

LIBERTY COAL FAILS TO MEET MATERIAL CONDITION

Liberty Coal (Pty) Ltd (“**Liberty Coal**”) has recently postponed the launch of its acquisition of the business of Optimum Coal Mine (Pty) Ltd in business rescue (“**OCM**”) (see letter attached), which letter contains numerous misstatements and allegations concerning Richards Bay Coal Terminal (Pty) Ltd (“**RBCT**”), which we do not agree with.

The correct position is that Liberty Coal failed to meet a material suspensive condition to its indirect acquisition of the Shareholders’ Interest in RBCT, including the export entitlement, of Optimum Coal Terminal (Pty) Ltd in business rescue (“**OCT**”).

The material suspensive condition, known to Liberty Coal since June 2021, required OCM to transfer its business and coal mines in full to Liberty Coal.

Based on documents provided by Liberty Coal’s attorneys on 6 February 2024, OCM and Liberty Coal failed to implement, among other things, the following:

- OCM has not transferred, and Liberty Coal is not the owner of, OCM’s mining right;
- OCM has not transferred, and Liberty Coal is not the owner of, OCM’s coal mines;
- Liberty Coal has not met the Section 11 Ministerial conditions imposed on OCM and Liberty Coal in October 2021 under the Mineral and Petroleum Resources Development Act, 2002 (“**MPRDA**”);
- Liberty Coal has not established a Community Trust or Employees Trust for Historically Disadvantaged South Africans (each Trust is meant to own 5% of the issued voting Class V Shares in Liberty Coal);
- Liberty Coal has not issued voting Class V Shares to its proposed BEE Shareholder (which is required to be a Historically Disadvantaged South African and to own 20% of the issued voting Class V Shares in Liberty Coal); and
- Liberty Coal has not issued non-voting Class A Shares to the proposed ‘*Administrator*’ as nominee for OCM’s creditors.

RBCT carefully considered Liberty Coal’s predicament and, on Friday 1 March 2024, proposed an alternate practical solution to OCT (a suspended defaulting shareholder at RBCT since 2018 without the right to use its export entitlement) that would allow OCT to access the entire export allocation as early as in March 2024, subject to compliance with RBCT’s internal governance procedures, while OCM and Liberty Coal implement their transaction in full.

Following receipt of RBCT’s proposal on Friday, 1 March 2024, OCT then requested a meeting, and met, with RBCT and other parties on Monday, 4 March 2024 to discuss the proposal. OCT is currently considering RBCT’s proposal.

RBCT
Media Statement
6 March 2024

02 March 2024

POSTPONEMENT

As you will no doubt be aware from recent press reports and the recent invitation for the re-launch of the Optimum Coal Mine, Liberty Coal had planned for Friday 8th March 2024, Liberty Coal has now taken over the assets, business and compromised liabilities of Optimum Coal Mine (Pty) Ltd (in business rescue) (“OCM”) and the linked entitlement at Richards Bay Coal Terminal (“RBCT”) historically held by Optimum Coal Terminal (Pty) Ltd (in business rescue) (“OCT”) in terms of the adopted business rescue plans of OCM and OCT.

On the basis that all obstacles to implementation of the business rescue plans had been resolved and the assets, business and compromised liabilities of OCM had been transferred to Liberty Coal, and OCT’s entitlement at RBCT had been transferred to a wholly owned subsidiary of Liberty Coal, you were invited by Liberty Coal to the re-opening of the Optimum Coal Mine with its local communities and stakeholders.

Unfortunately, the board of RBCT – which represents its shareholders, all of whom are competing coal exporters to Liberty Coal, including Seriti, Thungela and Glencore – has refused to register Liberty Coal Terminal in its securities register, and accordingly allow it to export coal from the Optimum Mine through the RBCT terminal. This is despite previously granted RBCT board approvals and the binding OCT business rescue plan, and is seemingly with the intent of delaying the successful re-opening of the Optimum Coal Mine. Any delay significantly prejudices the Optimum Mine, Liberty Coal and its employees, contractors and creditors. The only parties who stand to benefit therefrom are RBCT’s other shareholders, who continue to profit from their use of the allocated rail and port facilities that should now be available to Liberty Coal.

It is with real regret that, in the circumstances, it is necessary to postpone the planned re-opening event until the position is resolved through constructive dialogue or legal proceedings.

We wish to apologise for any inconvenience caused and to thank the employees and local communities for their continued support.

Liberty Coal remains committed to the Optimum Coal Mine and to its plans to refurbish and recapitalise the mine for the benefit of all stakeholders. It is unfortunate that Liberty Coal’s competitors wish to delay any access to the crucial port allocation at RBCT historically held by OCT, whilst utilising imposing unreasonable conditions on Liberty Coal which can only be described as unfair, anti-competitive and/or oppressive. These conditions do not appear to have ever formed the basis upon which the previous RBCT board approvals were granted or discussed in relation to the implementation of the OCT business rescue plan, nor the basis of any previous engagements with RBCT.

We look forward to welcoming you back to celebrate the Optimum Mine and its future with us once the present situation has been resolved.

Yours sincerely

LIBERTY COAL