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New mines charter to speed pace of change

The reviewed charter ensures there are clearer definitions, better articulated targets, improved monitoring mechanisms, specific guidelines and, for the first time, a warning that the minister may cancel mining or prospecting rights for noncompliance.

ALLAN SECCOMBE
Published: 2010/09/14 06:20:13 AM



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THE mining industry had not met its interim social, labour and black economic empowerment targets, prompting the Department of Mineral Resources to issue a more defined Mining Charter yesterday, which now includes the threat of companies forfeiting their licences if they fail to comply with the new requirements.

The mining sector has undergone a major restructuring in the past decade and, because of its importance to the economy from the wealth it generates and the large value as yet untapped, the government has singled it out for special attention when it comes to changing its racial makeup, particularly at ownership and management levels.

The charter lays out the social, labour and equity ownership requirements companies have to meet to qualify for new-order mining and prospecting rights.

The mining sector's progress in meeting targets for the first five years has been unsatisfactory, Mineral Resources Minister [Susan Shabangu](#) said yesterday.

The sector achieved 8,9% black ownership of mining assets last year against a target of 15%, sparking concerns within the department that the 2014 target of 26% ownership would also be missed.

"Where we are today, it is sad to deal with ownership in the mining sector which has not met the target of 15%," said Ms Shabangu. The sector missed other targets last year on employment equity and procurement by a long way.

The reviewed charter ensures there are clearer definitions, better articulated targets, improved monitoring mechanisms, specific guidelines and, for the first time, a warning that the minister may cancel mining or prospecting rights for noncompliance.

The amended charter takes effect immediately and will be gazetted this week.

Macquarie First South said there was "nothing obvious" in the reviewed charter to change the investment case of its mining stocks under coverage.

"The move by the department to a more prescriptive Mining Charter removes some of the ambiguity associated with the previous charter and tightens the degree of interpretation allowed, a positive development, in our opinion," it said.

Alana Bond, MD of Bravura Consulting, said there was too little on ownership in the charter.

"I think it's disappointing that they haven't taken the opportunity to think more holistically around broad-based empowerment and providing for it more clearly. With all the concern around ownership, it's a pity that they haven't really incentivised the broad-based element more clearly here."

The department is working hard to restore investor confidence in the sector after perceptions were affected by the controversial awarding of prospecting rights over existing mines.

"We cannot be subject to speculation and volatility and any type of uncertainty," said Iraj Abedian, the economic adviser to Ms Shabangu.

The department is compiling a broad range of amendments to all laws pertaining to the mining sector in an attempt to remove bottlenecks to growing and transforming the industry.

These amendments will be brought before the Cabinet before the end of the year and then to Parliament and opened to public participation in the first quarter of next year, said the department's director-general, Sandile Nogxina. Mr Nogxina said inspectors would visit mining companies and their operations to ensure compliance with the charter.

The president of the National Union of Mineworkers, Senzeni Zokwana, criticised the department for not forcing companies to comply with the charter in the past five years by making use of section 47 of the Mineral and Petroleum Resources Development Act. The section allows the minister to suspend or cancel rights but also gives companies the right to show why this should not happen.

"The department must be harsh on those who don't pull their weight," Mr Zokwana said.

The union does not trust those calling for the nationalisation of the sector and wanted to be able to

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"defend the industry" as a "caring" one, he said.

The director of the University of Johannesburg's Centre for the Study of Democracy, Prof Steven Friedman, said the nationalisation debate, which he did not regard as a serious one, would not "stand or fall by the release of the charter review".

Nationalisation may be debated at the African National Congress's national general council meeting in Durban next week.

"I have no reason to believe that the charter's release was deliberately timed to be a week before the council," he said.

Mr Nogxina could not say what would replace the charter after 2014 or whether 26% would remain as the minimum requirement for black ownership. "It all depends on the outcome we have in 2014. That will decide the form state intervention will take.

"The state may not intervene at all; allowing empowerment to grow organically, having laid this base of 26%. Or it may decide to intervene differently, not through the charter, seeing if there aren't financing models that will encourage black participation. Anything is possible," Mr Nogxina said.

The new charter met with mixed reviews from the sector, with some praising the improved clarity it now afforded participants, while others said it did not go far enough and was a missed opportunity to effect greater change.

"On the whole, and at first glance, it seems a much better document than the previous charter," said law firm Bell Dewar. "It appears the department is moving towards aligning the Mining Charter requirements with those of the BEE (Black Economic Empowerment) Act and related codes of good practice, which fall under the Department of Trade and Industry," it said.

The next step for the department is to negotiate amendments to the suspended codes of good practice to the South African minerals industry. These were released in April last year, but were roundly condemned by the mining fraternity, which felt they had not been adequately consulted by the department.

Mr Nogxina said: "We have to bring the codes of good practice in line with the charter. That will be our next project after this charter."

This should be by the end of March next year, he said. "It's important for us to get our regulatory environment right."


Mining companies and financial groups that constructed overly complicated empowerment deals were partly behind the long wait in some cases for approval from the department for these transactions, said Mr Nogxina. "It would serve the industry better if the structure of these deals do not become too complicated," he said.

The charter now requires BEE entrepreneurs, workers and communities to be included in empowerment transactions. It also requires "some" cash flow to go to the empowerment entities even while the debt is being repaid. "Accordingly, BEE entities are enabled to leverage equity henceforth in proportion to the vested interest over the life of the transaction in order to facilitate sustainable growth of BEE entities," the charter reads.

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By: Sireal

On: Sep 14 2010 8:07AM

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How is ownership in the mining industry calculated? Does one have to declare one's race when buying shares? Surely large swathes of shares are owned by pension funds and these have many black members. Is this accounted for?

By: GusMan

On: Sep 14 2010 8:37AM

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Let's face it fellow bloggers.....this amounts to nothing more than threatening white business to give to blacks. At the same time it seeks to ensure that a small elite become super rich at the direct expense of the poor masses! We have seen nothing BUT this happen over the last decade & a half. BEE was supposed to empower the working class generally so that they could buy shares in the company they worked for and so realise the risk/reward associated with that. Why do we pay ministers big salaries when they are utterly stupid and incompetent? They are doing exactly the same year in & year out and expecting a different result. Their aims and policies are racist, unsustainable and irrelevant, which is precisely why they will never succeed and why business will fight them every step of the way.

By: coach



On: Sep 14 2010 9:45AM

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The minister has to be congratulated on her hands on approach to the development and articulation of the principles in the charter. I think that there is more clarity on what the targets are and what need to be done to make progress on the transformation of this industry. The urgency to transform has to be embraced by all the players now rather than later.

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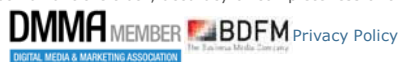
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