



The Chamber of Mines of Namibia

**CHARTER FOR SUSTAINABLE AND BROAD-BASED ECONOMIC AND
SOCIAL TRANSFORMATION IN THE NAMIBIAN MINING SECTOR
2014-2020
("THE NAMIBIAN MINING CHARTER")
19 September 2014**

Introduction and Context

With the adoption of the Constitution of the Republic of Namibia, an understanding was reached to redress the structural inequalities brought about by colonialism and apartheid. Article 23 of the Constitution provides the legal framework for the enactment of legislation and the implementation of policies and programmes to redress the socio-economic imbalances that were created by the racially motivated socio-political and socio-economic policies of the past that limited the creation of wealth to a minority of the Namibian society.

The objective of this Mining Charter is to facilitate meaningful participation of Historically Deprived Namibians (HDNs) in the mining industry. The Mining Charter has been developed as an instrument to effect transformation and sets specific targets for mineral licence holders active in Namibia.

This tool has been developed to create a common understanding for participants in the mining industry and the Ministry of Mines and Energy of what is meant by empowerment and how it is to be sustainably implemented in the years to come.

The Government views broad-based economic and social transformation as a conscious business decision for the future. The Government firmly believes that this intervention is a key moral and economic imperative which will contribute towards maintaining economic and political stability in Namibia.

Preamble

The mining industry is determined to **positively and proactively** participate in the economic and social transformation of the Namibian economy.

Industry participants include mining companies, development companies, and exploration companies. Government recognises that not all of these companies, especially development and exploration companies, make profits on a consistent annual basis.

Mining is a long-term undertaking involving large amounts of capital and high levels of risk. Both Government and industry are acutely aware of the risks of investing in mining companies and want to avoid placing unsustainable burdens of debt on individuals or groups unable to make the financial commitments and bear the financial risks involved.

Mining companies differ markedly in many respects: in the quality of their resources, their costs of production, their profitability, their location, their size, and composition of their workforces to name but a few. Any policy of transformation must be flexible enough to take account of these differences rather than adopt a strict “one size fits all” approach.

This Mining Charter is designed to address the issue of sustainable and broad-based economic and social transformation. It rests on the assumption that mining companies already comply with the laws and regulations of the Republic of Namibia in all areas including prospecting and mining law, company law, tax law, labour law, Affirmative Action law and environmental law. Both industry and Government accept that companies which are members of the Chamber of Mines of Namibia already adhere to the **Chamber of Mines’ Constitution**, the **Chamber of Mines’ Code of Conduct and Ethics for Members** and the **Chamber of Mines’ Mine Closure Framework**.

This Mining Charter is based on the following five transformation pillars:

1. Pillar 1: Ownership
2. Pillar 2: Education and Skills
3. Pillar 3: Affirmative Action
4. Pillar 4: Procurement and Enterprise Development
5. Pillar 5: Communities and Infrastructure

The following administrative issues are also covered:

6. Reporting, Scoring and Offset
7. Charter Trial Period and Review
8. Definitions

Applicability

The Chamber of Mines of Namibia, in consultation with the Government of the Republic of Namibia, has decided to take the initiative and adopt a Mining Charter to drive Sustainable Broad-Based Transformation among participants in Namibia's mining industry. All mining and exploration licence holders and their relevant group companies ("mining companies") are encouraged to comply with this Mining Charter.

Pillar 1: Ownership

The objective of this pillar is to ensure that HDNs participate in the country's mining sector as owners and co-decision-makers.

All mining, development and exploration companies shall make a **MINIMUM OF FIVE PERCENT EQUITY** available for sale exclusively to HDNs within two years of this Charter being adopted. This is only a minimum requirement and companies are encouraged to make more equity available to HDNs.

This equity requirement applies to the Namibian operations of companies operating in Namibia and not to the international parent companies of companies operating in Namibia.

Companies may offer and HDNs may accept to own equity in larger more diversified parent companies but the equity requirement must then reflect the importance of the Namibian operation to the wider company.

HDNs can include HDN individuals, groups of HDN individuals, HDN-influenced, HDN-empowered and HDN-owned companies, HDN employees, or HDN community groups or any combination thereof. In the case of HDN-influenced, HDN-empowered or HDN-owned companies, the amount of equity that will count as HDN-owned equity will be in proportion to the amount of equity held by HDNs within those companies.

The Government of Namibia and other Government owned entities or state-owned enterprises or organisations, including state owned mining companies, are classified as HDN. Such entities will be classified as either HDN-influenced, HDN-empowered or HDN-owned in the manner above according to the proportion of such entities owned by government.

