Draft Report of the Portfolio Committee on Mineral Resources on its oversight visit North West and Gauteng on the 13-14 September 2018, dated

The Portfolio Committee on Mineral Resources, having undertaken an oversight visit to North West and Gauteng, reports as follows:

1. Introduction

A delegation of the Portfolio Committee on Mineral Resources (the Committee) visited North West and Gauteng Provinces from 13-14 September 2018.

Two specific mining operations in business rescue were in danger of being liquidated in terms of company law (Company's Act of 1973). The PCMR needed to understand challenges that the Department is facing in dealing with mines that may not have sufficient resources to cover environmental rehabilitation costs in the event of closure.

The management of distressed mines is a major weakness in current mining policy. The PCMR needs to understand whether the weaknesses are due to poor implementation by the department or gaps in the mining legislation.

The first objective of the oversight was to visit Shiva Uranium/Gold mine in Klerksdorp, North West Province. The environmental impact of the mine is under question, and whether or not required rehabilitation is adequately funded. The issue is whether the Department of Mineral Resources has monitored the situation with sufficient care to ensure that environmental laws are properly enforced. For example, the Committee had been informed that:

- No work was going on at the mine. Shiva security (who had not been paid) and security appointed by the IDC were said to be the only people on site.
- Certain equipment had been stolen or vandalised. A security bakkie was burned and the jaw crusher has been broken. One person estimated the cost of damage and replacement would be in the region of R30 million.
- Local people say a former mine manager and his family members were trying to get workers to sign some sort of document. There were reports of threatening behaviour to workers.
- An allegation has been made that some former management were trying to falsify reports of how much gold is still at the mine to make it seem more viable.

The second objective of the oversight was to visit Mintails mine in Mogale City, Gauteng Province and get a briefing from DMR and environmentalists where the Department has failed to ensure that this mine had made the required provision to repair over R300 millions of environmental damage.

- Why had the Department not required that funds be deposited long before the company went into business rescue?
- What steps will the Department take against the owners and directors of Mintails to ensure that they are held personally responsible for paying the money needed for rehabilitation, now that the business rescue process has failed?
The PCMR is often confronted by instances of the devastation caused by careless mining where the DMR says it is a state liability because no-one can be found to take responsibility.

In the case of the Mintails operation in Krugersdorp, this mine went into business rescue in 2015 at a time when the mining company had an unfunded environmental liability of over R300-m. It had saved barely R20-m for all its responsibilities.

According to the Business Rescue Practitioner, Mr. Dave Lake, DMR withdrew its demand for a cash deposit as security “and agreed upon a ground-breaking and pragmatic approach for Mintails to practically effect rehabilitation activities monthly over the life of mine.”

This action of DMR staved off immediate liquidation of the mine in 2017 (and was said to have saved 800 jobs). But now the mine has been finally liquidated and there are not enough funds saved to pay for the environmental rehabilitation of the site.

The DMR was quoted as saying that it would engage with the appointed liquidators “with the intention to safeguard the environmental and social responsibilities.”

The Committee visited the two mining areas and held meetings with some of the stakeholders.

3. Composition of Delegation

3.1.1 Parliamentary Delegation

The delegation was constituted by the Chairperson of the Committee as the Leader of the delegation, Mr S Luzipo (ANC), Mr M Matlala (ANC), Ms MV Mafolo (ANC), Ms HV Nyambi (ANC) Mr IM Pilinini (ANC), Adv H C Schmidt (DA), Mr J Lorimer (DA), Mr T Rawula (EFF) Mr S Jafa (AIC).

Accompanying the committee was the Committee Secretary Miss A Boss, Committee Researcher Dr M Nicol, Committee Content Advisor, Mr N Kweyama, and Committee Assistant, Ms S Skhosana.

3.1.3 Guests in Attendance

<table>
<thead>
<tr>
<th>NAME</th>
<th>POSITION</th>
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<tr>
<td>Adv T Mokoena</td>
<td>DG</td>
<td>DMR</td>
</tr>
<tr>
<td>Mr MMA Zandi</td>
<td>Deputy Chief Inspector of Mines and acting chairperson, MQA</td>
<td>DMR</td>
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<tr>
<td>Mr X Mbonambi</td>
<td>Acting Deputy Chief Inspector</td>
<td>DMR</td>
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<tr>
<td>Mr S Mabaso</td>
<td>Regional Manager: Gauteng</td>
<td>DMR</td>
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<tr>
<td>Mr R Nkambule</td>
<td>Chief Director</td>
<td>DMR</td>
</tr>
<tr>
<td>Ms M Maduka</td>
<td>Deputy Director: MEM</td>
<td>DMR</td>
</tr>
<tr>
<td>Ms R Masanya</td>
<td>Director: Mine Closure</td>
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<tr>
<td>Mr F Nkuna</td>
<td>Acting Principal Inspector Of Mines</td>
<td>DMR</td>
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<tr>
<td>Ms M Liefferink</td>
<td>CEO</td>
<td>Federation for Sustainable Environment (FSE)</td>
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<tr>
<td>Ms J Sherlok</td>
<td>Student</td>
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4.1 Shiva Uranium: Presentation by BRPs

4.1.1 HISTORY

The current Business Rescue Practitioners, Cloete Murray and Chris Monyela were appointed following a Court Application brought by the Industrial Development Corporation (IDC) on Thursday, the 31st of May 2018. The IDC applied for the removal of the erstwhile Practitioners, Kurt Knoop and Louis Klopper. On the morning of the hearing, Knoop and Klopper resigned. This led to the appointment of Cloete Murray (31 May 2018) in terms of the Court Order. Chris Monyela was then appointed by the CIPC on Friday, 1 June 2018.

The new Business Rescue Practitioners immediately made arrangements to visit the mines, which happened on Monday, the 4th of June 2018.

