

# UPDATE: REVIEWED MINING CHARTER (2017)

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Legal Briefings - By **Peter Leon and Patrick Leyden**

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On 14 July 2017, the Chamber of Mines ("**the Chamber**") released a media statement advising that the Minister of Mineral Resources had given a written undertaking that both he and the Department of Mineral Resources ("**DMR**"), would not implement or apply the provisions of the Reviewed Mining Charter (2017) in any way, pending judgment in the urgent interdict (injunction) application brought by the Chamber last month. Based on this written undertaking, the Chamber agreed to the DMR's request for additional time to file its answering affidavit to the interdict application and for the hearing to take place on a later date. The hearing was scheduled for Tuesday, 18 July 2017 but the parties have requested the Deputy Judge President of the Pretoria High Court to allocate a hearing date in September this year...

The agreed suspension of the implementation of the Reviewed Mining Charter (2017) may present an opportunity for the parties to negotiate a revised version which reflects terms acceptable to all parties. We can only speculate at this stage but, in our view, the provisions of any amended or renegotiated Mining Charter should:

- be agreed by or, at the very least be representative of the views of, all parties in the mining sector. The Charter once again needs to reflect a social compact between government, labour and business rather than a top down form of executive lawmaking.
- be clear, concise and unambiguous.
- contain realistic and achievable timeframes for the implementation of any new

requirements.

- in relation to existing mining rights, fully recognise historic empowerment transactions for the duration of such rights. Security of tenure is of paramount importance to mining companies and investors given the capital intensive nature of mining and the long lead times between exploration and production.
- in relation to the procurement of goods and services, be achievable within realistic timeframes with due regard to South Africa's international trade law obligations.
- in relation to employment equity, be achievable within realistic timeframes having regard to South Africa's regional demographics as well as the provisions of the Constitution.
- not address issues of tax or company distributions to shareholders which are regulated under company or fiscal law.
- avoid being overly prescriptive in relation to the corporate structuring of mining companies and their assets.
- include a methodology for the calculation of the beneficiation offset under the ownership requirements. Although this offset has been recognised under all three Charters, the lack of methodology for the calculation of the offset has resulted in the DMR failing to recognise it since the first Mining Charter was published in October 2002.

## 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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