

Mining Charter will create policy certainty and real black empowerment

By [Ndavhe Mareda](#)

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The South African economy's stubborn lack of growth shows that we have still not recovered fully from the 2008 economic crisis. While the World Bank forecasts an average of 4.5% GDP growth for emerging markets, our growth forecasts are a paltry [1.1%](#). There are many reasons for this dismal performance, but most would agree that policy uncertainty in key areas of the economy, especially relating to transformation, is a leading factor.



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In that context, and given mining's role as the foundation of the modern South African economy, it is imperative that the Mining Charter is accepted and implemented as rapidly as possible.

Black ownership

As is widely known, the most contentious issue in the charter proposed by the Department of Mineral Resources (DMR) is the question of black ownership. All parties agree that enabling a substantial black stake in mining is vital; the sticking point is once an empowerment partner exits the deal by selling to a non-empowered party. The DMR unequivocally believes that the requirement of the Act to ensure black ownership is a continuing obligation, while the Minerals Council (formerly the Chamber of Mines) argues that once the empowerment threshold is reached, the obligation does not continue. "Once empowered, always empowered."

As we all know, the courts have decided in favour of the council, but the DMR is taking the case to the Appeal Court. We support the DMR's appeal because without the continuing participation of blacks as owners and managers of mines, and not just workers, we simply lack the social licence to operate. From that lack springs all sorts of challenges for the industry, not the least of which is a permanent state of mistrust between management and workers, perennially dysfunctional labour relations and conflict with local communities.

Finding solutions

Having said that, of course one must recognise that the obligation to ensure continuous black ownership at the 30% level suggested by the charter is a challenge. If nothing else, the continued dilution of shareholder funds will discourage foreign

(and domestic) investors which is imperative, and from a macro-economic perspective must be encouraged and developed.

The charter does, in fact, recognise this dilemma and proposes that BBBEE shares should only be sold to entities or individuals who fall into the same category. They should be supported by financial institutions who recognise the issues and bigger transformation. picture and who must step up to the plate to enable meaningful transformation and empowerment

This provision, in fact, disadvantages the BBBEE stakeholders because it automatically restricts the marketability—and thus the value—of their investment.

If we stand back and look at the big picture, it is only too apparent that in most cases the exiting of black investors from empowerment schemes in mining is typically driven by the realities of the financial disadvantage from which they suffer. For historical reasons, black individuals and entities are likely to be saddled with high levels of debt, which need to be serviced. By contrast, mining is very much a long-term investment, and does not necessarily deliver steady returns in the short and medium term. Black investors are thus very likely to be forced to exit in order to relieve financial pressures, not to realise some unearned golden bonanza as some would seem to think.

Given the importance of maintaining black ownership in order to legitimise the industry, and putting the legalities aside, surely we can come to some practical ways of making it easier for BBBEE investors to retain their investments for the long term, thus maximising the benefits both for them and the mining companies? One obvious avenue would be for institutions like the Industrial Development Corporation and the Development Bank of South Africa to accept share certificates as collateral for short-term loans.

Taking the holistic view

Making black shareholding of mines more secure is necessary, and it can be accomplished without unduly prejudicing all the relevant parties. But it's only the first step. The industry should also give attention to ensuring that blacks participate meaningfully at all levels.

A first step would be to educate BBBEE shareholders about their rights and responsibilities as part owners, and in the practicalities of exercising them.

In line with that thinking, the requirement that 50% (up from 40%) of all management should be black should also be seen as an opportunity to legitimise the industry. Given the current talent pool, this will take time to achieve, of course, but transparent succession planning will pay huge dividends. Share-incentive schemes to ensure managers have skin in the game should also be pursued.

Such an approach would create policy certainty while also protecting the interests of both shareholders and black investors. More important still, it would ensure that black participation in the mining industry is strengthened across the board, with the inevitable benefits that this will provide in terms improved labour and community relations. Meaningful and ongoing black participation is essential to mining's future; we have the framework and we should work within it now.

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