

## **The Board's Enhanced Role in the Amended ISO 14001**

**By Catherine Warburton and Peggy Schoeman**

**Managing Partner and Associate, Warburton Attorneys**

**June 2018**

The ISO 14001 Standard is an international framework for organisations to manage their environmental responsibilities, used by countless companies across a broad spectrum of industries. The ISO 14001 Standard was substantially amended in 2015 with the deadline to transition to the amended Standard set at September 2018. With this deadline in mind, this article outlines the extended role of a Board vis-à-vis its organisation's environmental management system ("EMS") within the mining sector – an industry with high environmental impacts, and certainly one where there are mounting pressures from the public, regulators and communities to demonstrate compliance with and certification in terms of ISO 14001.

A mining company's top management - those who direct and control the mining operation at the highest level - are now far more integral to, and have an enhanced responsibility with respect to, a mine's EMS. Gone are the days of delegating away responsibilities, or superficially adhering to these in a tick-box fashion. Generally, the amended Standard adopts a far more systematic, holistic and action-based approach, with leadership at the very centre, most aptly demonstrated in the amended Plan-Do-Check-Act cycle.

A notable new inclusion in the amended Standard is clause 5.1, which spells out nine specific responsibilities for top management. In this respect, the Board must –

1. take accountability for the EMS's effectiveness;
2. ensure the EMS is compatible with the mine's strategic direction and context;
3. integrate the EMS into the mine's activities;
4. make the necessary resources available to support the effective functioning of the EMS;
5. communicate the importance of compliance with the EMS;
6. ensure the EMS actually achieves its intended outcomes;
7. enable others to contribute to the EMS;
8. promote continual improvement of the EMS; and
9. support other mine management in their roles in relation to the mine's EMS.

In terms of responsibility 2, namely ensuring that the EMS is compatible with the mine's strategic direction and context, the reference to context is particularly noteworthy. Context, which is dealt

with in clause 4 of the amended Standard, is probably the most significant single amendment and encompasses the below two categories:

1. internal and external issues and environmental conditions. Internal issues include a mine's activities, its culture and its strategic direction, while external issues refer to the prevailing political, legal or economic circumstances. Environmental conditions include any condition which can affect, or be affected by, the mine, such as air or water quality, natural resource availability and climate change; and
2. the needs and expectations of interested parties, which is broadly defined as persons or organisations that can affect, be affected, or perceive themselves to be affected, by the mine. This casts an incredibly wide net and includes employees, shareholders, customers, suppliers, regulators as well as communities and environmental justice NGOs.

Flowing from a thorough understanding of the mine's context, the Board must identify risks and opportunities, which in turn determine the nature and scope of the EMS, and its subsequent implementation. For many mining companies, a risk-based assessment and determination, inclusive of all of the context-aspects set out above, will be a time-consuming and sizeable task.

Complementary to an understanding of context, is the introduction of life cycle thinking. This means that all stages of a mine's activities, products and services must be understood, starting from the sourcing of raw materials all the way through to the final treatment and sale of the minerals mined and/or beneficiated. The intention with a life cycle approach is to not shift the Board's duty to protect the environment elsewhere in the organisation's chain of responsibility. In this respect, the mine's environmental policy, as drafted by top management, must now also include a stated commitment to environmental protection. In this way, a mine's publicly available environmental policy must set out how it intends to proactively protect the environment from harm and degradation. Specific commitments made in this regard must be relevant to the mine's context (to be determined as set out above), and may include, for example, a commitment to climate change mitigation or the protection of biodiversity. In the face of mounting public opposition to coal mining for example, these public declarations should be carefully considered and communicated.

All in all, the amendments are welcome, especially as the previous ISO 14001 Standard was often criticised for being ineffective and not providing a clear demonstration of actual compliance. Hopefully, with the more prominent role to be played by the Board in the implementation of a mine's EMS, the inclusion of a context-based understanding of a mine's risks and opportunities

and the adoption of life cycle thinking, the amended ISO Standard will yield more meaningful results – results which will hopefully not only benefit affected parties and the environment, but also improve a mine's bottom line. There can be little doubt that a mine's potential liability would be substantially reduced with an effective EMS. With the deadline to transition to the amended ISO Standard a few months away, there is no time like the present for the Board to take the lead in this regard.