

2018 Mining Charter Analysis

Finding a happy medium

April 2019

*Value beyond
compliance series*

This report:

- Reviews key changes set out in the 2018 Mining Charter
- Analyses the degree of alignment with the dti B-BBEE Codes
- Discusses Deloitte's experiences and learnings
- Addresses the extent to which policy certainty has been achieved
- Highlights the strategic implications of the key changes.



Introduction

The final iteration of the Mining Charter was published after notable collaboration between stakeholders across the mining industry. The new Charter aims to drive transformation, while taking into account the realities facing the industry.

The Broad-Based Black Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry, commonly known as the Mining Charter, was first developed in 2002, and amended in 2010. The Charter was developed, following the Minerals and Petroleum Resources Development Act (MPRDA), as a tool to drive transformation in the industry.

Following the most recent Mining Charter draft (the "2018 draft Charter") and notable public comment, the third iteration of the Mining Charter (the "2018 Mining Charter") was gazetted on 27 September 2018. The Implementation Guidelines document, which unpacks the processes and procedures for executing the latest changes, was published alongside the Charter.

In the context of the prior drafts and iterations of the Mining Charter, the 2018 Mining Charter primarily includes expected changes. It introduces some new targets and measurement criteria to accelerate transformation within the industry. The Charter is also better aligned with compliance measures and criteria used in the dti Broad-Based Black Economic Empowerment Codes of Good Practice (B-BBEE Codes).

For the most part, the compliance targets are lower and less challenging for rights holders to comply with than those in the previous draft charters. This appears to be a response to transformation realities in the mining industry and cross-stakeholder consultation with all parties, making concessions for the betterment of the industry.

Nonetheless, the latest Charter aims to drive value beyond compliance within the South African mining ecosystem and redress historical inequalities inherited by South Africa's democratic governments.

In addition, the latest strategic changes will significantly affect mining rights holders (old, pending and new). Questions remain whether the Charter fully aligns and integrates with other government policies (specifically the dti's B-BBEE Codes). Moreover, even though it attempts to instil regulatory certainty as requested by various stakeholders, areas of uncertainty persist.

In the persistently weak economic environment, it is critical to align regulatory certainty with tangible transformation. This will assist in delivering value beyond compliance to the sector, and various stakeholders in the mining ecosystem. Creating a regulatory and policy environment that enhances competitiveness and investment, while simultaneously delivering socio-economic impact, is necessary to attract much-needed investment.



Overarching Changes

New concepts, scorecard and Implementation Guidelines form part of the latest iteration of the Department of Mineral Resources' (DMR's) Mining Charter.

New concepts, scorecard and guidelines

The 2018 Mining Charter has introduced various new concepts. Most of these are aimed at driving transformation while providing policy certainty. Encouragingly, the DMR also released Implementation Guidelines which assist in understanding and implementing the new concepts. Nevertheless, areas of ambiguity remain. These will be discussed in detail in the specific element sections.

2018 Mining Charter objectives:

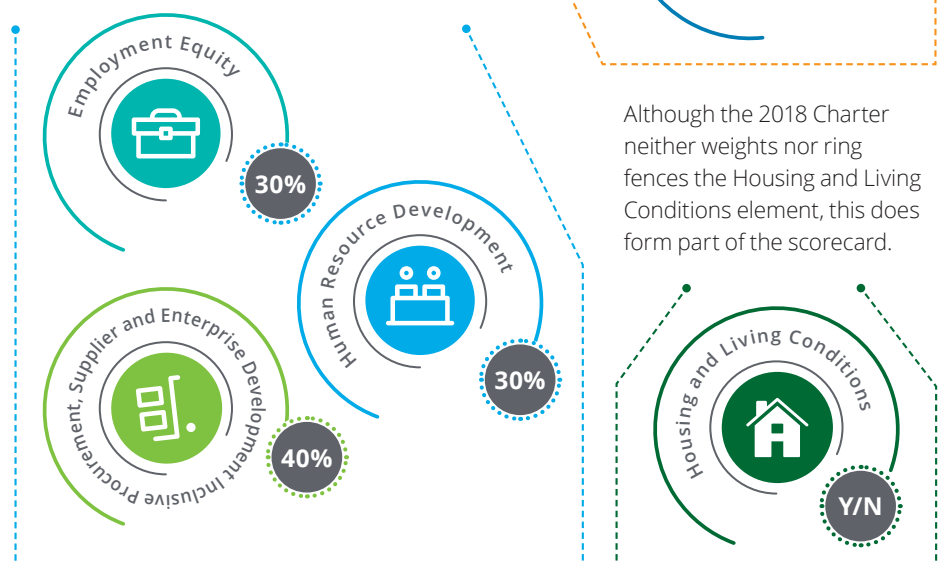
- Transformation
- Economic growth (incl. policy certainty)
- Socio-economic development
- Competitiveness of the mining industry.

Implementation Guidelines objectives:

- Outline processes, procedures, forms and templates
- Support compliance with the 2018 Mining Charter.

The 2018 Mining Charter has introduced a new concept by declaring Ownership and Mine Community Development as, what is termed, ring fenced elements, **requiring full compliance**. (The dti's B-BBEE Codes similarly declared Ownership, Skills Training, and Enterprise and Supplier Development as priority elements which require a 40% sub-minimum compliance.)

Rights holders that fail to comply fully with the ring fenced elements of the 2018 Charter, are automatically deemed non-compliant, irrespective of their scoring in the weighted elements, which are weighted as follows:



The 2018 Charter has introduced a new concept by declaring Ownership and Mine Community Development ring fenced elements, which require full compliance.

Although the 2018 Charter neither weights nor ring fences the Housing and Living Conditions element, this does form part of the scorecard. Rights holders will be required to submit a Housing and Living Conditions Plan in accordance with the Housing and Living Conditions Standard.

Although there is considerably more alignment between the 2018 Mining Charter and the dti B-BBEE scorecard (see below), it would be beneficial if charter compliance gave rights holders a corresponding dti B-BBEE recognition level. Double reporting, as discussed later, leads to additional costs in reporting, monitoring and compliance. A mining rights holder that fails to meet a 50% compliance (i.e. level 6 and lower), or, as mentioned, does not reach full compliance with the ring fenced elements is deemed to be in breach of the MPRDA, and non-compliant.

Rights holders will need to undertake a gap analysis to determine their current state of compliance against the 2018 Charter scorecard and the individual compliance criteria. This will assist in developing strategies and implementation plans to ensure they reach the minimum level 5 compliance.

DTI Levels	DMR Scorecard	Ring Fenced Elements + Percentage Weighting
Level 1	Ring fenced elements + 100%	Compliant
Level 2	Ring fenced elements + 80 - 100%	
Level 3	Ring fenced elements + 70 - 80%	
Level 4	Ring fenced elements + 60 - 70%	
Level 5	Ring fenced elements + 50 - 60%	
Level 6	Ring fenced elements + 40 - 50%	Non-compliant
Level 7	Ring fenced elements + 30 - 40%	
Level 8	Ring fenced elements + 20 - 30%	
Non-compliant	Ring fenced elements + <20%	
Non-compliant	Ring fenced elements not met + weighted element score	

Source: The Department of Mineral Resources, 2018a

Transition period

Rights holders must progressively align with existing targets. The 2018 Charter came into effect on 1 March 2019 with the first annual reporting scheduled before/on 31 March 2020.

Ownership grants a five-year transition period to pending applications to comply with the new 30% Black Economic Empowerment (BEE) shareholding target.

The Inclusive Procurement element notes a five-year transition period (with progressive implementation) for Mining Goods procurement, and a two-year transition for Services procurement.

Employment Equity also grants a five-year period for progressive implementation of the targets for this element.

No transition period is mentioned for Human Resource Development. While Inclusive Procurement has provided the progressive targets for each of the transition period years, Ownership and Employment Equity have not explicitly defined any.

Performance shall be reported and audited for each element in respect of implementation for the transition periods.

Rights holders are granted several transition periods with staggered compliance targets for some.

Application to precious metals

The application of the 2018 Charter targets and elements to the diamonds and precious metals licensees will be as per their status as exempt micro enterprises, qualifying small and micro enterprises and medium to large entities respectively (administered under the regulator for the Diamonds and Precious Metals Acts).



Ownership

The 2018 Charter requires rights holders to comply with certain criteria to create meaningful economic participation by Historically Disadvantaged Persons (HDP) in the mineral resources industry.

The criteria set out in the 2018 Mining Charter aim to enable effective mineral resource ownership by HDP via meaningful economic participation. The 2018 Charter sets out specific criteria for rights holders, whether new, pending or existing.

New mining rights must have a minimum of 30% BEE shareholding, i.e. host community, qualifying employees and BEE entrepreneurs. Importantly, the shareholding must be distributed in a specific manner which will be discussed, in detail, later. Furthermore, several impactful changes have been made, which include requirements around carried interest, equity equivalence, vesting requirements for BEE shareholding transactions, disposal of BEE shareholding, and (more comprehensive) beneficiation offsets.

Pending applications need to comply with the 2010 Mining Charter's 26% shareholding, but will have to increase their minimum BEE shareholding to 30% within five years.

Existing mining rights which have achieved the 2010 Mining Charter's 26% shareholding requirement – also if the BEE partner(s) has since exited – are recognised as compliant for the remainder of the right. Yet, upon renewal or transfer, the rights holders would have to comply with the minimum 30% BEE shareholding.

The 2018 Mining Charter clarifies past challenges. The “once-empowered, always-empowered” principle, which has previously resulted in legal disputes between the DMR and various parties, has now partially been recognised. Moreover, the contentious trickle dividend (minimum of 1% of EBITDA) to community and employee shareholders, which was captured in previous iterations, has been removed.



