Compliance with the Codes of Good Practice and the Mining Charter by the South African Mining Industry: The role of the Department of Minerals and Energy

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ABSTRACT

The South African mining industry has been, and still is, the cornerstone of the South African economy. Even though the mining industry flourished and created significant wealth, due to previous discriminatory policies, a large section of the South African population was excluded from partaking in the mining industry.

With the democratisation of South Africa, the Government adopted Black Economic Empowerment to redress past injustices. To achieve transformation, the Government implemented various polices and legislation and the impact thereof, on the mining industry had to be investigated. For this purpose a qualitative research approach was utilised and data were collected by means of literature studies and interviews.

Regarding transformation legislation and policies, the Mining Charter and the Codes of Good Practice were investigated. The Mining Charter is legally binding on the mining industry and the Codes of Good Practice is binding on all organs of state and public enterprises when making decisions regarding procurement as well as granting of licences. Therefore the Codes of Good Practice has an indirect impact on the mining industry and the implications thereof on the mining industry had to be investigated.

Since the Mining Charter and Codes of Good Practice are used as performance measurement instruments, the principles, theories and models of managing and measuring performance were studied.

A number of respondent groups were randomly selected and the case-study approach was used. Respondents were selected based on their position within the organisation, their involvement in the Mining Charter and Codes of Good Practice and the role they play in the implementation of and compliance with legislation.

Interviews were conducted to determine the impact of the Codes of Good Practice on the mining industry and it was determined that mining companies will have to comply with the Codes of Good Practice, if they wish to remain competitive and to obtain licences. Adopting the Codes of Good Practice is a business imperative within the mining industry. No composite indicators or a combined performance measurement instrument exists. The Department of Minerals and Energy is not playing any

substantial role in assisting mining companies regarding compliance with the Codes of Good Practice.

Recommendations are made based on the comparison of the elements of the Mining Charter with those of the Codes of Good Practice and with the performance management and measurement theories. Findings resulting from the empirical research conducted were provided, which resulted in the development of composite indicators and the Composite Scorecard for the Mining Industry.

OPSOMMING

Die Suid-Afrikaanse mynindustrie was en is steeds die hoeksteen van die Suid-Afrikaanse ekonomie. Alhoewel die mynindustrie gefloreer en aansienlike rykdom geskep het, weens vroëre diskrimineerende beleid is 'n groot deel van die bevolking deelname aan die mynindustrie ontsê.

Met die demokratisering van Suid Afrika het die Regering Swart Ekonomiese Bemagtiging ingestel om die gevolge van diskriminasie reg te stel. Om transformasie te bewerkstellig het die Regering verskeie beleidsdokumente en wetgewing geïmplementeer en die uitwerking daarvan op die mynindustrie moes ondersoek word. Om dit te bewerkstellig is gebruik gemaak van die kwalitatiewe navorsingsmetode, en data is ingesamel deur middel van literatuurstudies en onderhoude.

Betreffende transformasie-wetgewing en beleidsdokumente is die Mynhandves en die Kode van Goeie Praktyk ondersoek. Die Mynhandves is wetlik afdwingbaar op die myn-industrie en die Kode van Goeie Praktyk is bindend op alle Staats- en openbare instellings vir die neem van besluite betreffende aankope asook die toestaan van lisensies. Derhalwe het die Kode van Goeie Praktyk 'n indirekte uitwerking op die mynindustrie en die implikasies daarvan moes ondersoek word.

Weens die feit dat die Mynhandves, asook die Kode van Goeie Praktyk gebruik word as prestasie meetinstrumente, moes die beginsels, teorie en modelle vir die meet van prestasie bestudeer word.

'n Aantal respondent-groepe is geselekteer deur middel van steekproewe, en die gevallestudie beginsel is toegepas. Respondente is geselekteer op grond van die posisie wat hulle binne die organisasies beklee, hulle betrokkenheid by die Mynhandves asook die Kode van Goeie Praktyk en die rol wat hulle vervul in die implementering van en voldoening aan wetgewing.

