

# MINING & MINERALS ALERT

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### HOW WILL THE 2018 MINING CHARTER AFFECT YOU? THE MINING CHARTER 2010 V THE 2018 MINING CHARTER

The Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry (2018 Mining Charter) was published by Gwede Mantashe, the Minister of Mineral Resources, on 27 September 2018, and became effective on that date.

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*The 2018 Mining Charter deals only with mining rights. No mention is made of prospecting rights and therefore the requirements for such rights remain uncertain.*



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While the fact that we at last have a greater degree of certainty in regard to the policy framework governing the mining industry, it is regrettable that the concept of "Implementation Guidelines" has been introduced. It is not known what these guidelines will cover or what their legal status will be. These Implementation Guidelines are referred to only three times in the 2018 Charter – in regard to a 'Beneficiation Equity Equivalent Plan', in regard to developing Original Equipment Manufacturers and in regard to consent to use foreign-based analysis facilities.

In addition, the 2018 Mining Charter deals only with mining rights. No mention is made of prospecting rights and therefore the requirements for such rights remain uncertain.

We set out below a side by side summary of the 2010 Mining Charter requirements and the requirements of the 2018 Mining Charter, highlighting the differences between the respective charters.

Please note that this note does not analyse or provide any legal opinion or commentary in relation to the respective charters.

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
<p><b>Existing Definitions</b></p> <p>[Note: there is a difference in the way certain terms have been defined between the 2010 Charter and the 2018 Mining Charter. We have set out the differences as drafted in the respective Charters.]</p> <p>[Note: there are new definitions included in the 2018 Mining Charter which are not provided for in the 2010 Charter.]<sup>1</sup></p>	<p><b>"BEE entity"</b> 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>	<ul style="list-style-type: none"> <li>• <b>"BEE Compliant Company"</b> means a company with a minimum B-BBEE level 4 status in terms of the Department of Trade and Industry's BBEE Codes of Good Practice, and a minimum 25% + 1 vote ownership by Historically Disadvantaged Persons.</li> <li>• <b>"BEE Entrepreneur"</b> refers to a Historically Disadvantaged Person or enterprise that is at least 51% owned by Historically Disadvantaged Persons (excluding host communities and qualifying employees) with at least 51% of exercisable voting rights and 51% of economic interest.</li> <li>• <b>"BEE Shareholding"</b> refers to shares held by BEE Entrepreneur(s), Host Communities and qualifying employees.</li> <li>• <b>"Historically Disadvantaged Persons Owned and Controlled Company"</b> refers to an entity in which Historically Disadvantaged Persons hold at least 51% of exercisable voting rights and economic interest, including the Flow-Through Principle.</li> <li>• <b>"Women Owned and Controlled Company"</b> refers to an entity in which South African women hold at least 51% of exercisable voting rights and economic interest.</li> <li>• <b>"Historical BEE Transactions"</b> refers to BEE Transactions concluded prior to the coming into operation of the 2018 Mining Charter.</li> </ul>
	<p><b>"Beneficiation"</b> 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><b>"Beneficiation"</b> for purposes of the 2018 Mining Charter, beneficiation means the transformation, value addition or downstream beneficiation of a mineral or mineral product (or a combination of minerals) to a higher value product, over baselines to be determined by the Minister, which can either be consumed locally or exported.</p>

<sup>1</sup> **"BBBEE Act"** means Broad-Based Black Economic Empowerment Act 2003 (Act No. 53 of 2003) as amended;  
**"Core and Critical Skills"** refers to science, technology, engineering and mathematical skills across organisational levels in both production and operations of a mining company.  
**"Demographics"** means the numerical characteristics of a national or provincial population (eg population size, age, structure, sex/gender, race, etc.);  
**"MPRDA"** means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) as amended.

