



CHAMBER OF MINES  
of South Africa

# MEDIA STATEMENT

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## APPLICATION TO CONSOLIDATE ACTIONS HEARD, JUDGMENT RESERVED

### *Hearing of Chamber's application postponed*

**Johannesburg, 15 March 2016.** The Chamber of Mines advises that the application by Malan Scholes to consolidate its case with the Chamber of Mines' application was heard in the Pretoria High Court by Judge Rabie today. The Chamber opposed the consolidation of the action by Malan Scholes on the grounds that it does not seek determination of substantially the same questions of law or fact. While the Scholes application argues that the Mining Charter is unconstitutional and invalid, the Chamber's application does not make that argument. The industry has been, and continues to be, committed to the achievement of all the transformation objectives of the Mining Charter, but does however seek clarity on the interpretation of one critical issue related to the continuing consequences of empowerment transactions.

Judge Rabie reserved judgment in respect of the consolidation application. A decision on the allocation of costs will be made when the judgment is given. The Chamber's original application on behalf of its members for a declaratory order providing guidance on the principles applicable to the interpretation of the ownership aspect of the Mining Charter has been postponed.

### **Background:**

The Chamber of Mines and its members are seeking clarity on the assessment of the ownership element, particularly in respect of the continuous consequences of previous black economic empowerment (BEE) deals. The intention to jointly pursue this declaratory order was initially announced by the then Minister of Mineral Resources, Ngoako Ramatlhodi, in March 2015. It subsequently became clear that the legal mechanism available to the parties required a clear applicant and respondent, with an identifiable and clear point of dispute. The Chamber has since continued with the process while keeping the DMR fully apprised of its approach.



Chamber of Mines CEO, Roger Baxter notes that: “The industry has made significant progress in respect of all charter pillars, including meeting and exceeding the ownership target in aggregate. We believe we have met the spirit and intent of the Charter’s ownership provisions and it is our view that the DMR acknowledged this by issuing mining rights to mining companies based on their transformation achievements and plans. By our calculation, Chamber members have achieved empowerment levels of 38% on average (compared to the 26% target set out by the Mining Charter). The value of empowerment transactions since 2000 amounts to R205 billion in 2014 money terms, resulting in meaningful economic value transfer of R159 billion.”

The Chamber believes that the ‘continuing consequences’ clause of the original charter envisaged a situation that empowerment credits would be considered sustained. Indeed, the 2004 Charter envisaged it to be government’s responsibility to encourage longevity by BEE shareholders by indicating that government would consider special incentives to encourage HDSA companies to hold on to newly acquired equity for a reasonable period.

Further, we believe that it would not have served the interests of empowerment to impose a permanent lock-in or similar restriction on entrepreneurs and other beneficiaries. A limited degree of “lock-in” is justified given that these transactions generally involve significant discounts and other favourable conditions. However, had permanent ‘lock-ins’ been imposed, we would now have a situation of far less actual empowerment than has been achieved, with many black mining entrepreneurs who have built major companies having been restricted from making the decisions that enabled them to do so.

“Achieving certainty on the critical element of ownership is in the best interests of government, the companies and their shareholders and all other stakeholders,” Mr Baxter concludes.

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