CHAMBER OF MINES
of South Africa

SEPTEMBER 2015

QUARTERLY UPDATE

A PUBLICATION PRODUCED BY THE CHAMBER OF MINES OF SOUTH AFRICA

Click to enter

HIGHLIGHTS IN THIS ISSUE

The Chamber of Mines South Africa is a mining industry employers' organisation which exists to serve our members and promote their interests in South Africa. Also known as COMSA, information about us is readily available as our transparency serves as a statement of intent to our members. We put the mining industry first through a variety of activities and programmes undertaken in areas where our members share common concerns and promote the cooperation of specific industry-level policy responses and joint initiatives.

CONTACT DETAILS

chamber@rair.co.za
Tel: (011) 880 3924

5 Hollard Street, Johannesburg 2001
PO Box 61809, Marshalltown 2107

Subscribe to our mailing list

FROM THE CEO

STRENGTHENING OUR RESOLVE

Roger Baxter
CEO – Chamber of Mines of South Africa

One of my first tasks as CEO of the Chamber of Mines has been to get closer to our members. We have done this in many ways, and I have been incredibly grateful for the support that we have received.

The Chamber wants to ensure we have a common understanding of the state of the industry, and to work in unison as an industry to ensure we are getting the right messages across in the public forums that we all engage in. One of the ways in which we plan on keeping members up to date is through this Quarterly Update, which will highlight some of the issues we have been active on, and showcase some of the public debate by the Chamber and other role players.

HEADWINDS FACING THE INDUSTRY

There are currently significant perception and reality gaps in the industry between different stakeholders. The Chamber is currently sharing the message that the industry is facing significant international and local headwinds. We have tremendous domestic cost pressures, falling productivity, electricity supply disruptions, excessive wage demands, labour market instability and a number of other factors. What we want to get out in the public domain is that the Chamber is engaging government on these issues and that the industry has a plan to tackle each of these areas, whether it's through the presidential framework agreement or in direct bi-laterals with the Department of Mineral Resources. We don't control all of the processes taking place, but we are certainly trying to make sure that the industry's interests are properly represented in them.

JOB SAVING TASK TEAM

In early August, Minister Ramathlodi called key stakeholders together to address job losses through MIGDETT. Some of the issues that we as producers have put on the agenda are enhancing productivity, managing cost pressures, accelerating rehabilitation activity, looking at alternatives to avoiding job losses and support for mineworkers once they are retrenched. We have also raised the issues of investor promotion and market development.

"Some of the issues that we as producers have put on the agenda are enhancing productivity, managing cost pressures, accelerating rehabilitation activity, looking at alternatives to avoiding job losses and support for mineworkers once they are retrenched."

MINING CHARTER DECLARATORY ORDER

There is currently confusion in the media over the declaratory procedure in respect of the Mining Charter. The Chamber and its members fully support transformation and the aim of the declaratory process is to attain greater clarity and certainty in the way the law and charter are interpreted. This in turn will improve investment in the sector and transformation over time. The Chamber has lodged its papers and the DMR has responded. The Chamber is currently in the process of providing a responding affidavit. Even though the court case is proceeding, the Chamber is continuing to engage with the DMR in seeking to resolve the issues.

The fact is that sometimes we are going to disagree, and there are times when the courts do play a role in resolving particular processes.

MINING PHAKISA

Mining Phakisa is a new platform which will allow us to engage with other stakeholders in our industry and work on plans to deal with the challenges being faced in our sector as well as improving prospects for realising the potential of our sector in the long run. We will be engaging in Mining Phakisa in the coming month and will report back progress made in our next update.

We hope that the quarterly update proves to be useful to you in keeping you informed and we will continue our endeavours to put your positions and views forward in our engagements with other stakeholders.

STAKEHOLDERS SIGN SO-CALLED 'JOBS PACT'

On Monday, 31 August industry stakeholders gathered in Pretoria to sign the Mining Industry Commitment to Save Jobs and Ameliorate the Impact of Job Losses, dubbed by some as a 'jobs pact'.

This is a slight misnomer as the 'pact' recognises fully that not all jobs can be preserved in current economic circumstances and that to do so would require a thriving and sustainable industry. That is what the 'pact' is aimed at achieving.

