

Restriction on the granting of South African oil and gas rights

by Ntsiki Adonisi-Kgame and Edwin Berman

The South African Minister of Mineral Resources, Gwede Mantashe, published a notice in the government gazette on 28 June 2018 stating that there will be a restriction, in terms of section 49(1) of the Mineral and Petroleum Resources Development Act, 2002 (“MPRDA”), on the granting of applications for technical co-operation permits, exploration rights and production rights in terms of section 76, 79, and 83 of the MPRDA, from the date of publication of the notice (28 June 2018) until the publication of a notice of invitation for applications. Section 49 of the MPRDA itself refers to, *inter alia*, mining and prospecting right applications, but this provision is made applicable to applications for technical co-operation permits, exploration rights and production rights by virtue of section 69 of the MPRDA. Minister Mantashe’s notice is a final notice and is therefore effective as of 28 June 2018. The designated areas for restriction are depicted in a diagram attached to the notice, which depicts **all** of South Africa’s onshore and offshore petroleum acreage.

The Minister’s notice is reminiscent of, but distinguishable from, the notice published in the government gazette on 19 July 2017 by former Minister of Mineral Resources Mosebenzi Zwane inviting **representations** by relevant stakeholders on a **proposed** restriction under section 49(1) of MPRDA on the granting of any application for new prospecting and mining rights, applications for renewal of such rights, and section 11 applications. This proposed moratorium was widely opposed by the mining industry and in August 2017, the Department of Mineral Resources announced it would not pursue the proposed moratorium.

In contrast, Minister Mantashe’s moratorium summarily restricts the grant of applications for technical co-operation permits, exploration rights and production rights from the date of publication of the notice, without first having solicited representations from relevant stakeholders. Minister Mantashe therefore acted without the due process required in terms of section 49 of the MPRDA. For this reason alone, Minister Mantashe’s moratorium will qualify for review by a court.

Section 49 also only contemplates a prohibition or a restriction – where it is in the national interest – in respect of delimited areas of land and specific mineral and/or petroleum resources only. The provision does not empower the Minister to prohibit or restrict applications in respect of South Africa as a whole and in respect of all minerals and/or all petroleum resources.

Until the restriction is set aside by a court, the restriction remains valid and in effect.

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