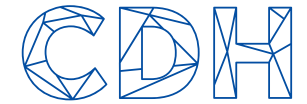


Mining & Minerals

ALERT | 31 January 2025



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The dispute resolution landscape for the mining industry in South Africa

South Africa, a country rich in minerals, presents significant opportunities, as well as challenges, for international investors seeking to invest in South Africa and benefit from minerals for the good of the local and global economies. Investment in South African minerals, whether in the form of debt funding or equity, requires knowledge and understanding of the context and legal frameworks within which such investment is made.

One of the key considerations for investors is the nature of the disputes that arise within the mining industry and the dispute resolution processes used to resolve such disputes. It is imperative that due thought be given to the legal framework within which disputes are resolved and, in particular, the efficient and cost-effective dispute resolution processes available to investors to resolve those disputes.

The South African context and stakeholders in the mining industry

Before considering the various processes available to investors in the event of disputes arising, it is imperative to understand the various stakeholders with whom investors will engage with from time to time.

The first stakeholder is the regulatory authority, the Department of Mineral and Petroleum Resources (DMPR), which, through the Minister of Mineral and Petroleum Resources, is the custodian of the nation's minerals. It is the DMPR, acting through its representatives, that ensures that the objectives of national legislation are achieved. The DMPR grants, *inter alia*, mineral rights while also having the right to suspend such rights in the event of contravention or suspected contravention of the governing legislation, being the Mineral and Petroleum Resources Act of 28 of 2002 (MPRDA).

The second category of stakeholders comprises the traditional authorities and communities surrounding a particular mining operation and on whose land the mining companies seek to benefit from the minerals. There is both national and provincial legislation governing these traditional authorities, the national legislation being the Traditional and Khoi-San Leadership Act 3 of 2019 (Traditional and Khoi-San Leadership Act).

The third category of stakeholders includes the organs of state that have been mandated to ensure compliance with environmental and other legislation applicable to mining operations, as well as the trade unions that seek to protect the interests of the employees on a mine. Failure to engage in a meaningful and appropriate manner with these stakeholders can lead to disastrous consequences.

The fourth category of stakeholders (even though these are traditionally perceived as being the primary/most important stakeholders from a pure corporate perspective) are, of course, shareholders of a mining company as well as third parties (suppliers, contractors and customers) with whom the mining company will contract.

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In engaging with any of these stakeholders, it is imperative that the appropriate expertise be mandated to ensure that investors comply with the regulations and the legal requirements for mining within South Africa. The manner in which disputes are resolved with each of these stakeholders and the forum to be used in resolving the disputes differs depending on the stakeholder with whom an investor or mining company will engage. Let's take a closer look at dispute resolution as it relates to engagement with some of these stakeholders.

The DMPR

The Minister of the Department of Mineral and Petroleum Resources is the head of the DMPR, the custodian of all the minerals within the Republic of South Africa. One of the discussion points and key takeaways from the Johannesburg Mining Indaba in October 2024 was the need for regulatory certainty, coupled with the urgent need for increased exploitation of minerals within South Africa. There has been a reduction in the number of applications for the exploitation of minerals within South Africa and foreign investment will add much-needed impetus in mining exploration.

The DMPR is still in the process of finalising the Cadastral system, which is a publicly available online map of South Africa's mineral resources and mineral rights, and which will provide an overview for the mining industry and give investors access to information about all of the mineral rights granted within South Africa, and which minerals are being mined and in what areas. It is hoped that this Cadastral system will reduce administrative inefficiencies within the DMPR and, in particular, the granting of overlapping mineral rights for the same minerals over the same land, which inefficiency has resulted in substantial

litigation to not only interdict mining operations over land, but also applications to review and set aside the granting of mineral rights over land where there are already existing rights in place in respect of the same minerals.

These inefficiencies have resulted in an escalation in litigation, which is counterproductive and delays the beneficiation of minerals and economic growth as the minerals in the ground are not being mined for the benefit of local and global economies.

