



mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

**AMENDMENT OF
THE BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER
FOR THE SOUTH AFRICAN MINING AND MINERALS INDUSTRY**

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PREAMBLE

The systematic marginalisation of the majority of South Africans, facilitated by the exclusionary policies of the apartheid regime, prevented Historically Disadvantaged South Africans (HDSAs) from owning the means of production and from meaningful participation in the mainstream economy. To redress these historic inequalities, and thus give effect to section 9 (equality clause) of the Constitution of the Republic of South Africa Act 108 of 1996 (Constitution), the democratic government has enacted, inter alia, the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA).

The objective of the MPRDA is to facilitate meaningful participation of HDSAs in the mining and minerals industry. In particular, section 100(2)(a) of the MPRDA provides for the development of the Mining Charter as an instrument to effect transformation with specific targets. Embedded in the Mining Charter of 2002 is the provision to review the progress and determine what further steps, if any, need to be made to achieve its objectives.

In line with this provision, the DMR has concluded a comprehensive assessment to ascertain the progress of transformation of industry against the objectives of the Charter in the mining industry. The findings of the assessment identified a number of shortcomings in the manner in which the mining industry has implemented the various elements of the Charter, viz. ownership, procurement, employment equity, beneficiation, human resource development, mine community development, housing and living conditions, all of which have not embraced the spirit of the Charter to the latter. To overcome these inadequacies, amendments are made to the Mining Charter of 2002 in order to streamline and expedite attainment of its objectives. Additionally, the review of the Charter introduces an element of sustainable growth of the mining industry, which seeks to ensure sustainable transformation and growth of the mining industry.

VISION

To facilitate sustainable transformation, growth and development of the mining industry.

MISSION

To give effect to section 100(2)(a) of the MPRDA and section 9 of the Constitution

DEFINITIONS

“BEE entity” means an entity of which a minimum of 25% + 1 vote of share capital is directly owned by HDSA as measured in accordance with flow through principle;

“Beneficiation” means the transformation of a mineral (or a combination of minerals) to a higher value product, which can either be consumed locally or exported. The term “beneficiation” is often used interchangeably with mineral “value-addition” or “downstream beneficiation”;

“Broad-Based Socio-Economic Empowerment (BBSEE)” means a socio-economic strategy, plan, principle, approach or act, which is aimed at:

- (a) Redressing the results of past or present discrimination based on race, sex and disability of historically disadvantaged persons in the minerals and petroleum industry, related industries and in the value chain of such industries; and
- (b) Transforming such industries so as to assist in, provide for, initiate, facilitate or benefit from the:
 - Ownership participation in existing or future mining, prospecting, exploration and beneficiation operations;
 - Participation in or control of management of such operations;
 - Development of management, scientific, engineering or other skills of HDSA’s;
 - Involvement of or participation in the procurement chains of operations;
 - Integrated socio-economic development for mine workers, host communities, major labour sending areas and areas that due to unintended consequences of mining are becoming ghost towns by mobilising all stakeholder resources;

“Calendar year” is defined as the one year period that begins on January 1st and ends on December 31st;

“Community” means a coherent, social group of persons with interest of rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law;

“Demographics” means the numerical characteristics of a population (e.g. population size, age, structure, sex/gender, race, etc.)

“Effective ownership” means the meaningful participation of HDSAs in the ownership, voting rights, economic interest and management control of mining entities;

“EMP” means an approved environmental programme contemplated in Section 39;

“Enterprise development” means monetary and non monetary support for existing or fostering of new HDSA companies in the mining sector of the economy, with the objective of contributing to their development, sustainability as well as financial and operational independence;

“ESOPs” mean Employees Share Ownership Schemes;

“Historically Disadvantaged South Africans” (“HDSA”) refers to South African citizens, category of persons or community, disadvantaged by unfair discrimination before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) came into operation which should be representative of the demographics of the country;

“Labour sending area” areas from which a majority of mineworkers, both historical and current are or have been sourced;

“Level of management” refers to line of demarcation between various managerial positions;

“Life of Mine” means the number of years that a particular mine will be operational;

“Meaningful economic participation” includes, inter alia, the following key attributes:

- BEE transactions shall be concluded with clearly identifiable beneficiaries in the form of BEE entrepreneurs, workers (including ESOPs) and communities;
- Barring any unfavourable market conditions, some of the cash flow should flow to the BEE partner throughout the term of the investment, and for this purpose, stakeholders will engage the financing entities in order to structure the BEE financing in a manner where a percentage of the cash-flow is used to service the funding of the structure, while the remaining amount is paid to the BEE beneficiaries. Accordingly, BEE entities are enabled to leverage equity henceforth in proportion to vested interest over the life of the transaction in order to facilitate sustainable growth of BEE entities.

