

A photograph of a ferrochrome smelter. Molten metal is being poured from a large container into a smaller one, creating a bright, glowing stream of liquid. The background shows industrial structures and a large wall. The scene is illuminated by the intense heat of the molten metal.


BLACK ECONOMIC EMPOWERMENT IN THE MINERALS AND MINING INDUSTRY OF SOUTH AFRICA

South African Ferro-alloys conference


9 July 2008

Picture compliments of the DME
Ferrochrome smelter near Brits


Bravura Consulting

	<ul style="list-style-type: none">➤ A niche corporate finance and structured finance house➤ Currently 2 empowerment deals in the mining sector, linked with mining license conversion
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<p>Keith Webb</p>		<ul style="list-style-type: none">➤ Broad experience from strategy consulting in South African businesses with McKinsey & Co.➤ Consulted in specific elements of the BEE scorecard e.g. Ownership; Procurement; Enterprise Development; and Talent Management
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<p>Ajay Lalu</p>		<ul style="list-style-type: none">➤ Extensive BEE consulting as a Director at Ernst & Young➤ Negotiated Utajiri participation in Deutsche bank BEE deal➤ Involved in public debate and regular speaker on the topic of BEE
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Key issues to discuss

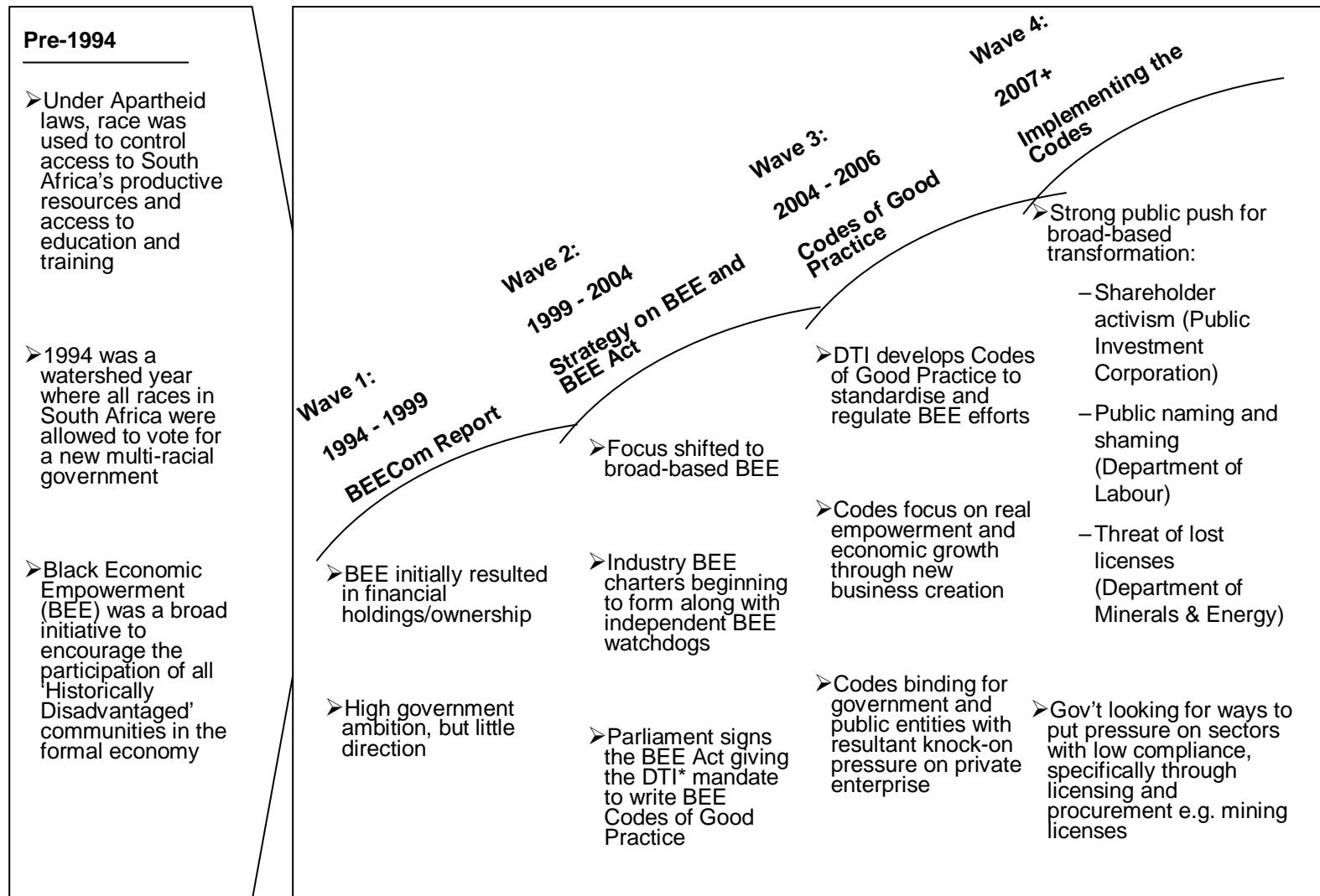
1. Overview of BEE regulation in the mining and minerals industries in South Africa

