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# MINING AND MINERALS ALERT

## IN THIS ISSUE

### THE MINING CHARTER 2010 V THE MINING CHARTER 2017 – HOW DOES THE NEW CHARTER AFFECT YOU?

The Reviewed Broad-Based Black Economic Empowerment Charter for the South African Mining and Minerals Industry ("Mining Charter 3") came into force on 15 June 2017 and imposes huge financial, regulatory and compliance obligations on an already fragile South African mining industry.

# THE MINING CHARTER 2010 V THE MINING CHARTER 2017 – HOW DOES THE NEW CHARTER AFFECT YOU?

The Reviewed Broad-Based Black Economic Empowerment Charter for the South African Mining and Minerals Industry (“Mining Charter 3”) came into force on 15 June 2017 and imposes huge financial, regulatory and compliance obligations on an already fragile South African mining industry.

The Chamber of Mines has refused to endorse Mining Charter 3 and has indicated its intention to institute interdict proceedings to prevent Mining Charter 3 coming into force, until the courts have ruled on a declaratory order application as to the applicability of the Once Empowered Always Empowered principle and a review application as to the reasonableness of Mining Charter 3’s contents.

How does Mining Charter 3 affect your business and how does it compare to the 2010 Mining Charter? We set out below a side by side summary of the 2010 Mining Charter requirements and the requirements of Mining Charter 3, highlighting the differences between the respective charters. This note does not analyse or provide any legal opinion or commentary on the respective charters. Further, there are a number of drafting issues and anomalies that exist in Mining Charter 3. We have, however, set out the requirements below as per the current language of Mining Charter 3.

ELEMENT	PREVIOUS 2010 CHARTER REQUIREMENTS	MINING CHARTER 3 REQUIREMENTS
<p>Definitions [Note: there is a difference in the way certain terms have been defined between the 2010 Mining Charter and Mining Charter 3. We have set out the differences as drafted in the respective Charters.] [Note: there are new definitions included in Mining Charter 3 which are not provided for in the 2010 Charter.]<sup>1</sup></p>	<p>“BEE entity” means an entity of which a minimum of 25% + 1 vote of share capital is directly owned by HDSA as measured in accordance with flow through principle</p>	<p>“BEE Entrepreneur” means a Black Owned Company (defined below) or a Black Person who acquires an equity interest in a Holder through a BEE Transaction. “Black Partner” means a Black Person that holds equity in a mining company as a result of a BEE Transaction (defined below). “BEE Transaction” means the issue of equity instruments to Black Persons or a group of Black Persons based on the principles of broad-based black economic empowerment, the aim of which includes:</p> <ul style="list-style-type: none"> <li>▶ to redress the results of past or present discrimination based on the race of historically disadvantaged persons in the mining and minerals industry; and</li> <li>▶ to transform such industries so as to assist in, provide for, initiate or facilitate:               <ul style="list-style-type: none"> <li>• the ownership, participation in or the benefiting from existing or future mining, prospecting, exploration or production operations;</li> <li>• the participation in or control of management of such operations;</li> <li>• the development of management, scientific, engineering or other skills of historically disadvantaged persons;</li> <li>• the involvement or participation in the procurement chains of operations;</li> <li>• the ownership of and participation in the beneficiation of the proceeds of the operations or other upstream or downstream value chains in such industries;</li> <li>• the socio-economic development of mine communities; and</li> <li>• the socio-economic development of all historically disadvantaged Black South Africans from the proceeds or activities of such operations.</li> </ul> </li> </ul> <p>“Historical BEE Transaction” means a BEE Transaction concluded prior to 15 June 2017 that achieved a minimum of 26% Black shareholding or more. “Black Owned Company” means a juristic person having shareholding or similar interest that is controlled by 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. “BEE Compliant Manufacturing Company” in relation to the procurement element of Mining Charter 3, a company that manufactures goods and has minimum BEE level 4 of the DTI Codes and minimum 26% black ownership.</p>

