
GENERAL NOTICE

NOTICE 1639 OF 2004

SCORECARD FOR THE BROAD BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY

Introduction

- The proposed scorecard gives effect to the provisions contained in the Broad Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry.

- The scorecard is designed to facilitate the application of the Charter in terms of the Mineral and Petroleum Resources Development Act requirements for the conversion of all the “old order rights” into new rights within a five-year conversion window period, but recognising the full 10-year period.

- In adjudicating the scorecard the Minister of Minerals and Energy will need to take into account the entire scorecard in decision making.

- The scorecard is intended to reflect the “spirit” of the Broad-based Socio-Economic Empowerment Charter for the Mining Industry.

- Progress by stakeholders in achieving the aims of the Charter as enunciated in the Scorecard can be measured in two ways:
 - The specific targets set in the Charter.
 - The targets set by companies.

ANNEXURE A: SCORECARD FOR THE BROAD BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY

NOTES	DESCRIPTION	5 YEAR TARGET		10 YEAR TARGET
		Yes	No	
1	Human Resource Development			
	• Has the company offered every employee the opportunity to be functionally literate and numerate by the year 2005 and are employees being trained?	Yes	No	
	• Has the company implemented career paths for HDSA employees including skills development plans?	Yes	No	
	• Has the company developed systems through which empowerment groups can be mentored?	Yes	No	
2	Employment Equity			
	• Has the company published its employment equity plan and reported on its annual progress in meeting that plan?	Yes	No	
	• Has the company established a plan to achieve a target for HDSA participation in management of 40% within five years and is implementing the plan?			
	• Has the company identified a talent pool and is it fast tracking it?	Yes	No	
	• Has the company established a plan to achieve the target for women participation in mining of 10% within the five years and is implementing the plan?			
3	Migrant Labour			
	• Has the company subscribed to government and industry agreements to ensure non-discrimination against foreign migrant labour?	Yes	No	
4	Mine community and rural development.			
	• Has the company co-operated in the formulation of integrated development plans and is the company co-operating with government in the implementation of these plans for communities where mining takes place and for major labour sending areas? Has there been effort on the side of the company to engage the local mine community and major labour sending area communities? (Companies will be required to cite a pattern of consultation, indicate money expenditures and show a plan).	Yes	No	
5	Housing and Living Conditions			
	• For company provided housing has the mine, in consultation with stakeholders established measures for improving the standard of housing, including the upgrading of the hostels, conversion of hostels to family units and promoted home ownership options for mine employees? Companies will be required to indicate what they have done to improve housing and show a plan to progress the issue over time and is implementing the plan?	Yes	No	
	• For company provided nutrition has the mine established measures for improving the nutrition of mine employees? Companies will be required to indicate what they have done to improve nutrition and show a plan to progress the issue over time and is implementing the plan?	Yes	No	
6	Procurement			
	• Has the mining company given HDSA's preferred supplier status?	Yes	No	
	• Has the mining company identified current level of procurement from HDSA companies in terms of capital goods, consumables and services?	Yes	No	
	• Has the mining company indicated a commitment to a progression of procurement from HDSA companies over a 3 – 5 year time frame in terms of capital goods, consumables and services and to what extent has the commitment been implemented?	Yes	No	
7	Ownership & Joint Ventures			
	• Has the mining company achieved HDSA participation in terms of ownership for equity or attributable units of production of 15 percent in HDSA hands within 5-years and 26 percent in 10-years?			15% 26%
8	Beneficiation			
	• Has the mining company identified its current level of beneficiation?	Yes	No	
	• Has the mining company established its base line level of beneficiation and indicated the extent that this will have to be grown in order to qualify for an offset?	Yes	No	
9	Reporting			
	• Has the company reported on an annual basis its progress towards achieving its commitments in its annual report?	Yes	No	