- Mineral and Petroleum Resources Development Act (and Mining Charter)
- Black Economic Empowerment Act (and Codes of Good Practice)

2. The renewal of mining licences

- Timelines
- Requirements

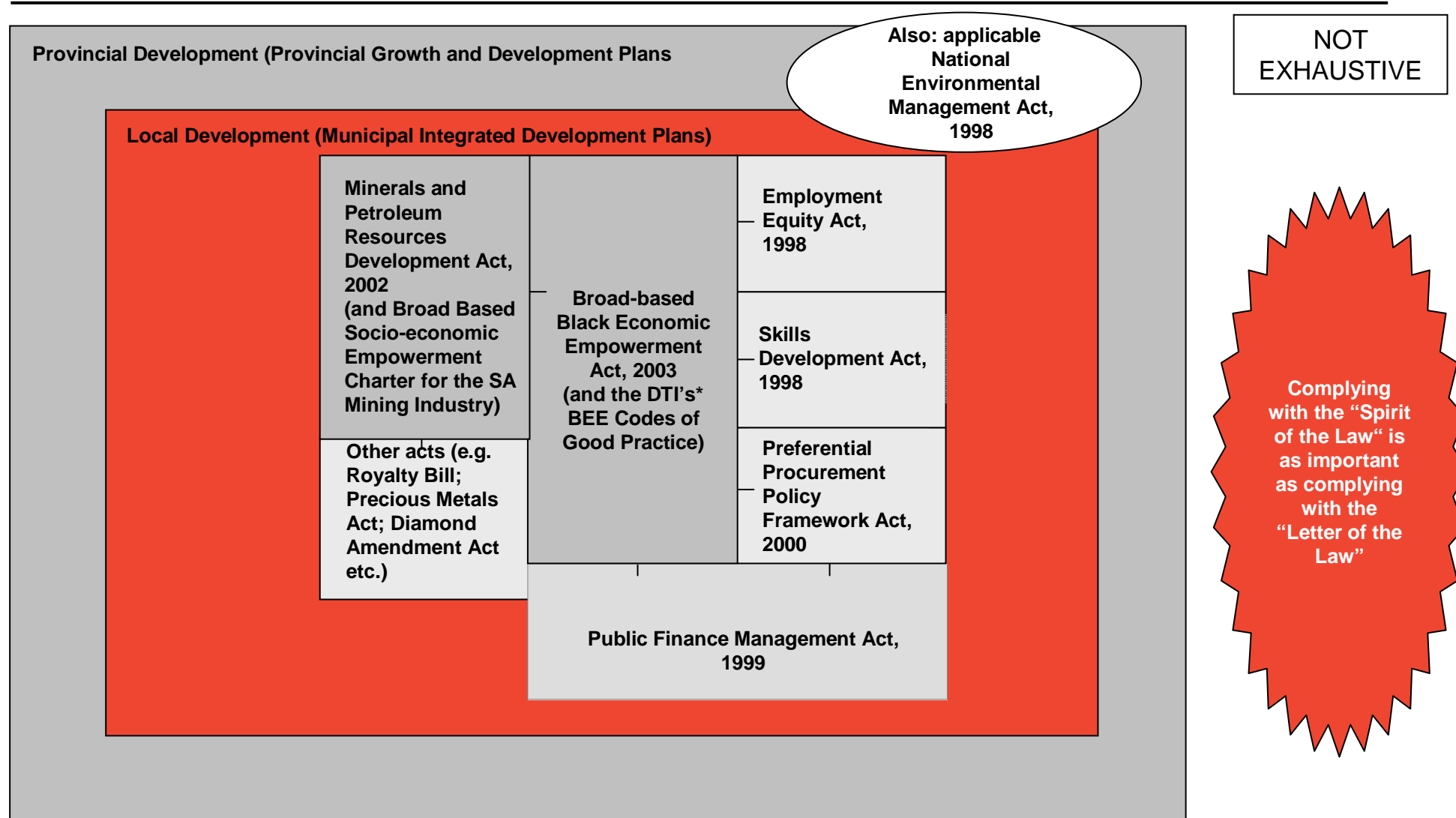
Background: Development of Black Economic Empowerment in South Africa



