



## Social and Ethics Committee Terms of Reference

---

### Constitution

The Social and Ethics Committee (the **Committee**) is constituted as a statutory committee in respect of those statutory functions assigned to it in terms of section 72(4) of the Companies Act, 71 of 2008, as amended (**Companies Act**) (read in conjunction with regulation 43 of the Companies Regulations, 2011 (**Regulations**)) and the King IV Report on Corporate Governance for South Africa, 2016 (**King Code**). It is a Board committee in respect of all other functions assigned to it by the Board from time to time.

The Committee has an independent role with accountability to the board of directors (**Board**) of Thungela Resources Limited (the **Company**) and to the Company.

These terms of reference are subject to the applicable provisions of the Companies Act, the Regulations, the listings requirements of the JSE or any other securities exchange on which the securities of the Company may be listed (**Listing Requirements**), the King Code, the Company's memorandum of incorporation and any other applicable law or regulatory provision (collectively, the **Legal Requirements**).

### Purpose

The purpose of the Committee is to monitor the Company's activities and practices having regard to the relevant Legal Requirements in respect of the social and ethical responsibilities of the Company and to ensure that the Company displays good corporate citizenship.

The Committee is further constituted to, among other things, assist the Board in ensuring that the Company and the other entities in the Company's group of companies (the **Group**) are and remain committed, socially responsible corporate citizens by creating a sustainable business and having regard to the

Company's economic, social and environmental impact on the communities in which it operates.<sup>1</sup>

The deliberations and work of the Committee do not reduce the fiduciary duties and responsibilities of the Company's directors, and the Board must continue to exercise due care and judgment in accordance with its statutory obligations.

The duties and responsibilities of the members of the Committee as set out in these terms of reference are in addition to those duties and responsibilities that they have as members of the Board.

The Committee should encourage open communication with assurance providers, which include, but are not limited to, senior management and the Board.

### Mandate

The Committee's authority is derived from the statutory duties as contained in section 72(4) of the Companies Act and Regulation 43 of the Regulations, as well as from the delegated authority of the Board as contemplated in these terms of reference, in accordance with section 72(1)(b) of the Companies Act or as otherwise is delegated to it by the Board from time to time.

The Committee has ultimate decision-making authority in regard to its statutory duties as contemplated in section 72(4) of the Companies Act and Regulation 43. The Committee has no ultimate decision-making authority in respect of the non-statutory matters within the scope of the Committee's functions as set out in these terms of reference (unless otherwise delegated to the Committee by the Board), and the Committee makes recommendations to the Board in respect of these matters for the Board's consideration and, if the Board considers it appropriate, ultimate approval.

---

<sup>1</sup> King Code, principle 3.



The Committee will have oversight and will ensure that the Company and the Group comply with all activities related to social and economic development, good corporate citizenship, the environment, public health, and safety principles, as set out in the governance and/or delegation of authority framework of the Board.

The Committee must act independently (with accountability to the Board and the Company's shareholders) and does not assume the functions of management, which remain the responsibility of the Company's executive directors, prescribed officers and other members of senior management.

The Board supports and endorses the Committee, which operates free of any organisational impairment.

The Committee is authorised by the Board to:

- investigate any activities within the scope of these terms of reference;
- seek any information it requires from any employee, the chairperson of the Board or any statutory committees of the Company, any of the Company's executive directors, Company officers, the company secretary of the Company (**Company Secretary**) or assurance providers, and all these parties are required to co-operate with any requests made by the Committee, to provide it with information or explanations necessary for the performance of its functions. All requests to employees will be channelled through the Company's executive directors; and
- form a sub-committee or sub-committees and, save to the extent prohibited under the Legal Requirements, to delegate all or any part of its powers, duties or authority to such sub-committee or sub-committees, or to any one or more designated members of the Committee or other person.

### Composition and Rotation of Membership

The members of the Committee shall meet the requirements of Regulation 43 and be nominated by the Remuneration and Nominations Committee having regard to the requirements of the relevant Legal Requirements, Listing Requirements and enunciated in the King Code regarding the constitution of the Committee.

The Committee shall comprise of not less than three directors of the Company, with the majority being non-executive directors and, at least one of whom must be a Director who is not involved in the day-to-day management of the Company's business, and must not have been so involved within the previous three financial years, and another being the Executive Head: Human Resources. All members shall be entitled to vote on matters before the Committee irrespective of whether or not they are directors.

The Committee shall appoint a chairperson of the Committee (**Committee Chairperson**) from the ranks of the non-executive directors on the Committee and determine the period for which they shall hold office, provided that the chairperson of the Board may not be the Committee Chairperson.<sup>2</sup>

The members of the Committee must collectively have sufficient qualifications and experience to fulfil their duties.

Committee members must keep up-to-date with key developments affecting their required skills set.

The maximum tenure for Committee members is three terms of three years.

Notwithstanding the tenure set out above, the Board may at any time remove a member of the Committee and shall from time to time review and, where appropriate, revise the composition of the Committee, taking into account the need for an adequate combination of skills and knowledge.

