



Address: Paulshof
Sandton
Johannesburg
2196
Tel: +2783 268 9843 / +2778 120 7887
Fax: +2786 552 4311
Our Reference: TP Dlongolo/ T Majoko
Your Reference: DMR/Charter 2016
Email: thokozani@lawgisticslegal.co.za
Web: www.lawgisticslegal.co.za

Mr Mosa Mabuza

Deputy Director General

Department of Mineral Resources
Head Office

27 July 2016

**COMMENTS TO THE DRAFT EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN
MINING AND MINERALS INDUSTRY**

This is a contribution with respect to the draft Empowerment Charter for the South African Mining and Minerals Industry (“Mining Charter”) with respect to the Chamber of Mines workshop held on 5 July 2016.

1. Clerical Error

The draft Mining Charter incorrectly refers to the National Small Business Act 102 of 1996 whereas it is the National Small Enterprise Act 102 of 1996 and the Act defines a small enterprise and not a small business.

2. The 26% Ownership

- a. The 26% ownership element percentage is a too low a minimum target.

Vonani Majoko (Chairman), Tiyani Majoko (Director), Thokozani Dlongolo (Director)

- b. 26% was required in the previous Mining Charter and cannot be the final requirement for Mining Companies.
- c. The previous Mining Charter had a 5 year projection and gradual compliance growth plan, and each year the required percentage for compliance grew in number.
- d. The current Draft Mining Charter does not have the gradual growth projection and in so doing the participation and ownership of black people in the Mining Sector is capped at 26% (for a non defined period of time) as there is also no definitive revision date of the codes by the Minister and/ or the Draft Mining Charter.
- e. The Mining Charter should have gradual compliance growth for the 5 year period (as it previously did). In this period we should seek to achieve 50% ownership in the hands of Black People growing at 8% each year for the next 5 years.
- f. If the gradual growth will not be allowed or implemented then, the minimum requirement should be 50% upfront in the new Mining Charter and the compliance period can be 5 years with respect to the transitional arrangements.

3. Defined percentage ownership for women

- a. The ownership element should have a compulsory defined percentage that should be placed in the hands of black women so as to promote the meaningful participation of women in the mining sector.

4. Beneficiation

- a. In terms of the Mining Charter under the Ownership element, Beneficiation can offset up to 11% of ownership.

b. The Mining Charter states that the above is in line with the terms and conditions in section 26 of the MPRDA.

c. Section 26(2A) of the MPRDA states that:

“In promoting beneficiation, the Minister may prescribe the levels required for beneficiation.”

d. The way in which the beneficiation level for qualification for the off-set is calculated needs to be clearly outlined and prescribed (as per section 26 of the MPRDA), i.e. what the different levels are in order for a mining company to obtain the 11% and how it can be realised.

e. One cannot sufficiently comment on the adequacy and/or inadequacy of this off-set without the knowledge of the levels.

5. 5% shares for the Community

a. These shares should be donated to the Community (i.e. they should not have to pay for them in the B-BBEE transaction) as compensation for the use of their land and/ loss of use of their land.

6. Guideline on engaging with the Community and the Employees

a. A guideline needs to be issued on how the mining Companies should engage with the Mining Communities so that engagement is not limited to certain people in the community e.g. the Chief. This guideline must, among others, prescribe that there be a committee elected by the Community that represents the different interests and age groups in the community (e.g. It cannot only consist of men, it must have women and youth representation).

- b. As part of the B-BBEE transaction and above-mentioned guidelines, the Community should be allowed to appoint attorneys of their choice to assist them with the deal at the expense of the Mining Company as the Community is at most times at a disadvantage in terms of understanding the legal consequences and principles of the deal.

7. Passing of a Special Resolution

- a. The Mining Company as a majority shareholder should be compelled to, despite the 75% requirement to pass a special resolution, have the consent or vote of at least 2 parties of the SPV prior to the passing of a special resolution.
- b. Clarity on whether the SPV acts in concert or can each party exercise their rights as they separately as they are owned in the SPV?

8. Mining Community Development

- a. The yearly target is 1% of the annual turnover.
- b. The target should be raised to 10% as 1% is too small for the benefit the mining company receives with respect to the minerals.

9. Procurement and Supplier Development

- a. Procurement and supplier development should be included as part of the ring fenced elements along with Human Resource Development, Ownership and Housing and Living Conditions. This will ensure value chain development to promote small businesses and enterprise development are meaningfully implemented.

10. A Second Mining Charter

- a. Mining companies vary in size and although the MPRDA makes allowance for small miners granting mining licences for up to 5 hectares and they are exempt from the obligations of the Mining Charter.
- b. However there is a group of miners that is referred to as Emerging Miners- the Chamber of Mines is currently working on a definition of the group to quantify them in size of turnover so that they can be eligible to receive certain exemptions.
- c. The proposal on 5 July was for a second charter, but this would be too arduous for the DMR therefore our proposal is rather for a second scorecard for Emerging Miners once the definition of an Emerging Miner has been approved.
- d. The exempted elements would have to be discussed with the stakeholders affected by the operations of Emerging Miners.

Lawgistics Legal Consultants