* Black = South African born Black African, Indian and Coloured (and Chinese!) people who were historically discriminated against

Source: Press; Bravura Consulting

Background: BEE Regulatory environment in the Mining Industry



* Department of Trade and Industry

Source: Bravura Consulting

Objectives of Mineral and Petroleum Resources Development Act (MPRDA)

■ Specific BEE objectives

Objectives of the Minerals and Petroleum Resources Development Act, 2002

- a) To recognise the right of the State to exercise sovereignty over all resources (internationally aligned);
- b) To give effect to the principle of the State's custodianship of the nation's resources;
- c) To promote equitable access to resources for all South Africans;
- d) To **substantially and meaningfully** expand opportunities for HDSA* in the industry;
- e) To promote economic growth in the sector;
- f) To promote employment and advance social and economic welfare of all South Africans;
- g) To provide security of tenure for prospecting, exploration, mining and production operations;
- h) To ensure the nation's resources are developed in an orderly and ecologically sustainable manner;
- i) To ensure holders of mining rights contribute to the socio-economic development of the areas in which they are operating

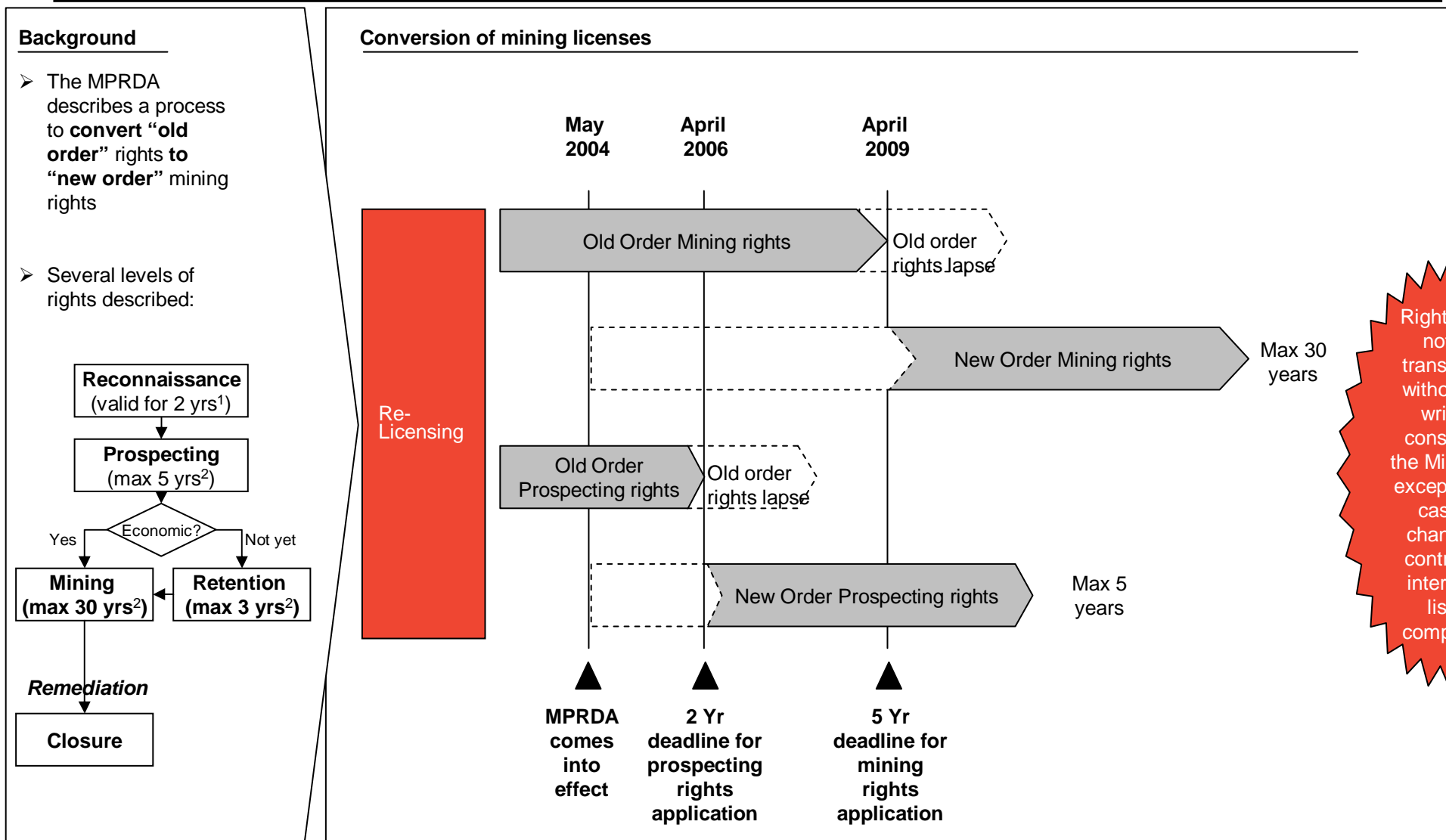
Consistent theme throughout all legislation:

- **SA economic development** (i.e. efficient mining and local beneficiation)
- **Redress** (i.e. BEE and social welfare)
- **Sustainability** (e.g. environment and local community)

* HDSA = Historically Disadvantaged South Africans

Source: Mineral and Petroleum Resources Development Act, 2002

Application of the MPRDA



1: Non-renewable; 2: Renewable

Source: Mineral and Petroleum Resources Development Act, 2002

Requirements for converting old order mining licences

■ Specific BEE objectives

Holders must submit:

- a) The prescribed particulars of the holder
- b) A sketch or plan depicting the mining area
- c) The name of the mineral or group of minerals for which the mining rights apply
- d) An affidavit verifying that the holder is conducting mining operations on the area of land
- e) A statement setting out the period for which the mining right is required substantiated by a **mining work programme**
- f) A prescribed **social and labour plan**
- g) Information as to whether the old order mining right is encumbered by an mortgage bond or other right registered at the Deeds Office or Mining Titles Office
- h) A statement setting out the terms and conditions which apply to the old order mining rights
- i) The original (or a copy) title deed in respect of the land to which the old order mining right relates
- j) The original old order right and the approved **environmental management programme**
- k) An undertaking that, and the manner in which, the holder will give effect to the objective of expanding opportunities for HDSA* to enter the minerals and petroleum industry and to promote employment and the advance the social and economic welfare of all South Africans

Note:

➤ Applying for **new mining** rights has similar requirements to those highlighted here

➤ **Converting old order and applying for new prospecting** rights does not require adherence to BEE objectives

* HDSA = Historically Disadvantaged South Africans

Source: Mineral and Petroleum Resources Development Act, 2002

Specific mention of historically disadvantage persons/communities in the MPRDA

Section 12. Assistance to historically disadvantage persons:

 Refer to Mining Charter

- The Minister may facilitate assistance to any historically disadvantage person to conduct prospecting or mining operations...

Section 100. Transformation of minerals industry:

1. The Minister must, within 5 years...:

- a) Develop a housing and living conditions standard for the industry (in consultation with the Minister of Housing
- b) Develop a code of good practice for the minerals industry

2. a) To ensure the attainment of Government's objectives of redressing historical, social and economic inequalities as stated in the Constitution, the Minister must within 6 months...develop a broad-based socio-economic empowerment Charter that will set the framework, targets and time-table for effecting the entry of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of mining and mineral resources.