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
	<p><b>“Broad-Based Socio-Economic Empowerment (BBSEE)”</b> 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><b>“Meaningful Economic Participation”</b> refers to the following key attributes:</p> <ul style="list-style-type: none"> <li>• Clearly identifiable partners in the form of Historically Disadvantaged Persons, including women; as well as Qualifying Employees and Host Communities;</li> <li>• A percentage of unencumbered net value based upon the time graduation factor which has accrued to BEE Shareholders;</li> <li>• A percentage of dividends declared, or other monetary distributions or trickle dividends paid to BEE Shareholders, subject to the provisions of relevant legislation;</li> <li>• BEE Shareholders with vested interest that has vested can leverage equity in proportion to such vested interest over the life of the transaction to reinvest in other mining projects; and</li> <li>• BEE Shareholders with full shareholder rights entitling them to full participation at annual general meetings, exercising of voting rights in all aspects, including but not limited to, trading and marketing of the commodity herein affected, and anything incidental thereto regardless of the legal form of the instrument used.</li> </ul>
	<p><b>“Effective ownership”</b> means the meaningful participation of HDSAs in the ownership, voting rights, economic interest and management control of mining entities.</p>	<p><b>“Effective ownership”</b> means the meaningful participation of Historically Disadvantaged Persons in:</p> <ul style="list-style-type: none"> <li>• the unencumbered net value ownership;</li> <li>• voting rights attaching to an equity instrument owned by or held for a participant measured using the Flow-Through Principle or Control Principle;</li> <li>• economic interest representing a return on ownership of the entity similar in nature to a dividend right, measured using the Flow-Through Principle; and</li> <li>• management control of mining operations.</li> </ul>

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
	<p><b>"Historically Disadvantaged South Africans ("HDSA")"</b> 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><b>"Historically Disadvantaged Persons ("HDP")"</b> refers to Historically Disadvantaged Persons as defined in the Mineral and Petroleum Resources Development Act, 2002 ("MPRDA").</p>
	<p><b>"Non-discretionary procurement expenditure"</b> means expenditure that cannot be influenced by a mining company, such as procurement from the public sector and public enterprises.</p>	<p><b>"Non-discretionary expenditure"</b> means total procurement budget excluding procurement from rail, utilities (electricity, water, rates and taxes) and fuel.</p>
	<p><b>"Shareholder"</b> 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 <b>"Shareholder"</b> not provided for in the 2018 Mining Charter; however, refer to definitions of <b>"BEE Shareholding"</b>, <b>"HDP"</b> and <b>"BEE Entrepreneur"</b> above.</p>
	<p><b>"Social Fund"</b> 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 <b>"Social Fund"</b> not provided for in the 2018 Mining Charter.</p>
	<p><b>"Sustainable development"</b> 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 <b>"Sustainable development"</b> not provided for in the 2018 Mining Charter, but specific provisions regarding sustainable development have been included (see below).</p>

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
	<p><b>"Community"</b> means a coherent, social group of persons with interest of rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law.</p> <p><b>"Mine Community"</b> refers to communities where mining takes place and labour sending areas.</p>	<p><b>"Host Community"</b> refers to a community within a local or metropolitan municipality adjacent to the mining area, as defined in the MPRDA.</p>
	<p>Definition of <b>"Carried Interest"</b> not provided for in the 2010 Mining Charter.</p>	<p><b>"Carried Interest"</b> means shares issued to Qualifying Employees and Host Communities at no cost to them and free of any encumbrance. The cost for the carried interest shall be recovered by a right holder from development of the asset.</p>
	<p>Definition of <b>"Economic Interest"</b> not provided for in the 2010 Mining Charter.</p>	<p><b>"Economic Interest"</b> means the legal entitlement of BEE Shareholders to dividends, capital gains and other economic rights of a shareholder.</p>
	<p>Definition of <b>"Equity Equivalent Benefit"</b> not provided for in the 2010 Mining Charter.</p>	<p><b>"Equity Equivalent Benefit"</b> refers to a percentage equivalent to the issued share capital of a mining right holder, at no cost to a trust or similar vehicle set up for the benefit of Host Communities.</p>
	<p>Definition of <b>"Qualifying Employees"</b> not provided for in the 2010 Mining Charter.</p>	<p><b>"Qualifying Employees"</b> for the purposes of the ownership element, refers to employees of a mining company, excluding employees who already hold shares in the same company as a condition of their employment contract.</p>

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
<b>Objects</b>	<ul style="list-style-type: none"> <li>• To promote equitable access to the nation’s mineral resources to all the people of South Africa;</li> <li>• To substantially and meaningfully expand opportunities for HDSA to enter the mining and minerals industry and to benefit from the exploitation for the nation’s mineral resources;</li> <li>• To utilise and expand the existing skills base for the empowerment of HDSA and to serve the community;</li> <li>• To promote employment and advance the social and economic welfare of mine communities and major labour sending areas;</li> <li>• To promote beneficiation of South Africa’s mineral commodities; and</li> <li>• Promote sustainable development and growth of the mining industry.</li> </ul>	<ul style="list-style-type: none"> <li>• The affirmation of the internationally recognised principle of State sovereignty; its right to exercise authority and make laws within its boundaries; over the life of its country – including all its mineral wealth;</li> <li>• To deracialise ownership patterns in the mining industry through redress of past imbalances and injustices;</li> <li>• To substantially and meaningfully expand opportunities of Historically Disadvantaged Persons to enter the mining and minerals industry and to benefit from the exploitation of the nation’s mineral resources;</li> <li>• To utilise and expand the existing skills base for the empowerment of Historically Disadvantaged Persons;</li> <li>• To advance employment and diversify the workforce to achieve competitiveness and productivity of the industry;</li> <li>• To enhance the social and economic welfare of South Africans so as to achieve social cohesion;</li> <li>• To promote sustainable growth and competitiveness of the mining industry;</li> <li>• To enable growth and development of the local mining inputs sector by leveraging the procurement spend of the mining industry; and</li> <li>• To promote beneficiation of South Africa’s mineral commodities.</li> </ul>

