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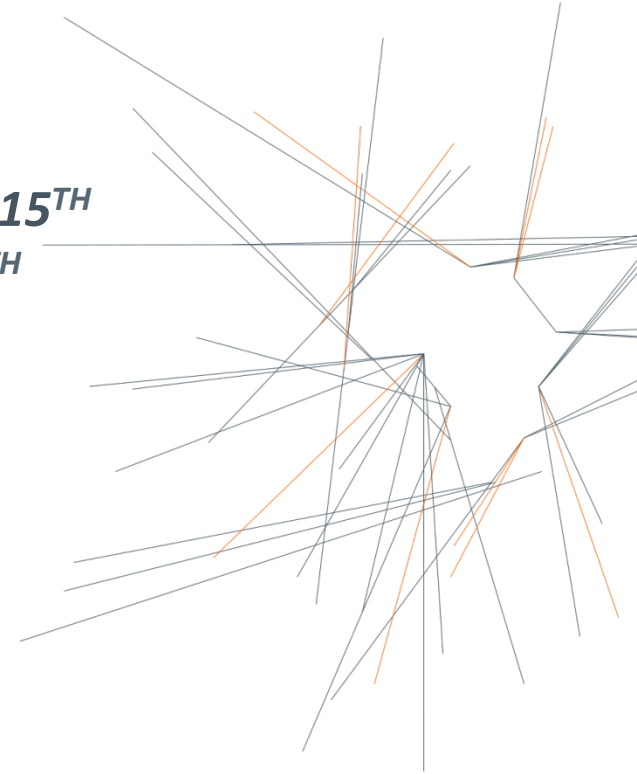
***CANADA-SOUTHERN AFRICA CHAMBER OF BUSINESS 15<sup>TH</sup>  
ANNUAL MINING BREAKFAST AND MINEAFRICA'S 12<sup>TH</sup>  
ANNUAL INVESTING IN AFRICAN MINING SEMINAR***

## **WHERE IS THE SOUTH AFRICAN MINING INDUSTRY HEADED?**

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# INTRODUCTION

- The mining industry has not been the same since the tragic incident at Lonmin's **Marikana mine** when **34 miners** were killed by South African Police Services tactical response unit on 16 August 2012.
- The Marikana incident arose from a **wild cat strike** led by the Association of Mineworkers and Construction Union ("**AMCU**") which was thus not protected under South Africa's labour laws.
- Since then, AMCU has **displaced** the National Union of Mineworkers ("**NUM**") as the majority union at many of the largest platinum mines.
- According to the National Treasury, **US\$1.1 billion in mine production was lost to labour unrest** in the wake of Marikana, shaving a half a per cent off South Africa's GDP in 2012.
- In an attempt to restore investor confidence and create greater stability in the South African mining sector, a government appointed team, led by **Deputy President Kgalema Motlanthe**, was tasked with creating more cohesion in the mining sector.
- This process resulted in the conclusion of the tripartite **Framework Agreement for a Sustainable Mining Industry** which was signed by government, labour and business on 3 July 2013 (the "**Framework Agreement**").
- **Fresh strikes** have begun across the platinum sector recently, though these strikes have, for the most part, been **peaceful** and **lawful**.



# THE FRAMEWORK AGREEMENT FOR A SUSTAINABLE MINING INDUSTRY



- **The Framework Agreement** is the first agreement for a **comprehensive strategy** for the industry between government, labour and business since the 2002 Mining Charter.
- The Framework Agreement recognises that:
  - government, labour and business need to "*work together to ensure the **sustainability** of the Mining Sector for the future of the country and [its] people*";
  - the industry can "*ill afford business as usual*";
  - "*the **rule of law** and **stability** is a fundamental pillar of our democracy and a necessity to ensure **economic** and **social development***"; and
  - the intermittent tensions that have plagued the industry in recent times "*have undermined stable labour relations, **constitutional rights**, equity and the rule of law*".



