

## Anglo American South Africa – Submissions on the MPRDA Amendment Bill – B15 - 2013

- Honourable Chairperson Ms Bikani, honourable Members of the Mineral Resources portfolio committee
- Anglo American welcomes the opportunity to present its submissions on the MPRDA Amendment Bill.
- We want to contribute positively and actively to the amendment process and achieve a mining regulatory system which is predictable, competitive and stable. This is crucial for the development, success and growth of the mining industry in South Africa.
- Anglo American is proud to have a long history of operating in South Africa. We have made significant investments contributing to the development not only of our business, but also of the country.
- Our platinum, iron ore, diamond and thermal coal operations will be directly affected by the proposed amendments, as will our ability to develop, expand and grow the company in South Africa. Anglo American has therefore taken the time to outline our concerns and suggest alternatives we believe will be of benefit to the industry and the country.
- Anglo American supports the comments already submitted by the Chamber of Mines - our proposals are in addition to those submissions.
- Honourable Chair, Honourable members, in the interest of time, we would like to focus on four core issues:
  1. ministerial discretion
  2. beneficiation
  3. transfers of interest, and
  4. residue stockpiles
- By way of background, I would like to highlight Anglo American's contribution to South Africa over the past year.

Honourable Chairperson, honourable members, Anglo American has its roots in South Africa, having been established here in 1917. Our operating assets in South Africa account for 35% of our global operating assets.

In 2012, 45% of Anglo American's revenue and 54% of operating profits were generated in South Africa. As at the end of 2012, Anglo American employed more than 97 000 people – about 70 500 of whom are full-time employees, and the rest are contractors.

Anglo American has invested in capital expenditure to the tune of R188.3 billion in South Africa since 1999. In 2012 alone, R14.4 billion was paid to the fiscus in the form of direct and indirect taxes. The

resultant capital inflow to South Africa from Anglo American's foreign shareholding was R9.6 billion in 2012 and export revenues generated, amounted to R94.2 billion.

Anglo American (together with its controlled companies) remains a significant contributor to the JSE, representing 8% of the value of all JSE companies in 2012, as well as 20% of the value of all JSE mining companies.

We are also a key partner with South Africa's state-owned enterprises. In 2012, we spent R3.5 billion with Eskom; the cost of thermal coal delivered to Eskom was R5.8 billion for the same period. Thermal coal supplied to Eskom by Anglo American represents approximately 27% of total domestic coal supplied to the utility.

We spent R6.7 billion with Transnet in 2012. Honourable Chairperson, Honourable members, as I stated this was to provide some context.

**1. On the issue of Ministerial Discretion we comment as follows:**

- As a Corporate citizen of South Africa, we want our country to grow and prosper. For this to happen, South Africa has to be an attractive investment destination. However, in any industry, but especially in mining, which is inherently high risk, and capital intense that cannot and will not happen without a stable regulatory environment which provides some certainty, stability and predictability.
- The finalisation of the MPRDA is an opportunity for Government to show that it is committed to improving the effectiveness of legal and regulatory compliance, is fair and impartial, is committed to the consistent application of laws, and most importantly, is committed to providing an environment supportive of investment. As such, it is imperative for the MPRDA to be constructive towards the mining industry rather than undermining it.
- As it stands, much of what the Bill should contain is left to the Minister's future discretion in the form of regulations to the MPRDA, with no guidance provided as to how this discretion should be exercised.
- Giving unfettered and uncircumscribed power to the Minister to determine the terms and conditions subject to which rights and permits may be granted is a significant disincentive to investment. It may also give rise to potential Constitutional difficulties as it constitutes a delegation of legislative power to the Minister and does not comply with the guidance principle.
- This level of discretion has the potential to be significantly disadvantageous to companies wanting to do business in South Africa as it does not provide advance notice of relevant regulatory regimes, and in an industry such as mining with very long-term investment horizons, this is very unattractive.
- We need a certain and stable regulatory framework to be able to continue prospecting and investing. The lack of further prospecting or investment from a company like Anglo American

would have a significant impact on the country. In fact, the Preamble to the Framework for a Sustainable Mining industry itself states that the South African mining industry is central to our economy and job creation.

- Honourable Chairperson, Honourable Members, while South Africa has until recently enjoyed strong credit ratings, we've seen this trend reversing with top rating agencies downgrading South Africa. On the other hand, Despite the JSE all-share index posting a 60% growth, and, in fact, outperforming the New York bourse since 2007; the JSE mining index was flat in nominal terms, which means investors in the SA mining industry in fact lost over 30% of their value, in real terms, in the same time. The National Development Plan has recognised that South Africa has failed to capitalise on the global commodities boom, with one of the central constraints being uncertainty of the regulatory regime.
- Under the current proposals, Honourable Chairperson, Honourable Members, the normal legislative public participation process will be bypassed entirely. Key decisions will be left to be determined by regulation. This level of discretion is in direct opposition to commitments made by the Government to ensure an environment that is conducive to investment.
- As such, we at Anglo American, strongly propose that the Bill should be revised to remove the broad conferral of discretion on the DMR and Minister. We also propose that the bill re-introduces specific time periods within which administrative decisions should be taken. This is particularly important for areas of regulatory decision-making that will have an impact on corporate transactions, such as those contained within section 11, dealing with transfers of rights.
- We strongly believe that key issues should be dealt with either in the MPRDA itself or in schedules to the MPRDA rather than being delegated to uncertain future regulation, which will not require the same law making process as is today the mandate of this Committee.
- Such unfettered discretion leads to uncertainty and will discourage investment in SA's mining industry, which is contrary to the requirements of the NDP and the Framework for a sustainable mining industry.
- As I said earlier - the MPRDA needs to be constructive towards the mining industry rather than undermining it.