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
<p><b>Ownership</b></p>	<ul style="list-style-type: none"> <li>• Must achieve minimum target of 26% ownership by 2014.</li> <li>• Off-setting permissible is 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><b>Existing Right Holders</b></p> <ul style="list-style-type: none"> <li>• Existing right holders who have achieved a minimum of 26% BEE Shareholding as at the date on which the 2018 Mining Charter is published (27 September 2018); and (b) at any stage during the existence of the mining right achieved a minimum of 26% BEE shareholding and whose BEE partner/s have since exited the BEE transaction prior to the commencement of the 2018 Mining Charter, shall be recognised as compliant for the duration of a mining right, and such recognition will not be applicable upon renewal. However, such holders will have a period of 5 years from the date of publication of the 2018 Mining Charter (27 September 2018) to supplement their BEE shareholding to 30%.</li> <li>• The recognition of continuing consequences includes historical transactions concluded at holding company level, mining right level, on units of production, shares or assets including all Historical BEE Transactions which formed the basis upon which new order mining rights were granted. However, the recognition of continuing consequences shall not be transferable and will not apply to (a) new applications for a mining right, or to (b) renewals of existing mining rights, and will lapse upon the transfer of a mining right or any part thereof.</li> <li>• It is worth noting that the 2018 Mining Charter does not specify how existing right holders who failed to achieve a minimum 26% BEE shareholding prior to the date on which the 2018 Mining Charter was published will be dealt with.</li> </ul>



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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
		<p><b>New Mining Rights</b></p> <ul style="list-style-type: none"> <li>• An entity applying for or holding a new mining right after the date on which the 2018 Mining Charter is published, must have a minimum of 30% BEE Shareholding for the duration of the mining right (which shall include economic interest plus the corresponding percentage of voting rights per mining right or in the mining company which holds the mining right).</li> <li>• The 30% BEE shareholding must be distributed as to –                         <ul style="list-style-type: none"> <li>- a minimum of 5% non-transferable Carried Interest (as defined above) to Qualifying Employees;</li> <li>- a minimum of 5% non-transferable Carried Interest to Host Communities, or a minimum 5% Equity Equivalent Benefit (as defined above) to Host Communities from the effective date of the mining right; and</li> <li>- a minimum of 20% Effective Ownership (as defined above) in the form of shares to a BEE Entrepreneur, a minimum of 5% of which must preferably be for women. A mining right holder of the minimum 20% shares referred to herein shall not be diluted below 51% ownership and control by BEE Entrepreneurs.</li> </ul> </li> <li>• Mining Right holders must ensure that any reduction in shareholding of existing shareholders through the issue of new shares shall not reduce Qualifying Employees Carried Interest and Host Communities Carried Interest or Equity Equivalent Benefit.</li> <li>• Although BEE Shareholding may be concluded at either the holding company level, mining right level, or on units of production, shares or assets, should BEE Shareholding be concluded at any level other than at the mining right level, the Flow-Through Principle will apply.</li> </ul>

