

# Press Release

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South African Institute of Race Relations  
*The power of ideas*

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## The draft mining charter goes well beyond the generic BEE codes

The Department of Mineral Resources (DMR) says that the draft mining charter it put forward in April this year is needed to align BEE obligations in mining with the generic codes. However, the draft charter often goes way beyond what the generic codes require, notes the IRR in a new issue of its *@Liberty* policy bulletin published yesterday.

On ownership, for instance, the BEE generic codes would give mining companies credit for partial performance, sanction them comparatively lightly (by reducing their level of BEE contribution by one level) if they fail to reach a 40% minimum score, and take account of indirect black ownership via pension funds and unit trusts.

“Under the draft charter, by contrast,” notes Dr Anthea Jeffery, Head of Policy Research at the IRR, “mining companies will receive no points at all for indirect black ownership, even though many mining shares are owned by local pension funds and unit trusts in which black South Africans hold increasing stakes.

“In addition, the draft charter gives no credit for BEE ownership at any level below 26%. It further threatens companies with a devastating penalty – the cancellation of their mining rights – if they fail to fulfil this target at any point over a period of 30 years or more. No punishment could be more draconian or more damaging to investor confidence.”

The DMR is adamant that 100% on ownership is what it wants (as it made clear at a recent public consultation attended by the IRR). Says the department: “We want 100% compliance all the time on ownership and cannot be satisfied with 90% or 95% of the target. Hence, the draft charter does not include pro rata ownership points, but asks a simple question: ‘Is the holder of a mining right 100% compliant with the 26% ownership target: yes or no?’”

Adds Dr Jeffery: “Mining companies, including the Chinese ones the DMR is presumably intent on wooing, are dismayed at the increased costs the draft charter will impose. They are particularly concerned about the large sums involved in doing additional BEE deals whenever black investors sell out. They are also worried about the loss of majority control that a succession of ownership deals is likely to bring about.

“The DMR has roughly two months to finalise the mining charter, before the sector’s temporary ‘exemption’ from having to comply with the DTI’s revised BEE generic codes ends in October. In that time, it also has to comply with the government’s new ‘socio-economic impact assessment’ (SEIA) system by publishing a comprehensive report on the many negative consequences the draft charter is likely to generate.

“The mining sector remains vital to investment, growth, and jobs in South Africa. If the DMR wants to help the industry recover from its current doldrums, it needs to heed the fundamental concerns expressed by mining companies – not keep brushing them aside.”

Ends

Download *‘Re-imagining the mining industry’* in yesterday’s *@Liberty* by clicking [here](#).