- b) The Charter must set out, amongst others how the <MPRDA objectives> c), d), e), f) and i) can be achieved.

Section 104. Preferent prospecting or mining right in respect of communities:

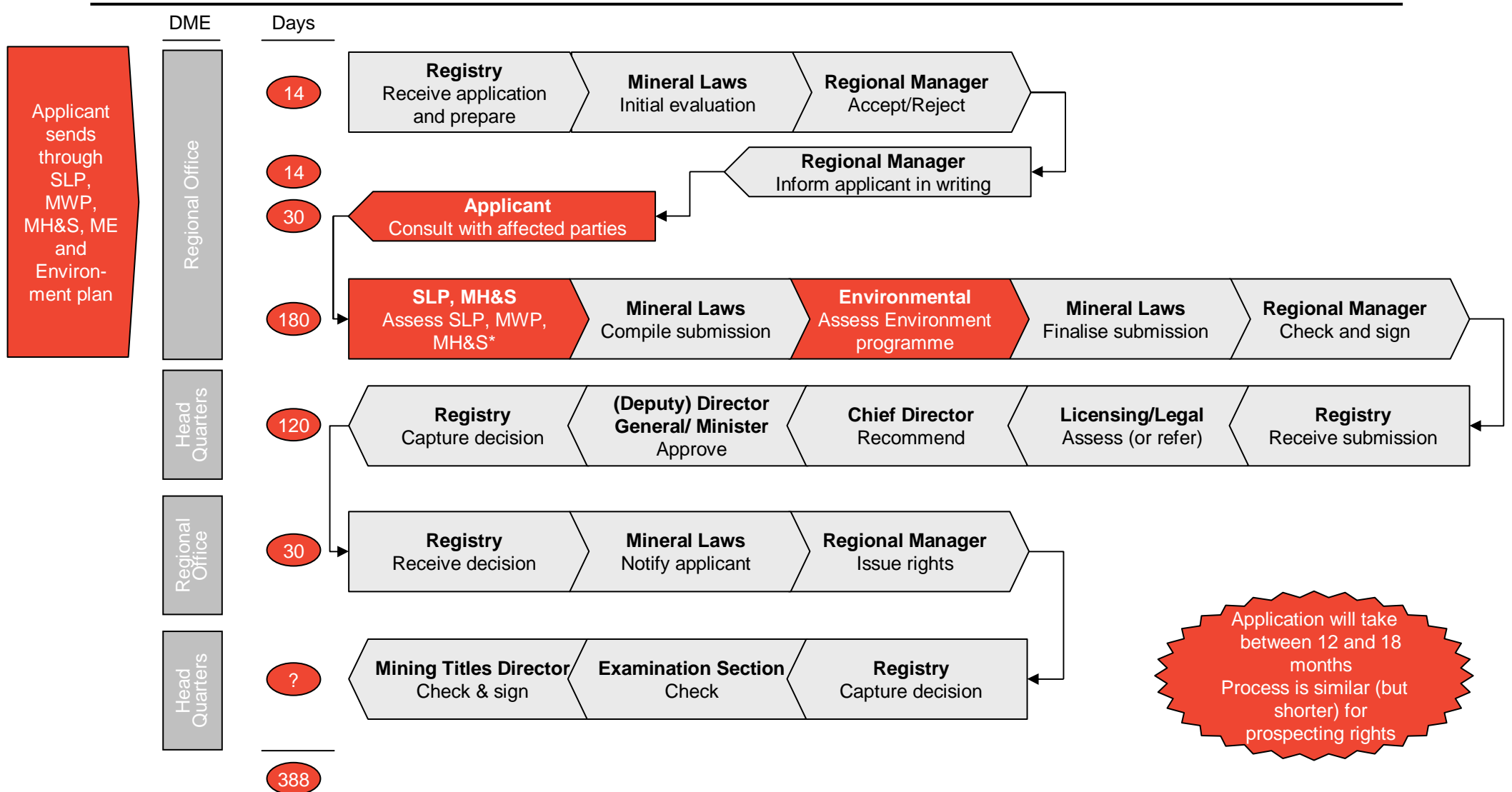
- Any community who wishes to obtain the preferent right to prospect or mine in respect of any mineral and land which is registered or to be registered in the name of the community concerned, must lodge such application to the Minister...