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
		<ul style="list-style-type: none"> <li>• The Equity Equivalent Benefit for Host Communities will be administered as follows:                             <ul style="list-style-type: none"> <li>- 5% equivalent of the issued share capital of the mining right holder, at no cost to a trust or similar vehicle set up for the benefit of Host Communities;</li> <li>- The trust or similar vehicle shall be established and administered in terms of the applicable legislation for the duration of the mining right;</li> <li>- The trust or similar vehicle shall comprise of representation from Host Communities (including community-based organisations; traditional authorities, etc) and mining companies;</li> <li>- Mining Right Holders must identify Host Community development needs, in consultation with relevant municipalities, Host Communities, traditional authorities and affected stakeholders;</li> <li>- The trust or similar vehicle shall be responsible for, amongst other things, Host Community development programmes, distribution of funds, as well as the governance of the Equity Equivalent Benefit;</li> <li>- All administration costs, project management and consultation fees of the trust or similar vehicle shall not exceed 8% of the total budget of the Equity Equivalent Benefit;</li> <li>- An approved Host Community development programme must be published in at least two languages commonly used in the Host Community; and</li> <li>- An approved Host Community development programme contemplated in this section of the 2018 Mining Charter shall not replace any Social and Labour Plan commitments placed on mining right holders in terms of section 23 of the MPRDA.</li> </ul> </li> <li>• The 2018 Mining Charter also sets deadlines by which the BEE Shareholding must vest for new rights, namely a minimum of 50% must vest within two thirds of the duration of a mining right; and the prescribed minimum 30% target shall apply for the duration of a mining right.</li> </ul> <p><b>Pending Applications</b></p> <p>A pending application lodged and accepted prior to the publication of the 2018 Mining Charter shall be processed in terms of the requirements of the 2010 Mining Charter with a minimum of 26% BEE Shareholding, and the holder will be required to increase the BEE Shareholding to a minimum of 30% within 5 years from the effective date of the mining right.</p>

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
		<p><b>Disposal of BEE Shareholding in respect of Existing and New Mining Rights</b></p> <ul style="list-style-type: none"> <li>• In circumstances where a BEE Shareholding or part thereof is disposed of below the prescribed minimum shareholding, that mining right holder's empowerment credentials will be recognised for the duration of the mining right, provided that – <ul style="list-style-type: none"> <li>- At the time of the disposal, the mining right holder is compliant with the requirements of the 2018 Mining Charter;</li> <li>- The BEE Shareholder must have held the empowerment shares for a minimum period equivalent to a third of the duration of the mining right, and an unencumbered Net Value<sup>2</sup> must have been realised;</li> <li>- The recognition of empowerment credentials shall only be applicable to measured Effective Ownership (as defined above) which has vested to BEE Shareholding; and</li> <li>- An agreement detailing exit mechanisms and the BEE shareholders' remaining financial obligations, which agreement constitutes a contract between the mining right holder and the BEE shareholders is submitted to the DMR.</li> </ul> </li> <li>• Mining right holders will not be able to claim recognition for the consequences of previous deals against (a) future mining rights or (b) mining right renewal applications.</li> </ul>

<sup>2</sup> The term "Net Value" is defined in the 2018 Mining Charter as "the value of equity which accrues to shareholders over time".

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
<p><b>Procurement, Supplier and Enterprise Development</b></p>	<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>• Mining right holders must promote economic development through developing and/or nurturing small, medium and micro enterprises and suppliers of mining goods and services. Should a mining right holder procure goods and/or services from a contractor for purposes of extraction or processing of minerals on behalf of the mining right holder (such as crushing and concentration), such goods and services will be deemed to have been procured by the mining right holder.</li> <li>• Within 6 months of implementation of the 2018 Mining Charter, right holders must submit a 5-year plan indicating progressive implementation of inclusive procurement targets.</li> </ul> <p><b>Mining Goods</b></p> <ul style="list-style-type: none"> <li>• Holders must spend a minimum of 70% of their total mining goods procurement expenditure (excluding non-discretionary expenditure) on South African Manufactured Goods<sup>3</sup>, apportioned in the following manner –             <ul style="list-style-type: none"> <li>- 21% of the total budget for procurement of mining goods must be spent on South African Manufactured Goods, produced by a HDP owned or controlled company;</li> <li>- 5% of the total budget for procurement of mining goods must be spent on South African Manufactured Goods, produced by a Women or Youth owned and controlled company;<sup>4</sup> and</li> <li>- 44% of the total budget for procurement of mining goods must be spent on South African Manufactured Goods, manufactured by a BEE Compliant Company (as defined above).</li> </ul> </li> <li>• Compliance with the mining goods procurement targets set out above must be met within the following transitional periods (calculated from the date on which the 2018 Mining Charter is implemented) –             <ul style="list-style-type: none"> <li>- the first-year mining goods procurement budget is set at 10%;</li> <li>- the second-year mining goods procurement budget is set at 20%;</li> <li>- the third-year mining goods procurement budget is set at 35%;</li> <li>- the fourth-year mining goods procurement budget is set at 50%; and</li> <li>- the fifth-year mining goods procurement budget is set at 70%.</li> </ul> </li> <li>• Mining right holders must procure goods in line with a standardised product identification coding system developed by the Department of Trade and Industry (DTI). Furthermore, mining right holders must provide proof of local content for mining goods in the form of certification from the South African Bureau of Standards (SABS) or any other entity designated by the Minister.</li> </ul>

<sup>3</sup> The term "South African Manufactured Goods" is defined as "goods with a minimum of 60% local content during the assembly or manufacturing of the product in South Africa. The calculation of local content excludes profit mark-up, intangible value such as brand value and overheads".

