
GOVERNMENT NOTICE

DEPARTMENT OF MINERALS AND ENERGY

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PUBLICATION OF THE CODES OF GOOD PRACTICE FOR THE MINERALS INDUSTRY

The Minister of Minerals and Energy has in terms of section 100(1) (b) of the Mineral and Petroleum Resources Development Act, 2002, (Act 28 of 2002), developed the Codes of Good practice for the minerals industry as set out below.



the dme

Department:
Minerals and Energy
REPUBLIC OF SOUTH AFRICA

CODES OF GOOD PRACTICE FOR THE SOUTH AFRICAN MINERALS INDUSTRY

April 2009

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DEFINITIONS

“Acquisition debt” means the debts of:

- (a) HDSA participants incurred in financing their purchase of their equity instruments in the Measured Entity; and
- (b) juristic persons or trusts found in the chain of ownership between the eventual HDSA Participants and the Measured Entity but excluding debts incurred by the Measured Entity for the same purpose as those in (a);

“Associated Enterprise” means an Entity with which a Seller has concluded a Qualifying Transaction;

“BEE controlled company” means a juristic person, having share holding or similar members interest, in which black participants enjoy a right to Exercisable Voting Rights that is more than 50% of the total such rights measured using the Flow Through Principle;

“BEE owned company” means juristic person, having share holding or similar members interest, that is BEE controlled, in which black participants enjoy a right to Economic interest that is more than 50% of the total such rights measured using the Flow through Principle;

“Beneficiation” The term mineral “beneficiation” entails the transformation of a mineral (or a combination of minerals) to a higher value product, which can either be consumed locally or exported. The term “beneficiation” is used interchangeably with “value-addition” or “downstream beneficiation”. The beneficiation of minerals includes downstream and side-stream linkages

“Black People” includes all African, Coloured or Indian persons who are South African citizens by birth or by descent or who were naturalized prior to the commencement of the interim constitution in 1993. In addition the term also includes black people who became South African citizen after the interim constitution's commencement but who would have been able to be naturalized prior to this, were it not for the Apartheid law which prohibited naturalization of certain persons;

“Consultation” means a joint consensus seeking process

“Economic interest” means a claim against an Entity representing a return on ownership of the Entity similar in nature to a dividend right, measured using the Flow Through and, where applicable, the Modified Through Principles;

“Entity” means a natural or a juristic person conducting a business, trade or profession in the Republic of South Africa;

“Fronting” means any practices or initiatives which are in contravention of or against the spirit of any law, provision, rule, procedure, process, system, policy, practice, directive, order or any other term or condition pertaining to black economic empowerment under the Codes.

“HDSA Controlled Company” means that companies that are owned or controlled by HDSA

“Historically disadvantaged South Africans” means-

- a. Any person, category of persons of community, disadvantaged by unfair discriminations before the constitution took effect;
- b. Any association, a majority of whose members are persons contemplated in paragraph (a);
- c. Any juristic person other than an association, in which persons contemplated in paragraph (a) own and control a majority of the issued capital of members' interest are able to control a majority of members' vote;

“Mandated Investment” means collective investment, through ESOPS and mining dedicated unit trusts. The majority ownership of these would need to be HDSA based. Such empowerment vehicles would allow the HDSA participants to vote collectively ESOPS and mining dedicated unit's trusts.

“Net Value” means the value of the Equity Instruments held by HDSA's determined on the date of measurement less the carrying value of any acquisition debts of the relevant HDSA Participants on the date of measurement expressed as a percentage of the value of the Measured Entity on the date of measurement.

“Ownership” recognises and measures the entitlement of black people to the voting rights and economic interest associated with equity holding.

“Participant” means a natural person holding rights of ownership in a Measured Entity;

“Qualifying Transaction” means a sale of a business, valuable business assets or shares that results in the creation of sustainable business opportunities and transfer of specialised skills or productive capacity for HDSA participants;

“Rights of ownership” is a collective term for the right to Economic Interest and the right to Exercisable Voting Rights;

“Standard valuation method” means a standard valuation method for an asset, an Economic Interest, or any other instrument or right relevant to measurement under this code, undertaken using normal valuation methods that represent standard market practise;

“Voting Rights” means the control of the Enterprise, through the exercise of voting rights at shareholder meeting.

