

KNOW YOUR RIGHTS AS A LANDOWNER OR LAWFUL OCCUPIER WHEN A MINING COMPANY WANTS TO PROSPECT OR MINE ON YOUR PROPERTY

Very often landowners/lawful occupiers of properties are unaware of their rights when mining companies approach them to conduct mining or prospecting on their property. The below contains a brief overview of your rights and the process to be undertaken to best protect you and the future value of your property.

1. Does a mining company want to prospect or mine on your property?

If you answered "Yes" to this question that means you have either:

- (i) been approached by a mining company to obtain access to your property for mining or prospecting; or
- (ii) received notification of proposed mining or prospecting operations to be conducted on your property or in the surrounding area either from the mining company or an environmental consultant acting on behalf of the mining company.

2. Did you know that you are granted various rights in the Mineral and Petroleum Resources Development Act, Act 28 of 2002 (the "MPRDA")?

In terms of the MPRDA, amongst others:

- (i) the mining company is obliged to consult with you as an interested and affected party (being a person that will be affected by the proposed operations);
- (ii) if no consultation has taken place, you can submit an objection or appeal to the Department of Mineral Resources against the granting of the right to the mining company;
- (iii) you are entitled to compensation for losses and damages that you will or are likely to suffer as a result of the activities on your property (incl. the diminished value of your property from being unable to use the property for farming or related purposes).

3. How can you ensure that your rights are protected?

The best way to protect your rights is to negotiate, draft and enter into a Land Use and

Compensation Agreement with the mining company. This agreement will, amongst others, regulate:

- (i) the type of mining, and manner in which mining will be undertaken on the property;
- (ii) the duration for which the mining company can utilise the property for mining or prospecting;
- (iii) the payment of compensation (calculated by considering losses and damages, access, tonnages to be mined, lack of grazing or crop and the diminished value of the property etc.);
- (iv) rehabilitation of the property (specifically the manner in which it is to be undertaken) and the payment of compensation in the event that rehabilitation is not timeously completed;
- (v) boreholes and the impact of mining on water to ensure that resources are protected; and
- (vi) various other rights and obligations.

4. What should you do when approached by a mining company?

The mining company is obliged to consult with you. We recommend that you ensure that you are aware of your rights and the obligations of the mining company in terms of the MPRDA. It is essential to obtain your own adequate representative to negotiate, draft and conclude an agreement that protects your rights and the value of your property as aforesaid.

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