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The Amended Mining Charter

The importance of, and challenges in delivering shared value in the mining sector

Contents

"Economic growth has lifted hundreds of millions out of poverty and improved the lives of many more over the last half century. Yet it is increasingly evident that a model of development based on economic progress alone is incomplete. **Economic growth alone is not enough**. A society that fails to address basic human needs, equip citizens to improve their quality of life, protect the environment, and provide opportunity for many of its citizens is not succeeding. **We must widen our understanding of the success of societies beyond economic outcomes. Inclusive growth requires achieving both economic and social progress."**

– Michael E. Porter et al

Introduction

The importance of, and challenges in delivering shared value in the mining sector.

Against the backdrop of concerns around the pace of transformation in the mining and minerals industry, government has published changes to the Mining Charter aimed at not only strengthening its effectiveness, but with the intent of bringing about regulatory certainty.

The Broad-Based Black Economic Empowerment (B-BBEE) Charter for the South African Mining and Minerals Industry, commonly known as the Mining Charter, was first developed in 2002. It served as an instrument through which the Minerals and Petroleum Resources Development Act (MPRDA) could fuel transformation in the industry. Following a second assessment on the effectiveness of the Charter, the most recent review was gazetted in draft on 15 April 2016 (the draft reviewed Charter), and was opened for public comments. The inputs were used as a guide for industry, government and other stakeholders in finalising the reviewed Charter, with a view toward ensuring the levels of certainty the industry requires.

After more than a year, and firm debate as to whether meaningful consultation took place in its design, the final reviewed Mining Charter was officially released on 15 June 2017. It brings with it several foreseen and unforeseen changes: A new element is introduced, and several compliance targets are increased.

This third iteration of the Charter aims to take the next steps in driving shared value within the South African mining ecosystems, while continuing a journey of redressing historic inequalities inherited by South Africa's first democratic government.

Much of the Charter's intention is aligned with sharing this value, however, the strategic impacts of the changes will have a significant effect on mining rights holders (new and old). Despite assertions therein, questions remain whether it aligns and integrates government policies. Moreover, even though it attempts to bring about the regulatory certainty requested by various stakeholders, areas of uncertainty persist. The high level of mistrust – stemming from all stakeholders in the mining ecosystem – remains an unfortunate barrier to true and meaningful transformation.

A legal process has been initiated by the Chamber of Mines (CoM) which has brought an urgent application to interdict the Minister, the Department of Mineral Resources (DMR), and its officials from implementing and applying the changes. This has led to a temporary suspension of the amended Charter until the completion of the Urgent Interdict – allowing the DMR to file replying papers ("the court proceedings"). Amid the uncertainty surrounding the amended Charter, it is critical that the dialogue continues. This report aims to contribute to the much-needed dialogue by focusing attention to areas in need of more certainty, as well as on the strategic implications of the proposed changes.

The purpose of this report is to:

- **Set out all of the key changes to the Charter**
- **Highlight the strategic implications of the changes**
- **Suggested steps the industry can take in addressing the changes**
- **Address whether regulatory or policy certainty has been achieved, and if not, set out areas of continued uncertainty**
- **Consider the cost to shared value impact**
- **Offer insights to key stakeholders as the dialogue continues**

Amid the current economic recession, it is critical to align regulatory certainty with transformation in order to deliver shared value to the sector. Creating a regulatory and policy environment that enhances competitiveness, while simultaneously delivering socio-economic impact, is necessary in attracting much needed investment to revive the sector and importantly, return it to a growth path.

Inclusive growth requires achieving both economic and social progress

Overarching Changes

The latest review of the Mining Charter's effectiveness, coupled with the request for alignment with the Department of Trade and Industry's (dti) amended B-BBEE Act and Codes of Good Practice, steered the Department of Minerals and Resources (DMR) to review the Mining Charter.

The DMRs published outcomes of the review of the Charter's effectiveness in its old form, noted:

Not fully transformed

- There has been noticeable improvement in levels of compliance
- However, there remains a long way for the mining and materials industry to be fully transformed

Limited social impact

- Companies have adopted a compliance-driven mode of implementation
- Designed to protect the "social license" to operate rather than to create social impact

Surrounding communities

- Proliferation of communities living in abject poverty continues to characterise the ecosystem's surrounding mining operations

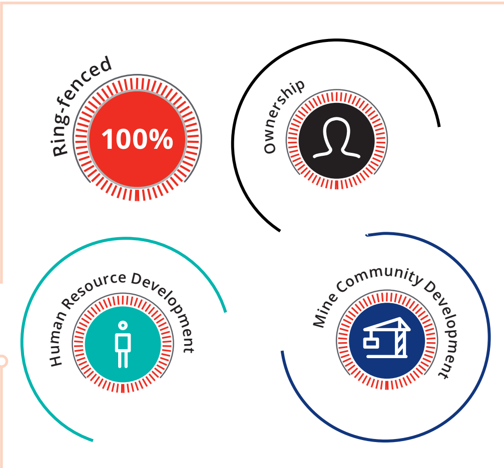
Insufficient progress in broad-based empowerment ownership

- Lack of progress made in embracing meaningful economic participation of black persons
- The interest of mineworkers and communities are typically held in trusts
- This constrains the flow of benefits to intended beneficiaries

Taking this into account, the amended Charter incorporates several overarching and strategically important changes:

RING FENCED ELEMENTS, NEW ELEMENT AND A NEW SCORECARD

As was proposed in the draft reviewed Charter, the amended Charter has introduced a new concept by declaring Ownership, Human Resource Development and, Mining Community Development as, what is termed, ring-fenced elements, **each of which require 100% compliance**. The dti's Codes of Good Practice introduced a similar concept in declaring Ownership, Skills Training, and Enterprise and Supplier Development as priority elements (which require a 40% sub-minimum compliance).



Rights holders that fails to meet the 100% compliance with each of the ring-fenced elements, is automatically deemed non-compliant, irrespective of their scoring in the remaining elements, which are weighted as follows:

The amended Charter has introduced a new concept by declaring Ownership, Human Resource Development and, Mining Community Development ring-fenced elements, each of which require 100% compliance

The amended Charter, for the first time, introduces a Sustainable Development and Growth element, which incorporates compliance criteria aimed at improving the industries existing efforts in the areas of environmental management, occupational health and safety, and research and development. Housing and Living Conditions have been removed as a scoring element in the amended Charter, however, rights holders will be required to submit housing and living conditions plans to the DMR for approval.

Lastly, the Mining Charter scorecard has formally been aligned with that of the dti's Codes of Good Practice (below). Compliance is now in accordance with the recognition levels (1-9) although the weighted percentage score deviates slightly per level for the respective scorecards. Mining rights holders that fails to meet a 60% compliance (i.e. levels 5-9), or, as mentioned, do not reach full compliance with any one, or more, of the ring-fenced elements are deemed to be in breach of the MPRDA, and no-compliant.

	dti Scorecard	Charter Scorecard	
Level 1	≥ 100 points	3 ring fenced Elements + 100%	Compliant
Level 2	≥ 85 points but < 100 points	3 ring fenced Elements + 80 - 100%	
Level 3	≥ 75 points but < 85 points	3 ring fenced Elements + 70 - 80%	
Level 4	≥ 65 points but < 75 points	3 ring fenced Elements + 60 - 70%	
Level 5	≥ 55 points but < 65 points	3 ring fenced Elements + 50 - 60%	Non-compliant (<60%)
Level 6	≥ 45 points but < 55 points	3 ring fenced Elements + 40 - 50%	
Level 7	≥ 40 points but < 45 points	3 ring fenced Elements + 30 - 40%	
Level 8	≥ 30 points but < 40 points	3 ring fenced Elements + 20 - 30%	
Level 9	< 30 points	3 ring fenced Elements + <20%	

Rights holders are granted a one-year transition period to align to the amended Mining Charter

TRANSITION PERIOD

Existing mining rights holders are granted a one-year period from the date of publication in which to comply with the revised targets as set out in the amended Charter. (This applies to all the elements except for part of the Preferential Procurement and Supplier and Enterprise Development element.) Reporting in the 2017 calendar year may remain as per the old Charter. Performance shall be reported and audited for each element in respect of implementation for the transition periods.

APPLICATION TO PRECIOUS METALS

The application of the amended 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-large entities respectively (administered under the regulator for the Diamonds and Precious Metals Acts)

Areas of certainty and uncertainty

1. The alignment of the Charter and dti scorecards will add an important level of certainty for many mining companies that have been endeavouring to comply with both scorecards, the compliance criteria of which are, in many cases, inherently misaligned, resulting in additional and unnecessary costs of compliance.
2. The aligned scorecard should allow for procurers of products from mining houses to apply recognition factors to the spend, in accordance with the level 1 – 4 compliance of the mining house.
3. The above is in line with the allowance of sector codes to deviate from targets and weightings used in the dti's Codes, if justifiable, based on sound economic principles, sectorial characteristics or empirical research. If acceptable to the dti, a deviation allowance will be granted past final approval of the amended Charter.
4. Due to the unfavourable reception of the amended Charter and the questions over meaningful consultation and openness in its drafting and implementation, uncertainty persists as to whether the Charter will be implemented in its current state.
5. While some elements, where deviating from the dti's Codes of Good Practice, are in line with the allowance criteria in 3 above, it could be argued that others are not.
6. The amended Charter does not appear to align with broader Government policy.
7. Bearing in mind the continuing uncertainty, it remains unclear whether there is an opportunity for further meaningful consultation.

