



CHAMBER OF MINES OF SOUTH AFRICA

Putting South Africa First



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MEDIA STATEMENT

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31 March 2015

CHAMBER WELCOMES DMR INTERIM MINING CHARTER PROGRESS STATEMENT AND AGREEMENT TO SEEK A DECLARATORY ORDER ON THE INTERPRETATION OF THE OWNERSHIP ELEMENT

The Chamber of Mines of South Africa (“the Chamber”) and its members welcome the interim statement on the state of progress in transformation in the mining sector which has been released today by Department of Mineral Resources (“DMR”) Minister Advocate Ngoako Ramatlhodi. The Chamber and its members fully support the transformation objectives encapsulated in the Mineral and Petroleum Resources Development Act (“MPRDA”) and have taken meaningful steps to give effect to them.

The year 2014 was the year by which companies in the mining industry were to aim to reach the targets set in the 2010 Amended Mining Charter. In order to conduct an assessment of levels of attainment of these targets by mining companies, the DMR embarked on an inclusive process with key stakeholders, where a template was designed and stakeholders were consulted to make inputs on it before it was finally released by the DMR for companies to start providing the necessary information required for the purpose of assessing the state of progress. The Chamber’s members have cooperated fully with the process and with other stakeholders.

The Chamber’s members have made considerable progress on all elements of the Mining Charter including: creating access to ownership, procurement and enterprise development, employment equity, human resource development, mine community development, improving living and housing conditions, and creating sustainable development in the mining industry by improving the environmental safety and health performance of the mining industry. The extent of change is profound and irreversible.

However, an area where the DMR and the Chamber have a difference of opinion is the understanding of the ownership element. The DMR’s understanding of the ownership element indicates that empowerment transactions concluded after 2004 where the Black Economic Empowerment (BEE) ownership level has fallen due to BEE disposal of assets or for other reasons, should not be included in the calculation of progress made. This means that the DMR may find certain components of the mining sector not to have achieved the ownership target as per its definition.

The Chamber on the other hand believes that previous deals should be included in the ownership calculation, as it represents meaningful economic participation by Historically Disadvantaged South Africans (HDSA) beneficiaries since before 2002. The industry believes the Mining Charter does not require of mining companies to maintain a 26% HDSA ownership once it has been achieved. The exclusion of past HDSA transactions would result in a material misrepresentation of all the meaningful economic HDSA participation facilitated by mining companies in good faith

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N Pretorius, A Sangqu, MP Schmidt, B Sibiya, PW Steenkamp, S Venkatakrishnan.

and with the approval of the DMR. The DMR in issuing mining rights had agreed with the transformation plans of the companies. In addition, the industry had met the original spirit and intent of the Mining Charter by broadening ownership and transferring significant value to BEE groups. The fact that various BEE companies had sold their assets in mining, or that the global financial crisis had materially impacted on the share price performance of companies should not be used to penalise the efforts of the mining companies to meet the objectives of the Mining Charter. From the Chamber's perspective, the mining industry has achieved the Mining charter ownership targets, having provided meaningful economic participation for HDSAs represented through identifiable beneficiaries, substantial cash flow and full shareholder rights.

In order to break the impasse, and to avert any confusion that may be damaging to investor perceptions, the DMR and the Chamber have jointly agreed that the court be approached to seek clarity on this matter. This will be done through a declaratory order which will provide a ruling on the relevant legislation pertaining to the continuing consequences matter. This is a proactive and necessary step to promote regulatory certainty for the mining industry and shows that both the DMR and Chamber recognise the need for the court to provide certainty. The Chamber fully supports the declaratory order process and will work with the DMR to get the court process underway as soon as possible.

The Chamber and its members have invested significantly in transforming the sector as agreed in the Mining Charter process that started in 2002. It is our view that the transformational change has been both profound and substantial, and that the process towards normalizing the country's economic landscape is now irreversible.

ENDS

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