VISION

All the actions and commitments set out below are in the pursuit of a shared vision of a globally competitive and transformed mining industry that draws on the human and financial resources of all South Africa's people and offers real benefits to all South Africans. The goal of the Code of Good Practice is to create an industry that will proudly reflect the promise of a non-racial, non-sexist and prosperous South Africa

PURPOSE OF THE DOCUMENT

The purpose of this document is to set out administrative principles in order to facilitate the effective implementation of the minerals and mining legislation and enhance the implementation of the Broad-Based Socio-Economic Charter applicable to the mining industry and to give effect to section 100 (1) (b) of the Mineral and Petroleum Resources Development Act, 2002 by developing a Code of Good Practise for the minerals industry in the Republic.

1. INTRODUCTION AND SCOPE

On the 1st of May 2004 the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) was proclaimed by the State President to be in operation, as a result the Broad-Based Socio-Economic Charter for the mining industry was also put into operation to promote equitable access to the nation's mineral resources to all people of South Africa in order to substantially and meaningfully expand opportunities for historically disadvantaged South Africans.

The development of the Code of Good Practice (the Code) for the minerals industry in the Republic is a requirement provided for in section 100 (1) (b) of the Mineral and Petroleum Resources Development Act, 2002. The Code does not replace the key legislation and laws relating to the minerals and the petroleum industry but serves as a statement of present policy providing an overview and confirmation of the existing mineral and mining policy that is in place. The applicability and the enforcement of this Code cannot be divorced from the Mining Charter and the key legislation in relation to the measurement of the socio-economic transformation in the mining industry. The Code can be amended by the Minister of Minerals and Energy when there is a change in mining policy and legislation.

This Code refers to a socio-economic strategy, plan, principles, approach or act, which is aimed at transforming the minerals industry so as to provide for the facilitation and benefits from the under-mentioned elements of the Code. The Code is intended for use by labour organisations, non-governmental organisations, financiers, Government departments, individuals, communities, beneficiation industry, minerals and mining industry:

2. ELEMENTS OF THE CODE OF GOOD PRACTICE FOR THE MINERALS INDUSTRY

2.1. Ownership Element of the Code of Good Practice for the Minerals Industry

2.1.1 The General Principles for measuring ownership

(a) Ownership participation by Historically Disadvantaged South Africans (HDSA) in the minerals industry is measured by using ownership scorecard;

(b) Ownership is measured as voting rights, economic interests and Net Value. Net Value will only be applicable after two years from the date of the agreement;

(c) The owner of the voting right must be able to exercise his/her voting right;

(d) Such voting rights exercisable directly in the measured entity are expressed as a percentage of voting rights held by HDSA in relation to all the votes within that measured entity.;

(e) Economic interest in the measured business is expressed as a percentage held by HDSA in relation to all the votes within that measured entity;

(f) The Minister must guard against the dilution of ownership in the hands of HDSA's by exercising the powers vested upon him or her in terms of section 11 of the Mineral and Petroleum Resources Development Act, 2002.

2.1.2 Ownership scorecard

The following table represent the indicators for compliance to ownership under this statement

CATEGORY	MINING CHARTER DESCRIPTION	OWNERSHIP INDICATOR/TARGETS	COMPLIANCE TARGET BY 2014	YES	NO
Ownership and Joint Ventures	Has the Mining Company achieved HDSA participation in terms of ownership for the equity or attributable units in production of 15% in HDSA hands within 5 years and 26% in 10 years	Voting Rights	26%		
		Economic Interest	26%		
		Net Value	26%		

2.1.3. Key Measure principles

Ownership element can be measured by using either the general principles, flow through principles or modified flow-through principles.

2.1.3.1 General principle

- (a) A measured entity receives percentage points for participation by HDSA in its rights of ownership.
- (b) HDSA may hold their right of ownership in the measured entity as direct participants
- (c) Only ownership rights in the hands of HDSA are measured.