This is compounded by the fact that dispute resolution involving the DMPR happens in the courts and, invariably, the High Court. The High Court is extremely efficient when it comes to urgent applications and in particular interdictory relief, such as an interdict against illegal mining or mining on land where overlapping rights have been granted. However, the same cannot be said for relief sought in the normal course in instances where an administrative decision of the DMPR is sought to be reviewed and set aside. Depending on the jurisdiction in which the application is brought, this can take anywhere between six to nine months and even longer, all while beneficiation is put on hold to the detriment of the local and global economies.



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Traditional communities

Mining within an African context requires co-operation and a mutually beneficial relationship with the traditional communities in a mining area. Interaction with traditional communities is not without its challenges and to avoid endless litigation, it is imperative that mining companies obtain clarity sooner rather than later as to who the authorised representatives of the traditional communities are that the mining company should be engaging with.

The legislation applicable to the traditional communities is the Traditional and Khoi-San Leadership Act and in most instances the affairs of a traditional community are administered by the traditional council, duly gazetted by the premier of the province within which the mining operations are conducted. In many instances, there are internal factions within these traditional communities that have made interaction and doing business with the traditional communities difficult and resulted in unnecessary protracted and costly litigation to the detriment of both the mining companies and the communities. Hopefully, in the future the organ of state that exercises authority over and assists traditional communities in managing their affairs, the Department of Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA), will play a more active and decisive role in resolving community disputes both internally and with external third parties such as mining companies. Our experience in many instances where there is litigation involving the traditional communities, and COGHSTA is cited as an interested party, is that COGHSTA simply abides by the decision of the High Court without taking the lead and proactively taking steps to resolve disputes with and within traditional communities.

Mining operations are invariably on traditional community land and the agreements concluded with these traditional communities for leasing land should provide for alternative dispute resolution in the event that disputes arise between the parties.

Shareholders and third-parties

The conclusion of agreements with shareholders and third-party suppliers is something within the control of investors and those looking to invest in the mining industry in South Africa. Every effort should be made to ensure that disputes are resolved as efficiently and expeditiously as possible. The terms of any agreement are within the control of the mining company and shareholders and it is imperative that all the necessary protective measures are put in place in order to guard the interests of the company and shareholders.



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Litigating within the Magistrates' Courts and High Courts of South Africa is not without challenges; the primary difficulty being delays in bringing matters to finality. Disputes within South Africa are either resolved through the court system, or by way of alternative dispute resolution. The court system does provide for alternative dispute resolution by way of mediation, with the recent amendment to the Rules of the High Court incorporating Rule 41A, which requires parties to attempt to mediate a dispute prior to the matter proceeding by way of application or action proceedings. Unfortunately, this rule does not have any 'teeth' and parties are not forced to mediate, albeit that they are required to comply with Rule 41A and state whether the dispute can be mediated. If one of the parties states that the dispute cannot be mediated, the matter will proceed to motion court or trial in the normal course.

The primary difficulty with litigating in the High Court is the delays in bringing disputes to finality. An example of this is the time delay between the moment when the parties are ready to proceed to trial and the date allocated for the trial. The time delay can be as long as four years, and this delay can be avoided by ensuring that any and all agreements provide for alternative dispute resolution in the form of informal settlement discussions between the parties followed by mediation, and in the event that mediation does not resolve the disputes, arbitration should ensue. This will substantially reduce the time it takes for disputes to be resolved.

The Arbitration Foundation of South Africa has rules that provide for the resolution of disputes on an expedited basis as opposed to disputes resolved in accordance with the ordinary commercial rules. In any event, even if the commercial rules are applied to a dispute, the disputes can be resolved in a substantially shorter period than disputes resolved in the High Court, especially disputes where trial proceedings rather than motions proceedings are instituted.

Lastly, consideration should be given to the arbitration forum that is used, especially in instances where cross-border disputes may arise.

Conclusion

There is a wealth of minerals within South Africa to be benefited for both local and global economic gain, and it is hoped that, moving forward, collaboration between the public and private sectors will restore the mining industry to its former glory and welcome foreign investment.

Disputes are inevitable, but if the public and private sectors, led by the mining companies, can come up with more constructive ways to resolve their disputes, it could create the legal and regulatory certainty that both crave.

