

# *Assuring your compliance to the new mine closure provisioning regulations*

Regulations Pertaining to the  
Financial Provision for Prospecting,  
Exploration, Mining or Production  
Operations: *GNR 1147 Financial  
Provisioning Regulation, 2015*

April 2016





***Note:** This document should not be regarded as a legal opinion. Interpretations have been obtained and provided through consultations with the DEA team responsible for drafting the regulation. It is intended to provide awareness and assist PwC clients in assessing what the potential impacts of GNR 1147 will be on their mine closure liability estimation process.*

## PwC summary

On 20 November 2015, the Minister of Environmental Affairs for South Africa promulgated the Regulations for Financial Provision for Prospecting, Exploration, Mining and Production Operations – the Financial Provisioning Regulations – published under Government Notice R1147 (GNR 1147) in Government Gazette 39425 of the same date.

Previously, financial provisioning and rehabilitation were governed by the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA) and the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA). Changes to environmental legislation related to mining prompted the Ministers of Environmental Affairs and Mineral Resources to subsequently change the requirements for making financial provision for the management, rehabilitation and remediation of environmental impacts arising from mining operations. The Department of Environmental Affairs (DEA) will be the legislative authority, while the Department of Mineral Resources (DMR) will remain the competent authority to implement GNR 1147.

Previous requirements (MPRDA)	New requirements under NEMA – GNR 1147
The quantum of the financial provision was determined under regulations 53 and 54 and the guideline document published by the DMR (DMR 2005 Guideline Document for the Evaluation of the Quantum of Closure-Related Financial Provision Provided by a Mine) and assessed according to the guideline.	Three plans are required (per mining right/permit/prospecting right/permit) with financial provision for each (Regulation 11(1)): <ul style="list-style-type: none"> <li>• Annual rehabilitation plan (concurrent);</li> <li>• Final rehabilitation, decommissioning and mine closure plan; and</li> <li>• Environmental risk assessment report (residual and latent impacts).</li> </ul>
Compiled in-house or by external consultants.	Must be compiled, reviewed and assessed annually by independent external experts (Pr.Eng., Pr.Sci.Nat).
Costs required for premature costing (immediate closure) regarding: <ul style="list-style-type: none"> <li>• Rehabilitation of the surface of the area;</li> <li>• Decommissioning and final closure of the operation (life-of-mine closure); and</li> <li>• Post-closure management of residual and latent environmental impacts.</li> </ul>	Comprehensive minimum content stipulated for all three documents in regulations.
The holder of a prospecting right, mining right or mining permit had to annually update and review the quantum of the financial provision.	Financial provision must be audited by an independent auditor, registered with the Independent Regulatory Board for Auditors (IRBA). This audit must take place annually (per mining right/permit/prospecting right/permit). Comprehensive reconciliation required year-on-year.
Financial guarantees related to the calculated provisions were updated with the DMR.	Formal report required – signed by the Chief Executive Officer (CEO) and submitted to the DMR together with an audit statement from the independent IRBA-registered auditor.
Water management included per hectare DMR rate.	Water liability explicitly included for pumping and treatment of polluted or extraneous water.
Limited oversight over the provision calculations.	Report must include statement of adequacy, exposure and liabilities. Audited annually by an IRBA-registered auditor. Audit statement to be submitted to the DMR.
Limited consideration of latent, residual and social impacts.	Latent risk assessment report to be compiled and updated annually. Social risk to be considered. Trust fund can be ceded to the DMR for management and rehabilitation of latent and residual risks. Allows for clearer criteria in the closure decision process.
Only 'material impact on financial statements' consideration.	Contingency statements and cash risk must be considered for inclusion in the audited financial statements by IRBA auditors.
Confusion between immediate closure cost and life of mine.	Availability of funds – ten years forthwith (immediate costs + ten years' life-of-mine cost).
Latent and residual impacts mainly not considered in the liability estimation.	Provision portion of latent and residual impact may be ceded to DMR with the issuing of a closure certificate.

## Previous financial provision requirements under MPRDA

Section 41 of the MPRDA, which has subsequently been repealed, required that an applicant for a prospecting right, mining right or mining permit make a prescribed financial provision for the rehabilitation or management of negative environmental impacts before the Minister would approve the environmental management plan (EMP). Furthermore, the MPRDA Regulations of 2004, Regulations 53 and 54, regulated the making of financial provisions and prescribed a payment method. These have now been superseded by GNR 1147.

## Financial Provisioning Regulation, 2015 (GNR 1147)

NEMA requires the following:

### “Section 24P – Financial provision for remediation of environmental damage

(1) An applicant for an environmental authorisation relating to prospecting, exploration, mining or production must, before the Minister responsible for mineral resources issues the environmental authorisation, comply with the **prescribed financial provision** for the **rehabilitation, closure and ongoing post decommissioning management** of negative environmental impacts.