Minister of Mineral Resources, Adv Ngoako Ramathlodi, briefed members of the media outlining the 10 interventions:

1	*Delaying the implementation of retrenchments*
2	*Enhancing productivity and managing cost pressures*
3	*Accelerating concurrent rehabilitation activities to create alternative jobs for mineworkers*
4	*Facilitating sales of distressed and other mining assets*
5	*Other alternatives to avoid job losses*
6	*Support for mineworkers in the event that job losses cannot be avoided*
7	*Utilisation of the Multi National Companies' procurement levy to also support employment opportunities for retrenched mineworkers*
8	*Streamlining Framework and other Enablers*
9	*Investment promotion and market development*
10	*Communication and implementation plan*

Some commentators have noted that the declaration calls for a moratorium on retrenchments currently underway or envisaged in the industry. It does not. It does mean that all stakeholders will not unreasonably withhold the extension of the consultation period as per the Labour Relations Act to allow for the implementation of the interventions to address job losses, and that where section 189A processes are currently being facilitated, that the consulting parties will continue the consultations during the 30 days' notice period after expiry of the 60 day facilitation period or any extension thereof. Notwithstanding the above paragraph, section 52 of the MPRDA shall be equally applicable.

Speaking at the briefing, Chamber Vice President, Andile Sangqu, was positive about the agreement, recognising that when the industry faced a crisis, the various stakeholder leaders came together to find solutions to the problems at hand. "Going forward, I believe that all stakeholders can join hands to find solutions acceptable to all parties."

Commenting on the engagement, Chamber CEO Roger Baxter, Chamber indicated that these had not been easy discussions.

"The fact that we are having discussions around productivity and cost containment agreed in the declaration demonstrates that stakeholders are starting to look at the fundamental issues which have caused the current crisis.

"Pleasingly," he said, tough discussions often lead to more pragmatic results."

"As the minister and other stakeholders have recognised, job losses are not going to stop. But, together with our social partners, we will seek to limit job losses as far as this is possible, and to ameliorate the consequences of job losses.

Significant engagement is still required. The DMR will engage the Department of Finance to further discuss fiscal relief mentioned in the agreement, while also engaging with the South African Reserve Bank on platinum becoming a reserve. Task teams will also be looking into the finer details of these interventions such as how to unlock jobs in mine rehabilitation.

Participants in the agreement are the DMR, NUM, UASA, Solidarity, AMCU, SAMDA and the Chamber of Mines. AMCU did not sign the agreement as they had not received a mandate from all of their members, but they have committed to it.

USEFUL LINKS

The agreement declaration

Chamber of Mines media statement, "Chamber of Mines signs leadership declaration with other stakeholders"

Roger Baxter interview with SABC News, 31 August 2015

THE TRUTH ABOUT TRANSFER PRICING

There has been a great deal of public commentary doing the rounds in SA over the last 18 months on the question of transfer pricing and illicit financial flows.

In the past several years this challenge that faces many countries has been rigorously addressed by the United Nations, the Organisation of Economic Cooperation and Development (OECD) and the G20 group of countries. The African Union commissioned former President Thabo Mbeki to lead a study which reported earlier this year and which determined that Africa has lost more than US$1 trillion in illicit financial flows over the past 50 years. These are real challenges facing the developing world in particular, and the work of these institutions has, we believe, offered significant progress.

Unfortunately, when political advocacy poses as serious research, and when people wanting to present a militant profile stand up on soapboxes and say anything they please, reality goes by the board. Flawed research and militant rhetoric in SA has blamed everything from perceived unsatisfactory miners' wage increases to inadequate government revenues on illegitimate transfer pricing.

Flawed research and militant rhetoric in SA has blamed everything from perceived unsatisfactory miners' wage increases to inadequate government revenues on illegitimate transfer pricing.

THE REALITY IS DIFFERENT.

Transfer pricing is not in itself unlawful or even illegitimate. It can occur when transactions take place between entities, or between various units of the same company and where that company operates in different parts of the world, in other words, it is more prevalent among multinational companies.

It is true that mining companies, because of the fact that many operate in more than one jurisdiction and because a large proportion of their products tend to be exported, are a prominent focus of any transfer pricing discussion. It is also true that, when a jurisdiction's transfer pricing regime is unregulated or inadequately regulated, that could enable companies illegitimately to transfer funds between jurisdictions or to misprice transfer in order to gain tax advantages.

Hence the need for countries' tax authorities to have clear rules and regulations, and to be able to implement those rules effectively.

The international standards for transfer pricing regulation are the OECD Transfer Pricing Guidelines for Multinational and Tax Administrations and, given perceptions of developed-country bias in the OECD, the UN Practical Manual on Transfer Pricing.

Both advocate the same approach to transfer pricing law and regulation: for transactions within a single group, individual group members must be taxed on the basis that they act at arm's length in their transactions with each other. If done on this basis, it would be the same as transactions between independent parties, thus eliminating price manipulation and contractual terms designed to facilitate tax avoidance.

Interestingly, although SA only has observer status at the OECD, our officials were actively involved in the work of the working party that developed the guidelines, and also in the development of the UN work on transfer pricing.