<sup>4</sup> The term "Youth" is defined for purposes of the 2018 Mining Charter as "(a) young South African citizens between the ages of 18 to 35 years old based on national or provincial demographics; or (b) a juristic person managed and controlled by a person/s contemplated in (a) where the person(s) collectively, or as a group, own and control the majority of the issued share capital or members' interest, and are able to control the majority of the members' vote."

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
		<p><b>Services</b></p> <ul style="list-style-type: none"> <li>• A minimum of 80% of a mining right holder's total expenditure on Services<sup>5</sup> (excluding non-discretionary expenditure) must be sourced from South African Based companies, apportioned in the following manner –                             <ul style="list-style-type: none"> <li>- 50% of the total Services budget must be spent on Services supplied by HDP owned and controlled companies;</li> <li>- 15% of the total Services budget must be spent on Services supplied by Woman Owned and Controlled Companies (as defined above);</li> <li>- 5% of the total Services budget must be spent on Services supplied by Youth; and</li> <li>- 10% of the total Services budget must be spent on Services supplied by BEE Compliant Companies.</li> </ul> </li> <li>• Compliance with the Services procurement targets set out above must be complied with progressively within a period of 5 years, and must also be met within the following transitional periods (calculated from the date on which the 2018 Mining Charter is published) –                             <ul style="list-style-type: none"> <li>- the first-year Services procurement budget is set at 70%; and</li> <li>- the second-year Services procurement budget is set at 80%.</li> </ul> </li> <li>• Terms and conditions offered to Woman Owned and Controlled Companies and Youth relating to the procurement of goods and Services must not be less favourable than those offered to other suppliers.</li> </ul>

<sup>5</sup> The term "Services" is defined as "services contracted by a right holder, or by a contractor on behalf of a right holder, including but not limited to: mining production services, drilling, mineral trading, mineral marketing, legal, shipping, transportation, information technology services, security, payroll, finance, medical, consulting, cleaning, insurance and any other services which are supplementary to the mine".

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
		<p><b>Enterprise and Supplier Development</b></p> <ul style="list-style-type: none"> <li>• Holders may invest in enterprise and supplier development against which they may offset their procurement obligations as follows –                             <ul style="list-style-type: none"> <li>- up to 30% of the total procurement budget on mining goods (excluding non-discretionary expenditure) may be offset against supplier development; and</li> <li>- up to 10% of the total procurement budget on Services (excluding non-discretionary expenditure) may be offset against supplier and enterprise development.</li> </ul> </li> <li>• The offset of enterprise and supplier development mentioned above must be implemented as follows –                             <ul style="list-style-type: none"> <li>- a mining right holder may develop suppliers through Original Equipment Manufacturers as prescribed in the 2018 Mining Charter Implementation Guidelines;</li> <li>- enterprise and supplier development must only be invested in HDP owned and controlled companies with a turnover of less than R50 million per annum;</li> <li>- investment in supplier development may not be claimed as expenditure on enterprise development;</li> <li>- there must be a written agreement between a right holder and the recipient of the supplier or enterprise development investment (the term of such agreement must be a minimum of 5 years).</li> </ul> </li> </ul> <p><b>Research and Development</b></p> <p>Mining right holders must spend a minimum of 70% of their total research and development budget on South African based research and development entities, either in the public or private sector.</p> <p><b>Processing of Samples</b></p> <ul style="list-style-type: none"> <li>• Mining right holders must only utilise South African based companies or facilities for the analysis of 100% of all mineral samples across the mining value chain.</li> <li>• Mining right holders may not conduct sample analysis using foreign based facilities or companies without the prior written consent of the Minister (as prescribed in the 2018 Mining Charter Implementation Guidelines).</li> </ul>