(3) Every holder must **annually**-

(a) Assess his or her **environmental liability** in a prescribed manner\* and must increase his or her financial provision to the satisfaction of the Minister responsible for mineral resources;”

*\*prescribed manner: Financial Provisioning Regulations, 2015 (GNR 1147)*

The purpose of GNR 1147 is to regulate the determination of financial provision as contemplated in NEMA for the specific costs related to undertaking the management, rehabilitation and remediation of environmental impacts. This is applicable from the commencement of exploration activities, through the lifespan of prospecting and mining operations. Most importantly, GNR 1147 also requires the consideration of and provision for latent or residual environmental impacts that may become known in the future.

## Scope of financial provision that must be provided for:

- Annual rehabilitation and remediation;
- Final decommissioning and closure activities at the end of prospecting, exploration mining or production operations; and
- Remediation and management of latent or residual environmental impacts which may become known in future, including the pumping and treatment of polluted or extraneous water.

## General requirements in respect of the above:

- Detailed itemisation and actual costs of all activities for all three above;
- Applicant or holder of a mining right/permit must ensure that the financial provision is at any given time equal to the sum of the actual costs of implementing the above for a period of at least ten years forthwith; and
- Where financial provision is made for the remediation of latent or residual environmental impacts which may become known in the future, including the pumping and treatment of polluted or extraneous water, as contemplated in regulation 5(c) and 6 (c ), the financial vehicle used for that purpose must, on issuance of a closure certificate in terms of the MPRDA, be ceded to the Minister responsible for mineral resources, or, if the financial vehicle contemplated in regulation 8(1) (c ) is used, the trustees must authorise payment to the Minister responsible for mineral resources.



## **Review, assessment and adjustment of financial provision by the holder of a mining right/permit**

### **General requirements**

The determination, review and assessment contemplated in Regulations 4, 5, 6, 7, 10 and 11 must be undertaken by a specialist or specialists ('Independent person who is qualified by virtue of demonstrable knowledge, qualifications, skills or expertise in mining, environmental, resource economy and financial fields').

**Regulation 11 (1):** The holder of a mining right/permit must ensure that a review is undertaken of the requirements for:

1. Annual rehabilitation as reflected in the **annual rehabilitation plan**;
2. Final rehabilitation, decommissioning and closure of the prospecting, exploration, mining or production operations at the end of the life of operations as reflected in a **final rehabilitation, decommissioning and mine closure plan**; and
3. Remediation of latent or residual environmental impacts which may become known in future, including the pumping and treatment of polluted or extraneous water, as reflected in an **environmental risk report**.

**Regulation 11 (2):** Mining right/permit holder must, on completion of the actions contemplated in sub-regulation (1), ensure that the adequacy of the financial provision is assessed and any adjustments that need to be made to the financial provision are identified:

1. Within one year of the commencement of the operations (mining right/permit);
2. Where operations authorised in terms of the MPRDA have commenced and where the holder of the right or permit is a person with a financial year, immediately after its financial year end that follows such commencement; and
3. **Annually thereafter.**

**Regulation 11 (3):** The results of the assessment of the adequacy of the financial provision contemplated in sub-regulation (2), including proof of payment or arrangements to provide for any adjustments to the financial provision, must be:

1. **Audited by an independent auditor (IRBA-registered)**;
2. Included in any environmental audit report required in terms of the EIA Regulations, 2014; and
3. Submitted for approval to the Minister by the mining right/permit holder in the form of an **auditor's report**, together with the plans and report contemplated in sub-regulation 1 (Regulation 2 (a)) within three months, Regulation 2 (b) within three months of its financial year end and annually thereafter.

**Regulation 12:** Preparation and submission of plans and reports

12 (1) – 12(3) The three plans must comply with the content stipulated in Appendices 3, 4 and 5 of GNR 1147.

12 (5) The holder of a mining right/permit must, in compliance with Regulation 11(3), submit to the Minister responsible for mineral resources a **declaration, signed by the independent auditor** of the holder of a mining right or permit, **reconciling the financial provision** submitted for approval and any update thereof with estimates of exposure and liabilities with regard to **environmental rehabilitation disclosed in the financial statement** of the holder of a right or permit.