Notes

1. The commitment of the mining companies is to have offered each employee the opportunity to become functionally literate and numerate. The critical test is if a human resource development system has been established and resourced so that people are being trained.
2. The mentoring of empowerment groups refers to that mining company's HDSA employees and HDSA linked partners at the levels of ownership and procurement. It does not preclude mining companies being involved in mentoring programmes outside of its own operations.
3. The aspirational target for HDSA participation in management is a 5-year target. If companies want to convert to licenses within a much shorter time frame, then a phase in approach will be adopted with the companies committing to a 40 percent by the fifth year. The key decision point here is whether the company has established a plan to achieve the target and is implementing the plan.
4. The aspirational target for women participation in mining is a five-year target and the phase in approach will be used. The key decision point here is whether the company has established a plan to achieve the target and is implementing the plan.
5. The commitment of stakeholders to ensure non-discrimination against foreign migrant labour can be approached from the perspective that each company subscribes to industry and government agreements on the matter.
6. In terms of companies establishing measures for improving the standard of housing – the company will be required to indicate what it has done to improve housing and show a plan to progress the issue over time and are implementing the plan.
7. In terms of companies establishing measures for improving the standard of nutrition – the company will be required to indicate what it has done to improve nutrition and show a plan to progress the issue over time and are implementing the plan.
8. In terms of procurement the mining company should commit to an increase of procurement from HDSA companies over the 3-5 year time frame and agree to a monitoring system.
9. The Scorecard represents the 5-year targets and it has been agreed that within 10-years the level of HDSA participation will rise to 26 percent.
10. In terms of beneficiation commitments and the offset option the key issue is to capture the actual beneficiation activities of a company and to convert it to the same unit of measurement of ownership e.g. attributable units of production / or % measure of value as the case may be and offset accordingly. The attributable ounces that are beneficiated above the base state may be offset against HDSA ownership targets. *Considering that some 59 different minerals are mined in South Africa – the detailed discussions on the base state for each mineral are ongoing.*

BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY

VISION

All the actions and commitments set out below are in the pursuit of a shared vision of a globally competitive mining industry that draws on the human and financial resources of all South Africa's people and offers real benefits to all South Africans. The goal of the empowerment charter is to create an industry that will proudly reflect the promise of a non-racial South Africa.

PREAMBLE

Recognising:

- The history of South Africa, which resulted in blacks, mining communities and women largely being excluded from participating in the mainstream of the economy, and the formal mining industry's stated intention to adopt a proactive strategy of change to foster and encourage black economic empowerment (BEE) and transformation at the tiers of ownership, management, skills development, employment equity, procurement and rural development;
- The imperative of redressing historical and social inequalities as stated by the Constitution of the Republic of South Africa, in inter alia section 9 on equality (and unfair discrimination) in the Bill of Rights;
- The policy objective stated in the Mineral and Petroleum Resources Development Act to expand opportunities for historically disadvantaged persons to enter the mining and minerals industry or benefit from the exploitation of the nation's mineral resources;
- The scarcity of relevant skills has been identified as one of the barriers to entry into the mining sector by historically disadvantaged South Africans (HDSA's);

- The slow progress made with employment equity in the mining industry compared to other industries.

Noting that

- It is government's stated policy that whilst playing a facilitating role in the transformation of the ownership profile of the mining industry it will allow the market to play a key role in achieving this end and it is not the government's intention to nationalise the mining industry.
- The key objectives of the Mineral and Petroleum Resources Development Act and that of the Charter will be realised only when South Africa's mining industry succeeds in the international market place where it must seek a large part of its investment and where it overwhelmingly sells its product and when the socio-economic challenges facing the industry are addressed in a significant and meaningful way.
- The transfer of ownership in the industry must take place in a transparent manner and for fair market value.
- That the following laws would also assist socio-economic empowerment:
 - The Preferential Procurement Framework Act (No. 5 of 2000)
 - The Employment Equity Act (No 55 of 1998);
 - The Competition Act (No. 89 of 1998) (Also ref. To the Amendment Act No. 35 of 1999 and subsequent amendments);
 - The Skills Development Act (No. 97 of 1998).

Therefore

The signatories have developed this Charter to provide a framework for progressing the empowerment of historically disadvantaged South Africans in the Mining and Minerals Industry. The signatories of this Charter acknowledge:

Section 100. (2) (a) of the Mineral and Petroleum Resources Development Act, which states that, to insure the attainment of Government's objectives of redressing historical social and economic inequalities as stated in the Constitution, the Minister of Minerals and Energy must within six months from the date on which this act takes effect develop a Broad-Based Socio-Economic Empowerment (BBSEE) Charter.

1. SCOPE OF APPLICATION

This Charter applies to the South African mining industry.

2. INTERPRETATION

For the purposes of interpretation, the following terms apply:

Broad-Based Socio-Economic Empowerment (BBSEE) refers to a social or economic strategy, plan, principle, approach or act, which is aimed at:

- Redressing the results of past or present discrimination based on race, gender or other disability of historically disadvantaged persons in the minerals and petroleum industry, related industries and in the value chain of such industries; and
- Transforming such industries so as to assist in, provide for, initiate, facilitate or benefit from the:
 - Ownership participation in existing or future mining, prospecting, exploration and beneficiation operations;
 - Participation in or control of management of such operations;
 - Development of management, scientific, engineering or other skills of HDSA's;
 - Involvement of or participation in the procurement chains of operations;
 - Integrated Socio-economic development for host communities, major labour sending areas and areas that due to unintended consequences of mining are becoming ghost towns by mobilising all stakeholder resources.

