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MINING & MINERALS ALERT

IN THIS ISSUE

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

The Draft Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry (2018 Draft Mining Charter) was published for comment by Gwede Mantashe, the Minister of Mineral Resources, on 15 June 2018.

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The Draft Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry was published on 15 June 2018.

Should the 2018 Draft Mining Charter be implemented in its current form, how will the 2018 Draft Mining Charter affect your business and how does it compare to the 2010 Mining Charter?

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Should the 2018 Draft Mining Charter be implemented in its current form, how will the 2018 Draft Mining Charter affect your business and how does it compare to the 2010 Mining Charter? We set out below a side by side summary of the 2010 Mining Charter requirements and the requirements of the 2018 Draft Mining Charter, highlighting the differences between the respective charters.

Please note that this comparison does not analyse or provide any legal opinion or commentary in relation to the respective charters. Further, there are a number of drafting issues and anomalies that exist in the 2018 Draft Mining Charter. We have, however, set out the requirements below as per the current language of the 2018 Draft Mining Charter.

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Ben Cripps and Allan Reid



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THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

ELEMENT	2010 CHARTER REQUIREMENTS	2018 DRAFT MINING CHARTER REQUIREMENTS
<p>Definitions</p> <p>Note: there is a difference in the way certain terms have been defined between the 2010 Charter and the Draft 2018 Mining Charter. We have set out the differences as drafted in the respective Charters.</p> <p>Note: there are new definitions included in the 2018 Draft Mining Charter which are not provided for in the 2010 Charter.¹</p>	<p>"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.</p>	<p>"BEE Compliant Company" means a company with a minimum B-BBEE level 4 status in terms of the BBEE Codes of Good Practice and minimum 26% black ownership.</p> <p>"BEE Entrepreneur" refers to Black enterprises that are at least 51% owned by Black Persons in which Black Persons hold at least 51% of exercisable voting rights and 51% of economic interest or an organ of State excluding mandated investments.</p> <p>"BEE Shareholding" refers to host community, qualifying employees' and BEE Entrepreneurs' shareholding.</p> <p>"Historical BEE Transactions" refers to BEE Transactions concluded prior to the coming into operation of the Mining Charter, 2018.</p>
	<p>"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".</p>	<p>"Beneficiation" for purposes of the 2018 Draft Mining Charter, beneficiation means the transformation, value addition or downstream beneficiation of a mineral or mineral product (or a combination of minerals) to a higher value product, over baselines to be determined by the Minister, which can either be consumed locally or exported.</p>
	<p>"Broad-Based Socio-Economic Empowerment (BBSEE)" means a socio-economic strategy, plan, principle, approach or act, which is aimed at:</p> <ul style="list-style-type: none"> • 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 • transforming such industries so as to assist in, provide for, initiate, facilitate or benefit from the: <ul style="list-style-type: none"> - 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; and - 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. 	<p>"Meaningful Economic Participation" refers to the following key attributes:</p> <ul style="list-style-type: none"> • Clearly identifiable partners in the form of BEE entrepreneurs, host communities and qualifying employees; • A percentage of unencumbered net value based upon the time graduation factor which has accrued to BEE Shareholders; • A percentage of dividends declared, or other monetary distributions or trickle dividends paid to BEE Shareholders, subject to the provisions of relevant legislation; • BEE Shareholders with vested interest can leverage equity in proportion to such vested interest over the life of the transaction to reinvest in other mining projects; and • BEE Shareholders with full shareholder rights entitling them to full participation at annual general meetings, exercising of voting rights in all aspects including but not limited to trading and marketing of the commodity herein affected and anything incidental thereto regardless of the legal form of the instrument used.

¹ **"BBBEE Act"** means Broad-Based Black Economic Empowerment Act 2003 (Act No. 53 of 2003) as amended;

"Core and Critical Skills" refers to science, technology, engineering and mathematical skills across organisational levels within both production and operational parts of a mining company.

"Demographics" means the numerical characteristics of a national and/or provincial population (e.g. population size, age, structure, sex/gender, race, etc.);

"MPRDA" means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) as amended.