2.1.3.2 Flow-through principle

(a) If the rights of ownership of HDSA pass through a juristic person such as a company, close corporations, partnerships or any other form of juristic person recognised under South African law the rights of ownership of HDSA in that juristic person are measured using this principle of measurement.

(b) This principle applies across every tier of ownership in a multi-tiered chain of ownership until that chain ends with a HDSA holding right of ownership.

2.1.3.3 Modified flow-through principle

(a) This principle applies to any HDSA owned or controlled company in the ownership of the measured entity;

(b) In calculating exercisable voting rights and economic interest, the chain of ownership by HDSA having an effective flow-through interest in excess of 50% (fifty percent), then only once in the chain may that effective interest be treated as 100% (one hundred percent) black shareholding.

(c) This principle allows for the participation of non HDSA funders at one tier of ownership. A measured entity can elect to apply the modified flow through principle at any time in a chain of ownership, but limited to one tier only

2.1.3.4 Exclusion of other specified entities in measuring ownership

(a) When determining ownership in a measured entity held directly by organ of State, public entity must be excluded.

(b) Rights of ownership of collective and institutional investment may also be excluded when determining ownership in a measured entity. Mandated investment includes; investments of collective investment schemes, investment of pension funds, investments of medical schemes, investment of long-term insurers and investments of banks

- c) The maximum percentage of ownership in the measured entity that may be excluded is 40%.

2.1.3.5 ESOPS

Collective investment, through ESOPS and mining dedicated units trusts. The majority ownership of these would need to be HDSA based. Such empowerment vehicles would allow the HDSA participants to vote collectively ESOPS and mining dedicated unit's trusts.

Net Value

- (a) Ownership fulfilment occurs:

- (i) On the release of HDSA participants in the measured entity from all third party rights arising from the financing their transaction with the measured entity.
- (ii) If the HDSA participants in the measured entity has never been subjected to any such third party rights.

2.2 Management Control Element of the Code of Good Practice for the Minerals Industry

2.2.1 The General Principles for measuring management control

- (a) Management control by black persons in the minerals industry is measured by using the Mining Charter scorecard on management control;
- (b) A measured entity receives points by meeting the target for participation of black people and black women at the Board and top management level;
- (c) There must be a clear distinction between top management and senior management for the purpose of this statement;

(d) If there is no distinction between top and senior management, management control will be measured using a single indicator;

(e) The common examples of top management are, chief executive officer, chief operating officer, chief financial officer and other people holding similar position, whilst the common examples of senior management are, chief information officer, the head of marketing, head of sales, head of public relations, head of transformation, head of human resource and other people holding similar position;

(f) Measured entity are encouraged to appoint a black person as a Non- Executive Independent Board member who do not serve in that capacity for any other measured entity;

2.2.2 Management control scorecard

The following table represent the indicators for management control under this statement:

CATEGORY	MINING CHARTER DESCRIPTION	OWNERSHIP INDICATOR/TARGETS	COMPLIANCE TARGET	YES	NO
Management Control	Has the Mining Company achieved HDSA active involvement in terms of management control and joint ventures?	Board Participation	Demonstrable HDSA fiduciary participation		
		Executive Committee	40%		

2.3 Employment Equity Element of the Code of Good Practice for the Minerals Industry

2.3.1 The General Principles for measuring employment equity element

- (a) The Employment Equity element of black persons in the minerals industry is measured by using employment equity scorecard;
- (b) The Employment Equity element is premised upon but not limited to the provisions of the Employment Equity Act, No 55 of 1998;
- (c) A measured entity receives points by meeting the target for participation of black people and black women in various occupational level listed in the scorecard;
- (d) A measured entity must develop a strategy whereby race, gender, and disability is specifically targeted as part of its recruitment strategy;
- (e) A measured entity must put measures in place or participate in collective measures to encourage and attract appropriate local skills to take up employment in the minerals industry;
- (f) Employment equity strategy for a measured entity must be established for a period of five years and revised on a quarterly base;

2.3.2 Employment Equity scorecard

The following table represent the indicators and method for calculating a score for employment equity under this statement:

CATEGORY	MINING CHARTER DESCRIPTION	EMPLOYMENT EQUITY INDICATOR/TARGETS	COMPLIANCE TARGET BY 2009	YES	NO
Employment Equity	Has the Mining Company published its employment equity plan and reported on its annual progress in meeting that plan?	Top Management	40%		
		Senior Management	40%		
		Middle Management	40%		
		Junior Management	40%		
		Women in Mining	10%		

2.4 Human Resource Development Element of the Code of Good Practice for the Minerals Industry

2.4.1 The General Principles for measuring human resource development element

(a) The skills development element in the minerals industry is measured by using skills development scorecard;

(b) Skills development element is premised upon the Skills Development Act of 1998, Skills Development Levies Act of 1999 and the National Skills Development Strategy as contemplated in section 5 (1) (a) (ii) of the Skills Development Act;

(c) A measured entity must comply with the Skills Development Act and Skills Development Levies Act and be registered with SARS and linked with SETA;

(d) A measured entity must also put measures in place to develop programmes and implement such programmes to target the development of priority skills in general specifically for blacks;

(e) Priority skills are those skills identified as being critical and scarce by any SETA that is value adding to the activities of the measured entity core business and specifically identified by the Sector Skills Plan and Joint Initiative for Priority Skills Acquisition (JIPSA);

(f) Only learning programmes listed on the learning programme matrix of the MQA is recognisable as skills development;

(g) Any legitimate expenses incurred for any learning programme listed in the learning programme matrix evidenced by an invoice or appropriate internal accounting record represents skills development spend;

(h) The commitment of the mining companies is to have offered each employee the opportunity to become functionally literate and numerate. The critical test is if a human resource development system has been established and resourced so that people are being trained;

(i) The mentoring of empowerment groups refers to that mining company's HDSA employees and HDSA linked partners at the levels of ownership and procurement. It does not preclude mining companies being involved in mentoring programmes outside of its own operations.

2.4.2 Human Resources Development scorecard

The following table represent the indicators for skills development under this statement:

CATEGORY	MINING CHARTER DESCRIPTION	HUMAN RESOURCE DEVELOPMENT INDICATOR/TARGETS	COMPLIANCE TARGET BY 2005	YES	NO
Human Resource Development	Has the Mining Company offered every employee the opportunity to be functionally literate and numerate by the year 2005 and are employees being trained	Skills Development Expenditure	100%		
		Learning programmes	100%		
		Functionally literate and numerate	100%		

2.5 Preferential Procurement Element of the Code of Good Practice for the Minerals Industry

2.5.1 The General Principles for measuring preferential procurement element

- (a) The preferential procurement element in the minerals industry is measured by using preferential procurement scorecard;
- (b) This element measures the extent that the measured entities buy goods and service from the BEE compliant supplier;
- (c) This element promotes BEE compliance by all entities as a result transformation is ensured through the entire economy;

(d) Measured entities are encouraged to procure locally produced goods, services and consumables;

(e) This element creates a sustainable black women owned, black owned and controlled enterprise;

(f) Specific targets/ incentives of procuring from small micro business create new and sustainable entities.

2.5.2 Preferential procurement scorecard

The following table represent the indicators for preferential procurement under this statement:

CATEGORY	MINING CHARTER DESCRIPTION	PREFERENTIAL PROCURMENT INDICATOR/TARGETS	COMPLIANCE TARGET YEARS 0-5	COMPLIANCE TARGET YEARS 6-10
Preferential Procurement	Has the Mining companies given HDSA's preferred supplier status?	BEE procurement spend from local suppliers based on capital goods	20%	30%
		BEE procurement spend from local suppliers based on services	50%	70%
		BEE procurement spend from local suppliers based on consumables	15%	30%
		BEE procurement spend from local SMME's	10%	20%
		BEE procurement spend from any of the following suppliers as a percentage of	15%	20%

		Total measured Procurement spent: (a) suppliers that are more than 50% black owned, (b) suppliers that are more than 30% black woman owned		
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2.6 Mine Community and Rural Development of the Code of Good Practice for the Minerals Industry

2.6.1 The General Principles for measuring mine community and rural development element

(a) The socio-economic development element in the minerals industry is measured by using mine community and rural development scorecard;

(b) This element measures the extent to which the enterprises carry out initiatives contributing to mine community and rural development and promotion of homeownership.

