

Minerals and Petroleum Resources Development Act, Act No. 28 of 2002 (MPRDA)

The MPRDA, which was enacted on 1 May 2004, provides for parties who are of the opinion that their rights have been expropriated as a result of that Act to claim compensation from the State. In terms of the Implementation of Legal Proceedings Against Certain Organs of State Act, 2002 (ILPA), any such claim for compensation must be made within three years of, *inter alia*, the action giving rise to the claim (i.e. in this instance the promulgation of the MPRDA) and must be preceded, within six months of the action arising, by a notice to the State giving notice of such claim.

Accordingly, as responsible corporate citizens, with a duty to protect the interests of its shareholders in an environment of newly developed legislation, notice was duly given during October 2004 by all affected group companies.

Regulation 82 A to the MPRDA was published in Government Gazette 26942 on 29 October 2004, providing for the Director General of the Department of Minerals and Energy (DME) to determine whether a claimant has a valid claim for compensation as a result of expropriation, or not. Such determination is subject to an internal appeal to the Minister of Minerals and Energy. Where a claim is accepted as valid, the amount of compensation must be agreed between the Director General and the claimant or determined by a competent court. The Regulation 82 A procedure must be exhausted prior to the institution of any claim for compensation.

Whereas all "old order" rights held within the Implats group of companies are currently the subject of applications for conversion to "new order" rights or applications for the grant of additional "new order" rights in terms of the provisions of the MPRDA, several factors that will have to be taken into consideration for possible claims for compensation as a result of the expropriation will only become apparent in the fullness of time. These may include conversions being granted either wholly or in part, new applications being granted or refused, and conditions being imposed on such new order rights (including but not limited to royalties payable).

Once the outcome of all applications made, as listed in Table 2, is known, the respective Implats group companies will be in a position to decide whether to institute the Regulation 82 A procedure and then, possibly, institute the conventional litigation process to claim compensation for expropriation. These claims will be quantified in accordance with the provisions of Item 12 of the MPRDA, as read in conjunction with the Constitution of the Republic of South Africa.

In all likelihood, the necessity to institute any compensation claims under the MPRDA or ILPA will be obviated if applications for "new order" rights under the MPRDA – either as mining or prospecting rights or conversions of old order rights – are successfully granted by the DME.

The Minerals and Mining Development Board, provided for in Section 57 of the MPRDA (the Board), has been established and was officially launched on 29 June 2005. The Board comprises 18 members, which are appointed by the Minister of Minerals and Energy and must include members representing the relevant State Departments, organised labour, organised business, relevant non-governmental organisations, relevant community-based organisations and persons with appropriate expertise, experience or skills to enhance the Board's capability of performing its functions more effectively.

The Board's functions include advising the Minister of Minerals and Energy on the sustainable development of South Africa's resources, the transformation and downscaling of the minerals and mining industry, as well as dispute resolution. The Board must also ensure the promotion of human resource development in the minerals and mining industry in consultation with the Mining Qualifications Authority. Furthermore, the Board may report to the Minister of Minerals and Energy on any matter relating to the MPRDA and enquire into and report to the Minister of Minerals and Energy on any matter concerning the objects of the MPRDA.

The Precious Metals Beneficiation Bill and the Diamond Amendment Bill

The first Precious Metals and Diamonds General Amendment Bill [B-2004] was published for public comments in the Government Gazette No 26245 on 16 April 2004. The purpose of this Bill was to amend the Mining Rights Act 20 of 1967 and the Diamonds Act 56 of 1986 so as to provide for the rationalisation of the regulation of matters pertaining to the downstream development of precious metals and diamonds; to promote equitable access to, and local beneficiation of the nation's precious metals and diamonds; and to provide for associated matters.

A revised Precious Metals and Diamonds General Amendment Bill [B-2005] was published on 21 January 2005 in the Government Gazette No 27167 without requesting further public comments. That Bill was submitted by DME to Parliament during the first Parliamentary Session of 2005, which referred it to the State Law Advisors for their approval, before onward submission to the Portfolio Committee on