Mining Charter needs to start afresh – says expert

As controversy and delays around the Third Mining Charter continue to deter investment – it's time to start afresh, says Soria Hay, BEE expert and Head of Corporate Finance at Bravura, an independent investment banking firm specialising in corporate finance and structured solutions. "A one-month extension for token consultation is not going to help. Going back to the drawing board and starting afresh on the problematic issues may take longer, but a bad outcome is worse than a longer waiting period."

Hay says that mining, a labour-intensive industry which contributed 14% to GDP in 1994, is now only at 7% of GDP. Therefore, the Third Mining Charter which is in draft format requires intensive mediation amongst the different stakeholders and proper alignment with the B-BEE codes to ensure that South African mining prospects are feasible and attractive to investors. "We are in a booming commodity cycle globally, but South Africa is missing out because we don't get our ducks in a row."

According to Hay, the requirement that existing mining permit holders will have to raise black ownership levels from 26% to 30% over a period of five years is not the main concern, but rather how to achieve this economically considering the new 10% free carry requirement.

"The free carry requirement that 10% of the 30% black ownership target for new mining right applicants be granted free to communities and qualifying employees, as well as the required contribution of 5% from payroll will have a major impact on the profitability and cashflow of mining entities," says Hay. "From an investor's perspective, this translates into big costs, before you even reach positive cashflows in a mine. For example, if a mine costs R1 billion to develop, then 10% of that (R100 million of value) of that must be given to these participants for free. The 90% shareholders still need to pay the full R1 billion development cost, not only the proportionate amount." "In addition to the free carry percentage, the remaining 20% black ownership must be funded in a sustainable way. Keep in mind that very few black participants have the kind of capital to contribute their proportionate share in what is a very capital-intensive industry," says Hay. "So, investors have a double headache. As we continue to see, they're questioning whether they should even start the investment process."

Another factor curtailing investment is the 50% plus 1 black ownership requirement for all new prospecting rights. "The exploration side of mining in South Africa, which is the most difficult to find financing and funding for, will be seriously impacted. Not even the Public Investment Corporation (PIC) or the Industrial Development Corporation (IDC) are willing to fund early exploration," says Hay.

Hay says that while the new Mining Charter has taken the 'Once empowered, always empowered' principle on board, it is under very limited circumstances. "If your transaction has resulted in net equity value and unencumbered ownership has been in place for at least a third of the duration of the mining rights, usually 10 years, then BEE points can be carried forward," says Hay. "The court ruling on this principle was also nuanced, saying that if the mining rights permit requires that the mine must remain empowered on an ongoing basis, then previous transactions don't continue to count. If the rights agreement doesn't require this, then previous transactions can count. Most of the mining rights that I see include that requirement."

Further percentages remain simply unrealistic and are not aligned with the B-BEE codes. "The Third Mining Charter, as it stands now, stipulates that a minimum of 70% of total mining capital goods must be procured from local firms, with 21% of that being sourced from black manufacturers. This is downright impossible. Most of the mining equipment used in South Africa is imported and cannot be sourced locally. On the employment equity front, there are simply not enough female technical professionals in the country to meet targets of up to 44% of women. If mines fail to comply with requirements, then their mining rights can lapse or be withdrawn, which is a huge risk for investors. "

Communities are voicing their concerns around the percentage allocations in the Charter. "Many feels that the 14% allocation to entrepreneurs is too high, and that community participation of 8% is too low," says Hay. "But a bigger question emerges, if the Department of Mineral Resources failed to fully implement or properly monitor the previous charter to ensure Social and Labour Plan and Mining Charter One targets were met, is there any point in setting new, more challenging ones?"

If the Third Mining Charter goes through as targeted by November, and becomes legislation, it will definitely dampen investment with disastrous consequences that will radically curtail mining development, says Hay. "When more than 50% of our gold mines and 60% of our platinum mines are currently battling to survive, this won't be good for mining in South Africa. However, if we start again and get the policy right, it's one of the industries that can actually create many jobs. There is a lot at stake here for South Africa's future."