

(15 June 2017 – to date)

MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT 28 OF 2002

(Gazette No. 23922, Notice No. 1273 dated 10 October 2002. Commencement date: 1 May 2004 [Proc. No. R25, Gazette No. 26264])

REVIEWED BROAD-BASED BLACK ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING AND MINERALS INDUSTRY, 2016 (REVIEWED MINING CHARTER, 2017)

*Government Notice 581 in Government Gazette 40923 dated 15 June 2017. Commencement date:
15 June 2017.*

I, Mosebenzi Joseph Zwane, MP, Minister of Mineral Resources, hereby in terms of section 100(2) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), as amended, publish the Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry, 2016 (Reviewed Mining Charter, 2017) for implementation.

The Reviewed Mining Charter shall come into operation from the date of publication of this notice in the Government Gazette.

A copy of the Reviewed Mining Charter, 2017 is attached hereto.

(Signed)

Mr Mosebenzi Joseph Zwane, MP

Minister of Mineral Resources

Date: 15/06/2017

BROAD-BASED BLACK SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING AND MINERALS INDUSTRY, 2017

June 2017

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PREAMBLE

The systematic marginalization of the majority of South Africans, facilitated by exclusionary policies of the apartheid regime, prevented Black Persons, as defined herein, from owning the means of production and from meaningful participation in the mainstream economy. To redress these historic inequalities, and thus give effect to section 9 (equality clause) of the Constitution of the Republic of South Africa, 1996 (Constitution), the democratic government enacted, *inter alia*, the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA).

The objective of the MPRDA is to ensure the attainment of Government's objectives of redressing historical, socio-economic inequalities and ensuring broad based and meaningful participation of Black Persons in the mining and minerals industry. In particular, section 100(2)(a) of the MPRDA provides for development of the broad-based black economic empowerment charter for the South African mining and minerals industry as an instrument to effect transformation with specific targets.

In 2009 the Department of Mineral Resources conducted a comprehensive assessment to ascertain the progress of transformation of the mining and minerals industry against the objectives of the Mining Charter of 2002 in the mining and minerals industry. The findings of the assessment identified a number of shortcomings in the manner in which the mining and minerals industry has implemented the various elements of the Mining Charter of 2002, viz. ownership, procurement, employment equity, beneficiation, human resource development, mine community development, and housing and living conditions. To overcome these inadequacies, the Mining Charter of 2002 was amended in order to streamline and expedite attainment of its objectives. Further, the sustainable development element, which sought to ensure sustainable transformation and growth of the mining and minerals industry was introduced.

Prepared by:

In 2014 a second assessment of the levels of compliance by mining companies with the Mining Charter of 2010 was conducted. This second assessment has revealed the following:

- Although there was a noticeable improvement in levels of compliance, there remains a long way for the mining and minerals industry to be fully transformed.
- Notwithstanding a paucity of companies of all sizes that have fully embraced the spirit of the Mining Charter, companies have adopted extremely varied degrees of performance most of which seem to suggest a compliance-driven mode of implementation, designed only to protect the "social license to operate".
- Whereas the MPRDA has transferred the ownership of the mineral wealth of the country to all the people of South Africa, under the custodianship of the State, a proliferation of communities living in abject poverty continues to be largely characteristic of the surroundings of mining operations.
- Limited progress has been made in embracing the broad-based empowerment ownership in terms of Meaningful Economic Participation of Black Persons. The trickle flow of benefits that ought not only to service any debt funding, but also include cash-flow directly to BEE Partners, is vastly limited. To this end, the interests of mineworkers and communities are typically held in trusts, which constrain the flow of benefits to intended beneficiaries. As a result, the mining and minerals industry has broadly been faced with increasing tensions with both workers and host communities.

It is against this backdrop that Government initiated another comprehensive review process in 2015 aimed at strengthening the efficacy of the Mining Charter as one of the tools for effecting broad based and meaningful transformation of the mining and minerals industry.

The review process took into account the need to integrate Government policies to remove ambiguities in respect of interpretation and create regulatory certainty. In this regard, the principles of this Mining Charter of 2017 are harmonised with the provisions of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) and the Codes of Good Practice (Dti Codes), the Employment Equity Act, 1998 (Act No. 55 of 1998) and other relevant regulatory framework.

The Mining Charter of 2017 introduces new definitions, terms and targets to effect the abovementioned harmonisation. The harmonisation of these policies is intended to ensure meaningful participation of Black Persons in accordance with the objects of the MPRDA and the Mining Charter and provide for policy and regulatory certainty sought to invest in the development of the industry.

VISION

To facilitate sustainable transformation, growth and development of the mining and minerals industry.

Prepared by:

MISSION

To give effect to section 100(2)(a) of the MPRDA, section 9 of the Constitution and harmonise Government's transformation policies.

DEFINITIONS

Government has identified a need to align and integrate the transformation regulatory framework contained in the Mining Charter of 2017 in order to remove ambiguities in respect of interpretation and bring about regulatory certainty. In this regard, this section defines terms and concepts used in this Mining Charter of 2017 so as to provide clarity as to their meaning.