Onderhoude is gevoer om die impak van die Kode van Goeie Praktyk op die mynindustrie te bepaal en dit is bevind dat mynmaatskappye aan die Kode van Goeie Praktyk sal moet voldoen indien hulle kompeterend wil bly en lisensies wil bekom. Om aan die Kode van Goeie Praktyk te voldoen is 'n besigheidsimperatief vir die mynindustrie. Geen saamgestelde aanwysers of 'n prestasie meetinstrument is

beskikbaar nie. Die Departement van Minerale en Energie speel bykans geen rol daarin om mynmaatskappye behulpsaam te wees om aan die Kode van Goeie Praktyk te voldoen nie.

Aanbevelings word gemaak wat gebaseer is op die vergelyking van die elemente van die Mynhandves, met dié van die Kode van Goeie Praktyk en die prestasiebestuur- en meetingsteorie. Bevindinge voortspruitend uit die emperiese navorsing word verskaf. Sodanige bevindinge het gelei tot die voorsiening van saamgestelde aanwysers, asook die Saamgestelde Telkaart vir die Mynindustrie.

DECLARATION

I declare that: "Compliance with the Codes of Good Practice and the Mining Charter by the South African Mining Industry: The role of the Department of Minerals and Energy" is my own work, that all sources used or quoted have been indicated and acknowledged by means of complete references, and this thesis was not previously submitted by me or any other person for degree purposes at this or any other university.

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SA Booyens Date

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CHAPTER 1

INTRODUCTION

1.1 *ORIENTATION AND PROBLEM STATEMENT*

The discovery of gold and diamonds during the late 19th century and the subsequent discovery of coal changed the face and history of the economic structure and political economy of the entire Southern African region. Mining formed the basis of industrialization and contributed overwhelmingly to the strong economic growth of South Africa. The continued dependence on this sector, together with political and economic policies of racial exclusion, in a changing international political and economic order, would prove highly detrimental to the South African economy in the 1970's and beyond (Schoeman, 1998:302-303).

The minerals industry is well-established and a resourceful sector of the South African Economy. Mining is the largest industry sector in South Africa and is followed by manufacturing (Department of Minerals and Energy, 2004:1). Although the existence of large reserves has been proven, the country cannot be considered to be over-explored and that considerable potential remains for the discovery of world-class deposits (Department of Minerals and Energy, 2004:7-8).

In the opening address of the Minister of Minerals and Energy, Ms Buyelwa Sonjica, at the mining breakfast in Toronto Canada on 6 March 2007, she mentioned that South Africa's mineral wealth is legendary. South Africa has the largest resources in the world of the platinum group metals (over 85%), chromium (over 70%), manganese (80%) and gold (40%). The honorable Minster indicated that South Africa also contributes significantly towards the global production of coal and iron ore.

During the early 1990s, the democratic change in South Africa resulted in the endorsement of private enterprise within a free-market system, offering equal opportunities to all people. Discriminatory polices excluded large sectors of the population from participation in the minerals industry during the pre-1994 period (Department of Minerals and Energy, 2004:1). To include the previously excluded people in the economy, section 25 of the Constitution of the Republic of South Africa Act 108 of 1996, empowers Government to take the necessary measures to reform,

in order to redress the results of past racial discrimination by taking legislative and other measures.

In an address to the Afrikaanse Handelsinstituut in Johannesburg, Ms Lulu Xingwana, the Deputy Minister of Minerals and Energy, discussed the reasons behind the transformation imperative called Black Economic Empowerment (BEE). She mentioned that it is crucial to understand why the nation needs to act together to bring about economic transformation to the benefit of all. Apartheid systematically and purposefully restricted the majority of South Africans from participating meaningfully in the economy. This process confined the creation of wealth to a racial minority and imposed underdevelopment on black communities. Currently, the result is an economic structure currently in which the majority of South Africans are still largely excluded.

Whiteford (2005:4) defines BEE as the transformation of economic structures in favour of previously disadvantaged people in South Africa. The pressure on the Government to ensure the transfer of economic power is evident since the Government is blamed for not doing enough to make BEE possible (Brevis *et al.*, 1997:433).