Summary of Mining Charter requirements

Charter Element	Charter requirements	Charter Element	Charter requirements
Ownership and JVs	<ul style="list-style-type: none"> ➤ 15% ownership in hands of HDSA within 5 years (2009) ➤ 26% ownership in hands of HDSA within 10 years (2014) 	Beneficiation	<ul style="list-style-type: none"> ➤ Current level of beneficiation known ➤ Targets to expand this level of beneficiation
Employment Equity	<ul style="list-style-type: none"> ➤ Plan for 40% HDSA participation in management within 5 yrs ➤ Talent pool identified for fast tracking ➤ Plan for 10% women participation in mining within 5 years ➤ Published employment equity plan and progress on plan 	Community / Rural Dev.	<ul style="list-style-type: none"> ➤ Co-operation in formulating integrated development plans with government, in mining and labour sending areas ➤ Engagement with local mine and labour sending communities
HR Development	<ul style="list-style-type: none"> ➤ Access to Adult Basic Education and Training courses ➤ Career path plans and skills development plans for HDSA ➤ Systems for mentoring HDSA 	Housing and Living conditions	<ul style="list-style-type: none"> ➤ Measures to improve standards of housing ➤ Conversion of hostels to family units ➤ Home ownership promoted
Procurement	<ul style="list-style-type: none"> ➤ Preferential procurement status to HDSA's ➤ Current level of procurement from HDSAs known ➤ Target to improve procurement from HDSA over 3-5 yrs 	Migrant Labour	<ul style="list-style-type: none"> ➤ Non-discrimination against foreign migrant labour
		Reporting	<ul style="list-style-type: none"> ➤ Annual reports on progress to achieving commitments

Compliance is open to interpretation, therefore work together with DME to ensure your initiatives are satisfactory

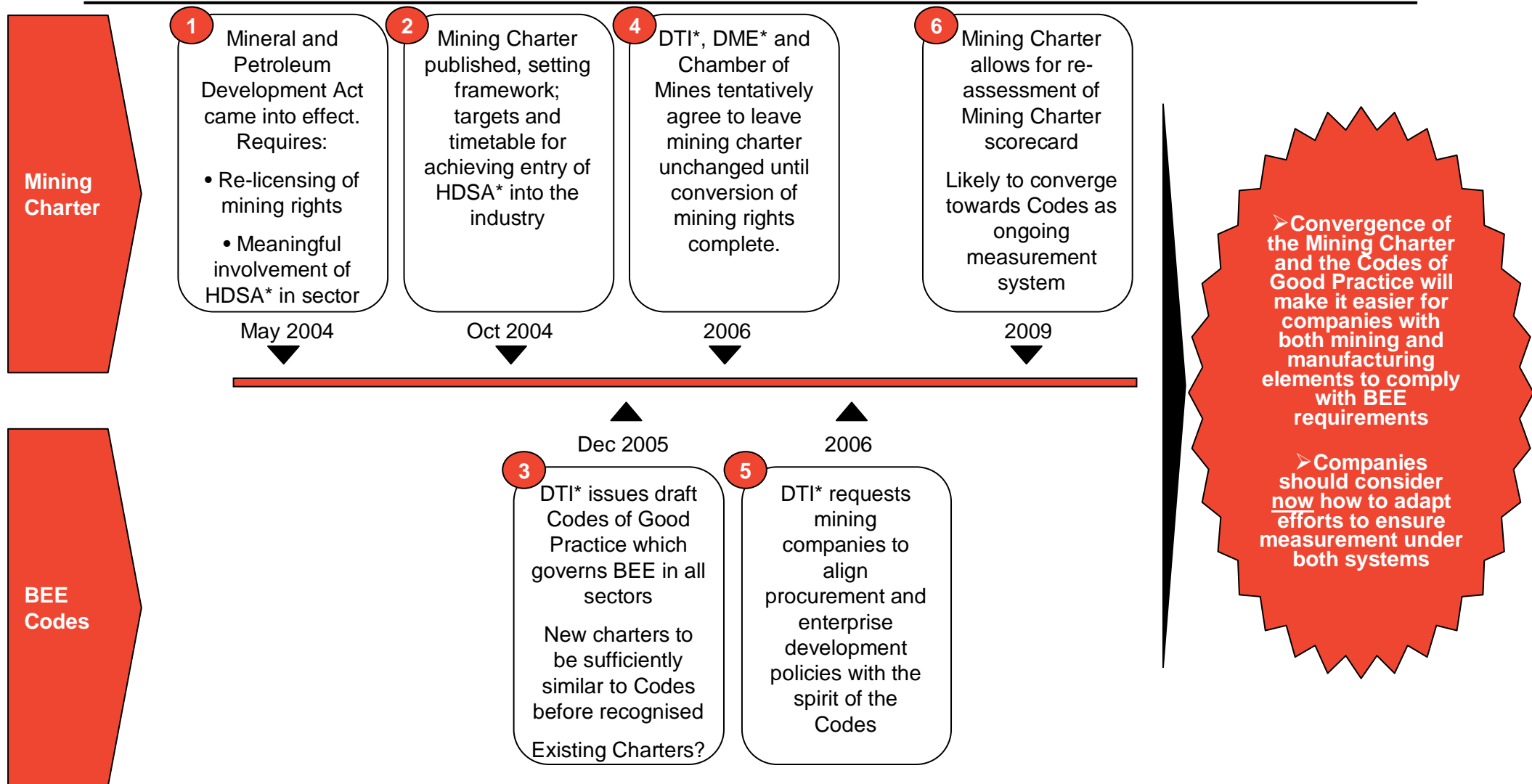
Summary of process for converting mining licences



