



## Update on the Nema Financial Provisioning Regulations

The Financial Provisioning Regulations, 2015 (the Regulations) published in terms of the National Environmental Management Act, 1998 (Act No.107 of 1998 as amended) (NEMA) was amended on 26 October 2016 by the Minister of Environmental Affairs (the Minister). The release of the proposed amendments to the Regulations on 9 September 2016. The Regulations promulgated on 26 October are brief and do not speak to many of the proposed amendments made within the document published for comment on 9 September 2016.

The following regulations have been amended:-

- Regulation 17(5) has been deleted. 17(5) addressed the transitional arrangements for compliance, and required that a holder ensure that a review, assessment and adjustment of the financial provision was conducted in accordance with Regulation 11 of the Regulations,
- the transitional period for the review, assessment and adjustment of financial provision has been extended to a 39 month timeframe, with final compliance to the Regulations now required no later than 20 February 2019. The holder, or the holder of a right or permit who applied for such a right or permit prior to the commencement of the Regulations but who obtained such a right or permit after the commencement of the Regulations, must within 39 months of the commencement of the Regulations and annually thereafter:-
  - ensure that a review, assessment and adjustment of the financial provisions is conducted in accordance with Regulation 11 of the Regulations; and
  - submit an updated financial provision including the plans and report contemplated in Regulation 11(1), a copy of the independent auditor's reports and proof of arrangements to provide the financial provision for approval by the Minister for Mineral Resources. The updated financial provision must be included in any audit required in terms of environmental authorisation of the Act, and attached to any amendment of an Environmental Management Programme to be submitted in terms of the Environmental Impact Assessment Regulations, 2014.

The amendments to the financial provisioning Regulations do not provide a substantially clearer direction to stakeholders in the mining and petroleum industry regarding requirements for compliance and associated steps to be taken in the immediate future. It is clear that the Government, notably the Department of Environmental Affairs (DEA), have acknowledged that more time is required to ensure that the Regulations are effectively and successfully integrated into the industry.

It is worth noting that the way in which environmental liability is determined (i.e. the requirement for the generation and submission of the Annual Rehabilitation Plan, Final Rehabilitation, Decommissioning and Mine Closure Plan and Risk Assessment Report) has not changed. The extended timeframe for compliance therefore provides the industry with an opportunity to appropriately assess and determine the potential impact on the quantum of environmental rehabilitation liabilities under the Regulations and the funding of such liabilities through appropriate financial instruments as governed by the Regulations.

Key concerns raised by various stakeholders which still require clarification include (but are not limited to):-

- the apparent non-alignment of the Regulations with the Income Tax Act;
- resolution of various concerns within the templates for the Trust Fund and Rehabilitation Guarantees which have been raised by various stakeholders;
- institutional mechanisms to manage remaining rehabilitation funds for addressing latent and residual impacts after closure certificates have been granted; and
- the specific procedures which the auditor must perform and the level of assurance required when signing off the financial aspects of the documentation which must be submitted to the Department of Mineral Resources (DMR) on an annual basis.

The most notable action yet to be completed is the formation of the technical task team between the industry and government (proposed by the DEA) to address outstanding concerns. The establishment of a multifaceted team which represents a broad range of interests and expertise will be critical in ensuring the successful integration of the Regulations.

Deloitte is actively engaging with government and industry stakeholders in order to assess the impact of the Regulations and the latest developments on its clients' businesses. Deloitte will continue to closely monitor developments and inform its clients accordingly. Whilst the latest developments suggest a postponement of the compliance deadline with regards to funding the liabilities, Deloitte advises clients to proceed with updating environmental rehabilitation liabilities carried on the balance sheet to align with the prescribed calculation methodology defined in the Regulations.

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Kind regards,

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