SCORECARD

New mining rights

Element Description	Compliance Target (%)	Measure	Weight (%)
Minimum target for representation of HDP ownership	30% BEE shareholding	A minimum of 5% non-transferable carried interest to qualifying employees from the effective date of a mining right	Yes/No (Y/N)
		A minimum of 5% equity equivalent benefit defined herein or 5% carried interest to host communities from the effective date of a mining right	
		A minimum of 20% effective ownership in the form of shares to HDP, 5% of which must preferably be for women	
	Beneficiation Equity Equivalent mechanism in lieu of BEE shareholding	A maximum of 5 percentage points of BEE shareholding	
Meaningful and effective participation		Net value	
		Voting rights attaching to an equity instrument owned by or held for a participant measured using the Flow Through Principle or Control Principle	
		Economic interest representing a return on ownership of the entity similar in nature to a dividend right, measured using the Flow Through Principle	

Source: The Department of Mineral Resources, 2018c

SCORECARD (cont.)

Existing mining rights

Element Description	Compliance Target (%)	Measure	Weight (%)
Minimum target for representation of HDP	26%	Meaningful economic participation	Y/N
		Full shareholder rights	

Pending applications*

Element Description	Compliance Target (%)	Measure	Weight (%)
Minimum target for representation of HDP ownership	26%	Net value	Y/N
		Voting rights attaching to an equity instrument owned by or held for a participant measured using the Flow Through Principle or Control Principle	
		Economic interest representing a return on ownership of the entity similar in nature to a dividend right, measured using the Flow Through Principle or Control Principle	

Key definitions

- **BEE entrepreneur** refers to a HDP or enterprise that is at least 51% owned by HDP (excl. host communities and qualifying employees) with at least 51% of exercisable voting rights and 51% of economic interest
- **BEE shareholding** refers to the shares held by BEE entrepreneur(s), host communities and qualifying employees
- **Beneficiation** for purposes of the Mining Charter, means the transformation, value addition or downstream processing 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

- **Carried interest** means shares issued to qualifying employees and host communities at no cost to them and free of any encumbrance. The cost of the carried interest shall be recovered by a right holder from development of the asset
- **Economic interest** means the legal entitlement of BEE shareholders to dividends, capital gains and other economic rights of a shareholder
- **Equity equivalent benefit** refers to a percentage equivalent to the issued share capital of the mining right holder, at no cost to a trust or similar vehicle set up for the benefit of host communities
- **Host community** refers to a community within a local or metropolitan municipality adjacent to the mining area, as defined in the MPRDA

- **Qualifying employees** for the purposes of the ownership element, refers to employees of a mining company excluding, employees who already hold shares in the same company as a condition of their employment agreement.



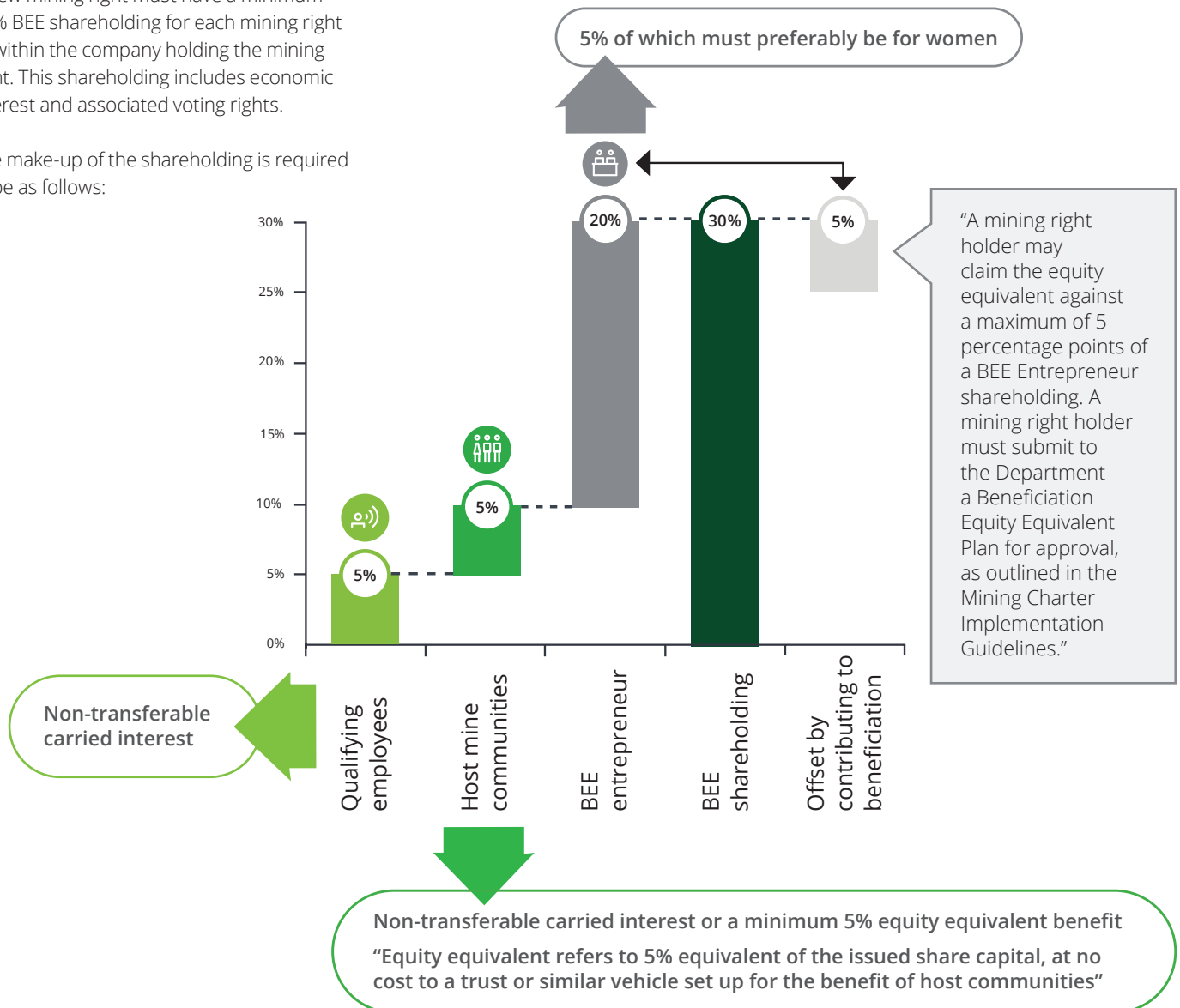
*Note: All pending applications will be required to top-up from 26% to 30% HDP ownership within the five-year transitional period provided in terms of clause 2.1.2.

Source: The Department of Mineral Resources, 2018c

New mining rights

A new mining right must have a minimum 30% BEE shareholding for each mining right or within the company holding the mining right. This shareholding includes economic interest and associated voting rights.

The make-up of the shareholding is required to be as follows:



Source: The Department of Mineral Resources, 2018c

Beneficiation offset against BEE entrepreneur(s) has been capped at 5% (from the previous 11%) for new mining rights. However, the beneficiation process seems more comprehensive, and is explained, in detail, in the Implementation Guidelines.

Rights holders will need to submit a Beneficiation Equity Equivalent Plan for approval by the DMR. The plan will be

approved/declined within 60 days. In addition, rights holders must submit progress reports to the DMR.

The structure of the plan, the qualifying criteria, reporting templates and even examples of calculating the equity equivalence are given in the Implementation Guidelines (see section 4.4, page 12).

New mining rights require a minimum 30% BEE shareholding, distributed in a specific manner.

Equity equivalent benefit

The 2018 Charter gives rights holders a choice between using non-transferable carried interest or equity equivalence for the benefit of host communities.

For the equity equivalent benefit, the 2018 Charter allows the establishment of a trust or a similar vehicle. There are some set requirements around the trust/vehicle such as representation, consultation, governance, and limitations on administration costs. Importantly, such a vehicle should set up a community development programme, which is not allowed to substitute the Social and Labour Plan.

Vesting of BEE shareholding

- This term is applicable to new mining rights
- According to the 2018 Charter:
 - “A minimum of 50% BEE shareholding shall vest within two thirds of the duration of a mining right”
 - “The prescribed minimum 30% target shall apply for the duration of a mining right.”

Pending applications

Pending applications, lodged and accepted before the start of the 2018 Mining Charter, will have to comply with the 26% BEE shareholding of the 2010 Charter. Notably these rights holders will need to top-up their ownership BEE shareholding to 30% in five years' time.



Although pending applications initially need to comply with the 26% BEE shareholding, they will have to top-up their BEE shareholding to 30% in five years.

Existing mining rights

Existing mining rights, which achieved the minimum 26% BEE shareholding, will be deemed compliant during the remainder of the mining right. This also applies to existing rights holders who, at any stage during their current mining right and prior to the 2018 Charter, have achieved the 26% BEE shareholding, including those whose BEE partner(s) has exited. These two types of existing mining rights will be deemed compliant throughout the life of the mining right until right renewal or transfer.



Existing mining rights upon renewal or transfer of a right will have to comply with the new mining rights criteria.

Disposal of BEE shareholding

- This term is applicable to existing or new mining rights
- If a BEE shareholding is below the minimum shareholding required due to a disposal, a mining right's empowerment credentials will be recognised, providing that a set of criteria (defined in the 2018 Charter) is fulfilled
- Previous deals cannot be extended to future mining rights nor upon renewal of a mining right.





Areas of certainty and uncertainty

Certainty

- It is clear that the Ownership element requires 100% compliance (ring fenced)
- The “once-empowered, always-empowered” principle has been affirmed, albeit to a limited extent
- For pending applications, the requirement to increase BEE shareholding to a minimum of 30% is clear. Similarly, for new rights holders, the 30% requirement as well as composition of this shareholding are clear
- The recognition of Historical BEE transactions has been extended to include deals concluded on the basis of units of production, assets and shares. All of the Historical BEE transactions are further allowable at the holding company and mining right level
- This 2018 Charter and Implementation Guidelines also go further to define the types of activities that will be considered for beneficiation/equity equivalent offsets.

Uncertainty

- The financial impact of these changes on rights holders, specifically within the current economic climate, is uncertain. This relates to the costs of supplementing BEE shareholding, and the carried interest for host communities and qualifying employee shareholders
- The extent of the “once-empowered, always-empowered” principle’s applicability to pending mining rights is unclear
- Uncertainty remains around the use of the non-transferable carried interest referred to for new mining rights
- It is also questionable whether (in respect of the definition of qualifying employees) one can legally differentiate between employees with regard to who can and cannot participate in the shareholding
- It is uncertain how existing mining rights which have not met the 26% BEE shareholding will be treated
- The question of what constitutes a “similar vehicle” for the equity equivalence benefit remains somewhat vague.



