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MINING AND MINERALS ALERT

IN THIS ISSUE

MINING CHARTER 3 – ULTIMATE BLAST TO ALREADY SHAKEN INDUSTRY?

The Minister of Mineral Resources this morning revealed the Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry, 2016 ("Mining Charter 3") amidst considerable uproar, with industry stakeholders expressing major concerns.

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One of the stated aims of Mining Charter 3 is to provide policy and regulatory certainty in order to seek investment for the development of the mining industry. In this, it has failed miserably. With share prices having plummeted within the hour of the Minister's briefing, one wonders whether true transformation is possible in an industry where investor confidence is rocked to this extent.

Controversially, Mining Charter 3 has been gazetted and comes into operation today. Its formulation, like previous charters, is poorly worded and often ambiguous. It introduces a number of new definitions, terms and targets, the salient points of which are as follows:

ELEMENT	SALIENT POINTS
OWNERSHIP	<ul style="list-style-type: none"> Minimum 30% BEE for all mining rights <ul style="list-style-type: none"> 8% employees 8% mine communities 14% black entrepreneurs Right-holders already at 30% not required to apportion Right-holders already at 26% must increase to 30% within 12 months but do not need to apportion 30% BEE shareholding must be held in entities or persons which are separate from the right-holder Minimum 50% plus 1 Black Person shareholding for all new prospecting rights; must include voting rights Right holder to pay 1% of annual turnover to the 30% BEE prior to any distribution to its shareholders. The solvency and liquidity provisions of the Companies Act 71, 2008 will apply A holder who claims a Historical BEE Transaction (transaction that achieved 26% prior to 2017 Charter) must top up to 30% within 12 months. Applies even where black person shareholding is no longer 26% due to either a BEE partner exiting or the contract with the BEE partner lapsing or the transfer of shares by the BEE partner to non-BEE persons

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A holder who has maintained 26% black person shareholding is required to top up its black person shareholding to 30% within 12 months of the 2017 Charter coming into effect.



OWNERSHIP	<ul style="list-style-type: none"> Any equity not vested in black persons must vest in no more than ten years and no less than 3% annually
EMPLOYMENT EQUITY	<ul style="list-style-type: none"> Board level: 50% black; 25% to be black women Executive/Top management: 50% black; 25% to be black women Senior management: 60% black; 30% to be black women Middle management: 75% black; 38% to be black women Junior management: 88% black; 44% to be black women
PROCUREMENT	<ul style="list-style-type: none"> 70% of all mining goods to be from BEE entities on a staggered basis 80% of all services to be from BEE entities 100% of mineral samples to be analysed by SA-based firms Foreign suppliers to pay 1% of their annual turnover to the Mining Transformation Development Agency Holders have a 3 year transitional period (extendable by up to another 2 years subject to DMR discretion) within which to achieve the procurement targets
BENEFICIATION	<p>A maximum offset of 11% against BEE shareholding; must meet the following criteria:</p> <ul style="list-style-type: none"> Invested in beneficiation since 2004 The beneficiation must be in line with the definition of beneficiation contained in the MPRDA The Department of Mineral Resources must approve such beneficiation 11% offset will not apply to beneficiation that started after 2004 but has since ceased or that has been terminated 11% offset can only be claimed if the beneficiation is still ongoing

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2% on essential skills development activities such as artisanal training, bursaries, literacy and numeracy skills for employees and non-employees (community members).



<p>HOUSING AND LIVING CONDITIONS</p>	<ul style="list-style-type: none"> Principles as set out in the Housing and Living Conditions Standards for Mining and Minerals Industry developed in terms of section 100(1)(a) of the MPRDA which includes: <ul style="list-style-type: none"> Decent standards of housing Centrality of home ownership Provision for social, physical and economic integrated human settlements Involvement of employees in the housing administrative system Proper nutrition requirements and standard These standards will be revised in due course
<p>HUMAN RESOURCE DEVELOPMENT</p>	<ul style="list-style-type: none"> 5% investment of the Leviable Amount on skills development, apportioned as follows: <ul style="list-style-type: none"> 2% on essential skills development activities such as artisanal training, bursaries, literacy and numeracy skills for employees and non-employees (community members) 1% towards South African Historically Black Academic Institutions 2% towards the Mining Transformation and Development Agency

There have been a few improvements since the last circulated draft charter in April 2016. These include:

- distributions are subject to liquidity and solvency requirements
- the removal of the need for each mining right to be housed in a separate SP vehicle and the requirement to be empowered in each such structure
- removal of the requirement for a Ministerial Skills Development Fund and a Social Development Fund and replaced with one fund being the Mining Transformation Agency Fund
- remove the requirements that trustees of the fund be representative of all stakeholders.

However the changes to accommodate the comments of industry on the April 2016 Charter have not been far reaching enough and this will have major implications for our clients in an already fragile economic environment, particularly as it follows the recent third credit downgrading for South Africa.

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The consequences of Mining Charter 3 may, however, only be truly evident once the likely challenges to this charter through litigation have been determined by the judiciary.

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A more in depth analysis on the content of Mining Charter 3 will follow shortly. In the interim, please do not hesitate to contact us:

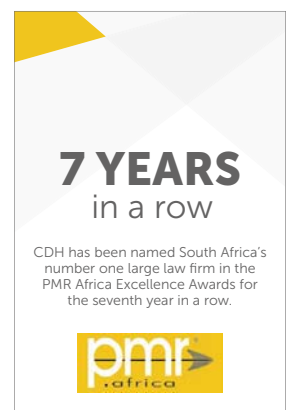
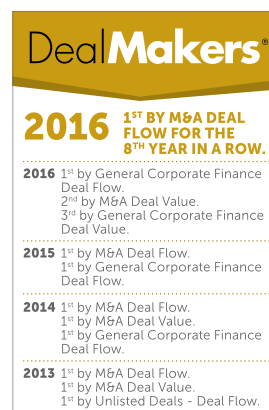
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