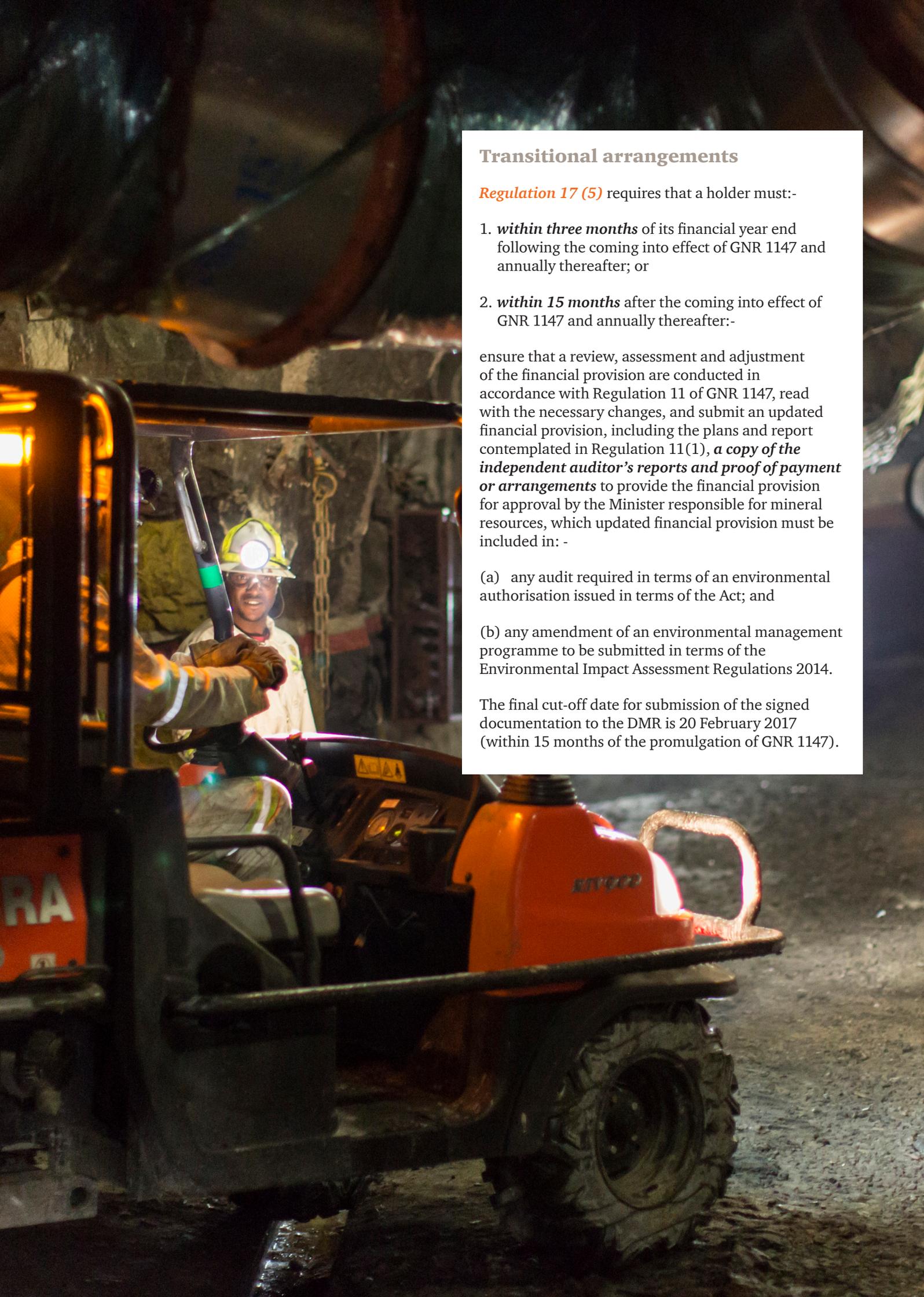
12 (6) The financial statement contemplated in sub-regulation (5) must include **contingent liabilities and restricted cash** associated with the financial provision liability.

**Regulation 13:** Responsibility of holder of a mining right or permit

13 (1) The EMPR must be publically available.

13 (2) The CEO is ultimately responsible and liable for implementation and financial provisioning.

13 (3) All documents submitted to the Minister must be **signed by the CEO as well as the independent IRBA-registered auditor**.



## Transitional arrangements

**Regulation 17 (5)** requires that a holder must:-

1. **within three months** of its financial year end following the coming into effect of GNR 1147 and annually thereafter; or
2. **within 15 months** after the coming into effect of GNR 1147 and annually thereafter:-

ensure that a review, assessment and adjustment of the financial provision are conducted in accordance with Regulation 11 of GNR 1147, read with the necessary changes, 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 payment or arrangements** to provide the financial provision for approval by the Minister responsible for mineral resources, which updated financial provision must be included in: -

- (a) any audit required in terms of an environmental authorisation issued in terms of the Act; and
- (b) any amendment of an environmental management programme to be submitted in terms of the Environmental Impact Assessment Regulations 2014.

The final cut-off date for submission of the signed documentation to the DMR is 20 February 2017 (within 15 months of the promulgation of GNR 1147).



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