<sup>1</sup> “BBBEE Act” means Broad-Based Black Economic Empowerment Act 2003 (Act No. 53 of 2003) as amended;  
 “Demographics” means the numerical characteristics of a population (e.g. population size, age, structure, sex/gender, race, etc.);  
 “Locally manufactured goods” refers to goods manufactured within the Republic of South Africa;  
 “Locally based companies” refers to companies that are domiciled within the Republic of South Africa;  
 “Ministerial Skills Development Trust Fund” refers to a trust fund established by the Minister of essential skills development activities such as artisanal, bursaries, literacy and numeracy and reflective of the proportional representation, but excluding the mandatory skills levy; and  
 “MPRDA” means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) as amended.

# THE MINING CHARTER 2010 V THE MINING CHARTER 2017 – HOW DOES THE NEW CHARTER AFFECT YOU?

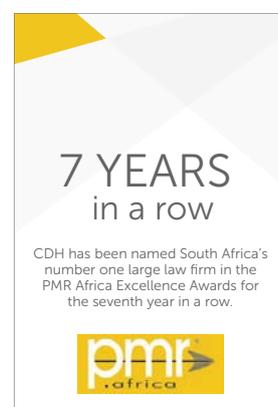
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ELEMENT	PREVIOUS 2010 CHARTER REQUIREMENTS	MINING CHARTER 3 REQUIREMENTS
	<p>"Beneficiation" means the transformation of a mineral (or a combination of minerals) to a higher value product, which can either be consumed locally or exported. The term "beneficiation" is often used interchangeably with mineral "value-addition" or "downstream beneficiation".</p>	<p>"Beneficiation" has the meaning ascribed to that term in the MPRDA.</p>
	<p>"Broad-Based Socio-Economic Empowerment (BBSEE)" means a socio-economic strategy, plan, principle, approach or act, which is aimed at:</p> <ul style="list-style-type: none"> <li>▶ redressing the results of past or present discrimination based on race, sex and disability of historically disadvantaged persons in the minerals and petroleum industry, related industries and in the value chain of such industries; and</li> <li>▶ transforming such industries so as to assist in, provide for, initiate, facilitate or benefit from the: <ul style="list-style-type: none"> <li>• Ownership participation in existing or future mining, prospecting, exploration and beneficiation operations</li> <li>• Participation in or control of management of such operations;</li> <li>• Development of management, scientific, engineering or other skills of HDSA's;</li> <li>• Involvement of or participation in the procurement chains of operations; and</li> <li>• Integrated socio-economic development for mine workers, host communities, major labour sending areas and areas that due to unintended consequences of mining are becoming ghost towns by mobilising all stakeholder resources.</li> </ul> </li> </ul>	<p>"Meaningful Economic Participation" includes, <i>inter alia</i>, the following key attributes:</p> <ul style="list-style-type: none"> <li>▶ BEE Transactions shall be concluded with clearly identifiable partners in the form of BEE Entrepreneurs, Mine Communities and workers;</li> <li>▶ A percentage of Effective Ownership must accrue to partners who are Black Persons;</li> <li>▶ Taking into account the provisions of the Companies Act, some of the distributions by mining companies should flow to the Black Person partners throughout the term of the investment the structure of the BEE Transaction financing should be in a manner where a percentage of the cash -flow is used to service the funding of the structure;</li> <li>▶ Accordingly, BEE Partners are enabled to leverage equity henceforth in proportion to vested interest over the life of the BEE Transaction in order to facilitate sustainable growth of Black Person partners; and</li> <li>▶ BEE Partners shall have full shareholder rights such as being entitled to full participation at annual general meetings, shareholders meetings and exercising of voting rights in all aspects at shareholder's meetings.</li> </ul> <p>[Also see definition of "BEE Transaction" above.]</p>
	<p>"Effective ownership" means the meaningful participation of HDSAs in the ownership, voting rights, economic interest and management control of mining entities.</p>	<p>"Effective ownership" means the meaningful participation of Black Persons in the net value ownership, voting rights, economic interest and/or management control of mining entities.</p>
	<p>"Enterprise development" means monetary and non-monetary support for existing or fostering of new HDSA companies in the mining sector of the economy, with the objective of contributing to their development, sustainability as well as financial and operational independence.</p>	<p>Definition of "Enterprise development" not provided for in Mining Charter 3.</p>

