

2016 AREAS OF FOCUS continued



Transformation

The Chamber continues to play a leading role in positioning its members in a leading role in the country's transformation agenda.

Apart from looking after the interests of its members on regulatory issues such as the Mining Charter, the Chamber's Transformation team has been at the forefront of engaging with key stakeholders to demonstrate how its members have performed against the Mining Charter's key objectives. The Chamber has encouraged members to support the national transformation agenda by going beyond compliance in fulfilling companies' social licence to mine.

In 2015, the DMR publicly reported on the industry's performance against the Mining Charter's 2014 targets. While the industry acknowledges that much still needs to be done, the Chamber has been able to demonstrate significant progress made by its members in meeting the set targets.



Tebello Chabana
Senior Executive: Public Affairs
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IMAGE
Sibanye's Driefontein Operation is an underground mine with surface reserves



Transformation continued

Overall performance by Chamber members against Mining Charter targets

Charter element	Description	Measure	Compliance target 2014	Chamber assessment
Ownership	Minimum target for effective Historically Disadvantaged South African (HDSA) ownership	HDSA ownership %	26%	38%
		Percentage of companies achieving 26%	100%	100%
		Percentage of companies with BEE, community and employee stock ownership plan	–	41%
Housing and living conditions	Conversion and upgrading of hostels to attain occupancy rate of one person per room	Percentage reduction of occupancy rate towards 2014 targets	100%	73%
	Conversion and upgrading of hostels into family units	Percentage conversion of hostels into family units	100%	63.4%
Procurement and enterprise development	Procurement spent from BEE entity	Capital goods	40%	72%
		Services	70%	63%
		Consumable goods	50%	72%
	Multinational suppliers' contribution to the Social Fund	Procurement spend from multinational suppliers	0.5%	20%
Employment equity	Diversification of the workplace to reflect the country's demographics to attain competitiveness	Top management	40%	50.4%
		Senior management	40%	41.9%
		Middle management	40%	50.9%
		Junior management	40%	54%
		Core skills	40%	75.5%
Human resource development (HRD)	Development of requisite skills, including support for South African resource development	HRD expenditure as percentage of total annual payroll	5%	5.5%
Mine community development	Conduct ethnographic community consultative processes to delineate community needs analysis	Implement approved community projects	Implementation to date	70.6%
Sustainable development and growth	Improvement in the industry's environmental management	Implementation of approved environmental management plans	100%	90.6%
	Improvement of the industry's mine health and safety performance	Implementation of tripartite plan on health and safety	100%	86.2%
	Utilisation of South African research facilities for analysis samples	Percentage of samples in South African facilities	100%	84.6%

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As a mandate-driven organisation, the Chamber drives its transformation agenda through the Charter Reference Group (CRG) Committee. The CRG comprises representatives of Chamber member companies responsible for the implementation of charter targets by those companies.

On 30 October 2015, the Minister of Trade and Industry released Notice 1047 of 2015 to exempt the DMR from applying the requirements contained in section 10(1) of the Broad-Based Black Economic Empowerment (B-BBEE) Act 53 of 2003. In effect, this was done to allow the DMR more time to develop a Mining Charter that would be aligned to the B-BBEE Codes of Good Practice as provided for in the Act.

Following publication by the DMR in April 2016 of the draft reviewed Mining Charter, the DMR embarked on an engagement process to discuss its content. The process was fundamentally different to that followed in the drafting of the previous two versions of the Charter finalised in 2004 and 2010. Previously there was a tripartite engagement process (through the MIGDETT in the 2010 version) where the parties rigorously engaged each other throughout and ultimately reached a negotiated consensus. On this occasion the DMR, sometimes including the Minister, has held a series of meetings with one set of stakeholders at a time.

In the several meetings in which the Chamber has been involved, the DMR position has created concern in a number of areas (see Transformation case study). Should those positions be included in an intended final published version of the Charter, the industry will need to consider its options.

The Chamber's understanding of the country's transformation imperative is informed by the following:

- The Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996)
- MPRDA Act 2002 (Act No. 28 of 2002)
- B-BBEE Act 2013 (Act No. 53 of 2003)
- National Industrial Policy Framework (NIPF)
- The National Development Plan (NDP)
- The recognition of the role that the mining industry needs to play to redress systemic inequalities and to meaningfully contribute towards the promotion of an inclusive industry and economy

The mining industry remains committed to a collective stakeholder process to finalise a Mining Charter that reflects the country's strategic intent to align transformation legislation.



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IMAGE

Gold Fields' South Deep Gold Mine is an intermediate to deep-level mechanised mine

CASE STUDY

REVIEWED MINING CHARTER

In engagements with the DMR, the following have emerged as key issues the industry has in respect of the draft reviewed Mining Charter proposals.

In respect of the ownership element of the Charter, the Chamber holds that, correctly interpreted, the Act and the Charter do not provide for top-up when BEE entities sell shareholdings (the so-called "once empowered, always empowered" issue). Detailed discussions have not yet led to a consensus on the way forward. As discussed in this report's Legislation section, the Chamber has initiated an application for a declaratory order by the High Court on this matter, though it will be proceeded with only if and when it is clear that agreement cannot be reached.

The Chamber does not support the establishment of the MTDA. A new bureaucratic structure, whose remit, governance structure and strategy are unclear and which is unlikely to add value, will be an additional cost to the industry and will undermine its competitiveness.

The Chamber does not support the appropriation of 15% of the 5% skills levy currently contributed to mining company skills development programmes in terms of the 2010 Mining Charter, or the proposed 1% procurement levy from multi-national companies. This skills money is best directed by the mining companies.

The Chamber and its members remain committed to workplace diversity and equitable representation at all levels to promote social cohesion, transformation and the competitiveness of the sector. But, the DMR's proposed employment equity targets are simply too steep and not realistically achievable by the sector even in the five-year transition period. The Chamber and its members are willing to work with the DMR in driving employment equity with reasonable and practical targets.

The industry supports the promotion of local manufacturing if it is done in a holistic manner looking at, among other things, supply, local and international demand, incentives and other key factors.

The Chamber is opposed to the 70% target for locally manufactured capital and consumable goods from BEE-compliant companies as this target is not achievable for a number of minerals. This new formulation of 70% locally manufactured goods from BEE compliant entities is a marked change and increase from the previous target of 40% BEE expenditure and is untested.

The revised DMR proposal for contributions to mine community development of 1% of turnover over a two-and-a-half-year period (0.4% per annum) is a reduction from the 1% of annual turnover proposal of April 2016. However, it is still equivalent to a royalty being charged on an *ad valorem* basis, and is the most regressive form of tax, as even loss-making mines would be liable to contribute. The Chamber is in favour of a reasonable EBIT-based target for commitments to community development.

The requirement for 100% compliance, at all times, with three ring-fenced elements – ownership, human resource development and mine community development – is unrealistic and not supported. The Chamber has proposed the use of sub-minimums similar to the B-BBEE Codes.

