

ENVIRONMENTAL LIABILITY ISSUES DURING TRANSACTIONS (Part 1)

By Mpai Motloung

When mining transactions take place, the potential consequences of environmental liability issues are seldom taken into account. Environmental liabilities may show up as one line in a complicated cash flow model, leading to the underestimation of the importance of these issues. However, this one line may mask a host of environmental considerations that may change the value of an asset.

Mineral Resource and Mineral Reserve Size

Companies need to recognise that environmental issues may serve as a modifying factor that could reduce the size of the mineral reserves and mineral resources. This is because only mineralised material for which there are reasonable prospects for economic extraction can be reported in Mineral Resource and Mineral Reserve Statements. In the case of pending environmental authorisations, the confidence in extracting these resources may be reduced. This was the case with Impala Platinum, and was reflected in its Mineral Resource and Mineral Reserve Statement for 2009, which included the statement:

“The Mineral Resources and Reserves quoted for 30 June 2009 exclude estimates for the North Open Pit pending environmental authorisation. This was included in previous estimates.”

Ownership of Environmental Liabilities

Another possible environmental issue which may affect transactions is the attachment of the environmental liability. Palabora Mining Company, in its results for the period ended on the 31st December 2005, indicated that it would close its zirconium basic sulphate plant, because, in the event of a sale, the *“environmental liability could still remain with Palabora even after the plant has been sold”*. This clearly indicated that a potential environmental liability was a greater risk than the sum that the company might receive for its plant.

Ownership of the environmental liability also seems to have played a part in the scuppering of the 2009 negotiations between Trans Hex and De Beers for De Beers' Namaqualand division. Trans Hex company secretary George Zacharias was quoted by Miningmx as saying that *“the environmental liability was one of the major negotiating points.”* A Miningmx source went even further, saying that *“the environmental liability at Namaqualand is enormous, and estimated at around four times the value that Trans Hex actually put on the business.”*

Venmyn believes that many of these environmental issues can be identified and managed by carrying out a thorough environmental due-diligence process, incorporated in the transaction's overall due-diligence process. Venmyn has partnered with MSA to offer this service, and Venmyn strongly encourages companies to consider an environmental due diligence when carrying out a due diligence or compiling a Competent Person's Report for a transaction. It is relatively inexpensive and not time consuming (given that all the necessary documentation is provided upfront). In addition, it can save a company from negative publicity and unnecessary expenditure.

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