# THE MINING CHARTER 2010 V THE MINING CHARTER 2017 – HOW DOES THE NEW CHARTER AFFECT YOU?

CONTINUED

ELEMENT	PREVIOUS 2010 CHARTER REQUIREMENTS	MINING CHARTER 3 REQUIREMENTS
	<p>"Historically Disadvantaged South Africans ("HDSA)" refers to South African citizens, category of persons or community, disadvantaged by unfair discrimination before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) came into operation which should be representative of the demographics of the country.</p>	<p>"Black people" is a generic term which means Africans, Coloureds and Indians:</p> <ul style="list-style-type: none"> <li>▶ who are citizens of the Republic of South Africa by birth or descent;</li> <li>▶ who became citizens of the Republic of South Africa by naturalisation:                             <ul style="list-style-type: none"> <li>• before 27 April 1994; or</li> <li>• on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date;</li> </ul> </li> <li>▶ a juristic person which is managed and controlled by person/s contemplated above and the person/s collectively or as a group own and control all issued share capital or members' interest, and are able to control the majority of the members' vote.</li> </ul>
	<p>"Non-discretionary procurement expenditure" means expenditure that cannot be influenced by a mining company, such as procurement from the public sector and public enterprises.</p>	<p>Definition of "Non-discretionary procurement expenditure" not provided for in Mining Charter 3.</p>
	<p>"Shareholder" shall mean a person who is entitled to exercise any voting rights in relation to a company, irrespective of the form, title or nature of the securities to which those voting rights are attached.</p>	<p>Definition of "Shareholder" not provided for in Mining Charter 3; however, refer to definitions of "BEE Partner" and "BEE Entrepreneur" above.</p>
	<p>"Social Fund" refers to a trust fund that provides financing for investments targeted at meeting the needs of poor and vulnerable communities as informed by commitments made by companies in terms of their social and labour plans.</p>	<p>Definition of "Social Fund" not provided for in Mining Charter 3."</p>
	<p>"Sustainable development" means the integration of social, economic and environmental factors into planning, implementation and decision-making to ensure that the mineral and petroleum resources development serves present and future generations.</p>	<p>Definition of "Sustainable development" not provided for in Mining Charter 3, but specific provisions regarding sustainable development have been included (see below).</p>



