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NEWS ANALYSIS: Bill will overregulate mining, say legal experts

Draft law will dampen dealmaking activity and scare away foreign investment, critics warn

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by JACOB WEBSTER



Mineral resources minister Gwede Mantashe. Picture: GALLO IMAGES/MISHA JORDAAN

The proposed Mineral Resources Development Bill of 2025 has raised alarm bells among legal and industry experts, who warn that the regulatory overhaul could hurt investor confidence in the country's already vulnerable mining sector.

The bill seeks to tighten state control over several aspects of the industry, including the transfer of rights, prospecting, artisanal mining and environmental management in an effort to combat regulatory uncertainty.

Legal experts warn that the draft bill will dampen dealmaking activity and scare away foreign investment while SA is struggling to boost

exploration and capital spending.

The bill proposes changes to the Mineral & Petroleum Resource Development Act, SA's flagship mining regulation, and advocates for a much broader range of transactions that will require mining minister Gwede Mantashe's stamp of approval.

"The draft bill indicates that the government is seeking to overregulate transactions in the mining sector, which does not bode well, particularly in light of the capacity challenges the department of mineral & petroleum resources already faces," said law firm Cliffe Dekker Hofmeyr.

Under the proposed framework, ministerial approval would be required for changes in any interest in a company that holds a prospecting or mining right, or an artisanal or small-scale mining permit.

The draft bill also proposes that ministerial approval be required for changing a controlling interest in listed companies. Publicly listed groups were previously exempt from this policy.

"These proposed amendments burden rights holders and potential rights holders with onerous obligations to account for any change in interest no matter how insignificant and to keep abreast of movements of controlling interest in listed companies," said Cliffe Dekker Hofmeyr.

"These proposed amendments will undoubtedly elicit a lot of commentary and criticism from the industry," said the group.

In the lead-up to its release, industry bodies such as the Minerals Council SA had called for the draft bill to address regulatory uncertainty about prospecting rights to boost mining exploration.

Weak investment in exploration remains a constraint on the local industry. After contracting in 2023, SA's mining GDP grew only 0.3% last year, reflecting the lack of investment and profitability pressures that continue to undermine the sector's economic contribution.

The draft bill is an important step in reworking the local mining sector's regulatory environment to be more attractive to foreign investors.

However, rather than eliminating regulatory uncertainty about prospecting rights, the bill makes the requirements for the application of prospecting rights “significantly more onerous”, said Cliffe Dekker Hofmeyr.

Under the bill, the minerals industry’s BEE requirements, codes of good practice and housing and living standards would become formal considerations in the granting of prospecting rights.

“All applicants for prospecting rights will need to navigate significantly more red tape and abide by the somewhat ambiguous requirement in the bill in relation to empowerment,” said Cliffe Dekker Hofmeyr.

“This focus on empowerment for the granting of prospecting rights seems misplaced and does not take cognisance of the reality that exploration is generally a ‘money pit’ not a ‘moneymaker,’” it said.

Legal experts at Herbert Smith Freehills echoed these concerns in a webinar last week, warning that “prospecting, by its very nature, is a very uncertain and capital-intensive exercise”.

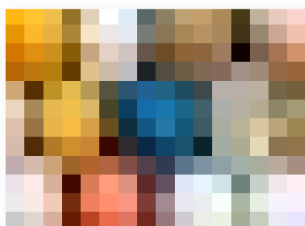
“To impose BEE requirements on prospecting rights makes no economic sense whatsoever,” said Herbert Smith Freehills partner Peter Leon.

NSDV mining lawyer Lili Nupen said the draft bill might represent a panicked attempt at protectionism from the department amid escalating trade wars and the rising demand for critical minerals.

She said the requirement for ministerial consent, which can take more than a year to obtain, to sell shares or sell a controlling interest in a listed company made the draft bill “completely unworkable”.

“We all know listed companies trade freely — that’s the whole point of a listed company.

“If this draft bill goes through in this format, our mining industry would be finished. We would see the majors completely divesting because they cannot sell any shares or do any sort of capital raise. They would get out [of SA] immediately, and our junior sector would be totally thwarted, because they won’t be able to raise capital,” said Nupen.

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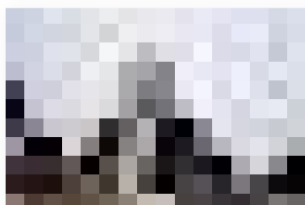
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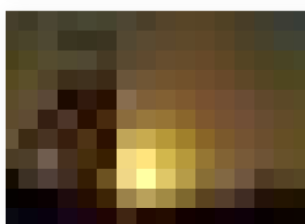
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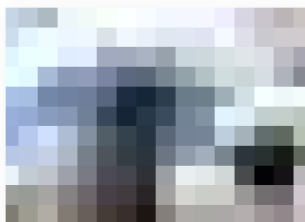
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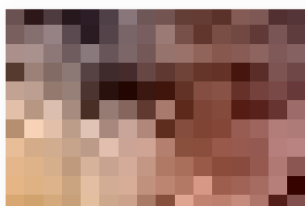
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