

Withdrawal of Australian mining company MRC welcomed by Xolobeni community; Questions on way forward remain

For Immediate Release: 18 July 2016

The Legal Resources Centre (LRC) and Richard Spoor Inc, Attorneys (Spoor Inc) welcome the decision of Mineral Commodities Ltd (MRC) to divest from the Xolobeni Mineral Sands Project; announced on the Australian Securities Exchange today.

The LRC and Spoor Inc represent the Amadiba Crisis Committee, the customary leadership of the Umgungundlovu community, and 69 of the 75 households within the proposed area in opposing the mining right application filed in March 2015.

The community's objection to the mining right application highlighted various defects in MRC's mining right application. (see attached)

Fundamentally, the objection noted that MRC had failed to seek the consent of the community in terms of its customary law, and that no mining right application should be granted without such consent being given.

Despite the community's opposition to the Xolobeni project, MRC has been granted repeated extensions by the Department of Mineral Resources to file crucial environmental documents, without any reference to the community, when its application stood to be dismissed outright.

Concern regarding transaction with Keysha

We note with concern MRC's announcement that it has entered into a Memorandum of Understanding with Keysha Investments 178 Pty Ltd (Keysha) to divest its interest in Transworld Energy and Resources (SA) Pty Ltd (TEM) in the Xolobeni Project.

We note that the Xolobeni community is only learning of this decision from

an announcement on the Australian Securities Exchange, and were not consulted about the decision.

It is unclear whether the Department of Mineral Resources has played a role in facilitating this transaction, or if any public financing through the Industrial Development Corporation or any other entity is involved.

It is manifestly unclear how this transaction will be funded, and what compensation Keysha will be obliged to pay to MRC and/or its subsidiaries in return for MRC's interest in the Xolobeni project.

We strenuously object to the process, in terms of which this decision has been taken without our clients' participation, much less consent. We have accordingly written to MRC and its attorneys seeking a copy of the MoU on behalf of our clients.

We note that previous documents filed by MRC's subsidiary, TEM, have indicated that Keysha was set up by MRC as a wholly owned subsidiary of the Xolobeni Empowerment Company (XolCo), a structure established by MRC.

While XolCo has been described by MRC as a "Black Economic Empowerment (BEE) company representing the Amadiba community at Xolobeni", our clients have never been consulted regarding XolCo and deny that it represents them:

- MRC documents have variously asserted that XolCo is owned by five or nine community trusts. The community has not been consulted in any of these trusts' formation and does not know whether any or all of these trusts have been registered.
- We have seen one trust deed from these community trusts. In terms of this deed the municipality would appoint three Trustees, with prominent mining supporter Zamide Qunya appointing the fourth. This clearly does not ensure community ownership of the Trust's decisions.
- While the Trusts are supposed to appoint the directors of XolCo, XolCO currently has eleven directors, all mining supporters, including the iNkosi (Chief) of the Amadiba traditional community, Lunga Baleni. As the Trusts

have not had any meetings in the community, it is denied that these directors were appointed by the Trusts.

- While few details have emerged, XolCo's purchase of a 26% share in the Xolobeni project was funded, in part, by issuing preference shares in Keysha that entitled MRC, and an entity known only as SGC, to 60% of Keysha's dividends.

- We are deeply concerned that the financing of Keysha's agreement with MRC will be similarly opaque and unfavourable.

- Keysha has a single director, Mzwandile Maraqana, who is entirely unknown in the community.

It is our clients' view that XolCo and Keysha were established by MRC to advance its mining interests. They clearly were not established by the community itself, and were established with minimal community consultation.

Indeed, our clients' view is that mining will not be accepted under any circumstances, much less the uncertain terms reflected in MRC's announcement.

We are unsure whether the transaction requires the approval of the Department of Mineral Resources in terms of section 11 of the Mineral and Petroleum Resources Development Act. We have noted that the Deputy Minister of the Department will be in Xolobeni tomorrow and hope that he will clarify this point. If section 11 approval is required, we expect the Department to engage in informed consultation with our clients, before making its decision.

We therefore reiterate our clients' call that the application be dismissed by the Department of Mineral Resources immediately.