(c) This element encourages entities to implement/support initiatives in public programmes meant to facilitate further mine community and rural development;

(d) This element adheres to the principle that mine community and rural development initiative should strive to facilitate access to the mainstream economy for black people and discourage perpetual dependency on hand-outs;

(e) The objective of this element is to create beneficiaries having sustainable access to economy and be developed in terms of Social and Labour Plans

2.6.2 Mine Community and Rural Development scorecard

The following table represent the indicators for mine community and rural development under this statement:

CATEGORY	MINING CHARTER DESCRIPTION	MINE COMMUNITY AND RURAL DEVELOPMENT INDICATOR/TARGETS	COMPLIANCE TARGET	YES	NO
Mine Community and Rural Development	Has the Mining companies co-operated in the formulation of integrated development plans and is the company co-operating with government in the implementation of these plans for the communities where mining takes place and for major labour sending areas? Has there been effort on the side of the company to engage the local mine community and major labour sending area communities? (Companies will be required to cite a pattern of consultation, indicate money expenditure and show a plan)	Annual value of all qualifying contributions made by the measured entity from the commencement of this statement	1% of net profit after tax		

2.7 Beneficiation Element of the Code of Good Practice for the Minerals Industry

2.7.1 The General Principles for measuring beneficiation element

- (a) The beneficiation element in the minerals industry is measured by using beneficiation scorecard;
- (b) This element measures the extent to which the measured entities carry out initiatives contributing to beneficiation;
- (c) This element also encourages entities to implement/support initiatives in access to finance and non financial assistance;
- (d) This element can only be offset against ownership

2.7.2 Beneficiation scorecard

The following table represent the indicators for beneficiation under this statement:

CATEGORY	MINING CHARTER DESCRIPTION	BENEFICIATION INDICATOR/TARGETS	COMPLIANCE TARGET	YES	NO
Beneficiation Need to address when assets are sold	Has the Mining companies identified its current level of beneficiation	Annual production volume of the entity in percentage measured from the refine stage	42%		
	Has the Mining company established its base line level of beneficiation and indicate the extent that this will have to grown in order to qualify for an offset?				

3. APPLICATION OF THE CODE OF GOOD PRACTICE FOR PERMITS/ LICENCES GRANTED UNDER THE PRECIOUS METALS ACT, 2005, AND THE DIAMONDS ACT, 1986, AS AMENDED

3.1 Proposed framework for applying the Code of Good Practice permits/ licences granted under the Precious Metals Act, 2005, and the Diamonds Act, 1986, as amended

EXEMPT FROM THE FOLLOWING	CATEGORY	METAL USAGE IN KG/ANNUM	% OF TOTAL INDUSTRY TURNOVER REPRESENTED	BEE OWNERSHIP	REQUIRED TO ADHERE TO THE FOLLOWING
Procurement	Students & Micro Businesses	-1.5 kg / annum Estimated max turnover Less than R1 million	Combined with small businesses = between 1 and 16%	Estimated 27% of permits based on industry feedback and MQA skills analyses: reference Kaiser Associates	
Human Resource Development					
Employment Equity					
Ownership & joint venture					
Employment Equity	Small Businesses	Between 1.5 kg and 5 kg / annum Estimated max turnover R1 million to 3.8 million	Combined with Students and Micro Enterprises = between 1 and 16%	Estimated between 26 and 30% of permits based on industry feedback, MQA skills analyses reference: Kaiser Associates	Procurement
Ownership & joint venture					Human Resource Development
	Medium and Large Businesses	Between 5 kg and up annum Estimated max turnover Greater than R3.8 million	19-24%- 65% reference Gold In South Africa	Estimated 0% of permits based on industry feedback, MQA skills analyses: reference Kaiser Associates	Human resource development
					Employment Equity
					Procurement
					Ownership & Joint Venture

NB: The turnovers are estimated and subject to the change in metal price as well as changes in the Rand Dollar exchange rates. It is for that reason that we define the industry in terms of metal usage rather than turnover. The turnover here is provided as illustration values.

