

## **THE OCTOBER/NOVEMBER 2012 EXAMINATION PAPER**

African Silver (Pty) Ltd is an established mining company that has successfully operated its business in the South African mining industry over the last five decades under the previous mining regime. South Africa is the world's biggest producer of platinum and African Silver (Pty) Ltd was the leading company that extracted platinum in the Bushveld complex, the main producing area of this mineral in South Africa. African Silver (Pty) Ltd, as leading company that specialized in extracting and refining this metal, has spent years and millions of Rands in order to improve its mining operations, specifically related to the extraction and refinement of platinum.

In October 2002, the Minerals and Petroleum Resources Development Act 28 of 2002 (MPRDA) came into operation, which makes provision for equitable access to and sustainable development of the nation's mineral and petroleum resources. In terms of the MPRDA, African Silver (Pty) Ltd's limited real right to mine automatically ceased to exist on the date the Act came into operation. In consequence, African Silver (Pty) Ltd had to apply for "new order" mining rights to carry on with its business. On 16 January 2003, African Silver (Pty) Ltd applied for mining rights in the Bushveld complex. The application was summarily turned down by the Department of Minerals and Energy without giving any reasons to African Silver (Pty) Ltd. In the interim, mining rights pertaining to the Bushveld complex were granted to African Golden (Pty) Ltd. The official who turned down African Silver (Pty) Ltd's application is a shareholder in African Golden (Pty) Ltd.

### **QUESTION 1**

- 1.1 Identify the organs of state in the given set of facts. Explain your answers with reference to the constitutional definition of organ of state.

**(6)**

In terms of s 239 of the Constitution the following are organs of state:

a) The Department of Minerals and Energy (any department of state or administration in the national, provincial or local sphere of government);

b) The official who made the decision in the Department of Minerals and Energy (any other functionary or institution (ii) exercising a public power or performing a public function in terms of any legislation).

- 1.2 Is administrative action in evidence in the set of facts? In your answer you should give a full definition of the concept "administrative action" with reference to the provisions of the Promotion of Administrative Justice Act (PAJA) 3 of 2000.

**(13)**

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