NEMA: New regulations, new opportunities

Much has been said lately about the recently amended National Environmental Management Act (NEMA). But what is clear from these new regulations, is that while changes are inevitable, we should see them as an opportunity not a curse.

It is a chance for mines to radically rethink their current investment strategies, to optimise their mining rehabilitation funding and maximise returns by consulting with the specialists in this niche field. Sanlam Investments are active in structuring investments to fund the rehabilitation liabilities (provided for in the Section 37A Trust or insurance guarantee products).

The new regulations are far more stringent in terms of the financial provisions required for rehabilitation and the financial vehicles allowed to provide for the rehabilitation liabilities. Amendments to the regulations include the restructuring of the underlying investments in the Section 37A Trust, ensuring all investments have an explicit capital guarantee.

One of the most significant challenges faced now is how companies in the mining industry can make adequate financial provision for these costs (which now include the difficult-to-quantify post-closure rehabilitation liability), without compromising the financial sustainability of the mine.

Mining companies must maximise the returns on their underlying investments in their chosen financial vehicle, taking into consideration the stringent explicit guarantee requirement for investments made in a 37A Trust. One way to do this would be by taking advantage of the natural efficiency of capital markets and the range of investable opportunities on offer to grow returns by more than inflation.

Cash is just not good enough. It is critical that mining companies make informed decisions when considering which funding vehicle to use when making provision for their mining rehabilitation liability and considering the investment flexibility associated with the chosen financial vehicle.

What has changed?

NEMA has brought about many significant changes, including the use of allowable vehicles to fund the annual and final rehabilitation, decommissioning and closure liabilities. NEMA also requires that provisions for the rehabilitation obligation post-closure of the mine should be made. These funding vehicles include bank or insurance guarantees, Section 37A Trusts or an upfront cash deposit that can be made with the DMR. However, the usage of the funding vehicles has been changed, particularly Section 37A Trusts.

Prior to NEMA, Section 37A Trusts were a popular vehicle for meeting rehabilitation obligations (given their favourable tax treatments). As a funding vehicle, they also had advantages and disadvantages. One of the disadvantages was the difficulty in accessing funds upon closure. Rehabilitation had to be funded from operational cash flow and only once the cost had been incurred, could the mine make a claim against the Trust. This resulted in additional unnecessary cash flow constraints.

Now, with the new regulations, a Trust may only be used as a funding vehicle for the post-closure rehabilitation liability, whose quantum may only be known at some point in the future. Moreover, the underlying investments for the Section 37A Trust must be of a capital guaranteed nature.

The big question is: How should you structure investments going forward?

Guarantees for the annual and final closure rehabilitation obligation

The insurance guarantee solutions offered by Cenviro Solutions (underwritten by Centriq Insurance Company Limited), part of the Sanlam Group, provides the most flexibility. These solutions are structured and customised in various ways to suit the particular needs of the mine. These insurance guarantees are issued to the DMR upfront, while the underlying funds that are built up to cover the mining rehabilitation liability are invested in portfolios that will optimise investment returns and mitigate unnecessary risks.

Optimisation of investment returns and mitigation of unnecessary risks are extremely important. Here Sanlam Investments play a key role by structuring the underlying investments to achieve optimal investment growth. This is done by structuring an asset-liability-matching strategy or investing in one of the absolute return funds designed specifically to optimise the rehabilitation funds of mining companies in South Africa.

In order to customise and structure to develop the appropriate solution for you, Sanlam Investments consult with you on:

- The company's cash-flow position (availability of cash)
- Tax position – optimisation of positive tax implications on solutions
- Optimisation of the balance sheet position of the company
- Degree of flexibility that is required, taking into account various financial factors
- Possibility of utilising a cell captive structure
- Availability of financial assets or immovable assets to assist in the structuring of a cash-flow and cost-sensitive solution.

Trust for the post-closure rehabilitation obligation

Because it is difficult to quantify actual post-closure rehabilitation liabilities, as well as the stipulations for financial provisioning for these, we believe that a philosophy of regular contributions to a moderate risk rehabilitation fund, with capital guarantees in place, makes financial sense and can help to provide efficiently for any growth in the post-closure liability.

For smarter ways to optimise investment returns, we also look at a range of tailor-made investment solutions that take into account asset liability matching strategies, or investment strategies that yield inflation-beating returns, such as absolute return products. Sanlam take into account NEMA's investment requirements here.

The company are flexible enough to allow for a more conservative approach or can take slightly more risk, while limiting capital losses and maximising returns. In other words, we can meet the dual objectives of inflation-beating returns and a capital guarantee.

Sanlam see the new mining rehabilitation regulations as a real opportunity for clients to relook at their current investment strategies, and put in place the most optimal funding solution to maximise returns and meet the capital guarantee requirements set out by the new regulations on Section 37A Trusts.

The idea is to help clients adapt to an ever-changing financial, mining and regulatory environment by offering flexible, customised solutions. Due to the level of customisation and flexibility offerred, we can help enhance the investment returns on the underlying assets, contributing to the overall financial viability of the mine, while at the same time assisting clients with the requirements as set out in terms of NEMA.

Andrew Rumbelow, Segment Head for the Sanlam Investments Institutional Business