#NotOur**Charter**

DMR's REVIEWED MINING CHARTER

The Chamber is fully supportive of and committed to meaningful transformation and growth in the mining industry. We see meaningful transformation as a national imperative.

The Chamber believes that transformation should be implemented with due regard to what is achievable, bearing in mind the realities of the industry itself, and the environment and context it finds itself in and with due regard, too, to the environment and context of other stakeholders.

The Chamber believes that, as the primary instrument for driving transformation in the mining sector, the new Mining Charter should have been designed and agreed by all directly affected stakeholders with an outcome that all stakeholders support and which they can defend.

The Department of Mineral Resources (DMR) has failed in this regard. There has been no visible demonstration of the DMR's commitment to engage genuinely and seriously with stakeholders. Neither has it provided substantive supporting arguments for many of the revised targets in its charter.

The Chamber believes that it would have been in the best interests of the industry, employees, communities, investors and South Africans at large if the DMR had opted to engage on the basis of an outcome that advances transformation with the intention of achieving progressive and realistic targets over a period of time.

In its current form, the DMR's charter will jeopardise the viability of an industry that is already under significant economic pressure, an industry that contributes significantly to transformation, and an industry which contributes overwhelmingly to the economy of South Africa.

The Chamber of Mines' objection to the 30% ownership shows that it is anti-transformation – how can you justify this? If the Chamber says its members have achieved 38% black ownership, why is it objecting to 30%? Surely 30% black ownership more 20 years after the end of apartheid is more than justifiable?

The industry remains committed to meaningful transformation done in an orderly and practical manner.

We are not against the 30% ownership proposal. We are against its unilateral determination and application. We ask ourselves: "Why has a target of 30% been set? What are the considerations that have been taken into account in setting this target? What is the science behind the target?"

We do not and cannot support the DMR's prescription of a percentage prescription to shareholders which has not been thoroughly considered and interrogated. Furthermore, we need the DMR to recognise the continuing consequences of previous transactions.

We do not support a percentage of turnover preferential income stream to the 30% shareholders.

We also accept that there should be specific consideration for communities and employees, and in fact there are and have been many such transactions in the past. However:

- We are concerned when the DMR and its officers show favour towards one or other specific shareholders/ stakeholders, and threaten companies' licenses in various ways if they do not follow the DMR's requirements. There are many instances – both public and not – where the DMR has shown clear preference for a certain prospective shareholder over another without reasonable or demonstrable basis, and have brought pressure to bear on companies to achieve this for their favoured clients. We believe that these covert actions that are undertaken for ulterior motives must come to an end. At the very least the DMR should display the level of transparency that companies are expected to display.
- We believe that BEE shareholders should share in the upside and downside of what is often a cyclical industry. When times are good, they should share in the dividends; when times are bad, they should see reduced dividend flow, just like all other shareholders. Certain shareholders should not receive preferential treatment at the expense of other stakeholders – employees, suppliers, and other beneficiaries. That applies particularly to the 1% of revenue proposed to be disbursed in respect of new rights holders.
- The DMR is in fact being disingenuous when it suggests that the target described in its charter is in fact 30%. The DMR's revised target for existing mining rights requires a level of BEE participation, in its prescribed format, in perpetuity. The DMR's charter implies that BEE shareholding must be topped up every time a BEE shareholder sells their shares. In reality, the DMR's target could see companies having to top up their BEE shareholding – at the expense of other shareholders – again and again, making this target far more than the 30% in reality.
- By disregarding the continuing consequences of prior transactions that have been sanctioned and recognised by the DMR, the DMR is reneging on prior commitments and undermining the fundamentals of our sector, creating ongoing uncertainty. If the DMR cannot be trusted to recognise prior agreements, how can it be trusted to recognise future ones? We have asked the Deputy Judge President of the High Court to set a court date for our application for a declaratory order that will hopefully settle this matter.
- A '30% in perpetuity' places an unrealistic burden and expense on all other shareholders – including the many pension funds who hold our companies' shares on behalf of all South Africans. Shareholders will not tolerate perpetual distribution.

Does the industry believe that a deal can be reached with the DMR? Is the relationship salvageable? Do you have confidence/trust in Minister Zwane?