# THE MINING CHARTER 2010 V THE MINING CHARTER 2017 – HOW DOES THE NEW CHARTER AFFECT YOU?

CONTINUED

ELEMENT	PREVIOUS 2010 CHARTER REQUIREMENTS	MINING CHARTER 3 REQUIREMENTS
Ownership	<ul style="list-style-type: none"> <li>▶ Must achieve minimum target of 26% ownership by 2014.</li> <li>▶ Off-setting permissible against the value of beneficiation.</li> <li>▶ Continuing consequences of all previous deals concluded prior to the date the MPRDA took effect would be included in calculating offsets/credits (measured by attributable units of production).</li> </ul>	<p><u> Holders of New Prospecting Rights and/or Mining Rights (Although not defined, we assume that these are rights granted after 15 June 2017)</u></p> <ul style="list-style-type: none"> <li>▶ a Holder of a new prospecting right must have a minimum of 50% + 1 Black Person shareholding for each prospecting right or in the company which holds the prospecting right (which shareholding must include voting rights);</li> <li>▶ a Holder of a new mining right must have a minimum of 30% Black Person shareholding for each mining right or in the company which holds the mining right (which shareholding must include economic interest plus a corresponding percentage of voting rights) and which must be distributed in the following manner:               <ul style="list-style-type: none"> <li>• a minimum of 8% of the total issued shares of the Holder must be issued to ESOPs or any similar employee scheme structure;</li> <li>• a minimum of 8% of the total issued shares of the Holder must be issued to Mine Communities<sup>2</sup> in the form of a community trust, which trust must be created and managed by the Mining Transformation and Development Agency, from a date to be published by the Minister; and</li> <li>• a minimum of 14% of the total issued shares of the Holder must be issued to BEE Entrepreneurs, (collectively "Minimum BEE Allocations").</li> </ul> </li> <li>▶ Holder must ensure that if it issues new shares, the Minimum BEE Allocations are not reduced.</li> <li>▶ Any portion of the Minimum BEE Allocations that have not yet vested must vest within 10 years and by no less than 3% annually of the total issued share capital of the Holder, proportionate to the respective non-vested shareholding of the employees, Mine Communities and BEE Entrepreneurs. Such vesting to be paid from proceeds of dividends received by Black Person shareholders and if such dividends are insufficient to discharge the amount required for full vesting, the Holder or vendor of the Black Person shares shall write off the balance owing.</li> <li>▶ Prior to and over and above any distributions to its shareholders, a Holder of a new mining right must pay a minimum of 1% of its annual turnover in a financial year to Black Person shareholders, subject only to the solvency and liquidity test (as contemplated in the Companies Act) of the Holder.</li> <li>▶ BEE Entrepreneurs are allowed to dilute a maximum of 49% of their shareholding in the Holder, as long as BEE Entrepreneur utilises 100% of the proceeds from the dilution to develop another asset.</li> <li>▶ 30% BEE stake must be managed by way of an empowering company or companies (SPV/s) separate from the Holder, and the Black Persons holding such stakes shall actively control their equity interests in the empowering company directly.</li> <li>▶ Only off-setting permissible under the ownership element is against the value of Beneficiation as per section 26 of the MPRDA. If approved by the DMR, such off-setting shall account for a maximum of 11% against the ownership target.</li> </ul> <p><u> Holders of Existing Prospecting Rights and/or Mining Rights</u></p> <ul style="list-style-type: none"> <li>▶ Historical BEE Transactions shall be recognised for the reporting period ending on 15 June 2017. The recognition of Historical BEE Transactions in this respect shall also apply to an existing Holder whose BEE Partner/s:               <ul style="list-style-type: none"> <li>• have exited the BEE Historical Transaction; or</li> <li>• the contract between the Holder and the BEE Partner/s has lapsed; or</li> <li>• the previous BEE Partner/s have transferred shares to a person/s other than a Black Person.</li> </ul> </li> <li>▶ Historical deals concluded on the basis of units of production, share asset deals and all BEE deals concluded for purposes of granting of a new order mining right (regardless of whether such deals were concluded at company level, asset level or cover all operations) will be recognised as Historical BEE Transactions.</li> <li>▶ Transactions that did not achieve a minimum of 26% empowerment by 15 June 2017 will not be recognised as Historical BEE Transactions.</li> <li>▶ If a Holder claims recognition of a Historical BEE Transaction and/or if an existing Holder has maintained a minimum of 26% Black Person shareholding after 15 June 2017, it is required to Top Up its Black Person shareholding (at the Holder level) to a minimum of 30% Black Person shareholding by no later than 14 June 2018. Such Top Up does not need to comply with the proportions of a new Minimum BEE Allocations. Further, by no later than 14 June 2018, a Holder must ensure that it's Black Partner/s directly and actively control their share of equity interest in the Holder.</li> <li>▶ Any required Top Up in this respect must be effected by proportionately reducing the shares held by remaining shareholders in the Holder who are not Black People, and proportionally transferring such shares to the Holder's existing BEE Partner/s.</li> <li>▶ Existing Holders who have acquired and maintained in excess of 30% Black Person shareholding will be allowed to maintain their existing BEE structures up until their BEE Partner/s exit or until their prospecting and/or mining rights are renewed. Further, by no later than 14 June 2018, a Holder must ensure that it's Black Partner/s directly and actively control their share of equity interest in the Holder.</li> <li>▶ After 15 June 2017, no Historical BEE Transactions will be recognised or apply to any new applications for a mining or prospecting right, or any applications for the renewal of such rights, or to applications in terms of section 11 of the MPRDA affected by such recognition.</li> </ul>

<sup>2</sup> Refers to a community where mining takes place, major Labour Sending Areas, as well as adjacent communities with a local municipality, metropolitan municipality and/or district municipality.

