

TRANSFORMATION

Frequently Asked Questions



MINERALS COUNCIL
SOUTH AFRICA

3 December 2019

The mining industry has played a critical role in South Africa's economic development for over 140 years being primarily responsible for transforming it into the most industrialised country on the African continent.



Question 1

WHY IS THERE A NEED TO TRANSFORM THE MINING INDUSTRY?



The need to transform the South African mining industry stems from the fact that, at the advent of non-racial democracy in 1994 the industry was a reflection of apartheid South Africa. As the original 2004 Mining Charter put it, blacks, mining communities and women were largely being excluded from participating in the mainstream of the economy, including the mining industry. There was a need to significantly broaden the ownership of the industry to allow new entrants, and, further, to allow all citizens the opportunity to participate in the industry at the levels of ownership, management, skills development, employment equity, procurement and community and rural development.



Question 2

HOW DOES THE MINING INDUSTRY DEFINE TRANSFORMATION? HAS THIS DEFINITION CHANGED SINCE THE MINING CHARTER WAS FIRST INTRODUCED?



'Transformation' has often been a difficult concept to interpret as it is guided by several pieces of legislation, all of which have bearing on the South African mining industry. These include the Constitution of South Africa, the Mining Charter (revised for the second time in 2018), the Broad-Based Black Economic Empowerment Act of 2003, the Employment Equity Act of 1998, and the Minerals and Petroleum Resources Development Act.

In dealing with transformational aspects, the South African Constitution aspires for a balance between attempts to broadly represent the country's demographics in the way in which organisations are structured and the need to maintain the necessary skills to ensure continual retention of skills for optimum and efficient organisational performance. More specifically, the Department of Mineral Resources and Energy views transformation as a measure to "redress historical imbalances engendered by apartheid so that the industry is consistent with the changes in South Africa's overall transformation of its social, political and economic landscape".

It is broadly accepted that transformation in the mining industry does not simply apply to effecting a change in the racial and gender composition of companies. It is also about cultural change, a change in mind-sets, embracing diversity, equalising rights and opportunities, and attaining social justice for historically disadvantaged individuals.



Question 3

HOW DO THE DEFINITIONS OF HDSAs DIFFER BETWEEN CHARTERS? IS THIS PROBLEMATIC IN ENSURING CONSISTENT COMPLIANCE?



In the original Mining Charters (2004) HDSAs were defined as any historically disadvantaged South Africans who were discriminated against during the apartheid era. It applied to all black people and all women, including white women. The 2010 charter had no targets for women specifically. The third Mining Charter published in September 2018 includes targets for women - as a proportion of overall HDSA representation - in respect of ownership, employment equity and procurement.



Question 4

ARE THE TARGETS IN MINING CHARTER III DIFFERENT FROM THOSE IN THE 2010 CHARTER (AGAINST WHICH THIS RESEARCH WAS MEASURED)?



The 2018 Mining Charter introduced a range of new targets for most pillars of the charter, some new, some advances on those of the 2010 charter. These can be found on pages 40-47 of the charter.



Question 5

WHY IS THERE A DISCREPANCY BETWEEN THE PERCENTAGE OWNERSHIP AS MEASURED AGAINST THE CHARTER SCORECARD, AND THE PERCENTAGE EQUITY HELD BY BEE PARTNERS ON THE JSE?



The JSE calculation does not take account of the continuing consequences of previous transactions, as the charter does in most respects.



Question 6

HOW ARE BEE STAKES FUNDED? HAVE FUNDING STRUCTURES CHANGED IN THE LAST DECADE?



The majority of black empowerment stakes have been acquired using structured finance deals owing to the lack of capital on the part of historically-disadvantaged investors. Structured finance is the use of different forms of debt, equity and derivative instruments to tailor make funding to suit both the empowerment partner and parent company's needs. It was, and still is, the case that these investors need the assistance of vendors and third-party funders.

Insufficient 'black capital' resulting in up to 100% borrowing by HDSAs in some cases still caused some transactions to fail due to high levels of gearing and declines in share prices after the 2008 international financial crisis. Furthermore, the complexity of innovative funding structures increased the risk of noncompliance with the tax and company legislation. Up till now, funding of empowerment deals through banks remain expensive as banks still perceive BEE transactions as highly risky, hence higher interest charges on loans given to BEE investors.



Question 7

WHAT ABOUT REGULATORY CERTAINTY? HOW MANY MORE ITERATIONS OF THE MINING CHARTER ARE WE LIKELY TO SEE?



While the gazetting of Mining Charter III has brought about a relative degree of regulatory certainty, it is highly possible that this version will be amended in the future. Where this applies to pillars where progress is still required, that is acceptable. However, where ownership is concerned, the industry remains concerned that the continuing consequences of previous transactions are not recognised in respect of renewals and changes of ownership. The Minerals Council has challenged this aspect of the charter in court. Also included in that litigation is a request that certain procurement targets be assessed against what is realistically feasible.



Question 8

HAS THE UNCERTAINTY OVER THE TRANSFORMATION AND TRANSFORMATION TARGETS IMPACTED INVESTOR SENTIMENT IN ANYWAY?



With regard to the 'continuing consequences' issue, the new Charter imposes new financial burden on many mining companies that have already brokered black economic empowerment deals in good faith, but, more importantly, it has the potential to significantly curtail investment and deal flow in the sector because of the added cost to renew empowerment structures that have already delivered value.



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