Strategic implications

- 1 Given the 26% BEE shareholding compliance target for existing shareholders, the implementation of the 2018 Charter from March 2019 is not too strenuous.
- 2 Seemingly, it appears as if existing rights holders who have not achieved 26% BEE shareholding will need to be compliant in the first measuring period, i.e. 2019, to avoid being non-compliant across the scorecard.
- 3 The defining and incorporating of host communities as well as qualifying employees into new mining rights will require some detailed consideration. This includes the reference to “similar vehicles” that can be used for the equity equivalence benefit.
- 4 The 2018 Charter emphasises the involvement of multiple stakeholders in the Ownership element, and throughout the rest of the document. Sufficient stakeholder engagement is thus crucial for rights holders.
- 5 For mine communities’ and qualifying employees’ shareholding, it would be important to define the legal entities that will hold the shares, their mandates, governance frameworks and socio-economic impact measurement tools in a manner that enables optimal benefit for the end beneficiaries.
- 6 It is important for mining companies to investigate the financial impact of these changes, especially during a commodity downcycle.

Employment Equity (EE)

The aim of Employment Equity is to attain fairness in the workplace by promoting fair treatment and equal opportunity.



Even though the case for transformation is strong, workplaces globally have not fully diversified. The South African mining industry is no different. The DMR aims to achieve a more diversified South African mining industry by eliminating discrimination and implementing affirmative action measures to rectify disadvantages in the workplace experienced by historically disadvantaged groups.

The 2018 Mining Charter intends to accelerate transformation by aligning with the dti B-BBEE Codes, the Department of Labour's EE planning and reporting, and by formalising career progression plans. As such, the measurement criteria will move away from the past blanket-approach measurement towards measuring EE in accordance with national/provincial demographics (i.e. the economically active population [EAP] targets set out in the Commission on Employment Equity Annual Report). The EE section contributes to 30% of the new scorecard.

Though there is alignment between the Charter and dti B-BBEE Codes, the Charter's measurements and scoring are lower for middle and junior management levels, especially for female targets. This appears to take cognisance of the historically lower number of female employees in this sector, and the need for the sector to grow progressively. Targets have also been set for core and critical skills, a measure not covered in the dti B-BBEE Codes. Lastly, the 2018 Charter has introduced a scoring criterion for disabled employees which differs from the corresponding target in the dti B-BBEE Codes scorecard. Other areas of ambiguity remain and will be discussed in the following sections.

Regardless, the 2018 Charter requires a new way of thinking about transformation: one where transformation and diversity initiatives are well thought through to deliver the desired impact. This requires a strategic and evidence-based approach, utilising synergies with other departments. Consequentially, success stems from an important characteristic: the organisation treating diversity not as "compliance necessary" but as "business-critical".

SCORECARD

Element Description	Compliance Target (%)	Measure	Weight (%)
Board	HDP	50%	2%
	Of which must be women	20%	2%
Executive management	HDP	50%	4%
	Of which must be women	20%	3%
Senior management	HDP	60%	3%
	Of which must be women	25%	3%
Middle management	HDP	60%	2%
	Of which must be women	25%	2%
Junior management	HDP	70%	2%
	Of which must be women	30%	2%
Employees with disabilities	Employees with disabilities as a percentage of all employees	1.5%	2%
Core and critical skills	HDP	60%	3%

Key insights



Increased targets



Introduction of career progression plans as a practice requirement



Inclusion of black females



Inclusion of disabled employees



Reflective of national or provincial demographics



Board and executive management targets include BEE shareholders

Five-year transition period: "A mining right holder must within a period of 6 months from the date of publication of the Mining Charter, 2018, submit a five-year plan indicating progressive implementation of the provisions of Employment Equity element targets."

Source: Deloitte based on the Broad-Based Black Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018

Alignment with the dti B-BBEE Codes

The 2018 Mining Charter has, in structure, aligned with the dti B-BBEE Codes. Similar to the Codes, the 2018 Charter requires a demographic overlay and has introduced female-specific targets and disabled employees as a scoring criteria.

Yet, there are still many differences between the set targets. Some are welcomed, such as the lower targets for certain management levels, as the realities of the struggling industry are taken in consideration. Others are less intuitive to understand. For example, the 2018 Charter refers to Historically Disadvantaged

Persons rather than the dti's (and the previous draft Charters') terminology of black persons. In the DMR's media releases (both the infographic and Charter highlights), the DMR refers to black persons. This leads to confusion which could have been avoided.

In addition, the 2018 Charter's disabled target is not only lower than those of the B-BBEE Codes, but requires national/provincial demographics overlay. This creates a double set of compliance standards, increasing reporting costs.

Core and critical skills – a scoring criterion familiar and unique to the mining industry – also needs to align with demographics.

Yet, whereas other scoring criteria are based on national or provincial demographics, core and critical skills should reflect the workforce demographics – a far better outcome for rights holders. This is an indication of the DMR acknowledging the challenges the mining industry is facing.

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

2016Q3 National and provincial economically active population

	Male				Female				Total
	African	Coloured	Indian	White	African	Coloured	Indian	White	
National	42.8%	5.3%	1.8%	5.3%	35.1%	4.5%	1.0%	4.2%	100%
Western Cape	19.9%	26.2%	0.4%	8.2%	16.1%	22.5%	0.1%	6.6%	100%
Eastern Cape	43.2%	5.9%	0.1%	3.0%	39.8%	5.5%	0.1%	2.4%	100%
Northern Cape	29.8%	21.3%	0.2%	6.2%	20.6%	17.3%	0.2%	4.4%	100%
Free State	49.6%	0.7%	0.4%	3.7%	41.5%	1.3%	0.1%	2.7%	100%
KwaZulu-Natal	43.2%	0.6%	6.8%	2.3%	41.1%	0.4%	3.8%	1.8%	100%
North West	56.4%	0.5%	0.1%	3.6%	35.9%	0.3%	0.2%	2.9%	100%
Gauteng	44.8%	1.7%	1.8%	7.9%	35.2%	1.3%	1.1%	6.3%	100%
Mpumalanga	51.0%	0.2%	0.6%	3.5%	42.1%	0.1%	0.1%	2.5%	100%
Limpopo	53.1%	0.2%	0.4%	2.1%	43.0%	0.1%	0.1%	1.0%	100%

Source: Department of Labour, 2016

Consistent with the Employment Equity Act, workplace diversity and equitable representation at all levels are viewed as catalysts for social cohesion, transformation, and competitiveness of the mining industry.

The national and provincial EAP (above) form the basis of most employment equity targets – each level of management and disabled employees should reflect the race and gender profiles, as target percentages. The EAP profiles are calculated from StatsSA's Quarterly Labour Force Survey and can be found on the Department of Labour's website.

If compliance targets are not met, scoring is pro-rated by the percentage achieved. Where rights holders are geographically positioned in certain provinces only, they should make use of the provincial EAP targets (instead of the national). EAP overlay thus promotes equal opportunity and assists employers in comprehending the environment they operate in.

Core and critical skills refer to science, technology, engineering and mathematical skills across organisational levels, in both production and operations of a mining company.

Our experience: Career progression plans

The 2018 Mining Charter emphasises career progression plans, and their effective implementation. The 2018 Charter lists steps/documentation to adhere to, whereas the Implementation Guidelines document provides templates to assist in developing and capturing career progression.

The advantages of implementing these plans are multiple: assisting in retaining top talent, filling internal roles and skills

gaps, and increasing productivity. The process, furthermore, is an important step in empowering employees – clear, concise and transparent career pathways enable employees to take ownership of their careers.

Rights holders will need to develop and implement a plan that is in line with the applicable EAP targets. During implementation, the monitoring and tracking of candidates' progress will be essential to ensure that plans come to fruition.

Below is our experience and six-step requirements of career progression planning, which we have developed over the years. Importantly, this:

- aligns with the Charter's steps
- builds targeted plans based on the individual transformation and diversity gaps that an operation faces
- stresses the importance of collaboration between training, HR and community development programmes.

1 Understand your transformation and diversity gaps to compliance.

Example of the dti black target gap analysis

		African Male	Coloured Male	Indian Male	African Female	Coloured Female	Indian Female	Total
Split compliance target	% Target	41.1%	0.2%	0.3%	33.3%	0.1%	0.1%	75%
	# Target	61.65	0.23	0.46	49.92	0.12	0.12	112.5
Current status	% Actual	28.7%	3.3%	1.3%	10%	3.3%	1.3%	48%
	# Actual	43	5	2	15	5	2	72
Gap	# Actual	-18.6	4.8	1.5	-34.9	4.9	1.9	

Score: 1/2

Gap key

#Targets to one decimal point to guide decision-making

Over
Under

4

Identify a talent pool to be fast-tracked in line with the organisation's needs.



5

Develop individual development plans for employees and identify the needed training.



Formal training



Work mentoring and on-the-job training



Life coaching

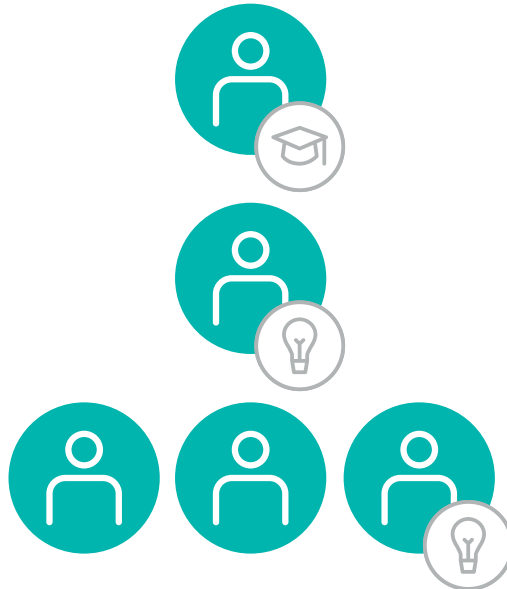


Horizontal learning opportunities

- 2 Develop comprehensive career development matrices of each discipline, including the minimum entry requirements and timelines. Example below is of a miner:



- 3 Map potential succession planning pathways.



