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08 October 2018

## ***B-BBEE explained — The Mining Charter—part 1***

The finalised Mining Charter was released for implementation on 27 September 2018. The Department of Mineral Resources (DMR) released a summary document highlighting the most significant changes and/or additions to the Charter.

The most important elements and focus points:

- I. Ownership
- II. Mine community development
- III. Employment equity
- IV. Procurement (including supplier and enterprise development)
- V. Housing and living conditions
- VI. Human resources development and
- VII. Beneficiation.

For this current flyer, we will focus on Ownership only. Further flyers will explain the remaining six elements.

### **Ownership:**

#### **Existing mining rights:**

- I. An existing mining right holder who has achieved a minimum of 26% BEE shareholding shall be recognised as compliant for the duration of the mining right but this is not applicable on renewals and transfers.
- II. The DMR has stated that pending applications lodged and accepted prior to the commencement of the Mining Charter, 2018, will be processed in terms of the requirement of the Mining Charter, 2010, with a minimum of 26% shareholding and a provision that BEE ownership increases to 30% within 5 years.

#### **New mining rights – Minimum 30% distributed as follows:**

- I. 5% non-transferable carried interest to employees



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5% non-transferable carried interest to host communities, comprising 5% equivalent of the issued share capital of the mining right holder, at no cost to a trust or similar vehicle set up for the benefit of all host communities as follows:

- ◆ 20% black entrepreneurs; 5% preferably to be women.
- ◆ 20% ownership shares to a BEE shall not be diluted below 51% ownership and control by the BEE Entrepreneur.
  - ◇ BEE shareholding may be concluded at holding company level, mining right level, on units of production, shares or assets. Where BEE shareholding is concluded at any level other than at mining right level, the Flow Through Principle will apply (*explained in a previous flyer*).
  - ◇ A BEE shareholder exiting the transaction must have held the empowerment shares for a minimum period equivalent to a third of the duration of the mining right, and an unencumbered net value must have been realised.
  - ◇ The Charter outlines requirements for Junior Miners – i.e., a mining right holder with a single or multiple mining rights, having a combined annual turnover of less than 150 million Rand.

The Charter has also set targets for licences granted under the Precious Metal Act, 2005 and the Diamonds Act, 1986; and threshold for precious metals jewellers and beneficiators.

As can be seen in just one B-BBEE related element, this is a significant step forward in the DMR's thinking as to how the Mining Sector should be transformed at an accelerated pace.

Current Mineral Rights holders and those intending to apply for mineral rights must ensure that they have done their research and ensured that compliance with the Charter is 100% at all times.

Contact BEE Ratings—SA at your earliest convenience for further detail and an appointment.