Equity stakes will be made available to HDNs at fair market values but the exact nature of each share transfer will be negotiated on a deal-by-deal basis by the HDNs and the mining companies involved.

The equity bought by HDNs must carry the same rights as shares of other ordinary shareholders, including board representation if the shareholding is large enough, and HDNs must be able to sell this equity in the same way as other ordinary shareholders. However, if HDN equity has been sold to a non-HDN shareholder, in order to count towards HDN equity for the purposes of this ownership pillar, the equity must have been held by HDNs for a **CONTINUOUS PERIOD OF FIVE YEARS**. Accordingly, mining companies are advised to include in the terms of subscription or shareholder agreements terms that oblige HDN shareholders to hold the shares for that minimum period or otherwise to trade that equity with other HDNs.

Arrangements that involve premeditated buy-backs by vendor companies after five years are prohibited.

Companies that fail to attract HDN shareholders will be deemed to have met the minimum requirement provided they can demonstrate they have made a minimum of five percent equity available at fair market value. In such cases, companies are encouraged to provide convincing explanations why they cannot attract suitable HDN shareholders.

Companies that sell equity to HDNs will be deemed to still meet the ownership requirement even if these HDNs subsequently sell their equity to third parties, be they HDN or non-HDN, after their five year commitment has lapsed.

Both industry and Government support employee ownership of mining companies and recognises that employee equity plans take a variety of forms with sophisticated terms and conditions. Further, typically such plans will have a shorter minimum holding period than the five year period referred to above. Accordingly, provided that employee equity plans offer employees a genuine opportunity to participate in ownership of the company and that performance hurdles are reasonably achievable, HDN employee share ownership will be counted in the same way as HDN equity ownership described above.

Government recognises that a special circumstance exists where an existing company or project is owned approximately 50% or above by one party and to introduce a new HDN shareholder could have the effect of the investor losing economic control over that company or project. In this instance the new shareholder would have a swinging vote, and this disruption of finely tuned commercial agreements is not intended by this empowerment pillar. Such cases should be considered on their merits, such as to ensure that economic control is not lost by the investor.

| Description | % Measure | Score |
|---|---|-------|
| HDN equity holding in Namibian licence holder | Minimum requirement 5% | 12 |
| | Additional 2 points for every 11.25% above 5% | 8 max |
| | Maximum total number of points | 20 |

Pillar 2: Education and Skills

Developing the nation’s skills base is one of the greatest contributions the mining industry can make to the process of transformation. Mining companies already play a critical role in developing the Namibian nation’s stock of human capital. The objective of this pillar is to ensure that the mining industry contributes to accelerating transformation by providing opportunities to individual HDNs to improve their levels of education and skills.

Mining companies must invest at least **TWO PERCENT** of their annual gross payrolls every year in developing the skills of HDN employees and other HDNs.

Payments under the Vocational Education and Training levy and any additional training levies imposed by Government should be included when calculating expenditure under this pillar.

Mining companies must use a portion of these training funds to fast-track HDN management talent within their workforces so that they meet their Affirmative Action targets below.

Mining companies must demonstrate that by the end of 2015 all their permanent employees are fully literate and numerate. In cases where this has not been achieved, companies must provide evidence that employees have been offered suitable opportunities to become literate and numerate.

| Description | % Measure | Score |
|---|---|-------|
| Training costs as a percentage of the total payroll expense | Minimum requirement 2% | 12 |
| | Additional 2 points for every additional 1% spent on training | 8 max |
| | Maximum total number of points | 20 |

Pillar 3: Affirmative Action

The objective of this pillar is to ensure that HDNs are properly represented at all levels of management so that they acquire the skills and experience needed to successfully help run the country’s mining industry.

The mining industry already strives to fully comply with national Affirmative Action legislation. The key to success is to ensure a sufficient supply of well-trained, experienced and motivated HDN management potential. Government recognises that the process of building international management talent requires time and that critical skills and experience are required at crucial points in the development of a new mine.

Operating companies existing at the date of this Charter will ensure HDNs are properly represented at management level over the coming years by achieving the following targets for HDN representation at all management levels combined:

- End 2014 – **30%**
- End 2016 – **40%**
- End 2018 – **50%**
- End 2020 – **60%**

Government recognises that developing leadership and managerial talent is an ongoing process which is more challenging during a development and construction phase where workforces increase rapidly and management is generally hired rather than developed and promoted. Furthermore, companies undergoing development and construction require far more internationally sourced specialists than a steady-state operating mine. Accordingly, exploration companies and development companies must achieve a minimum of 20% HDN representation. However as these companies become operating companies, the increased HDN representation will be measured from the date of the first sale of their product.

