

Charting a course towards clarity for a stronger industry

Mining law stalwart Peter Leon talks to Sanchia Temkin about charters, nationalisation, and working with his famous brother

PETER Leon, co-head of natural resources and regulatory law at commercial law firm Webber Wentzel, says SA's mining laws are not friendly enough for foreign investors.

"The laws were developed at a time when the government did not trust the mining industry and the industry did not trust the government," he says. "Further, if you look at the mining charter, it is a very vague document and lends itself to inconsistent application."

I met Leon at the law firm's offices for tea, where we sat in one of the firm's boardrooms. It had been difficult to secure an interview with Leon and he was forced to cancel on more than one occasion. His busy schedule takes him out of the country and he often has to attend urgently to clients' needs.

Leon is regarded as the stalwart of mining law in SA.

He was recently invited by the director-general of the Department of Mineral Resources, Sandile Nogxina, to participate as a regulatory and legal expert in the mining industry's growth, development and employment task team (Midgett). The task team is considering a wide spectrum of issues that affect the competitiveness and growth of SA's mining industry.

The team was set up by the government in 2008 to achieve

two critical outcomes. First, to help the industry manage the negative effects of the global economic crisis and to save jobs. Second, to position the industry for growth and transformation in the medium to long term.

Leon says Mining Minister Susan Shabangu is the first government official who has acknowledged that things are not what they should be in the industry. The minister has acknowledged that SA needs to get investment in the economy. Other government officials had a more defensive and hardline approach towards the mining industry, he says.

As a start, the controversial Minerals and Petroleum Resources Development Act needs to be amended, he says. "Although the act is well-written, it tends to be rather vague in terms of its requirements," Leon says.

"For instance, the legislation has too much of a so-called backdoor discretion. The minister or the regulators inside the Department of Minerals and Energy may refuse applications on the basis that they do not meet the social upliftment or the black economic empowerment requirements."

Further, he points out, the legislation does not require the regulator to make a decision within a specified period of time.

The minister has realised the processing of applications has to

be completed more timeously and expeditiously.

She has said that prospecting rights should be granted within three months and mining rights within six months. However, Leon says, in reality this is actually taking twice as long to happen. Hopefully, the time periods will be written into the law, he says.

Investors are not willing to invest in a country where regulation is vague, there is an uncertain energy supply and political tension, he says.

"It is unfortunate that SA missed out on the commodity boom because of uncertainty in the industry," he says. Many African economies, such as Zambia, opened up after the collapse of the Soviet Union. These economies passed regulatory reforms and put out a welcoming mat for mining companies, he explains.

As a result, the junior exploration companies have gone north of SA's borders.

Leon has concerns about the issue of nationalisation of the mines. One of these is whether African National Congress (ANC) Youth League leader Julius Malema is being used to "fly a kite" to float the idea of nationalisation.

Leon also has concerns that a policy paper from the ANC Youth League may eventually find its way to the ANC national general council to be held later



GETTING TO GRIPS: Peter Leon of Webber Wentzel ... 'My father was involved in the struggle cases in the 1960s, so it was not surprising that I got involved in politics.' Picture: MARTIN RHODES

this year in Durban.

He also thinks it likely that some form of nationalisation proposal may be taken to the ANC national conference in 2012 where it may be floated and adopted. "It won't be outright nationalisation — more likely a halfway house to nationalisation," he says.

Leon never planned to be a mining lawyer. "It happened by chance," he says, laughing.

More than 10 years ago he was asked by De Beers to advise the company in the Levy commission of inquiry into the South African diamond industry.

At the time he knew very little about diamonds and mining law. However, he is a fast learner and in the process

developed a passion for mining law. As a result, his career in mining law took off.

Leon also never planned to be a lawyer.

His father, retired Judge Ramon Leon, didn't persuade Leon and his brother, former Democratic Alliance leader Tony Leon, to go into law. "My father said we should pursue whatever we wanted to pursue. I wanted to be a diplomat," he says. That was in the early 1970s.

Leon was told he was "nuts" to become a diplomat under the National Party administration by the dean of the law school of the University of Cape Town. He reconsidered his career path and decided to study law instead.

"I had the ability to think in a

logical and concise manner, as law requires, with the added bonus of a photographic memory," he says.

After graduating cum laude at the University of Cape Town, he obtained his masters in law, first class, at the University of Cambridge.

Leon served his articles of clerkship with Webber Wentzel Bowens, as the firm was then known. Shortly after he was admitted as an attorney, he spent some time in Luxembourg with the Maitland group, which had a joint venture with Webber Wentzel.

When he returned to SA in the early '80s, he spent some in Webber Wentzel's commercial department focusing on

litigation and banking law. At the time, SA had experienced an exodus of professionals in the wake of the state of the emergency. Leon was given a "lucky break" and inherited a large portion of security regulation work that the firm did for the JSE.

In the mid-1990s Leon embarked on a political career. "I come from an intensely political family. My father was involved in the struggle cases in the 1960s, so, it was not surprising that I got involved in politics." He was elected as leader of the Democratic Party (now the Democratic Alliance) for Gauteng.

Leon was accountable to his brother Tony, former leader of the Democratic Alliance.

"There were tensions at times between us," he says. "Obviously we couldn't agree on everything. But I never lived in Tony's shadow," he says.

Leon carried on practising law while pursuing his political career. "It was far easier in those days to split yourself into two. Those were the early days of democracy. The legislature was also based in town," he explains.

Leon says that the Democratic Party was a small political party that had to be vigilant to the opposition at that time. This did cause concern within the firm, he says.

In 1999, Leon stepped down as leader of the Democratic Party for Gauteng and decided to concentrate full-time on his career at Webber Wentzel. However, he remained in the Gauteng legislature as a provincial MP and assisted in the transitional process of the caucus leadership.

"It was difficult leaving politics, but I have no regrets," he tells me.

Leon says it is highly unlikely he will ever return to politics, even though he enjoys a good debate from time to time.

Leon is chairman of the International Bar Association's

mining law committee. The committee is in the process of spearheading a major project with the World Bank, based on international best practice, for use in the developing world.

It is proposed that the model be used by mining companies and host governments in mining projects where a mature mining code is not in place, or where a mining code must be supplemented by a private agreement. Leon says it is not intended that every jurisdiction use the model, but rather that it is another tool that governments may consider.

"It can easily be amended for inclusion in mining law," he explains, "or even be used as a guideline."

Leon's principal areas of practice of law include natural resources, black economic empowerment, the regulatory aspects of financial services, and international investment.

Some of the recent matters that he has been involved in include advising on an international arbitration claim against the government in the International Centre for Settlement of Investment Disputes, advising on a major project to extend the life of PetroSA's gas-to-liquid plant in Mossel Bay, and advising on the Bisha mining project in Eritrea.

He has also assisted multinational mining groups on the legal implications of the Mineral and Petroleum Resources Development Act, as well as taking part in writing various drafts of the Mineral and Petroleum Royalty Bill.

I ask Leon what challenges he foresees in the near future.

He says the major challenge the government faces is getting foreign investment back in the mining industry in a meaningful and encouraging way.

"The government needs to create a best-practice regulatory regime, which encourages investment and protection of tenure," he says.