4.1.2 MINING OPERATIONS

Shiva Gold: Hartbeesfontein, Klerksdorp

On arrival at the mine in Hartbeesfontein, the Practitioners found that the mining operations have ceased but that the employees were still on the mine. They met with mine management and employees present on the day. The employees were requested to form an Employees Committee in terms of the Act. They were
advised that the mining operations were halted when the business rescue proceedings commenced in February 2018.

The Practitioners were made aware of the volatile security situation on the mine and the incidents that had occurred shortly before their appointment. They were also advised that a number of the electrical cables had been stolen and that there was no electrical supply to some parts of the mine.

The Practitioners are in the process of identifying suitable contractors who might be interested in mining the Hartbeesfontein mine in an attempt to establish an income stream. No firm offers have been received to date and this process continues.

**Shiva Gold: Brakfontein Delmas**

The BRPs explained the complex interconnections between the Shiva Gold mine in Klerksdorp and a coal mine that the company operated for another right-holder near Delmas. This contract was critical to Shiva Gold because it could earn the company immediate income, to deal with all its debts and responsibilities.

On arrival at the mine in Brakfontein, the BRPs met with the mine management and employees present on the day. The employees were requested to form an Employees Committee in terms of the Act.

The BRPs found that the mining operations had also ceased although there was a stockpile of coal next to the crushing plant. The mine manager also informed them that there was a Section 54 notice in place in respect of the Health and Safety aspects relating to some of the mining equipment being used on the mine. It should be noted that this mining equipment did not belong to Shiva but rather to a related company, Confident Concepts. These assets have in the meantime been sold by the Business Rescue Practitioners of that Company and have been removed from the mine. (This automatically lifted the notice).

The Practitioners, in the meantime, identified a suitable mining contractor which will start mining the Brakfontein mine in terms of a contractor’s agreement to be concluded with him. This process was severely delayed because of the refusal and/or inability of the employees to agree among themselves to continue the mining operations. Action by the employees at Brakfontein has hindered the company from getting back on its feet.

As soon as the contractor’s final agreement has been signed, the relevant appointments will be made and forwarded to the Department.

**4.1.3 FINANCIAL POSITION**

It was reported that the Company was currently in a severe financial predicament primarily because of the following reasons:

1. The refusal and/or inability of Eskom to pay the amounts due to Shiva Uranium via its ultimate owner, Tegeta, in terms of a sub-contractor agreement. The amount due is in the vicinity of R9,5-million and notwithstanding various requests to both Tegeta and Eskom, this money had not been paid. The BPRs were advised that Eskom refuses to make payment on any of the amounts due to all the entities related to Tegeta.
2. The Practitioners require post-commencement finance in order to secure and preserve the assets of the company and to pay the salaries of the employees.

3. The Practitioners were led to believe that the IDC would provide post-commencement finance to allow them sufficient time to market and dispose of the two mines to the best benefit of all concerned. This post-commencement finance has however not been forthcoming. They are not aware of the reasons, although it was a decision of the IDC board.

4. The Practitioners have also not been successful in procuring post-commencement finance from any other source. The holding company, Oakbay Resources, is not in a position to provide post commencement finance as they have no transactional banking facility available in the country.

5. If no post-commencement finance could be procured by the end of September 2018, there was a very good likelihood that the Practitioners would have to apply to the High Court for the provisional liquidation of the company. This was said to be a very last resort and it would have a dramatic impact on employment and the communities on and around both the mines.

4.1.4 EMPLOYEES

There are 152 employees at Brakfontein and 200 employees at Hartbeesfontein. The employees have not been dismissed or retrenched and their employment contracts are still in place.

The employees on both mines have formed Employees' Committees who represent them. The Practitioners have not been in a position to pay the employees' salaries in full. The employees had been paid their June salaries as well as a portion (30%) of their July salaries. The remainder of the July salaries as well as the August salaries would be paid as soon as possible.

The Practitioners communicate with the employees on a regular basis through a bulk sms system or via the Employees' Committees. The Practitioners have also engaged with the representative labour unions: AMCU (Brakfontein) and NUMSA (Hartbeesfontein).

4.1.5 SECURITY SITUATION

There is a large security contingent present at the Hartbeesfontein mine at a huge expense. This is mainly because of the incidents of cable theft and the illegal mining activities. The security contingent consists of stationary guards, mobile guards and a reaction capacity.

The security situation has calmed down considerably after the appointment of the new Practitioners with no major incidents. The three minor incidents (burning of a conveyor belt, burning of two transformers) have been reported to the SAPS and the mine management have met with the SAPS regarding it.

Regarding the allegations of the vandalizing of assets, these incidents occurred before the appointment of the present BRPs.
4.1.6 ENVIRONMENTAL RISK; HEALTH AND SAFETY

The environmental risk posed by the mine is minimal as there are no mining activities taking place.

Regarding the rehabilitation guarantee, the Practitioners have been notified by Guardrisk that the guarantee would be cancelled. After engaging with Guardrisk, they agreed to withdraw the notice and re-issue it in four months. The Practitioners are aware of the R38 million shortfall but the company is not in a position to pay it. However, the physical challenges on the mine will be attended to in order to reduce the shortfall.

Regarding the section 54 notice issued by the Department for Brakfontein, the majority of the notice related to the equipment on the premises of the mine. As mentioned above, these vehicles were owned by Confident Concepts and have been sold. A letter will be forwarded to the purchasers in which the section 54 notice will be brought to their attention.

4.1.7 LEGAL CHALLENGES

The current Business Rescue Practitioners have been inundated with a number of legal challenges since their appointment from the previous shareholders/directors. This by enlarge relates to the appointment of Murray and Monyela. The one matter that has been adjudicated was found in their favor. There are currently two legal matters that still need to be adjudicated and although the Practitioners are confident of their legal positions, the legal costs are escalating, and the funds being diverted to the legal fees could have been better allocated to the critical expenses of the company.