Strategic implications

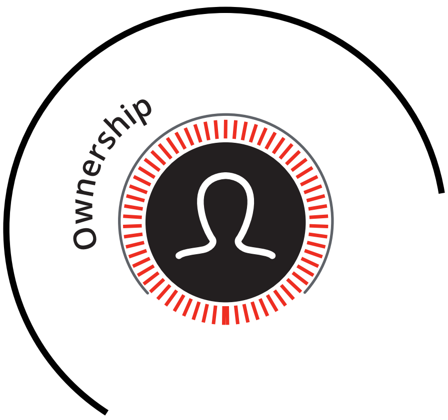
1. It is evident that there has only been a partial, and often unclear, alignment to the dti's Codes of Good Practice which brings with it uncertainty, especially with regard to compliance on matters which the Charter remains silent on. We unpack these areas of uncertainty further in the report.
2. The ring-fenced elements, as a new construct, may bring about a level of anxiety among rights holders. 100% compliance across all three elements may be difficult for the industry to achieve, especially within the 1 year time frame. Rights holders ability to comply with the ring-fenced elements within the transition period ought to be determined.
3. Rights holders would need to undertake a gap analysis (i.e. deviation from compliance) to determine current state compliance against the new scorecard, in order to develop strategies and implementation plans to ensure they reach the minimum level 4 compliance to retain their mining rights.
4. The general enforcement of the changes in the amended Charter, within the transition period, would need to be discussed and agreed upon, specifically where interpretations, guidelines, targets and measures remain unclear. At present, agreement has been reached to suspend the application of the Charter pending the outcome of litigation between the DMR and the Chamber of Mines.

Ownership

The changes to the ownership element have brought about the greatest level of debate and disagreement between stakeholders

Scorecard — **Ring-fenced**

Minimum target for representation of Black People Ownership *(Africans, Indians, Coloureds)*			
Measure		**Target**	**Score Weighting**
ESOPs	**8%**	**30% BBBEE Ownership**	**Yes/No (Ring-fenced element)**
BEE Entrepreneurs	**14%**		
Mine Community	**8%**		



Effective ownership is defined as meaningful participation of black people in ownership voting rights, economic interest and management control of mining entities. Although polarising, the government aims to use ownership as a tool to increase participation of Black People in the mainstream economy, battling racial and gender disparities prevalent in the industry.

Similar to the draft reviewed Charter, rather than Historically Disadvantaged South Africans (HDSA), the amended Charter references the need for ownership by Black People - aligning with the dti's definition. However, contrary to the draft reviewed Charter, the amended Charter increased the shareholding threshold to 30% (previously 26%).

Changes to the Ownership compliance criteria are made to:

- The composition of shareholding
- New versus existing prospecting and mining rights holders
- Sales of South African assets
- Payments to black shareholders
- The expectations around meaningful economic participation which is now defined as:

Clearly Identifiable BEE partners

The Charter explicitly states that new right BEE partners must include:

- BEE Entrepreneurs
- ESOPs
- Mine Communities

Shareholder

BEE partners shall be entitled to full shareholder rights, participation at annual general meetings, and ability to exercise voting rights

Cash Flow

- A portion of the dividends/ effective ownership should flow to the BEE partner throughout the investment
- BEE partners should be allowed to leverage their equity to facilitate sustainable growth of Black Person partners

Industry expected a three-year transition period, as stated in the draft reviewed Charter. However, this was amended to one year in the amended Charter

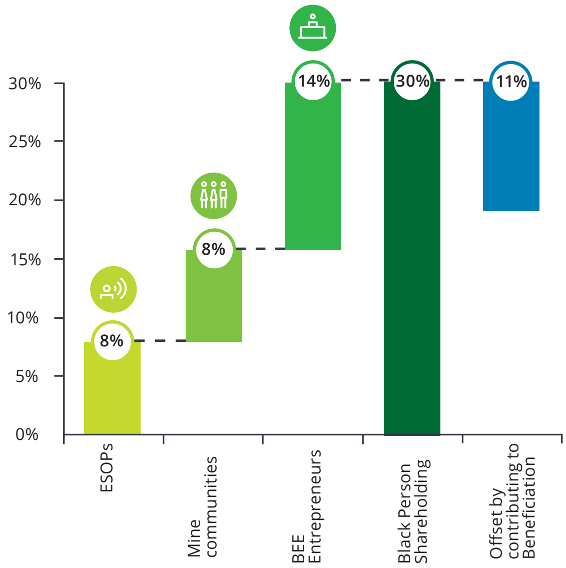
NEW MINING AND PROSPECTING RIGHTS

The below compliance criteria have been set out for holders of new prospecting or mining rights, both in terms of black person shareholding (meaningful economic participation) and the composition of the Black Person shareholding:

New prospecting and mining rights holders

Prospecting rights
- Must have minimum **50%+1** Black Person shareholding, including voting rights

Mining rights
- Must have minimum **30%** Black Person shareholding, including economic interest and a corresponding percentage of voting right, in mine right or company



At least 14% must be distributed among black entrepreneurs, 8% among employees through share ownership schemes (ESOPs) and 8% among communities through trusts (with representation of unions and traditional authorities respectively). 11% of the 26% can be offset based on the beneficiation of a rights holders commodity (the complexities of which are addressed later).

Transferring of shares within the above composition:

- Black person transferring shares must ensure that the party falls within the same category
- Black shareholding in new rights shall vest in no more than 10 years and by no less than 3% annually
- The vesting shareholding shall be paid from dividend proceeds received by the Black Person shareholders, and where such dividend is insufficient to repay amounts owing, the balance/ difference shall be written off by the holder/vendor of the shares.

Subject to the solvency and liquidity requirements of the Companies Act, a holder of a new mining right must pay a minimum **1% of its annual turnover** in any given financial year to the Black Person shareholders, prior to and over and above any distributions to the shareholders of the Holder.

The shareholding of the Mine Community must be held in a trust created and managed by the **MINING TRANSFORMATION AND DEVELOPMENT AGENCY.**

EXISTING PROSPECTING AND MINING RIGHTS HOLDERS

The amended Charter goes on to address the ownership requirements for existing rights holders by noting that Historical BEE Transactions (those concluded prior to the gazetting of the amended Charter and which achieve a minimum 26% black shareholding) shall be recognised for the reporting period ending post the publication date of the amended Charter.

The above applies specifically to existing rights holders:

Whose BEE Partner(s) have exited the Historical BEE Transactions

Whose contracts have lapsed

Whose previous BEE Partners shares have been transferred to non-Black Persons.

The Historical BEE Transactions as stated appear to have created four potential scenarios, namely rights holders who has:

1. Not attained the 26% Black Person Shareholding at the publication of the Charter, who appears to have to apply the shareholding composition set out on page 11.
2. Attained 26% Black Person Shareholding, which shareholding does not exists any longer(those previously deemed as "once empowered, always empowered").
3. Attained 26% Black Person Shareholding, who is now required to top up to 30% by a date which will be confirmed subject to the agreed suspension of the Charter and outcome of the court proceedings.
4. Attained 30% Black Person Shareholding or more, which shareholding remains, does not have to do anything at present.

Notwithstanding the above scenarios, the top up to the 30% Black Person Shareholding level is expected to be done in the 12-month transition period. Existing rights holders in whom there is more than 30% black person shareholding at time of publishing, are allowed to maintain their existing structures until a BEE Partner exits or on renewal of their mining rights.

SALE OF SOUTH AFRICAN ASSETS:

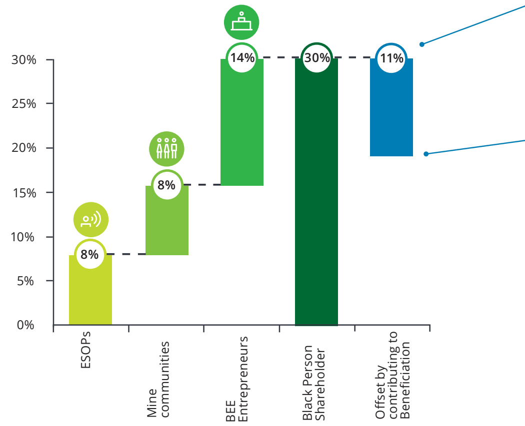
A holder who sells its mining assets must give Black Owned Companies a preferential option to purchase.

Areas of certainty and uncertainty

1. The greatest area of difficulty is the time frame: compliance in 12 months is practically difficult for most rights holders.
2. The application of clauses 2.1.2.1 and 2.1.2.2 which states that historical BEE Transactions shall be recognised for the reporting period ending on the date of publishing of the amended Charter, applies to existing rights holders whose BEE Partners have exited, whose contracts have lapsed or whose shares have been transferred to non-BEE shareholders. This effectively nullifies the "once-empowered always-empowered" principle.
3. Clause 2.1.2.5 states that existing rights holders with >30% Black Person shareholding shall be allowed to maintain its existing structure (i.e. not reconfigure as per the proportionate community, employee and entrepreneur percentage requirements) until such time as BEE partners exit or on renewal of the mining right. Thereafter, it is unclear whether they are required to reconfigure to the 8%, 8%, 14% target, or transfer shares within the same category of Black Persons as is currently in place.
4. The dilution of BEE Entrepreneur shareholding allowance (to 49%) and provision for use of proceeds toward developing another mining asset requires clarification, and, in itself it is in conflict with other transfer of shares requirements set out in the Charter.
5. The beneficiation off-setting provision now places approvals power in the hands of the DMR and no longer the Minister.
6. The recognition of Historical BEE transactions have been extended to include deals concluded on the basis of units of production and share assets. All of the Historical BEE transactions are further allowable at company, asset or operational level.
7. There is currently uncertainty around the financial impact changes in the ownership element will have, specifically within the current economic climate.