* SLP: Social and Labour Plan; MWP: Mining Work Programme; MH&S: Mining Health and Safety; ME: Mining Economics

Source: Department of Minerals and Energy

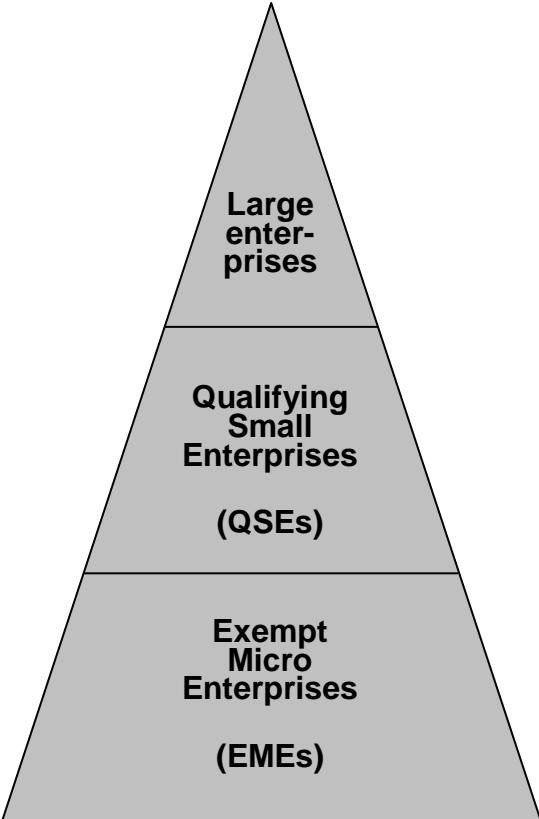
The convergence of the Mining Charter and the BEE Codes of Good Practice



* HDSA: Historically Disadvantaged South Africans; DTI: Department of Trade and Industry; DME: Department of Minerals and Energy

Source: Bravura Consulting; Mining Charter; DTI's Codes of Good Practice; Engineering News

Overview of the Codes of Good Practice

Company Size	Definition	Application of the Codes
 <p>Large enterprises</p>	<p>Turnover greater than R35m</p>	<p>Generic Scorecard or approved Sector Charter applies</p>
<p>Qualifying Small Enterprises (QSEs)</p>	<p>Turnover between R5m and R35m</p>	<p>Simplified scorecard applies:</p> <ul style="list-style-type: none"> ➤ Choice of 4 of 7 elements ➤ All elements weigh 25%
<p>Exempt Micro Enterprises (EMEs)</p>	<p>Turnover less than R5m</p>	<p>Exempt from BEE i.e. recognised as 100% compliant</p>