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

ELEMENT	2010 CHARTER REQUIREMENTS	2018 DRAFT MINING CHARTER REQUIREMENTS
	"Effective ownership" means the meaningful participation of HDSAs in the ownership, voting rights, economic interest and management control of mining entities.	"Effective ownership" means the meaningful participation of Black persons in the unencumbered net value ownership, voting rights, economic interest and management control of mining operations.
	"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.	Definition of "Enterprise development" not provided for in the 2018 Draft Mining Charter.
	"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.	"Black Persons" is a generic term which means Africans, Coloureds and Indians: <ul style="list-style-type: none"> • who are citizens of the Republic of South Africa by birth or descent; or • who became citizens of the Republic of South Africa by naturalisation before 27 April 1994; or • a juristic person which is managed and controlled by person/s contemplated above and the person/s collectively or as a group own and control majority of the issued share capital or members' interest and are able to control the majority of the members' vote.
	"Non-discretionary procurement expenditure" means expenditure that cannot be influenced by a mining company, such as procurement from the public sector and public enterprises.	Definition of "Non-discretionary procurement expenditure" not provided for in the 2018 Draft Mining Charter.
	"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.	Definition of "Shareholder" not provided for in the 2018 Draft Mining Charter; however, refer to definitions of "BEE shareholding", "BEE Persons" and "BEE Entrepreneur" above.
	"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.	Definition of "Social Fund" not provided for in the 2018 Draft Mining Charter.
	"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.	Definition of "Sustainable development" not provided for in the 2018 Draft Mining Charter, but specific provisions regarding sustainable development have been included (see below).

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

ELEMENT	2010 CHARTER REQUIREMENTS	2018 DRAFT MINING CHARTER REQUIREMENTS
Ownership	<ul style="list-style-type: none"> • Must achieve minimum target of 26% ownership by 2014. • Off-setting permissible is against the value of beneficiation. • Continuing consequences of all previous deals concluded prior to the date the MPRDA took effect would be included in calculating offsets/credits (measured by attributable units of production). 	<p>Existing Mining Rights</p> <ul style="list-style-type: none"> • Existing right holders who (a) had achieved and maintained a minimum of 26% BEE shareholding as at the date on which the final version of the 2018 Mining Charter is published; and (b) at any stage during the existence of the mining right achieved a minimum of 26% BEE shareholding and whose BEE partner/s have since exited the BEE transaction, shall be recognised as compliant, however, such holders will have a period of 5 years from the date of publication of the final version of the 2018 Mining Charter to supplement their BEE shareholding to 30%. • The recognition of continuing consequences includes historical transactions concluded on units of production, share assets including all historical BEE transactions which formed the basis upon which new order mining rights were granted (whether at company or mining right level). However, the recognition of continuing consequences in respect of existing and historical BEE transactions, shall not be transferrable and will not apply to new applications, or to renewals of existing mining rights and will lapse upon the transfer of a mining right or any part thereof. • Existing right holders who failed to achieve a minimum 26% BEE shareholding prior to the date of commencement of the final version of the 2018 Mining Charter, will not enjoy the recognition of continuing consequences and will be immediately subject to the corrective processes under the MPRDA. Such holders will also be required to supplement their BEE shareholding to 30% within a period of 5 years from the date of coming into operation of the final version of the 2018 Mining Charter.

