or mining permit in respect of land identified by the Minister for such period and on such terms and conditions as the minister may determine; and
- restrict the granting of any reconnaissance permission, reconnaissance permit, prospecting right, mining right or mining permit in respect of a specific mineral or minerals or class of minerals identified by the minister for such period and on such terms and conditions as the minister may determine".

Furthermore, the minister is obligated to consider "national interest, the strategic nature of the mineral in question and the need to promote the sustainable development of the nation's mineral resources" in reaching his decision to apply the moratorium.

## Difficult to understand

It is difficult to understand how this radical step on the part of the Minister may be justified as being in the "national interest" or "promot[ing] the sustainable development of the nation's mineral resources", says Jonathan Veeran, partner at Webber Wentzel.

"In any event, we are of the view that section 49 cannot be interpreted so broadly by the minister so as to impose a moratorium throughout South Africa and in respect of all minerals for an indefinite period. Section 49 specifically states that any moratorium imposed must be in respect of specific land, minerals and time period as "identified by the minister". Thus, it would be overly broad application of the minister's powers should he apply a moratorium across South Africa for all minerals for an indefinite period."

Section 49(2) goes on to state that "a notice contemplated in subsection(1) does not affect prospecting or mining in, on or under land which, on the date of the notice is the subject of a reconnaissance permission, prospecting right, a mining right, a retention permit or a mining permit".

"The minister is clearly attempting to extend the ambit of section 49(2) by attempting to apply the moratorium to section 11 applications, and renewal applications.

"We can only speculate as to the rationale of the minister, but it is difficult not to see this as an attempt to force the industry to ultimately bow to the minister's whim in respect of Mining Charter III," he says.

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