The term **Historically Disadvantaged South Africans (HDSA)** refers to any person, category of persons or community, disadvantaged by unfair discrimination before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) came into operation.

HDSA Companies are those companies that are owned or controlled by historically disadvantaged South Africans.

Major labour sending areas refer to areas from where a significant number of mineworkers are or have been recruited.

Ghost towns refer to areas whose economies were dependent on mining and therefore could not survive beyond the closure or significant downsizing of mining activities.

Ownership of a business entity can be achieved in a number of ways;

- a majority shareholding position, i.e. 50% + 1 share,
- Joint ventures or partnerships (25% equity plus one share).
- Broad based ownership (such as HDSA dedicated mining unit trusts, or employee share ownership schemes).

3. OBJECTIVES

The objectives of this charter are to:

- Promote equitable access to the nation's mineral resources to all the people of South Africa;
- Substantially and meaningfully expand opportunities for HDSA's including women, to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources;
- Utilise the existing skills base for the empowerment of HDSA's;
- Expand the skills base of HDSA's in order to serve the community;
- Promote employment and advance the social and economic welfare of mining communities and the major labour sending areas; and
- Promote beneficiation of South Africa's mineral commodities.

4. UNDERTAKINGS

All stakeholders undertake to create an enabling environment for the empowerment of HDSA's by subscribing to the following:

4.1 Human Resource Development

The South African labour market does not produce enough of the skills required by the mining industry. Stakeholders shall work together in addressing this skills gap in the following manner:

- Through the standing consultative arrangements they will interface with statutory bodies such as the Mines Qualifications Authority (MQA), in the formulation of comprehensive skills development strategies that include a skills audit;
- By interfacing with the education authorities and providing scholarships to promote mining related educational advancement, especially in the fields of mathematics and science at the school level;
- By undertaking to ensure provision of scholarships and that the number of registered learnerships in the mining industry will rise from the current level of some 1200 learners to not less than 5000 learners by March 2005; and
- Through the MQA shall undertake to provide skills training opportunities to miners during their employment in order to improve their income earning capacity after mine closure.

Government undertakes that:

- In its bi-lateral relations with relevant countries, undertakes to secure training opportunities for HDSA companies' staff, as well as exchange opportunities with mining companies operating outside of South Africa;

- Through the MQA and in collaboration with academic institutions, DME associated institutions, NGO's, and the Gender Commission, shall provide training courses in mining entrepreneur's skills;

Companies undertake:

- To offer every employee the opportunity to become functionally literate and numerate by the year 2005 in consultation with labour;
- To implement career paths to provide opportunities to their HDSA employees to progress in their chosen careers; and
- To develop systems through which empowerment groups can be mentored as a means of capacity building.

4.2 Employment Equity

Companies shall publish their employment equity plans and achievements and subscribe to the following:

- Establish targets for employment equity, particularly in the junior and senior management categories. Companies agree to spell out their plans for employment equity at the management level. The stakeholders aspire to a baseline of 40 percent HDSA participation in management within 5-years;
- South African subsidiaries of multinational companies and South African companies, where possible, will focus their overseas placement and/or training programmes on historically disadvantaged South Africans;
- Identification of a talent pool and fast tracking it. This fast tracking should include high quality operational exposure;

- Ensuring higher levels of inclusiveness and advancement of women. The stakeholders aspire to a baseline of 10 percent of women participation in the mining industry within 5-years; and
- Setting and publishing targets and achievements.

4.3 Migrant Labour

Stakeholders undertake to:

- Ensure non-discrimination against foreign migrant labour.

4.4 Mine Community and Rural Development

Stakeholders, in partnership with all spheres of government, undertake to:

- Co-operate in the formulation of integrated development plans for communities where mining takes place and for major labour-sending areas, with special emphasis on development of infrastructure.

4.5 Housing and Living Conditions

Stakeholders, in consultation with the Mine Health and Safety Council, the Department of Housing and organised labour, undertake to:

- Establish measures for improving the standard of housing including the upgrading of hostels, conversion of hostels to family units and the promotion of home ownership options for mine employees; and
- Establish measures for improving of nutrition of mine employees.

4.6 Procurement

Procurement can be broken down into three levels, namely: capital goods; services; and consumables.

Stakeholders undertake to give HDSAs a preferred supplier status, where possible, in all three levels of procurement. To this end stakeholders undertake to:

- Identify current levels of procurement from HDSA companies;
- Commit to a progression of procurement from HDSA companies over a 3 to 5-year time frame reflecting the genuine value added by the HDSA provider;
- Encourage existing suppliers to form partnerships with HDSA companies, where no HDSA Company tenders to supply goods or services; and
- Stakeholders commit to help develop HDSA procurement capacity and access Department of Trade and Industry (DTI) assistance programmes to achieve this.