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

ELEMENT	2010 CHARTER REQUIREMENTS	2018 DRAFT MINING CHARTER REQUIREMENTS
Ownership		<p>New Mining Rights</p> <ul style="list-style-type: none"> • An entity applying for or holding a new mining right after the date on which the final form 2018 Mining Charter comes into operation, must have a minimum of 30% BEE shareholding for the duration of a mining right (which shareholding must include economic interest plus the corresponding percentage of voting rights). • The 30% BEE shareholding must be distributed as to: <ul style="list-style-type: none"> - a minimum of 8% (of which 5% is non-transferable free carried interest) to Qualifying Employees within a period of 5 years from the effective date of a mining right²; - a minimum of 8% (of which 5% is non-transferable free carried interest) to Host Communities³ (in the form of a community trust as prescribed) within 5 years from the effective date of a mining right; and - a minimum of 14% shareholding to a BEE Entrepreneur. • Where a BEE Entrepreneur's shareholding is disposed of, the empowerment credentials of an otherwise compliant right holder will continue to be recognised on the continuing consequences basis for the duration of the mining right, provided that the BEE entrepreneur must have held the empowerment interest for a minimum period equivalent to a third of the duration of the mining right and unencumbered net value must have been realised, and the BEE entrepreneur must re-invest a minimum of 40% of the proceeds from the disposed equity in the mining industry. • The 2018 Draft Mining Charter also sets deadlines by which the BEE Entrepreneur must vest, namely 15% in the first quarter, 50% in the second quarter, 70% in the third quarter and in full in the last quarter of the duration of a mining right. • In addition to the proposed free carried interest, Qualifying Employees and Host Communities are set to benefit from having representation on the boards or advisory committees of right holders and the entitlement to receive a Trickle Dividend equal to a minimum of 1% of EBITDA from the sixth year of a mining right until dividends are declared. This trickle dividend is stated to be "redeemable" by a right holder when ordinary dividends are declared.⁴ • In relation to BEE entrepreneurs, the Trickle Dividend refers to "a dividend with a cash flow to BEE entrepreneurs throughout the term of the investment where a percentage of such cash flow should be used to service the funding of the structure while the remaining amount is paid to BEE entrepreneurs". These Trickle Dividends do not appear to be "redeemable".

² The term "Qualifying Employees" is defined as "employees of a mining company excluding employees who already own shares in the company as a condition of their employment agreement, except where such condition is a Mining Charter requirement."

³ The term "Host Community" is defined as "a community/ies in the local, district, metropolitan municipality or traditional authority within which the mining area as defined in the MPRDA is located."

⁴ This, according to Minister Mantashe, allows the trickle dividend to be repaid from normal dividends so that other shareholders are not prejudiced.

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

ELEMENT	2010 CHARTER REQUIREMENTS	2018 DRAFT MINING CHARTER REQUIREMENTS
Ownership		<p>Pending Applications</p> <p>A pending application lodged and accepted prior to the coming into operation of the final version of the 2018 Mining Charter, shall be processed and granted in terms of the requirements of the 2010 Charter with a minimum of 26% Black Person's shareholding, and the holder will be required to increase the BEE shareholding to 30% within 5 years of the effective date of the mining right.</p>
Procurement, Supplier and Enterprise Development	<ul style="list-style-type: none"> Procure minimum 40% of capital goods from BEE entities by 2014. Multinational suppliers must contribute 0.5% of annual income generated from local mining companies to a Social Development Fund from 2010. Procure 70% of services and 50% of consumer goods from BEE entities by 2014. 	<p>Mining Goods</p> <ul style="list-style-type: none"> Holders must spend a minimum of 70% of their total mining goods procurement expenditure on South African Manufactured Goods⁵, apportioned in the following manner: <ul style="list-style-type: none"> 21% of the total budget for procurement of mining goods must be spent on South African Manufactured Goods, manufactured by Black Entrepreneurs; 5% of the total budget for procurement of mining goods must be spent on South African Manufactured Goods, manufactured by BEE woman entrepreneurs or 51% youth owned and controlled enterprises;⁶ and 44% of the total budget for procurement of mining goods must be spent on South African Manufactured Goods, manufactured by BEE Compliant Companies. Compliance with the mining goods procurement targets set out above must be met within the following transitional periods (calculated from the date on which the final version of the 2018 Mining Charter is implemented): <ul style="list-style-type: none"> the first year: mining goods procurement budget is set at 10%; the second year: mining goods procurement budget is set at 20%; the third year: mining goods procurement budget is set at 35%; the fourth year: mining goods procurement budget is set at 50%; and the fifth year: mining goods procurement budget is set at 70%.

⁵ The term "South African Manufactured Goods" is defined as "goods where at least 60% of the value added during the assembly or manufacturing of the product is created within South Africa. The calculation of value added excludes profit mark-up, intangible value (such as brand value) and overheads."