"BBBEE Act" means the Broad-Based Black Economic Empowerment Act 2003 (Act No. 53 of 2003) as amended from time to time;

"Beneficiation" has the meaning ascribed to that term in the MPRDA;

"BEE Compliant Manufacturing Company", in relation to the procurement element contemplated herein, means a company that manufactures goods and has minimum BEE level 4 of the Dti Codes and minimum 26% black ownership;

"BEE Entrepreneur" means a Black Owned Company or a Black Person who acquires an equity interest in a Holder through a BEE Transaction;

"BEE Partner" means a Black Person that holds equity in a mining company as a result of a BEE Transaction;

"BEE Transaction" means the issue of equity instruments to Black Persons or a group of Black Persons based on the principles of broad-based black economic empowerment the aim of which includes –

- (a) to redress the results of past or present discrimination based on the race of historically disadvantaged persons in the mining and minerals industry; and
- (b) to transform such industries so as to assist in, provide for, initiate or facilitate –
 - (i) the ownership, participation in or the benefiting from existing or future mining, prospecting, exploration or production operations;
 - (ii) the participation in or control of management of such operations;

- (iii) the development of management, scientific, engineering or other skills of historically disadvantaged persons;
- (iv) the involvement or participation in the procurement chains of operations;
- (v) the ownership of and participation in the beneficiation of the proceeds of the operations or other upstream or downstream value chains in such industries;
- (vi) the socio-economic development of mine communities; and
- (vii) the socio-economic development of all historically disadvantaged Black South Africans from the proceeds or activities of such operations;

"Black Person" is a generic term which means Africans, Coloureds and Indians –

- (a) Who are citizens of the Republic of South Africa by birth or descent; or
- (b) Who became citizens of the Republic of South Africa by naturalisation:
 - (i) before 27 April 1994; or
 - (ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date;
- (c) A juristic person which is managed and controlled by person/s contemplated in paragraph (a) and/or (b) and the person/s collectively or as a group own and control all issued share capital or members' interest, and are able to control the majority of the members' vote;

"Black Owned Company" means a juristic person having shareholding or similar interest that is controlled by a Black Person/s and in which such Black Person/s enjoy/s a right to economic interest that is at least 50%+1 of the total shareholding;

"Companies Act" means the Companies Act, 2008 (Act No. 71 of 2008) as amended from time to time;

"Core and Critical Skills" means high level technical skills across all organisational levels within both the production and operational parts of the Holders' value-chain;

"Demographics" means the numerical characteristics of a national and/or provincial population and includes but is not limited to population size, age, structure, sex/gender, race;

"Dti" means the Department of Trade and Industry;

"Economic Interest" means the entitlement of a BEE Partner to distributions (including but not limited to dividends), capital gains and other economic rights of shareholders;

"Effective Ownership" means the meaningful participation of Black Persons in the net value ownership, voting rights, economic interest and/or management control of mining entities;

"ESOPs" refers to black employee share ownership plans, a vehicle used to empower employees of a mining company who are Black Persons, 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;

"Foreign Supplier" means a foreign controlled and registered company, supplying the South African mining and minerals industry with mining goods and services, which does not have at least a level 4 Dti Codes BEE status and 25% + 1 vote black ownership;

"Historical BEE Transactions" means those BEE Transactions concluded prior to the coming into operation of the Mining Charter of 2017 that achieved a minimum 26% Black shareholding or more;

"Holder" has the same meaning as is ascribed to that term in the MPRDA;

"Housing and Living Conditions Standards" means the Housing and Living Conditions Standards for the Mining and Minerals Industry developed in terms of Section 100(1)(a) of the MPRDA;

"Labour Sending Areas" means areas from which a majority of South African mineworkers both historical and current, are or have been sourced;

"Leviable amount" has the same meaning as is ascribed to that term in the Skills Development Levies Act, 1999 (Act No. 9 of 1999);

"Meaningful Economic Participation" includes, *inter alia*, the following key attributes:

- (a) BEE Transactions shall be concluded with clearly identifiable partners in the form of BEE Entrepreneurs, Mine Communities and workers;
- (b) A percentage of Effective Ownership must accrue to partners who are Black Persons;
- (c) Taking into account the provisions of the Companies Act, some of the distributions by mining companies should flow to the Black Person partners throughout the term of the investment the structure of the BEE Transaction financing should be in a manner where a percentage of the cash-flow is used to service the funding of the structure;

- (d) Accordingly, BEE Partners are enabled to leverage equity henceforth in proportion to vested interest over the life of the BEE Transaction in order to facilitate sustainable growth of Black Person partners;
- (e) BEE Partners shall have full shareholder rights such as being entitled to full participation at annual general meetings, shareholders meetings and exercising of voting rights in all aspects at shareholders meetings;

"Mine Community" refers to communities where mining takes place, major Labour Sending Areas, as well as adjacent communities within a local municipality, metropolitan municipality and/or district municipality;

"Mining Transformation and Development Agency" refers to an agency to be established by the Minister during the period set out in paragraph 2.11(a);

"Minister" means the minister of the Department of Mineral Resources;

"Mining Charter" means this broad-based black socio-economic empowerment charter for the South African mining and minerals industry, 2017, developed in terms of section 100(2)(a) of the MPRDA;

"Mining Goods" refers to tangible goods used by the Holder, or by a contractor on behalf of the Holder, for mineral extraction, materials handling, environmental control, mineral processing, drilling, digging, and earthmoving. This also includes aftermarket components and products that are used and/or consumed in daily operations;

"MPRDA" means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) as amended from time to time;

"the Republic" means the Republic of South Africa;

"Services" refers to work contracted out by the Holder, or by a contractor on behalf of a Holder, which includes but is not limited to, mining production services, drilling, mineral trading, mineral marketing, shipping, transportation, information technology services, security, payroll, finance, medical, cleaning, insurance and any other services which are supplementary or optional to the mine;

"Scorecard" means the scorecard set out in paragraph 2.16 below;

"SLP" means the social and labour plan contemplated in section 23 of the MPRDA;

"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 Historically Black Academic Institutions" means institutions of higher learning which were historically solely for Black Persons;

"South African Manufactured Goods" means goods where at least 60% of the value added during the assembly and/or manufacturing of the product is realised within the borders of the Republic. The calculation of value added for the purposes of this definition excludes profit mark-up, intangible value (such as brand value) and overheads;

"Top Up" means the increasing of shareholding of a Black Person in order to reach the minimum thresholds required by the Mining Charter;

"Youth" for the purposes of this Mining Charter refers to Black Persons between the ages of 18 to 35 years old.