4.1.8 SELLING OF THE MINES

Various companies / individuals have approached the Practitioners to purchase the mines. The Practitioners have, together with an outside forensic auditor, introduced a vetting process to which potential purchasers have to submit themselves. This process includes making available basic financial information such as the latest financial statements and external confirmation of funding. To date, not a single party that has contacted the Practitioners could provide the requisite information.

The Practitioners stated that the Shiva assets are contaminated due to the involvement of the Gupta’s before the business rescue process commenced. A number of companies have indicated that they are not willing to purchase these assets for that reason alone. This will have a dampening effect on the ability of the Practitioners to sell the mines as going concerns and to procure post commencement funding. When and if the mines have been sold, the section 11 process in the MPRDA will follow.

The financial predicament makes it impossible to launch a comprehensive marketing campaign to dispose of the mines.

4.2 Presentation by DMR on Shiva Uranium

4.2.1 Mining Right
The Regional Manager, North West, Mr N Zindela made a presentation. He started with the introduction saying Shiva Uranium was issued with mining rights in respect of various portions of farms situated in the Magisterial district of Klerksdorp. There is an approved section 11 application for Oakbay Resources (Pty) Ltd to acquire 100% of the entire issued share capital and loan accounts of Uranium One Africa Limited business and assets dated 09th April 2010. Uranium One Africa Limited was also the right holder at the time and there was a name change to Shiva Uranium hence the rights fell under Shiva Uranium.

Shiva Uranium has three mining rights issued in the North West Province under file reference numbers 228MR, 400MR and 401MR. Mining Right 228 was issued on the 28th of October 2006 with a duration of up to October 2036 for gold ore and allied minerals, uranium ore and allied minerals, rare earths and monazite (heavy minerals) over various portions of the farms Hartbeestfontein 297 IP, Rhenosterhoek 299 IP, Rynsvald 300 IP, Bramley 301 IP, Syferfontein 303 IP, Syferfontein 333 IP, Rhenosterspruit 326 IP, Wolwerano 425 IP, Wolwerano 413 IP, Rietkui 397, Rietkui 414 IP.

Mining Right 400MR was issued on the 10th of March 2011 and is valid until the 9th of March 2041 (30-year period), it allows the company to mine uranium and precious metals over the following farms; Rietkui 397 IP, Rietkui 414 IP, Wolwerand 413 IP and Wolwerand 425 IP. Mining Right 401MR was issued on the 10th of March until the 9th of March 2041 for 30 years for uranium and precious metals over portion 44, 48, 49, 50, 51, 54, 55, 56, 57, 58, 59, 60, 61, 62, 73 of the Rietkui Farm (397 IP).

Shareholding Structure

The shareholding structure of Shiva Uranium in respect of the three mining rights is as follows:
- Oakbay Resources (PTY) Ltd 74%
- Islandsite Investment 255 (PTY) Ltd 26%

Islandsite investment is made up of five shareholders namely Silver Heron Trade 14, Zim Holdings, Dixie Investments, Khovert Holding who together hold 17.5% of the Islandsite Investment, while Mabengela Investments holds 45% of the Islandsite Investment, with the remainder being held by the MK War Veterans Association, Dominion Reefs Uranium Mine HDSA Community Trust, Alease Workers Trust and Management.

4.2.2 Mining Works Program

Mining is executed through three declines and an incline namely dominion 1 and 2, Rietkui and Rietkui incline as per the approved Integrated Mine Works Programme. The production rate per annum (tpa) is 2400 000 tons, the initial production rate is 200 000 tons/month and was to increase to 400 000 tons/month when the mine has reached a steady state.

Geology of the Area
The Uranium and Gold mineralization is hosted within two narrow, quartz pebble conglomerate units that are located within the lower sedimentary unit of the Dominion Group. The Dominion Group sedimentary and volcanic uncomfortably overly Archaean granites. There are two major areas under consideration are the Dominion Reef and Rietkui areas. The lower and upper reefs are of major economic interest, with the middle reef being of a lesser economic importance, the economic horizons are outcropping in the Rietkui and Dominions Reefs. A resource statement was compiled on the 30th of November 2009 by Mr Izak Bosman Marais (Mineral
Resources Management certificate at Wits and is professionally registered). The uranium yield of the mine (Dominion Group) geology is 0.48 kg per ton and the total yield of the mineral is 90 Kilo Ton. With respect to gold the yield is 1.04 gram per ton with a total gold content of 194 kg. According to the competent person’s report the Rietkruil geological yield is 5.79 grams per ton which is equal to 661 658 ounces of gold in terms of the overall gold content.

4.2.3 Mining Operations

As per the report submitted in terms of section 28 of the MPRDA, the company undertook opencast mining, the production from the opencast gold section from July 2017 to 2018 April was 144 kg, for the same period 7kg of silver was produced and no uranium was produced. During the same period 211 people were employed by the operation together with 255 contractors. On the 30th of April 2018 there was no production.

4.2.4 Social and Labour Plan

Shiva Uranium Limited has one integrated Social and Labour Plan (SLP). The company’s first Social and Labour Plan commenced in 2011 (which was due in 2016). The second SLP (2017 – 2021) has been submitted and approval is pending. The initial SLP is still active following section 93 order issued on 08 March 2018 on non-compliant elements in respect of Human Resource Development Programme, Employment Equity and Local Economic Development projects, the company submitted an action plan to address the non-compliance in response to Section 93.

4.2.5 Human Resource Development Compliance (Social and Labour Plan 2011 - 2016)

The company did not meet committed targets in respect of the following

- Internal and external learnerships
- Employee portable skills
- Career progression
- Mentorship
- Bursaries
- Internship

At the time of the audit, the company’s employment equity status was below the Mining Charter target of 40% HDSA in terms of top, senior and middle management.