⁶ The term "Youth" is defined for purposes of the 2018 Draft Mining Charter as "young South African citizens between the ages of 18 to 35 years old based on national or provincial demographics."

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

ELEMENT	2010 CHARTER REQUIREMENTS	2018 DRAFT MINING CHARTER REQUIREMENTS
<p>Procurement, Supplier and Enterprise Development</p>		<p>Services</p> <ul style="list-style-type: none"> • A minimum of 80% of a Holder's total expenditure on Services⁷ (excluding non-discretionary expenditure) must be sourced from South African Based companies, apportioned in the following manner: <ul style="list-style-type: none"> - 60% of the total Services budget must be spent on BEE Entrepreneurs; - 10% of the total Services budget must be spent on BEE woman entrepreneurs or 51% youth owned and controlled enterprises; and - 10% of the total Services budget must be spent on BEE Compliant Companies. • Compliance with the Services procurement targets set out above must be met within the following transitional periods (calculated from the date on which the final version of the 2018 Mining Charter is implemented): <ul style="list-style-type: none"> - the first year: Services procurement budget is set at 70%; and - the second year: Services procurement budget is set at 80%. • Terms and conditions offered to BEE parties relating to the procurement of goods and Services must not be less favourable than those offered to other suppliers. • Holders may invest in enterprise and supplier development against which they may offset their procurement obligations as follows: <ul style="list-style-type: none"> - up to 5% of the total procurement budget for mining goods may be offset against supplier development; and - up to 10% of the total procurement budget on services (excluding non-discretionary expenditure) may be offset against supplier and enterprise development. • The offset of enterprise and supplier development mentioned above must be implemented as follows: <ul style="list-style-type: none"> - enterprise and supplier development must only be invested in BEE Entrepreneurs with a turnover of less than R50 million per annum; - investment in supplier development may not be claimed as expenditure in enterprise development; - there must be a written agreement between a right holder and the recipient of the supplier or enterprise development investment (the term of such agreement must be a minimum of 5 years).

⁷ The term "Services" is defined as "services contracted by a right holder, or by a contractor on behalf of a right holder, including but not limited to: mining production services, drilling, mineral trading, mineral marketing, legal, shipping, transportation, information technology services, security, payroll, finance, medical, consulting, cleaning, insurance and any other services which are supplementary to the mine".

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

ELEMENT	2010 CHARTER REQUIREMENTS	2018 DRAFT MINING CHARTER REQUIREMENTS
Procurement, Supplier and Enterprise Development		<ul style="list-style-type: none"> • Within 6 months of implementation of the final version of the 2018 Mining Charter, right holders must submit a 5-year plan indicating progressive implementation of inclusive procurement targets. • Holders must only utilise South African based companies for the analysis of 100% of all mineral samples across the mining value chain, except in cases where samples are analysed for calibration of local laboratories. • Holders may not conduct sample analysis using foreign based facilities or companies without the prior written consent of the Minister. • When submitting the annual Mining Charter Report to the DMR, Holders must provide proof of local content for goods and services in the form of a certification from the South African Bureau of Standards or any other entity designated by the Minister. • A Foreign Supplier⁸ must contribute a minimum of 0.5% of its annual turnover generated from South African mining companies towards development of suppliers to be directed to the Mandela Mining Precinct for research purposes.
Beneficiation	<ul style="list-style-type: none"> • Facilitate beneficiation 11% offset allowable against a portion of HDSA ownership. 	<ul style="list-style-type: none"> • A right holder can claim a maximum of an 11% offset credit against the BEE Entrepreneur allocation for beneficiation on the basis of a DMR approved "equity equivalent plan". This "equity equivalent" can only be claimed against a portion of a BEE Entrepreneur's shareholding. • Right holders will be entitled to apply for "equity equivalent" credits for the following activities: <ul style="list-style-type: none"> - supplying mineral ore or mineral products to independent local beneficiation entities at a discount to the mine gate price; - a portion of an Integrated Producer's production is beneficiated;⁹ - supplying mineral ore to black owned beneficiation entities at a discount to the mine gate price; - makes investments in local mineral beneficiation entities; and - any other activities or investments made since 2004 that relate to beneficiation. • A right holder will have to submit a progress report against the approved equity equivalent plan to the Department at the end of each calendar year.

