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Industry still concerned over mining bill, despite Mantashe's U-turn

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Minister Gwede Mantashe has invited industry to engage on the new draft mining law.

Dwayne Senior/Bloomberg via Getty Images

The Minerals Council said the draft mining law in its current form does not support growth and investment in the industry.
This is despite two corrections to the bill that were gazetted this week.
One legal expert said the move is a step in the right direction, but some uncertainty remains.
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Corrections to the draft mining law have failed to allay industry concerns over the potential anti-growth impact of the bill.

The Minister of Mineral and Petroleum Resources, Gwede Mantashe, this week issued two corrections to the draft Mineral Resources Development Bill to remove empowerment requirements placed on exploration activities, as well as a section 11 provision requiring ministerial consent for change of control in listed mining companies.

The Minerals Council South Africa, which represents almost all mining companies in the country, has voiced its concern over several aspects of the draft bill and noted its particular disappointment over the black economic empowerment requirements for exploration activities.

The council on Wednesday said it had “noted” the two corrections and would review the bill and submit its perspectives within the scheduled timeline of 13 August.

“The bill in its current form does not encourage or sustain the growth and investment that the mining industry needs to realise its full potential to create employment, stimulate the economy and fulfil its social mandate,” the council said in a statement.

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CURRENCIES	COMMODITIES	JSE INDEXES
Rand - Dollar	17.81	-0.0%
Rand - Pound	24.14	+0.1%
Rand - Euro	20.59	-0.0%
Rand - Aus dollar	11.65	-0.3%
Rand - Yen	0.12	+0.0%

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Mantashe has invited the industry to engage with his department on its concerns, although he has cautioned that he would not bend on empowerment and an aim to create black capitalists.

Peter Leon, mining law expert and partner at Herbert Smith Freehills Kramer, said the gazetted corrections are "a step in the right direction", but some uncertainty surrounding section 11 remains a concern.

While the correction to section 11 does away with an obligation for a listed mining company to obtain the minister's consent for a change in controlling interest, it is now unclear what the position of unlisted companies will be, Leon said.

Section 11 currently regulates the transfer of a controlling interest only in unlisted companies. The draft bill had, however, also proposed that any interest in an unlisted company would be subject to ministerial consent.

"There is no indication whether the department wishes to maintain the status quo, reduce the scope of the provision or expand it [for example, to any interest in an unlisted company], as was initially proposed," Leon said.

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