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Leadership

2017 has been a whirlwind year for all South Africans with every single aspect of both personal and business life being disrupted by political, socio-economic and regulatory change and uncertainty.

Many of the changes were anticipated and expected, some were predicted, and some may have caught people by surprise. Change and uncertainty have been particularly prevalent in the South African mining and natural resources sector, a key barometer for the state of business, which remains critical to the South African economy and which, if managed properly, can continue to contribute significantly to growth and development, to the benefit of all South Africans.

The mining and natural resources sector's position as a key contributor and as a potential significant driver for growth and development has been hampered by significant challenges faced by the sector in 2017.

This included the publication of the Reviewed Broad-Based Black Economic Empowerment Charter for the South African Mining and Minerals Industry 2016 on 15 June 2017 (Mining Charter 3), and the immediate, widespread, and generally negative response to Mining Charter 3.

Unlike in respect of the two previous versions of the Mining Charter, the response was more widespread, with criticism coming from a broad spectrum of stakeholders, which initially included the Chamber of Mines (COM) representing the majority of mining companies, trade unions, and other interested and affected parties.

In November 2017 the High Court of South Africa granted a request by the Centre for Applied Legal Studies and Lawyers for Human Rights, which represent various community organisations, to join the COM's application for a review of Mining Charter 3.

While the Centre for Applied Legal Studies and Lawyers for Human Rights are addressing Mining Charter 3 for reasons that may differ from those of the COM, the fact remains that the Centre for Applied Legal Studies and Lawyers for Human Rights represent important stakeholders that have also taken up a position that is critical of Mining Charter 3.

Despite some positive views on the South African mining and natural resources sector, there have been a number of aspects that have impacted, significantly. Without question, the most debated and discussed topic of 2017 was the impact of Mining Charter 3. It was estimated that

mining stocks lost approximately ZAR50 billion in value following its publication, with the rand losing ground at that time.

The COM immediately launched legal proceedings, and the grounds of challenge went to the heart of Minister Zwane's powers and functions under the mining legislation, and the constitutionality of Mining Charter 3. The COM and various other stakeholders have argued that Mining Charter 3 is harmful to industry and the economy because of its content, as well as the vague and contradictory language in Mining Charter 3.

Mining Charter 3 does not only impact South African mining companies, but also South African and foreign suppliers of goods and services.

In addition to Mining Charter 3, Minister Zwane published his intention to issue a notice placing a moratorium on all applications for new prospecting and mining rights, renewals of prospecting and mining rights, and ministerial consent in terms of section 11 of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) (in summary where a right or an interest in a right is to be transferred or there is a change of control, ministerial consent is required).

The Minister indicated his intention to issue the moratorium notice under section 49 of the MPRDA, which vests the Minister with the authority to issue a notice prohibiting prospecting or mining in respect of certain geographical areas or certain minerals for a particular period, having regard to the natural interest, the strategic nature of the mineral in question and the need to promote the sustainable development of the nation's mineral resources.

Various stakeholders expressed the view that the Minister had exceeded his powers under section 49 of the MPRDA by intending to issue a blanket notice. The COM again initiated court processes and the notice was not issued.

The dates for the hearing of the COM's application to review Mining Charter 3 by a full bench of the High Court remained 13 and 14 December 2017, despite the Order of the High Court granting the request by the Centre for Applied Legal Studies and Lawyers for Human Rights, to join the application.

Initial concerns that these dates would be pushed out have been addressed, and the focus has now turned to the substance of the challenge to Mining Charter 3. By the time that this article is published, the High Court should have handed down its judgment and, hopefully, provided clarity and a level of certainty to the South African mining and natural resources sector, and all stakeholders.

Mining Charter 3 has been blamed by a number of stakeholders for the high number of job losses in the mining and natural resources sector in 2017, or that it was at least, a significant contributing factor.

While there may be some merit in these arguments, it would be far too simplistic to attribute the job losses to Mining Charter 3 only – there are many contributing factors, such as regulatory and policy uncertainty, which are broader than just Mining Charter 3, the external investor perceptions

of political stability, corruption and nepotism, and the significant increases in the cost of mining operations in South Africa.

Feasibility studies for new investment and investment in expansion projects now, of necessity, include pricing the risk associated with policy and regulatory uncertainty, and this costing has resulted in cautious decisions on new investments and expansion projects which would, under other circumstances, have been feasible.