- 6 Provide employees with a comprehensive plan with targets, timeframes and guidance to implementation.





Areas of certainty and uncertainty

Certainty

- The targets are clear and the alignment to the EAP (read: demographics) targets clarifies expectations from/of rights holders
- The prescribed and permissible core and critical skills, which must be represented across all organisational levels, are explicitly listed
- The 2018 Mining Charter sets out the steps to facilitate career progression plans, clearly stating the importance of talent pools and the need to align with demographics.

Uncertainty

- The 2018 Charter notes “demographics” of the country in most sections, removing direct reference to EAP targets, which, despite their near-certain application, creates unnecessary interpretational uncertainty
- Similarly, the reference to HDP alongside other DMR communications (e.g. media releases), which refer to black employees, create interpretational uncertainty
- The disabilities target of 1.5% in the 2018 Charter is lower than the 2% in the dti B-BBEE Codes. It also includes an EAP overlay with no clear rationale
- Introducing a staggered transition period, similar to the one stated under Inclusive Procurement, could have assisted in creating realistic timelines for implementation
- Core and critical skills only state certain skills, and it is unclear whether other core skills, which are often operation-specific, will be accepted.



Strategic implications

- 1 The increased targets alongside the demographic overlay will change the compliance status for most. Rights holders need to rethink their approach to transformation with higher levels of sophistication, and strategic intent. A gap analysis – current performance against new targets – will be a vital exercise for future planning.
- 2 Although many of the 2018 Charter targets are lower than the dti targets, they remain ambitious for the mining industry. It remains uncertain whether rights holders can realistically achieve the targets, especially amidst ongoing retrenchments.
- 3 The EAP overlay of the disabled target could prove challenging (especially for small operations).
- 4 Although concession has been made to core and critical skills’ demographic overlay – now to reflect workforce demographics – rights holders would need to engage with the DMR to understand whether other core skills, which are often operation-specific, will be accepted.
- 5 Duplication of efforts remains for rights holders due to misalignment (e.g. HDP measurement criteria includes white women). Nevertheless, there is alignment in the general approach and structure.
- 6 The 2018 Mining Charter emphasises career progression plans, which will require constant tracking and monitoring of candidates to ensure that the intended value is realised.
- 7 The sector has witnessed continued declines in employment numbers, which in itself has also affected succession planning.
- 8 The linkages between employment equity, training, and mine community development should be utilised to entrench the skills required for the industry to thrive, while driving transformation and community development simultaneously. Stakeholders should assess these synergies, with a view to delivering value beyond compliance.

Human Resource Development (HRD)



The absence of much-needed skills within the South African economy has created a social and business imperative to drive education and skills training. Rights holders have played and will continue to play an important role in educating and developing their employees and communities.

The 2010 Mining Charter requires that 5% of payroll* be invested in human resource and essential skills development. This target has remained constant (in the 2018 Mining Charter). However, the composition of the 5% spend is different: the 2018 Charter considers demographics, similarly to the dti B-BBEE Codes. The 5% contribution must thus reflect provincial or national demographics – whichever is most relevant to the mining right.

There is a broad range of options for investment. The contribution should be invested in developing essential skills such as science, technology, engineering, mathematical, literacy and numeracy skills, as well as apprenticeships, bursaries, and artisanal and graduate training programmes. Other options include researching and developing solutions for exploration, mining processing, technology efficiency (energy and water use in mining), beneficiation, as well as environmental conservation and rehabilitation. (To date there has been a strong focus on technical/artisanal skills training.)

Furthermore, training should be offered to employees (excluding directors and executives) and community members that are not employees of the mine.

Notably, the training element does not fully align with the dti B-BBEE Codes which imposes two important directives:

- The focus on learnerships, internships and apprenticeships, for both employed and unemployed people, is aimed predominantly at accredited training in line with the Learning Programme Matrix.
- Incentives are in place to absorb unemployed trainees into the mining business to create jobs.

SCORECARD

Element Description	Compliance Target (%)	Measure	Weight (%)
HRD expenditure as percentage of total annual leviable amount (excl. mandatory skills development levy)	5% leviable amount	Invest 5% of the leviable amount as defined in the HRD element in proportion to applicable demographics (employees and non-employees)	30%

Source: The Department of Mineral Resources, 2018c

*The minimum 5% of leviable amount:

- excludes the mandatory skills development levy
- is defined in the Skills Development Levies Act, 1999 (Act No.9 of 1999) as "...the total amount of remuneration, paid or payable, or deemed to be paid or payable, by an employer to its employees during any month..."
- excludes certain amounts (e.g. paid by way of any pension, superannuation allowance or retiring allowance).

Key insights

Invest 5%

of leviable amount

(excl. the statutory skills development levy) on essential skills development activities such as:

Science



Artisans



Technology



Internships



Engineering



Bursaries



Mathematics



Beneficiation



"The skilling and research investment must be apportioned in line with national or provincial demographics."

Source: The Department of Mineral Resources, 2018c

Comparison with the dti Codes

Continued misalignment between the dti B-BBEE Codes and the Mining Charter make it difficult for rights holders to comply with both. Although the 2018 Mining Charter resolves some issues, the training requirement remains somewhat misaligned, with inefficiencies likely to continue.

The 2018 Mining Charter

Element Description	Compliance Target (%)	Measure	Weight (%)
HRD expenditure as percentage of total annual leviable amount (excl. mandatory skills development levy)	5% leviable amount	Invest 5% of the leviable amount as defined in the HRD element in proportion to applicable demographics (employees and non-employees)	30%

Source: The Department of Mineral Resources, 2018c

Overlap between the dti's B-BBEE Codes and Mining Charter for skills development

Aligning training with the applicable demographics is a shift towards EAP-targeted spending currently utilised in the B-BBEE Codes. As a result, rights holders will likely spend more than the 5% (or even the 6%) of the leviable amount to reach full compliance.

It will be crucial for mines to train efficiently across the dti and DMR targets. If not, spending will increase significantly, leading to compliance rather than development objectives. The level of contribution of each training programme towards compliance and business needs should be measured alongside cost. This will allow business to reduce inefficiencies and ineffectiveness in training.

Skills development must consider national or provincial demographics.

There are areas where the 2018 Mining Charter's spending requirements can overlap with the dti's B-BBEE Codes' skills training requirements.

The dti B-BBEE Codes

Category	Weighting Points	Compliance Targets
Skills Development Expenditure on any programme specified in the Learning Programme Matrix for black people as a percentage of the Leviable Amount		
Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black people as a percentage of Leviable Amount	8	6%
Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black employees with disabilities as a percentage of Leviable Amount	4	0.3%
Learnerships, Apprenticeships, and Internships		
Number of black people participating in Learnerships, Apprenticeships and Internships as percentage of total employees	4	2.5%
Number of black unemployed people participating in training specified in the Learning Programme Matrix as a percentage of number of employees	4	2.5%
Bonus points		
Number of black people absorbed by the Measured and Industry Entity at the end of the Learnership Programmes	5	100%

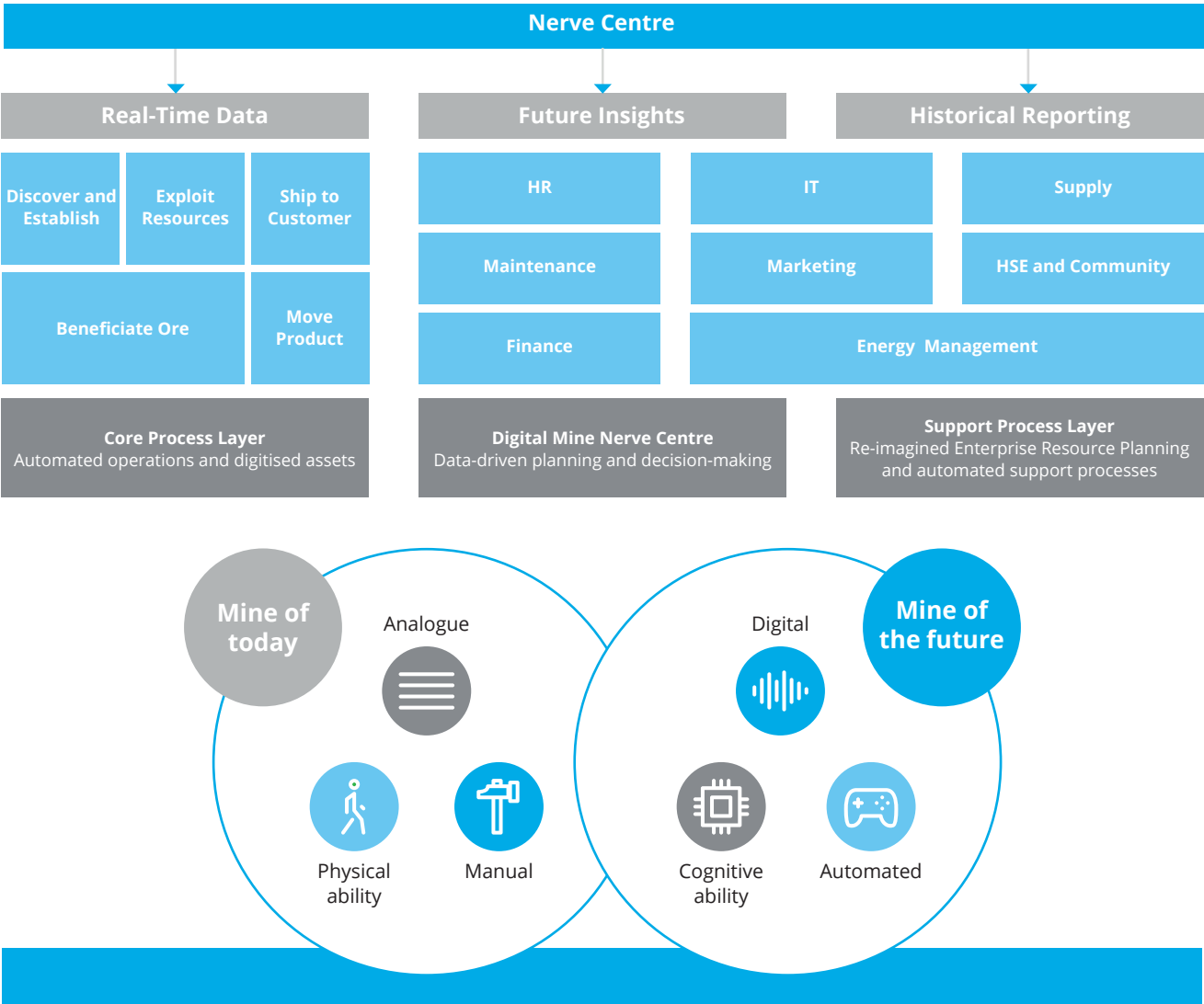
Source: The Department of Trade and Industry, 2013



Our experience: The Intelligent Mine

Rapid advances and decreasing costs make digital tools more practical and achievable. It is thus becoming important for the industry to harness these tools. The future of mining is in the digital transformation of core mining processes, the flow of information and supporting back-office processes. This transformation will significantly

affect the industry's future of work. HRD strategies and objectives will need to be tailored to the changing core business skills. The journey should be progressive, with targeted and strategic interventions aligning to the intelligent mine of the future. This transformation is expected to subdivide mining operations into three key areas (see below).



