



2018 DRAFT MINING CHARTER

Unpacking the 2018 draft Mining Charter:
Commentary and key insights

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The purpose of this report is to:

- Review key changes set out in the 2018 draft Charter
- Analyse degree of alignment with the dti B-BBEE Codes
- Suggested steps the industry can take in addressing the changes
- Address whether regulatory or policy certainty has been achieved, and if not, set out areas of continued uncertainty
- Highlight the strategic implications of the changes

Introduction

Unpacking the 2018 draft Mining Charter: Commentary and key insights

Against the backdrop of concerns around the pace of transformation in the mining and minerals industry, government has published a new draft Mining Charter aimed at strengthening its effectiveness, while taking into account the realities facing the industry.

The Broad-Based Black Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry, commonly known as the Mining Charter, was first developed in 2002, and amended in 2010. It served as an instrument through which the Minerals and Petroleum Resources Development Act (MPRDA) could fuel transformation in the industry. Following another assessment on the effectiveness of the Charter, the most recent review was gazetted in draft on 15 June 2018 (the "2018 draft Charter"), and has been opened for public comments. The inputs from this public commentary period need to be used as a guide for industry, government and other stakeholders in finalising the 2018 draft Charter, with a view toward ensuring the levels of certainty the industry requires.

With cognisance of the prior drafts of the Mining Charter, the 2018 draft Charter brings with it mostly foreseen changes, introducing new targets and measurement criteria aimed at accelerating the transformation progress of the industry, and a degree of alignment with certain compliance measures and criteria used in the dti Broad-Based Black Economic Empowerment Codes of Good Practice (B-BBEE Codes).

Importantly, for the most part, these increased compliance targets are lower and less challenging for right holders to comply with, than the previous draft and amended Charters. This appears to be appreciative of both the realities and challenges of transformation in the mining industry within its current down-cycle, and a degree of cross-stakeholder consultative consideration (with concessions made by all parties for the better of the industry).

Nevertheless, this latest iteration of the Charter aims to take the next steps in driving value beyond compliance within the South African mining ecosystems, simultaneously continuing a journey of redressing historic inequalities inherited by South Africa's first democratic government.

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

Amid the current economic environment, it is critical to align regulatory certainty with transformation. This will assist in delivering value beyond mere compliance to the sector, and to various stakeholders in the mining ecosystem. Creating a regulatory and policy environment that enhances competitiveness and investment, while simultaneously delivering socio-economic impact, is necessary in attracting much needed investment to revive the sector and importantly, return it to a growth path.

Inclusive growth requires both economic and social progress.



Overarching Changes

The Department of Mineral Resources (DMR) has published a new draft of the Mining Charter, subsequent to their most recent review of the current Mining Charter's effectiveness, alongside the request for alignment with the Department of Trade and Industry's (dti) amended B-BBEE Act and Codes of Good Practice.

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

Outcomes of the review



Not fully transformed

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



Limited social impact

- Many companies have embraced the spirit of the Mining Charter
- However, the findings were that right holders have adopted a compliance-driven mode of implementation, designed more to protect the "social license" to operate rather than to create true socio-economic impact



Insufficient progress in broad-based empowerment ownership

- Limited progress made in embracing meaningful economic participation for Black South Africans
- The interest of mine workers and communities are typically held in trusts, with the benefit flowing from these trusts to the intended beneficiaries not always evident
- The trickled flow of benefits which sought to not only service debt, but also provide cash flow to BEE equity owners, was found to be inadequate



Surrounding communities

- Proliferation of communities that continue to live in abject poverty, which is a continued characteristic of the ecosystem's surrounding mining operations
- This is despite the MPRDA effectively transferring ownership of South Africa's mineral wealth to its people, under the governments oversight

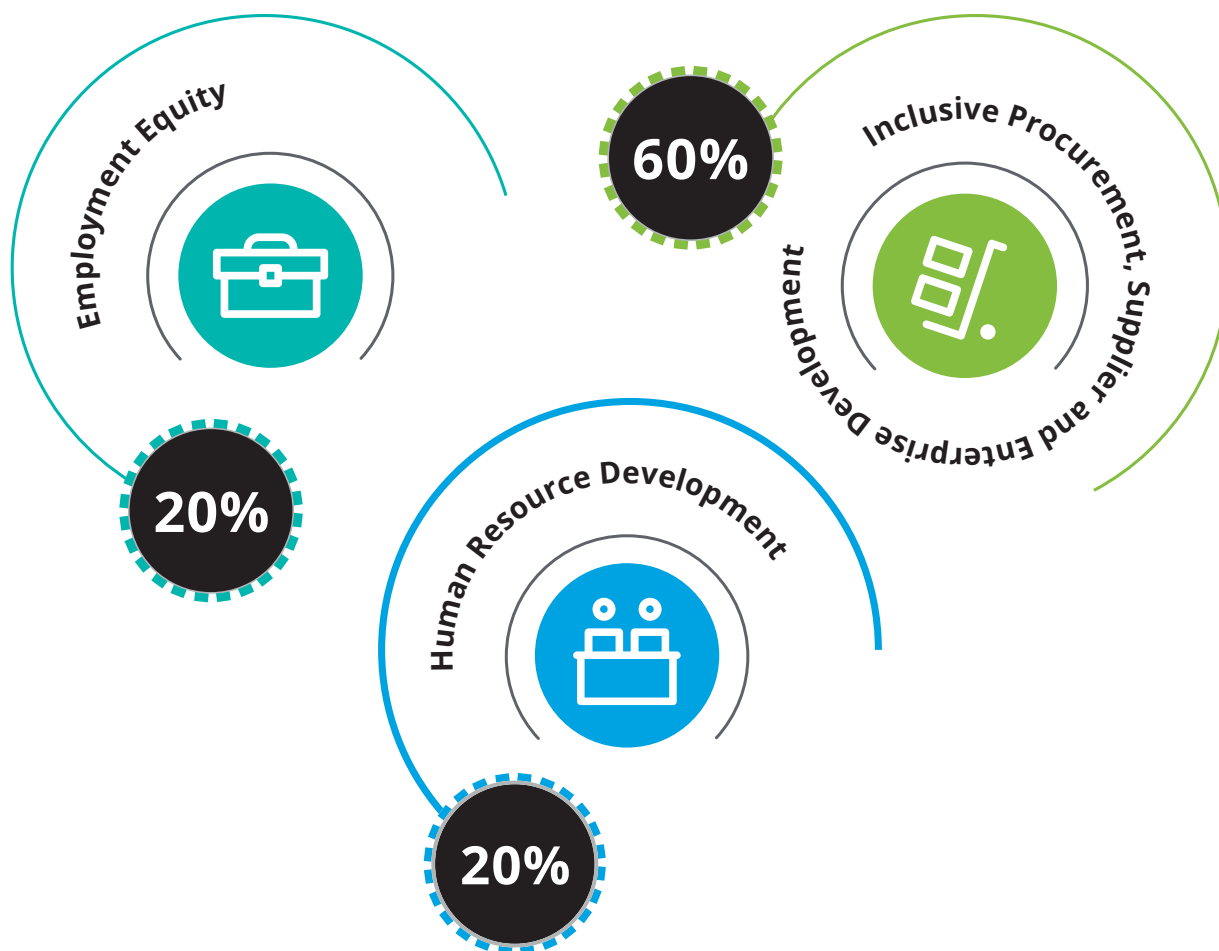
Taking this into account, the 2018 draft Charter incorporates several overarching and strategically important changes:

A new concept and scorecard

The 2018 draft Charter has introduced a new concept by declaring Ownership as, what is termed, a ring fenced element, **which requires 100% compliance**.

The dti's Codes of Good Practice has a similar concept in declaring Ownership, Skills Training, and Enterprise and Supplier Development as priority elements (which require a 40% sub-minimum compliance). A right holder that fails to meet the 100% compliance with the ring fenced element, is automatically deemed non-compliant, irrespective of their scoring in the remaining elements, which are weighted as follows:

Ring fenced



The 2018 draft Charter has introduced a new concept by declaring Ownership as a ring fenced element, which requires 100% compliance. Only Procurement, Employment Equity and Human Resource Development of the old scorecard remain in the proposed new scorecard.

The 2018 draft Charter removed Mine Community Development as well as Housing and Living Conditions as scoring elements, however rights holders will be required to submit relevant documents for each element in line with the requirements detailed further in this document. These submissions include Housing and Living Conditions Plan, as well as Social and Labour Plans, which require multi-stakeholder approvals.

Lastly, the draft Mining Charter scorecard has formally been aligned with that of the dti's Codes of Good Practice (below). Compliance is now in accordance with the recognition levels (1-9) although the weighted percentage score deviates slightly per level for the respective scorecards. A mining right holder that fails to meet a 50% compliance (i.e. level 6-9), or, as mentioned, does not reach full compliance with the ring fenced element is deemed to be in breach of the MPRDA, and non-compliant.



	dti B-BBEE scorecard	2018 draft Charter scorecard	
Level 1	≥ 100 points	Ring fenced Element + 100%	Compliant
Level 2	≥ 85 points but < 100 points	Ring fenced Element + 80 - 100%	
Level 3	≥ 75 points but < 85 points	Ring fenced Element + 70 - 80%	
Level 4	≥ 65 points but < 75 points	Ring fenced Element + 60 - 70%	
Level 5	≥ 55 points but < 65 points	Ring fenced Element + 50 - 60%	
Level 6	≥ 45 points but < 55 points	Ring fenced Element + 40 - 50%	Non-compliant (<60%)
Level 7	≥ 40 points but < 45 points	Ring fenced Element + 30 - 40%	
Level 8	≥ 30 points but < 40 points	Ring fenced Element + 20 - 30%	
Non-compliant	< 30 points	Ring fenced Element + <20%	

Right holders are granted several transition periods with staggered compliance targets to comply with the scoring elements of the 2018 draft Mining Charter.

Transition period

Existing mining rights holders are granted a five-year period from the date of publication in which to comply with the revised scorecard as set out in the 2018 draft Charter.

Ownership grants a five-year transition period to (where necessary) supplement and comply with the new 30% BEE shareholding target.

The Inclusive Procurement element notes a five-year transition period (with progressive implementation) for Mining Goods procurement, and a two-year transition for Services procurement.

Employment Equity also grants a five-year period for progressive implementation of the targets for this element.

No transition period is mentioned for Human Resource Development.

While Inclusive Procurement has provided the progressive targets for each of the transition period years, Ownership and Employment Equity have not explicitly defined any.

Performance shall be reported and audited for each element in respect of implementation for the transition periods.

Application to precious metals

The application of the 2018 draft Charter targets and elements to the diamonds and precious metals licensees will be as per their status as exempt micro enterprises, qualifying small and micro enterprises and medium-large entities respectively (administered under the regulator for the Diamonds and Precious Metals Acts).



Areas of certainty and uncertainty

Certainty

- A clear scorecard is set out aligned with levels from a dti B-BBEE Codes perspective.
- What is required to meet compliance is clear (in the form of full compliance with the Ownership requirements alongside at least 50% out of the 100% weighting from Employment Equity, Human Resource Development and Inclusive Procurement, Supplier and Enterprise Development elements respectively).
- The contributions of the above elements are also clear and certain.

Uncertainty

- Though the 2018 draft Chart states that this review process “takes into account the need to align (elsewhere noted as “harmonise”) and integrate Government policies to remove ambiguities in respect of interpretation and create regulatory certainty”, there remain certain areas of uncertainty that could be addressed in this commentary period and prior to a final publishing of the new Charter
- An example of this is Annexure A of the 2018 draft Charter that notes “alignment between the dti B-BBEE and DMR scorecard”. This scorecard sets out the dti B-BBEE recognition levels (1 – 8 and non-compliant) with DMR scorecard levels. Though this provides certainty as to the levels a right holder will receive in the dti B-BBEE scorecard from their respective DMR 2018 draft Charter scorecard, it would be beneficial for the industry for the Charter to state clearly that a right holder need only comply with the Mining Charter to obtain a dti B-BBEE recognition level. An affirmation of this by the dti is also required
- An alignment and clarity in line with the above will add an important level of certainty for many right holders that have (and continue to endeavour) to comply with both the dti B-BBEE Codes of Good Practice and the DMR Mining Charter. As a result of the dti B-BBEE Codes not taking cognisance of sectorial characteristics in mining, the compliance criteria set out therein are in many cases inherently misaligned with the Mining Charter. This results in additional and unnecessary costs of compliance for right holders seeking compliance with both
- The aligned scorecard ought to allow for procurers of products from right holders to apply recognition factors to the spend, in accordance with the level 1 – 5 compliance of the right holders allowed by the 2018 draft Charter
- The above would be in line with the allowance of sector codes to deviate from targets and weightings used in the dti’s Codes, if justifiable, based on sound economic principles, sectorial characteristics or empirical research.





Strategic implications

1

The 2018 draft Charter states that it will apply to prospecting rights as well in terms of the MPRDA (section 17(4)). This, however, is not certain as to what degree this Charter applies as a prospecting right holder would be challenged in meeting Employment Equity, Human Resource Development and certainly Ownership (and related financial burdens) requirements.

2

It is evident from the make-up of this Charter (in terms of, inter alia, compliance criteria, transition periods, and especially the recognition of the continuing consequence of the “once-empowered-always-empowered” ownership transactions) that there has been far greater consultation and mutual agreement between the DMR, and various other relevant stakeholders in the mining ecosystem.

3

Some concern continues to be raised predominantly with the new Ownership requirements (e.g. the free flow equity, and the trickle down dividends), which results in continuing the uncertainty on when a third Mining Charter will be finally gazetted and become applicable to the industry. It is in the best interests of certainty and inclusive growth for the industry that all stakeholders come together in this comment period and enable a process of reaching finality in this regard.

4

It is evident that there has only been a partial, and sometimes not entirely clear alignment to the dti's Codes of Good Practice, especially with compliance on matters which the Charter remains silent on. We unpack these areas of uncertainty further in the report.

5

The ring fenced Ownership element, as a new construct, may bring about a level of anxiety among rights holders. 100% compliance may be difficult for the industry to achieve, though a five-year time frame is allowed for right holders to meet the 30% target.

6

Right holders may need to undertake a gap analysis to determine their current state compliance against the new 2018 draft Charter scorecard and compliance criteria, in order to develop strategies and implementation plans to ensure they reach the minimum level 5 compliance to retain their mining rights.

7

The general enforcement of the changes in the 2018 draft Charter, within the transition period, would need to be discussed and agreed upon, specifically where interpretations, guidelines, targets and measures remain unclear.

8

A publication by the DMR in a form of the Codes of Good Practice would assist in guiding the interpretation for this Charter. This would benefit the industry as a whole, particularly with regards to the ambiguity that continues to exist.

Ownership and Beneficiation

The 2018 draft Mining Charter requires existing and new mining right holders to comply with certain criteria to create meaningful economic participation of Black Persons in South Africa's mineral resources industry.

The 2018 draft Mining Charter wishes to enable effective ownership of South Africa's mineral resources by Black Persons, through meaningful economic participation (defined below). An intended simultaneous benefit is that of increased participation and integration of Black Persons into the mainstream economy, to increase the equitable distribution of wealth in the industry, alongside addressing racial imbalances of the past.

Ownership requirements move away from the past Historically Disadvantaged South Africans (HDSA) definition, to that of Black Persons, aligning with definition used by the Department of Labour (DoL) and dti.

A differentiation is made for compliance requirements of existing right holders, who have to (where necessary) increase to a 30% BEE shareholding (from the current 26% target), and new right holders, who have the same 30% target, but with specific distribution requirements across three owner groups.