New operating companies commencing operations after the date of this Charter will ensure HDNs are properly represented at management level by achieving the following targets for HDN representation at all management levels combined:

- During development phase – 20%
- Within 2 years of the date of first sale of product – 30%

Within 4 years of the date of first sale of product – 40%
 Within 6 years of the date of first sale of product – 50%
 Within 8 years of the date of first sale of product – 60%

Government recognises that small mining or exploration companies may have such a limited management structure that it is very difficult or impossible to achieve the targets. Such companies will need to demonstrate that their management structure does not enable compliance with this requirement.

| Description | % Measure | Score |
|---|--|-------|
| HDNs as percentage of aggregate management (including the Board of Directors) | 2014-2020 – minimum requirements specified above for: - Existing operating companies - New operating companies 2014-2020 – exploration companies that do not develop a mine – 20% minimum requirement | 12 |
| | 1 additional point for each 5% achieved | 8 max |
| | Maximum total number of points | 20 |

Pillar 4: Procurement and Enterprise Development

The objective of this pillar is to ensure that the mining industry’s procurement programme is used to promote new and Namibian-owned businesses.

The greatest contribution the mining industry can make to the creation of employment is to continue to explore, develop and open new mines. With Government support, the mining industry is confident it can generate thousands of jobs, both directly and indirectly, provided market conditions remain favourable.

The mining industry has a significant procurement programme which has the potential to boost local production, employment and enterprise development. However, Government accepts that mining is an internationally competitive industry and that many inputs will not or cannot be produced in Namibia. In addition, the requirements of each mine are different.

Furthermore, Government also recognises the dangers of encouraging token “mailbox companies”, which only add to costs, or creating unsustainable businesses reliant exclusively on a single or limited customer base.

Mining companies must make information about their procurement requirements easily accessible and ensure their procurement policies do not place unnecessary obstacles in the way of Namibian and HDN suppliers. This will be completed by the end of 2014 and updated annually until 2020.

Mining companies must ensure they direct the following proportions of discretionary expenditure (defined below) to Namibian-owned businesses provided they are internationally cost and quality-competitive:

In the period to end 2015 – **25%** of discretionary expenditure

From 2016 to end 2020 – **40%** of discretionary expenditure

During periods of mine construction or significant expansion, this spending requirement shall be reduced by 50%.

State-Owned Enterprise suppliers that are monopolies shall not be classified as Namibian suppliers, and neither shall their supplies be included in discretionary expenditure. Those State-Owned Enterprises that are **not** monopolies, including Air Namibia, Telecom Namibia, TransNamib and the Roads Contractor Company, and over which, therefore, companies can apply some discretion, shall be classified as Namibian suppliers.

To qualify as expenditure on Namibian-owned businesses, a mining company must keep procurement records which conform with guidelines which will be published by the Chamber of Mines from time to time. The relevant Namibian-owned business must be able to show that it participates in some form of value-add in Namibia, rather than simply being a “mailbox company”. The Chamber of Mines guidelines will also advise mining companies of what is acceptable value-adding.

The mining industry believes that certain opportunities for economically sustainable beneficiation exist. The mining industry will support initiatives by mining and non-mining investors to promote both upstream (input) and downstream (output) beneficiation where it is price competitive, makes commercial sense and is therefore sustainable.

| Description | % Measure | Score |
|--|--|-------|
| Spend on Namibian suppliers as a percentage of total discretionary spend | 2014 – 2015 25% | 12 |
| | 2016 – 2020 40% | |
| | Further points in proportion to further spending on Namibian-owned business suppliers, to a maximum of 60% | 8 max |
| | Maximum total number of points | 20 |

Pillar 5: Communities and Infrastructure

The objective of this pillar is to ensure that mining companies contribute towards the transformation and upliftment of the communities in which they operate as well as the country as a whole. Namibia’s mineral resources belong to all the people of Namibia through the Namibian State. Mining companies pay taxes and royalties to the Namibian Fiscus for the rights to exploit these national resources. As well as paying taxes and royalties to the Fiscus, which go to benefit the entire Namibian population, mining companies have a special responsibility towards the communities in which they operate. Mining companies also contribute to economic and social infrastructure over and above levels required for their own operations.

Mining companies commit to spending **0.5 PERCENT** of their turnover in respect of their Namibian operations (in the case of an operating company) or **0.5 PERCENT** of their exploration costs (in the case of an exploration company) or **0.5 PERCENT** of their reduced development costs (in the case of a development company) on assisting Namibian communities or contributing towards infrastructure in excess of what is required for their own operations.