Local Economic Development Projects Compliance (Social and Labour Plan 2011 – 2016)

The company is behind and did not complete implementation of the Enterprise Development Centre and Upgrading of Bakang Primary School. Furthermore, the company only implemented one project, namely Semogare Agricultural project. The project is however currently not operating, it consisted of six beneficiaries from Tigane Village with the produce sold to Matlosana Fresh Produce Market and the general public.

Housing and Living Conditions Compliance (Social and Labour Plans 2011 – 2016)

The company does not have employees living in hostels, the hostel buildings are used as work offices. There is no ownership scheme in place, the company pays transport allowance.
4.2.6 Environmental Compliance

Shiva Uranium (Pty) Ltd has a financial provision to the amount of R 61 424 275 provided in a form of several insurance guarantees issued by Guard Risk Insurance Company Limited. In respect of the environmental liability report submitted, there is a shortfall amount of R38 594 383 which must be provided by the company. A compliance notice was issued to the company on the 20th of April 2018 to request a shortfall amount, however it has not been provided to date. A compliance notice was sent to the company dated the 11 April 2018 to instruct the company to provide the shortfall amount. A feedback letter was received from the company on the 09th of May 2018 indicating that the company is not in a position to provide such an amount based on their current financial status. On the 14th August 2018, this office has received a formal notification by Guardrisk insurance company stating their intention to withdraw Shiva Uranium Guarantees after four (4) months from the date of notification (12 December 2018). The company was informed about Guard risk’s intention and was required to make alternative arrangements to provide financial provision within 60 days from the date which the letter was signed i.e. 30 August 2018.

4.2.7 Rehabilitation on site

The inspection conducted on the 30th June 2017 revealed that the company was not rehabilitating the disturbed environment in line with the approved EMP. The company was requested to provide the rehabilitation plan with target dates for implementation indicating how outstanding environmental liabilities will be dealt with (letter dated 27 July 2018), such report was never submitted to the Department. A follow up inspection was conducted on the 7th of March 2018 and the findings were that the rehabilitation was conducted in a very slow pace considering that a small portion of the disturbed areas was rehabilitated.

4.3 Members raised the following questions and concerns:

- Members wanted to know the nature of legal issues to be finalised.
- Is there some form of security provided towards environmental rehabilitation?
- Clarification on contradictory statements on employees. There were no retrenchments but there are no employees.
- What else has to be rescued in Shiva except employees. What other assets are there?
- Confused about what assets are there. What are the next steps?
- IDC. Why the money has not been forthcoming to fund the business rescue?
- How much do you think IDC will be able to recoup?
- More details why it is difficult to dispose assets in question
- Purpose of appointing the BRP is to get the mine back into operational mode. Confusion about the non-availability of the business rescue plan.
- Does the non-operation of the mine not expose the operation to illegal mining?
- How often do the BRPs meet with DMR?
- Issue of payment of salaries for employees, what is the timeframe of “as soon as possible”.
- Does DMR have enough money in the rehabilitation fund if Shiva is closed?
- Will you share in future the names of potential buyers and how long it will take to finalise the process?
- Relationship with unions. How often do you meet with them?
- IDC is to go to court to get their R293 m. Can you share more information regarding this?
- Credibility of the new BRP. What is it that the BRPs before were doing that was not rescuing the Shiva mine?
- Members wanted to know the process followed in appointing the BRPs, as well as demographics and credentials.
- Regarding Brakfontein, if the assets are held by Concept, what then becomes the role of the BRP of Shiva?
- Estimated rehabilitation cost of this mine
- Estimated rehabilitation cost of the mines under Tegeta/Oakbay
- Is there a possibility that they will not be able to meet their rehabilitation obligations?
- What is the department doing on the matter of Shiva? Members were worried that Liquidators had been appointed as the BRPs.
- Have you engaged IDC and what are they saying about the current situation?
- Project infrastructure operations: RM not clear whether employees were retrenched or not on 30 April 2018.
- Matlosana fresh produce market: For how much was this project sold to Matlosana?
- Clarity requested on the process on management for the mine to operate.
- Has DMR been in discussion with mine management on processes?
- Why is there a shortfall in rehabilitation funds? How come that gap was allowed to exist?
- Down the line the department must tell the Committee what it has learnt or what is it learning. The Committee does not get any indication that a license comes with responsibility and consequences.
- The Committee was concerned about the lack of implementation of the law and proposed that maybe in future they need to look at where it can be fixed.