1. OBJECTIVES OF THE MINING CHARTER

This Mining Charter, is a government instrument designed to achieve mutually symbiotic sustainable growth and broad based and meaningful transformation of the mining and minerals industry. The Mining Charter seeks to achieve the following objectives:

- (a) Recognition of the internationally accepted right of the State to exercise sovereignty over all the mineral resources within the Republic;
- (b) Deracialising of ownership of the mining and minerals industry by redressing the imbalances of the past injustices;
- (c) Substantially and meaningfully expanding opportunities for Black Persons to enter the mining and minerals industry and to benefit from the exploitation of the State's mineral resources;
- (d) Utilising and expanding the existing skills base for the empowerment of Black Persons;
- (e) Advancing employment and diversifying the workforce in order to achieve competitiveness and productivity of the mining and minerals industry;
- (f) Enhancement of the social and economic welfare of Mine Communities and major Labour Sending Areas in order to achieve social cohesion;
- (g) Promotion of sustainable development and growth of the mining and minerals industry;
- (h) Catalysing growth and development of the local mining inputs sector by leveraging the procurement spend of the mining and minerals industry; and

- (i) Promoting Beneficiation of South Africa's mineral commodities by South African Based Companies.

2. ELEMENTS OF THE MINING CHARTER

2.1 OWNERSHIP

In order to give effect to Meaningful Economic Participation and the integration of Black Persons into the mainstream economy; and ensure Black Persons' effective ownership of the State's mineral resources, a Holder must comply with the following:

2.1.1 NEW PROSPECTING AND MINING RIGHTS HOLDERS

2.1.1.1 A Holder of a new prospecting right must have a minimum of 50%+1 Black Person shareholding which shareholding shall include voting rights, per prospecting right or in the company which holds the right.

2.1.1.2 A Holder of a new mining right must have a minimum of 30% Black Person shareholding which shall include economic interest plus a corresponding percentage of voting rights, per right or in the mining company which holds the right.

2.1.1.3 The 30% Black Person shareholding must be distributed in the following manner:

- (a) a minimum of 8% of the total issued shares of the Holder shall be issued to ESOPs (or any similar employee scheme structure);
- (b) a minimum of 8% of the total issued shares of the Holder shall be issued to Mine Communities (in the form of a community trust); and
- (c) a minimum of 14% of the total issued shares of the Holder shall be issued to BEE Entrepreneurs.

2.1.1.4 To the extent that any Black Person holds shares within one of the categories set out in paragraph 2.1.1.3 above, such Black Person shall ensure that in the event of transferring the shares, the party to whom the shares are transferred must fall within the same category as the transferring Black Person as set out *[sic]* paragraph 2.1.1.3 above. Such that the Black Person shareholding distribution set out in paragraph 2.1.1.3 above shall always be maintained by the Holder.

2.1.1.5 The Holder shall ensure that any reduction of shareholding of existing shareholders through the issue of new shares, shall not reduce the Black Person shareholding distribution as set out in the paragraph 2.1.1.3 above.

- 2.1.1.6 The portion of the 30% Black Person equity shareholding referred to in paragraph 2.1.1.3 which has not yet vested shall vest in no more than 10 years and by no less than 3% annually of the total issued share capital of the Holder, proportionate to the respective non-vested shareholding of the employees, Mine Communities and BEE Entrepreneurs. Such vesting shall be paid for from the proceeds of dividends received by the Black Person shareholders, provided that if the total dividends received by any of the Black Person shareholders is not sufficient to discharge the amount required for full vesting, the balance owing in respect thereof, shall be written off by the Holder or vendor of the shares to the Black Person as the case may be.
- 2.1.1.7 Subject only to the solvency and liquidity requirements as set out in the Companies Act, a Holder of a new mining right must pay a minimum 1% of its annual turnover in any given financial year to the Black Person shareholders, prior to and over and above any distributions to the shareholders of the Holder.
- 2.1.1.8 Subject to the provisions of paragraph 2.1.1.4, the BEE Entrepreneurs shall be allowed to dilute a maximum of 49% shareholding in the Holder, provided that 100% of the proceeds from the dilution are used by the BEE Entrepreneurs to develop another asset.
- 2.1.1.9 The shareholding of the Mine Community must be held in a trust created and managed by the Mining Transformation and Development Agency, from a date to be published by the Minister.
- 2.1.1.10 The Mining Transformation and Development Agency shall report to the Minister.*[sic]* on an annual basis.
- 2.1.1.11 The 30% Black Person shareholding must be held in an entity/ies or by person/s which is/are separate from the right Holder.
- 2.1.1.12 The Black Person shareholders shall directly and actively control their share of equity interest in the empowering company, including the transportation as well as trading and marketing of the proportionate share of the production.
- 2.1.1.13 The only offsetting permissible under the ownership element is against the value of Beneficiation as provided for in paragraph 2.1.4 below. Such offsetting shall account for a maximum of 11% against the ownership target where such offsetting has been approved by the Department of Mineral Resources.