### Meetings

Meetings of the Committee shall be held at least two times a year prior to scheduled Board meetings of the Company, at which Board meetings the Committee Chairperson will present a report on the activities of the Committee.

The Committee Chairperson may, within the framework of any relevant directives set by the Board, convene a meeting of the Committee at any time and at their discretion.

The quorum at any meeting of the Committee shall be a majority of its statutorily appointed members.

<sup>2</sup> King Code, principle 7, para 36



### **Meeting Attendees**

The Committee may invite any executive management team members or other individuals to attend meetings of the Committee as they consider appropriate.

The Committee may secure the attendance, at Committee meetings, of non-Committee members with the relevant experience and expertise where necessary, at the Company's expense, in accordance with any procedure developed by the Board for this purpose.

The Company Secretary or their designated representative shall be the secretary of the Committee.

### **Procedure for Meetings**

Committee members who are unable to attend Committee meetings shall inform the Committee Chairperson or Company Secretary at an early date.

Committee meetings may be conducted entirely or partly by electronic communication or a Committee member may participate in a meeting by electronic communication.

Each Committee member has one vote on a matter before the Committee.

A majority of the votes cast on a Committee resolution is sufficient to approve that resolution, and, in the case of a tied vote, the Committee Chairperson shall not have a casting vote and the matter being voted on fails.

The procedure to be followed for the convening of meetings, notice of meetings, and preparing agendas and minutes of meetings (to the extent not regulated in these terms of reference) will be determined from time to time and managed by the Company Secretary, in consultation with the Committee Chairperson and the Board.

In the absence of the Committee Chairperson at a meeting of the Committee, the remaining members present shall elect one member present to chair the meeting.

To the extent reasonably practicable, Committee papers will be circulated to all Committee members at least one week before the meeting and full and appropriate information will be supplied to Committee members by way of succinct position papers or reports with the Committee pack to enable Committee members to form an opinion on the issues on the agenda prior to the meeting and, if necessary, to request additional information before the meeting. Additional documentation may be circulated to Committee members prior to the Committee meeting and will, to the extent applicable and appropriate, be clearly labelled to indicate that such documentation constitutes additional reading. Failure to comply with these provisions shall not invalidate any proceedings or decisions taken thereat.

The Company Secretary shall keep appropriate records of all meetings of the Committee as well as minutes of the proceedings and all decisions made.

Minutes of the Committee meetings, signed by the Committee Chairperson, shall be sufficient evidence that the matters referred to therein have been fully discussed and agreed, whether by way of a formal meeting or otherwise.

The Company Secretary shall circulate the minutes of the meetings of the Committee to all members of the Committee and to the chairperson of the Board. Any director of the Company may, upon request to the Company Secretary, provided that there is no conflict of interest, obtain copies of the Committee's meeting agenda and minutes.

### **Access to resources and information**

The Committee, acting as such or through such of its members as are authorised by it from time to time, has unrestricted access to Company information falling within the Committee's mandate and will liaise with management on its information needs and the appropriate reports and information that it should receive to enable it to monitor, evaluate and report to shareholders on the progress made with respect to social, ethical, environmental and responsible business matters relating to the Company.

With the prior notification to the Committee Chairperson or the chairperson of the Board, the Committee or any of its individual members, may take outside legal, accounting or other independent professional advice on matters relating to



matters within the Committee's mandate, at the expense of the Company, in accordance with any procedure developed by the Board for this purpose. A formal mandate is to be entered into between such independent advisor and the Company to be facilitated by the Company Secretary.

### **Overall Role and Associated Responsibilities**

The statutory functions of the Committee are stipulated in Regulation 43 of the Companies Act, 2008.

To give effect to the statutory responsibilities, the Committee will focus on the following:

#### **1. Sustainability and stakeholder management**

- 1.1 Oversight and reporting on sustainability (Ethics, Social and Governance) to the extent that it is not covered in the Risk and Sustainability Committee, with focus on ethics, stakeholder relations, and responsible corporate citizenship. ; and
- 1.2 review and provide the Board with assurance on the integrity of the sustainability information reported on in the Company's Integrated Annual Report and the Ethics, Social and Governance (ESG) Report.

#### **2. Good corporate citizenship and community**

- 2.1 monitor the Group's policies and activities in regard to promotion of equality, prevention of unfair discrimination and reduction of corruption.
- 2.2 annually review and approve the Socio-Economic Development Strategy, key performance indicators and objectives and agree the annual Community Investment budget. Periodically review performance against these key indicators;
- 2.3 consider and make recommendations to the Board on the impact of the company's business on the communities in which it operates; and
- 2.4 periodically review all Community Investment Strategy sponsorships, donations and charitable contributions.