Kgalema Motlanthe  
**Deputy President of  
the Republic of South  
Africa**

# THE FRAMEWORK AGREEMENT FOR A SUSTAINABLE MINING INDUSTRY - CONTINUED



- **AMCU** has failed, despite earlier promises, to sign the Framework Agreement.
- AMCU was, however, a notable **participant in a forum** convened in November 2013 by Deputy President Motlanthe to assess progress in the implementation of the Framework Agreement.
- AMCU also appears to be adhering to the spirit of the Framework agreement:
  - its existing strikes are **lawful** and fall under the Labour Relations Act, 1995; and
  - a court **interdict** against AMCU's proposed strike in the gold mining sector earlier this year has been **respected**.





# CURRENT STRIKES IN THE PLATINUM SECTOR

- Fresh **strikes in the platinum industry** began on the 23 January 2014 under AMCU.
- AMCU is demanding a **minimum monthly wage of US\$1 135** for entry level miners, which is almost **150 per cent of the current minimum**. The Chamber of Mines ("**CoM**") has described these demands as **unaffordable**.
- The CoM estimates that the South African platinum strikes are **costing South Africa US\$36 million a day**.
- Lonmin, Impala Platinum and Anglo Platinum:
  - **have lost** collectively, **over US\$455 million in revenue**; and
  - **expect to lose** about **US\$1 545 million in revenue** over the course of the strike, should it last until May 2014.



- Employees have already **lost over US\$ 220 million in forfeited wages**.
- AMCU is currently in talks with the industry under the auspices of the **Commission for Conciliation, Mediation and Arbitration**.
- It is hoped that sense will prevail and that an **amicable settlement** will soon be reached to prevent further economic loss.

# MINING AND THE NATIONAL DEVELOPMENT PLAN

- The National Development Plan ("NDP") was produced by the National Planning Commission under Minister in Presidency, Trevor Manuel and is South Africa's plan for development of the economy, including the **mining industry**.
- The NDP has been described by:
  - the ANC as "*the **overarching framework** to guide and accelerate the development of South Africa to 2030 and beyond*".
  - President Jacob Zuma as the "***vision [for] the country** for the next 20 years*".
- The NDP was **adopted** by:
  - the South African Cabinet on 7 September 2012; and
  - the ANC at its 53<sup>rd</sup> National Conference in Mangaung in December 2012.
- **Implementation** of the NDP began in 2013 and will intensify in 2014:
  - **President Jacob Zuma** reaffirmed his government's commitment to implementing the NDP in his 2014 State of the Nation Address; and
  - **Finance Minister Pravin Gordhan's** 2014 Budget Speech made it clear the NDP is now the centrepiece of government's economic policy.



Trevor Manuel  
**Minister in the  
Presidency and head of  
the National Planning  
Commission**

# MINING AND THE NATIONAL DEVELOPMENT PLAN - CONTINUED

- The NDP acknowledges that the mining industry is **key to South Africa's future economic growth**.
- The NDP is also cognisant of the **challenges** faced by the mining industry and notes that the industry :

*"has performed poorly over the past decade", and that this is "an opportunity lost, as estimates show the mining sector **could expand by three per cent to four per cent a year to 2020**, creating a **further 100,000 jobs**', if it could overcome its 'central constraints'".*



- The National Development Plan ("NDP") the NDP sets out proposals to stimulate mining investment and production:
  - ensuring a **predictable, competitive and stable mining regulatory framework**;
  - developing and **enhancing linkages** with other sections of the economy; and
  - improving the **alignment of the Mining Charter** requirements to ensure effectiveness in **local communities**.