2.1.2 EXISTING PROSPECTING AND MINING RIGHTS HOLDERS

- 2.1.2.1 A Historical BEE Transaction shall be recognised for the reporting period ending on the date on which this Mining Charter is published in the *Government Gazette*.
- 2.1.2.2 The provisions of paragraph 2.1.2.1 shall apply to an existing Holder whose BEE Partner/s has exited the BEE Historical Transaction; or the contract between the Holder and the BEE Partner/s has lapsed; or the previous BEE Partner/s transferred its shares to a person/s other than a Black Person.
- 2.1.2.3 A Holder who claims the recognition of Historical BEE Transactions is required to Top Up its Black Person shareholding from the existing level to a minimum of 30% Black Person shareholding, at the Holder level within the twelve (12) months transitional period. Such Top Up need not be in proportion to the shareholding distribution set out in paragraph 2.1.1.3 above.
- 2.1.2.4 An existing Holder, who after the coming into operation of the Mining Charter of 2017, has maintained a minimum of 26% Black Person shareholding shall be required to Top Up its Black Person shareholding to a minimum of 30% within the twelve (12) months transitional period. Such Top Up need not be in proportion to the shareholding distribution set out in paragraph 2.1.1.3 above.
- 2.1.2.5 An existing Holder who has acquired and maintained more than 30% Black Person shareholding shall be allowed to maintain its existing structure until such time as the BEE Partner/s exits or upon renewal of such right.
- 2.1.2.6 The required Top Up stipulated in paragraphs 2.1.2.3 and 2.1.2.4 shall be effected by a reduction of the remaining shareholders who are not Black Persons in proportion to their respective shareholding in the company.
- 2.1.2.7 The Black Person shareholding Top Up referred to in 2.1.2.3 and 2.1.2.4 shall be given proportionally to the Holder's existing BEE Partner/s. To the extent that BEE Partner/s has exited the BEE Historical Transaction; or the contract between the Holder and the BEE Partners has lapsed; or the BEE Partners have transferred the shares to a person other than a Black Person, then the Top Up shall be to a BEE Entrepreneur.
- 2.1.2.8 A Holder referred to in 2.1.2.3 to 2.1.2.5 must, within the transitional period of twelve (12) months, ensure that its BEE Partners directly and actively control their share of equity interest in the Holder, including the transportation as well as trading and marketing of the proportionate share of the production.
- 2.1.2.9 The recognition of Historical BEE Transactions shall include the recognition of historical deals concluded on units of production, share asset deals (including deals

where the BEE Partner/s have sold their shareholding) and all Historical BEE Transactions deals which formed the basis upon which new order mining rights were granted.

2.1.2.10 The Historical BEE Transactions referred to above may be at company level, asset level or cover all operations.

2.1.2.11 The recognition of Historical BEE Transactions shall not apply to transactions which did not achieve a minimum of 26% empowerment by the date on which this Mining Charter is published in the *Government Gazette*.

2.1.2.12 After the date of publication of this Mining Charter in the *Government Gazette* the recognition of Historical BEE Transactions shall not apply to applications for a new mining right or prospecting right or applications for the renewal of such rights, or to applications in terms of section 11 of the MPRDA affected by such recognition.

2.1.3 Sale of South African Mining Assets

In order to ensure effective and meaningful participation of Black Persons in the mining and minerals industry, a Holder who sells its mining assets must give Black Owned Company/s a preferential an *[sic]* option to purchase.

2.1.4 MINERAL BENEFICIATION

In order to give effect to government policies and contribute to the Republic's national developmental imperatives relating to Beneficiation of the Republic's mineral resources:

- (a) A Holder may offset a maximum of 11% of Black Persons ownership by financially investing in and contributing to Beneficiation over and above the provisions of Section 26 of the MPRDA.
- (b) The offsetting referred to in paragraph 2.1.4(a) shall not exceed 11% irrespective of the formulae, methods and/or mechanisms identified.
- (c) A Holder claiming an offset pursuant to Beneficiation must meet the following criteria:
 - The Holder must have, since 2004, in addition to section 26 requirements of the MPRDA, invested in Beneficiation;
 - The activities that are deemed to be Beneficiation are in line with the baseline contemplated in the definition of Beneficiation in the MPRDA; and

- The Department of Mineral Resources must approve the proposed activities to ensure that such activities are in line with Beneficiation policies published by it from time to time.
- (d) Offsetting shall not apply to any Beneficiation project which existed post 2004 but which has since ceased to exist and or has been terminated.
- (e) Offsetting may only be claimed where the Holder's contribution to Beneficiation is still ongoing.

The processes and mechanisms that shall determine the offset of each mineral value chain, shall be provided for by the Minister, by way of *Government Gazette*, as envisioned in section 26(2) of the MPRDA.

2.2 PROCUREMENT, SUPPLIER AND ENTERPRISE DEVELOPMENT

Leveraging maximum benefit from the Republic's mineral resources will require strengthening linkages between the mining and minerals industry and the broader economy. This element seeks to strengthen these linkages through procurement of South African Manufactured Goods and sourcing of Services from South African Based Companies. Procurement of South African Manufactured Goods and Services presents opportunities to expand economic growth that allows for the creation of decent jobs and widens the scope for market access of South African Manufactured Goods and Services. A Holder must identify what goods and services are available within the community where its mining operation takes place and, where feasible, give preference to suppliers within that community.