There is also a recognition and affirmation of the "once-empowered-always-empowered" principle, with prior contemplation to amend this having resulted in legal disputes between the DMR and various parties. For existing mining rights, further amendments are made addressing transition periods and pending applications. For new mining rights, several impactful changes are made, which include requirements around community and employee shareholder board participation, a trickle down dividend, vesting requirements for BEE entrepreneur transactions, and forced reinvestment of a portion of disposed BEE entrepreneur shareholding.

Ring fenced



Scorecard

Ownership			
Element description	Measure	Compliance Target %	Weighting %
Minimum target for representation of BEE shareholders	Qualifying Employees		
	5% Free Carried Interest and 3% financed interest	30% B-BBEE Ownership	Ring fenced element
	Mine Community		
	5% Free Carried Interest and 3% financed interest		
	BEE Entrepreneurs	14%	
Trickle dividend	% of EBITA to be paid to qualifying employees and host communities	1%	Ring fenced element

Key definitions

- **BEE entrepreneur** refers to Black enterprises that are at least 51% owned by Black Persons in which Black Persons hold at least 51% of exercisable voting rights and 51% of economic interest or an organ of State excluding mandated investments
- **Economic Interest**
Means the entitlement of BEE shareholders to dividends, capital gains and other economic rights of a shareholder
- **Voting Rights**
Means voting rights that can be exercised generally at a general meeting of a company
- **BEE shareholding** refers to host community, qualifying employees' and BEE entrepreneurs' shareholding
- **Beneficiation** for purposes of the 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
- **Black persons** is a generic term which means Africans, Coloureds and Indians:
 - (a) Who are citizens of the Republic of South Africa by birth or descent;
 - (b) Who became citizens of





Key definitions

the Republic of South Africa by naturalisation before 27 April 1994;

(c) A juristic person which is managed and controlled by a person contemplated in paragraph (a) and (b) and the persons collectively or as a group own and control majority of the issued share capital or members' interest, and are able to control the majority of the members' vote

- **Economic interest** means the entitlement of BEE shareholders to dividends, capital gains and other economic rights of a shareholder
- **Effective ownership** means the meaningful participation of Black Persons in the unencumbered net value ownership, voting rights, economic interest and management control of mining operations
- **Existing right holders** refers to a holder of a mining right granted prior to the coming into operation of the Mining Charter, 2018
- **Historical BEE Transactions** refers to BEE Transactions concluded prior to the coming into operation of the Mining Charter, 2018
- **Host communities** refers to a community/ies in the local, district, metropolitan municipality or traditional authority within which the mining area as defined in the MPRDA is located
- **Meaningful economic participation** refers to the following key attributes:
 - (a) Clearly identifiable partners in the form of BEE entrepreneurs,

host communities and qualifying employees;

(b) A percentage of unencumbered net value based upon the time graduation factor which has accrued to BEE shareholders;

(c) A percentage of dividends declared, or other monetary distributions or trickle dividends paid to BEE shareholders, subject to the provisions of relevant legislation;

(d) BEE shareholders with vested interest can leverage equity in proportion to such vested interest over the life of the transaction to reinvest in other mining projects; and

(e) 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

- **Net value** refers to the value of equity which accrues to Black shareholders over a period of time calculated as the difference between the market value of shares held by Black shareholders at the measured date, less the amount of loans relating to the acquisition of shares outstanding at the measured date
- **Pending applications** refers to applications lodged and accepted prior to the coming into operation

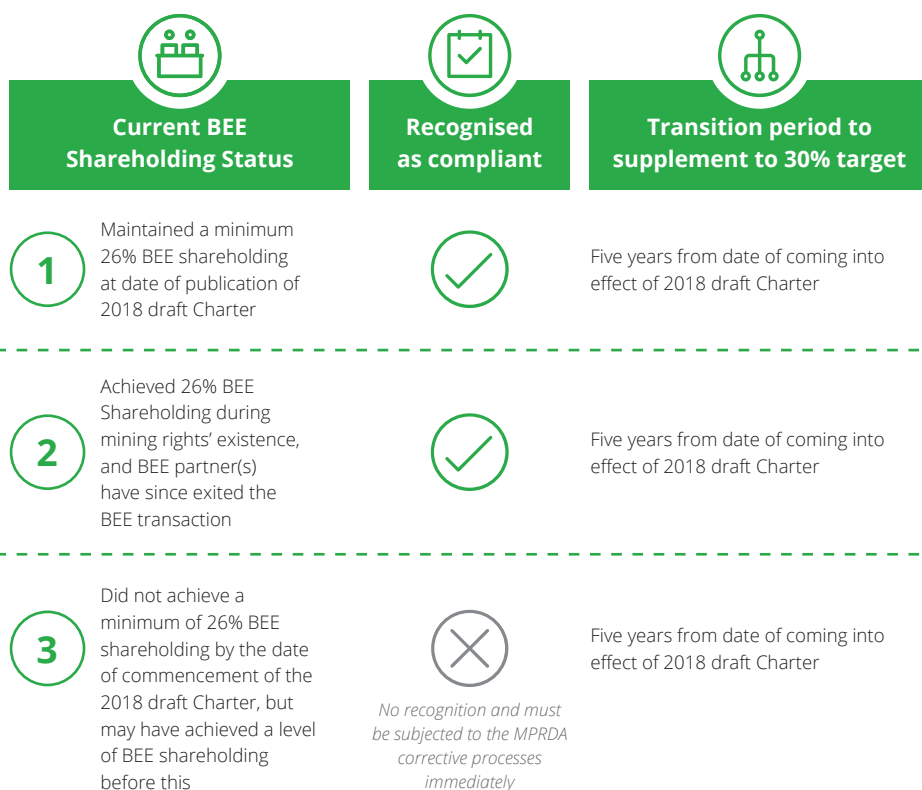
of the Mining Charter, 2018

- **Qualifying employees** 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 agreement except where such condition is a Mining Charter requirement
- **Right holder** refers to a holder of a mining right granted in terms of the MPRDA
- **Trickle dividend**
 - (a) In relation to host communities and qualifying employees, it refers to a dividend that has a fixed dividend rate contributed to a trust for host communities and a structure elected by qualifying employees and is redeemable by a right holder when ordinary dividends are declared;
 - (b) In relation to BEE entrepreneurs, it refers to a dividend with a cash flow to BEE entrepreneurs throughout the term of the investment where a percentage of such cash flow should be used to service the funding of the structure while the remaining amount is paid to BEE entrepreneurs.



Existing mining right holders

Existing right holders are bracketed into the following categories with associated BEE shareholding requirements:



A transition period of five years from date of implementation of the 2018 draft Charter, is allowed for supplementing of existing mining rights ownership levels to the 30% BEE shareholding requirement.

Principle of "once-empowered-always-empowered"

Continuing consequences

- ✓

The recognition of continuing consequences shall include historical transactions (at a mine right or holding company level) concluded on units of production, and share assets including all historical BEE transactions which formed the basis upon which new order mining rights were granted. In essence this relates to the empowerment transactions that took place prior to the coming into effect of the MPRDA, which were converted and recognised as new order mining rights at that stage.
- !

This recognition shall not apply to an application for a new mining right and renewal of a mining right enjoying such recognition.
- !

The recognition of continuing consequences of existing and historical BEE transactions shall not be transferable and shall lapse upon transfer of such mining right or part thereof.

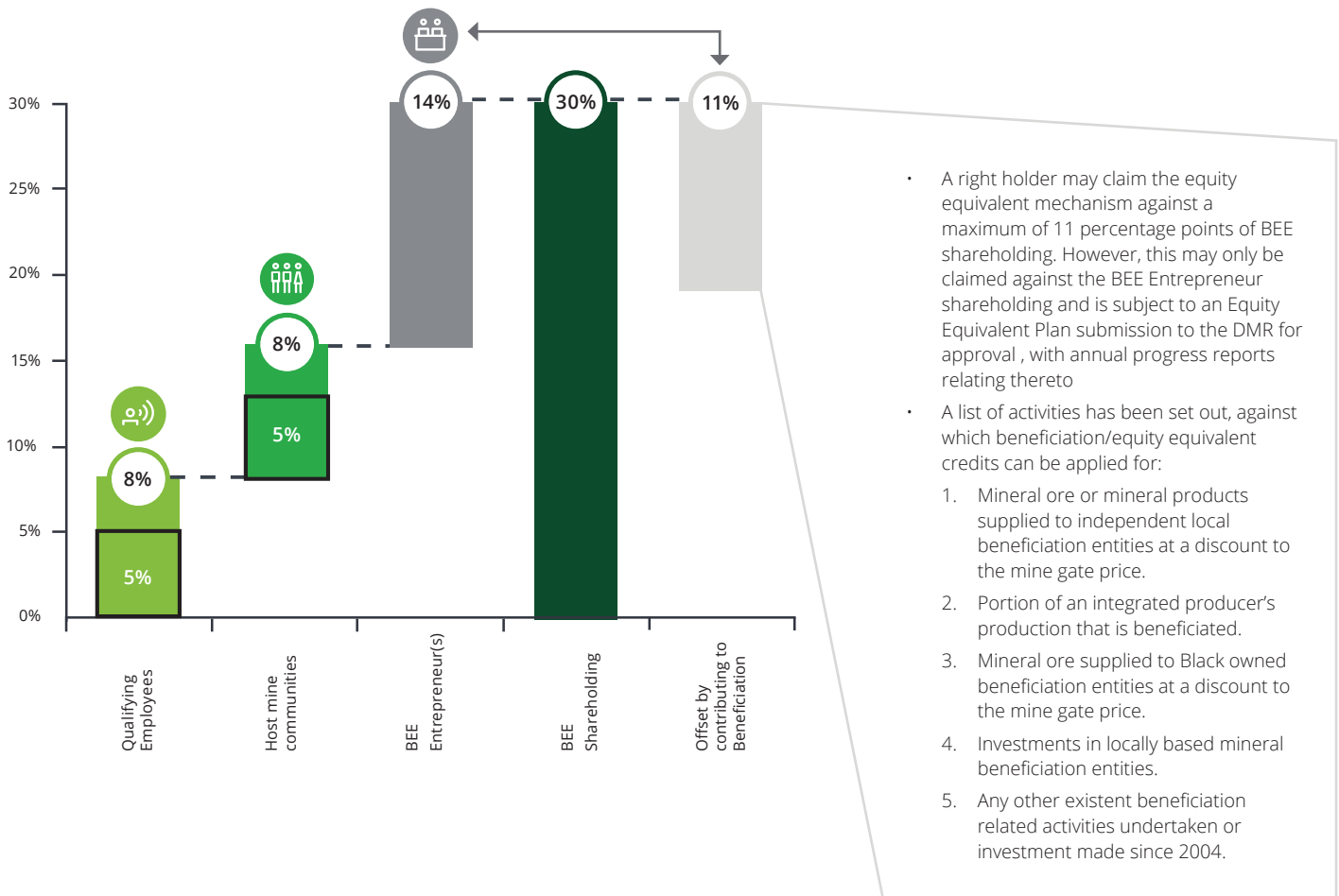
Pending applications

A pending application lodged and accepted prior to coming into effect of the 2018 draft Charter shall be processed and granted in terms of the requirements of the current (2010) Charter and under the current Ownership requirement of 26% shareholding. This shareholding, however, must be by Black Persons and not HDSAs. Once granted, these right holders must also comply with the requirement to supplement the shareholding to the new minimum 30%.

New mining rights

A new mining right must have a minimum 30% BEE shareholding, for each mining right or within the company holding the mining right. This shareholding shall include economic interest and associated voting rights and shall apply for the duration of the mining right.

The make-up of the shareholding is required to be as follows, within a period of five years:



Key considerations

5%

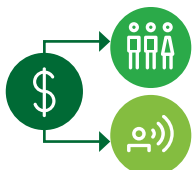
5% of the qualifying employees and community shareholding is expected to be non-transferable free carried interest.



The host community shareholding is expected to be held within a community trust.



Both host community and employee shareholders shall have representation on the board or advisory committee of a right holder. The board and executive/top management employment equity targets must account for the Black shareholders and their active participation in management and control of the business.



From the 6th year of the issuing of a mining right, right holders shall pay a trickle dividend (at any point within a 12 month year) equal to a minimum of 1% of Earnings Before Interest, Taxes, Depreciation and Amortisation (EBITDA) to qualifying employees and host communities respectively, until dividends are declared.



BEE Entrepreneurs

- **A BEE Entrepreneurs shareholding must at least vest as follows during the mine right:**
 - 15% of the equity allotted in the first quarter of the mining right
 - 30% of the equity allotted in the second quarter of the mining right
 - 70% of the equity allotted in the third quarter of the mining right
 - 100% of the equity allotted in the fourth quarter of the mining right
- **Where a BEE Entrepreneur's shareholding is disposed, a right holder's empowerment credentials shall be recognised for the duration of the mining right, provided that:**
 - A right holder is compliant with the requirements of this element at the time of disposal
 - The BEE entrepreneur's partner must have held the empowerment shares for a minimum period equivalent to a third of the duration of the mining right and unencumbered net value must have been realised
 - The recognition of empowerment credentials shall only be applicable to measured effective ownership which has vested to a BEE entrepreneur.
- **The BEE Entrepreneur must re-invest a minimum of 40% of the proceeds from the disposed equity in the mining industry**





Areas of certainty and uncertainty

Certainty

- It is clear that the ownership element requires 100% compliance (ring fenced) and furthermore has a clearly defined five year transition period, after the coming into effect of the 2018 draft Charter, within which to meet compliance
- The move from HDSA shareholders to Black Person shareholders aligns with the definitions used by the dti and other industry charters
- The “once-empowered always-empowered” principle has been affirmed as being recognised
- From a shareholder certainty perspective, there is a clear delineation of existing mining rights and the requirements that will apply to them, and the new mining rights (future looking) requirements
- For existing right holders, the requirement to increase BEE shareholding to a minimum of 30% is clear. Similarly for new right holders, the 30% requirement as well as composition of this shareholding is clear
- The recognition of Historical BEE transactions has been extended to include deals concluded on the basis of units of production and share assets. All of the Historical BEE transactions are further allowable at company, asset or operational level
- The Beneficiation offsetting provision has now been linked with government's National Industrial Policy Framework which enables an equity equivalent programme against which empowered shareholding can be applied
- This 2018 draft Charter also goes further to clearly define the types of activities that will be considered for beneficiation/equity equivalent offsets
- The processing of existing mine right applications in line with the current 2010 Charter is clear.

Uncertainty

- The definition of BEE entrepreneur will raise some confusion, as a result of the inclusion of organs of state (who aren't strictly defined by race or gender) and the fact that the DMR applies a 51% shareholding requirement as opposed to dti's commonly used industry requirement of 50% +1 vote
- The financial impact on right holders of the changes in the ownership element, specifically within the current economic climate, is uncertain. This relates to the costs of supplementing BEE shareholding, as well as (for new mining right holders) the trickle dividend, and/or EBITDA payment requirements, and free carry 5% shareholding for host communities and qualifying employee shareholders
- It is questionable whether it is legal and enforceable for BEE Entrepreneurs completed to reinvest 40% of their disposed shareholding back into the industry. Equally, it is unclear how extensive the definition of industry is or should be
- It is also questionable whether (in respect of the definition of qualifying employees) one can legally differentiate between employees with regard to who can and cannot participate in the 8% (with 5% free carry interest) shareholding.
- The requirement on new mining rights to seemingly grant a free 5% equity to host communities and qualifying employees respectively (10% in total) bring uncertainty as to how right holders might structure such a transaction, and more so how they might finance same
- It is uncertain how the community trusts will be administered and monies spent, as well as the degree of socio-economic impact that will have on the mine host communities they represent
- One of the key uncertainties for investors will remain the time period for which the 30% BEE shareholding requirement will remain, and whether this will increase again at a point in the near future.