Strategic implications

1. The once-empowered-always-empowered construct has been nullified and top up provisions on their approved rights, where applicable, is required.
2. These changes have been negatively received by the mining industry and various other stakeholders. One of the most prominent reasons is the transition period: 12-month time frame is unrealistic. In the current economic environment with domestic and international difficulties, diluting their equity interest becomes practically difficult to implement.
3. Aligned to this is the very real risk that new BEE deals would negatively affect a rights holders capability to raise capital at the end of the down-cycle, inhibiting their growth potential and their ability to take advantage of the next up-cycle.
4. For rights holders whose BEE transactions have lapsed, questions would need to be asked around their financial capability to fund another BEE deal in the current economic recession and commodity downturn.
5. The requirement for new mining rights holders to pay 1% or annual turnover to their black person shareholders prior to other shareholder distributions insinuates a type of preference share. This will have severe financial impacts for these rights holders
6. The introduction of the Mining Transformation and Development Agency (MTDA) places the DMR and government (alongside the rights holders) at the heart of accountability to communities and the socio-economic impact of the value shared therein. It is mentioned that the structure and mandate of the MTDA will be gazetted at a later stage. Ideally, the intended trust would be overseen by Trustee representatives from government,rights holders, labour, civil society, traditional leaders, and objective and independent third parties. This grouping of key stakeholders would need to work together in designing the MTDA's strategy and mandate. However it is to be seen whether the MTDA will be an effective delivery mechanism, and whether it will improve or erode socio-economic impact.
7. A new requirement for rights holders who sell mining assets to give Black Owned Companies a preferential option to purchase has been introduced. The current financial predicament many rights holders find themselves in may necessitate sale of assets and the ability of Black Owned Companies (as stand-alones) to finance these purchases will become increasingly important.
8. Challenges will exist with finding new Black Person owners to take up the 30% shortfall in ownership and whether these deals can be funded.



Beneficiation

Beneficiation is a regulatory and policy imperative for government, with several enabling frameworks driving this mandate

The definition of benefication, importantly, aligns with that of the MPRDA as "the transformation, value addition or downstream beneficiation of a mineral and petroleum resource (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". The intention is for this element to drive downstream beneficiation, while other elements of the Charter inherently drive side-stream beneficiation.

11% offsetting toward beneficiation of the ownership portion reserved for black people

The amended Charter – in line with the draft reviewed Charter - reiterates government's policy on mineral beneficiation: to utilise South Africa's mineral resource comparative advantage to support industrialisation by "strengthening the linkages between mining and manufacturing". It has remained consistent in its enablement of an 11% offsetting toward beneficiation of the ownership portion reserved for Black People. The process around it remains uncertain, despite the intention of this element to be an enabling mechanism for beneficiation.

At present, discretionary powers are offered to the Minister by the MPRDA (section 26) as follows:

- The Minister may initiate or prescribe incentives to promote the beneficiation of minerals in South Africa:
  - If the Minister, acting on the advice of the board and after consultation with the Minister of Trade and Industry, finds that a particular mineral can be beneficiated economically in the Republic, the Minister may promote such beneficiation subject to such terms and conditions as the Minister may determine
  - Any person who intends to beneficiate any mineral mined in the Republic outside of the Republic may only do so after written notice and in consultation with the Minister

In addition to the above provisions of the MPRDA, the amended Charter re-confirms a rights holders ability to offset a maximum of 11% of the Black Person ownership by financially investing and contributing to Beneficiation.

It prescribes the following underlying compliance criteria in pursuing a beneficiation offset:

- The Holder must have, since 2004, in addition to section 26 requirements of the MPRDA, invested in Beneficiation
- The activities that are deemed to be Beneficiation are in line with the baseline contemplated in the definition of Beneficiation in the MPRDA
- The DMR must approve the proposed activities to ensure that such activities are in line with Beneficiation policies published by it from time to time
- The offsetting cannot apply to projects that no longer exist
- May only be claimed where the contribution to Beneficiation is still ongoing.

DMR'S STRATEGIC VALUE CHAINS AND MINERALS

The DMR has defined certain value chains, and minerals, from which multi-tier value can be derived:

Commodities	Strategic Minerals	Critical Intervention Areas
Energy Commodities	1. Coal 2. Uranium & Thorium	Regulatory Incentives Competitive Pricing Mechanisms Investment in R&D Initiatives Commitment by Producers to Support Local Beneficiation Skills Development Security of Energy Supply International Market Development
Iron & Steel	3. Iron Ore 4. Chrome 5. Manganese 6. Nickel 7. Vanadium	
Pigment & Titanium Metal Production	8. Pigment 9. Titanium	
Autocatalytic Converters & Diesel Particulate Filters	10. Platinum Group Metals	
Jewellery Fabrication	11. Gold 12. Diamonds	

Beneficiation Criteria:

- Invested in Beneficiation **since 2004**
- **Beneficiation activities** in line with MPRDA definition
- **Approval** from the DMR
- **Ongoing Beneficiation contribution**

The process and mechanisms that shall determine the offset of each mineral value chain, shall be provided for by the Minister, by the way of **government Gazette**.

A maximum of **11% offsetting** is permissible through investing and contributing to **BENEFICIATION** over and above the provisions of Section 26 of the MPRDA.

Importantly, the Minister is now expected to Gazette the processes and mechanisms that will determine offsetting of each mineral value chain

Areas of certainty and uncertainty

1. The maximum 11% of the black ownership available for offsetting is reiterated and certain.
2. This said, until such time as the Gazette (mentioned above) is published, uncertainty persists with regard to how a rights holders can achieve this.
3. The DMR has set out a series of strategic beneficiation value chains and minerals, as well as several broader strategic intents, which combined offer a basis for clarity on the beneficiation imperative.
4. Beneficiation faces various constraints that have been acknowledged by the DMR, for which interventions have been set out but which may require industry support to execute.
5. For new mine rights holders, additional uncertainty now exists as to which category of Black Person shareholding the off-setting will be allowed, or whether it will be required to be proportionate to all three (if applicable, bearing in mind beneficiation applies at present to existing rights holders).

Strategic implications

1. While the DMR's strategic minerals (for the most part) lend themselves to Beneficiation initiatives, various other resources cannot be efficiently beneficiated in South Africa, necessitating different solutions in this regard.
2. Successful beneficiation requires multi-stakeholder engagement, intervention, and importantly intensive cooperation and coordination across government departments. At present, decision-making lies with the DMR and dti, and though the MPRDA Amendment Bill intends to expand this, the intended Gazette ought to take the first steps in defining key stakeholders and procedures to be followed for beneficiation offsetting strategies and applications.
3. Taking cognisance of the intended beneficiation linkages between the mining and manufacturing sectors, several questions need to be answered around the competitiveness of South Africa's manufacturing sector, and its ability to maximise the aspired for benefits.
4. As beneficiation has a great impact on industry, they along with the DMR would need to work together on developing mechanisms and processes (the Gazette) that bring certainty, credibility and confidence.
5. The DMR's broader strategy document on beneficiation ought to form the basis of a working group discussion with not only industry but cross-governmental and industry stakeholders in order to determine clear pathways for the strategic minerals and value chains that are capable of delivering the intended economic and social imperative.
6. Where beneficiation is not viable for certain minerals, government and industry would need to agree on alternate value drivers against which rights holders can offset this portion of the black shareholding.
7. Rights holders would need to internally review their beneficiation endeavours for compliance against the requirements set out in the reviewed Charter so as to plan, if possible and appropriate, around the application for any offsetting.

Employment Equity

Workplace transformation and the broader inclusion of South Africa's diverse racial and gender demographics has increased gradually, similarly so in the mining sector. However, for tangible change and benefits (e.g. social cohesion and competitiveness of the mining industry) to be realised, the DMR intended for the pace of transformation to increase in line with the draft reviewed Charter.

The Mining Charter changes have necessitated for a new, evidence-based approach in achieving compliance targets and diversifying the workforce.

The amended Charter mostly aligns with the dti Codes, replacing HDSA, in scoring compliance in accordance with the national/provincial demographics, i.e. with the economically active population (EAP) targets set out in the Commission on Employment Equity Annual Report. These targets are based on the racial and gender demographics in the economically active population in each province and nationally as a whole.

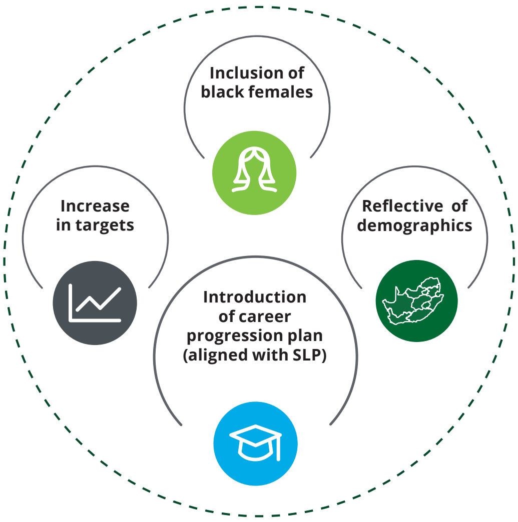
Scorecard

Employment Equity Targets

Measure	Target	Score Weighting
Board		
Black	**50%**	**3%**
Black Females	**25%**	**3%**
Executive/Top Management		
Black	**50%**	**3%**
Black Females	**25%**	**3%**
Senior Management		
Black	**60%**	**4%**
Black Females	**30%**	**4%**
Middle Management		
Black	**75%**	**3%**
Black Females	**38%**	**3%**
Junior Management		
Black	**88%**	**1%**
Black Females	**44%**	**3%**
Core and Critical Skills		
Black	**60%**	**3%**
Disabilities		
Black	**3%**	**2%**

The Mining Charter changes have necessitated for a new, evidence-based approach in achieving compliance targets and diversifying the workforce

KEY INSIGHTS



Holder must employ a **minimum threshold of Black Persons**, reflective of the demographics of the country

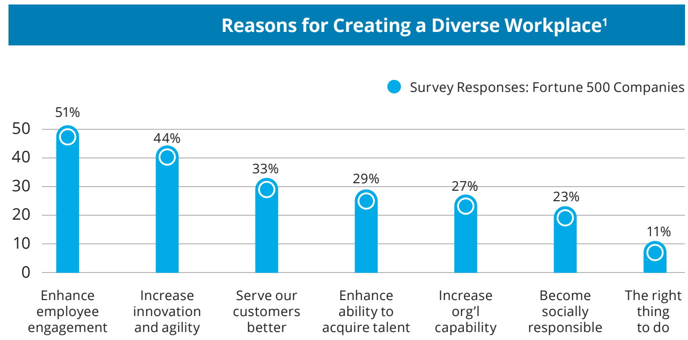
Core and critical skills must include **technical representation across all organisational levels**

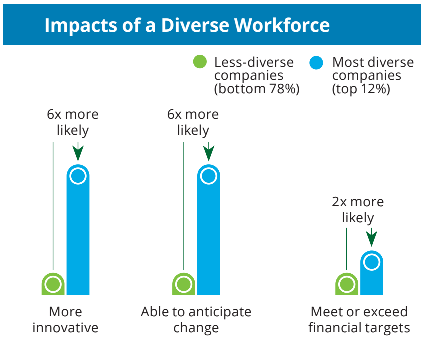
Holder must identify and **implement talent pools** in line with the **approved SLP**

Career progression plans aligned to SLP and demographics of RSA must include:

- **Developing career development matrices** of each discipline (inclusive of minimum entry requirements and timeframes)
- Developing **individual development plans** for employees
- Identifying a **talent pool** to be fast tracked in line with the needs
- Providing a **comprehensive plan with targets, time frames** and how the plan will be implemented

Research has shown that more transformed and diverse workforces are six times more likely to innovate and anticipate change; and twice as likely to meet/exceed financial targets.