To achieve this, a Holder must identify all goods and services that will be required in its operations and must ensure that its procurement policies adhere to the following criteria:

Mining Goods

A Holder must spend a minimum of 70% of total mining goods procurement spend on South African Manufactured Goods. The abovementioned 70% of the total goods procurement spend shall be apportioned in the following manner:

- (a) A minimum of 21% of total mining goods procurement spend must be set aside for sourcing South African Manufactured Goods from Black Owned Companies;
- (b) A minimum of 5% of total mining goods procurement spend must be set aside for sourcing South African Manufactured Goods from Black Owned Companies with a minimum of 50%+1 vote female Black Person owned and controlled and/or 50%+1 vote Youth owned and controlled; and

- (c) A minimum of 44% of total mining goods procurement spend must be set aside for sourcing South African Manufactured Goods from BEE Compliant Manufacturing Companies.

Services

A minimum of 80% of the total spend on services must be sourced from South African Based Companies. The abovementioned 80% of the total services procurement spend shall be apportioned in the following manner:

- (a) A minimum of 65% of the total spend on services must be sourced from Black Owned Companies;
- (b) A minimum of 10% of the total spend on services must be sourced from Black Owned Companies with a minimum of 50%+1 vote female Black Person owned and controlled companies; and
- (c) A minimum of 5% of the total spend on services must be sourced from Black Owned Companies with a minimum of 50%+1 vote Youth owned and controlled companies.

Processing of samples

- (a) A Holder must utilise South African Based Companies for the analysis of 100% of all mineral samples across the mining value chain, except in cases where samples are analysed for the purpose of verification of the accuracy of local laboratories.
- (b) A Holder may not conduct sample analysis using foreign based facilities and/or companies without the prior written consent of the Minister.

Verification of local content

- (a) A Holder shall, when submitting the annual Mining Charter report contemplated in paragraph 2.9 to the Department of Mineral Resources, provide proof of local content for goods and services in the form of certification from the South African Bureau of Standards (SABS).
- (b) The responsibility to verify local content lies with the supplier of goods and/or services.

Contribution by Foreign Suppliers

A Foreign Supplier must contribute a minimum of 1% of its annual turnover generated from local mining company/ies towards the Mining Transformation and Development Agency.

2.3 EMPLOYMENT EQUITY

Prepared by:

The purpose of the Employment Equity Act, 1998, (Act No. 55 of 1998) (EE Act) is to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational levels in the workforce.

Consistent with the EE Act, workplace diversity and equitable representation at all levels are catalysts for social cohesion, transformation and competitiveness within the mining and minerals industry. In order to create a conducive environment to ensure diversity as well as participation of Black Persons at all decision-making positions and core occupational categories in the mining and minerals industry, a Holder must employ a minimum threshold of Black Persons which is reflective of the Demographics of the country as follows:

Board

A minimum of 50% Black Persons with exercisable voting rights, 25% of which must be female Black Persons.

Executive/Top Management

A minimum of 50% Black Persons at the executive directors' level as a percentage of all executive directors, 25% of which must be female Black Persons.

Senior Management

A minimum of 60% Black Persons in senior management, 30% of which must be female Black Persons.

Middle Management level

A minimum of 75% of Black Persons in middle management, 38% of which must be female Black Persons.

Junior Management level

A minimum of 88% Black employees in junior management, 44% of which must be female Black Persons.

Employees with disabilities

A minimum of 3% employees with disabilities as a percentage of all employees, reflective of national and/or provincial Demographics.

Core and Critical skills

A Holder must ensure that a minimum of 60% Black Persons are represented in the Holder's Core and Critical Skills by diversifying its existing pools. Core and Critical Skills must include technical representation across all organisational levels. To achieve this, the Holder must identify and implement its existing pools in line with the approved SLP and such implementation must be reflective of the Demographics of the Republic.

Career progression (aligned with SLP)

A Holder must develop and implement a career progression plan consistent with the Demographics of the Republic by:

- (a) Developing career development matrices of each discipline (inclusive of minimum entry requirements and timeframes);
- (b) Developing individual development plans for employees;
- (c) Identifying a talent pool to be fast tracked in line with the needs; and
- (d) Providing a comprehensive plan with targets, timeframes and how the plan will be implemented.

The targets indicated under this element may change in order to address employment equity measures.

2.4 HUMAN RESOURCE DEVELOPMENT

The mining and minerals industry is knowledge based and thus hinges on human resource development which constitutes an integral part of social transformation in the workplace as well as sustainable growth. The objective is to improve the employment prospects of Black Persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education.

A Holder must invest 5% of the Leivable amount on essential skills development. To achieve this objective, a Holder must invest the 5% in the following manner:

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

- (b) The skilling referred to in paragraph (a) must be a representative of national and/or provincial demographics and must be biased towards low level employees;
- (c) 1% towards South African Historically Black Academic Institutions for research and development initiatives intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), Beneficiation as well as environmental conservation and rehabilitation. A Holder may make representations to the Minister for exemption from the 1% referred to in this paragraph (c) if the Holder has partnered and supported a State owned entity in respect of mining related research and development; and
- (d) 2% towards the Mining Transformation and Development Agency.

2.5 MINE COMMUNITY DEVELOPMENT

Mine Communities form an integral part of mining development, which requires a balance between mining and the Mine Community's socio-economic development. A Holder must meaningfully contribute towards the development of the Mine Community (with a bias towards communities where mining takes place) both in terms of impact, and also in keeping with the principles of the social license to operate.

Mine Community development projects referred to above must include infrastructure projects, income generating projects and enterprise development.

District, metropolitan, and local municipalities as constitutionally, mandated institutions for community development, have a responsibility to develop integrated development plans (IDP's) in consultation with all relevant stakeholders in a transparent and inclusive manner in terms of applicable legislation. A Holder must contribute towards Mine Community development by identifying priority project/s as per the approved IDP.

