Short notes on:

NEW MINING CHARTER - ARE YOU READY?

Introduction

The Department of Mineral Resources (“DMR”) has recently released an updated draft of the Reviewed Broad-Based Black-Economic Empowerment Charter for the South African Mining Industry, 2016 (“Reviewed Mining Charter”). The reviewed mining charter provide directives on how mines should transform in order to comply with the revised Broad-Based Black Economic Empowerment Act, No. 53 of 2003 (“BBBEE Act”) and the Codes of Good Practice (DTI Codes). The Minister of Mineral Resources, Mosebeni Zwane published the draft to strengthen the efficacy of the Mining Charter developed in terms section 100(2)(a) of the Mineral and Petroleum Resources Development Act, No 28 of 2002\(^1\) ("MPRDA"), as a meaningful transformation of the South African mining and minerals industry. The mining charter is thus an instrument to effect transformation with specific targets, in this case the mining industry in South Africa as a whole.

The draft review of the Mining Charter was published for a period of 30 days as defined in the MPRDA, during which period the minister has engaged with the organised business and labour institutions in the mining industry for their input. Interested or affected parties had until 31 May 2016, as per the Government Gazette Notice\(^2\) to submit written inputs and comments.

Objectives

There are fundamental changes made in comparison to the 2002 and 2010 Mining Charters. The reviewed mining charter is expected to be given effect later in the year, after the minister and various effected parties within the industry has had input.

The minister has set out the objectives of the charter as follows:

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\(^1\) Act 28 of 2002, Section 100(2)(a) - To ensure the attainment of Government’s objectives of redressing historical, social and economic inequalities as stated in the Constitution, the Minister must within six months from the date on which this Act takes effect develop a broad-based socio-economic empowerment Charter that will set the framework, targets and time-table for effecting the entry of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of mining and mineral resources.

\(^2\) Government Gazette No. 39933, 15 April 2016
(a) Promote equitable access to the nation's mineral resources to all the people of South Africa;

(b) Substantially and meaningfully expand opportunities for black people to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources;

(c) Utilise and expand the existing skills base for the empowerment of black people and to serve the community;

(d) Promote employment and advance the social and economic welfare of mine communities and major labour sending areas;

(e) Promote beneficiation of South Africa's mineral commodities.³

The definition of “black” people is in the context of the BBBEE Act, and its regulations, which defines it as follows:

_A generic terms which means Africans, Coloureds, and Indians –_

(a) _Who are citizens of the Republic of South Africa by birth or descent; or_

(b) _Who are citizens of the Republic of South Africa by naturalisation–_

   i. _Before 27 April 1994; or_

   ii. _On or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date._⁴

_Some concerns regarding the amendments_

Given the objectives highlighted by the minister, Industry and affected parties should take measures to minimize their financial as well as legal risk.

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⁴ Section 1(b)(a) of The Broad-Based Black Economic Empowerment Act, No. 53 Of 2003
The most notable of these includes the BBBEE ownership principle. Importantly, the charter specifies certain minimum percentages for communities, black entrepreneurs and employees. According to the above, persons would be entitled to a minimum of 5% BBBEE ownership, of the 26% of mining rights held by a company. Secondly, would be the transitional arrangements, which will require tremendous amounts of reviews by the companies in the industry. Further, the charter also provides that should a BBBEE partner exit the company, a new BBBEE partner should be appointed within three years of such exit.

**Conclusion**

It is important for the entire mining industry and its participants to ensure they update their strategies and polices to be in line with the above in order to limit risk. Contact a specialist at SchoemanLaw for assistance today.