2.8 Housing and Living Conditions Standard Element of the Code of Good Practice for the Minerals Industry

2.8.1 The General Principles for measuring housing and living conditions standard element

- (a) The housing and living conditions standard element in the minerals industry is measured by using housing and living conditions standard scorecard;
- (b) A measured entity will establish measures to for upgrading of hostels and conversion of hostels into single accommodation apartments and family units;
- (c) A measured entity must ensure affordable, equitable and sustainable proper nutrition, sufficient food and water for its employees.
- (d) A measured entity is encouraged to base its housing development on the integrated development plans within its area of jurisdiction;
- (e) A measured entity must ensure that the housing or hostel system of mine workers is administered on non-racial and non-ethnic lines.

2.8.2 Housing and living conditions standard scorecard

The following table represent the indicators for housing and living conditions standard under this statement:

CATEGORY	MINING CHARTER DESCRIPTION	HOUSING AND LIVING CONDITIONS STANDARD INDICATOR/TARGETS	COMPLIANCE TARGET Y 2014	YES	NO
Housing and Living Conditions Standard	For Mining companies provided housing has the mine, in consultation with stakeholders established measures for improving the standard of housing, including the upgrading of the hostels, conversions of hostels to family units and promoted home ownership options for mine employees? Companies will be required to indicate what they have done to improve housing and show a plan to progress the issue over time and is implementing the plan?	Total number of the hostels in a measured entity must have been upgraded into single accommodation apartments and/or converted into housing units	100%		

3. IMPLEMENTATION PLAN

The Department of Minerals and Energy shall ensure that transformation within the minerals industry does take place as per the implementation of this Code.

Refining license, beneficiation licence and jewellery permits or any other mineral processing authorisation issued by the Department of Minerals and Energy and the South African Diamonds and Precious Metals Regulator shall be granted or refused based on the principles of this code of good practise.

4. ETHICS OF CONDUCT

4.1 FRONTING PRACTICES

Fronting practices include, but are not limited to:

4.1.1 Window-dressing

This includes cases in which black people are appointed or introduced to an Enterprise on the basis of tokenism and may be:

(a) Discouraged or inhibited from substantially participating in the core activities of an Enterprise; and

(b) Discouraged or inhibited from substantially participating in the stated areas and/or levels of their participation;

4.1.2 Benefit Diversion:

This includes initiatives implemented where the economic benefits received as a result of the BEE Status of an Enterprise do not flow to black people in the ratio as specified in the relevant legal documentation.

4.1.3 Opportunistic Intermediaries:

This includes Enterprises which have concluded agreement with other Enterprises with a view to leveraging the Opportunistic Intermediary's favorable BEE Status in circumstances where the agreement involves:

- (a) Significant limitations or restrictions upon the identity of the Opportunistic Intermediary's suppliers, service providers, clients or customers;
- (b) The maintenance of their business operations in a context reasonably considered improbable having regard to resources; and
- (c) Terms and conditions which are not negotiated at arms-length on a fair and reasonable basis.

4.1.4 Indicators of Fronting

The fronting indicators include, but are not limited to:

5.1.4.1 The black people which an Enterprise claims are its shareholders, executives or Management are unaware or uncertain of their role or participation within an Enterprise

5.1.4.2 The black people who serve in executive or management positions in an Enterprise is paid significantly lower than the market norm, unless all executives or management of an Enterprise are paid at a similar level

5.1.4.3 The black people identified by an Enterprise as its shareholders, executives or management have limited knowledge of an Enterprise;

5.1.4.4 There is no significant indication of active participation by black people identified as top management at strategic decision making level

4.1.5 Non Compliance

Non-compliance with the Codes of Good Practice will render the entity to be in breach with the MPRDA and subjected to section 47 of the Act.

5. AMENDMENTS

The Code may be amended by the Minister of Minerals and Energy from time to time.