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## **IBML Update on Pending Court Actions in Namibia**

There are currently three pending court actions delaying our wholly-owned subsidiary, Craton Mining and Exploration (Pty) Ltd ('Craton'), from developing our Omitiomire Phase 1 project in Namibia.

### Surface Rights and Litigation

In terms of section 52 (1) of the *Minerals Act, 1992*, and in order to be entitled to conduct exploration and mining operations, Craton is required to enter into an agreement with the owner of private land, providing for the payment of compensation to the owner of such land. Currently, the land on which Craton intends to conduct exploration and mining operations, Farm Groot Omitiomire, is under the control of the executor of the estate of the late Alida Steyn. Previously, the four heirs of that estate were also the co-executors, but on account of continuing disagreement, the Master of the High Court of Namibia had removed all four co-executors and appointed a third party as executor. Craton had sought to enter into a section 52 (1) compensation agreement with the said executor and did so on 26<sup>th</sup> November 2014. On 1<sup>st</sup> December 2014, one of the heirs (who resides on the farm) brought motion proceedings to the High Court of Namibia against various parties (principally the Master of the High Court of Namibia and the current executor), asked for and was granted an order to the effect that the said section 52 (1) compensation agreement be set aside or be suspended pending the review of the decision by the Master of the High Court to appoint the current executor. Craton was cited as an interested party, but since no relief was asked against Craton, Craton did not oppose the matter. The review referred to is currently underway.

In terms of the *Minerals Act, 1992*, and if Craton is not able to enter into a section 52 (1) compensation agreement with the executor because the executor fails to negotiate or makes unreasonable demands for compensation, Craton would be entitled to approach the Ancillary Rights Commission for such surface rights. It is not clear under the *Minerals Act, 1992*, what Craton's position is where the executor – as is the case here – neither refuses to negotiate nor makes unreasonable demands for compensation. Craton will continue to engage the executor and then approach the Ancillary Rights Commission for relief if required.

In accordance with the case management system in place in the High Court of Namibia, the matter was assigned to a managing judge, being Justice Uietele, but the case was removed from the High Court roll on 20<sup>th</sup> February 2015. Craton will follow up to establish for what date the matter will be set down (whether for further case management or for hearing).

### Environmental Clearance

On 27<sup>th</sup> November 2014, two neighbouring farmers to Farm Groot-Omitiomire have lodged an internal appeal in terms of section 51 of the *Environmental Management Act, 2007*, against the grant of an environmental clearance certificate to Craton by the Environmental Commissioner of the Republic of Namibia. The appeal is broadly formulated and contains various substantive and procedural lines of

attack. In terms of the Environmental Management Act, 2007, Craton is required to respond within 30 days of the receipt of the appeal, and then the Minister may either determine the appeal himself or appoint a special panel for the determination of the appeal. On 3<sup>rd</sup> December 2014, Craton requested the Minister for an extension of the time period within which to respond, which extension is within the powers of the Minister. In terms of the Environmental Management Act, 2007, the environmental clearance granted to Craton remains valid pending the finalisation of the appeal or until the Minister of Environment directs otherwise.

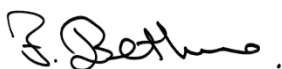
The Minister of Environment did not in due course respond to the request for extension of time. On 31<sup>st</sup> December 2014, by e-mail, Craton submitted a formal and detailed response to the appeal to the Ministry of Environment and Tourism, in which response it dealt with the various allegations of the appellants. The receipt of this response was never acknowledged by the Ministry of Environment and Tourism, and, subsequently, a hard copy of that response was filed on the Ministry of Environment and Tourism on 13<sup>th</sup> January 2015. Also, on 7<sup>th</sup> January 2015, the legal practitioners for the appellants acknowledged receipt of Craton's response, and on 5<sup>th</sup> February 2015 the legal practitioners for the appellants lodged further answering papers to Craton's response.

#### High Court Application

On Monday 16<sup>th</sup> February 2015, Craton was served with and cited in motion proceedings in the High Court of Namibia, brought by one Hendry Derks and one Drikus Bruwer Swanepoel. The principal respondent under the motion proceedings is the Minister of Mines and Energy, Craton being the third respondent. In substance, the applicants have asked the High Court of Namibia to review the decision of the Minister of Mines and Energy to award mining licence ML 183 to Craton. The principal basis of the challenge is the applicants' interpretation of section 31 of the Environmental Management Act, 2007. Section 31 (1) of the Environmental Management Act, 2007, states first that despite any other law to the contrary, a "competent authority" may not issue an authorisation to engage in a so-called "listed activity" (such as mining) under the Environmental Management Act, 2007, unless the proponent has obtained an environmental clearance certificate in terms of the Environmental Management Act, 2007. More specifically, in terms of section 31 (2) of the Environmental Management Act, 2007, it is stated that "an authorisation issued contrary to subsection (1) is invalid". The applicant's position is therefore apparently that the award of the mining licence by the Minister of Mines and Energy under the Minerals Act, 1992, is an "authorisation" contrary to section 31 (1) of the Environmental Management Act, 2007, and therefore "invalid". There is no case law on this point in Namibia, and the validity of this attack will require to be tested.

Craton will lodge a notice to oppose the application.

The procedure, being an administrative law review, is that the Minister of Mines and Energy is first required to provide a complete record of all documents relating to the decision to award the mining licence to Craton. Once these documents have been supplied by the Minister of Mines and Energy, the applicants may amplify their papers, upon which the respondents (including Craton) may file replying papers.



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