4.4 Responses from the Department and BRP

- First legal challenge related to the appointment of current BRP. The owners of Shiva contest that their appointment was not legal according to the legislation.
- The second challenge, from labour, related to unpaid wages.
- Current fixed deposit of R61m by Guardrisk. Not one of the insurance companies is prepared to invest in replacement guarantees, because they are tainted.
- Employment issue, except for 3 suspended employees, no employees have been dismissed or suspended. The reason was that these individuals were close to the shareholders (the Guptas). Were they serving the interests of the company or those of their masters?
- Actively engaging with potential buyers of the mine. Business Rescue Plan has not been formulated yet because no buyers have come forward. This is because the assets are “toxic” because of the historical involvement of certain people. Mr B (Elias) Khumalo said he wanted to buy Shiva, but he could not guarantee that he actually has funding. They are now looking for other buyers.
• IDC finance was promised to assist with the business rescue. But, when appointed, the BRPs were advised that IDC will provide not finance. As for the reason, the BRPs don't have any idea why the IDC changed its mind. This was an IDC main board decision.
• IDC made a loan of R250 m in 2011 to Shiva. The loan was paid back in tranches from 2013, but the interest due on the loan was never paid. The interest portion was converted to equity in Oakbay Resources. When Shiva went into Business Rescue only R38.5 million was still owed on the IDC loan. R250 million is a contingent liability.
• There was an agreement to sell the coal stockpile at Brakfontein. However, the contractor could not physically remove the stockpile because of disruptions at the mine, by dissatisfied workers.
• Eskom owes money to Tegeta, not to Shiva. Shiva is responsible for only arranging the mining at Brakfontein – on behalf of Tegeta (Shiva does not hold the mining right). But then Tegeta has to compensate Shiva. The BRPs have taken the issue of non-payment to Tegeta up with Eskom.
• When the BRP was appointed it made a financial plan which has not been approved yet.
• Illegal mining is not the problem in Hartbeesfontein – although there are zama zamas. The problem is the vandalism of the mine assets. This is why the security is critical.
• BRPs have regular interaction with the DMR. There is a designated website for Shiva. Communication and talks with employees are good. Unions get all the documents. The BRPs have had three mass meeting with the communities in Brakfontein, though the community is divided and will not allow the stockpile to be removed.
• Salary issue is a big concern. As soon as we receive money, employees will be paid.
• IDC questioned the independence of the initial BRP's, because they were appointed by the Board of Directors that was controlled by the Guptas.
• Mr Monyela, the second BRP is a Liquidator, and has been practising for 20 years. Mostly deals with labour issues. He was approached by NUM, for example, to be the BRP for Optimum.

Department
• A concern was raised, given that the Committee had a meeting with the Minister in connection with this mine. It was an observation of the BRP, that the Companies Act regards the process as a business intensive care unit (ICU). If the process fails it eventually leads to liquidation.
• DMR did not issue section 11, but issued section 93 and NEMA to top up
• Section 54 that was issued to Brakfontein was for non-compliance of the machinery. They informed the department that that the machines have now been sold, if that is the case then section 54 falls away
• IDC loan is a stand-alone loan, rehabilitation deals with environment. Total amount is R61 million, of which R38 million has been paid. DMR has a limited control during the business rescue stage
• One SLP project was a farm. Whatever is produced will be sold to Matlosana market
• The DMR has constant engagement with the BRP's to make sure that the mines are sold and do not go into Liquidation

5. Briefing by DMR on the Liquidation of Mintails

Mr S Mabaso, Regional Manager, Gauteng gave a summarised overview of the state
of affairs at Mintails and responded to the questions raised by the Committee. In terms of the legislation, the National Environmental Management Act (NEMA) empowers the Minister responsible for mineral resources to prevent pollution or ecological degradation of the environment or to rehabilitate dangerous occurrences by utilizing financial provision made by the holder of the relevant reconnaissance permission, prospecting right, mining right, retention permit or mining permit. The MPRDA provides that the right lapses upon final liquidation or sequestration, however, in the Palala Judgement [Palala Resources (Pty) Ltd v Minister of Mineral Resources and Energy 2016 (6) SA 121 (SCA)], the Supreme Court of Appeal ruled that the right continues to exist.

With regards to ownership, Mintails SA is a subsidiary of Mintails Limited, a public company listed in the Australian Securities Exchange., 74% - Mintails Limited, 26% - not allocated*

* The 26% was previously held by Dikgoshi Pty Ltd an HDSA entity which was bought out due to differences. No replacement of the BEE ownership to date.

5.1 Mining Rights Operated by Mintails SA

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<th>Period (years)</th>
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<td>Minerals and Mining Reclamation</td>
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<td>Mogale Gold</td>
<td>206MRC</td>
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The Mining Rights were granted but never issued due to shortfalls in Financial Provision and non-compliance with SLP. (DMR granted the rights subject to conditions that Mintails never fulfilled. Therefore, the mining rights were not notarially executed – they were never issued. Mintails had old order rights and mining licenses, but no mining right under the MPRDA has ever been issued to Mintails).

5.1.1 MINTAILS AND THE MINING RIGHTS

- Mogale Gold (206MR) is 100% subsidiary of Mintails SA.
- Minerals and Mining Reclamation Services (133MR) is 100% subsidiary of Mintails SA.
- GP132MR was acquired from West Wits Mining (owned by DRD). A section 11 was lodged to transfer the Mining Right to Mintails SA but this never happened. The application for the transfer was subsequently withdrawn due to lack of BEE.
- The entire Mintails operation has 260 permanent and around 500 contracting employees.
• Mogale is the company with higher potential since it has a gold plant where potential buyers have more interest but it also has the highest environmental liability.

5.2 Environmental Liability and Financial Provision

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<tr>
<th>Ref No</th>
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<td>2 600 000.00</td>
<td>Bank Guarantee</td>
<td>380 961 751.88</td>
</tr>
<tr>
<td>Total</td>
<td>485 997 811.07</td>
<td>25 601 000.00</td>
<td></td>
<td>460 367 811.07</td>
</tr>
</tbody>
</table>

5.2.1 Environmental Liability and Financial Provision

• After numerous directives by the RM, the DG directed Mintails on 9/10/2014 to fully provide for GP 133MR with immediate effect and further relaxed the requirements by allowing a six months’ payment plan to fully provide for GP132MR and GP206MR in terms of MPRDA.

• Management changes in 2015 at Mintails disputed the liability, thus Mr Moolman the new CEO, appointed Golder Associates Africa, in 2016 and later appointed Digby Wells Environmental in 2018. Both consultants brought lower liability figures as follow.

Liability Quantified by Golder and Digby Wells

<table>
<thead>
<tr>
<th>Consultant</th>
<th>Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Golder Report – Feb 2016</td>
<td>R258 749 771.00</td>
</tr>
<tr>
<td>Digby Wells Report – Mar 2018</td>
<td>R245 870 177.64</td>
</tr>
</tbody>
</table>

The DMR could not accept these figures as they were not compliant with the relevant Regulations.