⁹ The term "Integrated Producer" is defined as "a right holder that beneficiates minerals mined by such right holder as part of its business activities". The Minister is still to determine the baselines over which the beneficiated higher value product will be measured.

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

ELEMENT	2010 CHARTER REQUIREMENTS	2018 DRAFT MINING CHARTER REQUIREMENTS
Employment Equity	<p>Must achieve a minimum of 40% HDSA demographic representation by 2014 at:</p> <ul style="list-style-type: none"> • executive management (board) level; • senior management (EXCO) level; • core and critical skills; • middle management level; • junior management level; and • fast track existing talent pool. 	<ul style="list-style-type: none"> • Regarding Employment Equity, a right holder must achieve a minimum threshold of Black Persons which is reflective of the provincial or national demographics as follows: <ul style="list-style-type: none"> - Board - a minimum of 50% Black Persons with exercisable voting rights, 20% of which must be black women; - Executive/Top Management - a minimum of 50% Black Persons at the executive directors' level as a percentage of all executive directors proportionally represented, 15% of which must be black women; - Senior Management - a minimum of 50% Black Persons proportionally represented, 15% of which must be black women; - Middle Management - a minimum of 60% of Black Persons, proportionally represented, 20% of which must be black women; - Junior Management - a minimum of 70% Black Persons proportionally represented, 25% of which must be black women; - Employees with disabilities - a minimum of 1.5% employees with disabilities as a percentage of all employees, reflective of national or provincial demographics; and - Core and Critical Skills - a right holder must ensure that a minimum of 60% Black Persons are represented in the right holder's core and critical skills by diversifying its existing pools (representative of demographics). Core and critical skills must include science, technology, engineering and mathematical skills representation across all organisational levels. To achieve this, a right holder must identify and implement its existing pools in line with the approved Social and Labour Plan.¹⁰ • Holders must develop and implement a career progression plan consistent with the demographics of South Africa, which plan must provide for: <ul style="list-style-type: none"> - career development matrices of each discipline (inclusive of minimum entry requirements and timeframes); - develop individual development plans for employees; - identify a talent pool to be fast tracked in line with needs; and - provide a comprehensive plan with targets, timeframes and how the plan would be implemented.

¹⁰ The term "Social and Labour Plan" refers to the Social and Labour Plan contemplated in section 23 of the MPRDA.

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

ELEMENT	2010 CHARTER REQUIREMENTS	2018 DRAFT MINING CHARTER REQUIREMENTS
Human Resource Development	<p>Invest a percentage of annual payroll spent in essential skills development activities reflective of demographic (excluding mandatory skills levy), including support for South African based research and development initiatives intended to develop mining, exploration, processing etc:</p> <ul style="list-style-type: none"> • 3% for 2010; • 3.5% for 2011; • 4% for 2012; • 4.5% for 2013; and • 4% for 2014. 	<ul style="list-style-type: none"> • Holders must invest 5% of Leviable Amount¹¹ on essential skills development (excluding the mandatory statutory skills levy), invested in the following manner (apportioned in proportion with national or provincial demographics): <ul style="list-style-type: none"> - 3.5% on essential skills development activities such as science, technology, engineering, mathematic skills as well as artisans, bursaries, literacy and numeracy skills for employees and non-employees (community members); and - 1.5% towards South African Public Academic Institutions, Science Councils or research entities for the development of solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation as well as environmental conservation and rehabilitation. This research and development expenditure must qualify for the R&D Tax Allowance in terms of Section 11D of the Income Tax Act.
Mine Community Development	<ul style="list-style-type: none"> • Meaningful consultation to develop/ implement projects consistent with international best practice. • Conduct assessments to determine community requirements in collaboration with communities in line with integrated development plans. 	<ul style="list-style-type: none"> • Holders must meaningfully contribute towards Mine Community Development with biasness towards mine communities both in terms of impact as well as in keeping with the principles of the social license to operate. In consultation with relevant municipalities, mine communities, traditional authorities and affected stakeholders, right holders must identify developmental priorities of mine communities and make provision for such priorities in the prescribed and approved Social and Labour Plans.¹² • Holders who operate in the same area may collaborate on certain identified projects to maximise the socio-economic development impact in line with the approved Social and Labour Plans.¹³ • Social and Labour Plans must set out the mechanisms, measures and targets applicable to Mine Community Development. Any amendments and/or variations to commitments set out in Social and Labour Plans (including budgets) shall require approval in terms of section 102 of the MPRDA, and right holders will be required to consult with mine communities. • To provide clear targets and timelines for purposes of implementing mine community development principles, Social and Labour Plan Guidelines shall be reviewed.