The Deloitte report notes that SA has adopted the best international standards of the time since the mid-1990s, with continuing tightening and adjustment. "South Africa now has in place robust and comprehensive transfer pricing rules in accordance with global best practice", the report says. "The administration of the legislation requires a high level of disclosure by multinational enterprises operating in South Africa in respect of their transfer pricing practices," it adds.

USEFUL LINKS

Read the original article "Transfer pricing is truly well regulated in SA", Business Day, 28 July 2015

CHAMBER OF MINES RESEARCH REPORT ON PROGRESS ON OWNERSHIP

On the 15th of May 2015, the Chamber and its members released findings of a comprehensive report which demonstrates the meaningful economic participation of Historically Disadvantaged South Africans (HDSAs) in the South African mining industry as per the ownership pillar of the Mining Charter.

This report is an aggregation of company information based on DMR submissions as at 31 December 2014. The analysis is based on the bulk of Chamber members and also captures a significant portion of the South African mining industry (80% – 90% based on Black Economic Empowerment (BEE) transactions, value and volumes).

The analysis has captured compliance levels in relation to mining rights held at the operating asset level over a period of 12 years. The results demonstrate that the industry has met and exceeded the target of 26% HDSA ownership by 2014 and that it has transferred significant value to HDSAs despite the challenges which arose with the 2008 world financial crisis and the subsequent bear market for commodities. In addition, meaningful economic participation of HDSAs has occurred with broad-based, identifiable beneficiaries and evidence of cash flowing to HDSA beneficiaries. This demonstrates the industry's commitment to transformation and the spirit of the Mining Charter.

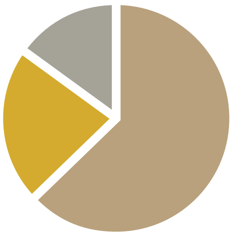
Broad-based HDSA ownership of 38% and meaningful economic value transfer in excess of R159 billion

The various sectors of the South African mining industry all met or exceeded the HDSA ownership targets

38.0%	27.3%	47.2%	26.0%
PGM	GOLD	COAL	DIAMONDS
35.7%	42.2%	35.1%	
IRON ORE	MANGANESE ORE	CHROME	

THE HIGHLIGHTS

Since the start of transformation in the mining industry, meaningful economic empowerment participation by HDSAs has been 38% on average, based on the Chamber collation. This exceeds the Mining Charter's 2014 26% HDSA ownership target. HDSA beneficiaries who have benefited both directly and indirectly, are composed of the following categories:



- **63% BEE entrepreneurs**
  (46 companies)
- **22% communities**
  (6.9 million individual HDSAs)
- **15% employees**
  (210 000 individual HDSAs)

In terms of the DMR's interpretation of the Charter meaningful economic participation by HDSAs has to include all three beneficiary categories, i.e. BEE entrepreneurs, communities and ESOPS (this interpretation is not shared by the Chamber). Based on the company information we have received, we found that the proportion of companies that have all three categories present, represent a minimum of 41% of the SA Mining Industry.

Over the 12 year period, dividends of a minimum of R47 billion were paid to HDSA beneficiaries, representing 19.6% of the total dividends paid over the period. This is in line with the phased HDSA ownership target from 15% by 2009 to 26% by 2014 and fairly represents the average over the period. It does not take into account profit from asset sales over the period and should be considered against a background of a dividend drought for many shareholders.

BEE transactions with an initial value of R116 billion were implemented over the 12-year period. These transactions created net value of around R159 billion (+207%) over the same period. The net value (after deducting debt from the asset values) created for HDSA-controlled entities represented 26% of the value earnings before interest, taxes, depreciation and amortisation (EBITDA multiple basis) of the entire industry at December 2014.

However, based on a through-the-cycle low and high valuation of assets, the net value created represents between R155 billion (+200%) and R282 billion (+444%) or 25% to 46% of the entire industry value (EBITDA multiple basis), respectively.

USEFUL LINKS

Summary of Chamber Research Report on Progress on Ownership

The full Chamber Research Report on Progress on Ownership

Comparison of CoM-DMR transformation numbers

Chamber of Mines media statement on MIGDETT Meeting and Mining Charter

CHAMBER OF MINES RESPONDS TO NERSA

NERSA ENCOURAGED TO CONSIDER ALTERNATIVE FUNDING MECHANISM

Further multi-year tariff hike jeopardises mining industry sustainability.

The Chamber submitted its response to Eskom's application to National Energy Regulator of South Africa (NERSA) for a multi-year increase of 24%. The Chamber's opposing stand to the further tariff hike is based on the premise that the mining industry's sustainability will be severely compromised should this increase be imposed.

In line with the Energy Intensive User Group (EIUG) submission on the matter, the Chamber does not believe that the correct funding mechanism to solve Eskom's financing requirements should be at the expense of the mining sector. "Nevertheless," says CEO Roger Baxter, "we note Eskom's need for further funding. What we are saying is that government needs to explore other avenues to raise these funds – we cannot accept that tariff increases are the most appropriate way of dealing with this shortfall at this time."

