

Mining Charter III approved

By [Allan Reid](#)

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On 19 September 2018, cabinet approved the long-delayed Mining Charter III and also approved the withdrawal of the Mineral and Petroleum Resources Development Amendment Bill which has been subject to the legislative process since 2013.



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The draft mining charter was published for public comment on 15 June 2018. The period within which to submit comments was extended due to the highly controversial nature of certain of the provisions of the draft charter.

Although the mining industry will need to wait until the final charter is gazetted to fully understand the amendments made to the draft charter and how they will be impacted, it would appear from commentary made by Minister Mantashe and that the ministry has ameliorated various of the provisions following the receipt of comments from the industry. The fact that there will, at last, be certainty in regard to this highly critical policy document is to be welcomed.

Of considerable importance is the fact that it appears that the trickle dividend of a minimum of 1% of EBITDA to community and employee shareholders has been scrapped. Although black ownership requirements have remained at 30%, mining right holders who secured mining rights prior to the new charter being gazette will not have to immediately comply with the new ownership percentages, but would have to do so when they apply for a renewal of these rights.

This may however heavily impact mining companies whose rights are due to be renewed within the near future. Applicants with pending mining right applications will also be afforded a transition period within which to achieve 30% black ownership.



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The percentage shareholding to be allocated to communities and employees is not clear at this stage. However, it would appear that mining companies can elect to offset 5% of the community interest by investing in community development instead. How this community investment will interact with a mining right holder's obligations under its Social and Labour Plan remains to be seen.

The idea of a free carried interest has been heavily criticised as being anti-investment and will make the funding of new mining projects so much more difficult. It is hoped that this controversial provision will be conceded in the final charter.

The additional tax raised in the draft charter for Human Resource Development of 5% of the "leviable amount" payable under the Skills Development Act, 1999 has not been clarified as yet. It likewise remains to be seen whether the high targets set in regard to Employment Equity have been ameliorated.

The industry is also holding its breath in regard to revised targets for Inclusive Procurement, Supplier and Enterprise Development as well as the criteria set for Housing and Living Conditions.

Balancing the interests of the various stakeholders was never going to be an easy task for Minister Mantashe and the industry is watching with interest to see how the minister will deal with the "once empowered, always empowered" principle in the revised charter, particularly given his appeal against the High Court judgment of 4 April 2018, which finally recognised this principle.

Further details on the content of Mining Charter III are anticipated to be revealed by President Ramaphosa during his announcement later today on the government's eagerly awaited economic stimulus package.

In the meantime, a mining industry in crisis holds its collective breath.

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