

ENVIRONMENTAL LIABILITY ISSUES DURING TRANSACTIONS (Part 2)

When mining transactions take place, the potential consequences of environmental liability issues are seldom taken into account. Environmental liabilities may show up as one line in a complicated cash flow model, leading to the underestimation of the importance of these issues. However, this one line may mask a host of environmental considerations that may change the value of an asset.

According to the Mineral and Petroleum Resources Development Act No. 28 of 2002 (MPRDA), a mineral property must have an Environmental Management Programme Report (EMPR) that is approved by the Department of Minerals and Energy (DME) at the time that mining operations commence. This is not always the case at the time that a transaction is concluded between two companies. The EMPR approval process is lengthy and might require a number of re-submissions and amendments before it is approved. Approval of the EMPR can take from a few months to over a year. The financial implications of not having a valid EMPR at the time that a transaction takes place are related to:

- the inability to start mining operations immediately after the transaction is concluded;
- the new owners having to carry out amendments or re-submissions of the EMPR to the DME; and
- the new owners incurring fines imposed by the DME.

Venmyn believes that many of these environmental issues can be identified and managed by carrying out a thorough environmental due-diligence process, incorporated in the transaction's overall due-diligence process. Venmyn has partnered with MSA to offer this service, and Venmyn strongly encourages companies to consider an environmental due diligence when carrying out a due diligence or compiling a Competent Person's Report for a transaction. It is relatively inexpensive and not time consuming (given that all the necessary documentation is provided upfront). In addition, it can save a company from negative publicity and unnecessary expenditure.

For further information, please contact Mpai Motloun on 011 783 9903.