Empowerment has been a constant theme in the African National Congress's policy since the adoption of the Freedom Charter and one of the first projects of the new democracy was an empowerment-related initiative known as the Reconstruction and Development Programme (RDP). The objectives of the RDP include the creation of jobs, human resources development, provision of infrastructure, changes in ownership and the reduction of inequality in society. To achieve transformation, various forms of legislation were implemented, such as the Promotion of Equality and Prevention of Unfair Discrimination Act, the Extension of Security Tenure Act, the Restitution of Land Act, the Employment Equity Act, the National Empowerment Act, the Competitions Act, the Policy Framework Act and the Preferential Procurement Act (Woolley, 2005:21-22). Lodge (2002:55) adds that the RDP policies should ensure that foreign investment creates as much employment and real knowledge transfer as possible and that government should assist small and especially black-owned enterprises through its allocation of contracts and by requiring financial institutions to lend capital to these firms.

Woolley (2005:12) indicates that transformation has been defined as an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of black people that manage, own and control the country's economy, as well as a significant decrease in income inequalities.

The Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA), which came into effect on 1 May 2004, legislates the official policy concerning the exploitation of the country's minerals. The restructuring of the economy and changing local and international circumstances were taken into consideration and the MPRDA addresses a number of issues, including the transformation of the minerals and mining industry. The MPRDA promotes equitable access and investment in exploration, mining and mineral beneficiation, socio-economic development and environmental sustainability of the mining industry (Department of Minerals and Energy, 2004:1). The Director General of Minerals and Energy, Adv Sandile Nogxina, in his address at the Chamber of Mines Strategic Planning Session on 15 May 2006, indicated that the MPRDA introduced the Mining Charter, which is essential to the transformation process.

In terms of section 2 of the MPRDA, one of the objectives of the MPRDA is to substantially and meaningfully expand opportunities for Historically Disadvantaged South Africans (HDSAs), including women, to enter into the minerals industry. section 100(2)(a) of the MPRDA determines that a Broad-Based Socio-Economic Empowerment Charter (Mining Charter) must be developed after consultation with the relevant role-players within and affected by the mining industry. The Mining Charter was published on 13 August 2004. The Mining Charter provides a framework for progressing empowerment of HDSAs in the mining industry. The Mining Charter consists of nine pillars which focus on human resource development, employment equity, migrant labour, mine community and rural development, housing and living conditions, procurement, ownership and joint ventures, beneficiation and reporting (SA, 2004:10-15).

During an address by the Deputy President, Ms Phumzile Mlambo-Ngcuka, at the launch of the Minerals and Mining Development Board on 28 June 2005, she mentioned that the Minister of Labour is reporting annually that white males still dominate most, if not, all industries. The mining and petroleum industry has set employment equity targets, of 40% HDSAs participation in mining and 10% women,

to be reached by April 2009. The honorable Deputy President added that movement and progress in transformation of the mining industry is rather slow.

The mining industry is legally obliged to implement the provisions of the Mining Charter, as determined in section 100(2)(a) of the MPRDA. The Scorecard for the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry (Mining Charter Scorecard), was introduced to measure the success of implementation of and compliance with the provisions of the Mining Charter and the MPRDA. (SA, 2004:13).

The Deputy Minister of Minerals and Energy, Ms Lulu Xingwana, during a speech delivered at the South African Mining Development Association BEE Workshop held on 18 April 2006, mentioned that the time for action is here and that the assessment of progress on transformation in the mining sector cannot wait for 2009 or 2014. Transformation is a matter of life and death for the country and the Government will not allow failure.

Compliance with the Mining Charter has seen a number of BEE deals taking place during 2005/2006 and several of these deals were with well established South African mining houses, and importantly these deals are taking on a more broad-based approach (Department of Minerals and Energy, 2006:4).

Adv S Malebe, Regional Manager in the Department of Minerals and Energy, indicated, in an interview (Booyens, 24 January 2007) that the Department of Minerals and Energy is only concerned with the requirements of the Mining Charter and that the Codes of Good Practice is not applicable to the mining industry.

Even though the mining industry is subject to the MPRDA and Mining Charter, the Government also enacted the Broad-Based Black Economic Empowerment Act 53 of 2003 (BEE Act). In terms of section 2 of the BEE Act, the objectives are to facilitate BEE by promoting economic transformation and meaningful participation of black people and to achieve sustainable change in the racial composition of ownership and management structures. It also intends to promote transformation and participation in skilled occupations, increase the extent to which communities, workers cooperatives and other collective enterprises own and manage enterprises and increase their access to economic activities, infrastructure and skills training. The BEE Act also aims at increasing the extent to which black women own and manage enterprises

and at promoting investment programmes that lead to broad-based participation in the economy by black people. The objectives contained in section 2 of the BEE Act also include the empowerment of rural and local communities by enabling access to economic activities and promoting access to finance for BEE.