¹² For purposes of implementing Social and Labour Plans and Mine Community Development Projects, the term **"Mine Community"** refers to communities where mining takes place, major labour sending areas, adjacent communities within a local municipality, metropolitan municipality and/or district municipality.

¹³ Approved Social and Labour Plans must be published in English and one or two other languages commonly used within the mine community.

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

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Housing and Living Conditions	<ul style="list-style-type: none"> • Convert or upgrade hostels into family units by 2014. • Attain an occupancy rate of one person per room by 2014. • Facilitate home ownership options for all mine employees in consultation with organised labour by 2014. 	<ul style="list-style-type: none"> • Mining companies must improve the standards of housing and living conditions for mine workers as stipulated in the Housing and Living Conditions Standard for the Mining and Minerals Industry, developed in terms of section 100(1)(a) of the MPRDA, including: <ul style="list-style-type: none"> - decent and affordable housing; - centrality of home ownership; - provision for social, physical and economic integrated human settlements; - measures to address housing demand; - involvement of mine employees in the housing administration system; - secure tenure for the employees in housing institutions; - proper health care services; - affordable, equitable and sustainable health system; and - balanced nutrition. • Holders must further submit Housing and Living Conditions Plans to be approved by the DMR after consultation with organised labour and the Department of Human Settlement. • To provide clear targets and timelines for purposes of implementing the aforesaid housing and living condition principles, the Housing and Living Conditions Standard Guidelines shall be reviewed. Pending the finalisation of the reviewed Housing and Living Conditions Standard, a right holder must comply with those Housing and Living Conditions Standards that are in force and ensure that it maintains single units, family units and any other agreement which has been reached with workers.
Sustainable Development and Growth of the Mining Industry	<ul style="list-style-type: none"> • Improvement of the industry's environmental management. • Improvement of the industry's health and safety performance. • Undertaking to enhance the capacity and skills in research and development facilities. 	<p>Holders must spend a minimum of 70% of their total research and development budget on South African based research and development entities. A minimum of 50% of the 70% must be spent at South African Public Academic Institutions or Science Councils.</p>
Reporting (Monitoring and Compliance/Evaluation)	<ul style="list-style-type: none"> • Report level of compliance annually in terms of section 28(2)(c) of the MPRDA. • Balanced scorecard proposed with score linked to compliance in terms of the MPRDA. 	<ul style="list-style-type: none"> • Holders must report levels of compliance annually in terms of section 28(2)(c) of the MPRDA. • The DMR shall monitor and evaluate a right holder's implementation, taking into account the material constraints which may result in non-achievement of the set targets.