Source: Deloitte, 2018



Areas of certainty and uncertainty

Certainty

- The percentage contribution to be used on HRD is clear
- The beneficiaries of the skills development investment are stated clearly
- The types of skills and R&D solutions that should be funded are evident
- The contribution (to the workforce and community) should reflect either national or provincial demographics.

Uncertainty

- The misalignment with the dti B-BBEE Codes undermines the importance of implementing training according to the learning programme matrix (i.e. prioritising accredited training)
- The Charter is silent on emphasising portable skills training that offers trainees alternate employment opportunities. This is a critical consideration in a cyclical industry that is affected by ongoing digitisation and automation
- When R&D investment is spent on entities rather than individuals, it remains uncertain how it should reflect demographics. If it refers to historically black institutions, the definition is unclear as many historically black or white institutions have merged. As a result, ensuring (and proving) that investment reflects demographics would be difficult, which exacerbates the already challenging compliance reporting landscape.



Strategic implications

- 1 The payroll varies throughout the year, and is only finalised after the financial year-end (e.g. year-end bonuses paid ad hoc depending on company performance). To effectively track HRD spend against this changing target, rights holders should assess their training spending and payroll continuously. If not, it could unintentionally lead to forced expenditure on ineffective training, which would also disrupt production, to ensure compliance.
- 2 The 2018 Mining Charter does not test the overall effectiveness of training, which perpetuates the compliance-driven mentality. For example, prior excessive ABET training has proven ineffective for several reasons: often done after hours with low attendance, focused on underground miners whose average age lends itself to this form of training.
- 3 Current training interventions should be reviewed in line with training evolution due to innovation and automation. Training activities should be aligned with rising digitisation, bearing in mind expected continued job losses (thus highlighting the need for portable skills training). R&D investment could be used to address these considerations. Yet, it may prove difficult in practise to spend in proportion to the applicable demographics.
- 4 The industry ought to focus on career progression – included in Employment Equity – and portable skills in its training plans to enable employees to progress in up-cycles and find alternative employment in down-cycles. This requires significant collaboration between HR and training, and is especially important as skills investment is required to align with national/provincial demographics. Alignment can only be efficient if the workforce itself is demographically aligned.
- 5 Mining companies need to embrace continuous learning methods, which emphasise a holistic approach to training, through a blend of formal learning, on-the-job development, and learning support systems. This assists in creating an integrated and balanced learning environment. To limit training to essential skills could result in a continued compliance-driven approach that may harm the shared value training intent.

Inclusive Procurement, Supplier and Enterprise Development (IPSED)



The procurement from and the development of local empowered businesses are crucial drivers of much-needed inclusive economic growth.

The mining sector (via the previous Charters) has been no different from other sectors in supporting IPSED. Support is often given through three key areas:

- Preferential procurement of a percentage of capital goods, consumables and services from BEE entities
- A contribution (the proportion of annual income generated) by multinational suppliers of capital goods from local mining companies, towards socio-economic development of local communities into a Social Development Trust Fund
- The utilisation of South African facilities for the analysis of any mineral samples.

The 2018 Charter continues its emphasis on local procurement, with the IPSED element the highest weighted contributor to the overall compliance scorecard (40% out of the 100%). Moreover, the 2018 Charter introduces several amendments to the IPSED measurement criteria and targets.

In the new Charter, the 2010 Mining Charter's capital goods and consumables spend categories have been consolidated into a mining goods spend category.

The mining goods are also required to be proportionately made up of South African manufactured goods, which only qualify if at least 60% of the content is local, as certified by the South African Bureau of Standards (SABS) or another entity as selected by the Minister.

For services, a minimum of 80% of services spend must be sourced locally. For both mining goods and services, the specified percentage needs to be distributed in a specific manner between the following categories: HDP owned and controlled entities, women owned, and youth owned and controlled companies, as well as BEE compliant entities.

Moreover, the Charter covers measurement criteria relating to Enterprise and Supplier Development (ESD) as an optional offset for mining goods and services, R&D, as well as for the processing of samples.

SCORECARD

Element Description	Compliance Target (%)	Measure	Weight (%)
Total procurement budget spend on goods and services	Procure 70% locally manufactured mining goods with a 60% local content	21% of total mining goods procurement budget must be spent on South African manufactured goods produced by HDP owned and controlled company	5%
		5% of total mining goods procurement budget must be spent on South African manufactured goods produced by women owned and controlled company or youth owned and controlled company	5%
		44% of total mining goods procurement budget must be spent on South African manufactured goods produced by BEE compliant company	5%
		80% services	
		50% of total services budget must be spent on services supplied by HDP	5%
		15% of total services budget must be spent on services supplied by women owned and controlled companies	5%
		5% of total services budget must be spent on services supplied by the youth owned and controlled companies	5%
		10% of total services budget must be spent on services supplied by a BEE compliant company	5%
		Research and development	
		A minimum of 70% of total R&D budget to be spent on South African based R&D entities	2.5%
Sample analysis		Utilise South African based facilities or companies for the analysis of 100% of all mineral samples across the mining value chain	2.5%

Source: The Department of Mineral Resources, 2018c

Comparison with the dti B-BBEE Codes

The 2018 Mining Charter aligns more, although not fully, with the dti B-BBEE Codes. This is evident from the inclusion of women and youth owned companies, as well as BEE compliant companies, which must have both equity empowerment credentials, and level 4 B-BBEE recognition. This measure incentivises BEE compliant companies to drive transformation and socio-economic impact through their own compliance with various elements of the B-BBEE

Codes. The 2018 Charter's IPSED element is thus in line with the evolving South African preferential procurement landscape, as highlighted by the ongoing amendments to the B-BBEE Act and Codes of Good Practice since 2007. Yet, areas of variances remain, such as the 2018 Charter's use of HDP definition, rather than the dti's terminology of black persons – see the EE section for a further discussion on the terminology.

	Preferential/Inclusive Procurement					ESD	
	HDP Owned Suppliers	Women Owned Suppliers	Youth Owned Suppliers	BEE/B-BBEE Compliant Companies	SMMEs	Enterprise Development	Supplier Development
2002 MINING CHARTER I	-	-	-	-	-	-	-
2003 BEE ACT	-	-	-	-	-	-	-
2007 B-BBEE ACT	12% \$ 50% HDP	8% \$ 30% Women	-	70% \$ BEE suppliers	19% \$ QSE or EME	3% NPAT \$ ED or SD	
2010 MINING CHARTER II	-	-	-	40% \$ Capital goods 50% \$ Consumables 70% \$ Services 25% + 1 vote BEE	-	-	-
2013 AMENDED B-BBEE ACT AND DTI CODES	40% \$ 51% Black HDP	12% \$ 30% Black women Women	2% \$ 51% Black youth Youth	80% \$ BEE suppliers	15% \$ SMMEs	1% NPAT \$ Enterprise Development	1% NPAT \$ Supplier Development
2018 MINING CHARTER III	21% \$ Mining goods 50% \$ Services 51% HDP	5% \$ Mining goods 15% \$ Services 51% Women	5% \$ Mining goods 5% \$ Services 51% Youth OR For mining goods	44% \$ Mining goods 10% \$ Services 26% HDP owned + ≥ level 4 B-BBEE	-	May undertake ED and SD and set off against goods and services procurement spend	



represents percentage spend target based on total measured procurement spend



represents spend category and/or ownership targets for beneficiaries of spend



Mining goods

A 70% minimum of the total mining goods budget needs to be spent on South African manufactured goods, and spent with HDP, women and youth owned and controlled companies, as well as BEE compliant companies. This excludes non-discretionary expenditure, which now also eliminates buildings, lubricants, roads and fuel as stated in the Implementation Guidelines.

A five-year transitional period is permitted, with the first year set at 10% of the procurement budget, increasing progressively from there. Lastly, rights holders must submit a five-year plan indicating their progressive implementation within six months from the 2018 Charter's publication date.

Lastly, the procured mining goods' local content verification needs to be done by the SABS or another entity as chosen by the Minister. The SABS certificates are not required for the first two transition years.

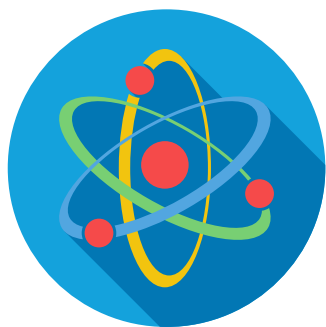
Mining Goods Procurement							
Measure	Transition Period					Compliance Target (%)	Weight (%)
	Year 1	Year 2	Year 3	Year 4	Year 5		
% of total mining goods procurement budget must be spent on South African manufactured goods produced by HDP owned and controlled companies	3%	6%	10.5%	15%	21%	21%	5%
% of total mining goods procurement budget must be spent on South African manufactured goods produced by women owned and controlled companies or youth owned and controlled companies	0.71%	1.43%	2.50%	3.57%	5%	5%	5%
% of total mining goods procurement budget must be spent on South African manufactured goods produced by BEE compliant companies.	6.29%	12.57%	22%	31.43%	44%	44%	5%
<div> <div>Local content comes into effect</div> <div> <div>70%</div> <div>50%</div> <div>35%</div> <div>20%</div> <div>10%</div> </div> <div> <div>Year 1</div> <div>Year 2</div> <div>Year 3</div> <div>Year 4</div> <div>Year 5</div> </div> <div>Transition period</div> </div>							



Services

An 80% minimum of total services spend needs to be sourced from South African companies. This excludes non-discretionary expenditure. A two-year transitional period is allowed, with the first year set at 70% of the total services procurement budget and the second year at the full 80%. The progressive implementation of this scoring criterion needs to be captured in the five-year plan mentioned in the mining goods section.