According to section 9 of the BEE Act, and in order to promote the purposes thereof, the Minister may issue codes of good practice on BEE that may include the further interpretation and definition of BEE and categories of BEE entities, qualification criteria for preferential purposes for procurement and other economic activities, indicators to measure BEE, the weighting attached to BEE indicators, guidelines for stakeholder and transformation charters.

Subsequently the Black Economic Empowerment Codes of Good Practice, hereafter referred to as the Codes of Good Practice, was released. The Codes of Good Practice was released in two phases; the first phase was released on 1 November 2005 and the second phase on 20 December 2005. Phase one was approved by the Cabinet during October 2005 and deals with the framework of measurement of BEE, as well as ownership and management control. Phase two deals with measurement of employment equity, skills development, preferential procurement, enterprise development, residual elements of BEE, sector codes and measurement of qualifying small enterprises (Department of Trade and Industry, 2005:6). The Codes of Good Practice were published in Government Gazette No. 29617 and came into effect on 9 February 2007 (SA: 2007:3).

The Codes of Good Practice is to be applied in the development, evaluation and monitoring of BEE charters, initiatives, transactions and other implementation mechanisms. It contains basic principles and essential considerations as guidance in the form of explanatory and other material (Department of Trade and Industry, 2005). After the publication of the Codes of Good Practice, investors now have guidelines to enable them to understand BEE and map out its effects on their investment activity (Anon (A), 2007:4).

The Codes of Good Practice provide a standard framework for the measurement of BEE across all sectors of the economy, which means that no industry will be disadvantaged over another when presenting its BEE credentials. The Codes of Good Practice will level the playing field for all entities operating within the South

African economy by providing clear and comprehensive criteria for the measurement of BEE (Department of Trade and Industry, 2005:4).

Smith (2005) reported that Mr M Diliza, Chief Executive of the Chamber of Mines, said that the Government understood that it would be undesirable to have one set of rules, the Mining Charter, for conversion of one company and another set of rules, the Codes of Good Practice, for a different conversion. It was also reported that agreement was reached, with regard to the mining industry, that the Mining Charter would take precedence over the Codes of Good Practice.

In a presentation by Mr Leon Bekker at Gallagher Estate on 27 November 2006, he indicated that the BEE Act defines BEE as the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse, but integrated and socio-economic strategies. This includes increased ownership, facilitating ownership and management, human resources and skills development, achieving equitable representation, preferential procurement and investment enterprises. This definition of BEE is not part of the MPRDA.

The Codes of Good Practice (2007:9) applies to all public entities, any public trading entities which undertake business with any organ of state, as well as any enterprise that undertakes business with any organ of state or public entity. It further determines that any other enterprise that undertakes any business, whether direct or indirect, with any entity subject to measurement in terms of the Codes of Good Practice, is subject to the Codes of Good Practice.

The aforementioned was confirmed by the Department of Trade and Industry in the guideline documents, where it is stated that the Codes of Good Practice will be binding on all organs of state and public entities. This means that the Government must apply the Codes of Good Practice when entering into decisions affecting procurement, licensing, concessions, public-private partnerships or sale of state-owned entities. By deduction, private sector enterprises must apply the Codes of Good Practice should they wish to interact with organs of state and public entities in the aforementioned activities. Private sector enterprises are encouraged to apply the Codes of Good Practice, as preferential procurement will effectively impinge on most private sector enterprises through the chain of supply. The Codes of Good Practice

will be very important to the management of an enterprise, interacting with both public and private sector entities (Department of Trade and Industry, 2005:6-7).

The Deputy Minister of Minerals and Energy, Ms Lulu Xingwana, in an address to the Afrikaanse Handelsinstituut in Johannesburg on 18 August 2004, mentioned that a scorecard will be introduced to measure three core elements of BEE which are: direct empowerment through ownership of business and assets, human resources development and preferential procurement. In terms of the Codes of Good Practice (2007:11) the Generic Scorecard is introduced and contains the elements to be measured, the weightings and primary reference codes which specify mechanisms for measurement and calculation of each of the elements of the Generic Scorecard. Compliance will be measured in terms of the Generic Scorecard (SA, 2007:10).