Alternative dispute resolution is the way forward across all sectors and hopefully in the future we will be able to create and retain a precedent system that is legally recognised and accepted. Currently, arbitral awards are not reported and so the legal precedent of previously decided cases is lost in matters resolved by way of arbitration.

Burton Meyer and Denise Durand



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The African junior miner's playlist: Streaming and royalties on repeat



Welcome to the second article in our series exploring innovative financing models for the African mining sector. In our previous piece, *"Financing mining projects: Thinking outside the box to unlock Africa's mining potential,"* we examined how traditional financing models often fail to meet the unique needs of African mining projects. With the capital-intensive nature of mining and the challenges associated with securing funding, alternative financing structures are becoming essential for ensuring sustainable growth in the sector.

Now, we shift our focus to some recent case studies showcasing the potential benefits of royalty and streaming models, offering new opportunities for both investors and mining companies. By exploring these case studies, we aim to uncover how miners can structure deals for success, drawing strategic lessons that maximise growth and sustainability. Let the music play on as we explore how royalty and streaming deals are striking the right chord in the mining sector.

Goldstrike: A billion-dollar hit

One of the most celebrated examples of royalty financing is Franco-Nevada's agreement with the Goldstrike operation located in north-eastern Nevada in the US. In 1986, Franco-Nevada invested \$2 million to acquire a royalty on Goldstrike, a mine with 600,000 ounces of gold reserves at the time. Just three years later, a major discovery boosted reserves to 20 million ounces, transforming Goldstrike into one of the world's largest and most profitable gold mines. Over the life of the mine, Goldstrike went on to produce

over 44,4 million ounces of gold, a staggering return for Franco-Nevada. The royalty has paid Franco-Nevada more than \$1 billion in revenue, returning 500x on the initial investment.

This transaction highlights the upside potential of royalty financing. Mining investors can learn from Franco-Nevada's early entry and strategy of securing long-term royalties. By doing so, they can secure initial funding to develop their assets without diluting ownership. This deal also shows the value of retaining flexibility and setting up agreements that allow for future increases in reserves. When negotiating, junior miners should look for clauses that allow for adjustments based on future discoveries or changes in the mineral resource base.

Sandstorm Gold's \$45 million royalty on the Houndé gold mine

In a landmark \$45 million deal, Sandstorm Gold, a global leader in providing upfront financing to gold mining companies, acquired a 2% net smelter return (NSR) royalty on the Houndé gold mine in Burkina Faso. Operated by Endeavour Mining Corporation, the Houndé mine has become a flagship operation in West Africa, recognised for its exceptional production rates and low operating costs.



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Since its commercial production began in 2017, the mine has delivered outstanding results, averaging 235,000 ounces of gold annually at an all-in sustaining cost of \$610/oz during its initial four years. The mine's robust performance ensures steady returns for Sandstorm Gold and supports the mine's aggressive exploration and expansion plans.

This case study highlights the mutually beneficial nature of the NSR royalty arrangement, with Sandstorm Gold gaining reliable cash flow and Endeavour Mining Corporation receiving the financial support necessary for further exploration and development in the highly lucrative Kari North and South tenements.

Empress Royalty expansion on the Manica Gold Project

In January 2022, Empress Royalty Corp. (Empress) increased its royalty on gold sales from the Manica project in Mozambique, operated by Mutapa Mining & Processing LDA (MMP), from 2,25% to 3,375%, with an additional payment of \$1 million under a previously executed royalty purchase agreement. This increased royalty applies to gold sales up to a total of 95,000 ounces, after which the percentage will reduce to 1,125% and continue in perpetuity. The agreement is secured by a first-ranking security interest in certain MMP assets, ensuring Empress's position is protected throughout the duration of the project.

The Manica project, located in the Odzi-Mutare-Manica Greenstone Belt, consists of several key deposits, including Fair Bride, Guy Fawkes, Boa Esperanza and Dots Luck, on Xtract Resources Plc's (Xtract) mining concession. MMP has entered into a collaboration with Xtract, where MMP will build, finance and operate a carbon-in-leach (CIL) plant to process ore from Xtract's concession under a profit-share arrangement. This strategic partnership provides Empress with enhanced exposure to future gold production while maintaining a secure financial stake in the project, showcasing the potential of royalty and streaming agreements to generate long-term, stable returns.

