

PUBLICATION OF MINING CHARTER III

28 September 2018 | South Africa

Legal Briefings - By **Peter Leon, Patrick Leyden and Ernst Müller**

While many of the provisions of the 2018 Mining Charter (**Charter**) remain largely unchanged from the previous draft, there have been important changes to certain material issues.

In relation to previous concerns around security of tenure, existing mining rights holders that have met the 26 per cent BEE ownership requirement will not be required to top up to 30 per cent for the duration of the right. This is positive and also applies to companies which met the 26 per cent ownership requirement but whose BEE shareholders have since exited. This is clearly an improvement from the draft Charter which required compliant mining right holders to increase their BEE shareholding to 30 per cent within five years of the Charter coming into force.

An existing mining right holder's BEE Shareholding, in turn, will be reassessed when the mining right is transferred or renewed. This may well conflict with the Gauteng High Court's decision earlier this year that the Mineral and Petroleum Resources Development Act, 2002 does not permit the Minister of Mineral Resources to reconsider empowerment for renewal applications. Companies with pending applications for mining rights, likewise, are also not exempted and are required to top up to 30 per cent within five years of the right being granted.

The position in respect of applications for new mining rights is likewise not clear. Although it is encouraging to see that the Minister has decided to remove a mining company's obligation to issue "free carried" shares, it remains to be seen what is meant by "a non-transferable carried interest". If the explanation made by Minister Manatshe at the media briefing earlier today is correct, successful applicants will be able to recoup this through their mining operations. While it is unclear how they would be able to do so, it would be positive for mining companies to have an opportunity to recover some contribution for these shares. The Minister's decision to reduce the proposed employee and mining community share to five per cent will most likely not find favour with these stakeholders.

Mining right holders' obligations in terms of employment equity and procurement appear to have remained largely unchanged and the concerns around a potential breach of South Africa's international trade law obligations remain as these provisions clearly discriminate against foreign suppliers of goods and services.

It seems regrettable that the Department of Mineral Resources is now required to develop and publish guidelines on how the Charter should be implemented. Ideally the requirements imposed under the Charter should have been clear to understand as much as meet. This is another lost opportunity for the Department to promote the regulatory certainty which South Africa's mining sector needs.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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