Services Procurement				
Measure	Transition Period		Compliance Target (%)	Weight (%)
	Year 1	Year 2		
% of total services budget must be spent on services supplied by HDP	43.75%	50%	50%	5%
% of total services budget must be spent on services supplied by women owned and controlled companies	13.13%	15%	15%	5%
% of total services budget must be spent on services supplied by youth owned and controlled companies	4.37%	5%	5%	5%
% of total services budget must be spent on services supplied by BEE compliant companies	8.75%	10%	10%	5%
<p>Transition period</p>				



Research and development

A 70% minimum of the total R&D budget needs to be spent on South African public or private entities. The 2018 Charter removes the disputed "South African Institutions or Science Councils" specific spend criterion, which would have been difficult to implement.

Research and Development			
Measure		Compliance Target (%)	Weight (%)
% of R&D budget spent on South African based R&D entities		70%	2.5%



Sample analysis

All mineral samples are required to be analysed locally. If sample analysis from foreign companies is needed, it will require the written consent of the Minister. According to the Implementation Guidelines, the Minister must make a decision within 30 days, which will be valid for 12 months.

Sample Analysis

Measure	Compliance Target (%)	Weight (%)
% of samples analysed using South African based facilities/companies across the mining value chain	100%	2.5%

Key definitions

- **BEE compliant company** means a company with a minimum B-BBEE level 4 status in terms of the dti's B-BBEE Codes of Good Practice, and minimum 25% +1 vote ownership by HDP
- **Historically Disadvantaged Persons Owned and Controlled Company** for the purpose of the Mining Charter, refers to an entity in which HDPs hold at least 51% of exercisable voting rights and economic interest, including the Flow-Through Principle
- **Local content** means the value added during assembly or manufacturing of the mining good that is produced in South Africa
- **Mining goods** refers to capital goods and consumables used by a right holder or by a contractor on behalf of a right holder
- **Non-discretionary expenditure*** means total procurement budget excluding procurement from rail, utilities (electricity, water, rates and taxes) and fuel
- **Services** refers to services contracted by a right holder, or by a contractor on behalf of a right holder, which includes 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
- **South African based company** refers to a company incorporated and registered in terms of the Companies Act (Act 71 of 2008), with operations in the Country and subject to South African laws
- **South African manufactured goods** refers to goods with a minimum 60% local content during the assembly or manufacturing of the product in South Africa. The calculation of local content excludes profit mark-up, intangible value such as brand value and overheads
- **Women owned and controlled company** refers to an entity in which South African women hold at least 51% of exercisable voting rights and economic interest
- **Youth** for the purpose of the Mining Charter, refers to:
 - a) Young South African citizens between the ages of 18 to 35 years based on national or provincial demographics; or
 - b) A juristic person managed and controlled by a person/s contemplated in paragraph (a) where the persons, 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.



*Note: Buildings, lubricants and roads form part of non-discretionary spend in the Implementation Guidelines.

Source: The Department of Mineral Resources, 2018c



Enterprise and Supplier Development

ESD has formally been included in the Procurement element in the 2018 Mining Charter, having previously formed part of Mine Community Development. The objective of ESD aligns with that in the dti B-BBEE Codes (although less fleshed out), in creating a local industrial base. The objectives of ESD, according to the dti B-BBEE Codes, are:



*To **strengthen local procurement** in order to help build South Africa's industrial base in critical sectors of production and value adding manufacturing, which are largely labour-intensive industries.*



*To **increase local procurement** through capacity building, achieved by incentivising appropriate local supplier development programmes by businesses supplying imported goods and services.*



*To **actively support procurement** from black owned Qualifying Small Enterprises (QSE) and Exempted Micro Enterprises (EME) by identifying opportunities to increase procurement from local suppliers in order to support employment creation.*

The 2018 Charter permits rights holders to invest in ESD by offsetting some of its Procurement element obligations, as follows:

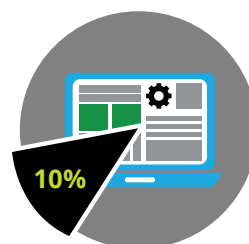
Mining goods

"Up to 30% of the total procurement budget on mining goods (excl. non-discretionary expenditure) may be offset against supplier development."



Services

"Up to 10% of the total procurement budget on services (excl. non-discretionary expenditure) may be offset against supplier and enterprise development."



Source: The Department of Mineral Resources, 2018c

Qualifying beneficiaries for ESD contributions somewhat align with the B-BBEE Codes. ESD can only be done for:

- 50% + 1 vote or more HDP owned and controlled companies
- company turnover of less than R50 million.

Other criteria require written agreement to be entered into between the rights holders and the beneficiary of the ESD contributions – a common and appropriate practice. Furthermore, rights holders and recipients/beneficiaries of supplier development contributions (not enterprise development) need to enter into a contract for a minimum of five years.

Notably, the 2018 Charter does allow supplier development through Original Equipment Manufacturers (OEMs), creating collaboration opportunities between rights holders and their OEMs. The Implementation Guidelines have a section on the collaboration, which allows for supplier development of HDP, women, or youth owned and controlled companies or B-BBEE compliant companies with a minimum of 25% + 1 HDP ownership and level 4 B-BBEE recognition. Importantly, supplier development through OEMs is only allowed if the particular supplier development project does not already form part of the OEM's equity equivalence programme.

Our experience: ESD

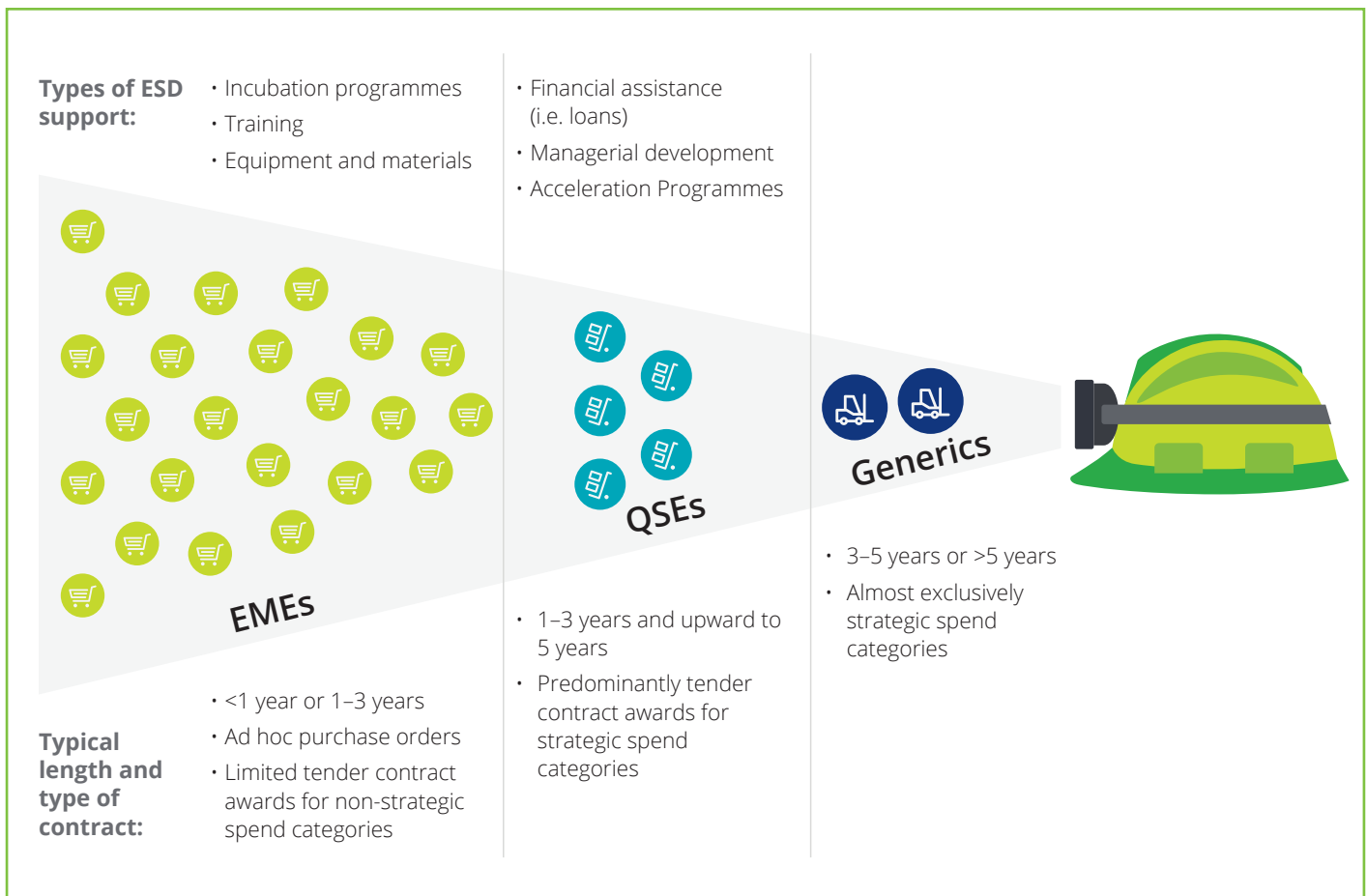
ESD strategies should be based on rights holders' individual needs, goals and aspirations. Our ESD frameworks take key strategic factors into consideration, for which we have developed several tools and methodologies to effectively support Small, Medium and Micro Enterprises (SMMEs) in their growth and sustainability.