5.2.2 OTHER COMPLIANCES (SLP & MWP)

• The company did not comply with Social and Labour Plan commitments on HRD, LED and Portable skills (much needed now) training despite numerous orders, the latest issued on 10/08/2017.

• Mintails has not complied with the Mining Work Program. They processed ore from third party clean-up operations which was not approved in the MWP. This was stopped through a directive on 29/03/2018 and the third parties were engaged and directed to take corrective measures. The company lamented this stoppage as a contributing factor to their financial crisis, because this tolling provided cash flow for the company.

• Despite directives issued on 23/12/2015 and 12/09/2017, Mintails failed to
submit audited financial statements for the past five years as required in terms of Section 28 of the MPRDA for the DMR to assess their financial performance.

5.2.3 Actions Taken

- The Department had numerous engagements with Mintails and sent several statutory notices to remedy these non-compliances, in response the company pleaded financial crisis and repeatedly requested extension of the deadlines with promises to comply.

- This matter was then referred to Compliance Section within the DMR for further handling and possibly instituting prosecution to hold the directors liable. An outcome here is still awaited.

5.2.4 Mintails 'Engagement with the Minister

- Around May 2018, Mintails requested DMR to approve the release of the rehabilitation trust funds guarantees (held by DRD Trust Fund) in order to rescue their cash flow crisis with the promise that they will replace the trust fund when the company gets into a healthy financial status. This was refused as it was against Section 24P read together with EIA Regulation 7 of the National Environmental Management Act.

- On 19 June 2018 a meeting was held with Mr Harbour, the major shareholder, Mr Lake, the Business Rescue Practitioner and Mr Moolman, the CEO of Mintails. They were instructed to remedy the non-compliances with immediate effect and also submit a comprehensive business rescue plan before any request for assistance from DMR could be considered.

5.2.5 Provisional Liquidation

- On 31 July 2018 the BRP was instructed by the majority shareholders to apply for provisional liquidation which was granted on the 17th August 2018.

- Liquidators have been appointed and are currently engaging with the Department.

- The hearing for final liquidation was set for 18 September 2018. (Liquidation was granted unopposed).

- Upon announcement of provisional liquidation, the Regional Manager conducted an inspection on 08/08/2018 to ascertain the status of liability on site and confirmed that an independent audit is required before accepting the liability as proposed.

5.2.6 DG's Engagement with Liquidators

- The DG met with the liquidators on 07/09/2018 to ascertain the status and the role the DMR can play to avoid the situation deteriorating to the level of Blyvooruitzicht gold mine and Aurora, where assets were stripped illegally.
The following interventions were requested from DMR:

- Mintails should be allowed to provide for the liability in instalments over the life of the mine in order to enable prospective buyers to afford the huge liability requirements.
- DMR should request Eskom to extend the deadline for switching off the electricity supply set for Tuesday 11 September 2018. This could result in a dire situation. Electricity is critical for maintaining security. If security fails, this could lead to the assets being vandalised to a state beyond recovery.

5.2.7 DG’s Role after Engagement

- The DG wrote to the Eskom CEO on the same day requesting extension of the cut-off date by 60 days, however Eskom responded by confirming a deadline of Wednesday, 12 September 2018 if a payment of R2m was not made by 14:00.
- On the second request, the DG promised to explore the possible regulatory transcripts enabling the payment of Financial Provision in stages over the life of the mine and to revert back to the liquidators.
- DMR hoped that a determination/solution could be made to rescue the situation to avoid a humanitarian crisis similar to the Blyvoor and Aurora.

5.3 Presentation by Mine Health and Safety Inspectorate

Mr F Nkuna outlined the presentation as follows: Health and Safety performance (mandatory Inspections and Audits, Health and Safety challenges (Liquidation), Legal Appointment, medical Examination and Explosives), Illegal Mining and impact of surrounding Communities.

It was reported that there were 2 reportable accidents that were dispatched to the Office of the DMR which was on May 2016, where an employee’s finger caught on the conveyor belt gear box and July 2018 accident where the security personnel was gassed inside the security booth. Audits and Inspections have always been conducted for both surface and underground. All disciplines have participated in individual inspections.

5.3.1 The following were reported as Health and Safety challenges during liquidation:

- Mine Health and Safety Act to be maintained
- Key Legal Appointments
- Healthy and Safe Environment Sec 5
- Records of Medical Surveillance Sec 15
- Explosives Evacuation Chapter 4 Reg 4.2(1)
- Annual and Quarterly Environmental Reports Chapter 9
- Survey plan underground and surface Chapter 17
- Reportable accidents and incidents Chapter 21&23

5.3.2 The following were reported as Health and Safety challenges for Personnel

- Appointment of Chief Executive Officer
- General/Plant Manager
- Electrical or Mechanical Engineer
- Safety Officer
- Health and Safety Representative
• Security Personnel
• Full or Part Time Occupational Medical Practitioner
While the plant is winding down or still functional key appointments should still be maintained.

5.3.3 The following were reported as Health and Safety Medicals challenges

• Records of Medical Surveillance including Exit Medicals
• Employees still within service medicals to continue
• Employees leaving the service undergo Exit Medical Summary (Exit Audiogram, Exit X-Ray Lung Function, Biological Monitoring Occupational Diseases, Summary of Compensation)
• Records to be kept for more than 30 years and accessible to stakeholders and employees.

5.3.4 The following were reported as Health and Safety Explosive challenges

When mine closure is intended or when mine is not being worked
• Type of explosive
• Quantities
• Location of such explosive
• Measures take to safeguard persons from significant risk associated with explosive
Engagements with Inspectors of Explosive with relocation for such to Supplier/s.