Ultimately, a workable and practical charter with realistic targets that promotes competitiveness, investment growth and transformation is what would be in the best interests of the industry, South Africa and its citizens. This is what is required. As evidenced by the 15 June charter, the DMR cannot be trusted to leverage a mutually acceptable charter. To realise a workable charter, the stakeholders ultimately need to negotiate with third-party mediation to realise an outcome.

- We are concerned by allegations of corruption and capture within the DMR that have not been investigated or disproved. There needs to be a proper investigation into state capture by the Judicial Commission of Enquiry.
- The DMR and the Minister are reputed to have forced the sale of once-profitable assets to persons who have been implicated in reports of state capture by the Public Protector.
- High level and influential positions within the DMR have been vacated by long-standing and knowledgeable leaders, and replaced by persons seemingly unqualified and untested for their positions (other than their prior relationship with the Minister and certain other parties).
- Had allegations of corruption, mal-intent or incompetence been levelled against any private sector company or leader – as has been done against the Minister of Mineral Resources – they would have been removed from office (at least for the period of investigation). It is of great concern that neither the DMR nor government as a whole has even considered the allegations that have been made, and the evidence that is the case is mounting.
- We note suggestions that the DMR's charter, including the express provision regarding naturalised citizens, is intended primarily to benefit a certain family. While this is pure surmise, we have no real grounds to dispute it.

Why is the Chamber objecting to funds being allocated to training and community development?

We are concerned that significant funds allocated by the sector towards education and training and community development will be diverted from the industry and the people they are meant to serve.

- The Chamber's members spend over R6 billion annually on skills development. This money is under the control of the industry and good skills development outcomes are taking place.
- The DMR is aiming to take 2 percentage points or R2.4 billion of the industry's skills development money to a newly created MTDA that has no mandate, governance structure or track record.
- The DMR has not established any clear governance guidelines for the MTDA. If these guidelines are not clearly defined at the outset, the monies appropriated to the fund could be applied in any manner the DMR sees fit.
- The DMR has not demonstrated that it has a plan in place, or the resources, to use these funds sensibly and objectively.
- In theory, the MQA, which is managed under the auspices of the DMR would – at a push – be the most sensible vehicle for the housing of at least some of these funds. This has not been considered by the DMR, which is planning the establishment of an entirely new, untested and likely costly, bureaucracy.
- And, while the MQA might be an existing vehicle that could be used to house and direct these funds, its own management and financial accountability is under question. The most recent MQA audit outcome has once again been a qualified audit. Surely it would make sense for the DMR to adequately oversee this existing vehicle, before it creates yet another one.

What is the Chamber's objection to the 1% revenue allocation?

We are concerned that the DMR has decided on a level of revenue allocation to BEE shareholders that is not sustainable, and that will result in premature closure of mines or, in fact, in mines simply not being funded. And it wants the shares, and the returns on shares, including this 1% of revenue, managed by the untested MTDA.

- The 1% of turnover to BEE shareholders is contrary to the Companies Act and will undermine existing shareholders.
- In 2016, the mining industry paid shareholders R5.9 billion in dividends. The proposed 1% revenue allocation will remove R5.8 billion from revenue, significantly reducing the portion of dividends paid to shareholders. If investors cannot count on receiving a return on their investment, they would have no choice but to disinvest which will be to the detriment of the mining industry and its stakeholders.
- The potential short-term funds will come at the expense of long term value creation for communities, jobs and value to the fiscus.
- Further, the DMR does not have the resources to consider, review, allocate, manage and oversee communities' holdings and its suggested share of 1% of revenue cash flows. It has no track record in this regard and, once again, we would question the level of fiduciary integrity of overseeing these funds.

Why is the industry so opposed to local procurement?

We agree that local procurement contributes to the growth and development of the South African economy. We are concerned that the DMR has decided on a level of locally manufactured procurement with no prior research which rigorous research would almost certainly find to be unrealistic.

- The DMR has not considered whether or not South Africa has the necessary resources, technical skills and infrastructure to manufacture these goods to the appropriate standard.
- The DMR has not demonstrated that it is willing to put plans and programmes in place to assist local manufacturers to obtain the necessary technical skills and investment.
- We do not believe that the 70% capital procurement from BEE controlled locally manufactured companies is practical or achievable in the short term.
- The prescription of women and youth targets need some flexibility.