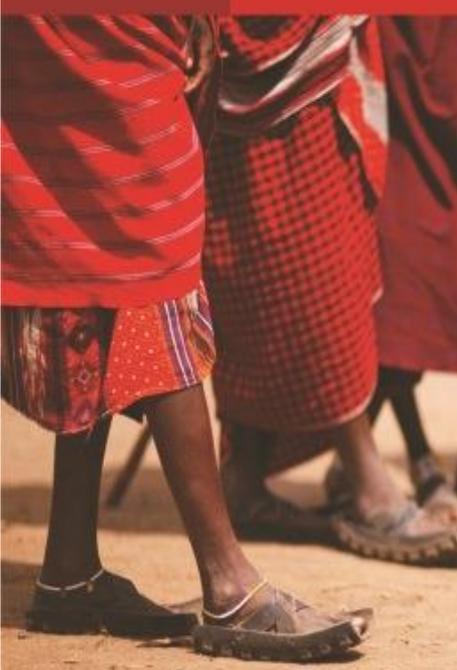




DIGBY WELLS
ENVIRONMENTAL



Proposed Regulations pertaining to the Financial Provisions for Prospecting, Exploration, Mining or Production Operations.

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1 Introduction

The long awaited changes to the Financial Provisioning Regulations, 2015 (referred to as GN R 1147) were promulgated in Government Notice Regulations 1228 on 10 November 2017 (GN R1228).

The intention of the Regulations is to standardise the manner in terms of which financial provision (FP) is calculated and provided for regarding the costs associated with undertaking the management, rehabilitation and remediation of environmental impacts from prospecting, exploration, mining or production operations through the lifespan of such operations and the residual environmental impacts that may become known in the future.

GN R1228 applies to an “applicant”, “holder” and “holder of a right or permit” and different provisions are made applicable to each of these persons/entities as defined in the Regulations.

2 Definitions:

- An Applicant is differentiated into an applicant for an Environmental Authorisations as part of a Prospecting Right, Mining Right or Mining Permit and an applicant for an amendment to a right or permit in terms of section 102 of the Mineral Resource and Petroleum Development Act (MPRDA) or an applicant for a consent to cede, transfer, assign or alienate in terms of section 11 of the MPRDA.
- A “holder”, refers to a mining entity that has a mining right, prospecting right or mining permit prior to the coming into effect of the GN R1147 and for which no closure certificate has been granted.
- The “holder of a right or permit” refers to a holder of any right or permit under the MPRDA which was issued after the coming into effect of GN R1147 or GN R1228.

These definitions are important in order to differentiate the legal obligations relevant to each category in respect of the closure cost calculations, the reports that have to be compiled as part of the financial provisioning, the audits that need to be conducted and also differentiates these requirements by means of the stages of the mining operations.

3 Requirements

- It is generally accepted that the applicant, holder or holder of a right or permit, must determine the costs and make financial provision for the rehabilitation and remediation of the adverse environmental impacts relevant to their prospecting or mining operations (exploration rights and production rights are not being considered here). The scope of the FP must include rehabilitation and remediation measures during the operational phase, rehabilitation, decommissioning and closure activities expected at the end of the prospecting, or mining operations; and remediation and management of residual environmental impacts, including the pumping and treatment of polluted or extraneous water.



- Whereas in the past GN R1147 did not provide guidance in terms of the methodology for financial provisioning GN R1228 includes Appendix 1 and 2 which sets out the methods to be used based on whether the provisioning applies to a new development (Greenfields) site or an existing operation (Brownfields) site, respectively.
- A significant change in the new Regulations is the period which the financial provision is required to cover. The FP must be calculated using the greenfields/brownfields methodology and must ensure that at any given time that the FP is equal to the sum of the costs of implementing the activities identified in the final rehabilitation, decommissioning and closure plan and the residual risk assessment report for a period of 3 years for any Mining Right and only 1 year for a Mining Permit or Prospecting Right application. Although the timeframe has been reduced from 10 years to 3 years for a mining right application, the calculation of the provision will not be reduced dramatically and may even increase in certain circumstances as a result of the requirement to include CPI plus 2% and inclusion of VAT.
- It is also noted that although the Regulations require the completion of an annual rehabilitation plan and that the financial provisioning must be determined for annual rehabilitation and remediation, this cost will come out of operational expenditure and is not required to be included in the financial provision fund. This deals with the concern with GN R1147 that mining companies were required to double account for concurrent rehabilitation through operational capital and still provide for the annual rehabilitation in the financial provisioning.
- The existing financial vehicles for financial provision remain unchanged and are financial/insurance guarantees, direct deposit in the DMR FP account, or a contribution to a trust fund. However, it is stipulated that a financial guarantee or insurance guarantee may not be used for the financial provision required for remediation of residual environmental impacts.
- The determination of financial provision as well as the review, assessment and adjustment of FP can be done by the applicant, holder or holder of a right or permit as long as an independent specialist is appointed to externally review the determination, review and assessment.
- The requirements relevant to the annual assessment, review and adjustment of financial provision has remained and will have significant cost implications for mining companies. Whereas under the MPRDA financial guarantees related to closure were for the most part calculated internally and reviewed by external specialists, reviewed by auditing firms and included in audited financial statements, GN R1228 stipulates that all documentation submitted to the Minister must be signed off by the CEO and the information regarding the financial aspects contained in such documentation must be signed off by an independent auditor.