The focus area for ESD is specifically SMMEs (including EMEs and QSEs). SMMEs have the greatest need for developmental support. Their needs, and the challenges they face, are well researched and documented, not only in South Africa, but globally. Listed below are some of the important considerations when supporting SMMEs:

- Entrepreneurial competence is correlated with the business' survival and success
- Education and training are also correlated with successful SMMEs (as evidence in South Africa has indicated)

- Support should be differentiated by sector, size, skills, and other factors
- Different stages of business growth should be taken into consideration
- The low survival rate for start-ups in South Africa (most fail within the first three years) is correlated with inadequate managerial skills
- Accessing and retaining skills within SMMEs is a key competitive advantage.

SMMEs require different ESD support at different phases of their growth journey – see below. Unsurprisingly, SMMEs require significantly more support in the EME phase than in the QSE phase.





Areas of certainty and uncertainty

Certainty

- The targets and progressive transition periods are clear and certain
- The Implementation Guidelines document states clearly that SABS certificates are not required for the first two transition years
- The pre-qualification criteria for potential ESD beneficiaries regarding their size is now aligned to those of the B-BBEE Codes. In other words, for an enterprise to be eligible for ESD contributions, it must be a business with less than R50 million turnover
- The application and approval process for foreign sample analysis has been clearly defined in the Implementation Guidelines with a timeline provided
- The Implementation Guidelines document provides process information and examples, which increases implementation certainty.

Uncertainty

- It is uncertain whether SABS has the capacity to administrate additional duties. This could result in administrative and financial burdens for stakeholders in the mining goods value chain
- The measurement of local content remains uncertain, and more information is required
- The local content requirement may pose a problem – only a few South African companies have the capacity to produce sophisticated capital goods/services required in the mining sector
- The youth criteria must reflect national/provincial demographics, leading to implementation uncertainty
- New procurement exclusions, such as buildings and roads, are broad and it is unclear as to which items are excluded/included
- Although the Charter refers to women owned companies, there are areas in the Implementation Guidelines which specifically refer to black women.



Strategic implications

- 1 Rights holders will be impacted greatly by the increased procurement targets and new definitions (such as fuel and lubricants forming part of non-discretionary spend). Rights holders should, as soon as possible, understand their gaps to compliance, and the needed changes to their procurement strategies.
- 2 The direct support measures for women and/or youth owned businesses as a percentage of procurement spend could bring about impactful change, alongside the more realistic transition periods.
- 3 Rights holders must identify goods and services from within their mine communities, giving preference to suppliers within these communities, where feasible. An unintended consequence, however, is that the inclusion of buildings and roads as non-discretionary spend decreases the community-based procurement opportunities.
- 4 It is unlikely that local companies have the capacity to verify local content given the additional workload. This can prove additional administrative and financial burden to the mining industry.
- 5 The move to digital supply chains, underpinned by holistic decision-making, connected communities, intelligent optimisation, end-to-end transparency, and analytics resources will enable new and innovative solutions.
- 6 The five-year contracts for supplier development may lead to exclusionary practices whereby only a small number of QSEs, that are already sufficiently developed to sustain themselves through a five-year contract, will be supported.
- 7 Nevertheless, the changes (especially the increased ESD offset) offer rights holders the opportunity to work together with their OEM supplier bases in industrialising and developing mine communities that are sustainable in the long term.

Mine Community Development (MCD)



The surrounding mine communities are integral to mine development. Many of these community members, directly and indirectly, devote their lives to the success of mining operations.

Mining forms part of a larger ecosystem. It is thus critical for rights holders to contribute to the socio-economic wellbeing of their ecosystem, especially their surrounding and host communities.

A key change in the 2018 Mining Charter is the new-found emphasis on Mine Community Development. The MCD element is ring fenced in the 2018 Charter, i.e. 100% compliance is required.

Although there remains vagueness and ambiguity as to MCD contributions expected by rights holders (still refers to “meaningful contribution”), many progressive and impactful changes have been made. The Social and Labour Plan (SLP) has become even more integral to MCD and highlights the importance of targeted development with proper processes, procedures and consultation. Furthermore, assessments of community development needs, international best practices, and a consultative process with key stakeholders is required in developing SLPs. This assists in delivering projects that meet the needs of their mining and labour-sending communities. Notably, the approved SLP must be published in English and at least one other dominant language used in the mine community, and made publicly available. Ultimately, all the approved SLP commitments must be implemented in the agreed timeframe.

The 2018 Charter furthermore explicitly promotes collaboration to increase social impact. Nevertheless, the collaboration should be captured in the approved SLP.

Notably, the Charter links the 5% equity equivalent under Ownership to MCD. A trust overseeing the 5% spend should use funds for community needs and is responsible for community development. Importantly, this community development programme is not allowed to substitute SLP commitments and caps

administration, project management and consultation fees at 8% of the budget.

Nevertheless, compliance remains difficult as the MCD financial investment required is uncertain. The dti's B-BBEE Codes stipulate a 1% Net Profit after Tax (NPAT) annual contribution target for socio-economic development (which can be compared to MCD), and include a five-point scoring for meeting the clearly outlined socio-economic compliance targets.

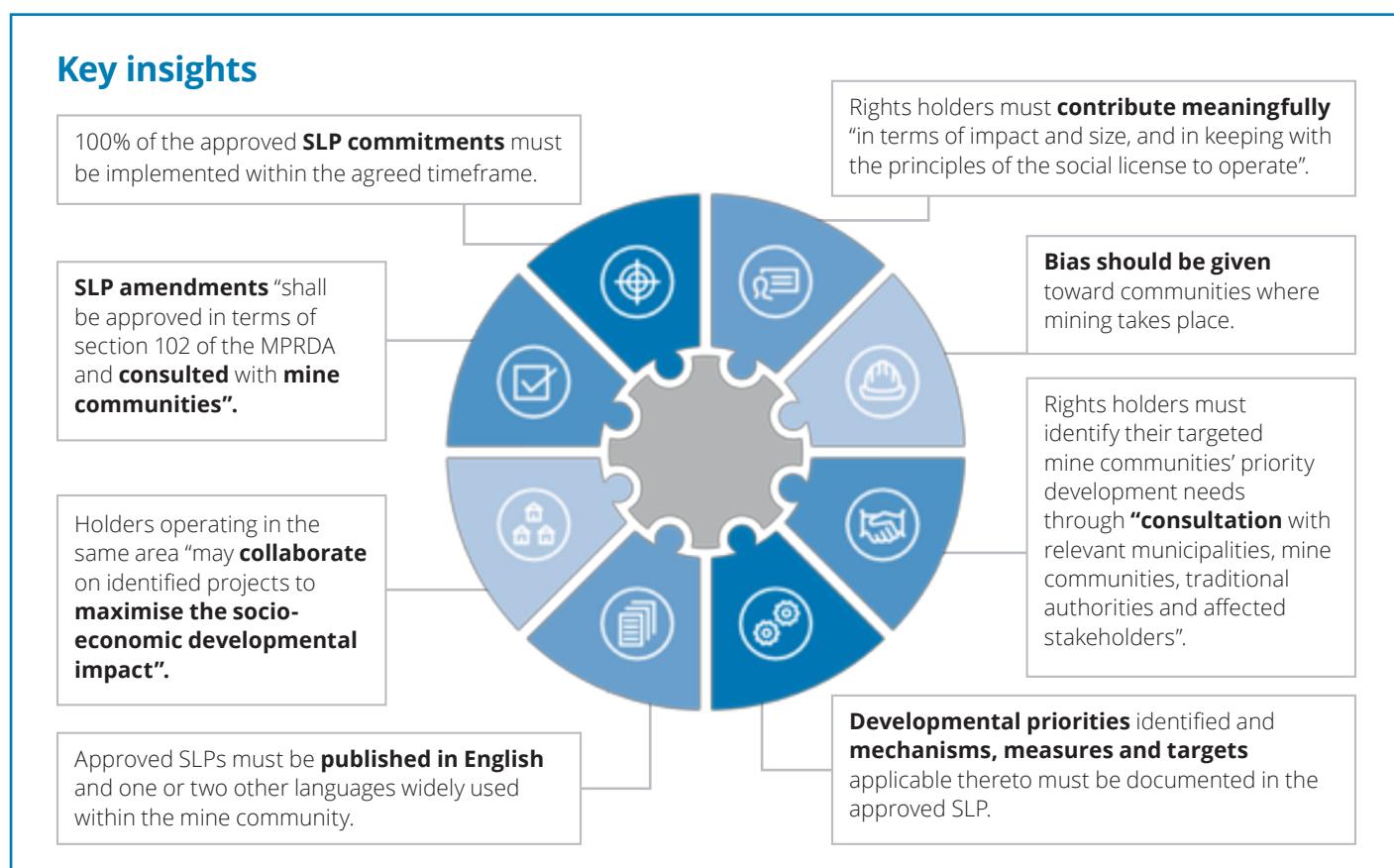
SCORECARD

Element Description	Compliance Target (%)	Measure	Weight (%)
Meaningful contribution towards MCD with biasness towards mine communities both in terms of impact, in keeping with the principles of the social license to operate	100% compliant with approved SLP commitments	Publish the SLP in two languages (dominant one in the community and English) Implement all approved commitments in the SLP	Y/N

Source: The Department of Mineral Resources, 2018c

Mine community refers to communities where mining takes place, major labour-sending areas, adjacent communities within a local municipality, metropolitan municipality or district municipality.

The 2018 Charter heightens emphasis on SLP commitments, which now need to be fully implemented in the agreed timeframe.



Source: Deloitte based on the Broad-Based Black Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018

SLP development process and approvals



Consult (to identify community needs and projects):

- IDPs of the mine communities
- Community members, community leaders, municipal authorities (local and district municipalities) and any other relevant stakeholders
- Other relevant National Priorities and economic development frameworks, such as:
 - Provincial Growth and Development Strategy (PGDS)
 - National Spatial Development Strategy (NSDS).