During an interview (Booyens, 5 April 2007) with Mr P Jordaan, Operations Manager at Sasol Mining, he indicated that Sasol Mining will have to comply with the requirements of Codes of Good Practice, in addition to those of the Mining Charter, due to the fact that its clients are measured in terms of the Codes of Good Practice. If Sasol Mining does not comply, the clients will not receive the required credits in terms of the Codes of Good Practice and subsequently Sasol Mining may lose its clients and markets. Mr Jordaan indicated that no single measurement instrument is available to assist Sasol Mining in determining its performance against both the Mining Charter and Codes of Good Practice. Currently both scorecards have to be applied as the scorecards measure different indicators. Even if the more stringent measures of the Codes of Good Practice are adopted, certain indicators that appear in the Mining Charter do not appear in the Codes of Good Practice. He indicated that a measurement instrument which will assist mining companies in measuring performance in a single measurement instrument would be of significant value.

According to Wikipedia (2007), performance measurement is the process of assessing progress towards a predetermined goal whilst performance management is building on the process, adding the required communication and action on the progress achieved, against these predetermined goals.

ANON (B) (2007:4) states that, to set measurable, observable meaningful standards of performance and to measure work or document the findings is a very difficult exercise. The process of measurement is the assignment of numbers or words to items or events in order to describe the difference. To be useful, measurement

information must be descriptive, unambiguous and objective (Henderson, 1984:157). Researchers and designers have developed a wide variety of appraisal instruments, some which go beyond the conventional instrument that consists of a set of simple rating scales on which to rate a number of dimensions or aspects of performance (Henderson, 1984:155).

Van der Waldt (2004:53) is of opinion that, to enable the monitoring and evaluation of policy processes, performance and outcome, a set of key performance measures and indicators needs to be in place. The performance management process comprises four major phases: performance planning, design or redesign of structures, ongoing management and review of performance (Spangenberg, 1994:35).

Performance Scorecards address a wide variety of needs managers, their team members, and their superiors have in order to manage and achieve performance results. Scorecards provide a concise summary of critical measures needed for updates and decisions and allow managers to monitor performance against targets, business goals and competitive benchmarks. Scorecards also contain indicators that relate to decision making and business results. Performance scorecards provide decision tools that reduce time and expenses for gathering and analyzing data. Scorecards provide a picture of true performance that is concise, accurate, and current. The right measures in the right places reinforce business outcomes. Performance scorecards further allow management to define the number and to label the categories to fit the organization's strategies (Chang & Morgan, 2000:xv-xvii).

All enterprises will benefit from clarifying goals and monitoring progress. However, it is the prescribed formula for controlling performance that presents difficulties (Van der Waldt, 2004:48). McNamara (2007) mentions that, if simply put, performance management includes activities to ensure goals are consistently being met in an effective and efficient manner.

According to Crosby (1979:6), quality is an achievable, measurable, profitable entity that can be installed once commitment and understanding is obtained. Gitlow *et al.* (1995:3) indicate that the pursuit of quality requires that organizations optimize their systems of interdependent stakeholders which include employees, customers, investors, suppliers, contractors, regulators and the community.

Quality management is defined as a method for ensuring that all activities necessary to design, develop and implement a product or service are effective and efficient with respect to the system and its performance (Wikipedia, 2007). Quality management systems are described as a set of policies, processes and procedures which enables organizations to identify, measure, control and improve processes that will lead to improved performance (Wikipedia, 2007).

The question then arises: To what extent does mining companies comply with the Codes of Good Practice to ensure they remain the preferred suppliers to public and private companies outside the mining industry, and what is the role of the Department of Minerals and Energy in measuring their performance against both the Mining Charter and Codes of Good Practice?

1.2 RESEARCH QUESTIONS

To operationalise the fundamental question that arises from the problem statement, the following research questions can be posed, namely:

a) To what extent do the Mining Charter and Codes of Good Practice overlap?
b) What will the implications be on mining companies if they decided not to comply with the provisions of the Codes of Good Practice?
c) To which aspects of the Codes of Good Practice will a mining company have to comply with to remain competitive or become a preferred supplier to public and private enterprises?
d) Are there any combined indicators and performance measurement instruments that will enable a mining company to measure its performance against the requirements of both the Mining Charter and the Codes of Good Practice?
e) What is the role of the Department of Minerals and Energy in measuring mining companies' compliance performance against both the Mining Charter and Codes of Good Practice?