Strategic implications

1

The "once-empowered-always-empowered" construct has been affirmed.

2

The transition period to meet the new 30% BEE shareholding requirement is appropriate and no longer as unrealistic for the industry as the 12-month timeframe previously proposed.

3

For new mining rights, the trickle dividend (equal to a minimum of 1% of EBITDA) payable to qualifying employees and host communities respectively (until dividends are declared) will have a financial impact on right holders, especially when industry cyclical movements negatively impact the mines' financial performance. This may require a special class of shares as well with unique dividend rights.

4

The above financial impact is somewhat softened by the application of this trickle dividend only from year six of mining right, enabling effective planning in this regard.

5

Existing mine right holders who have not achieved 26% BEE shareholding will face challenges in raising capital to address not only this shortfall but also supplementing to 30%.

6

The defining and incorporating of host communities into new mining rights will require some detailed consideration as the definition is broad including local, district, metropolitan municipality or traditional authority within which the mining area (as defined in the MPRDA) is located.

7

The requirement upon BEE entrepreneurs in new rights to hold a third of the mine right may impact on their ability to dispose of the shares at the top of the cycle impacting their ability to maximise on the value thereof.

8

The need to have board and executive/top management representation for host communities and qualifying employees shareholders will require strategic consideration of the roles, responsibilities, relevant experience and competencies and also contribution of these representatives to the national and provincial demographic (race and gender profile) requirements of the Employment Equity requirements.

9

For mine community and qualifying employees shareholding, it would be important to define the legal entities that will hold the shares, their mandates, governance frameworks and socio-economic impact measurement tools in a manner that enables optimal benefit for the end beneficiaries.

Employment Equity

The aim of Employment Equity (EE) is to attain fairness in the workplace by promoting fair treatment and equal opportunity.

The DMR aims to achieve this by eliminating discrimination and implementing affirmative action measures to rectify disadvantages in the workplace experienced by historically disadvantaged groups. Workplace transformation and the broader inclusion of South Africa's diverse racial and gender demographics has increased gradually, similarly so in the mining sector.

Due predominantly to the differing EE targets in mining (tracking progress against Historically Disadvantaged South Africans) to those applied by many other industries (tracking progress against Black and Black Female representation at different occupational levels), progress in transformation and especially diversity has been slow. For tangible change to be seen and benefits (e.g. social cohesion and competitiveness of the mining industry) to be realised, there is a belief that the pace of transformation needs to increase.

The DMR, through the 2018 draft Charter, aims to align EE compliance measures with those utilised in the

dti's B-BBEE Codes, as well as the DoL in their EE planning and reporting. The intended outcome being the acceleration of transformation and diversity. The measurement criteria will move away from the past measurement of HDSAs, which came into effect as far back as the 2002 Mining Charter, toward measuring EE in accordance with the national/provincial demographics (i.e. the economically active population (EAP) targets set out in the Commission on Employment Equity Annual Report).

Though alignment with the dti's B-BBEE Codes of Good Practice exists, the measurements and scoring are lower for senior, middle and junior management levels, especially for Black Female targets. This appears to take cognisance of the lower historic number of Black Female employees in this sector, and the need for the sector to grow progressively from here. Targets have also been set for Core and Critical skills and Disabled Employees. The latter target is lower in the draft Charter than in the B-BBEE Codes, and importantly requires EAP overlay.



The 2018 draft Mining Charter changes necessitate a new, strategic and evidence-based approach in achieving compliance targets and diversifying the workforce.

Scorecard

Employment Equity targets		
Element	Measure	Weighting
Board		
Africans Coloureds Indians	50%	2%
Black Females	20%	2%
Executives/Top Management		
Africans Coloureds Indians	50%	2%
Black Females	15%	2%
Senior Management		
Africans Coloureds Indians	50%	2%
Black Females	15%	2%
Middle Management		
Africans Coloureds Indians	60%	2%
Black Females	20%	2%
Junior Management		
Africans Coloureds Indians	70%	1%
Black Females	25%	1%
Core and Critical Skills		
Africans Coloureds Indians	60%	1%
Disabilities		
Africans Coloureds Indians Whites	1.5%	1%

Key insights

Right holders must employ a **minimum threshold of Black Persons**, and **Black Females** reflective of the provincial or national demographics.

Core and Critical skills must include **technical representation (science, technology, engineering and mathematical skills)** across **all organisational** levels within both production and operational and be reflective of the **provincial or national demographics**.

Career progression plans aligned to mine's Social and Labour Plan (SLP) and the demographics of RSA must include:

- Developing career development matrices of each discipline (inclusive of minimum entry requirements and timeframes)

- Developing individual development plans for employees
- Identifying a talent pool to be fast tracked in line with the organisation's needs
- Providing a comprehensive plan with targets, timeframes and how the plan will be implemented

Disabled Employees' EE target introduced which is required to be reflective of national or provincial **demographics**. The measure includes Africans, Indians, Coloureds and White disabled employees.

Board and executive/top management targets must include **BEE shareholders** in line with the MPRDA's and Mining Charter objectives for Black. (read: in line with the MPRDA's and Mining Charter objectives for Black representation)



Increased targets



Inclusion of Black Females



Reflective of demographics



Introduction of career progression plans as a practice requirement



Inclusion of Disabled Employees



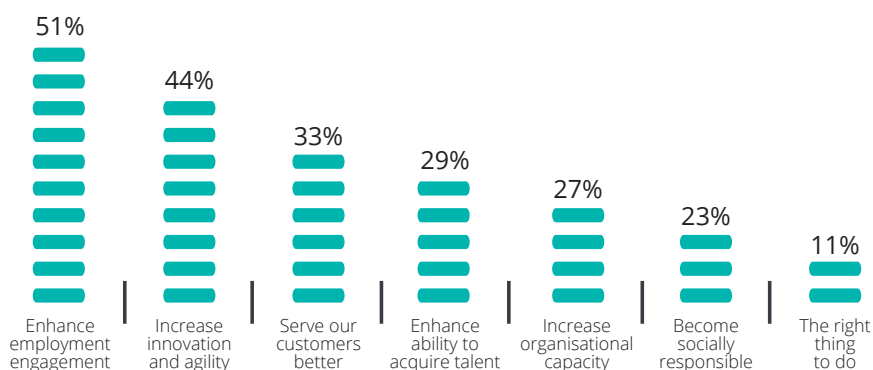
Board and executive/top management targets must include BEE shareholders

The case for transformation and diversity

A more diverse workforce can give organisations a competitive advantage. Research has shown that more transformed and diverse workforces are six times more likely to innovate and anticipate change; and twice as likely to meet/exceed financial targets.

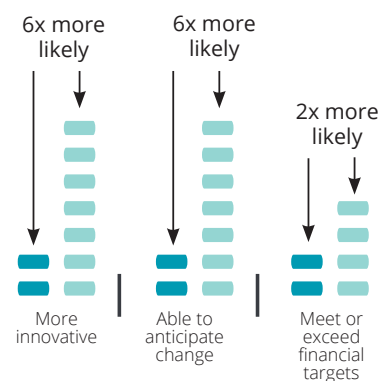
Reasons for creating diverse workplace¹

Survey Responses: Fortune 500 Companies



Impacts of a diverse workforce²

Less-diverse companies (bottom 78%)
Most diverse companies (top 12%)



Note: ¹Based on 1 000 research-based resources, 200 case studies, and 70 in-depth industry studies; ²Based on a survey of 245 global organisations and more than 70 client interviews.

Source: Bersin by Deloitte (2014) "The Diversity and Inclusion Benchmarking Report"; Bersin

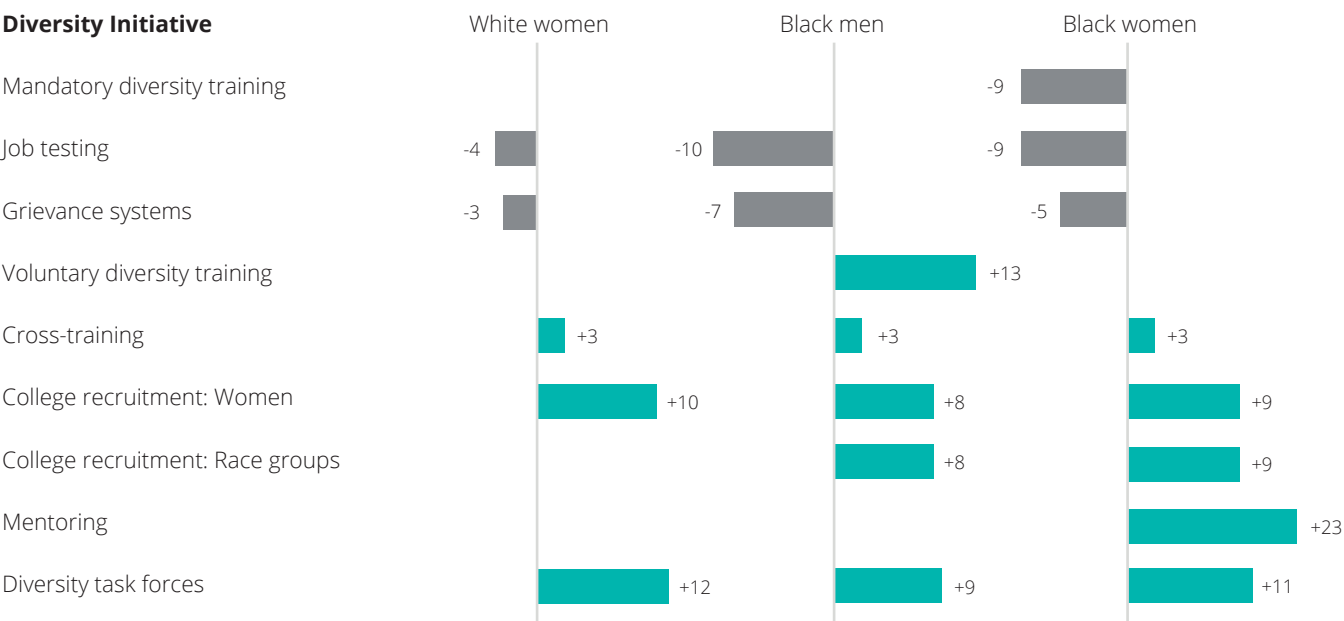
It is important that transformation and diversity initiatives are well-thought through, to deliver the desired impact. Research has shown that not all diversity initiatives are effective, with different initiatives having varying impacts across targeted groups.

Diversity initiatives that have proved to be successful include cross-training, university recruitment, mentoring, diversity task forces and voluntary diversity training. However, some of these successful initiatives have varying impacts across targeted groups. For example, voluntary diversity training is shown to be more successful for Black Men, while mentoring has been proven successful for Black Women.

In general, the initiatives' success stems from an important characteristic: the organisation treating diversity not as "compliance necessary" but as "business-critical", by prioritising inclusive leadership and implementing them voluntarily.



High impact of diversity initiatives (% change in workforce in five years)³



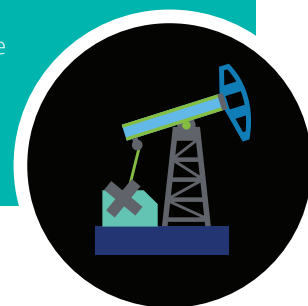
Note: ³Based on research of 829 midsize and large U.S. firms analysing the isolated effects of diversity programmes from other business changes and economic factors.

Source: “The Diversity and Inclusion Benchmarking Report”, Bersin by Deloitte (2014); “Why Diversity Programs Fail”, Harvard Business Review (2016)



Key definitions

- **Black Persons** is a generic term which means Africans, Coloureds and Indians:
 1. Who are citizens of the Republic of South Africa by birth or descent; or
 2. Who became citizens of the Republic of South Africa by naturalisation before 27 April 1994.
 3. A juristic person which is managed and controlled by a person contemplated in paragraph (a) and (b) and the persons collectively or as a group own and control the majority of the members' vote.
- **Core and Critical skills** refers to science, technology, engineering and mathematical skills across organisational levels within both production and production and operational part of a mining company
- **Demographics** means the numerical characteristics of a national and/or provincial population (e.g. population size, age, structure, gender, race, etc.)
- **Social and Labour Plan** refers to the Social and Labour Plan contemplated in section 23 of the MPRDA.



National/provincial demographics and the economically active population

The 2018 draft Charter refers to national and provincial demographics and states that it "is aligned to the provisions of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (B-BBEE Act) and the Codes of Good Practice (dti Codes), Employment Equity Act, 1998 (Act No. 55 of 1998) and other relevant regulatory frameworks". The B-BBEE Act itself does not reference demographics, yet does refer back to the publishing of the dti B-BBEE codes which references EAP targets implicitly (clause

2.1 and 2.2) by citing "overall demographic representation of Black people as defined in the Regulations of Employment Equity Act and Commission on Employment Equity Report". Presumably, the 2018 draft Charter refers to the same legislation, albeit indirectly.

The national and provincial EAP (below) form the basis of the employment equity targets - each level of management, disabled employees and, Core and Critical skills employees should be representative of the below race and gender profiles and target percentages. If compliance targets are not met, scoring is pro-rated by the

percentage achieved. Where right holders are geographically positioned in certain provinces only, they should make use of the provincial EAP targets (instead of the national) for relevant targets.

Alongside the introduction of EAP-related targets, we have seen the introduction of Black Females and Disabled Employees to the compliance targets for the mining industry for the first time. Both these sets of targets need to be aligned with EAP. Furthermore, Core and Critical skills – an element familiar to the mining industry – now also needs to be aligned with the relevant EAP.

2016Q3 National and provincial economically active population

	Male				Female				Total
	African	Coloured	Indian	White	African	Coloured	Indian	White	
National	42.8%	5.3%	1.8%	5.3%	35.1%	4.5%	1.0%	4.2%	100%
Western Cape	19.9%	26.2%	0.4%	8.2%	16.1%	22.5%	0.1%	6.6%	100%
Eastern Cape	43.2%	5.9%	0.1%	3.0%	39.8%	5.5%	0.1%	2.4%	100%
Northern Cape	29.8%	21.3%	0.2%	6.2%	20.6%	17.3%	0.2%	4.4%	100%
Free State	49.6%	0.7%	0.4%	3.7%	41.5%	1.3%	0.1%	2.7%	100%
KwaZulu-Natal	43.2%	0.6%	6.8%	2.3%	41.1%	0.4%	3.8%	1.8%	100%
North West	56.4%	0.5%	0.1%	3.6%	35.9%	0.3%	0.2%	2.9%	100%
Gauteng	44.8%	1.7%	1.8%	7.9%	35.2%	1.3%	1.1%	6.3%	100%
Mpumalanga	51.0%	0.2%	0.6%	3.5%	42.1%	0.1%	0.1%	2.5%	100%
Limpopo	53.1%	0.2%	0.4%	2.1%	43.0%	0.1%	0.1%	1.0%	100%

As compliance is not awarded for meeting the EAP statistics for white race groups (except for the Disabled target), the EAP needs to be adjusted (for the relevant province, or nationally) into:

- Black Split Compliance Target
- Black Female Split Compliance Target

Consistent with the *Employment Equity Act*, workplace diversity and equitable representation at all levels are viewed as catalysts for social cohesion, transformation and competitiveness of the mining industry.

