



# INSIGHT

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## A day in the life of a mining lawyer

As a director of a leading black commercial law firm in Johannesburg, a typical day working on some of the biggest and most complex corporate deals always begins with a coffee, while checking emails to ensure that I respond proactively and swiftly to clients and matters. Once energised, the next step is always to work on the deliverables of the particular transaction or deal that we are working on.

In recent months, the commercial team has worked on impactful but challenging deals, particularly one that saw us rescue an entire town which is dependent on a certain entity or industry. This deal will, without doubt, create and retain jobs for thousands of workers in the most remote part of the country.

In the past year, we concluded another deal for a client purchasing a mine in the Democratic Republic of Congo. It was particularly challenging because the laws in the DRC are in French, so local counsel had to be briefed extensively to assist with the due diligence and the transaction documents. It is always an immense pleasure to work on cross-border deals, particularly on the African continent, and to appreciate the differences in the regulatory frameworks and the approaches of teams in other corporate environments.

In my experience, the regulatory aspects of M&A deals are always significant because of the various laws that are applicable in the different jurisdictions, and the economic and sometimes political factors that impact how these laws are implemented.

As a female working in corporate South Africa, I have been privileged to work with the best lawyers in the country. This exposure has been priceless. My male colleagues have been (and continue to be) intentional about empowering females, particularly females from historically disadvantaged backgrounds, to succeed.

As an environmental lawyer, I recently advised on a deal involving the acquisition of certain water assets. Environmental matters in commercial deals can be difficult to navigate as scientific methods and experts are always involved to determine the quantum of environmental liabilities, which can be billions of rands. It is, therefore, critical that when drafting commercial agreements and transaction documents, the commercial lawyers ensure that clients are adequately covered, and that all risks in M&A transactions are mitigated.

Perhaps the biggest deal that we advised on in the past year was an empowerment transaction. This deal required us to consider the applicable regulatory framework and provisions of the Mining Charter, 2018, which requires holders of mining rights to comply with certain ownership requirements in terms of historically disadvantaged persons. The idea is to promote meaningful participation of historically disadvantaged persons in the mining and minerals industry. In our legal advice, we had to consider nuanced legal points on the applicability of the Mining Charter, 2018 to existing mining rights holders.

Mining remains the backbone of the South African economy, but the industry currently finds itself in a precarious position and, amongst other issues, is grappling with the matter of illegal mining. In response to this challenge, the Minister of Mineral Resources and Energy published, for implementation, the Artisanal and Small Scale-Mining Policy 2022, which seeks to formalise the largely informal artisanal and small-scale mining industry. The policy recognises, among others, the challenges posed by illegal mining activities (commonly known as 'zama zamas'), which have resulted in a loss of national revenue of over R70 billion per annum to illegal mining in the gold sector alone.

Communities are being directly affected by illegal mining, in terms of environmental degradation, health risks and gang violence emanating from rival illegal miners. In fact, we have seen mining communities play an ever-increasing role in mining projects. Some of the recent deals that we've been involved in included mining communities. In commercial deals, mining communities may group themselves in a number of formal structures, which include: the registration of community trusts, community companies, or communal property associations (or CPAs). In concluding deals, we have also interacted with traditional authorities, traditional leaders and traditional councils.

While minerals are finite resources, we have seen a decline in the mining of traditional minerals – including gold and platinum group metals – and more deals and activity in emerging minerals. This includes minerals for industries of the future, such as lithium, rare earth minerals, copper, nickel, and the expansion of high-grade manganese fields.

We are hoping to see more mining deals and M&A transactions as the country develops more regulatory certainty and effectively implements its existing laws and policies. 

