Stakeholders blast Mining Charter as underhanded

By Nicci Botha

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The worst fears of a cross-section of mining industry stakeholders were realised when the minister of mineral resources, Mosebenzi Zwane released the latest iteration of the Mining Charter last week.

Mosebenzi Zwane, minister of mineral resources. *Photo: African Mining Indaba*

What is the real agenda?

The common lament was the lack of consultation with key role players prior to the publication of the document and questions around the real agenda behind the revised charter.

The South African Chamber of Mines has flat out rejected the charter, saying it will seek an interdict to have its implementation suspended, and is considering reinstating its court case against the department of mineral resources (DMR).

“Unlike previous charters, where stakeholders in the sector worked together to produce a stakeholder-agreed charter, the DMR chose from the outset to produce and publish its own draft in April 2016, without engaging the industry in its conception, or even in structures such as the tripartite Mining Industry Growth Development and Employment Task Team (Midgett), the chamber said.

According to the trade union, Uasa, the minister called a Midgett meeting an hour before the charter was released, which it did not attend, as it believed it was a ploy to get stakeholders to rubber stamp the new charter.

Prior to its publication in the *Government Gazette* on 15 June, the Chamber of Mines and its members had not had sight of the actual reviewed Mining Charter since the April draft was published in 2016, it said.

“The lack of meaningful engagement with the industry, and collective engagement with all stakeholders, has been most disappointing,” said Chamber of Mines president, Mxolisi Mgojo.

Investment unfriendly

One of the stated aims of Mining Charter 3 is to provide policy and regulatory certainty to seek investment for the development of the mining industry. “In this, it has failed miserably. Share prices plummeted within the hour of the minister’s briefing, one wonders whether true transformation is possible in an industry where investor confidence is rocked to this extent,” said mining experts from attorneys, Cliffe Dekker Hofmeyr.

“We are deeply concerned about the flawed content of the new Mining Charter, which appears to be very investor unfriendly. Now is not the time to introduce a Mining Charter that is in our opinion the result of a flawed DMR process and that will frighten off current and future investors in one of the most critical sectors in our economy. The last thing South Africa can afford now is to further alienate investors,” said Uasa.

“The instrument for radical economic transformation, could in fact radically curtail mining development in South Africa. With limited consultation with the Chamber of Mines or other industry investors prior to the release of the charter, the interests of key industry stakeholders are clearly not the main driver here,” said Soria Hay, BEE expert and head of corporate finance at Bravura.

Ownership

The revised charter requires mining enterprises to have 30% black ownership, up from 26% from the previous charter.

This in itself is not the end of the world, according to Hay “However, the devil is in the detail, as within this 30%, the new Mining Charter requires 8% to be owned by employees, 8% by mine communities and 14% by black entrepeneurs. Further employment equity level requirements are simply unrealistic, for example there are simply not enough female technical professionals in the country to meet targets of up to 44% of women.”

Hay outlined several glaring issues with the new charter. “The major problem here is that all mines have already implemented BEE deals under the previous legislation, at the required 26%. While an exemption has been created eliminating the specific apportionment requirements if the rights holderis on 30% already, these mining companies will not qualify for this exemption.

“Does this make them non-compliant, and are they now required to completely restructure? It’s certainly not as simple as topping up their BEE within 12 months. And furthermore, it is clear that the ‘Once empowered, always empowered’ approach within this sector is no longer on the table.”

Meanwhile the chamber of mines pointed out that many of its members have achieved ownership empowerment levels of 38% on average (compared to the 26% target set out by the Mining Charter). The value of empowerment transactions since 2000 amounts to over R205bn in 2014 money terms.

Some improvements

However there have been some improvements since the draft was circulated more than a year ago, CDH said.
These include:

- distributions subject to liquidity and solvency requirements;
- the removal of the need for each mining right to be housed in a separate SP vehicle and the requirement to be empowered in each such structure;
- removal of the requirement for a Ministerial Skills Development Fund and a Social Development Fund and replaced with one fund being the Mining Transformation Agency Fund; and
- removing the requirements that trustees of the fund be representative of all stakeholders.

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ABOUT NICCI BOTHA

Nicci Botha has been wordsmithing for more than 20 years, covering just about every subject under the sun and then some. She's strung together words on sustainable development, maritime matters, mining, marketing, medical, lifestyle... and that elixir of life - chocolate. Nicci has worked for local and international media houses including Primedia, Caxton, Lloyd's and Reuters. Her new passion is digital media.

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