#### **3. Ethics and responsible business practice management**

- 3.1 ensure that where business decisions may impact the Company's values and ethics from a reputational perspective the potential impact has been fully considered; and
- 3.2 ensure an annual review of the Company's ethical policies and processes and consider the effectiveness thereof.
- 3.3 providing oversight and guidance in respect of the development of the Company's responsible business practices and policies and holding executives accountable for its effective planning, resourcing, implementation and delivery. This includes, but is not limited to:
  - 3.3.1 reviewing and approving the necessary policies and/or guidelines;
  - 3.3.2 ensuring focus areas are appropriately aligned with business purpose, objectives and shared value outcomes;
  - 3.3.3 ensuring that appropriate governance systems, performance metrics, internal and external assurance and reporting is in place, to ensure effective delivery and accountability; and
  - 3.3.4 providing guidance and input into the Group wide risk management framework, ensuring that appropriate environmental, social and governance related risks are considered and reviewed as a part of the annual materiality assessment for integrated reporting.



#### 4 Labour and Employment

- 4.1 review strategic people issues including but not limited to progress in transformation and major employee relations issues;
- 4.2 review the Company's performance in the area of human resources development, diversity and retention against internal transformation targets, critical skills and legislative imperatives, and make recommendations to the Remuneration Committee;
- 4.3 Review the company's standing in terms of the goals and purposes of the:
  - i. 10 principles set out in the United Nations Global Compact Principles;
  - ii. the OECD recommendations regarding corruption; and
  - iii. the Employment Equity Act.

#### 5 Broad based Black Economic Empowerment management

- 5.1 review the Company's Broad-Based Black Economic Empowerment (**B-BBEE**) status and the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry of 2002 (the **Mining Charter**) compliance;
- 5.2 publish the Company's B-BBEE annual verification certificate;
- 5.3 monitor the correct balance between transformation activities, provision of adequate skills and maintaining stability within the Company;
- 5.4 consider material external developments in the fields of transformation and sustainable development and where appropriate, to have these assessed and provide appropriate strategic guidance; and
- 5.5 make recommendations to the Board on possible participation, cooperation and consultation to transformation, community and social development issues with government and non-governmental organisations and employee organisations.

#### 6. GOVERNANCE

6.1 Review developments in corporate governance and best practice and consider their impact and implication for the Company's processes and structures.

6.2 Evaluate and monitor the regulatory governance requirements and code of business conduct within the Company.

6.3 Review significant cases of employee conflicts of interest, misconduct or fraud, or any other unethical activity by employees or the Company; and

6.4 Have due regard to the principles of governance and code of best practice as contained in the King Code and any legislation with respect to governance requirements and standards.

#### Committee work plan<sup>3</sup>

An annual work plan will be prepared for the Committee and a list of issues, as formulated by the Committee Chairperson together with the Company Secretary, which need to be considered by the Committee annually, will be tabled at the first Committee meeting of each year. The agenda for discussion of these issues will be spread over the meetings of the year so that each of these issues are addressed at least once a year.

---

<sup>3</sup> King Code, principle 9, para 74



## General

The Committee members are obliged to disclose to the Committee in writing any personal financial interest (as contemplated in section 75 read with section 1 of the Companies Act) and any other interests they have within or outside the Company that may be relevant, factually or perceptively, to their independence or their role on the Committee, including matters which may or may be perceived to interfere or conflict with the performance of their duties as members of the Committee. Disclosures made; in accordance with paragraph 10 of the Board Charter and section 75 of the Companies Act shall be regarded as having been made for this purpose, and duplicate disclosure of such matters to the Committee shall thus not be required.

All Company information that becomes known to directors in the performance of their duties must at all times be kept confidential.

## Reporting<sup>4</sup>

The Committee Chairperson shall report to the Board at the first Board meeting following the last Committee meeting on the activities of the Committee.

The Committee shall report on an annual basis to the shareholders at the annual general meeting of the Company as well as to the shareholders through the Integrated Annual Report on the following items:

- the Committee's overall role and associated responsibilities and function;
- its composition, including each member's qualifications and experience;
- any external advisers or invitees who regularly attend the Committee meetings;
- key areas of focus during the reporting period;
- the number of meetings held during the reporting period and attendance at those meetings; and

<sup>4</sup> King Code, Principle 8, para 43.

- whether the Committee is satisfied that it has fulfilled its responsibilities in accordance with its terms of reference for the reporting period.

The Committee Chairperson shall be required to attend the Company's annual general meeting to answer relevant questions posed by shareholders.

## Evaluation<sup>5</sup>

The Committee will be independently evaluated as required by legislation and/or best practice governance and actions from the evaluation should be agreed and implementation tracked and reported to the Board.

## APPROVAL OF THESE TERMS OF REFERENCE

The Committee shall review its Terms of Reference annually and amend them as appropriate, subject to approval from the Board.

The original terms of reference were recommended to and approved by the Board on 31 March 2021

The revised terms of reference were approved by the committee on 15 March 2022.

The revised terms of reference were approved by the Board on 18 March 2022 and will be due for review on 31 December 2022.

<sup>5</sup> King Code, Principle 8, para 43.