Note: ¹Based on 1 000 research-based resources, 200 case studies, and 70 in-depth industry studies; 2Based on a survey of 245 global organisations and more than 70 client interviews
Source: Bersin by Deloitte (2014) "The Diversity and Inclusion Benchmarking Report"; Bersin by Deloitte (2017) "Building an Inclusive Culture"

2016Q3 NATIONAL AND PROVINCIAL ECONOMICALLY ACTIVE POPULATION

The national EAP (below) form the basis of the employment equity targets, in that at each level of management, disabilities and, core and critical skills employees should be representative of the below race and gender profiles and target percentages. If compliance targets are not met, scoring is pro-rata the percentage achieved. Where rights holders are geographically positioned in certain provinces only, they should use the provincial EAP targets (below) instead of the national.

Province	Male				Female				
	A	C	I	W	A	C	I	W	Total
National	**42.8%**	**5.3%**	**1.8%**	**5.3%**	**35.1%**	**4.5%**	**1.0%**	**4.2%**	
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%

In addition, compliance targets have been increased substantially across the various levels of management, aligning to the dti Codes, and incorporating disabled employees as a scoring criteria:

Current Charter (HDSA)	
Top Management (Board)	40%
Senior Management	40%
Middle Management	40%
Junior Management	40%
Core Skills	40%
Women in Mining	10%

Amended Charter	
Top Management (Board)	50%
of which are Black Females	25%
Senior Management	60%
of which are Black Females	30%
Middle Management	75%
of which are Black Females	38%
Junior Management	88%
of which are Black Females	44%
Core Skills	60%
Disabilities	3%

Areas of certainty and uncertainty

1. The targets are clear and the alignment to the EAP targets brings certainty as to what is expected of rights holders.
2. The amended Charter notes 'demographics' of the country, removing direct reference to EAP targets it had in the draft reviewed Charter. The amended Charter does however state that it "shall be read and interpreted in conjunction with MPRDA and the BBBEE Act where words are not defined and a meaning thereof has been ascribed in the aforementioned legislation". The BBBEE Act itself does not reference demographics, however it does refer back to the publishing of the dti codes which references EAP targets implicitly (clause 2.1 and 2.2) by citing "overall demographic representation of black people as defined in the Regulations of Employment Equity Act and Commission on Employment Equity Report".
3. The disabilities target has been increased from the 2%, in alignment to the dti Codes of Good Practice, to 3% in the amended Charter with no clarity as to why.

Strategic implications

1. Although industry appears to have broadly met HDSA targets, the now increased targets as well as the reflection of demographics will change compliance status for most. There is thus a need to rethink how to approach transformation and diversification with higher levels of sophistication.
2. Despite positive efforts by the industry in meeting the current criteria, the substantial increases brought about by the dti Codes alignment bring with them a new baseline and measurement criteria, with challenges in expediting the required transformation.
3. For junior and middle management positions in particular, the targets have increased substantially. In the midst of the current slump and ongoing retrenchments by several rights holders, questions are raised how easily these targets can be achieved.
4. The inclusion of Black females and the EAP targets necessitates internal assessments by rights holders of their current performance against the new targets, and rapid changes in respect of their employment equity plans and reports.
5. The application of the EAP (read: demographics) targets to Core mining is a new requirement, the impact of which will be significant bearing in mind the primarily African male workforce in this area.
6. Overall the sector has witnessed continued declines in employment numbers, which in itself has also affected succession planning. A balance may need to be struck between compliance motivated appointees and those that meet the skills requirements of a sector in need of growth.
7. Employment equity ought to be about ensuring the necessary skills base required for the industry to thrive, alongside the transformation agenda. Stakeholders would need to assess necessary linkages between this and the Human Resource Development element, with a view towards shared value.
8. As the dialogue continues, it would be prudent – bearing in mind the required changes in the transformation measurements and criteria – to agree to realistic timelines within which the rights holders can redesign their transformation and diversity strategies to reconfigure their workforce in line with the new targets (particularly the advancement of Black females).

Human Resource Development

Scorecard | Ring-fenced

HRD expenditure as % of total annual Leviable amount (excl. mandatory skills development levy)		
Measure	**Target**	**Score Weighting**
Essential skills development activities	**2%**	**Yes/No (Ring-fenced element)**
Mining, Transformation and Development Agency	**2%**	
South African Historically Black Academic Institutions	**1%**	

The desperate state of education in South Africa has brought with it a social imperative to advance education and skills training, some of which should be driven by the private sector.

The current mining charter required that 5% of payroll* be invested in human resource and essential skills development. This target has remained constant in the amended Charter, and extends to include support for South African-based research and development initiatives intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation, as well as environmental conservation and rehabilitation.

The amended Charter, although maintaining the 5% of payroll required, expands on the spending criteria by proposing three notable changes. The first proposes that training (a minimum of 2% of payroll) be reflective of demographics, and be invested in essential skills development activities such as artisanal, literacy and numeracy development, and bursaries. This is an inappropriately narrow mandate, and to date there has been a strong focus on technical/artisanal skills training as per the needs of the sector. The second notable change is a 2% of payroll contribution to the Mining Transformation and Development Agency. The final change is a 1% of payroll contribution towards South African Historically Black Academic Institutions for research and development initiatives. The 1% contribution could be excused if the holder has partnered/supported a State-owned Entity in such research and development initiatives.

Notably, this element does not align at all with the dti Codes which, outside of a percentage of payroll as a target (6%), imposes two important directives:

- The necessity to focus on learnerships, internships and apprenticeships for both employed and unemployed persons, aimed predominantly at accredited training in accordance with the learning programme matrix
- The incentivisation of absorbing unemployed trainees into one's business.

2 percentage points of the 5% of payroll must now be contributed toward the **Mining Transformation and Development Agency**

Areas of certainty and uncertainty

1. There is certainty on the percentage of payroll to be used on human resource development, as well as the allocation thereof to the Mining Transformation and Development Agency and South African Historically Black Academic Institutions.
2. Uncertainty however exists as to the mandate and the potential effectiveness of the fund itself, as well as whether its funding will be ring-fenced for use in the mining sector, and for training initiatives in particular.
3. The non-alignment with the dti Codes brings uncertainty as to the necessity of driving training in accordance with the learning programme matrix (prioritising accredited training). It is entirely unclear as to why learnerships and internships in particular were not specifically included in the essential skills training programme list.
4. In addition, the dti codes stipulate that other legislated training be excluded from that permitted for purposes of their scoring. This, in particular, has a significant impact with regard to occupational health & safety training, and other necessary legal training.
5. The amended Charter is silent on enforcing portable skills training that offers opportunity to trainees to find alternate employment, a critical consideration in a cyclical industry.
6. Historically Black Academic Institutions include the Universities of Fort Hare, Zululand, Venda, Limpopo, Western Cape, Walter Sisulu and North West. However, uncertainty remains around the definition as mergers of historically black and white institutions are prevalent.
7. It is unclear what is expected of rights holders already existing SLP commitments such as training funds, resources and the number of employees.

Strategic implications

1. The nature of payroll is such that it is variable throughout the year, and is only finalised post a financial year-end (take into consideration the effects of year-end bonuses paid ad hoc dependent on company performance). Though one can budget for this, the variability places rights holders at a very real risk of failing to comply with the annual target by under-budgeting, and in turn being deemed non-compliant and in breach of the MPRDA.
2. An unintended consequence of the above may be forced training expenditure on ineffective training, which simultaneously disrupts production in order to ensure compliance.
3. The natural evolution of training in the mining sector through innovation and automation necessitates a review of current training interventions. Industry stakeholders would need to work together in refining the training needs to align with the growing digitisation in mining, as well as portable skills training, bearing in mind the expected continued job losses.
4. The overall effectiveness of training is not tested by the amended Charter, which only enhances a compliance-driven mentality. An example of this is a history of excessive AET training which has for several reasons been ineffective (often done after-hours with low attendance, focused on underground miners whose average ages lend itself to this form of training).
5. The industry ought to focus on both career progression and portable skills training in its training plans, so as to enable employees to progress in up-cycles and also find alternative employment in the down cycles.
6. As mentioned above, linkages between employment equity and career progression would need to be defined and mutually agreed on by industry and the relevant government departments, driven by the promotion of shared value.
7. Training is a critical lever in sustainably and effectively implementing the new employment equity targets. As a result, much emphasis needs to be placed on managerial and accelerated development programmes. They ought to form an integral part of the essential skills training spend requirements.
8. Mining companies ought to embrace a continuous learning method, which emphasises a holistic approach to training and development through a blend of formal learning, on-the-job development, and learning support systems and tools to create an integrated and balanced learning environment. To limit training to a narrow definition of essential skills only will result in a continued compliance-driven approach that will have a detrimental impact to the shared value training intent.
9. The vague definition of essential skills – only categorising artisan training, bursaries, and literacy and numeracy skills – needs to be clarified with DMR to ensure that definite training such as induction, and health and safety is included to reduce unnecessary and expensive training for compliance sake.