1.3 RESEARCH OBJECTIVES

To operationalise the research questions, the objectives of the study are:

a) To determine whether any overlap occurs between the pillars of the Mining Charter and those of the Codes of Good Practice and to what extent such overlap, if any, occurs.

b) To establish whether it is possible for mining companies to ignore the provisions of the Codes of Good Practice and function in isolation thereof.

c) To determine which aspects of the Codes of Good Practice a mining company will have to comply with, if any, to ensure that it remains competitive or gains a preferred status as a supplier to public and private enterprises.

d) To determine whether any combined indicators and performance measurement instruments exist within the mining industry which will enable mining companies to measure performance against, and compliance with, both the Mining Charter and the Codes of Good Practice, and if not, to develop such combined indicators and a performance measurement instrument.

e) To analyse the role of the Department of Minerals and Energy in measuring mining companies' compliance performance against both the Mining Charter and Codes of Good Practice.

1.4 LEADING THEORETICAL STATEMENTS

The following preliminary statements are made:

a) The South African mining industry is legally obliged to implement the provisions of the Mining Charter, as determined in section 100(2)(a) of the MPRDA. To measure the success of the implementation of the provision of the Mining Charter and to give effect to the main objectives of the MPRDA, the Mining Charter Scorecard was introduced. The measurement of compliance will be on the basis of the scoring achieved in terms of the Mining Scorecard (SA, 2004:16).

b) The Codes of Good Practice will be binding on all organs of state and public entities. This means that government must apply the Codes of Good Practice when entering into decisions affecting procurement, licensing, concessions, public-private partnerships and sale of state-owned assets. By deduction private sector must apply the Codes of Good Practice should they wish to interact with organs of state and public entities in the aforementioned activities (Department of Trade and Industry, 2005:6-7).

c) Lester (2005) mentions that, with the publication of the first draft of the Codes of Good Practice under the BEE Act, the regulation of BEE has taken an interesting turn. It would appear that those sectors that have already adopted transformation charters such as petroleum, mining, financial services,

maritime, transport and information and communication technology, may have to give some serious thought to their approach to attaining BEE.

d) The Mining Charter Scorecard is intended to reflect the spirit of the Mining Charter and in adjudicating the Mining Charter Scorecard the Minister of Minerals and Energy will need to take into account the entire Mining Charter Scorecard in decision making (SA, 2004:3).

e) The Generic Scorecard measures the effective ownership, control and management of enterprises by black people. It also measures initiatives to achieve equity, measures to develop competencies and the extent to which enterprises buy goods from suppliers with strong BEE procurement recognition levels (SA, 2007:4).

f) Chang and Morgan (2000:xxi-xxii) indicate that performance scorecards allow companies to manage successfully and achieve greater results by focusing on the few vital measures that matter. Measurement plays a crucial role in translating strategies into results. Performance scorecards are a set of business measures linked to strategies and goals.

1.5 RESEARCH METHODOLOGY

1.5.1 Literature review

Hart (in Bell, 2005:99) considers the review of literature important, as without it one will not acquire an understanding of what has already been done, how it has been researched, and what the key issues are.

A literature study was conducted in which primary and secondary literature was used to determine which charter and guidelines are applicable to the South African mining industry. A literature study was conducted to gather information on legislation, the Mining Charter, Mining Charter Scorecard, Codes of Good Practice, Generic Scorecard and performance management tools. Books, reports, legislation, departmental guidelines, government reports, legal and other periodicals, press releases and other relevant documents were consulted. In addition, performance management tools will be required to measure various variables introduced by the possible overlapping of the Mining Charter and Codes of Good Practice. These variables consist in almost all the different pillars of the scorecards as included in the Mining Charter Scorecard (SA, 2004:4). The Generic Scorecard imposed by the Codes of Good Practice also functions on a different measurement method than the

Mining Charter Scorecard. Literature studies were conducted on performance management tools, techniques and scorecards. Internet searches for relevant material were undertaken. A preliminary analysis indicated that sufficient material and literature were available to do research on this topic.