In addition, compliance targets have been increased across the various levels of management, aligning somewhat to the dti Codes (more in structure than set targets), and incorporating disabled employees as a scoring criteria:

Measurement Criteria Element		2018 Draft Mining Charter (%)	dti B-BBEE Codes of Good Practice (%)
Board	Black	50	50
	Black Female	20	25
Executive/Top Management	Black	50	50
	Black Female	15	25
Other Executive Management	Black	-	60
	Black Female	-	30
Senior Management	Black	50	60
	Black Female	15	30
Middle Management	Black	60	75
	Black Female	20	38
Junior Management	Black	70	88
	Black Female	25	44
Core and Critical Skills	Black	60	-
Disabilities	<i>Differ</i>	1.5	2
		Includes: • African • Coloured • Indian • White	Refers to Black

Career progression plan of demographics

A significant change is the emphasis placed on Career Progression Plans and their implementation in the 2018 draft Charter. The advantages of implementing these plans are multiple: assisting in retaining top talent, filling internal roles and skills gaps, and increasing productivity. This process, furthermore, is an important step in

empowering employees - clear, concise and transparent career pathways enables employees to take ownership of their careers.

A mining rights holder will need to develop and implement a plan that is in line with the applicable EAP targets. During implementation, the monitoring and tracking of candidates' progress will be essential to ensure that plans come to fruition.

Below is our experience of career progression planning, which we have developed over the years. This methodology aligns well with the steps from the 2018 draft Mining Charter. In addition, our methodology stresses the importance of building these plans based on the individual transformation and diversity gaps that an operation faces.

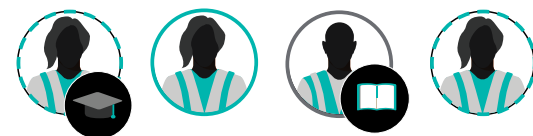
Employment Equity: Career Progression Plan

1 Understanding your transformation and diversity gaps to compliance

dti Black Target Gap Analysis

		African Male	Coloured Male	Indian Male	African Female	Coloured Female	Indian Female	Total	Gap key
Split Compliance Target	% Target	41.1%	0.2%	0.3%	33.3%	0.1%	0.1%	75%	Over
	# Target	61.65	0.23	0.46	49.92	0.12	0.12	112.5	Under
Current Status	% Actual	28.7%	3.3%	1.3%	10%	3.3%	1.3%	48%	
	# Actual	43	5	2	15	5	2	72	
Gap	# Actual	-18.6	4.8	1.5	-34.9	4.9	1.9		
Score: 1/2									#Targets to 1 decimal point to guide decision-making

4 Identify Talent Pool to be fast tracked in line with the organisation's needs



5 Develop Individual Development Plans for employees to assist them by:



Formal training



Work mentoring and on-the-job training



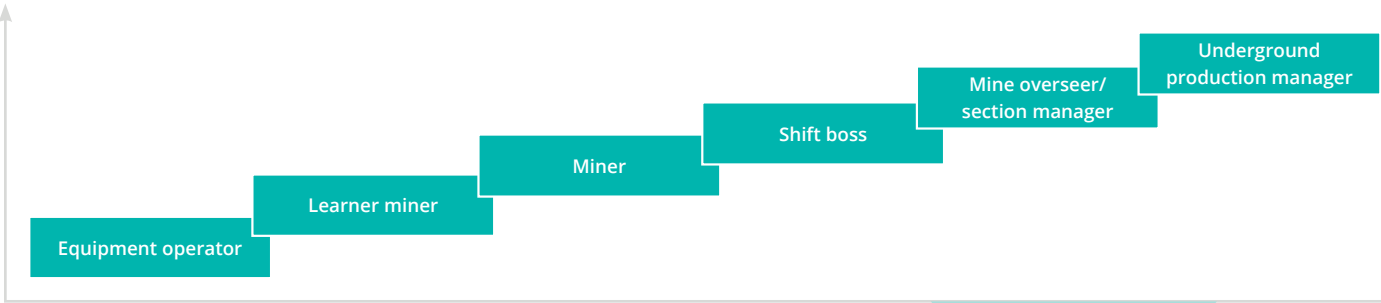
Life coaching



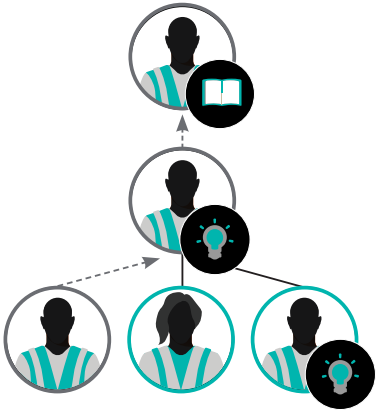
Horizontal learning opportunities



2 Career development matrices of each discipline, including the minimum entry requirements and timelines. Example below is of a miner:



3 Map Succession Planning Pathways



6 Providing employees with a comprehensive plan with targets, timeframes and how the plan would be implemented



Plan with targets



Clear timeframes



Implementation plan



Areas of certainty and uncertainty

Certainty

- The targets are clear and the alignment to the EAP (read: demographics) targets brings certainty as to what is expected of rights holders
- The prescribed and permissible Core and Critical skills are explicitly listed (and include science, technology, engineering and, mathematical skills), which must be represented across all organisational levels
- The 2018 draft Mining Charter sets out the steps to facilitate Career Progression Plans, clearly stating the importance of talent pools and the need to align them with EAP targets.

Uncertainty

- The disabilities target has been decreased from the 2% in the dti Codes of Good Practice to 1.5%, including an EAP (read: demographics) overlay with no clarity to the rationale.
- Despite the reference to EAP targets (aligned to the Departments of Trade and Industry and Labour's definitions and requirements), the draft Charter notes "demographics" of the country in most sections, removing direct reference to EAP targets which, despite their near certain application, brings unnecessary interpretational uncertainty
- Although the targets for Employment Equity are clear, the period in which they can be realised is not. Introducing a transition period that is clear, similar to the one stated under Preferential Procurement, could assist in creating realistic timelines for implementation
- Core and Critical skills only state certain skills, it is unclear whether other core skills, which are often operation specific, will be accepted.



Strategic implications

1

Although industry appears to have broadly met the HDSA targets, the now increased targets as well as the reflection of demographics will change compliance status for most. There is a need to rethink how you approach transformation and diversity with higher levels of sophistication, and strategic intent.

2

The inclusion of Black Females and the EAP-targets necessitates internal assessments by rights holders of their current performance against the new targets, and rapid changes in respect of their employment equity plans and reports.

3

For junior and middle management positions in particular, the targets have increased substantially. In the midst of the current slump and ongoing retrenchments by several right holders, questions are raised as to how easily these targets can be achieved.

4

The application of the EAP (read: demographics) targets to Core mining will have a significant impact bearing in mind the primarily African Male workforce in this area. This is exacerbated by our education system, which struggles with quality mathematics and science education.

5

Although the 2018 draft Mining Charter targets for Black and Black Female are lower than the dti targets, the targets remain ambitious given the state of the mining industry. The lack of a clearly defined staggered transition period may result in challenges for the industry.

6

Although the inclusion of the Disabled target is aligning with the dti's B-BBEE Codes of Good Practice, the EAP overlay thereof could prove challenging (especially for small operations).

7

In general, duplication of efforts remains for right holders that continue to drive compliance with both the dti's B-BBEE Codes of Good Practice and the 2018 draft Charter due to the areas of misalignment. Nevertheless, there is alignment in the approach, and structure.

8

The 2018 draft Mining Charter places emphasis on career progression plans, which will require constant tracking and monitoring of candidates to ensure that the intended value is realised.

9

Overall the sector has witnessed continued declines in employment numbers, which in itself has also affected succession planning. A balance may need to be struck between compliance motivated appointees and those that meet the skills requirements of a sector in need of growth.

10

Employment equity ought to be about ensuring the necessary skills base required for the industry to thrive, alongside the transformation agenda. Stakeholders would need to assess necessary linkages between this and the Human Resource Development element, with a view towards delivering value beyond compliance.

Human Resource Development

The dire state of education in South Africa has brought with it a social imperative to drive education and skills training. Right holders have and will continue to play an important role in education and developing their employees and communities.

The current Mining Charter requires that 5% of payroll* be invested in human resource and essential skills development. This target has remained constant in the 2018 draft Mining Charter. However, the structure of the 5% spend is different. The 2018 draft Charter expands on the spending criteria by proposing two notable changes.

The first proposes that training (a minimum of 3.5% of the leviable amount) be reflective of demographics, and be invested in essential skills development activities such as science, technology, engineering, mathematical skills as well as artisanal, literacy and numeracy development, and bursaries. This is a broad mandate, and to date there has been a strong focus on technical/artisanal skills training as per the needs of the sector. It further states that the training should be for both employees and community members that are not employees of the mine.

*% of Leviable amount (excl. mandatory skills development levy)

The second change is a 1.5% of payroll contribution requirement towards South African public academic institutions, science councils or research entities (examples of which are available in the Inclusive Procurement section). This is intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation, as well as environmental conservation and rehabilitation.

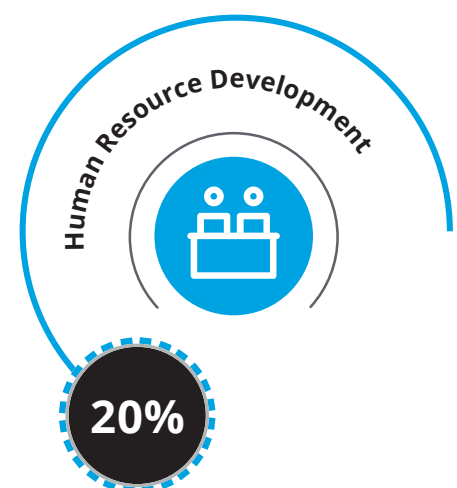
Notably, this element does not align with the dti B-BBEE Codes of Good Practice which, outside of a percentage of payroll as a target (6%), imposes two important directives:

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

1.5% of payroll is required to be contributed towards South African public academic institutions, science councils or research entities.

Scorecard

Element	Measure	Compliance Target %	Weighting %
HRD expenditure as percentage of total annual leviable amount (excl. mandatory skills development levy)	Invest 3.5% of the leviable amount as defined in the HRD element in proportion to applicable demographics.	3.5%	10%
	Invest 1.5% of the leviable amount towards South African public institutions, Science Councils and research Institutions in proportion to applicable demographics.	1.5%	10%
Sub-total		5%	20%



Comparison with dti

A significant challenge faced by many right holders is the need to comply with both the B-BBEE Codes of Good Practice, as well as the Mining Charter. With the training compliance requirements remaining extensively misaligned, this challenge is exacerbated and will continue to result in likely inefficiencies that are costly.

2018 Draft MC III

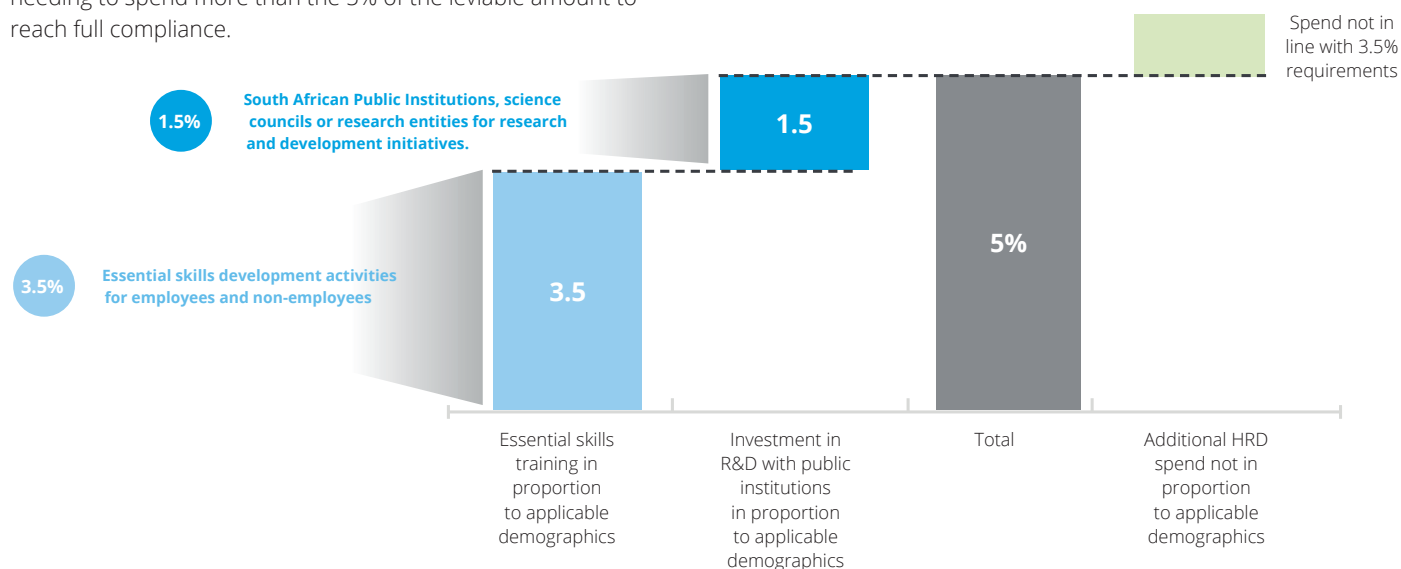
Element	Measure	Compliance Target %	Weighting %
HRD expenditure as percentage of total annual leviable amount (excl. mandatory skills development levy)	Invest 3.5% of the leviable amount as defined in the HRD element in proportion to applicable demographics.	3.5%	10%
	Invest 1.5% of the leviable amount towards South African public institutions, Science Councils and research Institutions in proportion to applicable demographics.	1.5%	10%
	Sub-total	5%	20%