Procurement, Supplier and Enterprise Development

The procurement from, and support and development of, local empowered businesses is a fundamental driver of not only transformation, but economic growth in South Africa.

Scorecard

Measure	Target	Score Weighting
Mining Goods		
RSA Manufactured Goods	**70%**	**15%**
Black Owned Companies	**21%**	**5%**
50 + 1% Black Women and/or Black Youth Owned Companies	**5%**	**1%**
BEE Compliant Manufacturing Companies	**44%**	**9%**
Services		
RSA Based Services	**80%**	**9%**
RSA Based Service Companies*	**65%**	**5%**
50 + 1% Black Women Owned Companies	**10%**	**2%**
50 + 1% Black Youth Owned Companies	**5%**	**2%**
Multinational Supplier Contributions		
% of annual turnover generated from local mining companies towards the **Mining Transformation and Development Agency**	**1%**	**3%**
Samples		
100% of samples analysed using RSA based facilities	**100%**	**3%**

*Scorecard reference differs from Charter write-up

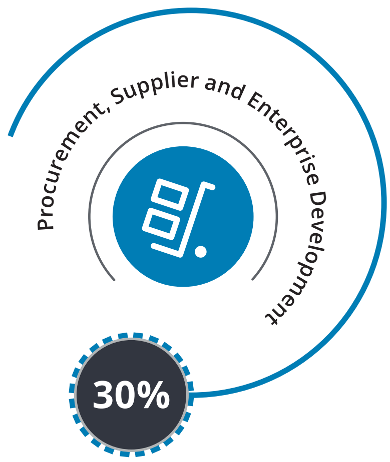
The mining sector (via the old Charter) has been no different from others in supporting this agenda through three key areas:

- Procurement of a percentage of capital goods, consumables and services from BEE Entities
- A contribution by multinational suppliers of capital goods of annual income generated from local mining companies, towards socio-economic development of local communities into a Social Development Trust Fund from 2010
- The utilisation of South African facilities for the analysis of any mineral samples

The amended Charter introduces several notable changes. The first key change is the introduction of new definitions which underpin the changed measurement targets and criteria:

- **BEE Compliant Manufacturing Company**, in relation to the procurement element contemplated herein, means a company that manufactures goods and has a minimum BEE level 4 of the dti Codes and a minimum 26% black ownership
- **Black Owned Company** means a juristic person having shareholding or similar interest that is controlled by a Black Person/s and in which such Black Person/s enjoy/s a right to economic interest that is at least 50% + 1 of the total shareholding
- **Foreign Supplier** means a foreign controlled and registered company, supplying the South African mining and minerals industry with mining goods and services, which does not have at least a level 4 dti Codes BEE status and 25%+ 1 vote black ownership

A Holder must identify the goods and services available within the community where its mining operation takes place and, where feasible, give preference to suppliers within that community



- **Mining Goods** refers to tangible goods used by the Holder, or by a contractor on behalf of the Holder, for mineral extraction, materials handling, environmental control, mineral processing, drilling, digging, and earthmoving. This also includes aftermarket components and products that are used and/or consumed in daily operations
- **Services** refer to work contracted out by the Holder, or by a contractor on behalf of a Holder, which includes but is not limited to, mining production services, drilling, mineral trading, mineral marketing, shipping, transportation, information technology services, security, payroll, finance, medical, cleaning, insurance and any other services which are supplementary or optional to the mine
- **South African Based Company** refers to a company incorporated in the Republic in terms of the Companies Act and which has offices in the Republic
- **South African Manufactured Goods** means goods where at least 60% of the value added during the assembly and/or manufacturing of the product is realised within the borders of the Republic. The calculation of value added for the purposes of this definition excludes profit mark-up, intangible value (such as brand value) and overheads
- **Youth** for the purposes of this Mining Charter refers to Black Persons between the ages of 18 – 35 years old

The second key change is the move way from consumables and capital goods as separated procurement compliance areas, and toward bundling them into a broader Mining Goods category.

The third is an increase across the board of the percentage procurement spend that must be allocated to Black, Black Women, Black Youth Owned and BEE Compliant Manufacturing Companies of mining goods and services, as set out below:

Mining Goods

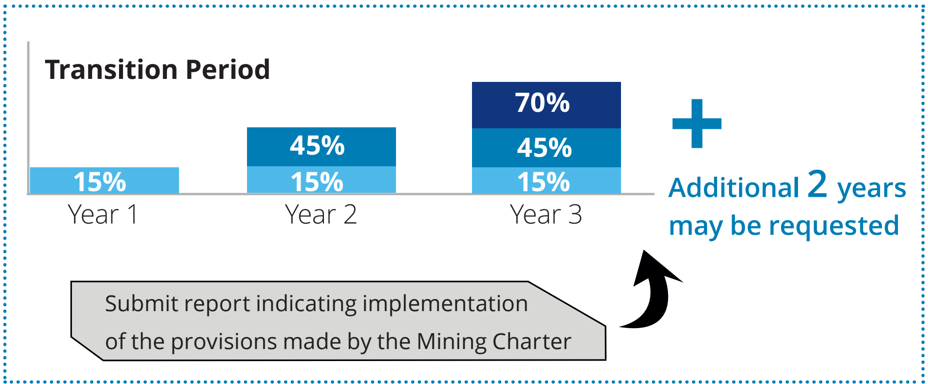
70%	RSA Manufactured Goods
21%	Black Owned Companies
5%	50 + 1% Black Women/Youth Owned Companies
44%	BEE Compliant Manufacturing Companies

Services

80%	RSA Based Services
65%	Black Owned Companies
10%	50 + 1% Black Women Owned Companies
5%	50 + 1% Black Youth Owned Companies

The fourth change is the increase of multinational – now termed foreign – supplier contributions of 1% of their turnover with local mining companies. This contribution must now flow to the MTDA and no longer to the social funds noted in the previous Charter. Lastly, 100% of samples must be analysed locally. If sample analysis from foreign companies is needed, it requires the written consent from the Minister.

A transition period of three years is set out for the mining goods criteria of this element. There are however targets for each of the three years: the first year target is set at 15%, second year target at 45% and the third year target is set at 70%. However, if the 70% requirement cannot be obtained in the three years, a Holder can apply for a further two-year extension, to enable sufficient time to develop 50 + 1% Black Owned suppliers.



The Holder must within three years from the date of publication submit a three year plan indicating progressive implementation of the provisions of this reviewed Mining Charter

Areas of certainty and uncertainty

1. The DMR have, unlike in the draft reviewed Charter, opted to not align the definition of BEE Compliant Companies with that of the dti Codes of Good Practice. It has, rather, for Mining Goods selected a combination of past BEE Company criteria (26% black ownership) applied in the sector, a restrictive dti level 1-4 (nothing below this), and the need for goods to meet the above definition of South African manufactured goods. For services, similar criteria apply save for the need of services companies to be South Africa based.
2. At present there does not exist a mechanism for recording of Youth Owned businesses, nor 50% + 1 Black Woman Owned businesses. Engagements with the dti to amend their EME/QSE affidavits and scorecards would need to be undertaken by the DMR to ensure practical application of this compliance criteria.
3. Beyond this however, the amended Charter raises further uncertainty and confusion. The introduction of a new compliance criteria in the form of a verification of local content for capital and consumer goods with the South African Bureau of Standards (SABS), may lead to an administrative burden for not only rights holders, but suppliers onto whom the necessity to ensure SABS compliance will likely be passed. The SABS may not have capacity to expedite applications in this regard. This amounts to another financial burden, especially on small businesses. In addition, it is questionable whether the SABS is the appropriate control body to address this.
4. Several of the new definitions require clarity from an audit and reporting perspective. For instance, how will one verify 60% value added during assembly and/or manufacturing? A standard needs to be drawn up in this regard.
5. The definition for mining goods and (less so) services are specific to certain procurement items, which might bring uncertainty as to the applicability of the targets to other procurement items that fall outside of these definitions.

Strategic implications

1. Rights holders will be impacted greatly by the increased procurement targets and must, as soon as possible, understand the impact on their existing procurement practises.
2. The direct support measures for Black Women and/or Youth Black Owned business as a percentage of procurement spend ought to bring about impactful change.
3. The new compliance criteria will bring about a much increased financial and administrative burden on rights holders, and suppliers alike. Despite the intended sharing of value, the failure to align with the dti's criteria (such as EME/QSE/Enterprise and Supplier Development) will necessitate unique and costly monitoring and reporting systems for rights holders.
4. The changes do offer the opportunity for rights holders to work together with their supplier bases in industrialising and developing mine communities, as well as Black Owned suppliers that are sustainable in the long term.
5. Rights holders must identify goods and services from within their mine communities, applying preference to suppliers within these communities where feasible.
6. 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 toward meeting compliance targets and sharing value, especially in the areas of enterprise and supplier development.
7. If implemented, the effect of the changes to this element can have a significant socio-economic impact.

Mine and Community Development

Mine and labour sending communities lie at the heart of the operational capabilities of rights holders. Directly and indirectly, many members of these communities devote their lives to the success of a mine's operations.

Scorecard | **Ring-fenced**

Mine Community Development		
Element	**Measure**	**Score Weighting**
Implement locally approved community projects , which are aligned to the district, metropolitan and local municipality's IDPs of revenue projection for two and half years, applicable to a SLPs for five year cycle	Contribution towards mine community development must be proportionate to the size of the investment	**Yes/No (Ring-fenced element)**

It is thus critical for rights holders to contribute to the socio-economic well-being of these communities. However, the Charter is vague and ambiguous as to the nature of mine and community development expected of rights holders, merely stating "there has to be a meaningful contribution towards community development, both in terms of size and impact".