List of suppliers: It is envisaged that information on all HDSA companies wishing to participate in the industry will be collected and published. All participants in the industry will assist the DTI in compiling such a list that will *inter alia* be published by government on the Internet and updated regularly.

4.7 Ownership and Joint Ventures

Government and industry recognise that one of the means of effecting the entry of HDSA's into the mining industry and of allowing HDSA's to benefit from the exploitation of mining and mineral resources is by encouraging greater ownership of mining industry assets by HDSA's. Ownership and participation by HDSA's can be divided into active or passive involvement as follows:

Active involvement:

- HDSA controlled companies (50 per cent plus 1 vote), which includes management control.

- Strategic joint ventures or partnerships (25 per cent plus 1 vote). These would include a Management Agreement that provides for joint management and control and which would also provide for dispute resolution.
- Collective investment, through ESOPS and mining dedicated unit trusts. The majority ownership of these would need to be HDSA based. Such empowerment vehicles would allow the HDSA participants to vote collectively.

Passive involvement:

- Greater than 0 percent and up to 100 percent ownership with no involvement in management, particularly broad based ownership like ESOPs.

In order to measure progress on the broad transformation front the following indicators are important:

- The currency of measure of transformation and ownership could, *inter alia*, be market share as measured by attributable units of South African production controlled by HDSA's.
- That there would be capacity for offsets which would entail credits / offsets to allow for flexibility.
- The continuing consequences of all previous deals would be included in calculating such credits/offsets in terms of market share as measured by attributable units of production.
- Government will consider special incentives to encourage HDSA companies to hold on to newly acquired equity for a reasonable period.

In order to increase participation and ownership by HDSA's in the mining industry, mining companies agree:

- To achieve 26% HDSA ownership of the mining industry assets in 10 years by each mining company; and
- That where a company has achieved HDSA participation in excess of any set target in a particular operation then such excess maybe utilised to offset any shortfall in its other operations.

All stakeholders accept that transactions will take place in a transparent manner and for fair market value. Stakeholders agree to meet after 5-years to review the progress and to determine what further steps, if any, need to be made to achieve the 26% target.

4.8 Beneficiation

This Charter will apply to mining companies in respect of their involvement in beneficiation activities, specifically activities beyond mining and processing. These include production of final consumer products.

Mining companies will be able to offset the value of the level of beneficiation achieved by the company against its HDSA ownership commitments.

Mining companies agree to:

- Identify their current levels of beneficiation.
- Indicate to what extent they can grow the baseline level of beneficiation.

4.9 Exploration and Prospecting

Government will support HDSA companies in exploration and prospecting endeavours by, *inter alia*, providing institutional support.

4.10 State Assets

Government will ensure compliance with the provisions of this Charter and be exemplary in the way in which it deals with state assets.

4.11 Licensing

To facilitate the processing of licence conversions there will be a scorecard approach to the different facets of promoting broad based socio economic empowerment in the mining industry. This scorecard approach would recognise commitments of the stakeholders at the

levels of ownership, management, employment equity, human resource development, procurement and beneficiation. These commitments have been spelt out in sections 4.1 to 4.9 above.

The HDSA participation required to achieve conversion within the five year period on a company specific basis will be specified in the score-card, hereto attached as Annexure A.

4.12 Financing Mechanism

The industry agrees to assist HDSA companies in securing finance to fund participation in an amount of R100 billion within the first 5-years. Participants agree that beyond the R100 billion-industry commitment and in pursuance of the 26 per cent target, on a willing seller – willing buyer basis, at fair market value, where the mining companies are not at risk, HDSA participation will be increased.

4.13 Regulatory Framework and Industry Agreement

Government's regulatory framework and industry agreements shall strive to facilitate the objectives of this Charter.

4.14 Consultation, Monitoring, Evaluation and Reporting

It is recognised that the achievement of the objectives set out herein entails an ongoing process.

Companies undertake to report on an annual basis their progress towards achieving their commitments, with these annual reports verified by their external auditors. A review mechanism will be established which again provides flexibility to the company commitments.

Parties hereto agree to participate in annual forums for the following purposes:

- Monitoring progress in the implementation of plans;
- Developing new strategies as needs are identified;
- Ongoing government/industry interaction in respect of these objectives;

- Developing strategies for intervention where hurdles are encountered;
- Exchanging experiences, problems and creative solutions;
- Arriving at joint decisions;
- Reviewing this Charter if required.

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