## 2. Beneficiation

- Honourable Chairperson, Honourable Members, on the issue of beneficiation, let me start off by saying that Anglo American supports beneficiation as a means of creating new wealth and employment in South Africa. We understand and support Government's drive to reindustrialise South Africa. However, we do agree with the National Development Plan's comments that beneficiation is not a panacea, and that it must make economic sense.
- Anglo American's PGM, iron ore, diamonds and thermal coal businesses have the potential to be impacted by the beneficiation clauses in the Bill, and we are concerned that there remains a significant amount of uncertainty around beneficiation as the Bill currently stands.
- Of particular concern to us is the new definition of "beneficiation" and the resulting discretion that this affords the Minister. We find it concerning that through this amendment, the Minister has the power to determine the price and volume of commodities that must be set aside to local beneficiaries, without consideration of market nor economic factors.
- From 1999 to 2012, Anglo American has invested c. R188.3bn (US\$22.9bn) in capital expenditure in South Africa based on the assumption of security of tenure and a predictable regulatory environment.
- Lack of definitions of important concepts such as "designated minerals" and "developmental pricing conditions", among many others, also leads to a lack of certainty which is prohibitive with respect to making future investment decisions.
- Furthermore, the proposed control of exports may contravene international trade agreements and commitments relating to tariffs and trade.
- It is therefore our strong belief that the proposed reference to developmental pricing conditions should be deleted in favour of export parity pricing. If it is retained however, the Bill should spell out clearly how price will be determined, taking into account the need to provide a competitive risk-adjusted return to the producers.
- Honourable Chairperson, Honourable Members, clarity should also be provided on the definitions of strategic minerals and developmental pricing conditions.
- We further propose the exclusion of commodities that are not suitable for export minerals, such as export quality coal, as well as diamonds and precious metals, which are already regulated in specific pieces of legislation, namely, the Diamonds Act and the Precious Metals Act. For example, with regards to Diamonds, the proposed amendments do not take into account the existing regulation of diamonds in the Diamonds Act and the Precious Metals Act. The promotion of local beneficiation of unpolished diamonds, (introduced in 2005 after extensive

consultation with the Diamond Industry) is regulated by the Diamonds Act, as well as the Diamond Export Levy Act.

- Anglo American is acutely aware that it is the government's duty and right to extract the maximum developmental impact and value from a country's natural resources for its people, as is the purpose of beneficiation. However, it is our belief that the single largest constraint to greater beneficiation in South Africa has nothing to do with access to raw materials, but is rather about the lack of capital investment, both in downstream industries, but also in mining, which is only exacerbated through the proposed legislation.

### **3. Moving on to transfers of interest**

- Clause 8(a) of the amendment bill proposes that the Minister's consent is required for the disposal of any interest in an unlisted company holder and of a controlling interest in a listed company.
- Anglo American is concerned that ministerial discretion and lack of time lines for the exercise of such discretion will most likely deter investment in the mining sector as the terms of the right at the date of transfer may be amended and more onerous conditions may be imposed by the Minister.
- This would have negative implications for foreign direct investment as it will directly affect shares such as Anglo American that are traded daily on stock exchanges. The restrictions will cause delays and uncertainty in commercial mining transactions.
- As such, Honourable Chairperson, Honourable Members, Anglo American calls for the deletion of the amendment so that only the disposal of a **controlling** interest in unlisted company holders requires ministerial consent. We also call for confirmation that these provisions are compliant with South Africa's international law obligations.

### **4. Honourable Chairperson, Honourable Members, next we would like to bring to your attention the issue of residue stockpiles**

- Current legislation does not regulate mine dumps created before the commencement of the MPRDA. However, the amendment bill now proposes this inclusion.
- To facilitate these inclusions, the amendment bill provides for a 2 year transitional period, where owners of mine dumps must apply for a reclamation permit in order to commence or to continue conducting mining operations in respect of mine dumps. However these permits will endure for a period not exceeding 4 years with one renewal not exceeding 2 years, and will not be transferable.

- If implemented, the proposals in the Bill will adversely affect Anglo American in that its ownership of mine dumps will be expropriated and the proposed short-term reclamation permits will in most cases not be sufficient to cover the period necessary to reclaim the mine dumps. Further to this, the non-transferrable nature of the permits would prevent future group restructuring and sales, or part sales of, mines.
- In light of this, Anglo American proposes that the relevant portion of the Bill not be passed.

**Honourable Chairperson, Honourable Members to conclude**

- While Anglo American supports a number of the objectives of the DMR, particularly the desire to harmonise conflicting regulatory regimes and the introduction of “best practice” regulations, we believe that several of the proposed amendments do not achieve these goals and run the risk of significantly compromising South Africa’s future economic growth.
- Mining is an inherently high risk and long term business. The mining regulatory regime should not add to the risk undertaken by mining companies and investors, by providing certainty, stability and predictability through a clear and unambiguous legal framework.
- The Framework for a Sustainable Mining industry facilitated by the Deputy President committed signatories to repositioning the mining industry to become more attractive to investors and a more meaningful contributor to job creation, while government specifically committed to improve the effectiveness of mechanisms for legal and regulatory compliance.
- These principles also need to be evident in the MPRDA and are contradicted by the proposed amendments. This cannot be attained under the current MPRDA amendments which are unattractive to investors and will not lead to employment if investment is curtailed.
- Mining has significant developmental potential for South Africa; this is a country that has been blessed with the greatest untapped resource endowment in the world, but we are missing out on the massive untapped potential, and we will continue to miss out on that, until we can create a regulatory environment that encourages investment and supports our industry.