- BEE shall have full shareholder rights such as being entitled to full participation at annual general meetings and exercising of voting rights, regardless of the legal form of the instruments used;
- Ownership shall vest within the timeframes agreed with the BEE entity, taking into account market conditions.

“Mining Charter” means the broad-based socio-economic empowerment Charter for the South African Mining and Minerals Industry;

“Mine Community” refers to communities where mining takes place and labour sending areas;

“Non-discretionary procurement expenditure” means expenditure that cannot be influenced by a mining company, such as procurement from the public sector and public enterprises;

“Shareholder” shall mean a person who is entitled to exercise any voting rights in relation to a company, irrespective of the form, title or nature of the securities to which those voting rights are attached.

“Social Fund” refers to a trust fund that provides financing for investments targeted at meeting the needs of poor and vulnerable communities as informed by commitments made by companies in terms of their social and labour plans;

“Stakeholder” refers to a person, group, organisation, or system which affects or can be affected by an organisation’s actions which may relate to policies intended to allow the aforementioned to participate in decision making in which all may have a stake;

“Sustainable development” means the integration of social, economic and environmental factors into planning, implementation and decision-making to ensure that the mineral and petroleum resources development serves present and future generations;

1. OBJECTIVES

The Broad Based Socio Economic Empowerment Charter for the South African Industry, hereafter referred to as “the Mining Charter”, is a Government instrument designed to effect sustainable growth and meaningful transformation of the mining industry. The Mining Charter seeks to achieve the following objectives:

- (a) To promote equitable access to the nation’s mineral resources to all the people of South Africa;
- (b) To substantially and meaningfully expand opportunities for HDSA to enter the mining and minerals industry and to benefit from the exploitation of the nation’s mineral resources;
- (c) To utilise and expand the existing skills base for the empowerment of HDSA and to serve the community;
- (d) To promote employment and advance the social and economic welfare of mine communities and major labour sending areas;
- (e) To promote beneficiation of South Africa’s mineral commodities; and
- (f) Promote sustainable development and growth of the mining industry.

2. ELEMENTS OF THE MINING CHARTER

2.1 Ownership

Effective ownership is a requisite instrument to effect meaningful integration of HDSA into the mainstream economy. In order to achieve a substantial change in racial and gender disparities prevalent in ownership of mining assets, and thus pave the way for meaningful participation of HDSA for attainment of sustainable growth of the mining industry, stakeholders commit to:

- Achieve a minimum target of 26 percent ownership to enable meaningful economic participation of HDSA by 2014;
- The only offsetting permissible under the ownership element is against the value of beneficiation, as provided for by Section 26 of the MPRDA and elaborated in the mineral beneficiation framework.

The continuing consequences of all previous deals concluded prior to the promulgation of the Mineral and Petroleum Resources Development Act, 28 of 2002 would be included in calculating such credits/offsets in terms of market share as measured by attributable units of production.

2.2 Procurement and Enterprise Development

Local procurement is attributable to competitiveness and transformation, captures economic value, presents opportunities to expand economic growth that allows for creation of decent jobs and widens scope for market access of South African capital goods and services. In order to achieve this, the mining industry must procure from BEE entities in accordance with the following criteria, subject to the provisions of clause 2.9:

- Procure a minimum of 40% of capital goods from BEE entities by 2014;
- Ensure that multinational suppliers of capital goods annually contribute a minimum of 0.5% of annual income generated from local mining companies towards socio-economic development of local communities into a social development fund from 2010;
- Procure 70% of services and 50% of consumer goods from BEE entities by 2014.

The targets above are exclusive of non-discretionary procurement expenditure.

2.3 Beneficiation

Beneficiation seeks to translate comparative advantage in mineral resources endowment into competitive advantage as fulcrum to enhance industrialisation in line with State developmental priorities. In this regard, mining companies must facilitate local beneficiation of mineral commodities by adhering to the provision of Section 26 of the MPRDA and the mineral beneficiation strategy:

- Mining companies may offset the value of the level of beneficiation achieved by the company against a portion of its HDSA ownership requirements not exceeding 11 percent.