# THE MINING CHARTER 2010 V THE MINING CHARTER 2017 – HOW DOES THE NEW CHARTER AFFECT YOU?

## CONTINUED

ELEMENT	PREVIOUS 2010 CHARTER REQUIREMENTS	MINING CHARTER 3 REQUIREMENTS
Sale of South African Mining Assets		A Holder who sells its mining assets must give Black Owned Companies a preferential option to purchase such mining assets.
Procurement, Supplier and Enterprise Development	<ul style="list-style-type: none"> <li>▶ Procure minimum 40% of capital goods from BEE entities by 2014.</li> <li>▶ Multinational suppliers must contribute 0.5% of annual income generated from local mining companies to a Social Development Fund from 2010.</li> <li>▶ Procure 70% of services and 50% of consumer goods from BEE entities by 2014.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Holders must spend a minimum of 70% of total mining goods procurement on South African Manufactured Goods<sup>3</sup>, apportioned in the following manner:                             <ul style="list-style-type: none"> <li>• a minimum of 21% of the total spend to be set aside for sourcing South African Manufactured Goods from Black Owned Companies;</li> <li>• a minimum of 5% of the total spend to be set aside for sourcing South African Manufactured Goods from Black Owned Companies with a minimum 50% + 1 vote female Black Person owned and controlled and/or 50% + 1 vote Youth owned and controlled; and</li> <li>• a minimum of 44% of the total spend to be set aside for sourcing South African Manufactured Goods from BEE Compliant Manufacturing Companies.</li> </ul> </li> <li>▶ Holders must procure a minimum of 80% of services from South African Based Companies<sup>4</sup> apportioned in the following manner:                             <ul style="list-style-type: none"> <li>• a minimum of 65% of the total spent on services to be sourced from Black Owned Companies;</li> <li>• a minimum of 10% of the total spent on services to be sourced from Black Owned Companies with a minimum 50% + 1 vote female Black Person owned and controlled companies; and</li> <li>• a minimum of 5% of the total spent on services to be sourced from Black Owned Companies with a minimum 50% + 1 vote Youth owned and controlled companies.</li> </ul> </li> <li>▶ Holders must only utilise South African Based Companies for the analysis of 100% of all mineral samples across the mining value chain.</li> <li>▶ Holders may not conduct sample analysis using foreign based facilities and/or companies without the prior written consent of the Minister.</li> <li>▶ When submitting annual Mining Charter Reports to the DMR, Holders must provide proof of local content for goods and services in the form of a South African Bureau of Standards certification.</li> <li>▶ A Foreign Supplier<sup>5</sup> must contribute a minimum of 1% of the annual turnover generated from South African mining companies to the Mining Transformation and Development Agency.</li> <li>▶ Holders must within 3 years from 15 June 2017 achieve the procurement targets (which may be extended by a further 2 years to give the Holder sufficient time to develop the 50% + 1 vote for Black Owned Company suppliers). Procurement targets within the 3-year transitional period shall be as follows:                             <ul style="list-style-type: none"> <li>• for the first year, 15% of the 70%;</li> <li>• for the second year, 45% of the 70%; and</li> <li>• for the third year, the full 70%.</li> </ul> </li> </ul>
Beneficiation	<ul style="list-style-type: none"> <li>▶ Facilitate beneficiation 11% offset allowable against a portion of HDSA ownership.</li> </ul>	<ul style="list-style-type: none"> <li>▶ A Holder may off-set a maximum of 11% Black Persons ownership by financially investing in and contributing to Beneficiation over and above the provisions of section 26 of the MPRDA, if the following criteria are met:                             <ul style="list-style-type: none"> <li>• the Holder must have invested in Beneficiation since 2004;</li> <li>• the Holders must have complied with the requirements contained in section 26 of the MPRDA and the activities considered to be Beneficiation are in line with the baseline contemplated in the MPRDA; and</li> <li>• the DMR must approve such Beneficiation.</li> </ul> </li> <li>▶ The 11% off-setting will not apply to any Beneficiation that started after 2004 but has since ceased or been terminated.</li> <li>▶ The 11% off-setting can only be claimed where the Holder's contribution to Beneficiation is still ongoing.</li> </ul>