- (a) In this regard a Holder's contribution towards Mine Community development must be proportionate to the size of the investment.
- (b) A Holder must meaningfully contribute towards Mine Community development in terms of its approved SLP which is to be published in English and other languages commonly used within the Mine Community.
- (c) All project management and consultation fees incurred during the execution of Mine Community development projects shall be capped at 8% of the total budget.
- (d) Holders may collaborate on projects where more than one right Holder operates in the same area informed by their SLPs, which are aligned to the district, metropolitan and local municipality's IDP's for maximum socio-economic developmental impact.

2.6 SUSTAINABLE DEVELOPMENT AND GROWTH OF THE MINING AND MINERALS INDUSTRY

Mineral resources are non-renewable in nature. Accordingly, exploitation of such resources must emphasise the importance of balancing concomitant economic benefits with social and environmental needs without compromising future generations, in line with the provisions of the Constitution for ecologically sustainable development and use of natural resources. To this end, in consideration of clause 2.122-9[sic] (reporting), a Holder must implement elements of sustainable development commitments included in the "Stakeholders' Declaration on Strategy for the sustainable growth and meaningful transformation of South Africa's Mining Industry" of 30th June 2010, and in compliance with all relevant legislation, as follows:

2.6.1 Improvement of the industry's environmental management

In order to preserve and improve the environment, a Holder must comply with and implement environmental management systems that focus on continuous improvement to review, prevent and mitigate adverse environmental impacts in line with the environmental management plan approved in terms of the National Environmental Management Act 1998 (Act 107 of 1998) and its Regulations.

2.6.2 Improvement of the industry's health and safety performance

The stakeholders within the mining and minerals industry have committed themselves to the goal of zero harm. The key driver to achieve zero harm will be the implementation of the 2016 Occupational Health and Safety Summit Milestones and taking into consideration the following:

- (a) Implementing a management system focused on continuous improvement of all aspects of operations that have a significant impact on the health and safety of employees and communities where mining takes place;
- (b) Providing all employees with health and safety training; and
- (c) Implementing regular health surveillance and risk-based monitoring of employees.

The Holder must comply with the following milestones:

- (a) Elimination of occupational lung diseases in accordance with agreed timelines and taking into account occupational exposure limits;
- (b) Elimination of noise-induced hearing loss in accordance with agreed timelines and taking into account occupational exposure limits;

- (c) Prevention and management of tuberculosis and HIV/AIDS in accordance with agreed timelines;
- (d) Elimination of fatalities and injuries in accordance with agreed timelines; and
- (e) Implementing the approved Culture Transformation Framework pillars aimed at significantly improving the culture towards health and safety across the mining sector, in accordance with agreed timelines.

A Holder must further put in place a management system focused on continuous improvement of all aspects of operations that have a significant impact on the health and safety of employees, contractors and communities where mining takes place. A Holder must continue providing all employees with health and safety training and require employees of contractors to have undergone such training.

2.6.3 Research and Development Spend

- (a) Where a Holder intends to undertake research and development, the Holder must spend at least 70% of their research and development budget in the Republic.
- (b) 50% of the 70% indicated above must be spent on South African Historically Black Academic Institutions.

2.7 HOUSING AND LIVING CONDITIONS

Human dignity and privacy for mineworkers are still the hallmarks to enhance productivity and expedite transformation in the mining and minerals industry in terms of housing and living conditions. In this regard Holders must improve the standards of housing and living conditions for mine workers as stipulated in the Housing and Living Conditions Standards. The Housing and Living Conditions Standards provide for, amongst others, the following principles:

2.7.1 Principles of Housing Conditions

- Decent standards of housing;
- Centrality of home ownership;
- Provision for social, physical and economic integrated human settlements;
- Measures to address housing demand;
- Involvement of employees in the housing administrative system; and

- Secure tenure for the employees in housing institutions.

2.7.2 Principles of Working Conditions

- Proper health care services;
- Affordable, equitable and sustainable health system; and
- Proper nutrition requirements and standards.

A Holder shall further be required to submit a housing and living conditions plan which must be approved by the Department of Mineral Resources after consultation with the Department of Housing and organised labour and the Department of Human Settlement.

2.8 APPLICATION OF THE MINING CHARTER TO LICENCES GRANTED UNDER THE PRECIOUS METALS ACT, 2005 AND THE DIAMONDS ACT, 1986

The Diamonds Act 1986 (Act 56 of 1986) and the Precious Metals Act 2005 (Act 37 of 2005) make provision for the South African Diamond and Precious Metals Regulator (as defined therein) to have regard to the requirements of this Mining Charter of 2017 when considering applications lodged in terms of those acts.

The targets and elements of the Mining Charter shall therefore apply to licenses under those Acts in line with the table below:

CATEGORY/SIZE OR CLASS	QUALIFYING CRITERIA	EXEMPT FROM THE FOLLOWING TARGETS	REQUIRED TO COMPLY WITH THE FOLLOWING TARGETS
Exempted Micro Enterprises (including students)	Estimated max turnover less than R1 Million.	Ownership	Sustainable Development and growth of the minerals industry.
		Human Resource Development	
		Procurement	
		Employment Equity	
Qualifying Small and Micro Enterprises (QSME's)	Estimated max turnover R1 Million to R3.8 Million.	Ownership	Employment Equity
		Mine Community Development	Human Resource Development
			Procurement and

			supplier and enterprise development.
			Sustainable Development and growth of the minerals industry.
			Ownership
Medium and Large Entities	Estimated max turnover greater than R3.8 million.	Mine Community Development	Employment Equity ²
			Human Resource Development ³
			Procurement and supplier and enterprise development
			Sustainable Development and growth of the minerals industry.