The following databases have been consulted to ascertain the availability of study material for purposes of this research:

- Catalogue of theses and desertions of South African Universities
- Catalogue of books: Sasol Secunda Library
- Catalogue of books: Secunda Library
- Catalogue of books: Ferdinand Postma Library
- Nexus
- Internet

1.5.2 Empirical research

A qualitative research design was followed. Bell (2005:115) indicates that methods are selected because they will provide the data required to produce a complete piece of research. Decisions need to be made concerning which method would be suitable for the particular purpose and then data collecting instruments must be designed to obtain the data. Primary data collection for quantitative research can be obtained by means of interviews, and three types of interviews, these being standardised, semi-standardised and unstandardised interviews, are identified (Struwig & Stead, 2003:98-99).

A major advantage of the interview is its adaptability since the interviewer can follow up ideas, probe responses and investigate motives and feelings which cannot be achieved with a questionnaire (Bell, 2005:157). Semi-structured interviews which enable the interviewer to tick or circle responses on a pre-prepared schedule enable the interviewer to leave the interview with a set of responses that can be fairly easily recorded, summarized and analyzed (Bell, 2005:159).

Semi-structured interviews were conducted with Government officials in the DME who were selected based on their involvement in the implementation and application of the Mining Charter and Mining Charter Scorecard. The specific role-players are the Deputy Director-general Mineral Policy and Promotion, the Chief Director Mineral

Promotion as well as the Regional Managers, Mpumalanga and Free State Regions and the Director Licensing and Legal Compliance. The Deputy Director-general and Chief Director are responsible for policy development, amendment and implementation and the Regional Managers are responsible for the initial evaluation and scoring of Mining Charter compliance. The Deputy Director-general and Chief Director also advise the Minister on Mining Charter compliance and BEE in the Mining Industry. Semi-structured interviews were also conducted with officials in the Department of Trade and Industry who were selected based on their involvement in the implementation and application of the Codes of Good Practice.

This sample was selected based on the involvement of the relevant government officials in the decision-making chain within the application and measurement of performance with the provisions of the Mining Charter and Codes of Good Practice. These officials play a critical role in determining whether a company complies by scoring it against the various scorecards or reviewing scores from accredited agencies. Interviews with these role-players were aimed at obtaining insight into Government's approach to the application of the Mining Charter and Codes of Good Practice within the mining industry.

Semi-structured interviews were conducted with role-players within a number of mining houses as well as BEE practitioners and consultants. Due to the size of the mining industry, respondents were randomly selected, and by applying a case-study approach, representative samples could be ensured.

The sample size was based on the relevant role-players' involvement in the application of the Mining Charter and Codes of Good Practice within the mining industry. These interviews were aimed at obtaining information regarding strategies and processes developed to measure performance and compliance with the Mining Charter and with the Codes of Good Practice. The specific role-players were the Commercial Manager, Mashala Resources, the Legal Advisor Pamodzi Gold, the Manager Mining Charter and Continuous Improvement, Sasol Mining and the Corporate Affairs Manager and Head Legal Services of Xstrata Coal, as well as consultants such as Business Map and attorneys specializing in the Mining Charter and Codes of Good Practice.

The results of the interviews were utilised to determine which charter is applicable to the South African mining industry, whether any overlaps occur between the Mining

Charter and Codes of Good Practice and what is required to enable mining companies to comply with both. The information obtained was also used to determine whether any combined indicators and performance measurement instrument exists to determine compliance with the Mining Charter and the Codes of Good practice, in a combined scorecard. On the basis of the research objectives all relevant information was analysed and evaluated.

1.6. STRUCTURE OF THE RESEARCH

In Chapter 1 an exposition of the substantiation, the research problem and the relevant research were presented.

Chapter 2 discusses the charter and guidelines applicable to the mining industry in terms of the applicable legislation.

Chapter 3 takes an in-depth look at the Mining Charter and the Codes of Good Practice, its aims and targets.

Chapter 4 takes an in-depth look into the implications of the Codes of Good Practice on a mining company, including the negative and positive impacts, should a mining company decide to adopt the principles of the Codes of Good Practise.

Chapter 5 investigates the principles, theories and models of measuring performance. Findings will be provided as to whether a mining company will be able to measure its performance both against both the Mining Charter Scorecard and the Generic Scorecard.