It is important that this pillar does not become a disincentive for development companies to invest in capital, nor should this pillar make funding the development of projects substantially more difficult. Therefore, for the purposes of this pillar, spending on communities and infrastructure by development companies will be calculated on their “reduced development costs” (see the definition section below).

| Description | % Measure | Score |
|--|--|-------|
| Corporate Social Responsibility Spend as a percentage of turnover or costs | 0.5% | 12 |
| | additional points in proportion to additional spending up to a total of 1% | 8 max |
| | Maximum total number of points | 20 |

Reporting, Scoring and Offset

The Chamber of Mines will co-ordinate the reporting of its members and thereby compile and publish a meaningful representation of the mining industry’s performance as a whole. It will make this Mining Charter available on its website to enable mining companies that are not Chamber of Mines members to also understand and meet the Charter requirements.

Mining companies will submit to the Chamber an annual report showing how they have met Charter targets and providing explanations where these targets have not been met. These reports will be submitted to the Chamber within six months of the end of their financial year. These reports will form the basis for part of the regular year-end briefing to the Ministry of Mines and Energy by members of the Chamber of Mines. Furthermore, the Chamber will make the collective outcome of the reports available to the Ministry of Mines and Energy and other industry stakeholders. Individual company reports will be available to the Ministry of Mines and Energy on request, but will not be released to the public without the relevant mining company’s consent.

Companies can score up to 20 points on each of the five empowerment pillars giving a total of 100 points. Companies will receive 12 points on each pillar for complying with the minimum requirement and up to 8 additional points for going beyond the minimum requirement. Companies will be expected to achieve a minimum of 60 out of 100 points overall.

If a company is not able to comply with the minimum requirement on a specific pillar, an additional 8 points can be achieved by going beyond the minimum requirement on other pillars so that the company can still achieve the prerequisite 60 points.

Submission of annual reports by Chamber members is encouraged but not mandatory during the trial period. All Chamber members are encouraged to report during 2014, meaning that members with a financial year end after July 2014 should report based on their half year results if they are unable to submit an annual report based on full year results by 31 December 2014. Although Chamber members should commence implementing this Mining Charter on 1 January 2014, members are only expected to have achieved compliance with this Charter by 31 December 2014.

Charter Trial Period and Review

This Mining Charter will be implemented during a trial period lasting from 2014 to the end of 2016. It will be reviewed in full in 2016 by the Chamber of Mines in consultation with Government.

Definitions

Annual gross payroll – all payroll costs excluding bonuses and other variable or discretionary components

Development Company – a company that holds an exploration or mining licence that is in the process of actively building a mine (including any group companies that are involved in the mining industry)

Discretionary expenditure – expenditure which meets the following requirements:

- (a) the expenditure is on supplies which are available in Namibia from Namibian-owned companies. In this context, “available” means that the supplier can supply the items on reasonable terms and timeframes in sufficient quantities;
- (b) the mining company has a degree of choice regarding who to buy the relevant supplies from (which excludes monopoly SOEs).

Exploration Company – a company that holds an exploration licence (including any group companies that are involved in the mining industry)

Fair market value – a value based on transparent market prices and valuations

HDN – Historically Deprived Namibian as defined in the Affirmative Action (Employment) Act (Act No. 29 of 1998), refers to Namibian citizens, category of persons or community, disadvantaged by unfair discrimination before the Constitution of the Republic of Namibia, 1990, came into operation which should be representative of the demographics of the country

HDN-empowered company – a company that is 25.1% owned by HDNs

HDN-influenced company – a company that has some HDN shareholding

HDN-owned company – a company that is majority-owned by HDNs

Namibian-owned business – a business that is majority owned by Namibians. Once the New Equitable Economic Empowerment Framework becomes law, this term shall be defined as a company which is NEEEF compliant

Operating company – a company that holds a mining licence and is operating a mine (including any group companies that are involved in the mining industry)

Reduced development costs shall be calculated as follows:

$$A = B/C$$

where: A equals the reduced development costs for a project for each month of the development phase;

B equals the projected turnover for the first 12 months of production for the project, from the start of ramp up; and

C equals the total number of months of the projected development phase (use 12 if the development phase lasts less than a year).

State-Owned Enterprise – a company that is 100% owned by the Government of Namibia and defined as an SOE by the SOE Governance Act (Act No. 2 of 2006)

Guidelines

The Chamber will from time to time publish Guidelines to clarify the meaning of certain words and phrases, or the applications of certain rules or processes, used in this document. These Guidelines are designed to assist government, industry and their stakeholders in understanding the application of this Charter and to ensure consistency across the industry.