VS

dti B-BBEE Codes

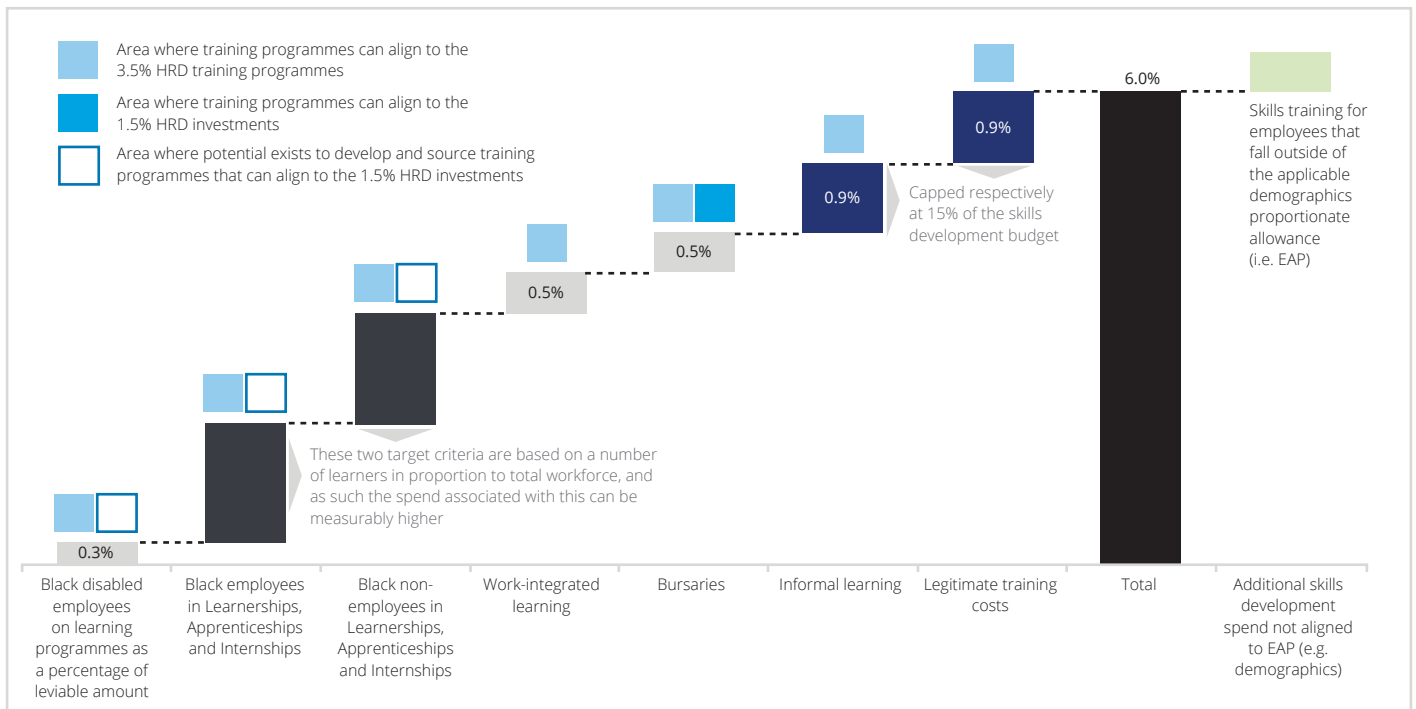
Category	Skills Development Element	Weighting Points	Compliance Targets
2.1.1 Skills Development Expenditure on any programme specified in the Learning Programme Matrix for Black people as a percentage of the Leviable Amount			
2.1.1.1	Skills Development Expenditure on Learning Programmes specified the in Learning Programme Matrix for Black people as a percentage of Leviable Amount.	8	6%
2.1.1.2	Skills Development Expenditure on Learning Programmes specified the in Learning Programme Matrix for Black employees with disabilities as a percentage of Leviable Amount	4	0.3%
2.1.2 Learnerships, Apprenticeships, and Internships			
2.1.2.1	Number of Black people participating in Learnerships, Apprenticeships and internships as percentage of total employees	4	2.50%
2.1.2.2	Number of Black unemployed people participating in training specified the in learning programme matrix as a percentage of number of employees	4	2.50%
Bonus points:			
2.1.3	Number of Black people absorbed by the Measured and Industry Entity at the end of the learnership programmes	5	100%

Nevertheless, there are synergies between these compliance targets which can be leveraged. The graph below indicates the training spend requirements for the 2018 draft Charter. The introduction of the need to align training to the applicable demographics (a shift towards EAP-targeted spend currently utilised in the B-BBEE Codes), will likely result in right holders needing to spend more than the 5% of the leviable amount to reach full compliance.



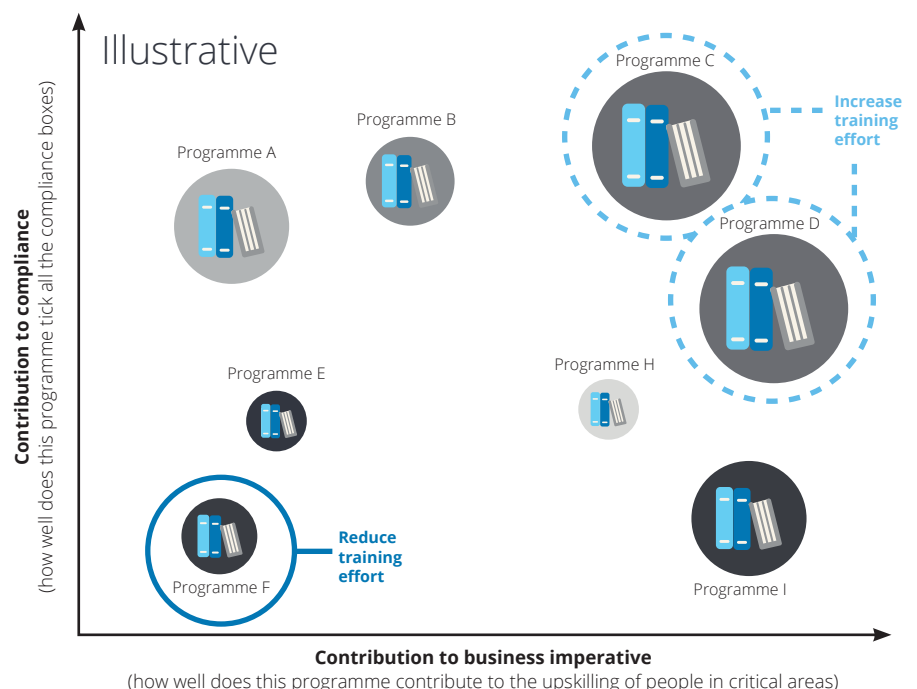
Areas exist where the 2018 draft Charter's spend requirements have the potential to overlap with the dti's B-BBEE Codes skills training requirements. The graph below indicates the dti skills development spend requirements, with reference to areas where overlaps exist and can be potentially established.

dti B-BBEE Codes of Good Practice Skills Development Targets and areas where 2018 draft Mining Charter HRD Spend can align



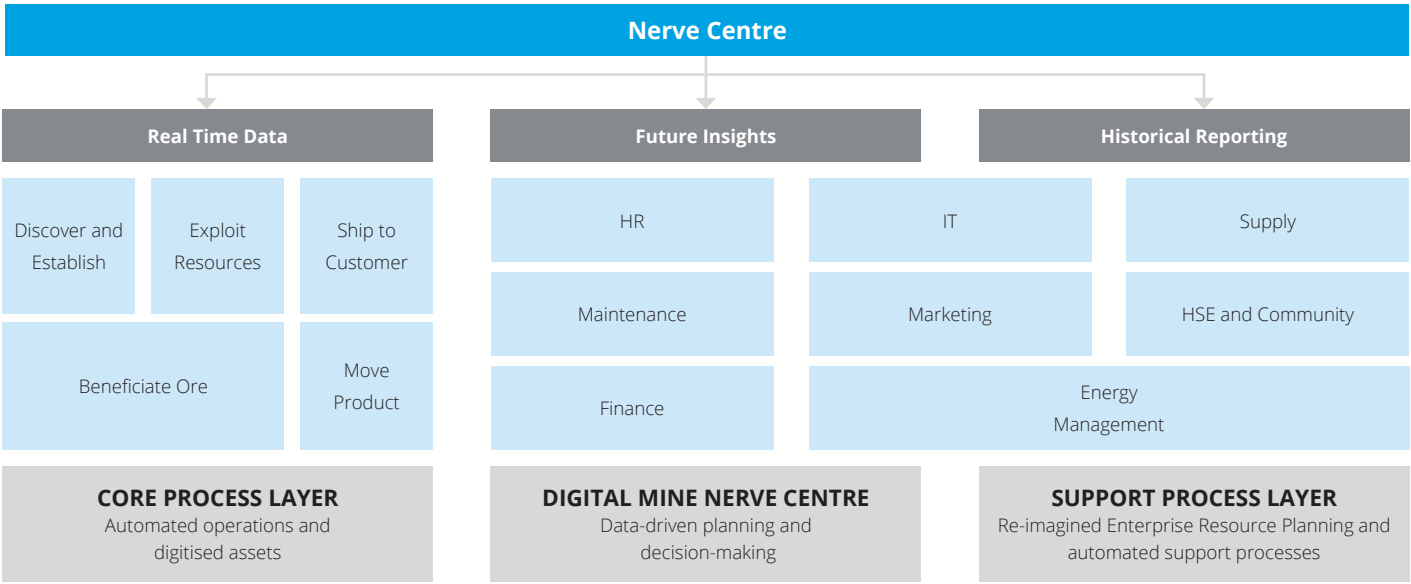
It will be crucial for mines to utilise training efficiently across the dti and DMR targets. If not, spend will increase significantly, leading to compliance rather than development objectives.

The level of contribution of each training programme towards compliance and business imperative should be measured, alongside cost. This will enable a process of reconfiguring training to reduce inefficiencies and ineffectiveness.

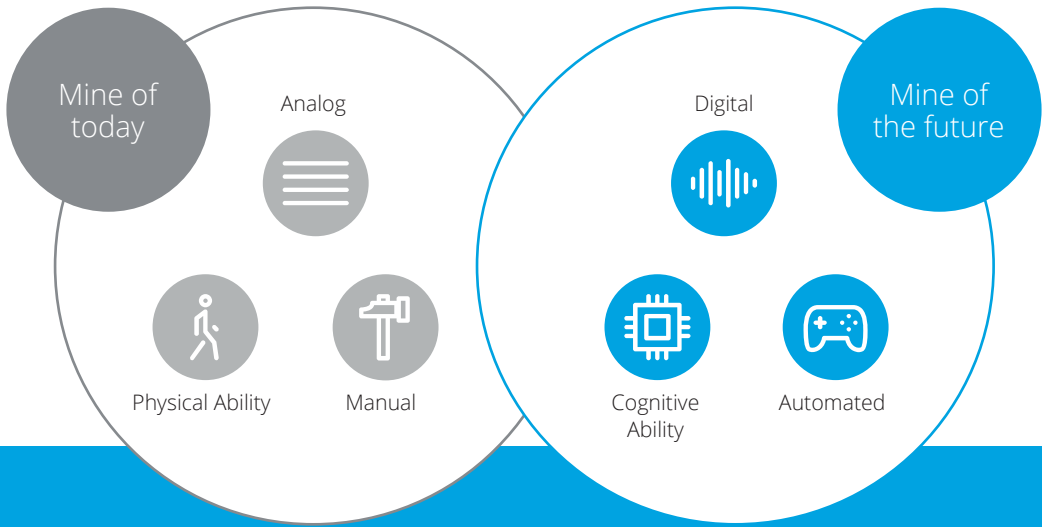


=The Intelligent Mine

Rapid advances in technology along with decreasing costs overall have meant that harnessing the power of digital tools has become more practical and achievable – to the extent that it is now becoming an imperative for the mining industry. The future of mining is in the digital transformation of core mining processes, the flow of information, and supporting back-office processes. This transformation is envisioned to result in the subdivision of mining operations into three key areas (see below).



This transformation will have a significant long-term impact on the industry's future of work. Human Resource Development strategies and objectives will need to be tailored to the changing core business skills. This should be a progressive journey, undertaken in a considered manner with strategic interventions aligning to the intelligent mine of the future.





Areas of certainty and uncertainty

Certainty

- The percentage of payroll to be used on Human Resource Development, as well as the allocation thereof
- The skills development investment should benefit both employees and non-employees
- The types of skills and research and development solutions that should be funded
- The skilling investment (of the workforce and community) should reflect national or provincial demographics.

¹South African Department of Higher Education and Training

²University of Witwatersrand

Uncertainty

- The non-alignment with the dti B-BBEE Codes of Good Practice skills training requirements brings uncertainty as to the necessity of driving training in accordance with the learning programme matrix (prioritising accredited training)
- The 2018 draft Mining Charter is silent on enforcing portable skills training that offers opportunity to trainees to find alternate employment, a critical consideration in a cyclical industry that is furthermore impacted by ongoing digitisation and automation
- The term South African public academic institutions is broad. South African Public Academic institutions include Universities, Universities of Technology, Technical and Vocational Education and Training (TVET) colleges¹. In addition, research entities could refer to councils like the CSIR and Council of Geoscience²
- There is uncertainty with regard to the research and development investment being reflective of demographics. If this refers to historically Black institutions, uncertainty remains around the definition as mergers of historically Black and white institutions are prevalent. This could pose a challenge in ensuring (and proving) that investment is reflective of demographics, and exacerbates the already challenging compliance reporting landscape.

Example of skilling and research investment allocation

With reference to point 4 in the uncertainties above, it isn't clear how right holders will be able to comply with Research and Investment spend in accordance to their relevant EAP. We show the difficulty thereof by illustrating the skilling and research investment for a mine located in Limpopo with an annual leviable amount of R10 million.

	Male				Female				Total
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Limpopo EAP	53.10%	0.20%	0.40%	2.10%	43.00%	0.10%	0.10%	1.00%	100%
Skills development investment (3.5% *R10m* EAP)	R185 850	R700	R1 400	R7 350	R150 500	R350	R350	R3500	R350 000
Research and development investment (1.5% *R10m* EAP)	R79 650	R300	R600	R3 150	R64 500	R150	R150	R1 500	R150 000

While apportioning the 3.5% essential skills development spend is possible across the demographics of Limpopo, rights holders will have challenges identifying research institutions/science councils, and thereafter proportionately allocating, tracing and reporting their 1.5% budget in such a disaggregated manner.



Strategic implications

1

The nature of payroll is variable throughout the year, and is only finalised post a financial year-end (taking into consideration the effects of year-end bonuses paid ad hoc dependent on company performance). To effectively track HRD spend against this changing target, right holders should assess their training spend and payroll monthly.

2

An unintended consequence of the above may be forced training expenditure on ineffective training, which simultaneously disrupts production in order to ensure compliance.

3

The natural evolution of training in the mining sector through innovation and automation necessitates a review of current training interventions. Industry stakeholders would need to work together in refining the training needs to align with the growing digitisation in mining, as well as portable skills training, bearing in mind the expected continued job losses. The 1.5% spend allocation to research and development is an opportunity to focus efforts in addressing these considerations.

4

The overall effectiveness of training is not tested by the 2018 draft Mining Charter, which only enhances a compliance-driven mentality. An example of this is a history of excessive ABET training, which has for several reasons been ineffective (often done after hours with low attendance, focused on underground miners whose average age lends itself to this form of training).

5

The industry ought to focus on both career progression – which is included in the Employment Equity section – and portable skills training in its training plans, so as to enable employees to progress in up cycles and also find alternative employment in the down cycles.

6

As mentioned above, career progression has been included in the 2018 draft Mining Charter. This will require significant collaboration between HR and training, as training is a critical lever in sustainably and effectively implementing these plans. This is especially important as skills investment is required to be aligned with the provincial EAP. This can only be reached if the workforce itself is aligned with the provincial demographics.

7

Mining companies ought to embrace a continuous learning method, which emphasises a holistic approach to training and development through a blend of formal learning, on-the-job development, and learning support systems and tools to create an integrated and balanced learning environment. To limit training to essential skills only will result in a continued compliance-driven approach that will have a detrimental impact to the shared value training intent.

8

There exists the opportunity to design research and development investment initiatives in a manner that enables right holders to optimise their compliance scoring in both this and the Inclusive Procurement element simultaneously.

9

This said, the requirement for research and development investment to be spent in proportion to the applicable demographics may be difficult to affect in a practical manner, as such spend is anticipated to be invested with legal entities and not individuals of a particular race and gender. Right holders should seek clarity on this before actions are taken to implement.

Inclusive Procurement, Supplier and Enterprise Development

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

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

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

The 2018 draft Charter introduces several amendments to the procurement measurement criteria and targets for this element, which is also the highest weighted contributor to the overall compliance scorecard (60% out of the 100%).

It proposes right holders to identify both goods and services spend categories within their supply chain, adjusting procurement policies to enable spend on these new measurement criteria.

The current capital goods and consumables spend is consolidated into a Mining Goods spend category.

These mining goods are also required to be proportionately made up of South African manufactured goods, which goods must have at least a 60% local content, as certified by the South African Bureau of Standards (SABS) or other entity designated by the Minister.