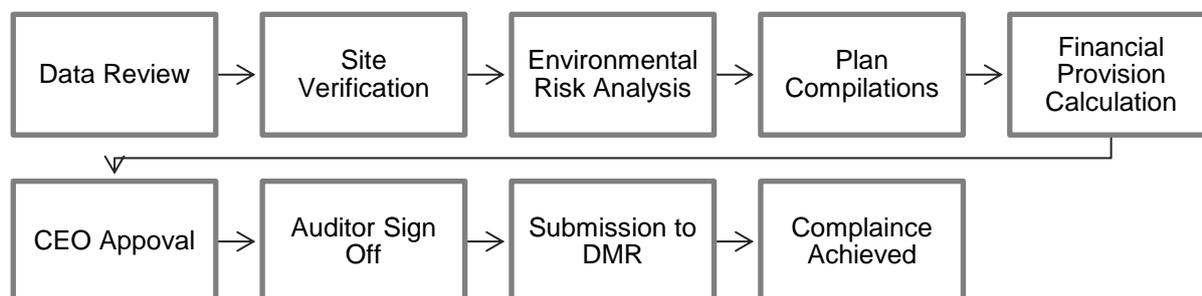


- It is obvious that the compilation of the documentation, review and internal and external approval process will be time consuming and may have significant cost implications. At the end of the approval chain negotiations with the relevant financial service providers will also still need to be conducted, should they wish to make use of such a financial vehicle. It must also be noted that there is no distinction made for Prospecting Rights and Mining Permits in respect of the annual review, assessment and adjustment of the FP and will also require sign off by the independent auditor and the CEO before submission to the DMR.
- In addition to the above, such determination, review and adjustment of the financial provision as well as the audit of the financial provision once submitted to the DMR must be made available on a publically accessible website of the mining company, at the site office of the prospecting or mining operations and must be made available to the public on request.
- The methodology for calculating financial provision for new and existing development is included in appendix 1 & 2 respectively. The Financial guarantee and deed of trust is included in appendix 3 and 4 respectively. The minimum content of an annual rehabilitation plan, final rehabilitation, decommissioning and mine closure plan and the minimum content of an environmental risk assessment report are included in appendix 5, 6 and 7 respectively.
- There are several transitional arrangements that are made applicable and will be discussed separately.

The below tables provide a detailed synopsis of the applications, documentation, and annexure relevant, as well as the associated timeframes of a new application for a prospecting right, mining right and mining permit after the coming into effect of GN R1128.

Application	Mining Permits/Prospecting Right	Mining Permits/Prospecting Right	Mining Right	Mining Right
New or existing development	Greenfields	Brownfields	Greenfields	Brownfields
FP Methodology	Appendix 1 methodology	Appendix 2 Methodology	Appendix 1 methodology	Appendix 2 Methodology
Reports	EA Application	EA Application	EA Application	EA Application
Environmental Assessment Process	Basic Assessment Process	Basic Assessment Process	Scoping and EIA Process	Scoping and EIA Process
Environmental Reports	Basic Assessment Report (BAR)	Basic Assessment Report (BAR)	EMP	EMP
	Annual rehabilitation Plan	Annual rehabilitation Plan	Annual rehabilitation Plan	Annual rehabilitation Plan
	Final rehabilitation decommissioning and closure plan			
	Residual Risk Assessment Report			
FP Availability Period	1 year	1 year	3 years	3 years
FP Calculation	Costs associated with implementing final closure plan and residual risk assessment report	Costs associated with implementing final closure plan and residual risk assessment report	Costs associated with implementing final closure plan and residual risk assessment report	Costs associated with implementing final closure plan and residual risk assessment report

Table 1: Applications, Documentation, and Annexure relevant to a new application for a prospecting right, mining right and mining permit after the coming into effect of GN R1128.



Application Process	Description	Alternative Time Frame
Data review	Review of all existing environmental data to highlight potential areas of concern or risks	4 to 6 weeks
Site verification	Detailed site verification to determine extent of disturbance	2 weeks
Environmental risk analysis	Identification of residual environmental risks	4 weeks
Plan compilation	Drafting of annual and final rehabilitation actions on which financial provision estimate will be based.	6 to 8 weeks
Financial provision calculation	Itemized breakdown of actual costs associated with rehabilitation and closure	6 weeks
CEO approval	The mine's CEO is required to review and approve the financial provision	4 weeks
Auditor approval	Financial auditor to review and sign off the financial provision estimate	4 to 6 weeks
Submission to DMR and approval	Submission and approval of the financial provision by DMR within 30 days.	2 weeks
Compliance Achieved		

Table 2: Timeframes relevant to a new application for a prospecting right, mining right and mining permit after the coming into effect of GN R1128.