With regards to illegal mining, it was reported that illegal mining is happening at West Village between Randfontein and Krugersdorp. Incidents occurring on both underground outcrop and open pit areas, tailings facilities and general surface. Slime pipes being vandalised. Shafts being reopened by illegal miners. Incident with +50 trapped miners in Krugersdorp in 2017.

With regard to community impact, it was reported as follows:
• December 2013, community of Kagiso protested against Mogale Gold due to blasting at Princess plt. (cracking of House, Damaged roofing, Shattered windows, noise and dust during blasting)
• Drowning of Kids during School Holidays is common in the West Rand
• Criminals disposing of bodies in the Open Pits and shafts
• Absence of securing is going to present SAPS with increased illegal mining activities.

5.4 Presentation by FSE

Ms Marriette Liefferink, CEO of Federation for a Sustainable Environment) made a presentation to the Committee on Mintails' Alleged Failure in Duty of Care. This was supported by over 100 pages of photographs and documents, including efforts made by FSE over more than ten years (before business rescue started in 2015) to get government authorities to act on the environmental harm caused by Mintails activities.

Ms Liefferink said that FSE is an activist organisation that is based on Section 24 of the Constitution. FSE is not opposed to mining but believes that the externalisation of the impacts of mining onto society is no longer sustainable.
The area around Krugersdorp carries the legacy of over 120 gold mining companies. 6 billion tons of iron pyritic waste remains in tailing dumps on the surface. There is a broad spectrum of metals in mine dumps that will be there for geological ages. There is dust fallout, radioactive contamination and water pollution. The desiccated Tudor dam on the Mintails property has radioactivity measuring 16 times the regulatory limit, while the water in the Lancaster dam is acutely toxic.

At Mintails, mining has not been completed. There are no trenches to stop contaminated water flowing out – although this is required by law. Mintails has mined the payable parts of dumps only and did not rehabilitate the dump footprints. There are clusters of pits across the area 30 to 40 metres deep – unfenced and close to where communities live. There are spillages from Tudor dam by Mintails into the wetland. Mintails did not do concurrent rehabilitation during its operations.

Since Mintails bought Mogale Gold out of a previous liquidation in 2005, FSE has approached DMR many times. Non-compliance has sometimes been followed by directives from DMR, but when issued, they have not been enforced and business continued as usual.

This has become a densely populated area with vulnerable communities, affected by widespread poverty. There was delinquency by the directors of Mintails on their duty of care under the law.

The mining right MR132 was never transferred by the Minister to Mintails, but Mintails continued to mine. This was in terms of an agreement with DRD Gold, the right holder that, Mintails SA accepted all liability, whether relating to environmental rehabilitation or otherwise.

Under NEMA if you purchase an asset, you purchase the liabilities that go with the asset. The environmental regulations require that the closure of a mine must be planned at the commencement of mining. Mintails has no plan for sustainable future land use. There has been no remedial action on the spillages from Tudor since 2009 and the irresponsible activities by Mintails continued. Criminal prosecution of directors and managers at Mintails is called for.

Ms. Liefferink said it's very clear from the liquidation papers and business rescue plan that there was delinquency by the directors, she believed this allows the Companies and Intellectual Property Commission to deregister Mintails’s directors.

The Companies Act does not allow the environment to be a preferred creditor in the case of business rescue or liquidation. This omission could be tackled at the Constitutional Court.

5.5 Members raised the following Questions and Concerns

- The DMR says there was non-compliance by Mintails on many issues, be it SLP, Environment, financial provisions. When the Department receives application is there no way to ascertain at the outset that the company cannot comply? Is the DMR forced by law to give the mining right to anyone who applies for it?
- At what stage is a mining right granted but not issued? Can you mine legally if the mining right is granted but not issued?
- Open pits, what can the department do to have those pits closed
- If delinquency of shareholders and directors is actionable, who should do this? Has the DMR done this? FSE sent six recent letters to DMR. Which have been answered? Why were questions not answered, nor acknowledged by DMR?
- Members wanted to know the time frame to sorting out the case backlog with the NPA
- Members were concerned about this issue related to Mintails, which cuts across many departments, who should have a plan to clean this huge mess? How do you prevent what we have now? How could DMR have done it better?
- The value of a mine is vested in the Mineral right. The granting of mineral right is normally subjected to acceptance of environmental liability. Is that a legal requirement to transfer the whole of environmental liability onto a new buyer? The consequence could be to sterilise any economic activity on the property, if DMR has not enforced the law in the past, to ensure environmental liabilities are provided for.
- The DMR says there is no feedback from issues referred to its compliance section. The Department is very lenient on companies. It lets them do as they wish.
- BRP: when they were appointed and has the department met with them?
- Hope next time FSE and DMR can present what they are doing in collaboration. DMR may not agree, but you must understand one another. Then you are dealing with the issue.
- Clarity was sought on the BRP process and how it ended up in Provisional Liquidation.
- Members requested the Audit report and revert back to the Committee

5.6 The Department responded as follows:

- DMR engaged the liquidators last week Friday. They indicated they have no money. Since they are 8 liquidators, the fact that the salaries of only one entity were paid created tension amongst liquidators.
- DMR acknowledged the need to follow up with its compliance office. To date, no feedback has come on Mintails.
- The DMR is certainly able to detect whether an applicant is capable of complying with the law. This requirement is set out in Sections 16 and 17 together with 22 and 23 of the MPRDA. These state that applicants need to prove that they have all financial and technical capabilities. These were not new applications, however, these were conversions from old order rights that were derived for previous legislation. At the time of the application, they had financial capabilities.
- DMR did not approve EMP due to lack of financial provision.
- Rehabilitation and fencing pits is not in the provision.
- Prosecution of directors, managers and shareholders for delinquency is not the competency of the DMR. This belongs with the National Prosecuting Authority (NPA) DMR has a backlog with NPA. Need to do a lot of training between DMR and NPA. NPA is not used to mining law.
- When mismanagement was detected by DMR, Mintails was repeatedly given time to comply with the rules for new order rights under the Transitional Arrangements in the MPRDA. When the DMR grants a right, this may come subject to conditions. When you have complied with the conditions, the right is effective. Under the MPRDA, a mine is not supposed to mine until the mining right is actually issued, but the transitional arrangements allowed continued working to preserve jobs, although there were issues of non-
compliance. DMR did not approve Mintails Environmental Management Plan due to the lack of financial provision.