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

ELEMENT	2010 CHARTER REQUIREMENTS	2018 DRAFT MINING CHARTER REQUIREMENTS
Applicability of the Mining Charter		<ul style="list-style-type: none"> The final version of the 2018 Mining Charter will apply to existing mining rights, pending mining right applications and new mining rights. The final version of the 2018 Mining Charter will also apply to prospecting rights as contemplated in section 17(4) of the MPRDA. The ownership element is ring-fenced and requires 100% compliance at all times. In respect of Junior Miners, a right holder may make representations to the Minister regarding the extent to which the final version of the 2018 Mining Charter elements shall apply.
Non-Compliance	<ul style="list-style-type: none"> Breach of the Charter results in breach of the MPRDA. Subject to section 47 of the MPRDA. 	<ul style="list-style-type: none"> A right holder who has not complied with the ownership element and falls between levels 6 and 8 of the final version of the 2018 Mining Charter score-card will be regarded as non-compliant with the provisions of the final version of the 2018 Mining Charter and in breach of the MPRDA and will be dealt with in terms of section 93 read in conjunction with sections 47, 98 and 99 of the MPRDA.
Application of the Mining Charter to Licences granted under the Diamonds Act and the Precious Metals Act		<ul style="list-style-type: none"> The South African Diamond and Precious Metals Regulator must have regard to the requirements of the final version of the 2018 Mining Charter when considering applications lodged in terms of the Diamonds Act 1986 (Act 56 of 1986) and the Precious Metals Act 2005 (Act 37 of 2005) (Acts). Ownership target for the downstream diamond and precious metals industry is a minimum of 18% in the hand of black people per licensee. The Black Person shareholding must comprise of BEE Entrepreneurs and workers and must be 40% ownership of net value based upon the time-based graduation factor.

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

ELEMENT	2010 CHARTER REQUIREMENTS	2018 DRAFT MINING CHARTER REQUIREMENTS
<p>Application of the Mining Charter to Licences granted under the Diamonds Act and the Precious Metals Act</p>		<ul style="list-style-type: none"> • Permit or licence holders in terms of the Acts must comply with all the targets set out in the final version of the 2018 Mining Charter, subject to the following exemptions: <ul style="list-style-type: none"> - Exempted Micro Enterprises (with students) with an estimated maximum turnover of less than R1 million are exempt from complying with Ownership, Human Resources Development, Procurement, Employment Equity and Mine Community Development targets, and are required to comply with Sustainable Development and Growth of the Minerals Industry Targets; - Qualifying Small and Micro Enterprises with an estimated maximum turnover of R1 million to R3.8 million are exempt from complying with the Ownership and Mine Community Development targets, and are required to comply with Employment Equity, Human Resource Development, Procurement and Supplier and Enterprise Development Targets, and Sustainable Development and Growth of the Minerals Industry Targets; and - Medium and Large Entities with an estimated maximum turnover greater than R3.8 million are exempt from complying with the Mine Community development targets, and are required to comply with Ownership, Employment Equity, Human Resource Development, Procurement and Supplier and Enterprise Development Targets, and Sustainable Development and Growth of the Minerals Industry Targets.
<p>Scorecard</p>		<p>For the sake of completeness, a copy of the proposed Mining Charter Scorecard is attached hereto.</p>

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

SCORECARD: MINING CHARTER REVIEW

REVIEWED MINING CHARTER SCORECARD	WEIGHTING %
Ownership	Y/N
Employment Equity	20%
Procurement supplier & Enterprise Development	60%
Human Resource Development	20%
Total	100%

OWNERSHIP:

ELEMENT DESCRIPTION	MEASURE	COMPLIANCE TARGET %	WEIGHTING%
Minimum target for representation of BEE shareholders	Qualifying Employees 5% Free Carried Interest and 3% financial interest	30% BBEE Ownership	Ringfenced element
	Mine Community 5% Free Carried Interest and 3% financed interest		
	BEE Entrepreneurs 14%		
Trickle dividend	% of EBITDA to be paid to qualifying employees and host communities	1%	Ringfenced element

HUMAN RESOURCE DEVELOPMENT:

ELEMENT DESCRIPTION	MEASURE	COMPLIANCE TARGET %	WEIGHTING %
HRD expenditure as percentage of total annual leviable amount (excl. mandatory skills development levy).	Invest 3.5% of the leviable amount as defined in the HRD element in proportion to applicable demographics.	3.5%	10%
	Invest 1.5% of the leviable amount towards South African public institutions, Science Councils and research Institutions in proportion to applicable demographics	1.5%	10%
Sub-total			20%