# THE CHALLENGE AND OPPORTUNITY PRESENTED BY THE MPRDA AMENDMENT BILL, 2013



- The objectives of the **Mineral and Petroleum Resources Development Amendment Bill, 2013** (the "Bill") include **improving the regulatory system** and removing ambiguities from the Mineral and Petroleum Resources Development Act, 2002 (the "MPRDA").
- However, the Bill in its original form did not appear to achieve these objectives.
- More concerning is the fact that the Bill imposes mandatory mineral beneficiation requirements on the producers of "**designated minerals**":
  - The Bill in its original form granted the Minister the power, in her sole discretion, to **prescribe** "**designated minerals**", the levels required for beneficiation, the percentage per commodity that is required for local beneficiation as well as the price at which such commodity is to be sold to local producers
  - Further amendments were, however, proposed by the DMR on 11 February 2014 after **consultation** with the CoM. These amendments **significantly improve** the Bill. For instance these amendments propose that the beneficiated minerals will be sold at "**mine gate price** or [an] **agreed price**" instead of at a price determined by regulation. This appears to be based on the market price of minerals.
  - The Bill still requires any person who intends to **export** any "**designated minerals**" to obtain the Minister's **written consent** prior to doing so.
- The **Parliamentary process is not yet complete**, which leaves opportunity for further improvement.



# THE FRASER INSTITUTE ON SOUTH AFRICA



- The **Fraser Institute's annual survey of mining companies** for 2013/2014 (the "Survey") cites **regulatory issues, labour disruptions and licensing delays** as major areas of concern in South Africa.
- South Africa's ranking in the survey remained the same as it was in 2013, being ranked:
  - **64<sup>th</sup>** out of the **112** mining jurisdictions ranked in the Survey's policy potential index; and
  - **8<sup>th</sup>** of out of **17** African mining jurisdictions.
- This is a significant improvement as the Survey **ranked only 96 jurisdictions in 2013**, only **16** of which being African: South Africa thus moved from the bottom third of countries surveyed to almost within the top half.
- Some investors expressed **positive** sentiments in the Survey, **despite the challenges**. Importantly, these investors viewed the South African situation in context:

“ *South Africa is a good investment destination: one needs to consider that there is a transformation process in progress which is attempting to create a stable country in decades to come.* ”

**A mining company with more than US\$50 million in revenue, Vice President**

# CONCLUSION



- In summary, the South Africa mining industry is facing **significant challenges** including:
  - **on-going labour unrest;**
  - **falling production;**
  - **high labour, infrastructure and energy costs;** and
  - **regulatory complexity.**
- However, efforts are being made to address these challenges. In particular:
  - the signing and implementation of the **Framework Agreement** by government, labour and business in 2013;
  - the effective implementation of the **NDP** through the budgetary process; and
  - improvement of the **MPRDA Amendment Bill** during the current parliamentary process.

## Peter Leon

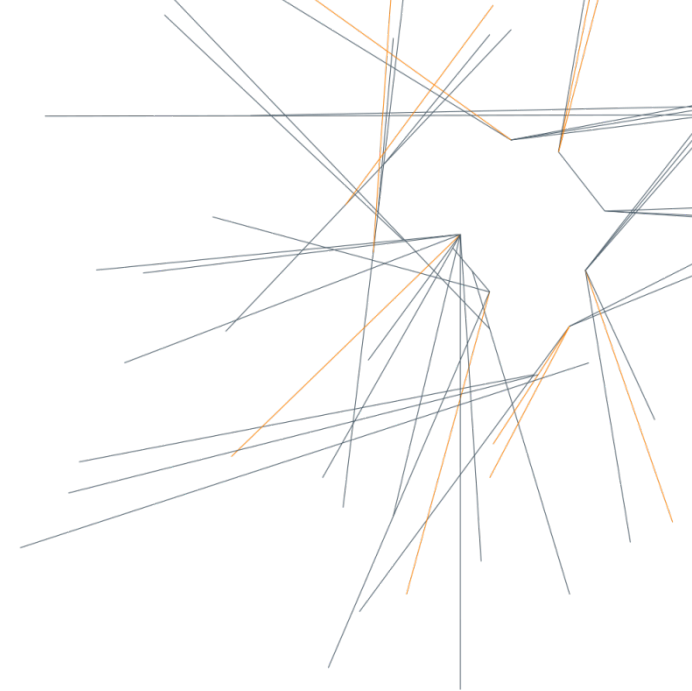
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