2.4 Employment Equity

Workplace diversity and equitable representation at all levels are catalysts for social cohesion, transformation and competitiveness of the mining industry. In order to create a conducive environment to ensure diversity as well as participation of HDSA at all decision-making positions and core occupational categories in the mining industry, every mining company must achieve a minimum of 40% HDSA demographic representation at:

- Executive Management (Board) level by 2014;
- Senior management (EXCO) level by 2014;
- Core and Critical skills by 2014;
- Middle management level by 2014;
- Junior management level by 2014.

In addition, mining companies must identify and fast-track their existing talent pools to ensure high level operational exposure in terms of career path programmes.

2.5 Human Resource Development

The mining industry is knowledge based and thus hinges on human resource development, constituting an integral part of social transformation at workplace and sustainable growth. To achieve this objective, the mining industry must:

- Invest a percentage of annual payroll (as per relevant legislation) in essential skills development activities reflective of the demographics, but excluding the mandatory skills levy, including support for South African based research and development initiatives intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation as well as environmental conservation and rehabilitation; as follows:
 - Target for 2010 = 3%;
 - Target for 2011 = 3.5%;
 - Target for 2012 = 4%;
 - Target for 2013 = 4.5%;
 - Target for 2014 = 5%.

2.6 Mine Community Development

Mine communities form an integral part of mining development, there has to be meaningful contribution towards community development, both in terms of size and impact, in keeping with the principles of the social license to operate. Stakeholders must adhere to the following:

- Consistent with international best practices in terms of rules of engagement and guidelines, mining companies must invest in ethnographic community consultative and collaborative processes prior to the implementation/development of mining projects;
- Mining companies must conduct an assessment to determine the developmental needs in collaboration with mining communities and identify projects within the needs analysis for their contribution to community development in line with Integrated Development Plans (IDPs), the cost of which should be proportionate to the size of investment.

2.7 Housing and Living Conditions

Human dignity and privacy for mineworkers are the hallmarks to enhance productivity and expedite transformation in the mining industry in terms of housing and living conditions. In this regard mining companies must implement measures to improve the standards of housing and living conditions for mineworkers as follows:

- Convert or upgrade hostels into family units by 2014;
- Attain the occupancy rate of one person per room by 2014;
- Facilitate home ownership options for all mine employees in consultation with organised labour by 2014.

2.8 Sustainable Development and Growth of the Mining Industry

Mineral resources are non-renewable in nature, forthwith exploitation of such resources must emphasise the importance of balancing concomitant economic benefits with social and environmental needs without compromising future generations, in line with Constitutional provisions for ecological, sustainable development and use of natural resources. To this end, with consideration to clause 2.9, every mining company must implement elements of sustainable development commitments included in the *“Stakeholders’ Declaration on Strategy for the sustainable growth and meaningful transformation of South Africa’s Mining Industry of 30 June 2010 and in compliance with all relevant legislation”*, as follows:

- Improvement of the industry’s environmental management by:
 - Implementing environmental management systems that focus on continuous improvement to review, prevent, mitigate adverse environmental impact;
 - Undertake continuous rehabilitation on land disturbed or occupied by mining operations in accordance with appropriate regulatory commitments;
 - Provide for the safe storage and disposal of residual waste and process residues;
 - Design and plan all operations so that adequate resources are available to meet the closure requirements of all operations.
- Improvement of the industry’s health and safety performance by:
 - Implementing a management systems focused on continuous improvement of all aspects of operations that have a significant impact on the health and safety of employees, contractors and communities where mining takes place;
 - Providing all employees with health and safety training and require employees of contractors to have undergone such training;
 - Implement regular health surveillance and risk-based monitoring of employees.
- Stakeholders undertake to enhance the capacity and skills in relevant South African research and development facilities in order to ensure quality, quick turn around, cost effectiveness and integrity of such facilities. To this extent, mining

companies are required to utilise South African based facilities for the analysis of samples across the mining value chain.

2.9 Reporting (Monitoring and Evaluation)

Every mining company must report its level of compliance with the Mining Charter annually, as provided for by Section 28(2)(c) of the MPRDA.

The Department shall monitor and evaluate, taking into account the impact of material constraints which may result in not achieving set targets.

3. NON-COMPLIANCE

Non compliance with the provisions of the Charter and the MPRDA shall render the mining company in breach of the MPRDA and subject to the provisions of Section 47 read in conjunction with Sections 98 and 99 of the Act.

4. AMENDMENTS

The Minister of the Department of Mineral Resources may amend the Mining Charter as and when the need arises.