<sup>3</sup> Means goods where at least 60% of the value added during the assembly and/or manufacturing of the product is realised within South Africa.

<sup>4</sup> Companies which are incorporated in and hold offices in South Africa.

<sup>5</sup> A Foreign Supplier is a company registered and controlled outside South Africa, which supplies the South African mining industry with mining goods and services, and which does not have at least a level 4 DTI Codes BEE status and 25% + 1 vote black ownership.

# THE MINING CHARTER 2010 V THE MINING CHARTER 2017 – HOW DOES THE NEW CHARTER AFFECT YOU?

## CONTINUED

ELEMENT	PREVIOUS 2010 CHARTER REQUIREMENTS	MINING CHARTER 3 REQUIREMENTS
Employment Equity	<p>Must achieve a minimum of 40% HDSA<sup>6</sup> demographic representation by 2014 at:</p> <ul style="list-style-type: none"> <li>▶ executive management (board) level;</li> <li>▶ senior management (EXCO) level;</li> <li>▶ core and critical skills;</li> <li>▶ middle management level;</li> <li>▶ junior management level; and</li> <li>▶ fast track existing talent pool.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Minimum of 50% Black Persons with exercisable voting rights and proportionally representative at board level (25% of which must be female Black Persons).</li> <li>▶ Minimum of 50% Black Persons at the executive directors' level (25% of which must be female Black Persons).</li> <li>▶ Minimum of 60% Black Persons in senior management (30% of which must be female Black Persons).</li> <li>▶ Minimum of 75% of Black Persons in middle management (38% of which must be female Black Persons).</li> <li>▶ Minimum of 88% Black employees in junior management (44% of which must be female Black Persons).</li> <li>▶ Minimum of 3% of the percentage of employees with disabilities, reflective of national and/or provincial Demographics.</li> <li>▶ Minimum of 60% Black Persons represented in the Core and Critical skills. To achieve this, a Holder must fast track existing pools in line with an approved SLP which must be reflective of the Demographics of South Africa.</li> <li>▶ Holder must develop and implement a career progression plan consistent with the Demographics of South Africa.</li> </ul>
Human Resource Development	<p>Invest a percentage of annual payroll spent in essential skills development activities reflective of demographic (excluding mandatory skills levy), including support for South African based research and development initiatives intended to develop mining, exploration, processing etc:</p> <ul style="list-style-type: none"> <li>▶ 3% for 2010;</li> <li>▶ 3.5% for 2011;</li> <li>▶ 4% for 2012;</li> <li>▶ 4.5% for 2013; and</li> <li>▶ 4% for 2014.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Holders must invest 5% of Leviable<sup>7</sup> amount on essential skills development, invested in the following manner: <ul style="list-style-type: none"> <li>• 2% on essential skills development such as artisanal training, bursaries, literacy and numeracy skills to employees and non-employees (community members) and reflective of national and/or provincial demographics and must be biased towards low level employees;</li> <li>• 1% towards South African Historically Black Academic Institutions<sup>8</sup> for research and development initiatives intended to develop solutions in exploration, mining, processing, technology efficiency, Beneficiation, environmental conservation and rehabilitation. A Holder may apply to the Minister for an exemption from this 1% if the Holder has partnered with and supported a State owned entity in relation to mining related research and development; and</li> <li>• 2% towards the Mining Transformation and Development Agency.</li> </ul> </li> </ul>
Mine Community Development	<ul style="list-style-type: none"> <li>▶ Meaningful consultation to develop/ implement projects consistent with international best practice.</li> <li>▶ Conduct assessments to determine community requirements in collaboration with communities in line with integrated development plans.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Holders must meaningfully contribute towards the development of Mine Communities (with a bias towards communities where mining occurs). Development projects should include infrastructure projects, income generating projects and enterprise development.</li> <li>▶ A Holder's contribution towards a Mine Community/development must be proportionate to the size of the investment, and must be in terms of its SLP which is to be published in English and the language/s commonly used in the Mine Community.</li> <li>▶ All project management and consultation fees incurred for purposes of a Mine Community development project must be capped at 8% of the total budget.</li> <li>▶ Holders may collaborate on projects where more than one right Holder operates in the same area, informed by their SLP's, which are aligned to the district, metropolitan and local municipality's Integrated Development Plans for maximum socio-economic development impact.</li> </ul>