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

INCLUSIVE PROCUREMENT, SUPPLIER AND ENTERPRISE DEVELOPMENT SCORECARD¹⁴

ELEMENT DESCRIPTION	MEASURE	COMPLIANCE TARGET %	WEIGHTING %
Goods Procurement: A minimum of 70% of the total mining goods procurement budget must be spent on South African manufactured goods with a 60% + local content value must be sourced from compliant manufacturing companies. ¹⁵	Percentage of the total mining goods procurement budget spend on South African manufactured goods by BEE Entrepreneurs.	21%	10%
	Percentage of the total goods procurement budget spent on South African manufactured goods from companies BEE Women Entrepreneurs or Youth owned and controlled company	5%	5%
	Percentage of the total goods procurement spend on South African manufactured goods from BEE compliant companies	44%	5%
Services Procurement: A minimum of 80% of the total spend on services must be sourced from South African based companies. The abovementioned 80% of the total services procurement spend shall be apportioned in the following manner.	Percentage total services budget spent on services from BEE Entrepreneurs	60%	5%
	Percentage of total services budget spent on services from BEE compliant companies	10%	5%
	Percentage of total services budget spent on services from companies who are 51% youth owned and controlled companies or BEE Women Entrepreneurs	10%	10%
Percentage of samples analyses using South African based facilities: Utilise South African based facilities for the analysis of mineral samples across the mining value chain except in cases where samples are analysed for the purpose of verification of the accuracy of local laboratories.	% of samples analysed using South African based facilities	100%	5%
Research and Development: A minimum of 70% of the right holder's research and development budget must be spent in South Africa	% of research and development budget spent in South Africa	70%	10%
Contribution by foreign suppliers	% of revenue as defined in the element.	0.5%	5%
SUB-TOTAL			60%

¹⁴ See transitional arrangements for progressive targets to be met during the transitional period.

¹⁵ Calculation of goods and services spend does not include non-discretionary such as spend on buildings, roads, utilities (electricity and water) and land rates.

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

EMPLOYMENT EQUITY

ELEMENT DESCRIPTION			COMPLIANCE TARGET %	WEIGHTING %
Board:				
Africans	Coloureds	Indians	50%	2%
Black women as a percent of all Board representatives			20%	2%
Executive / Top Management:				
Africans	Coloureds	Indians	50%	2%
Black women as a percentage of all executive directors			15%	2%
Senior Management:				
Africans	Coloureds	Indians	50%	2%
Black women as a percentage of all senior managers			15%	2%
Middle Management:				
Africans	Coloureds	Indians	60%	2%
Black women as a percentage of all middle managers				
Junior Management:				
Africans	Coloureds	Indians	70%	1%
Black women as a percentage of all junior managers			25%	1%
Employees with disabilities:				
Africans	Coloureds	Indians	1.5%	1%
Male	Women			
Core and Critical Skills:				
Africans	Coloureds	Indians	60%	1%
Male	Women			
SUB-TOTAL				20%

THE MINING CHARTER 2010 VS THE 2018 DRAFT MINING CHARTER: HOW WILL THE 2018 DRAFT MINING CHARTER AFFECT YOU?

CONTINUED

ANNEXURE A

This annexure provides an alignment between the DTI BBEEE and DMR scorecard.

DTI LEVELS	DMR SCORECARD	RING FENCED ELEMENT + PERCENTAGE WEIGHTING
Level 1	Ring fenced Element + 100%	
Level 2	Ring fenced Element + 80 – 100%	
Level 3	Ring fenced Element + 70 – 80%	Compliant
Level 4	Ring fenced Element + 60 – 70%	
Level 5	Ring fenced Element + 50 – 60%	
Level 6	Ring fenced Element + 40 – 50%	<50% Non-Compliant
Level 7	Ring fenced Element + 30 – 40%	
Level 8	Ring fenced Element + 20 – 30%	
Non-Compliant	Ring fenced Element + <20%	
Non-Compliant	Ring fenced Element not met + weighted element score	

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BBBEE STATUS: LEVEL TWO CONTRIBUTOR

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