ELEMENTS OF THE MINING CHARTER APPLICABLE TO LICENSEES UNDER THE PRECIOUS METALS ACT, 2005 AND THE DIAMONDS ACT, 1986 AS AMENDED

2.8.1 OWNERSHIP

- (a) In line with Government policies to encourage Beneficiation of the Republic's mineral resources, offsetting shall be permissible under the ownership element against the value of Beneficiation up to a maximum of 11% against the ownership target. As such the ownership target for the downstream diamonds and precious metals industry is a minimum of 19% in the hands of Black Persons per licensee to enable meaningful economic participation of Black Persons.
- (b) The Black Person shareholding indicated above shall comprise of BEE Entrepreneurs and workers and must be 40% ownership of net value based upon the time based graduation factor.
- (c) Taking into account the extent of the exemption in terms of the above table, a permit or license holder in terms of the Precious Metals Act and the Diamonds Act is required to comply with all the relevant elements and targets as set out in this Mining Charter of 2017.

2.8.2 REPEAL OF PARAGRAPH 3 OF THE CODES OF GOOD PRACTICE FOR THE MINERALS INDUSTRY

Paragraph 3 of the *Codes of Good Practice for the Minerals Industry* published in *Government Gazette* No. 32167 of 29 April 2009 is hereby repealed.

2.9 REPORTING (MONITORING AND COMPLIANCE)

A Holder must report its level of compliance with this Mining Charter of 2017 annually, as provided for by Section 28(2)(c) of the MPRDA. The Department shall monitor and evaluate the Holder's implementation of this Mining Charter of 2017, taking into account the impact of material constraints which may result in not achieving the set target.

The ownership, Mine Community development and human resources development elements are ring fenced and require 100% compliance at all times.

2.10 APPLICABILITY OF TARGETS

All targets stipulated in this Mining Charter of 2017 shall be applicable throughout the duration of a mining right (including prospecting and other exploration rights), unless a specific element specifies otherwise.

2.11 TRANSITIONAL ARRANGEMENTS

The following provisions shall only apply to existing Holders:

- (a) An existing mining right holder has a maximum of twelve (12) months to comply with the revised targets of this Mining Charter of 2017 from the date of publication of this Mining Charter of 2017. Save that the twelve (12) month period in relation to paragraph 2.1.1.3(b) as read with paragraph 2.1.1.9, shall commence upon a date to be published by the Minister.
- (b) The Holder must align existing targets cumulatively from the Mining Charter of 2014 targets within the transitional period referred to above to meet the revised targets in line with the attached Scorecard.
- (c) The transitional arrangements period for the procurement element targets is three years. The Holder must within three (3) years from the date of publication of this reviewed Mining Charter of 2017, submit a three (3) year plan indicating progressive implementation of the provisions of this reviewed Mining Charter of 2017 insofar as they relate to procurement.
- (d) The transition period for the procurement target may upon request by the Holder be extended by a further two (2) years to allow the Holder sufficient time to develop the 50%+1 vote Black Owned Company suppliers in accordance with the procurement targets.
- (e) Compliance with procurement targets within the transitional period shall be as follows:
 - o The first year target is set at 15% of the 70%, second year target is set at 45% of the 70% and the third year target is set at 70%.

- (f) A Holder must comply with the Housing and Living Conditions Standards and ensure that it maintains single sex units and family units and any other agreement which has been reached with workers pending the finalisation of the Reviewed Housing and Living Conditions Standards.
- (g) The Holder's performance shall be reported and audited against each element in respect of implementation for the applicable transitional period.

2.12 NON-COMPLIANCE

A Holder who has not complied with the ownership, Mine Community development and human resource development elements and falls between level 5 and 8 of the Scorecard will be regarded as non-compliant with the provisions of the Mining Charter and in breach of the MPRDA and will be dealt with in terms of section 93 read in conjunction with section 47, 98 and 99 of the MPRDA.

2.13 REVIEW OF THE CHARTER

The Minister may, by notice in the *Government Gazette* review this Mining Charter.

2.14 REPEAL OF PREVIOUS MINING CHARTERS

This Charter repeals the 2004 and the 2010 Mining Charters.

2.15 INTERPRETATION OF THE MINING CHARTER

The Mining Charter shall be read and interpreted in conjunction with MPRDA and the BBBEE Act where words are not defined and a meaning thereof has been ascribed in the aforementioned legislation.

2.16 SCORECARD: MINING CHARTER REVIEW

Reviewed Mining Charter Scorecard	Weighting %
Ownership	Y/N
Human Resource Development	Y/N
Mine Community Development	Y/N
Procurement supplier & Enterprise Development	30%
Employment Equity	35%
Sustainable Development and growth	35%
Total	100%

OWNERSHIP

Element Description	Measure	Compliance Target %	Weighting %
Minimum target for representation of Black people ownership.	ESOP's	30% BBBEE Ownership	Y/N (Ring-fenced element)
	BEE Entrepreneurs		
	Mine Community		

HUMAN RESOURCE DEVELOPMENT

Element Description	Measure	Compliance Target %	Weighting %
Development of requisite core and critical skills, literacy and numeracy and South African Historically Black Academic Institutions in respect of human resources development initiatives intended to develop	Percentage of the total annual Leivable amount contributed to essential skills development activities	2%	Y/N (Ring-fenced element)
	Percentage of the total annual Leivable amount contributed to Mining, Transformation and Development Agency.	2%	