<sup>6</sup> In Act No 200 of 1993, it became came Historically Disadvantaged South Africans, referring to South African citizens, category of persons or community, disadvantaged by unfair discrimination before the Constitution of the Republic of South Africa, came into operation, which would be representative of the demographics of the country.

<sup>7</sup> Has the same meaning as in the Skills Development Levies Act No. 9 of 1999.

<sup>8</sup> Means institutions of higher education which were historically solely for Black Persons.

# THE MINING CHARTER 2010 V THE MINING CHARTER 2017 – HOW DOES THE NEW CHARTER AFFECT YOU?

## CONTINUED

ELEMENT	PREVIOUS 2010 CHARTER REQUIREMENTS	MINING CHARTER 3 REQUIREMENTS
Housing and Living Conditions	<ul style="list-style-type: none"> <li>▶ Convert or upgrade hostels into family units by 2014.</li> <li>▶ Attain an occupancy rate of one person per room by 2014.</li> <li>▶ Facilitate home ownership options for all mine employees in consultation with organised labour by 2014.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Holders must improve the standards of housing and living conditions for mine workers as stipulated in the Housing and Living Conditions Standards, developed in terms of section 100(1)(a) of the MPRDA, including:               <ul style="list-style-type: none"> <li>• decent standards of housing;</li> <li>• centrality of home ownership;</li> <li>• provision for social, physical and economic integrated human settlements;</li> <li>• measures to address housing demand;</li> <li>• involvement of employees in the housing administration system;</li> <li>• secure tenure for the employees in housing institutions;</li> <li>• proper health care services;</li> <li>• affordable, equitable and sustainable health system; and</li> <li>• proper nutrition requirements and standards.</li> </ul> </li> <li>▶ Holders must submit housing and living conditions plans to be approved by the DMR after consultation with the Department of Housing, organised labour and the Department of Human Settlements.</li> <li>▶ Holders must ensure that they maintain single sex units and family units and comply with any other agreement that has been reached with workers pending the finalisation of the Reviewed Housing and Living Conditions Standards.</li> </ul>
Sustainable Development and Growth of the Mining Industry	<ul style="list-style-type: none"> <li>▶ Improvement of the industry's environmental management.</li> <li>▶ Improvement of the industry's health and safety performance.</li> <li>▶ Undertaking to enhance the capacity and skills in research and development facilities.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Holders must implement elements of sustainable development commitments included in the "Stakeholders declaration on strategy for the sustainable growth and meaningful transformation of South Africa's Mining Industry" of 30 June 2010, and in compliance with all relevant legislation.</li> <li>▶ Holders must comply with and implement environmental management systems that focus on the continuous improvement to review, prevent and mitigate adverse environmental impacts.</li> <li>▶ Holders must commit themselves to the goal of zero harm, driven by the implementation of the 2016 Occupational Health and Safety Summit Milestones. Holders must comply with the following milestones:               <ul style="list-style-type: none"> <li>• elimination of occupational lung diseases in accordance with agreed timelines and taking into account occupational exposure limits;</li> <li>• elimination of noise-induced hearing loss in accordance with agreed timelines and taking into account occupational exposure limits;</li> <li>• prevention and management of tuberculosis and HIV/AIDS in accordance with agreed timelines;</li> <li>• elimination of fatalities and injuries in accordance with agreed timelines; and</li> <li>• implementing the approved Cultural Transformation Framework pillars, in accordance with the agreed timelines.</li> </ul> </li> <li>▶ Holders must put a management system in place that is focused on continuous improvement of all aspects of operations that have an impact on the health and safety of employees, contractors and communities where mining occurs.</li> <li>▶ Holders must provide all employees with health and safety training and require employees of contractors to undergo such training.</li> <li>▶ If Holders undertakes research and development, at least 70% of their research and development budget must be spent within South Africa (50% of which must be spent on South African Historically Black Academic Institutions).</li> </ul>
Reporting (Monitoring and Compliance/Evaluation)	<ul style="list-style-type: none"> <li>▶ Report level of compliance annually in terms of section 28(2)(c) of the MPRDA.</li> <li>▶ Balanced scorecard proposed with score linked to compliance in terms of the MPRDA.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Holders must report levels of compliance annually in terms of section 28(2)(c) of the MPRDA.</li> <li>▶ DMR shall monitor and evaluate Holder's implementation of Mining Charter 3.</li> <li>▶ The ownership, Mine Community development and human resources development elements of Mining Charter 3 are ring-fenced and require 100% compliance at all times.</li> </ul>
Applicability of Targets		<ul style="list-style-type: none"> <li>▶ All targets stipulated in Mining Charter 3 shall be applicable throughout the duration of a mining right (including prospecting right and other exploration rights) unless specified otherwise.</li> </ul>