Summary of the Generic Scorecard

DTI BEE scorecard		Weighting	Regulatory objective	Key compliance targets
Direct empowerment	Equity Ownership	20%	➤ Encourages the sharing of equity and voting rights with black people and black women	➤ 25% black ownership
	Management	10%	➤ Encourages senior black decision making at Executive Board and Senior Top management levels	➤ 40 – 50% black staff at level
Employment equity	Employment Equity	15%	➤ Encourages companies to identify, recruit and develop black people at senior, middle and lower management positions	➤ 60 – 80% black staff at level
	Skills Development	15%	➤ Promotes spending on in-service training and apprenticeship programmes	➤ 3% of payroll on training; ➤ 5% of staff on learnerships
Indirect empowerment	Preferential Procurement	20%	➤ Measures the extent to which enterprises procure from companies that are BEE compliant. Also encourages spend on Small and Micro-enterprises	➤ 70% of procured goods from BEE suppliers
	Enterprise Development	15%	➤ Encourages the creation or expansion of (particularly black) small, medium enterprises	➤ Annually: 3% NPAT
	Socio-economic Development	5%	➤ Encourages Corporate Social Investment initiatives with a focus on black beneficiaries	➤ Annually: 1% NPAT
		100%		

➤ Performance against this scorecard is assessed on an annual basis

➤ Accredited Rating Agents will perform the rating similarly to Financial Auditors

Source: DTI Codes of Good Practice

BEE recognition levels

Contribution Level	Qualification	BEE Recognition
Level One Contributor	≥ 100 points on the Generic Scorecard	135%
Level Two Contributor	≥ 85 but < 100 points on the Generic Scorecard	125%
Level Three Contributor	≥ 75 but < 85 points on the Generic Scorecard	110%
Level Four Contributor	≥ 65 but < 75 points on the Generic Scorecard	100%
Level Five Contributor	≥ 55 but < 65 points on the Generic Scorecard	80%
Level Six Contributor	≥ 45 but < 55 points on the Generic Scorecard	60%
Level Seven Contributor	≥ 40 but < 45 points on the Generic Scorecard	50%
Level Eight Contributor	≥ 30 but < 40 points on the Generic Scorecard	10%
Non Compliant Contributor	< 30 on the Generic Scorecard	0%

Aligning Mining Charter and DTI BEE initiatives

Mining Charter

DTI BEE scorecard

Ownership and JVs		Equity Ownership
Employment Equity and HR Development	Build on the Employment Equity and Skills Development plans required by EE and SD legislation and ensure compliance with both Mining Charter and generic scorecard	Management Control Employment Equity Skills Development
Beneficiation	Encourage the creation or expansion of black enterprises and leverage to improve preferential procurement	Enterprise Development
Procurement	Review existing plans for HDSA suppliers and ensure compliance with the generic scorecard	Preferential Procurement
Community / Rural Dev. Housing and Living Conditions	Leverage community and housing / living conditions initiatives as socio-economic spend to ensure compliance with the generic scorecard	Socio-Economic Development

Note: Migrant Labour and Reporting elements of the Mining Charter need to be specifically addressed

Key differences to be aware of

Overall

- Overall, the Codes have specific targets for each element where the Mining Charter leaves these targets up to the individual company
- Codes require scoring across all broad-based elements – not just narrow-based HDSA Ownership in the Charter
- Codes have 5 year and 10 year targets (starting in 2007)

Ownership

- Codes have specific requirements for Black women and Broad-based groups
- Codes Ownership score is also dependent on net equity value
- Mining Charter allows for Ownership measurement through Production units (i.e. not only equity value)

Employment Equity and HR Development

- Codes do not include white women in their Employment Equity and Skills Development calculations
- Codes have 40% sub minimums on these targets before scoring begins

Procurement

- BEE status of suppliers is based on broad-based scoring in the Codes (not just narrow-based HDSA Ownership in the Charter)
- Codes also require purchasing from Black owned Small and Micro enterprises

Thank You!

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