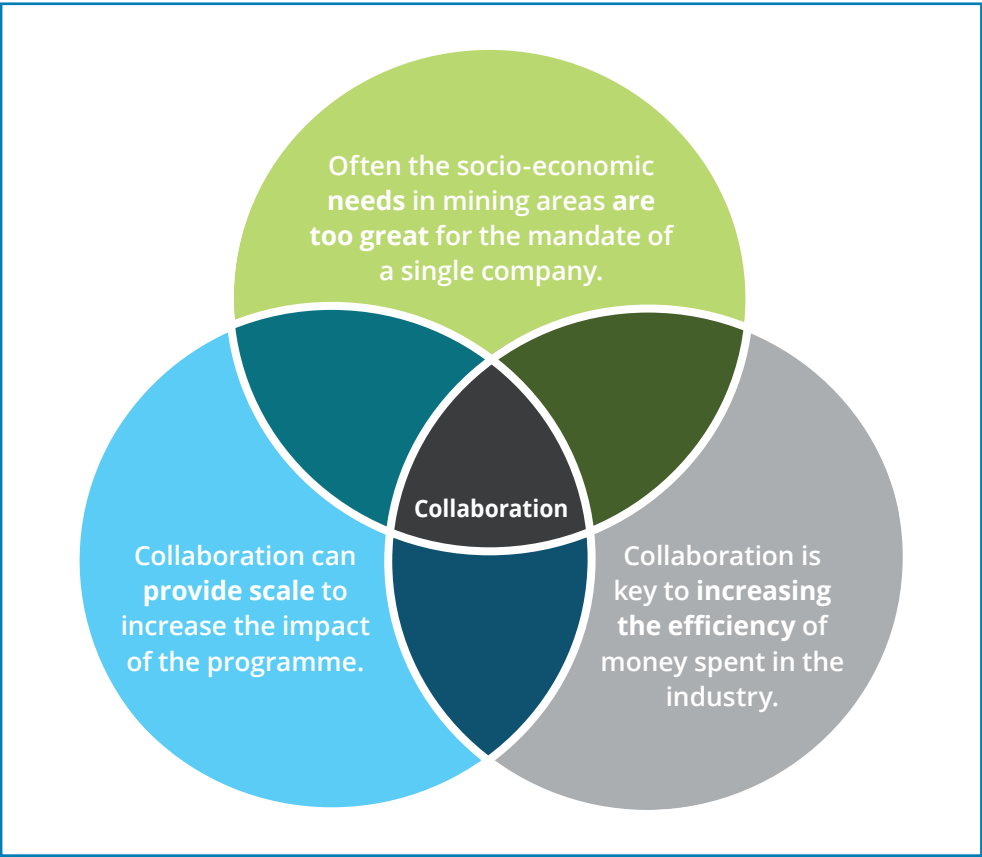
Project classification:



Our experience: Shared value via collaboration

Multiple mines are often situated around the same community. Often mines develop MCD projects without consulting surrounding mines, leading to inefficient (and sometimes wasteful) spending. Economies of scale can be used if SLP funds are pooled across neighbouring mines, leading to more value for the mine communities.

Understanding the ecosystem is critical to deliver value quickly; it requires engaging with key stakeholders to comprehend the immediate community challenges and potential solutions. The case for collaboration of South African mines is obvious, as the figure below shows.





Areas of certainty and uncertainty

Certainty

- SLP project approvals and processes (highlighted before) have become a common practice that rights holders understand
- Regardless of the budget uncertainty, it is clear that MCD projects must benefit mine communities, as explicitly defined in the 2018 Charter.

Uncertainty

- The absence of an explicit, measurable (financial) MCD target, creates uncertainty around compliance expectations and the magnitude of MCD efforts required by rights holders
- Even with the 2018 Charter identifying the publically available SLPs as the main driver of MCD requirements, uncertainty remains around the targets, timelines, and expectations accepted by the DMR.



Strategic implications

- 1 Compliance remains challenging due to the lack of measurable MCD targets and the volatile nature of commodity prices. Compliance is even more important now as MCD is ring fenced, necessitating full compliance. It is thus vital for the five-year SLP to capture realistic projects, timelines, and costs.
- 2 Identifying a quantifiable target is difficult. The dti and other sectors use NPAT as a measure. Although this provides a quantifiable target, it remains challenging due to the cyclical nature of the mining industry. Fluctuating NPATs (influenced by index-linked prices and exchange rate volatility) could lead to volatile compliance targets and expectations, making it difficult to reach full compliance. Other sectors have allowed for a combination or choice of either a percentage of NPAT or turnover, dependent on value derived.
- 3 MCD expectation management has become even more important. Any amendments made to a mine's SLP now require consultation with mine communities alongside the DMR. A clear and comprehensive stakeholder management and engagement strategy will be crucial in ensuring sound expectation management.
- 4 As most discretionary spending lies with government (especially with the need to align MCD projects to IDPs and the like), industry and government would need to work toward a solution that does not place rights holders at risk of failure to deliver on agreed projects.
- 5 As SLPs have explicit reporting mechanisms, more efficient and effective project planning and execution through clear project targets and timelines are expected (given that approved SLP targets and timelines are feasible).
- 6 A challenge, however, remains with the SLP's reliance on IDPs, which often fail to reflect the communities' most pressing needs.
- 7 The promotion of collaboration between rights holders has the potential to drive greater value, with greater strategic focus, socio-economic impact projects, and targeted cluster development.

Housing and Living Conditions



Housing and living conditions have a substantive impact on people's mental and physical wellbeing. The 2018 Mining Charter remains firm on the element's importance while acknowledging the progress the industry has made.

Decent housing and living conditions for mine employees, much like MCD initiatives, have the potential to improve employee wellness, community development, and mine productivity. The mining industry has embraced the previous Housing and Living Conditions targets, ensuring good living standards for their employees. This is evident from the reduced emphasis (no explicit weighting, nor ring fencing) on the Housing and Living Conditions element in the Mining Charter scorecard.

The 2010 Mining Charter required rights holders to comply with three specific requirements:

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

These compliance requirements carried a four-year progressive timeline, with full compliance expected by 2014.

The 2018 Mining Charter requires maintaining the aforementioned 2010 targets, as well as the current Housing and Living Conditions Standard and other agreements reached with employees until the new iteration of the Standard is finalised.

Unlike other scorecard elements, the Housing and Living Conditions element is governed under the Housing and Living Conditions Standard. The Standard is based on principles which constitute good Housing and Living Conditions. (Some of these principles are set out on the right.) The Standard will be reviewed to give clear targets and timelines for the implementation of these principles.

As such, rights holders will be required to submit a Housing and Living Conditions Plan to the DMR. The plan needs to be drafted in consultation with organised labour and the Department of Human Settlements.

SCORECARD

Element Description	Compliance Target (%)	Measure	Weight (%)
Improvement in the standard of housing and living conditions of mine employees	100% compliant with Housing and Living Conditions Standard commitments	Implement all Housing and Living Conditions commitments in the Standard	Y/N

The Standard provides principles such as:

Principles of housing conditions

- Decent and affordable housing
- Provision of home ownership
- Provision for social, physical and economic integration of human settlements
- Secure tenure for the employees in housing institutions.

Principles of working conditions

- Proper healthcare services
- Affordable equitable and sustainable health system
- Balanced nutrition.

Source: The Department of Mineral Resources, 2018c

Rights holders will be required to submit a Housing and Living Conditions Plan (approved by the DMR after consultation with organised labour and the Department of Human Settlements).

Comparison of Mining Charters

2010 Mining Charter	2018 Mining Charter
<p>Address three key interventions by 2014:</p> <ul style="list-style-type: none"> • Convert or upgrade hostels into family units • Attain an occupancy rate of one person per room • Facilitate home ownership options for all mine employees. 	<p>Improve the standard of housing and living conditions as specified in the Mining and Minerals Industry's Housing and Living Conditions Standard and implement in accordance with the Standard's stipulated principles.</p>
<p>Scorecard with progressive implementation of inclusive Housing and Living Conditions targets specified as follows:</p> <div> <div>2010 Baseline</div> <div>2011 25%</div> <div>2012 50%</div> <div>2013 75%</div> <div>2014 100%</div> </div>	<p>Clear implementation targets and timelines are to be specified within the reviewed Housing and Living Conditions Standard.</p>
	<p>Full compliance with the Housing and Living Conditions Standard commitments is required.</p>
	<p>Required to submit a Housing and Living Conditions Plan:</p> <p>Consult – organised labour and Department of Human Settlements</p> <p>Approve – DMR</p>



Concluding Thoughts

In the midst of a weak economy, and increased global competitiveness, South Africa needs all stakeholders to work together in ensuring the mining sector not only remains a contributor to economic growth, but also leverages our mineral resources to make meaningful socio-economic impact for our people.

After months of much-needed collaboration, the 2018 Charter starts to take the realities of the country, industry, and sectorial characteristics into account. Although, as noted, areas of ambiguity remain, the 2018 Charter is an improvement on previous drafts. It sets more reasonable compliance targets for rights holders, while supporting government's transformation objectives; in essence, it finds a happy medium. This will assist companies to refocus and deliver value beyond compliance, aligning economic performance with social progress.

This Charter, alongside the subsequent Implementation Guidelines, thus begins to improve South African regulatory and policy certainty and, importantly, investor perception.

Investment in the industry is essential, and may define the speed at which it returns to a sound growth path. South Africa cannot afford to, again, fail to take advantage of the next up-cycle, and investor confidence in the regulatory and policy landscape is vital.

Still, economic growth ambition associated with the sector's aspirational growth alone is not enough. Rights holders form part of a larger ecosystem, influenced by the needs of its employees, communities, environment, and industry. As the drive for continued transformation escalates, a more holistic and innovative outlook that embraces value beyond compliance, underpinned by inclusive growth, is needed.

Unlike a compliance-driven approach, value beyond compliance thinking drives innovation, productivity, and both social and economic growth. This is necessary in closing the trust divide in South Africa's mining sector, as government, labour, and industry work in unison to deliver value to all stakeholders.

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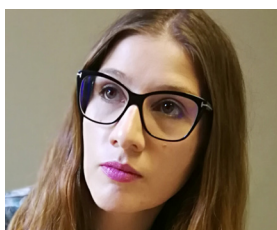
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