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
<b>Beneficiation</b>	Facilitate beneficiation 11% offset allowable against a portion of HDSA ownership.	<ul style="list-style-type: none"> <li>• Mining right holders may claim the Equity Equivalent (as defined above) against a maximum 5% of a BEE Entrepreneur shareholding. This Equity Equivalent may only be claimed against a portion of a BEE Entrepreneur.</li> <li>• Existing mining right holders who have claimed the 11% beneficiation offset prior to the publication of the 2018 Mining Charter are entitled to retain the 11% offset for the duration of the mining right.</li> <li>• Mining right holders must submit a Beneficiation Equity Equivalent Plan (as outlined in the 2018 Mining Charter implementation guidelines) to the DMR for approval. Furthermore, mining right holders must submit an annual progress report to the DMR, which report must be in line with the approved Beneficiation Equity Equivalent Plan.</li> <li>• Mining Right holders will only be entitled to apply for Equity Equivalent beneficiation credits subject to the following –               <ul style="list-style-type: none"> <li>- supplying mineral ore or mineral products to independent South African based beneficiation entities at a discount to the mine gate price;</li> <li>- a portion of an Integrated Producer’s production that is beneficiated;<sup>6</sup></li> <li>- supplying mineral ore to BEE Entrepreneur owned beneficiation entities at a discount to the mine gate price;</li> <li>- monetary investments in South African based mineral beneficiation entities are made; and</li> <li>- any other activities or investments undertaken, or monetary investments made since 2004 that relate to beneficiation.</li> </ul> </li> </ul>

<sup>6</sup> The term “Integrated Producer” is defined as “a mining right holder that beneficiates minerals mined by such mining right holder as part of its business activities”.

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
<p><b>Employment Equity</b></p>	<p>Must achieve a minimum of 40% HDSA 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>• Regarding Employment Equity, a right holder must achieve a minimum threshold of HDP's which is reflective of the provincial or national demographics as follows –             <ul style="list-style-type: none"> <li>- Board - a minimum of 50% are HDP's, 20% of which must be women;</li> <li>- Executive Management - a minimum of 50% are HDP's at the executive director level as a percentage of all executive directors proportionally represented, 20% of which must be women;</li> <li>- Senior Management - a minimum of 60% are HDP's proportionally represented, 25% of which must be women;</li> <li>- Middle Management - a minimum of 60% are HDP's, proportionally represented, 25% of which must be women;</li> <li>- Junior Management - a minimum of 70% are HDP's proportionally represented, 30% of which must be women;</li> <li>- Employees with disabilities - a minimum of 1.5% employees with disabilities as a percentage of all employees, reflective of national or provincial demographics; and</li> <li>- Core and Critical Skills - a mining right holder must ensure that a minimum of 60% HDP's are represented in the mining right holder's core and critical skills by diversifying its existing pools (representative of demographics). Core and critical skills must include science, technology, engineering and mathematical skills representation across all organisational levels. To achieve this, a right holder must identify and implement its existing pools in line with the approved Social and Labour Plan.<sup>7</sup></li> </ul> </li> <li>• Mining right holders must develop and implement a career progression plan (aligned with its Social and Labour Plan) consistent with the demographics of South Africa, which plan must provide for –             <ul style="list-style-type: none"> <li>- career development matrices of each discipline (inclusive of minimum entry requirements and timeframes);</li> <li>- develop individual development plans for employees;</li> <li>- identify a talent pool to be fast tracked in line with needs; and</li> <li>- provide a comprehensive plan with targets, timeframes and how the plan would be implemented.</li> </ul> </li> </ul>

<sup>7</sup> The term "Social and Labour Plan" refers to the Social and Labour Plan contemplated in section 23 of the MPRDA.



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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
<p><b>Human Resource Development</b></p>	<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>• Mining right holders must invest 5% of the Leviaible Amount<sup>8</sup> on essential skills development (excluding the mandatory statutory skills levy), invested on essential skills development activities such as science, technology, engineering, mathematic skills as well as artisans, internships, learnerships, apprentices, bursaries, literacy and numeracy skills for employees and non-employees (community members), graduate training programmes, research and development of solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation, as well as environmental conservation and rehabilitation.</li> <li>• The skilling and research investment contemplated above must be apportioned in line with national or provincial demographics.</li> <li>• Directors and executives cannot be regarded as employees for purposes of Human Resource Development.</li> </ul>
<p><b>Mine Community Development</b></p>	<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>• Mining right holders must meaningfully contribute towards Mine Community Development with biasness towards mine communities both in terms of impact as well as in keeping with the principles of the social license to operate. In consultation with relevant municipalities, mine communities, traditional authorities and affected stakeholders, mining right holders must identify developmental priorities of mine communities and make provision for such priorities in prescribed and approved Social and Labour Plans.<sup>9</sup></li> <li>• Mining right holders who operate in the same area may collaborate on certain identified projects to maximise the socio-economic development impact in line with Social and Labour Plans.<sup>10</sup></li> <li>• Mining right holders must implement 100% of their Social and Labour Plan commitments in any given financial year of the mining right holder. Any amendments and/or variations to commitments set out in Social and Labour Plans (including budgets) shall require approval in terms of section 102 of the MPRDA, and right holders will be required to consult with mine communities.</li> </ul>

<sup>8</sup> The term "Leviaible Amount" has the same meaning as in the Skills Development Levies Act No. 9 of 1999.