In addition to the current measurement criteria relating to processing of samples, and contributions by foreign suppliers (formerly defined as multinational suppliers), a measurement criteria relating to research and development spend has been added.

A right holder is required to promote economic growth through the development or nurturing of small medium and micro enterprises and suppliers of mining goods and services to the mining industry and other sectors of the economy.

Scorecard






































Goods procurement		
Measure	Target %	Weighting
BEE Entrepreneurs	21%	10%
BEE Women Entrepreneurs or Youth Owned and controlled company	5%	5%
BEE Compliant Companies	44%	5%
Services procurement		
Measure	Target %	Weighting
BEE Entrepreneurs	60%	5%
BEE Compliant Companies	10%	5%
51% Youth Owned and controlled companies or BEE Women Entrepreneurs	10%	10%
Samples		
Measure	Target %	Weighting
% of samples analysed using South African based facilities	100%	5%
Contributed by foreign suppliers		
Measure	Target %	Weighting
% of revenue as defined in the element	0.5%	5%
Research and Development		
Measure	Target %	Weighting
Percentage of research and development budget spent in South Africa	70%	10%




A final notable change is the introduction of procurement requirements from BEE and BEE Woman Entrepreneurs (essentially 51% Black and Black Woman owned businesses), Youth Owned and controlled companies, and BEE Compliant Companies (who must have both

empowerment credentials, as well as a level 4 B-BBEE recognition level, indicating that they are driving transformation and socio-economic impact through their own compliance with the various elements of the B-BBEE Codes of Good Practice).

This is the first significant change in this element to fall in line with what has been an evolving preferential procurement landscape in South Africa, as highlighted by the comparative with the ongoing amendments to the B-BBEE Act and Codes of Good Practice since 2007.

	Preferential/Inclusive procurement					ESD	
	 Black Owned Suppliers	 Black Woman Owned Suppliers	 Youth Owned Suppliers	 BEE/B-BBEE Compliant Companies	 SMMEs	 Enterprise Development	 Supplier Development
2002 MINING CHARTER I	-	-	-	-	-	-	-
2003 BEE ACT	-	-	-	-	-	-	-
2007 B-BBEE ACT	12%  50% 	8%  30% 	-	70%  BEE suppliers	15%  QSE OR EME	3% NPAT  ED OR SD	
2010 MINING CHARTER II	40%  Capital goods 50%  Consumables 70%  Services 25% + 1 vote 	-	-	-	-	-	-
2013 AMENDED B-BBEE ACT AND DTI CODES	40%  51% 	12%  30% 	-	80%  BEE suppliers (based on recognised spend)	15%  15%  QSE and EME	1% NPAT 	2% NPAT 
2018 DRAFT MINING CHARTER III	21%  Mining goods 60%  Services 51% 	5%  Mining goods 10%  Services 51% 	5%  Mining goods 10%  Services 51% 	60%  26% Black owned + ≥ level 4 B-BBEE	-	May undertake ED and SD and set off against goods and services procurement spend	

 represents percentage spend target based on total measured procurement spend

       represents spend category and/or ownership targets for beneficiaries of spend

The draft charter states that right holders must ensure that the terms and conditions offered to BEE Entrepreneurs including BEE Women Entrepreneurs or Youth Owned enterprises are not less favourable than those offered to other suppliers. Reported procurement expenditure must reflect the actual expenditure that is incurred by the right holder.

Key definitions

- **BEE Entrepreneur** refers to Black enterprises that are at least 51% owned by Black Persons (in which Black Persons hold at least 51% of exercisable voting rights and 51% of economic interest), or an organ of State excluding mandated investments.
- **Economic Interest**
Means the entitlement of BEE shareholders to dividends, capital gains and other economic rights of a shareholder
- **Voting Rights**
Means voting rights that can be exercised generally at a general meeting of a company;
- **BEE Compliant Company**
Means a company with a minimum B-BBEE level 4 status in terms of the B-BBEE Codes of Good Practice and minimum 26% Black ownership
- **Foreign Supplier**
Means a foreign controlled or registered company, supplying the South African mining industry with mining goods or services which does not have at least level 4 status in terms of the B-BBEE Codes of Good Practice and 26% Black ownership
- **Mining Goods**
Refers to consumable and capital goods used by a right holder or by a contractor on behalf of a right holder
- **Services**
Refers to services contracted by a right holder, or by a contractor on behalf of a right holder, which includes 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
- **South African Based Company**
Refers to a company incorporated in the Republic in terms of the Companies Act and which has offices in the Republic
- **South African Manufactured Goods** refers to goods with a minimum 60% of the value added during the assembly or manufacturing of the product is created in the Republic. The calculation of value added excludes profit mark-up, intangible value such as brand value and overheads
- **Youth** for the purposes of the Mining Charter, refers to young South African citizens between the ages of 18 to 35 years old based on national or provincial demographics

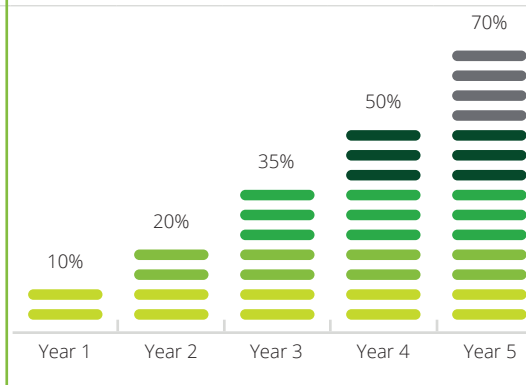




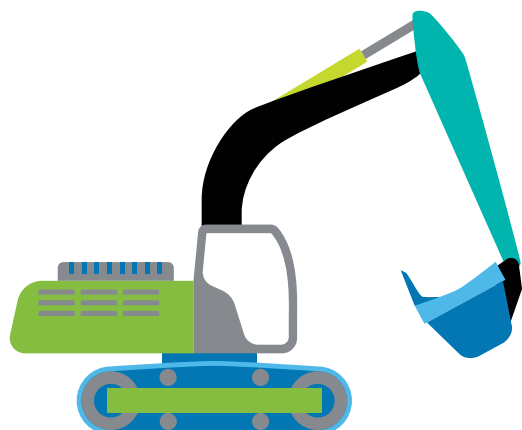
Mining goods

A minimum of 70% of total mining goods spend must be South African manufactured goods, spent with BEE Entrepreneurs and BEE Woman Entrepreneurs, Youth owned and controlled companies, and BEE Compliant companies against the targets set out below. A transition period of five years is allowed to meet these compliance targets (also set out below), and a right holder must submit a five year plan indicating progressive implementation of inclusive procurement targets within six months from the date of publication of the final version of this 2018 draft Mining Charter.

Goods procurement							
Measure	Transition period					Compliance Target %	Weighting
	Year 1	Year 2	Year 3	Year 4	Year 5		
Percentage of the total mining goods procurement budget spent on South African manufactured goods by BEE Entrepreneurs (referred to as Black entrepreneurs in the published 2018 draft Mining Charter).	3%	6%	10.5%	15%	21%	21%	10%
Percentage of the total goods procurement budget spent on South African manufactured goods from companies BEE Women Entrepreneurs or Youth owned and controlled company	0.71%	1.45%	2.50%	3.57%	5%	5%	5%
Percentage of total goods procurement spend on South African manufactured goods from BEE compliant companies	6.29%	12.57%	22%	31.43%	44%	44%	5%



Transition period





Services

A minimum of 80% of total spend on services (excluding non-discretionary expenditure) must be sourced from South African Companies. A two year transitional period is permitted for this measure, with the first year set at 70% of procurement budget and the second year at the full 80%.

Services procurement				
Measure	Transition Period		Compliance Target %	Weighting
	Year 1	Year 2		
Percentage of total services budget spent on services from BEE Entrepreneurs	52.5%	60%	60%	5%
Percentage of total services budget spent on services from BEE Compliant companies	8.75%	10%	10%	5%
Percentage of total services budget spent on services from companies who are 51% youth owned and controlled companies or BEE Women Entrepreneurs	8.75%	10%	10%	10%
<p>The chart shows two bars representing the transition period. The first bar, labeled 'Year 1', reaches the 70% mark. The second bar, labeled 'Year 2', reaches the 80% mark. The y-axis is marked with 70% and 80%.</p>				

Transition period



Research and Development

A minimum of 70% of total research and development budget must be spent on South African based entities. The 2018 draft Charter requires that 50% of the 70% must be spent at South African Public Academic Institutions or Science Councils.

Research and Development			
Measure		Compliance Target %	Weighting
Percentage of research and development budget spent in South Africa		70%	10%

- South African Public Academic Institutions include Universities, Universities of Technology, Technical and Vocational Education and Training (TVET) colleges*
- Science Councils are councils like the CSIR and Council of Geoscience**

*South African Department of Higher Education and Training

** University of Witwatersrand

Note: It is also stipulated in the Human Resource Development section of the 2018 draft Charter that companies need to invest 1.5% of the leviable amount towards South African public institutions, Science Councils and research institutions in proportion to applicable demographics.



Processing of samples

100% of samples across the value chain must be analysed locally. If sample analysis from foreign companies is needed, it requires the written consent from the Minister.

Samples		
Measure	Compliance target %	Weighting
% of samples analysed using South African based facilities	100%	5%



Contribution by foreign suppliers

Foreign supplier contributions of 0.5% of annual turnover, generated from local mining companies, must be directed to the Mandela Mining Precinct for research purposes. The Mandela Mining facility originated out of the 2015 Mining Phakisa discussions. The primary objective of the facility is to drive research, development, innovation and work on the challenges facing the mining industry. The facility is a partnership between the Department of Science and Technology, the Department of Trade and Industry and the Mineral Council of South Africa.

Contributed by foreign suppliers		
Measure	Compliance target %	Weighting
% of revenue as defined in the element	0.5%	5%

Enterprise and Supplier Development

Enterprise and Supplier Development (ESD) has been formally included into this element of the Mining Charter scorecard, having been included in the Mine Community Development section in the old Charter. This said, the approach taken to endeavour to promote ESD is unlikely to advance either the sustainability and growth of SMMEs, or industrialisation, localisation and socio-economic impact, as will be unpacked.

The 2018 draft Charter states that a right holder **may** invest in enterprise and supplier development against which it may offset some of its procurement element obligations. Qualifying beneficiaries for ESD contributions are aligned to those of the B-BBEE Codes of Good Practice (i.e. BEE entrepreneurs with a turnover of less than R50 million). A further criteria is for a written agreement to be entered into between the right holder and the beneficiary of the ESD Contributions (assumably detailing the nature of the contributions). These criteria are common and appropriate practice.

The final implementation requirement, however, is one that right holders may be challenged with, and which may have the unintended consequences of inhibiting much of the possible positive impact of ESD programmes. It demands that right holders and recipients/beneficiaries of Supplier Development contributions (not Enterprise Development) enter into a contract for a minimum of five (5) years. One presumes this relates to a supply agreement and not the written agreement detailing the supplier development contributions.

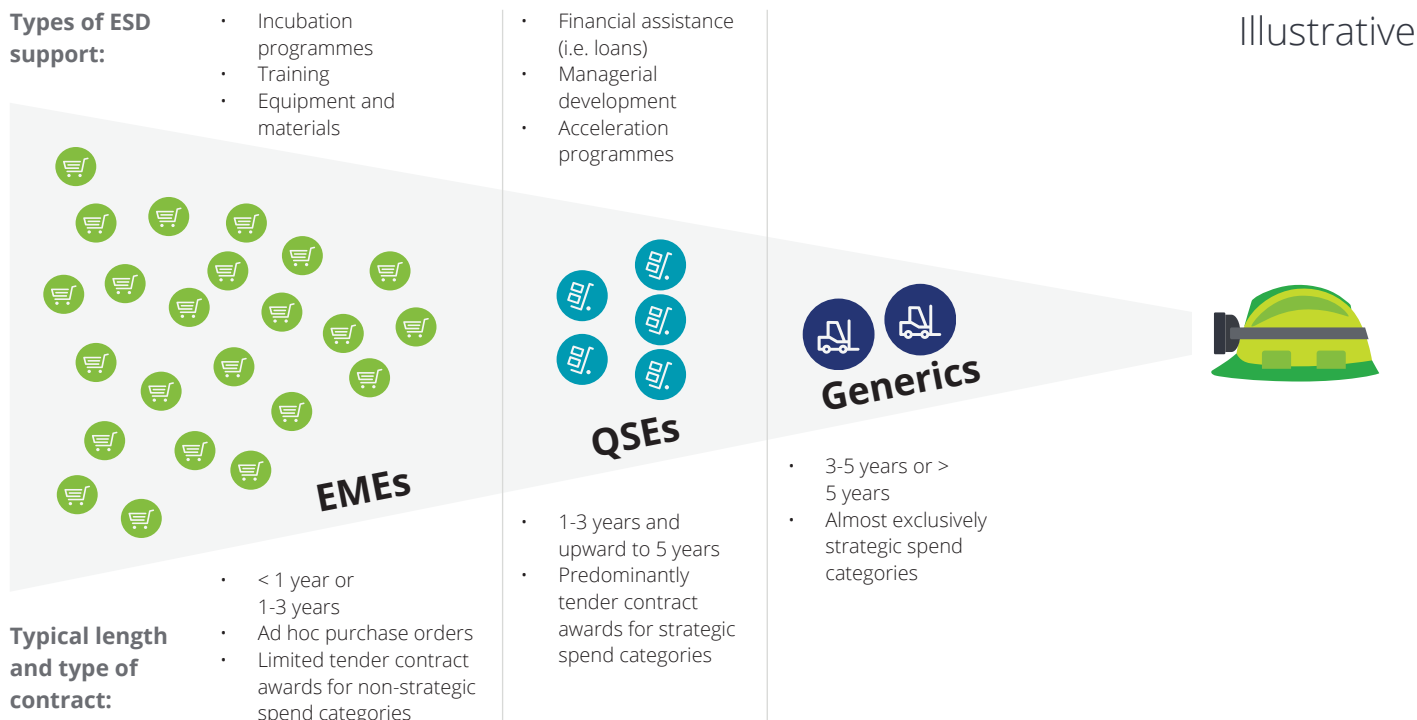
To understand the negative impact this will have, one must begin by understanding the purpose and intent of ESD, which is well set out in the B-BBEE Codes of Good Practice as follows:

 <p>To strengthen local procurement in order to help build South Africa's industrial base in critical sectors of production and value adding manufacturing, which are largely labour-intensive industries.</p>	 <p>To increase local procurement through capacity building, achieved by incentivising appropriate local supplier development programmes by businesses supplying imported goods and services.</p>	 <p>To actively support procurement from Black owned QSEs and EMEs by identifying opportunities to increase procurement from local suppliers in order to support employment creation.</p>
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The focus area for ESD is specifically SMMEs (exempt micro enterprises and qualifying small enterprises) as they have the greatest need for developmental support. Their needs, and the challenges they face, are well researched and documented, not only in South Africa but globally. When supporting SMMEs one should take cognisance of not only their size, but also the following considerations:

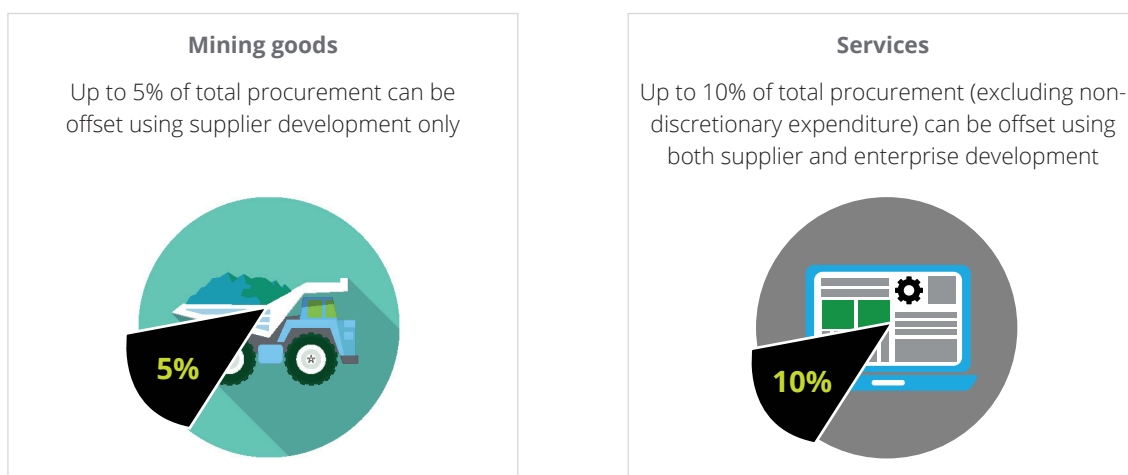
- Entrepreneurial competence is correlated to the likelihood of business survival and success
- There is evidence of correlation between education and training and successful SMMEs in South Africa
- The need to differentiate support for firms by their sector, size, skills and other factors
- The need to consider the different stages of business growth
- The low levels of entrepreneurial culture and education across the country (particularly at schooling level)
- The low survival rate for start-ups in South Africa (most fail within the first three years), correlated with inadequate managerial skills
- Opportunity-driven entrepreneurship is favoured for success over necessity-driven entrepreneurship
- Accessing and retaining skills within SMMEs is a key competitive advantage

As is evident below, SMMEs require different ESD support at different phases of their growth journey. Further to this, there are significantly more SMMEs requiring support in the EME phase than in the QSE phase.