Since 2008 electricity tariffs have increased by 300% in South Africa. By applying energy management and efficiency projects a number of member companies of the Chamber have effectively absorbed about one third of this cumulative tariff increase by reducing utilisation, and installing significant back-up generation capacity.

From this point going forward, any improvements and efficiencies in mining will have much less impact, and will also be more costly to implement. Among certain mines the contribution of electricity to overall operating costs has doubled, and consequently any further tariff increase today is much more debilitating than in 2008.

Given the crisis situation the sector finds itself in, with the majority of operations loss-making, this additional electricity tariff increase will place the industry in jeopardy.

The Chamber submitted a number of related concerns in support of its objection to the tariff increase, including the indirect cost implications on items such as water, estimated to increase from the planned 14% hike to 17%.

The current price increases proposed by Eskom do not give industry (nor the rest of the country as a whole) a sense of an electricity price trend or projections into the future; this is a critical function of the multi year price determination (MYPD).

This discourages investment and undermines any potential growth in the mining sector.

The mining sector is in a difficult position in that it is essentially a price taker. The structural increases in electricity costs and the sector's inability to cut these any further, along with unreliable electricity supply, has severely compromised the electricity-intensive gold and PGM mining sub-sectors. A more stable electricity environment, in terms of both pricing and supply, is critical to ensuring the long-term sustainability of these sub-sectors in particular.

The mining industry is at a tipping point. The long-term negative economic impact of these proposed increases would result in damage to investor confidence, employment, capital expenditure and to the manufacturing sectors supporting the mining industry. The Chamber therefore encourages government to explore alternative funding mechanisms such as traditional shareholder recapitalisation and to consider the reallocation of the electricity levy revenues. We need all stakeholders to work together in order for the mining sector to emerge from its current malaise, to prevent further job losses and to make a more positive contribution to the broader South African economy.

USEFUL LINKS

- *Chamber of Mines response to NERSA regarding MYPD3 re-opener presentation*
- *Chamber of Mines media statement, "Chamber of Mines responds to NERSA MYPD3 re-opener presentation"*
- *Monique Mathys interview with SABC News, 23 June 2015*

LOOKING BACKWARDS TO LOOK FORWARDS

LEARNING FROM MARIKANA

It has been three years since the tragic events at Marikana shook our industry and our country, and altered the lives of 24 families forever.

Events commemorating that day have seen protests, gatherings, prayers, outrage and sadness and many statements of hope and reconciliation. All of these outpourings are right and appropriate, and our sympathies are extended to those who grieve.

Says Chamber President, Mike Teke, "For the mining industry it is a day to look backwards, so that we may look forwards. In looking backwards, we must understand and interrogate those issues and circumstances that led to the fateful events of that day, and the role that we – as business, as unions, as employees, and people – played in its unfolding. We must reflect on the extensive efforts that have been made to address these and many other legacy issues, and the way in which we as an industry engage.

And we must – and will – look forward to intensifying peaceful and constructive engagement and seeking ways to ensure that the mineral wealth with which South Africa is blessed delivers value to all stakeholders."

USEFUL LINKS

Further reading on the Marikana tragedy

Chamber of Mines media statement, "Looking backwards to look forwards"

MINISTER OF MINERAL RESOURCES

CALLS FOR COLLABORATION

Collaboration and support to uphold the sustainability of the mining industry

On 5 August 2015, Chamber office bearers Mike Teke, Graham Briggs, Andile Sangqu, Chamber Chief Executive Officer Roger Baxter as well as Anglo American Platinum CEO Chris Griffith participated in a multi-stakeholder leadership meeting called by the Minister of Mineral Resources, Advocate Ngoako Ramathlodi in Pretoria.

The gathering was aimed at addressing the challenges the mining industry is facing, more specifically job losses.

Roger Baxter, the CEO of the Chamber said: "The meeting was constructive and comes at a critical juncture as mining companies face a 'perfect storm' – weak commodity prices combined with spiralling costs. The mining industry is supportive of collaboration between all stakeholders ensuring that the mining industry continues to play a fundamental wealth creation role in South Africa. Simply put, mining matters for South Africa."

The task is now to prioritise short- and medium- term solutions that will enable sustainability, and minimal job losses in the mining industry. This will be an ongoing effort that the Chamber will participate in for the sake of the well-being of the industry and its stakeholders. Through collaboration, there is more reason to be optimistic about the future of mining in South Africa.

USEFUL LINKS

Chamber of Mines media statement, "Addressing Challenges Facing Mining in South Africa"

Department of Mineral Resources media statement, "Minister Ramathlodi calls urgent meeting with industry on job losses"