The negative consequences of the job losses are widespread. It is generally acknowledged that a multiplier effect applies, and that for each person in the mining and natural resources sector who loses his or her job, another six to eight persons who may be dependent on that person are affected. It is, however, not only direct dependants that are affected – there is a ripple effect to service providers that provide food, transport, accommodation, etc. These service providers are often, themselves, small to medium enterprises that cannot absorb the loss of business.

On a positive note, the threatened strike for late 2017 in the coal subsector was called off and despite Eskom's announcement that it has sufficient coal stockpiles across its coal-fired power stations and was building them ahead of the potential strike, there were concerns that electricity-reliant businesses could be impacted at a critical time of the year.

Not all news has been bad news. In November 2017 delegates who attended the Chromium 2017 Conference were informed that South Africa is an irreplaceable supplier of chrome ore and ferrochrome, and continues to hold its position as a dominant global chrome producer, and that South Africa remains a significant exporter of chrome, predominantly to China. South Africa has, however, lost out in its number one producer position to China.

2016/2017 also saw mining companies challenging instructions and decisions of the Department of Mineral Resources in the South African courts. One of the matters that was commented on extensively during 2017, was involving AngloGold Ashanti Limited, the Acting Chief Inspector of Mines, the relevant Principal Inspector, and the Inspector that issued a section 54 instruction in terms of the Mine Health and Safety Act 29 of 1996 (MHSA). In late 2016, the Labour Court handed down a judgment in favour of AngloGold Ashanti.

In the matter, an inspector conducted an inspection on Level 44 of Section 12 of AngloGold Ashanti's Kopanang Mine, situated in the District of Orkney, in the Northwest Province.

The area where the inspection was conducted constituted a small part of the overall mining operations at the mine. A series of six instructions were issued in terms of section 54 of the MHSA, stopping various operations. AngloGold Ashanti challenged the instructions.

The Labour Court held in the matter, in relation to stoppage notices, such as section 54 instructions, that "it is the notion that one ought not to use a sledgehammer to crack a nut". The AngloGold Ashanti judgment provided useful guidance to all stakeholders in the industry, in 2017. The judgment urged all stakeholders to carefully consider their positions and to engage, meaningfully, to ensure the ultimate objects of zero harm.

From a health and safety perspective, 2017 has raised the question as to whether "zero harm" is achievable. As at the end of November 2017, there were 82 fatalities, which surpassed the total 2016 figure of 73, ending nine straight years of a decrease in fatal accidents. It has been suggested that this is as a result of the disruption to the "mining rhythm" as a result of mine stoppages, restructuring programmes, retrenchments, and placing shafts on care and maintenance.

2017 has also been a year of disruption for the mining and natural resources sector as a result of developments on renewable energy, the fourth industrial revolution, more commonly referred as Industry 4.0, the internet of things (IoT) and the strides being made in artificial intelligence.

From a global perspective, renewable energy is dominating development of capacity, and is likely to outstrip fossil fuel-generated energy in the short to medium term. The growth of renewable energy capacity is attributable, to a large extent, to the lowering of the costs associated with renewable energy.

South Africa may be losing out. While renewable energy is very clearly on the agenda, whether it is being implemented properly is another thing, entirely. In contrast, for example, China is now a leader in the push for renewable energy and has taken the dramatic step of banning any new coal-fired power plants. This has been in support of China's constitutional environmental imperatives and its programme of "Beautiful China".

South Africa remains heavily reliant on coal-fired electricity generation, but even South Africa's coal mining industry will have to acknowledge the drive for cleaner energy.

Industry 4.0, the IoT and artificial intelligence are a reality that should be embraced to improve efficiencies, while balancing a critical component of the South African mining industry, namely its employees, through the implementation of appropriate programmes of re-skilling, implementation of open source/access infrastructure that can be shared by sectors such as the agriculture sector, and buy-in from key stakeholders in the mining and natural resources sector.

A number of mining-focused events were held in the latter part of 2017 including Africa DownUnder, Joburg Indaba, and Mines and Money London. The views expressed at these events have generally been positive, and there is certainly the perception that progress made in the mining and natural resources sector in 2017 is sustainable and that, at the very least, the first quarter of 2018 is likely to see further improvements.

One thing is certain, the super cycles previously experienced, are unlikely to be seen in the near future, if ever, again. Prudent mining companies will therefore keep a very close watch on mining costs to ensure that operations remain profitable, while at the same time, creating monetary reserves for possible expansion and acquisition projects.

South Africa has been acknowledged for its "can do" approach, and many innovations developed in South Africa have been successfully exported abroad. It is critical for leaders to come forward, who embrace the changes that are so necessary for the success of South Africa and all its citizens.

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