

Be aware of the red tape that can cause costly delays

TO PROVIDE jobs for the unemployed, the economy needs to grow. Investment in the construction, mining or agricultural sectors could provide a boost and attract much-needed foreign investment.

Since South Africa is a highly regulated country, projects undertaken in these sectors face layers of red tape.

The legislature, recognising water as a scarce national resource, enacted the National Water Act, which is intended to ensure, among other things, the proper management of water. In the process, it has added to the red tape.

Section 21 of the act sets out 11 activities regarded as "water use(s)" including activities that go beyond the extraction, storage or consumption of water.

An example is the erection of infrastructure near rivers or wetlands.

Engaging in "water use"



Legal Brief

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without the requisite licence is an offence under the act, punishable by the imposition of a fine, imprisonment or both.

In terms of section 155 of the act, the minister may approach the High Court to interdict the continuation of an unlawful water use and compel the offender to "remedy the adverse effects of the contravention".

Given the harsh penalties and potential criminal liability for unlawfully using water, businesses are advised to tread carefully around water use.

Projects are often delayed due to the lengthy licence application

process. Although the Department of Water and Sanitation website provides for a process that can take "anything from three to 12 months", in reality delays of up to three years are not uncommon.

The main contributor to these delays is that there are no time frames in place for the process.

In February the department published draft regulations on the procedural requirements for water use applications.

A notable provision is the inclusion of a 300 day time frame for the process to be completed. But this is subject to

extensions, which could undermine the objective of providing a streamlined application process.

In the mining sector, the delays in obtaining water-use licences have been the most problematic.

Until recently, mining licences would be granted while the requisite water licence was outstanding.

This resulted in a delay in the start of mining operations and, if the water licence was still outstanding for a year after the mining licence was issued, the mining licence could lapse.

An agreement has been reached between the Department of Mineral Resources and the Department of Water and Sanitation in terms of which a mining licence will be granted only when a water-use licence has been granted.

This does not solve the problems relating to the

lengthy water application procedure.

Businesses that are involved in land-related projects should be aware that their activities may require a licence.

Once it is established a water-use licence is needed, immediate steps should be taken to apply for one to avoid unnecessary and costly delays in getting a project off the ground.

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