Implications of the new 2018 Mining Charter

The 2018 draft Broad-Based Socio-economic Empowerment Charter for the Mining and Minerals Industry ("2018 Charter") was published for comment on 15 June 2018. The 2018 Charter is designed to effect sustainable growth and broad based and meaningful transformation of the mining industry. We have briefly summarised some of the main requirements as set out in the 2018 Charter.

When reading the 2018 Charter, it is important to note that certain terms appearing in the 2010 Charter have been omitted from the 2018 Charter. Amongst these are "Shareholder" and "Social Fund". A second noteworthy point is the fact that some definitions have slightly changed to harmonise the 2018 Charter with the Broad-Based Black Economic Empowerment Act, 53 of 2003. In the 2010 Charter a BEE Entity was defined as an entity of which a minimum of 25% + 1 vote of share capital is directly owned by historically disadvantaged South Africans. The 2018 Charter defines a BEE Compliant Company as a company with a minimum B-BBEE level 4 status in terms of the Codes of Good Practice and a minimum 26% black ownership. Black Persons are also defined to include Africans, Coloureds and Indians, who are citizens of South Africa, and include a juristic person managed and controlled by Black Persons as defined in the Act.

Further requirements for Mining Right Holders ("holders") in terms of the 2018 Charter include:

1. Ownership

Holders will have a period of five years from the date of publication of the final version of the 2018 Mining Charter to supplement their BEE shareholding to 30%. These BEE shareholders must have the same economic interest as other shareholders, plus the corresponding percentage of voting rights. The 2018 Charter also sets out further rules governing how the BEE shareholding is to be distributed between Qualifying Employees, Host Communities and BEE Entrepreneurs. In terms of the 2010 Charter Holders should have achieved a minimum BEE target of 26% by 2014. A pending application lodged and accepted prior to the coming into operation of the 2018 Charter will be processed under the requirements of the 2010 Charter.

2. Procurement

In terms of the 2010 Charter the Holder must have procured a minimum of 40% of capital goods, 70% of services and 50% of consumer goods from BEE entities.

According to the 2018 Charter, Holders must spend a minimum of 70% of their total mining goods procurement expenditure on South African manufactured goods, whereby:

• 21% of the budget must be spent on South African manufactured goods manufactured by black entrepreneurs; and

• 5% of the budget must be spent on South African manufactured goods manufactured by BEE women entrepreneurs or 51% youth owned and controlled Enterprises; and

• 44% of the total budget must be spent to procure goods that were manufactured by BEE compliant companies.

Holders will be expected to comply with these procurement obligations over a period of five years during which certain annual benchmarks will have to be met.

A minimum of 80% of Holders' expenditure on services must be sourced from South African companies, whereby

• 60% of the total services budget must be spent on BEE Entrepreneurs; and

• 10% must be spent on BEE Women Entrepreneurs or 51% youth owned and controlled enterprises; and

• 10 % of total services budget must be spent on a BEE compliant companies

Compliance with these targets must be met within two years from the date of publication of the final 2018 Mining Charter.

When negotiating terms with new suppliers to meet the above requirements, the terms and conditions offered to BEE parties may not be less favourable than those offered to other suppliers. Holders may invest in enterprise and supplier development against which some of their procurement obligations may be offset in accordance with the 2018 Charter.

A right holder shall submit an annual Mining Charter report to provide proof of local content for mining goods in the form of a certificate from the SABS.

3. Employment Equity

Holders must employ Black Persons in such a way that is reflective of the provincial or national demographics with the following minimum requirements in the respective management and other levels:

• board of directors: a minimum of 50% Black Persons of which 20% must be black women;
• top management: a minimum of 50% Black Persons of which 15% must be black women;
• senior Management: a minimum of 50% Black Persons of which 15% must be black women;
• middle management: a minimum of 60% Black Persons of which 20% must be black women;
• junior management: a minimum of 70% Black Persons of which 25% must be black women and
• employees: a minimum of 1.5% must be employees with disabilities.

4. Mine Community Development

Holders will also be required to develop and implement a Career Progression Plan consistent with the demographics of South Africa. Holders should also contribute towards the development of mine communities by identifying developmental priorities of the mine communities. The term "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. All Holders, who operate in the same area, may collaborate to maximize the development impact.

5. Housing and living conditions

Mining companies should improve the standards of housing and living conditions for mine workers as stipulated in the Housing and Living Conditions Standard for the Mining and Minerals Industry developed in terms of section 100 of the Mineral and Petroleum Resources Development Act. Holders must submit a housing and living conditions plan for the DMR's approval. No timelines for compliance herewith have however been provided.

6. Applicability of the 2018 Charter

The 2018 Charter will apply to existing, pending and new applications for mining rights. It will also apply to prospecting rights as contemplated in section 17(4) of the Mineral and Petroleum Resources Development Act. Certain elements of the 2018 Charter will also apply to licensees under the Diamonds Act, 56 of 1986 and the Precious Metals Act, 37 of 2005.

The 2018 Charter scorecard will therefore consist of the following:
• Employment equity will weigh 20%;
• Procurement Supplier and Enterprise Development will weigh 60%; and
• Human Resource Development will weigh 20%;
• The ownership element is ringfenced. Compliance therewith will not be measured in a

percentage; it requires 100% compliance at all times.

A holder, who does not comply with the 2018 Charter, will be regarded as non-compliant with the provisions of the Charter and in breach of the Mineral and Petroleum Resources Development Act and will be dealt with in accordance with the terms under the Act.

Janus Olivier, Van Velden-Duffey Inc.