<p>solutions in exploration, mining, processing, technology efficiency, beneficiation as well as environmental conservation.</p> <p>HRD expenditure as percentage of total annual Leviable amount (excl. mandatory skills development levy)</p>	<p>Percentage of the total annual Leviable amount contributed to South African Historically Black Academic Institutions</p>	<p>1%</p>	
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MINE COMMUNITY DEVELOPMENT

Element Description	Measure	Compliance Target %	Weighting %
<p>Implement locally approved community projects, which are aligned to the district, metropolitan and local municipality's IDPs of revenue projection for two and half years, applicable to a SLP's for five (5) years cycle.</p>	<p>Contribution towards mine community development must be proportionate to the size of the investment</p>		<p>Y/N (Ring-fenced element)</p>

PROCUREMENT SCORECARD

Element Description	Measure	Compliance Target %	Weighting %
<p>Goods Procurement:</p> <p>A minimum of 70% of the total mining</p>	<p>Percentage of the total mining goods procurement spend on South African manufactured goods from 50%+1 vote Black owned and controlled companies.</p>	<p>21%</p>	<p>5%</p>
	<p>Percentage of the total goods</p>	<p>5%</p>	<p>1%</p>

goods procurement spend must be spent on South African manufactured goods must be sourced from a BEE compliant manufacturing companies. Calculation of goods and services spend does not include spend on buildings, roads, utilities (electricity and water) and land rates.	procurement spend on South African Manufactured goods from companies with a minimum of 50%+1 vote Black women owned and controlled and/or 50%+1 vote youth ownership;		
	Percentage of the total goods procurement spend on South African manufactured goods from companies that are at least at level 4 BEE +26% ownership	44%	9%
Services Procurement: A minimum of 80% of the total spend on services must be sourced from South African based companies. The abovementioned 80% of the total services procurement spend shall be apportioned in the following manner. ¹	Percentage of total spend on services from South African based services companies.	65%	5%
	Percentage of total spend on services from companies with a minimum of 50%+1 vote Black women owned and controlled companies.	10%	2%
	Percentage of total spend on services from companies with a minimum of 50%+1 vote youth owned and controlled companies.	5%	2%
Percentage of samples analyses using South African based	Percentage of samples analysed using South African based facilities	100%	3%

facilities:			
Utilise South African based facilities for the analysis of mineral samples across the mining value chain except in cases where samples are analysed for the purpose of verification of the accuracy of local laboratories.			
Contribution by Foreign Suppliers	Percentage of annual turnover generated from local mining companies contributed towards the Mining Transformation and Development Agency	1%	3%
Mining companies to submit supplier development plans.			
Total			30%

EMPLOYMENT EQUITY

Element Description			Compliance Target %	Weighting %
Board:				
Africans	Coloureds	Indians	50%	3%
Black Females as a percentage of all Board representatives			25%	3%
Executive/Top Management				
Africans	Coloureds	Indians	50%	3%
Black Females as a percentage of all executive directors.			25%	3%
Senior Management:				
Africans	Coloureds	Indians	60%	4%
Black Females as a percentage of all senior managers.			30%	4%
Middle Management				

Africans	Coloureds	Indians	75%	3%
Black Females as a percentage of all middle managers.			38%	3%
Junior Management:				
Africans	Coloureds	Indians	88%	1%
Black Females as a percentage of all junior managers.			44%	3%
Employees with disabilities:				
Africans	Coloureds	Indians	3%	2%
Core and Critical Skills:				
Africans	Coloureds	Indians	60%	3%
Total				35%

SUSTAINABLE DEVELOPMENT

Element Description	Measure	Compliance Target %	Weighting %
Improve the industry's environmental compliance	Compliance[<i>sic</i>] with the approved Environmental Management Plans	100%	10%
A minimum of 70% of the right holder's research and development budget must be spent in South Africa	Percentage of research and development budget spent in South Africa	70%	3%
	Percentage of the research budget spent locally and spent on South African Historically Black Academic Institutions.	50%	2%
Total			15%

Element Description	Measure	Compliance Target	Weighting %
	(a) Percentage of all exposure measurement results for respirable crystalline silica below the milestone	95%	1%
	(b) Percentage of all exposure measurement results	95%	1%

	for platinum dust respirable particulate below the milestone		
	(c) Percentage of all exposure measurement results for coal dust respirable particulate below the milestone level	95%	1%
	(d) Tuberculosis incidence rate by 2024	Below National TB incident rate	2%
Elimination of Occupational Diseases	(e) Percentage of employees offered HIV Counselling and Testing (HCT) annually	100%	2%
	(f) Percentage of all eligible employees linked to an Anti-Retroviral Treatment (ART) programme	100%	2%
Elimination of Occupational fatalities and injuries	(a) Percentage annual reduction of fatalities	20%	7%
	(b) Percentage annual reduction of injuries	20%	3%
Culture Transformation Framework	(a) Culture Transformation Framework pillars aiming to significantly improve the culture towards Health and Safety across the mining sector, in accordance with agreed timelines	6 Pillars implemented	1%
Total			20%

Annexure A

This annexure provides an alignment between the Dti BBEEE and DMR scorecard

Dti LEVELS	DMR LEVELS	DMR SCORECARD	3 Ring Fenced Elements + percentage weighting
Level 1	Level 1	3 Ring fenced Elements + 100%	Compliant
Level 2	Level 2	3 Ring fenced Elements + 80-100%	
Level 3	Level 3	3 Ring fenced Elements + 70-80%	

Level 4	Level 4	3 Ring fenced Elements + 60-70%	