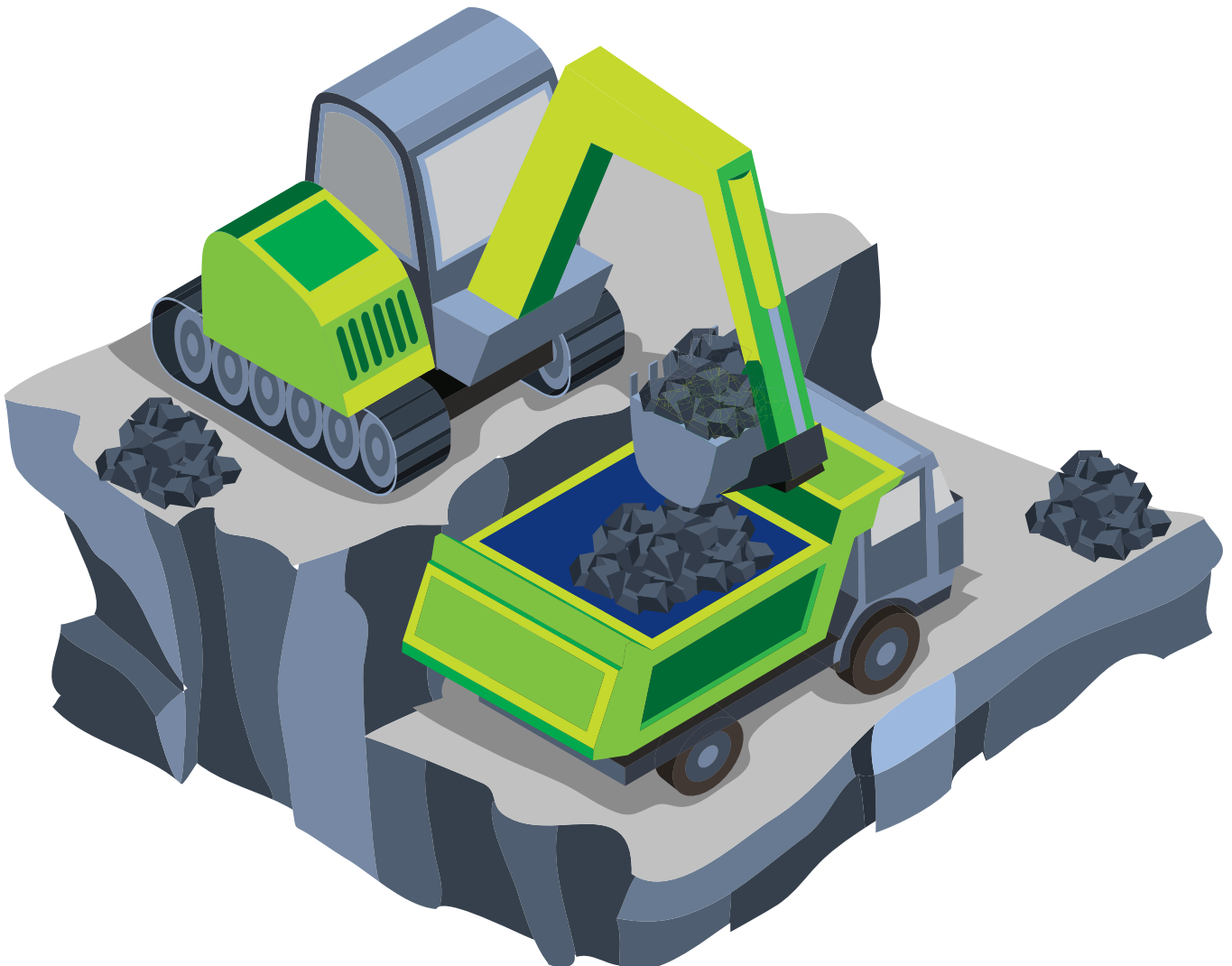
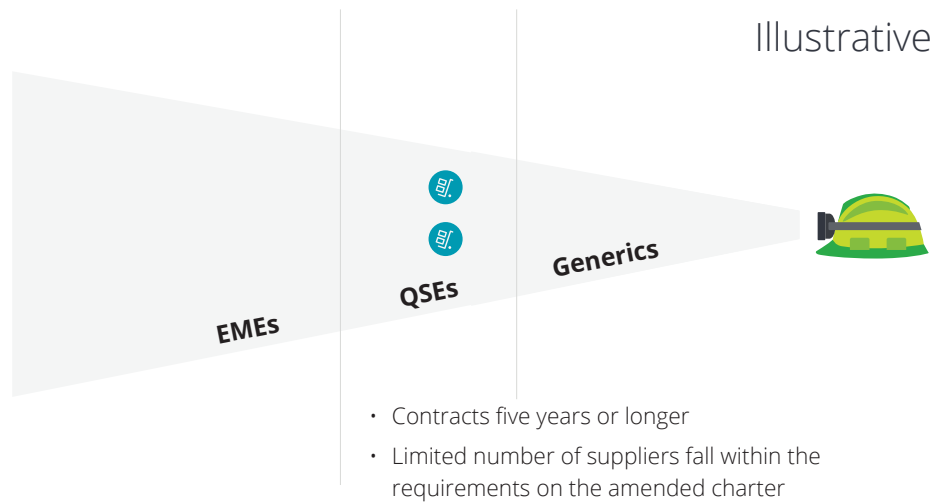
The 2018 draft Mining Charter has the potential to disincentivise this support in two ways:

1. It proposes only a set-off of the procurement spend (in goods and services) of the value invested in ESD as per the below:



One would presume that a right holder would rather procure goods or services (receiving the value associated with them) directly from the preferred empowered suppliers, to supporting the development of suppliers through ESD whereby they do not receive a direct and immediate value in return. An alignment with the B-BBEE Codes stance of providing Net Profit After Tax (NPAT) based targets for ESD spend per annum, with associated compliance scoring, would have been far more progressive and effective in supporting the sustainability and growth of the multitude of SMMEs supplying (or endeavouring to supply) the mining industry.

2. The second inhibitor is the insistence of a minimum five (5) year contract for supplier development beneficiaries. As was illustrated above, the vast majority of suppliers in a right holder's supply chain are EMEs, who require support to grow into QSEs and thereafter Generic companies. The illustration shows further that the respective ESD support that they commonly require is different, as are the typical contract types and lengths. This approach may enforce an exclusionary practice whereby only a small number of QSEs that are already sufficiently developed to sustain themselves through a five year contract will be supported.





Areas of certainty and uncertainty

Certainty

- The targets and criteria are clear and certain
- BEE Entrepreneur, BEE Women Entrepreneur and BEE Compliant company are all fully defined leaving no room for confusion
- The DMR have opted not to directly align the definition of BEE Compliant companies with that of the dti Codes of Good Practice. It has, rather, for Mining Goods selected a combination of 2010 Charter BEE Compliant company criteria (26% Black ownership), alongside a restrictive dti B-BBEE recognition level 1-4 (nothing below this), and the need for goods to meet the above definition of South African manufactured goods. For services, similar criteria apply, save for the need of services companies to be South Africa based
- The pre-qualification criteria for potential ESD beneficiaries with regards to their size and empowerment status is now substantially aligned to that of the Broad-Based Black Economic Empowerment (B-BBEE) Codes of Good Practice, i.e. in order for an enterprise to be eligible for ESD contributions, it must be a business with less than R50m turnover (i.e. a QSE or EME) that has at least 51% Black or Black women ownership
- More realistic transition periods have been allowed for right holders to reach the new procurement targets. The right holder must submit a plan, from the date of publication of the new charter, indicating the progressive implementation to meet the procurement targets.

Uncertainty

1. The introduction of a new compliance criteria in the form of a verification of local content for capital and consumer goods with the South African Bureau of Standards (SABS) may result in both administrative and financial burdens for several stakeholders in the mining goods value chain in South Africa. This additional compliance may, firstly, lead to an administrative burden for not only rights holders, but suppliers onto who the necessity to ensure SABS compliance will likely be passed. Secondly, the SABS may not have capacity to expedite applications in this regard, with recent reports of its own financial, business and sustainability challenges. Lastly, this may amount to another financial burden, especially on small businesses.
2. The definition for mining goods and (less so) services are specific to certain procurement items, which might bring uncertainty as to the applicability of the targets to other procurement items that fall outside of these definitions.
3. Procurement of mining goods and services from foreign suppliers is still unfavourable and does not comply with South Africa's trade law obligations. The draft Charter's procurement requirements state that at least 70% of its spending on capital and other mining goods will have to go to locally manufactured products (with a local content of at least 60%). This may pose a problem for large companies as only a few South African companies have the capacity to produce sophisticated capital goods required in the mining sector.
4. Contributions to research and development in South African based entities is a new element and appears to incentivise localised research and development. It appears as though right holders will be able to simultaneously benefit from these contributions in both this and the Human Resource Development scorecard, which requires validation.
5. The definition of Youth for the purposes of the Mining Charter, refers to young South African citizens between the ages of 18 to 35 years old (no longer a requirement to be Black) based on national or provincial demographics. This raises confusion with regard to how the 5% Mining Goods and 10% Services target should be allocated with regard to demographics. The example below is used for illustrative purposes:

Example:

Right Holder A spends R200 000 000 on procurement of which R100 000 000 is for mining goods. 5% of total Mining Goods procurement must be BEE Women Entrepreneurs or Youth owned and controlled companies. Assuming this 5% (R5 000 000) is spent with Youth owned and controlled companies, apportioning for demographics of Mpumalanga province (i.e. the economically active population in this province), the spend would presumably be as follows:

	Male				Female				Total
	A	C	I	W	A	C	I	E	
Mpumalanga province EAP	51%	0.2%	0.6%	3.5%	42.1%	0.1%	0.1%	2.5%	100%
Mining goods spend on youth owned and controlled businesses	R2 550 000	R10 000	R30 000	R175 000	R2 105 000	R5 000	R5 000	R125 000	R5 000 000

This appears to insinuate that spend outside of this demographic distribution would not count toward the compliance score. A further challenge exists in that currently, B-BBEE Affidavits and certificates have only recently been updated to record a Youth ownership percentage – however, this is not defined by race and gender. Without a tool through which to effectively measure this, a right holder may not be able to effectively track and report on this spend.



Strategic implications

1

Rights holders will be impacted greatly by the increased procurement targets and should, as soon as possible, understand their gaps to compliance, and required changes to their procurement strategies.

2

The direct support measures for Black Women and/or Youth Black Owned businesses as a percentage of procurement spend could bring about impactful change. This may be particularly impactful bearing in mind the high proportion of Black Females that make up the economically active population in all provinces in South Africa, alongside the high levels of youth unemployment.

3

The new compliance criteria will bring about a much increased financial and administrative burden on right holders, and suppliers alike. Despite the intended sharing of value, the failure to align with the dti's criteria (such as EME/QSE/Enterprise and Supplier Development) will necessitate unique and costly monitoring and reporting systems for right holders.

4

The changes do offer the opportunity for rights holders to work together with their supplier bases in industrialising and developing mine communities, as well as Black Owned suppliers that are sustainable in the long term. To truly achieve inclusive growth in this regard, right holders should seek to collaborate and together work towards cluster development.

5

Rights holders must identify goods and services from within their mine communities, applying preference to suppliers within these communities, where feasible.

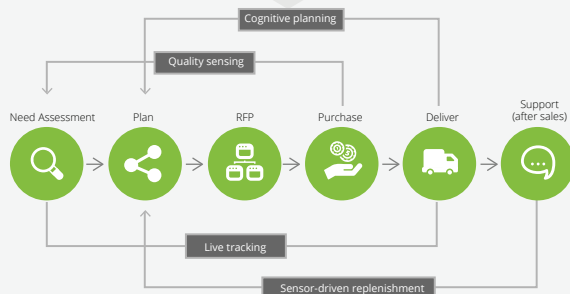
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The move to digital supply chains, underpinned by holistic decision-making, connected communities, intelligent optimisation, end-to-end transparency and analytics resources will enable new and innovative solutions toward meeting compliance targets and sharing value, especially in the areas of enterprise and supplier development.

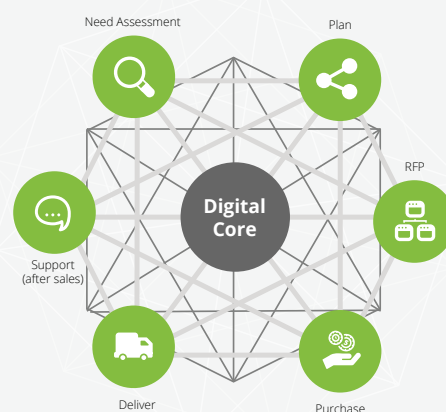
Improvement has traditionally been localised within specific **supply nodes**...



...but technologies are now connecting the silos of the **linear supply chain**...



...causing them to collapse into a dynamic and integrated set of **Digital Supply Networks**



7

Although the 2018 draft Charter is an improvement from the previous draft charter, it is still unlikely to result in much needed investment in the already challenged South African mining sector.

8

The draft charter continues to display unfavourable conditions with regard to the supply of foreign goods and services, which does not comply with South Africa's international trade law obligations.

Mine Community Development

Key definitions

- **Right holder** refers to a holder of a mining right granted in terms of the MPRDA.
- **MPRDA** means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) shareholder.
- **Host Community** refers to a community/ies in the local, district, metropolitan municipality or traditional authority within which the mining area as defined in the MPRDA is located.
- **Labour Sending Area** refers to an area from which a right holder sources majority of its current or historical South African employees.
- **Social and Labour Plan** refers to the Social and Labour Plan contemplated in section 23 of the MPRDA.
- **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.



