

# MINING & MINERALS ALERT

## IN THIS ISSUE

### BREAKING NEWS

#### MINISTER REVEALS DETAILS OF FINAL MINING CHARTER 2018

In a media briefing by Minister Gwede Mantashe today, the highlights of the final version of the revised Mining Charter 2018 were announced. Minister Mantashe described the new Charter as one which represents a consensus among industry stakeholders, with compromises having been made on some of the contentious aspects of the version of the Charter published for comment in June 2018.

# MINISTER REVEALS DETAILS OF FINAL MINING CHARTER 2018

*Recognition of once empowered, always empowered will not be applicable on the renewal of the mining right and will also not transferable to a new owner in the event of a transfer of the mining right.*

*It appears that a carried interest, rather than a free carried interest, will mean that the interest will be financed by the development of the mine over time.*



In a media briefing by Minister Gwede Mantashe today, the highlights of the final version of the revised Mining Charter 2018 were announced. Minister Mantashe described the new Charter as one which represents a consensus among industry stakeholders, with compromises having been made on some of the contentious aspects of the version of the Charter published for comment in June 2018.

Importantly, in an effort to entrench regulatory certainty for investors and to provide security of tenure for investments, the principle of once empowered, always empowered will be recognised with existing mining right holders who achieved 26% BEE ownership being recognised as compliant for the duration of the mining right. This recognition will not be applicable on the renewal of the mining right and will also not be transferable to a new owner in the event of a transfer of the mining right.

A new mining right granted after the coming into effect of the Charter must have a minimum of 30% BEE shareholding, applicable for the duration of the mining right, which must be distributed as follows:

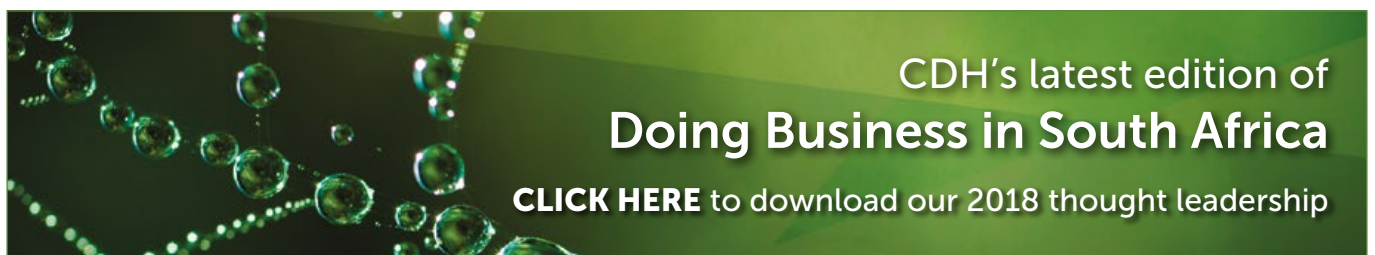
- a minimum of 5% non-transferable *carried* interest to qualifying employees;
- a minimum of 5% non-transferable *carried* interest to host communities, or a minimum 5% equity equivalent benefit; and

- a minimum of 20% effective ownership in the form of shares to a BEE entrepreneur, a minimum of 5% which must *preferably* be for women.

The equity equivalent benefit relating to communities refers to a 5% equivalent of the issued share capital, at no cost to a trust or similar vehicle set up for the benefit of host communities. The intention behind introducing this alternative is so that communities accessing the benefit of ownership will not be delayed. The host community would receive an economic benefit as *if* it was the holder of a 5% equity interest.

It appears that a *carried* interest, rather than a *free carried* interest, will mean that the interest will be financed by the development of the mine over time.

The Mining Charter, 2010 will apply to all pending applications lodged and accepted prior to the coming into effect of the Charter and, once granted, the rights holders will be required to increase their BEE shareholding to 30% within five years.



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# MINISTER REVEALS DETAILS OF FINAL MINING CHARTER 2018

CONTINUED

*The elements of ownership and mine community development are ring-fenced elements requiring 100% compliance.*



The Charter will also outline the requirements for "Junior Miners" which will now be defined as a mining right holder with a single or multiple mining rights, having a combined annual turnover of less than R150 million.

A major positive is that it appears that the trickle dividend of a minimum of 1% of EBITDA to community and employee shareholders has been excluded from the Charter.

Given the emphasis on transforming the industry with a strong focus on ownership, the Charter will reduce the offset available for beneficiation from 11% to 5%, but on the basis that existing mining right holders who qualified for the previous offset would be allowed to retain it for the duration of the right.

A mining right holder will be expected to invest a minimum 5% of the "leviable amount" envisioned in the Skills Development Levy Act (excluding the statutory skills development levy) on essential skills development including science, technology, engineering and mathematical skills, graduate training programmes and R&D initiatives. This will be a major cost to mining companies.

A mining right holder will be required to meaningfully contribute towards mine community development. A trust or similar vehicle will need to be established to oversee the implementation of the 5% equity equivalent detailed under the ownership element and should have representation from host communities and mining companies. The trust will identify community development needs and be responsible for developing a host community development programme, fund distribution, governance and organisation. Use of funds for administration costs, project management and consultation fees of the trust or similar vehicle may not exceed 8% of the total budget. Such a development programme will not substitute social and labour plan commitments.

The elements of ownership and mine community development are ring-fenced elements requiring 100% compliance.

The Charter, together with the planned withdrawal of the Mineral and Petroleum Resources Development Amendment Bill, will go a long way in providing policy certainty and boosting investor confidence.

*Giada Masina*



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