- If a right is not issued (and registered) the mine cannot use it as collateral for loans. Mintails always said they wanted to comply, they never said they would not. They said the cannot afford to comply and they used unions to ask DMR to extend the deadlines. Mintails kept engaging to get an amicable solution for both company and the employees. That is how come they were still mining without an issued mining right.

- DMR is not lenient with companies. It has to look at the interests of 4,000 people affected if the mine stops. If we deal with the company severely, it will affect the community. DMR does not allow a mine to operate if it does not respect health and safety of employees – but it is a balancing game.

- Palala Judgement - DMR is seeing it being abused by the industry. Focusing on section 56c which is deregistration of the company. On liquidation, the Mining Right goes back to the DMR, it cannot be sold on.

- Mintails is not an easy company to deal with. One day you deal with a particular Director the next day he is removed.

- Lack of Acknowledgement letters to FSE: There has been communication between RM office and FSE. A problem is that when a letter comes to DMR, it may not be referred on to the correct officials to deal with it.

- Splitting the environmental liability from the mining right is not possible. Liability goes with the right according to the MPRDA.

- Contact will be made with legal services to see if the directors cannot be held liable

- If everything fails, it becomes a liability of the state. DMR is listed as a creditor for money to use for rehabilitation in the liquidation process.

- On what needs to be done: How can the laws be amended so DMR has influence when there is a liquidation?

FSE added that:

- The Council for Geoscience has determined that if you remove the crust on an old dump to re-process it, you expose what is inside to contaminate again in future. This is why DMR should only grant a right if the plan provides to remove the entire dump and rehabilitate the footprint. The DMR said no EMP was approved. This means the mining at Mintails was illegal. None of the pits did the roll-over rehabilitation as they mined. If mining is done irresponsibly it exacerbates poverty.

- The FSE outlined a dilemma between the Companies Act, the Insolvency Act and the MPRDA. These laws do not work together.

- Not a single closure certificate in the Witwatersrand Gold fields has been issued by DMR. DMR systems are weak. The Department works in silos. There is often a temporary cessation of mining, followed by an application for closure. But the DMR is reluctant ever to grant a mine a closure certificate, because then it is the DMR that becomes responsible for rehabilitation. Because the DMR does not grant closure certificates, companies abandon their workings. A dangerous precedent is set by DMR not granting closure certificates.

UASA responded that:

- One meeting, employees were told there was no more work. Arguments were held with the BRP; reports were positive until the investor did not put up the money
• The union was notified by Master of High Court that the operation in under liquidation. They are busy appointing liquidators.

6. Findings

The Committee made the following observations:

• It is clear that some mining companies are still operating without adequate financial provision for repairing damage caused to the environment by mining activities, if they suddenly close.
• Neither Shiva Uranium (Pty) Ltd and Mintails Mining SA (Pty) Ltd has saved all the money they were supposed to set aside under the law to pay for environmental rehabilitation. The shortfalls are R36.6-million for Shiva and R460-million for Mintails.
• The state will inherit these liabilities if the mines are finally liquidated.
• The DMR has failed to implement effectively and carry out the intentions of Parliament to ensure that all mines rehabilitate the damage they cause.
• Changes to the mining law were made by Parliament after 2002 to ensure that in mining, as elsewhere, the polluter must pay.
• The new laws have not proven effective in avoiding this situation where the state and the taxpayer still ends up paying for the environmental harm caused by mining.
• There is a lack of clarity on the rules for the Department of Mineral Resources when it comes to Business Rescue Practitioners. It seems there is non-application of the law resulting in a free for all.
• The DMR allowed Mintails to operate between 2012 and 2018, despite the fact that the Department had never approved the environmental management plans of the mine and had never issued the company with a mining right under the law.
• There is a huge regulatory gap regarding the financial provision of environmental rehabilitation of a mine during the process of business rescue.
• There is a lack of standardization by the DMR on how to relax environmental obligations of a mine during the business rescue stage.

7. Recommendations by the Committee

The Portfolio Committee on Mineral Resources having heard the presentation from all stakeholders listed above recommends the following:

• The DMR must identify clearly and specifically the gaps between mining, insolvency and company law that have led to this ongoing situation, where the polluter does not pay – it is the state that ends up paying.
• DMR should get specific legal opinion on these complex issues.
• Then DMR must report to the Committee in Parliament on what it will do [or needs to do] differently in future to ensure that this situation does not continue into the future.
• DMR must report on what efforts they have made to hold directors and shareholders of Shiva and Mintails liable for the environmental debts of these failed ventures.
• The DMR must actively ensure that the licensing of mines goes with responsibility and accountability.
• The DMR should further explore the regulatory gaps resulting from the business rescue process and come up with regulations that will ensure full
environmental compliance during the period when a mine experiencing financial distress.

- The DMR should design and implement standardized approach when dealing with the relaxation of environmental financial provisions for mines that are undergoing business rescue process.

8. Acknowledgements

The Committee thanks the Department, the Business Rescue Practitioners at Shiva and mine management at Shiva and Mintails for accommodating the oversight visit at a time when they had urgent matters to attend to. The FSE assisted the Committee both with copious information and with guidance on where the environmental problems caused by Mintails could be seen.

Report to be considered.