<sup>9</sup> For purposes of implementing Social and Labour Plans and Mine Community Development Projects, the term "Mine Community" refers to communities where mining takes place, major labour sending areas. Adjacent communities within a local municipality, metropolitan municipality and/or district municipality.

<sup>10</sup> Approved Social and Labour Plans must be published in English and one or two other languages commonly used within the mine community.

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
<p><b>Housing and Living Conditions</b></p>	<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 and affordable housing;</li> <li>- provision for home ownership;</li> <li>- provision for social, physical and economic integration of human settlements;</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>- balanced nutrition.</li> </ul> </li> <li>• Holders must submit housing and living conditions plans to be approved by the DMR after consultation with organised labour and the Department of Human Settlement.</li> <li>• To provide clear targets and timelines for purposes of implementing the aforesaid housing and living condition principles, the Housing and Living Conditions Standard Guidelines shall be reviewed. Pending the finalisation of the reviewed Housing and Living Conditions Standard, a right holder must comply with those Housing and Living Conditions Standards that are in force and ensure that it maintains single units, family units and any other agreement which has been reached with workers.</li> </ul>
<p><b>Regime for Junior Miners</b></p>		<ul style="list-style-type: none"> <li>• The 2018 Mining Charter now makes provision for junior mining companies, who meet the qualifying criteria, and grants such companies exemption from certain elements/targets set out in the 2018 Mining Charter.</li> <li>• The regime for junior mining companies is limited to mining right holders who, either through holding a single or multiple mining rights, have a combined annual turnover of less than R150 million.</li> <li>• Mining right holders who have a turn-over of less than R10 million per annum are –             <ul style="list-style-type: none"> <li>- Exempt from the following elements/targets set out in the 2018 Mining Charter: Employment Equity Targets (if they have less than 10 employees); Inclusive Procurement Targets; as well as Enterprise and Supplier Development Targets;</li> <li>- Required to only comply with the following elements/targets set out in the 2018 Mining Charter: Ownership element (undefined)<sup>11</sup>; Employment Equity Targets (if they have more than 10 employees); Human Resource Development Targets; and Mine Community Development Targets.</li> </ul> </li> <li>• Mining right holders who have a turn-over of between R10 million and R50 million per annum are required to comply with the following elements/targets set out in the 2018 Mining Charter: Ownership element (undefined); Human Resource Development Targets; Inclusive Procurement Targets; Employment Equity Targets (at group level); and Mine Community Development Targets.</li> </ul>

<sup>11</sup> It is uncertain as to what this is intended to mean

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
<p><b>Application of the Mining Charter to Licences granted under the Diamonds Act and the Precious Metals Act</b></p>		<ul style="list-style-type: none"> <li>• The South African Diamond and Precious Metals Regulator must have regard to the requirements of the 2018 Mining Charter 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) <b>(Acts)</b>.</li> <li>• Ownership target for downstream diamond and precious metals jewellers and diamond beneficiators is a minimum of 26% shareholding for HDP's, which must be distributed in the following manner –             <ul style="list-style-type: none"> <li>- A minimum of 10%, of which 5% is a non-transferable Carried Interest to Qualifying Employees from the effective date of the licence or permit;</li> <li>- A minimum of 16% shares to a BEE Entrepreneur;</li> </ul> </li> <li>• Ownership target for diamond dealers and precious metals refiners beneficiators is a minimum of 30% shareholding for HDP's, which must be distributed as follows –             <ul style="list-style-type: none"> <li>- A minimum of 10%, of which 5% is a non-transferable Carried Interest to Qualifying Employees from the effective date of the licence or permit;</li> <li>- A minimum of 20% shares to a BEE Entrepreneur;</li> </ul> </li> <li>• If a refiner is also a mining right holder and claims the same BEE shareholders as those claimed in terms of the mining right, the flow-through principle will apply.</li> <li>• The licence holder must contribute 1% NPAT towards socio-economic development. Projects identified for socio economic development must be published in English and one other language.</li> <li>• Enterprise development for a licence or permit issued in terms of the Acts is now compulsory and is considered a ring-fenced element. Any enterprise development must be industry-related and approved by the South African Diamond and Precious Metals Regulator. Licence or permit holders who are required to comply with the enterprise development element must submit a five-year plan indicating the progressive implementation of the approved enterprise development. A licence or permit holder's annual performance on enterprise development must be reported, audited and verified annually against the approved five-year plan.</li> </ul>