This case study highlights the strategic benefits of royalty financing in providing both upfront capital and long-term revenue streams for mining projects. By increasing its royalty stake from 2,25% to 3,375%, Empress demonstrated how royalty agreements can be adjusted to reflect the evolving potential of a project. This flexibility allows investors to increase their exposure to a project's



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upside while offering miners the necessary funding to continue development without diluting ownership. The partnership between MMP and Xtract and the profit-sharing arrangement to build and operate the CIL plant, further illustrates how royalty deals can align the interests of various stakeholders, ensuring that all parties benefit from increased production and project success.

The strategic benefits of royalties and streaming

The examples above illustrate the immense potential of royalty and streaming financing. These deals allow mining investors to unlock capital for exploration, development and expansion without taking on debt or diluting ownership. Below, we outline why miners should consider integrating these models into their financial toolkits.

Unlocking capital without dilution

Traditional financing structures often necessitate the sale of equity, leading to ownership dilution and a corresponding reduction in control over mining assets. In contrast, royalty and streaming agreements provide upfront capital without requiring miners to relinquish ownership interests, thereby preserving their stake in the project. This structure is particularly advantageous for junior miners, who frequently encounter challenges in securing funding through conventional debt or equity financing.

Moreover, these agreements serve as a critical source of capital for exploration and development activities, allowing mining companies to accelerate project timelines and enhance resource delineation. Given that junior miners may lack the financial capacity to obtain traditional loans, royalty and streaming arrangements offer an alternative means of securing funding while mitigating financial strain and supporting long-term project sustainability.

Reducing risk for investors

Royalty and streaming agreements offer a risk-mitigated investment structure by linking returns directly to production, ensuring that investors generate revenue only when the mine is producing. Unlike traditional equity investments, which are subject to broader market volatility and company performance, royalty and streaming contracts provide predictable, production-based returns. This model is particularly advantageous for investors seeking exposure to the mining sector without assuming operational risks, such as cost overruns, regulatory compliance issues, or commodity price fluctuations. For junior miners, these agreements provide an essential capital infusion without the burden of fixed debt repayments, allowing them to focus on resource development while ensuring that investors benefit from potential resource expansion and production growth.



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Chambers Global 2024 Results

Mining & Minerals

Chambers Global 2017–2024 ranked our Mining & Minerals sector in:
Band 2: Energy & Natural Resources: Mining.

Allan Reid ranked by Chambers Global 2017–2024 in
Band 2: Energy & Natural Resources: Mining.



Long-term stability

Streaming agreements, in particular, offer long-term revenue predictability, making them an attractive alternative to volatile equity markets or short-term financing solutions. By securing an ongoing stream of revenue tied to future production, mining companies can plan and execute long-term growth strategies without the constant pressure of refinancing or seeking additional funding. This stability is especially beneficial in cyclical commodities markets, where price fluctuations can disrupt traditional financing structures. Additionally, for investors, streaming deals provide exposure to mining assets without direct operational liabilities, ensuring a steady return even in fluctuating economic conditions. As a result, both miners and investors benefit from a financing model that promotes sustainable expansion and financial resilience.

Keeping the Beat Alive in African Mining

Royalty and streaming financing models are gaining traction in the African mining sector, particularly for junior miners who are often overlooked by traditional financing methods. By exploring these models and learning from global case studies, these mining companies can tap into an alternative source of funding that mitigates risks while providing long-term growth potential.

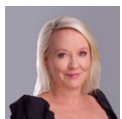
Incorporating streaming and royalty deals into their financing strategy enables miners to secure capital for development, reduce financial strain, and build lasting partnerships. These models offer a pathway to success that strikes the right chord for both investors and mining companies, unlocking new possibilities and driving Africa's mining industry forward.

Vivien Chaplin and Phetha Mchunu



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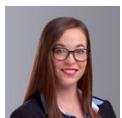
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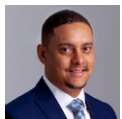
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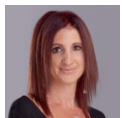
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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