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

"A right holder must meaningfully contribute towards Mine Community Development with bias towards host mine communities"

Mining forms part of a larger ecosystem. It is thus critical for right holders to contribute to the socio-economic wellbeing of their ecosystem, and especially their surrounding and host communities.

A key change in the 2018 draft Charter is the removal of mine community development (MCD) as a scoring element of the scorecard.

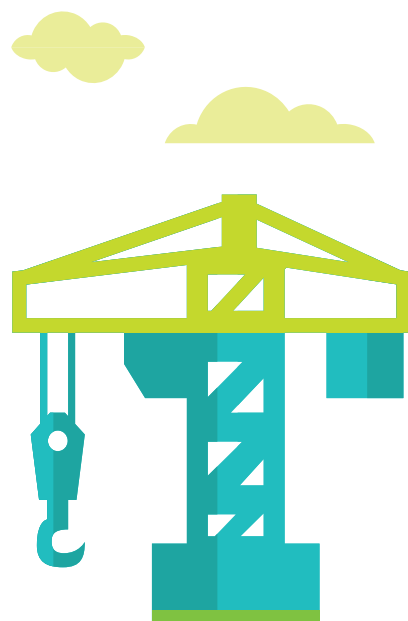
Vagueness and ambiguity remains as to the nature of MCD contributions expected of a right holder. The 2018 draft Charter states "A right holder must meaningfully contribute towards Mine Community Development, both in terms of impact, (and) in keeping with the principles of the social license to operate".

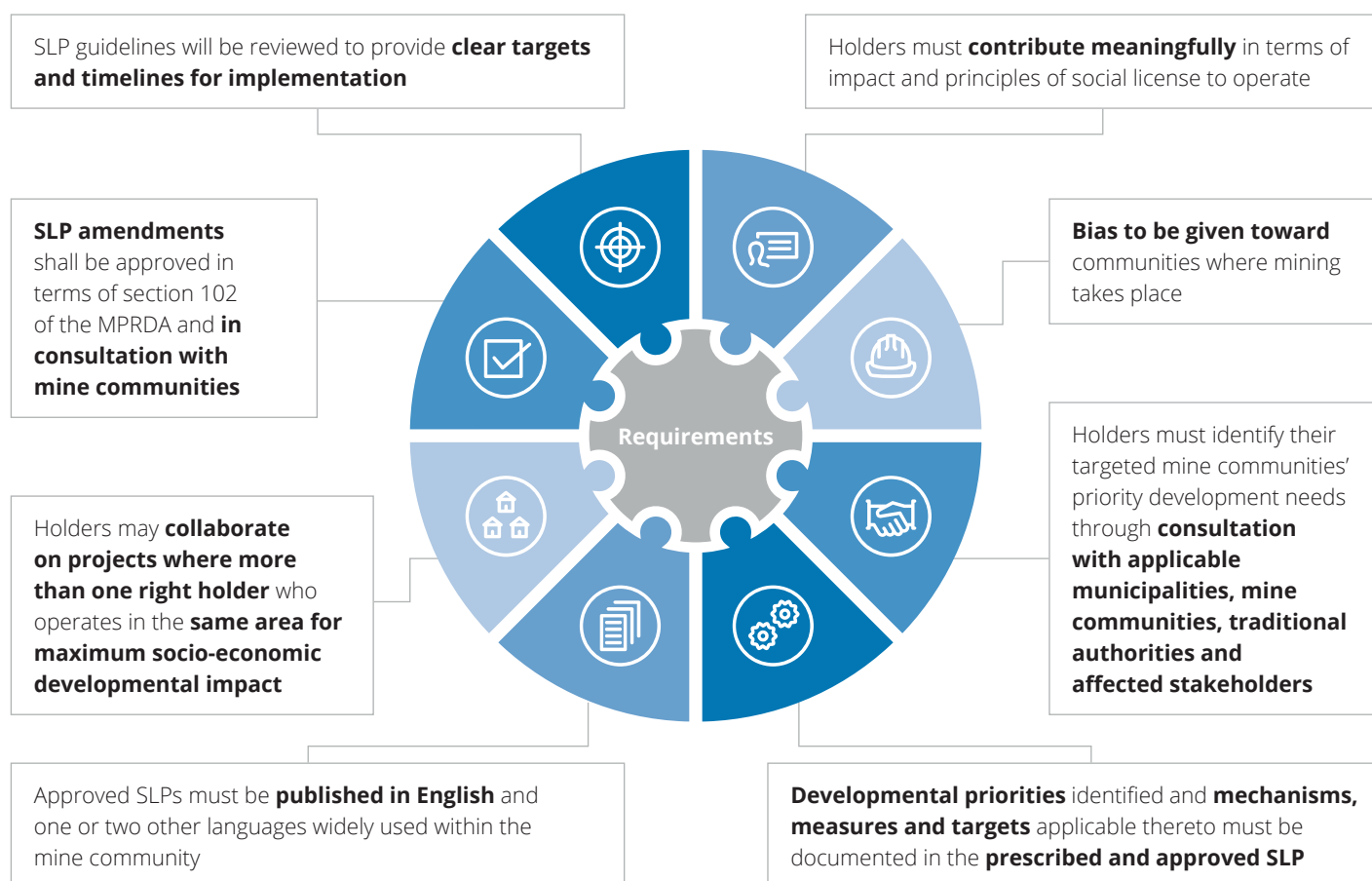
Despite this vagueness, some progressive and potentially impactful changes have been proposed. The 2018 draft Charter explicitly promotes collaboration to increase social impact, and highlights the importance of targeted development with proper processes, procedures and consultation. This is demonstrated by the assessments of community development needs, international best practices, and a consultative process with key stakeholders required in developing Social and Labour Plans (SLPs) to deliver projects that meet the needs of their mining and labour sending communities.

Nevertheless, this remains difficult as the financial investment required is

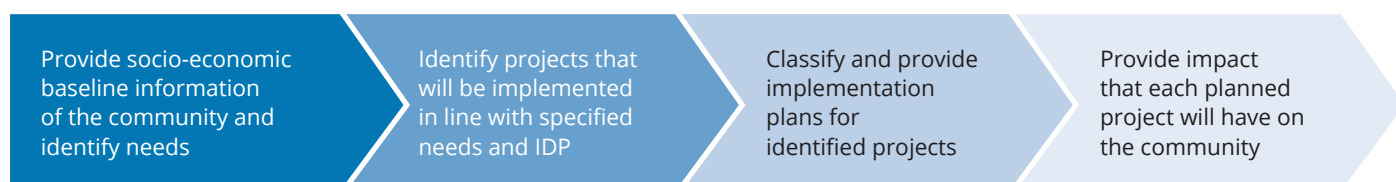
uncertain. The dti's B-BBEE Codes of Good Practice stipulate a 1% Net Profit after Tax (NPAT) annual contribution target for socio-economic development (which can be compared to mine community development), and include a five point scoring for meeting these clearly outlined socio-economic compliance targets.

The 2018 draft Charter does not quantify a compliance target and, furthermore, does not include Mine Community Development as an element in the scorecard.





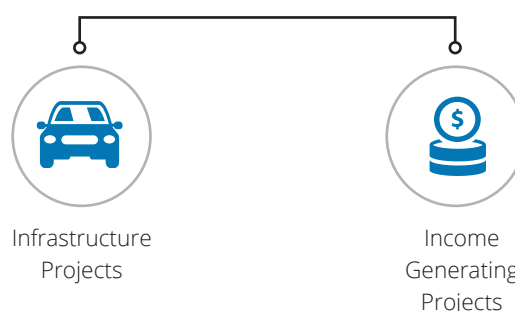
SLP development process and approvals



Consult

- Integrated Development Plans (IDPs) of the mine communities
- Community members, community leaders, municipal authorities (local and district municipalities) and any other relevant stakeholders
- Other relevant National Priorities and economic development frameworks, such as:
 - Provincial Growth and Development Strategy (PGDS)
 - National Spatial Development Strategy (NSDS)

Project classification





Areas of certainty and uncertainty

Certainty

- SLP project approvals and processes (highlighted above) have become a practice that is common and understood by right holders.
- Regardless of the uncertainty associated with the abovementioned vague compliance targets and expectations, it is clear that MCD projects must take place in communities where mining takes place, major labour sending areas, adjacent communities within a local municipality, metropolitan municipality and/or district municipality.

Uncertainty

- The lack of clarity associated with the stipulated “meaningful contribution” requirement, due to the absence of explicit, measurable (financial) MCD targets, creates uncertainty around compliance expectations and the magnitude of MCD efforts required by rights holders.
- Although the 2018 draft Charter emphasises the publically available Social and Labour Plans as the main driver of MCD requirements, uncertainty remains around the targets, timelines and expectations that will emerge with the Reviewed SLP Guidelines.



Strategic implications

1

Due to vague compliance targets and the lack of measurable MCD compliance targets and timelines (other than the use of right holder's SLP to guide developmental prioritisation), compliance remains challenging especially with volatile commodity prices, and the current extended down cycle for the industry.

2

The dti and a few other sectors use NPAT as a measure of certainty. Although this provides a quantifiable target to measure performance against, it may result in additional challenges due to the cyclical nature of the mining industry. Fluctuating NPATs (influenced by index linked-prices and exchange rate volatility), would lead to dynamic compliance targets and expectations which in turn may lead to difficulties in meeting compliance requirements. Other sectors have allowed for a combination of, or choice from either a percentage of NPAT or turnover dependent on value derived.

3

Given the new requirement that any changes made to a mine's SLP during the five year validity period will now require consultation with the mine communities along with the DMR, it is clear that MCD expectations are impacted by several external factors and differing stakeholders and expectations. As such, a clear and comprehensive stakeholder management and engagement strategy will be crucial in ensuring sound expectation management.

4

As most discretion of spend lies with government (especially with cognisance of the need to align MCD projects to IDP's and the like), industry and government would need to work toward a solution that doesn't place rights holders at risk of failure to deliver on agreed projects.

5

With greater emphasis being placed on implementing MCD initiatives through publically available SLPs, and with explicit reporting on mechanisms required therein, we expect a positive outcome in more efficient and effective project planning and execution through clear project targets and timelines.

6

The promotion of collaboration between right holders has the potential to drive greater value, with greater strategic focus, socio-economic impact projects, and focused cluster development.

Housing and Living Conditions

Good housing and living conditions for mine employees is inherently linked to their human dignity and privacy. Rights holders have been required through the current and past Charters to drive improvements in the housing standards and living conditions of mine employees.

Much like Mine Community Development initiatives, good housing and living conditions for mine employees have the potential to drive the positive culture necessary to improve mine production and employee wellness. Mine employees' wellness also extends to their families, and loved ones. The mining industry has acknowledged this need and has made good progress, predominantly meeting the current targets.

The current Mining Charter required right holders to comply with three specific requirements:

1. Convert or upgrade hostels into family units;
2. Attain an occupancy rate of one person per room; and
3. Facilitate home ownership options for all mine employees in consultation with organised labour.

These compliance requirements all carried a four year progressive timeline; with expected full compliance by end 2014.

Right holders will be required to submit a Housing and Living Conditions Plan (approved by the Department of Mineral Resources after consultation with organised labour and the Department of Human Settlement).

The 2018 draft Mining Charter necessitates the maintenance of this status quo. This includes the maintenance of the single occupancy units and family units, as well as any other agreement reached with employees in the time period pending the completion and publishing of the Reviewed Housing and Living Conditions Standard.

The 2018 draft Charter does not include Housing and Living Conditions as an element of the formal scorecard. The housing and living conditions of mine employees will, instead, be governed under the Housing and Living Conditions Standard for the Mining and Minerals Industry developed in terms of section 100 of the MPRDA. Section 100 effectively required that the Minister, after consultation with the Minister of Housing, develop this Standard, alongside a Code of Good Practice in this regard.

This Standard provides the below principles of Housing and working conditions. The Standard shall be reviewed to provide clear targets and timelines for the implementation of these principles.

The removal of Housing and Living Conditions as a formal element of the Mining Charter scorecard is a testament to the industries continuous good efforts in ensuring good housing and living standards for their employees.

Principles of housing conditions

1. Decent and affordable housing
2. Centrality of home ownership
3. Provision for social, physical and economic integrated human settlements
4. Measures to address housing demand
5. Involvement of mine employees in the housing administrative system
6. Secure tenure for the employees in housing institutions

Principles of working conditions

1. Proper healthcare services
2. Affordable equitable and sustainable health system
3. Proper nutrition requirements and standards

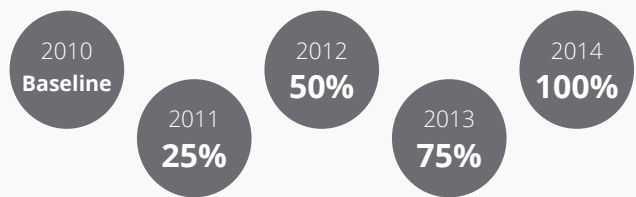


Mining Charter II

- Address three key interventions by 2014:
- 1. Convert or upgrade hostels into family units
 - 2. Attain an occupancy rate of one person per room
 - 3. Facilitate home ownership options for all mine employees

Interventions to be implemented by 2014.

Scorecard with progressive implementation of inclusive Housing and Living Conditions targets specified as follows:



2018 draft Mining Charter

Improve the standard of housing and living conditions as specified in the Mining and Minerals Industry's Housing and Living Conditions Standard and implement in accordance with the Standard's stipulated principles.

Clear implementation targets and timelines to be specified within the reviewed Housing and Living Conditions Standard.

No stipulated targets in the formal scorecard. However, a requirement is in place to ensure maintenance of single units and family units.

Required to submit a Housing and Living Conditions Plan:

CONSULT > organised labour and Department of Human Settlement

APPROVE > DMR



Concluding Thoughts

This 2018 draft Mining Charter, alongside the MPRDA and SLP amendments expected later this year, offer an opportunity to improve regulatory and policy certainty, and subsequently investor perception.

The 2018 draft Charter sets reasonable compliance targets for right holders that also appear to "take stock" of the challenges the industry faces as well as its sectorial characteristics.

From the perspective of clarity and certainty, it is an improvement on the previous draft and amended Charters, though areas exist where a feeling of regulatory uncertainty persists. This document captures these uncertainties, which are critical to amend in ensuring a well-functioning mining ecosystem.

Investment in the industry is essential, and may define the speed at which it returns to a sound growth path. South Africa cannot afford to, again, fail to take advantage of the next up cycle, and investor confidence in the regulatory and policy landscape is vital. Still, economic growth ambition associated with the sector's aspirational growth alone, is not enough. Rights holders form part of a larger ecosystem, influenced by the needs of its employees, communities, environment, and industry. As the drive for continued transformation escalates a more holistic and innovative outlook is needed that embraces value beyond compliance, underpinned by inclusive growth.

Unlike a compliance driven approach, value beyond compliance thinking drives innovation, productivity and both social and economic growth. It is necessary in closing the trust divide in South Africa's mining sector, as government, labour and industry work in unison to deliver value to all stakeholders.

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



Contacts



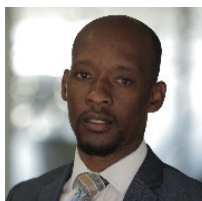
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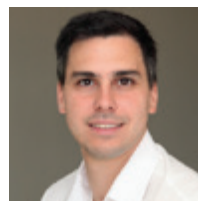
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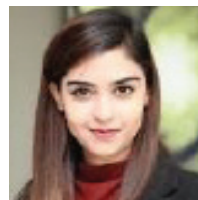


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