Through assessments of community development needs, cognisance of integrated development plans (IDP), international best practices, and a consultative process with key stakeholders, rights holders develop social and labour plans to deliver projects that meet the needs of their mining and labour sending communities. This however remains difficult as the financial investment required is uncertain, with projects expected to be costed proportionately to the size of investment. The DMR's Codes of Good Practice for the South African Minerals Industry stipulated a 1% Net Profit after Tax (NPAT) annual contribution target for mine and community development, though the applicability and enforcement of these Codes appears to have now been nullified.

The essence of the mine and community development element remains the same in the amended Charter, critically removing the 1% of turnover suggested by the draft reviewed Charter. There is however, one crucial difference: the element, although it maintains the discretion of the rights holders as to the financial contributions toward mining and community development, is now ring-fenced.

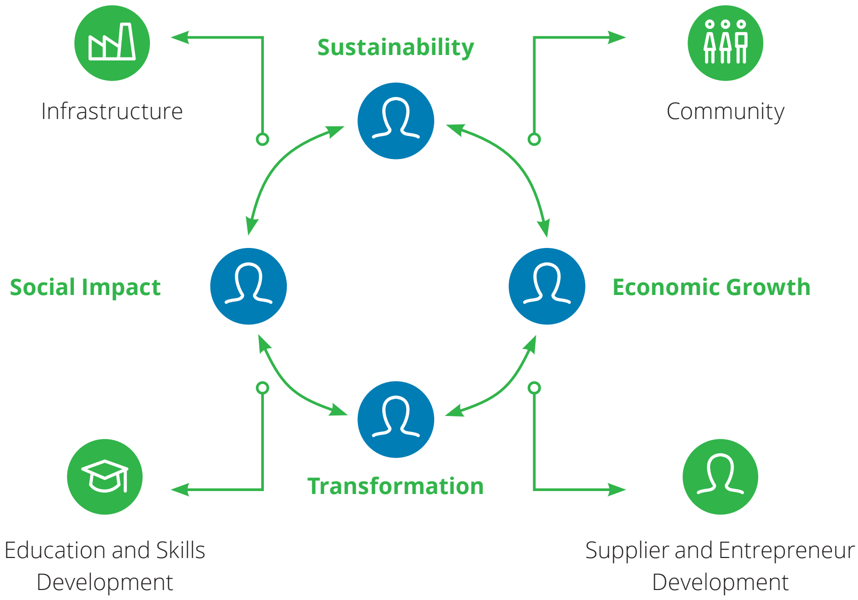
Mine and labour sending communities lie at the heart of the operational capabilities of rights holders

PERMITTED PROJECTS

- Enterprise Development Projects
- Infrastructure Projects
- Income Generating Projects

FURTHER REQUIREMENT

- **Priority projects** are identified as per the **approved IDP**
- Holder's **contribution** towards MCD must be **proportionate** to the **size of the investment** (contribute meaningfully in terms of impact and principles of social license to operate)
- **Meaningfully contribute** towards MCD **in terms of its approved SLP**
- **Bias toward** communities where mining takes place
- Project management and consultation fees to be **capped at 8% of the total budget**
- Holders may **collaborate on projects where more than one right holder** who operates in the **same area for maximum socio-economic developmental impact**



Areas of certainty and uncertainty

1. Removing the explicit target, suggested by the reviewed Charter, results in a lack of certainty on financial expectations. This uncertainty is exacerbated by the scorecard element which refers to "revenue projection for two and a half years, applicable to a SLP for a five (5) years cycle", thus permitting broad discretion to administrators.
2. Although the amended Charter promotes alignment of the social and labour plans to the mine and community development requirements, uncertainty remains around the definition of *meaningful contribution.*

Strategic implications

1. Due to uncertainty of financial contributions expected of rights holders other than alignment of the social and labour plans, compliance remains challenging. This difficulty however is exacerbated by the element being ring-fenced.
2. The dti and some other sectors use NPAT as a measure of certainty. It also lends itself better to an industry such as mining that is cyclical – allowing for greater contributions in up-cycles, reducing accordingly in down-cycles. Other sectors have also allowed for a combination of, or choice from either a percentage of NPAT or turnover dependent on value derived.
3. The Mining Transformation and Development Agency mentioned earlier ought to have in its mandate local community development. It may be prudent to consider this as the vehicle for a pooling of financial resources toward agreed and more-impactful projects.
4. With no clear procedure and defined rules the agreement between stakeholders around projects, expediting the social impact can take time and respective stakeholders may force their own agenda ahead of those that benefit the communities.
5. As most discretion of spend lies with Government, industry and Government would need to work toward a solution that doesn't place rights holders at risk of failure to deliver on agreed projects.
6. Socio-economic change would be greater regionally if rights holders within close geographic proximity were incentivised into working together toward effecting change. Stakeholders may consider working together on innovative options in this regard.
7. The requirement to incorporate only priority IDP projects into SLP – most of which are infrastructure related – could have the negative consequence of undermining socio-economic impact.

Sustainable Development and Growth

The latest addition to the Charter aims to advance sustainable development commitments, both social and environmental, for long-term growth in the mining industry.

Although the addition was unanticipated, many of the element's requirements are familiar and already enforced by rights holders. The journey towards zero harm started in 1996 with the introduction of Mine Health and Safety Act, leading up to the inclusion of it in the 2010 Mining Charter as well as the 2014 Mine Health and Safety Summit. This has contributed to health and safetyimproving substantively over the years. Nevertheless, South Africa still lags behind the international benchmark. Thus, the addition of the element could promote further developments in this sphere in accordance to the journey of zero harm.

The element is broken into three categories, namely environmental management, health and safety and research and development spend.

Environmental management (10% weighting)

This category emphasises implementation of environmental management systems that focus on continuous improvement to review, prevent and mitigate adverse environmental impacts. To reach the target, holders must be compliant with the approved environmental management plans which should be in line with National Environmental Management Act 1998 (Act 107 of 1998) and its regulations.

Health and safety (25% weighting)

Health and safety was first introduced in the revised Mining Charter of 2010, although no explicit scoring weights were associated. The new weighting aims to formally implement the 2016 Occupational Health and Safety Summit Milestones while taking other health and safety factors into consideration. The scorecard focused on three areas. The first two focus on eliminating occupational dangers, specifically diseases (such as lowering TB under the National TB incident rate) and occupational fatalities and injuries. The last is called the Culture Transformation Framework (CTF) which aims to improve the culture towards Health and Safety across the mining sector by implementing six of the eleven pillars stated in the official framework.

The Chamber of Mines in its Safety in Mining 2017 factsheet committed to the implementation of the five prioritised pillars as well as the data management pillar by 2020. The eleven pillars, as stated by the CTF, are set out below with the Chamber of Mines' committed pillars marked in green.

Scorecard

Sustainable Development and Growth

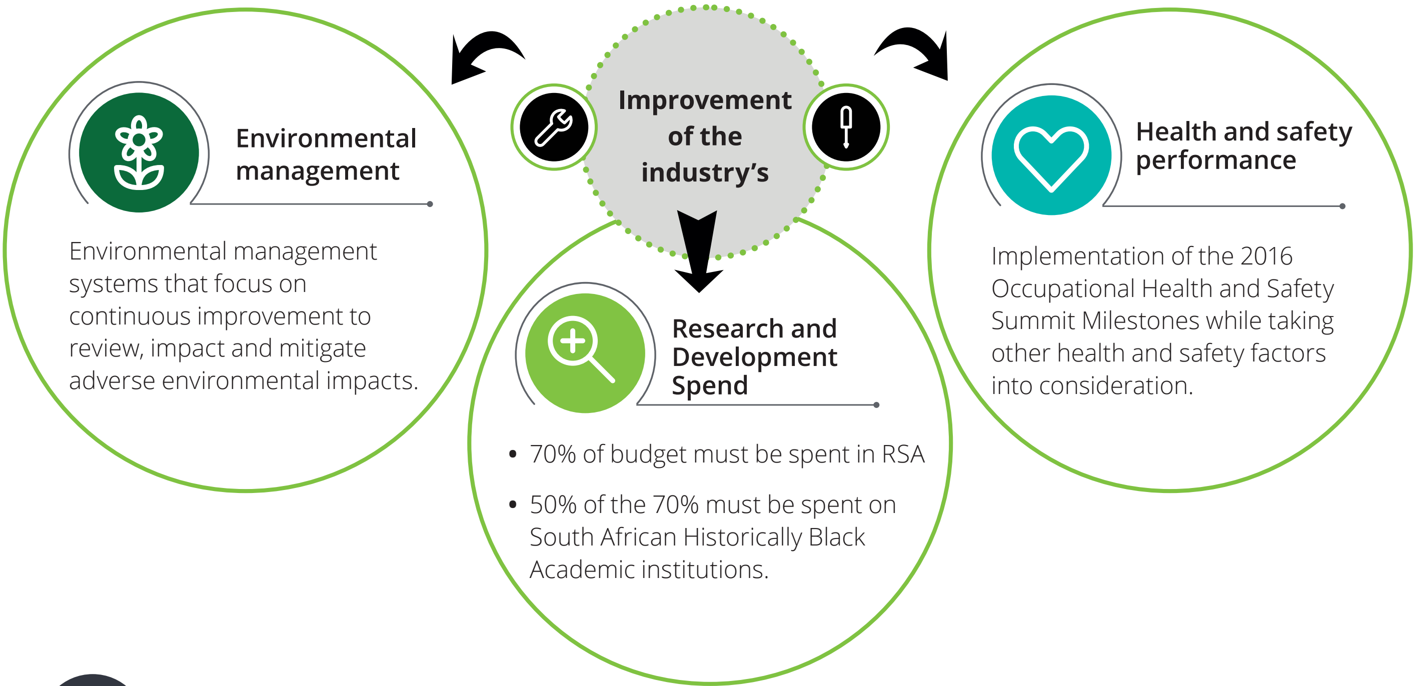
Measure	Target	Score Weighting
Improve the industry's environmental compliance		
Compliance with the approved Environmental Management Plans	**100%**	**10%**
A minimum of 70% of the rights holders research and development budget must be spent in SA		
Percentage of research and development budget spend in SA	**70%**	**3%**
Percentage of research budget spent locally and spend on SA Historically Black Academic Institutions	**50%**	**2%**
Elimination of Occupational Diseases		
Percentage of all exposure measurement results for respirable crystalline silica below the milestones	**95%**	**1%**
Percentage of all exposure measurement results for platinum dust respirable particulate below the milestone	**95%**	**1%**
Percentge of all exposure measurement results for coal dust respirable particulate below the milestone level	**95%**	**1%**
Tuberculosis incidence rate by 2024	**Below National TB incident rate**	**2%**
Percentage of employees offered HIV counselling and Testing (HCT) annually	**100%**	**2%**
Percentage of all eligible employees linked to an Anti-Retroviral Treatment (ART) programme	**100%**	**2%**
Elimination of Occupational fatalities and injuries		
Percentage annual reduction of fatalities	**20%**	**7%**
Percentage annual reduction of injuries	**20%**	**3%**
Culture Transformation Framework		
Culture Transformation Framework pillars aiming to significantly improve the culture towards Health and Safety across the mining sector, in accordance with agreed timelines	**6 Pillars implemented**	**1%**

