

Small miners likely to struggle with charter targets

By [Manus Booysen](#) & [Rita Spalding](#)

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The broad-based ownership, local procurement and social and labour plans requirements of the latest iteration of the Mining Charter are likely to put serious pressure on small-scale miners, suggesting that it's time to move away from a one-size-fits-all approach to setting targets.



Several clauses in Mining Charter III, which may be challenging for large mining houses, place onerous, even impossible, responsibilities on small-scale miners.

These miners include some black-owned businesses as well as hundreds of alluvial diamond miners who are members of the South African Diamond Producers' Organisation (Sadpo) a member of the Minerals Council South Africa.

The main areas of concern relate to ownership and local procurement targets, as well as social and labour plans.

Ownership

The charter's removal of 51% black empowerment for prospecting rights is welcomed. But the requirement to have 30% black empowerment for new or renewals of mining rights, up from 26% for existing rights, will present problems, particularly as this has to be allocated 20% to a black entrepreneur, 5% to communities and 5% to employees.

Small miners already have 26% black ownership in place but will not have structured it in the 20: 5: 5 ratio. Often the existing stake is 26% held by a black empowerment consortium. So to comply with the obligations for new or renewal of their rights, the miners will either have to ask their existing partners to surrender part of their stakes or surrender more of their own shares to allocate to communities and employees. Neither option is practicable.

Procurement obligations

Another concerning new development is burdensome procurement obligations. Charter III requires that, within five years, at least 70% by value of mining goods purchased must be of SA manufacture, of which 21% must be goods produced by Historically Disadvantaged South African owned and controlled companies, 5% must be produced by companies owned and controlled by black women or youth and 44% must be produced by a BEE compliant company (i.e. more than 25%

black shareholding).

This is very difficult to achieve. South African mines utilise sophisticated equipment which is mostly imported. South Africa does not have the ability to manufacture this equipment - let alone manufacture this equipment by the mandatory categories of historically disadvantaged South Africans. It is beyond the ability and capacity of even the bigger South African mining companies to establish the manufacturing capacity of these categories to produce 70% of mining goods within the next five years. This requirement of Charter III is practically and economically not achievable.

A practical way to address this problem would be to allow companies an exemption from the local sourcing requirements if they can show that the equipment they need is not and will not become locally-manufactured.

Social and labour plans

On social and labour plans, each mining company is expected to draw up and enforce its own plan. The result is a proliferation of social development efforts. The alluvial diamond industry consists of so many and such small operators, that the laudable social development objectives are not achieved.

Sadpo proposed to the minister in commenting on the draft charter III, that its members contribute a percentage of their turnover to an independently (not state) administered and accountable fund that would pool all this money to achieve coordinated and meaningful community upliftment.

Although there is a provision in the charter which allows for cooperation between mining right holders in respect of social development, it is unstructured. The department appears to understand the problem of uncoordinated community upliftment spending but wants to retain the ability to enforce it. Perhaps the time has come to explore the concept of coordinated social development by small operators in more detail.

Under paragraph 9 of the charter, failure to meet the targets is a contravention of the Minerals and Petroleum Resources Development Act (MPRDA), which means rights can be suspended and cancelled under sections 93 and 47 of the Act. However, the charter is neither legislation nor subordinate legislation. It is a policy document read in conjunction with the MPRDA. While it is doubtful whether paragraph 9 of the charter is lawful, it is still problematic because unless it is set aside judicially, mining licences could be at risk.

The SA mining industry has the ability to contribute meaningfully to economic growth, creating employment and eradicate poverty and benefit SA at large. But achieving these goals requires the cooperation of all interested and affected parties, including government, which has the role to create a regulatory framework conducive to investment and growth. While Charter III is a huge step forward from former Minister Zwane's 2017 attempt and also the June 2018 draft, there are still stumbling blocks in its provisions which we believe will be difficult to get over in achieving a prosperous industry while redressing the wrongs of the past - the primary objective of the Mining Charter.

ABOUT THE AUTHOR

Manus Booyesen and Rita Spalding are mining sector experts at Webber Wentzel.

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