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
		<ul style="list-style-type: none"> <li>• Permit or licence holders in terms of the Acts must comply with all the targets set out in the 2018 Mining Charter, subject to the following exemptions:               <ul style="list-style-type: none"> <li>- <b>Thresholds for Precious Metals Jewellers and Precious Metals Beneficiators -</b> <ul style="list-style-type: none"> <li>- Exempted Micro Enterprises (including students) with an estimated maximum turnover of less than R1 million per annum are exempt from complying with all 2018 Mining Charter elements and targets;</li> <li>- Small Enterprises with an estimated maximum turnover of between R1 million to R50 million per annum are exempt from complying with the Socio Economic Development element, Inclusive Procurement, Supplier and Enterprise Development element, and Employment Equity element (in respect of businesses with less than 10 employees), however they must comply with the Ownership element (undefined), Human Resource Development element and Employment Equity Element (in respect of businesses with 10 or more employees); and</li> <li>- Medium and Larger Enterprises with an estimated maximum turnover greater than R50 million per annum must comply with all 2018 Mining Charter elements and targets.</li> </ul> </li> <li>- <b>Thresholds for Diamond Beneficiators –</b> <ul style="list-style-type: none"> <li>- Small Enterprises with an estimated maximum turnover of less than R 50 million per annum are exempt from complying with the Socio Economic Development element and Employment Equity element (in respect of businesses with less than 10 employees), however they must comply with the Ownership element (undefined), Human Resource Development element, Employment Equity Element (in respect of businesses with 10 or more employees), and Inclusive Procurement, Supplier and Industry Related Enterprise Development Element;</li> <li>- Medium and Larger Enterprises with an estimated maximum turnover greater than R50 million per annum must comply with all 2018 Mining Charter elements and targets.</li> </ul> </li> </ul> </li> <li>- <b>Thresholds for Diamond Dealers and Precious Metals Refiners.</b> All 2018 Mining Charter elements and targets must be complied with, regardless of category, class or size.</li> </ul>

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ELEMENT	2010 CHARTER REQUIREMENTS	2018 MINING CHARTER REQUIREMENTS
<p><b>Reporting (Monitoring and Compliance/Evaluation)</b></p>	<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>Mining Right holders must report levels of compliance annually in terms of section 28(2)(c) of the MPRDA.</li> <li>The DMR shall monitor and evaluate a right holder's implementation, considering the material constraints which may result in non-achievement of the set targets.</li> <li>A holder of a licence or permit issued in terms of the Diamonds Act 1986 (Act 56 of 1986) ("<b>Diamonds Act</b>") or the Precious Metals Act 2005 (Act 37 of 2005) ("<b>Precious Metals Act</b>") must annually report its level of compliance with the 2018 Mining Charter to the South African Diamond and Precious Metals Regulator. The South African Diamond and Precious Metals Regulator shall monitor and evaluate a permit or licence holder's implementation, considering the material constraints which may result in non-achievement of the set targets.</li> </ul>
<p><b>Applicability of the Mining Charter</b></p>		<ul style="list-style-type: none"> <li>The 2018 Mining Charter will apply to existing mining rights, pending mining right applications, new mining rights, as well as existing and new licences and permits issued in terms of the Diamonds Act or the Precious Metals Act.</li> <li>For mining right holders, the Ownership and Mine Community Development<sup>12</sup> elements are ring-fenced and require 100% compliance at all times.</li> <li>For holders of licences or permits issued in terms of the Diamonds Act and the Precious Metals Act, the Ownership and Inclusive Procurement, Supplier and Enterprise Development elements are ring-fenced and require 100% compliance at all times.</li> </ul>
<p><b>Non-Compliance</b></p>	<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 mining right holder who has not complied with the Ownership element and falls between levels 6 and 8 of the 2018 Mining Charter score-card will be regarded as non-compliant with the provisions of the 2018 Mining Charter and in breach of the MPRDA and will be dealt with in terms of section 93 read in conjunction with sections 47, 98 and 99 of the MPRDA.</li> <li>A licence or permit holder who has not complied with the requirements of the 2018 Mining Charter shall be in breach of the Diamonds Act or the Precious Metals Act and subject to the relevant provisions thereof.</li> </ul>

<sup>12</sup> Section 9.1 of the 2018 Mining Charter contemplates that only the ownership element is ring-fenced for absolute compliance

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