# THE MINING CHARTER 2010 V THE MINING CHARTER 2017 – HOW DOES THE NEW CHARTER AFFECT YOU?

CONTINUED

ELEMENT	PREVIOUS 2010 CHARTER REQUIREMENTS	MINING CHARTER 3 REQUIREMENTS
Non-Compliance	<ul style="list-style-type: none"> <li>▶ Breach of the Charter results in breach of the MPRDA.</li> <li>▶ Subject to section 47 of the MPRDA.</li> </ul>	<ul style="list-style-type: none"> <li>▶ A Holder which has not complied with the ownership, Mine Community development and human resource development elements of Mining Charter 3 and which falls between levels 5 and 8 of the Scorecard shall be in breach of Mining Charter 3 and the MPRDA.</li> </ul>
Application of the Mining Charter to Licences granted under the Diamonds Act and the Precious Metals Act		<ul style="list-style-type: none"> <li>▶ The South African Diamond and Precious Metals Regulator must have regard to the requirements of Mining Charter 3, when considering applications lodged in terms of the Diamonds Act 1986 (Act 56 of 1986) and the Precious Metals Act 2005 (Act 37 of 2005) (Acts).</li> <li>▶ Ownership target for the downstream diamond and precious metals industry is a minimum of 19% in the hand of Black Persons per licence.</li> <li>▶ The Black Person shareholding must comprise of BEE Entrepreneurs and workers and must be 40% ownership of net value based upon the time based graduation factor.</li> <li>▶ Permit or licence holders in terms of the Acts must comply with all the targets set out in Mining Charter 3, subject to the following exemptions:               <ul style="list-style-type: none"> <li>• Micro Enterprises, with an estimated maximum turnover of less than R1 million, are exempt from complying with the Ownership, Human Resources Development, Procurement, Employment Equity and Mine Community Development targets;</li> <li>• Qualifying Small and Micro Enterprises, with an estimated maximum turnover of R1 million to R3.8 million, are exempt from complying with the Ownership and Mine Community Development targets; and</li> <li>• Medium and Large Entities, with an estimated maximum turnover greater than R3.8 million, are exempt from complying with the Mine Community development targets.</li> </ul> </li> <li>▶ Off-setting permissible under the ownership element against the value of Beneficiations is a maximum of 11%.</li> </ul>

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