



# WHAT YOU NEED TO KNOW ABOUT FINANCIAL PROVISION REGULATIONS FOR MINING, OIL AND GAS IN SOUTH AFRICA



## What is financial provision?

- » Financial provision is money (cash or financial guarantee) that is set aside (secured) to make sure that it is only used for rehabilitation of the environmental impacts of extractive activities, including when companies search for minerals, gas or oil (prospecting and exploration), mining and production.
- » Before they start extractive activities, companies must assess what it will cost to rehabilitate the impact of their operations on the environment, and then they must set aside and secure the amount of money needed to cover that cost until the money is needed for rehabilitation.
- » The '**polluter must pay**' principle in South African law requires that the one who pollutes is the one who must pay to clean up that pollution. Financial provision is intended to achieve that.





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## Why is the standard of rehabilitation and the regulation of financial provision so important?

- » Communities that are affected by mining and other extractive activities often experience social, environmental, health and economic hardship during extractive operations, and continue to do so even after operations have stopped.
- » While there are thousands of mines in South Africa that have been classified as “derelict and ownerless” there is also an ongoing problem of mine abandonment. These are mines that are no longer profitable, and have been abandoned without the company rehabilitating the environmental impacts. There are also mining sites where the standard for rehabilitation was so low that the land cannot be put to good use, and where no post-mining economic activity can take place.
- » Abandoned, derelict and poorly rehabilitated areas are a serious problem in South Africa. Environmentally degraded areas make poverty and inequality worse. This goes against the objectives of the Mineral and Petroleum Resources Development Act (MPRDA), which includes the need to address historical social and economic inequality.
- » What we mean by rehabilitation and planning for closure is therefore very important.
  - Planning for closure of the extractive activity must take place when the feasibility of the project is being assessed and before it has been licensed. That planning must take into account all stakeholders and it must include meaningful, informed negotiation with them.
  - It should not be defined by the extractives company because this often leads to the cheapest form of rehabilitation being selected. It also should not be selected by the Department or other government agency responsible for regulating the sector, without negotiating the options and possibilities with interested and affected parties.



## What is the purpose of Financial Provision Regulations?

The intention of these regulations is to ensure that:

- » companies that profit from extractive operations are accountable for environmental damage caused by those operations
- » extractive operations are environmentally sustainable
- » funds to cover the cost of rehabilitation and closure plans for extractives operations are secured and regulated
- » plans to implement and manage activities and procedures to mitigate (reduce) and rehabilitate environmental damage from extractive operations can take place
- » it is clear when the Minerals Minister and/or the Minister responsible for water affairs may use the finance provision to mitigate and rehabilitate on behalf of the extractives right holder
- » communities do not bear the environmental burden of extractive operations and the State doesn't become liable (responsible) for the costs of mitigating, rehabilitating and managing the negative environmental impacts of extractive operations, rather than the rights holders who reaped the profits of those operations.
- » methods of calculating and reviewing the calculation of the cost of the approved rehabilitation measures and closure plans are set out
- » the State's and therefore public's exposure to and liability for premature and unplanned closure of extractive operations that have not been rehabilitated is reduced





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## What can you do to ensure that the financial provision regulations achieve their intended purpose?

- » When you hear that new or expanded extractive projects are proposed in an area that affects you, find out who is proposing the new or expanded operations and which environmental assessment practitioner (EAP) is running the application process for them.
- » Ask the company or EAP about rehabilitation and closure planning public participation processes that the company or its environmental assessment practitioner (EAP) plans to undertake.
- » Ask that information about rehabilitation and closure planning is provided to you ahead of any public participation process. This information might include the extent of the project area, the anticipated impacts of the project area, the list of people who are being consulted, the post closure economy that the company proposes to make possible, the environmental mitigation, management and rehabilitation measures that are proposed and the costing that the company has undertaken to ensure that the closure plan is feasible and will be covered by financial provision.
- » At the public participation meetings, share your experience about how you are affected by extractives or about how communities you know are affected and what you are worried about.
- » Confirm your concerns, requirements and objections regarding the project in a letter or email to the EAP.



- » Ask for more information, or explanations of technical information that you do not understand.
- » Speak to communities already affected by extractives about their experience, or to activists working on the environmental impacts of extractives, or to activists working on the just transition, including on land reform, climate change, adaptation, etc. If you do not have these contacts, have a look at the following websites and make contact with those who you think might be able to help:
  - <https://lifeaftercoal.org.za>
  - <https://mejcon.org.za/>
  - <https://cer.org.za/>
  - <https://earthlife.org.za/>
  - <https://groundwork.org.za/>



## READ

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Civil Society **comments** on the draft Financial Provision Regulations, 2021

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