Pillar		Intention	Responsibility
1	Integrated Mining Activities	We will base mining activities on the recognition that health, safety and production are not competing objectives. Safety and health are the outcomes of work well done.	Individual Mines Holding Companies Chamber of Mines
2	Risk Management*	We will seek to eliminate risks at their source and investigate the root causes of incidents.	Individual Mines Holding Companies Chamber of Mines Government
3	Technology	We will adopt mechanisation and technology as a key method of eliminating health and safety risks to mine employees.	Individual Mines Holding Companies Chamber of Mines Mine Health and Safety Council Government
4	Leading Practice*	We will take a common approach to identifying and facilitating the adoption of leading OHS practices and research outcomes.	Chamber of Mines Government MHSC
5	Elimination Of Discrimination*	There will be no racism, genderism and any forms of unfair discrimination.	Individual Mines Holding Companies Chamber of Mines Government
6	Bonuses And Performance Incentives*	We will ensure that ZERO HARM is prioritised ahead of production.	Holding Companies Organised Labour Chamber of Mines
7	Tripartism	Government, labour and employers will regularly engage to pursue common objectives and goals for the mining industry.	All Stakeholders
8	Regulatory Framework	We will develop clear, concise and understandable legislation that includes enforceable minimum standards.	Mine Health and Safety Council
9	Inspectorate	We will create an effective, well-resourced inspectorate that can protect people at and around mines with integrity and job pride.	Government
11	Data	We will establish a data system that allows effective and timely collection, capture, analysis, communication, dissemination and use by the industry of mine Health and Safety information	Government
12	Leadership*	That our leaders will lead by example in walking the ZERO HARM talk.	All Stakeholders

Note: * = Pillar is prioritised

Research and Development spend (5% weighting)

The last category aims to ensure that Research and Development spend remains within the borders of South Africa while also advancing previously disadvantaged institutions. The Amended Charter does so by subscribing that a rights holders must spend a minimum of 70% of their research and development budget in South Africa, while 50% of that 70% must be spent on South African Historically Black Academic Institutions. As mines have spent significant sums on research in this sphere, allocating the spend to support local research and development, especially at South African Historically Black Academic Institutions could further assist in sustainable development and growth within South Africa.



Areas of certainty and uncertainty

1. Although only six of the eleven pillars from the Culture Transformation Framework need to be implemented, no guidance is given as to which to implement first even though the Framework prioritises five of the eleven pillars.
2. It is unclear what would be defined as 100% compliance on targets such as the Environmental Management Plans, and who would determine this measure?

Strategic implications

1. The implementation of the six pillars is difficult to measure and potentially costly. Deliberation is required as to how they will be implemented to add the most value to key stakeholders and industry.
2. Holders need to choose the six pillars astutely in order to optimise the value-added relative to cost.
3. An unintended consequence of the domestic research and development spend may be either less spend or forced spend on ineffective initiatives.
4. Partnering with a Historically Black South African Institution to develop appropriate research and development must be a priority to rights holders, as does working together to drive research and development around changing mine environment and operations

Housing and Living Conditions

Much like mine and community development, adequate housing and living conditions goes to the heart of the operations and directly impacts the human dignity and well-being of mine workers.

It furthermore drives productivity and general employee contentment important for rights holders. As the Mining Charter has evolved within the broader regulatory landscape of the MRPDA, supported by the Codes of Good Practice and the Housing and Living Conditions Standard for the South African Minerals Industry, it has promoted a progressive compliance level in addressing employee living and housing conditions. The current Charter required rights holders to address three interventions. The first was to convert or upgrade hostels into family units. The second intervention, to attain an occupancy rate of one person per room. The last was to facilitate home ownership options for all mine employees in consultation with organised labour.

Since compliance of these interventions was expected by end - 2014, the draft reviewed Charter necessitated maintaining family units, and the occupancy rate of one person per unit, as well as contributing to home ownership options for interested mine employees. This approach was not taken in the amended Charter, and Housing and Living Conditions was removed as an element of the scorecard. Nevertheless, the amended Charter did stipulate the importance of adequate housing conditions. Therefore, Holders must improve the standards of housing and living conditions for mine workers as specified in the Housing and Living Conditions Standards, this includes principles such as:

Principles of Housing conditions

- Decent housing standards
- Centrality of home ownership
- Social, physical and economic integrated human settlements
- Measures to address housing demand
- Involvement of employees in the housing administrative system
- Secure tenure for the employees in housing institutions

Principles of Working conditions

- Proper health care services
- Affordable equitable and sustainable health system
- Proper nutrition requirements and standards

Rights holders must submit a Housing and Living Conditions Plan, consulting the Department of Housing, organised labour and Department of Human Settlement. This plan would need to be approved by the DMR

Cost to Shared Value Impact

The need for inclusive growth is now more important than ever. The South African economic outlook remains bleak; currently facing a recession with the mining sector dwindling and inequality remaining stark. In order to revitalise growth in the industry, mining houses need to achieve social endorsement while moving towards inclusive growth.

The elements of the Charter (old and new), at their core, endeavour to deliver shared value throughout the sector, and the economy as a whole via sectoral linkages. It attempts to improve markets - driven primarily by beneficiation, redefining productivity in the value chain, transformation in ownership, employment equity, preferential procurement, supplier enterprise development and human resource development - and enable local cluster development - improvement of housing and living conditions and mine and community development. The Charter essentially aims to drive shared value throughout a mine's ecosystem. However, to share value effectively necessitates more than mere compliance driven social-economic investment and action.

Through the periods of the first two variations of the Mining Charter, significant money has been spent by rights holders, as well as government and other stakeholders; the socio-economic impact of which is regrettably not always apparent

The cost-to-shared value impact has not, to date, been successfully measured. Doing so may enable productive dialogues between stakeholders in mining ecosystems to ensure the greatest possible shared value impact is achieved through the moneys spent (in what is at present a compliance driven, and insufficiently impactful approach). Each element in the Charter, has a cost associated with it – primarily for the rights holders – and an associated shared value impact. Thus the changes to these elements in the amended Charter have associated cost-to-shared value impact effects.

The burning issues that requires addressing is whether the changes will, in their current form, result in the requisite level of shared value impact required, and whether the costs associated with each element are justifiable in cognisance of the impact they make

The following charts provide a hypothetical viewpoint on the possible changes to the cost-to-shared value impact associated with the changes to the Charter element:

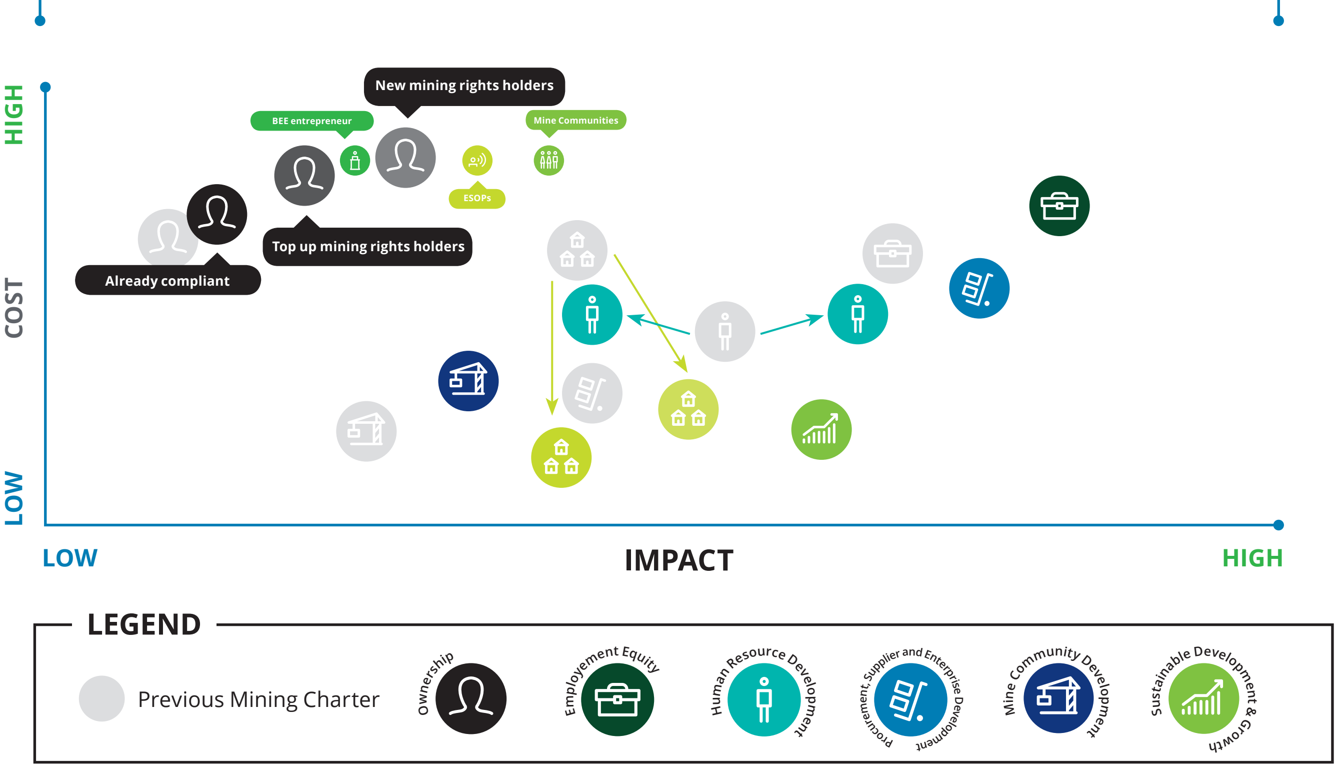
- **Ownership** remains the most polarised of the elements. The cost of capital or debt required by new mine/prospecting rights holders and existing rights holders impacted by the need to top up or re-empower are significant. However the cost and the respective impact depends on the various scenarios stemming from the amended Charter. The first scenario is that of already compliant rights holders (30% plus). These existing compliant companies will see no cost implications until such time as their license is renewed or BEE partners exit (excluding the 1% of revenue to be discussed later). The second is that of top up (26% or less to 30%) which would increase cost of capital or debt required. Moreover, it will increase impact also through transformation. The last is new Mining Rights (30% Black Ownership plus distributed by Entrepreneurs, ESOPs and Communities) which would be most expensive but would lead to significantly increased impact. However the impact for these different stakeholders will differ: ESOPs and community trusts broaden impact, whereas it is not clear that Black Entrepreneurs holdings broaden impact at all. Further questions remain around the effectiveness of having community holdings held by a trust controlled by the DMR rather than the community themselves. Furthermore, the 1% revenue royalty is another significant cost for a mining industry facing significant internal and external encumbrances with the potential to create broad social impact questionable.
- Significant strides have been made in **Housing and Living Conditions**. Although the costs associated are high, the impact made has been equally so. As targets should have been met end-2014, the element has been removed from the scorecard. The costliness of the element most probably will reduce as most of the much needed improvements have already been made. However, maintenance will remain important to realise social benefits with higher cost expected to be associated with larger impact. However, the final cost (and impact) associated with this element will be dictated by the Housing and Living Plan as consulted with the Department of Housing and Human Capital respectively, and by organised labour, and approved by the DMR.
- The **Employment Equity** element has a

direct effect on meaningful Black Person economic participation by creating employment and a skilled workforce. Nonetheless, there will be a much higher cost for rights holders underpinned by a need to rapidly transform a workforce that historically has included very few black females. Costs could stem from targeted recruitment premiums, career development programmes, space creation or parallel appointments.

- Although the cost of **Human Resource Development** has not changed, the nature of the composition has and implicitly, so has the expected cost associated. Training for employees and non-employees now only constitutes 2% of the 5% payroll potentially negatively affecting the impact mining houses make toward their own employees and importantly mine communities. However, much of the impact will be determined with the way funds are used by the MTDA and South African Historically Black Academic Institutions. Thus two scenarios arise: one in which the impact increases as the MTDA and Historically Black Academic Institutions use funds more productively; and another in which inefficiencies decrease impact. Moreover, we expect costs for mining houses to increase due to omitted training that will continue beyond the 2% payroll target.
- The cost associated with the change in targets of **Preferential Procurement and Supplier and Enterprise Development** is considerable emanating from the need to find and develop sustainable transformed suppliers. Costs will be incurred in developing and implementing supplier development programme to meet these heightened requirements. Nonetheless, spend in this regard by rights holders (and more so their combined regional spend) can have extensive positive spillovers to the domestic economy. These positive impacts vary from job creation (due to spend of local goods and services) to knowledge transfers (due to mining's international linkages), and overall socio-economic advancement of transformed suppliers.
- Even though **Mine Community Development** cost has been significant, the impact of spending has been questionable. The required focus on priority IDP projects will have the unintended consequence of limiting the breadth and width of socio-economic impact possible through mine community development initiatives. Many mine and labour sending communities continue to suffer with social challenges related to unemployment (specifically youth), and a lack of basic food and water, sanitation and infrastructure. As the element is now ring-fenced and vagueness of compliance continues, one can expect spending to increase. This would most probably also lead to additional impact, the extent of which will remain marginal, if rights holders fail to apply measures for socio-economic impact of spend.

It is in rights holders best interest to design their corporate and business unit strategies, aligning to a mandate that ensures compliance spend delivers the greatest possible shared value through their ecosystems. To do so, the approach from both private sector and government needs to change from reactive responses to proactive deliberations. However, the cost induced in the short-term and the affordability of it in current economic conditions should not be taken lightly.

CHANGES TO THE MINING CHARTER



Concluding Thoughts

This latest variation of the Mining Charter, alongside the MPRDA amendments expected later this year, offered an opportunity to improve investor perception on the regulatory and policy environment. The need for the DMR to align, save for allowances, with the dti scorecard brought further hope in this regard. While the amended Charter has brought clarity in many areas, the feeling of regulatory and policy uncertainty persists. This comes despite the public comment period, and is likely exacerbated by the belief among industry that no meaningful consultations and joint design of the amended Charter has (unlike in the past) occurred.

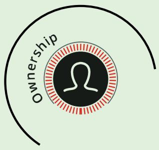
The investment required as the industry moves out of the down-cycle may define the speed at which it returns to a growth path. South Africa cannot afford to again fail to take advantage of the next up-cycle, and investor confidence in the regulatory and policy landscape is critical. However, economic growth ambition associated with the sector's aspirational growth through an up-cycle is not, alone, enough. Rights holders operate as part of a broader mining ecosystem influenced by, inter alia, the needs of its employees, communities, environment, and industry. As the drive for continued transformation escalates, a more holistic and innovative outlook is needed which embraces shared value underpinned by inclusive growth.

Unlike a compliance driven approach, shared value thinking drives innovation, productivity and both social and economic growth. It 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.

Amid the current economic environment and the uncertainty surrounding the Charter, the need for shared value thinking has never been as critical. In order for the mining industry to contribute positively and sustainably to the South African economy, all stakeholders need to engage, discuss and commit to measures supporting genuine inclusive growth.

In the midst of a struggling economy, depreciated commodity prices, and increased global competitiveness; South Africa needs to return to a state in which all stakeholders work together in ensuring the mining sector not only remains a contributor to economic growth, but furthermore leverages our mineral resources to make telling socio-economic impact for our people

Suggested next steps



1. The impact of the nullification of the once-empowered, always-empowered construct on shareholder value is significant and despite the impending court case, it is important to find a mutually beneficial agreement on this.
2. An assessment on the financial impact of the changed ownership requirement is necessary in determining the ability to fund, giving effect to new BEE deals within the transition period.

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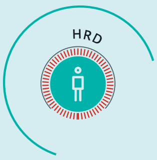
1. The changes in the measurement criteria and targets necessitate a review and redesign of existing transformation, diversity and inclusiveness strategies, aimed at accelerating transformation and specifically addressing the industry-wide shortage of black females.
2. Employment equity should be about ensuring the necessary skills base required for the industry to thrive, alongside the transformation agenda. Stakeholders should assess necessary linkages between this and the Human Resource Development element, with a view towards shared value.
3. Understand the recruiting, promotion and retention trends in the company, to identify which levers can be pulled to create most impact in meeting employment equity targets.



1. The variability of payroll makes 100% compliance extremely difficult to budget for accurately within a 12-month period. government and industry should work together on a solution that won't put rights holders at risk of non-compliance due to this variability. A solution may be to permit a deviance of 0.5% of payroll in a given year, allowing reconciliation and rectification in the following year.
2. Industry stakeholders should work together in refining the training needs to align with the growing innovation and automation in mining, as well as portable skills training.
3. Training is a critical driver of shared value, both as an enabler of transformation, and in advancing the skills and personal development of employees and community members.
4. The above, coupled with a drive toward digitisation and automation, and the changes to HRD spend requirements, requires a refreshed outlook toward training programmes and their cost-to-shared value impact.

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1. Rights holders will need to review their existing preferential procurement, supplier and enterprise development strategies. Additional emphasis should be placed on synergies between operations, and joint efforts (by operations and rights holders) in developing sustainable Black Owned suppliers (including youth and women)
2. Developing a long-term sustainable and implementable strategy for the above, that addressed a rights holders aspirations, where they will play to win, what capabilities and management systems they need will be critical in bringing not only compliance but the sharing of value associated with this.
3. 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 toward meeting compliance targets and sharing value, especially in the areas of enterprise and supplier development.

1. An impact assessment should be considered on the contributions of different rights holders, analysing individual multipliers.
2. All stakeholders should pull together to address the real concern – that of past failings in delivering a shared value through sustainable and impactful socio-economic benefit to mine and labour sending communities. Working together in solving this issue, through careful planning and effective delivery (possibly through the MTDA) may enable real change.

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1. Holders need to choose the six pillars astutely in order to optimise the value-added relative to cost.
2. Partnering with Historically Black South African Institutions to develop appropriate research and development.
3. Understanding the current compliance levels against a new scorecard element, and implementing plans to address any shortcomings.

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