Chapter 6 reports on findings on the information gathered from the Department of Minerals and Energy, the Department of Trade and Industry, mining houses as well as BEE consultants and attorneys, on the actions required by mining companies to comply with the Mining Charter, as well as the Codes of Good Practice and whether any combined indicators or a performance measurement instrument exists.

Chapter 7 contains a summary of the findings as to whether a mining company will be able to measure performance against the requirements of the Mining Charter and Codes of Good Practice, without adopting a new method of measuring the combined

indicators and on the development of a measuring instrument to measure the combined indicators of the Mining Charter and Codes of Good Practice.

1.7 CONCLUSION

In this chapter the exclusion of the majority of South Africans from partaking in and benefiting from the nations' mineral wealth was discussed. This imbalance occurred due to the systematic exclusion of black people from the mining industry. Subsequent to South Africa's democratization in 1994, various legislative measures were implemented to rectify the imbalances.

Transformation in the South African economy, including the mining industry, is of significant importance to the Government and this resulted in the implementation of the MPRDA and the BEE Act. This legislation brought about the Mining Charter and Codes of Good Practice by means of which the Government aims to achieve Broad-Based Black Economic Empowerment. The Mining Charter consists of nine pillars, whilst the Codes of Good Practice consist of seven elements.

However, to determine whether a mining company is subject to the Mining Charter only or the Codes of Good Practice as well, a number of research questions could be posed. Amongst others, the questions asked were if mining companies comply with the Codes of Good Practice, will this ensure that they remain the preferred suppliers to public and private companies outside the mining industry and are any combined indicators and performance measurement instruments available that will enable a mining company to measure its performance against the requirements of both the Mining Charter and the Codes of Good Practice. The role of the Department of Minerals and Energy in measuring their performance against both the Mining Charter and Codes of Good Practice needed to be clarified.

Once the leading theoretical statements had been made, a discussion on research methodology followed. A qualitative research approach was applied and research was conducted by means of a literature review and empirical research.

In the next chapter the legislation, charter and guidelines applicable to the South African mining industry will be discussed.

CHAPTER 2

LEGISLATION, CHARTER AND GUIDELINES APPLICABLE TO THE SOUTH AFRICAN MINING INDUSTRY

2.1 INTRODUCTION

Social and economic transformation in South Africa is high on the agenda of the South African Government. In terms of the Constitution of the Republic of South Africa Act 108 of 1996, the Government has a mandate to ensure that transformation is achieved. Subsequently, a number of laws have been enacted to ensure the transformation of the economic sectors of South Africa. In addition to general legislation passed by the Government, legislation, charters and guidelines were enacted, specifically for the mining industry, to give effect to the transformation imperative of the Government. In this chapter the legislation with regard to social and economic transformation applicable to the mining industry, as well as the applicable charters and guidelines, will be discussed. Other legislation applicable to transformation in general will also be explored briefly.

2.2 THE SOUTH AFRICAN GOVERNMENT'S MANDATE TO ACHIEVE SOCIAL AND ECONOMIC TRANSFORMATION

The majority of South Africans were systematically and purposefully restricted from participating meaningfully in the economy by the apartheid regime. This resulted in the accumulation of wealth to a racial minority, which imposed underdevelopment on black communities. In addition, the assets of millions of people were directly and indirectly destroyed and access to skills and self-employment was totally restricted (Department of Trade and Industry, 2007:4).

Allardyce (2007:13) indicates that South Africa is not unique in attempting to come to terms with the reduction in the gap between those who have and those who don't have, those who are empowered and those who are economically disenfranchised, and how to ensure that investment is sustainable and has a lasting positive impact. In other parts of the world this is called the triple bottom line accounting; or sustainable development; or social enterprise process.

In its report on the South African Mineral Industry 2003/2004, the Department of Minerals and Energy (DME) (2004:1) indicates that the democratic change during the 1990's resulted in the endorsement of the principles of private enterprise within a free-market system, offering equal opportunities for all people.

This is enshrined in the preamble to the Constitution (1996) which determines that the injustices of the past be recognized and that the Constitution (1996), as the supreme law of South Africa, must heal the divisions of the past. The Constitution must establish a society based on democratic values, social justice and fundamental human rights. It continues to state that the foundations should be laid for a democratic and open society in which Government is based on the will of the people and every citizen is equally protected by law, as well as to improve the quality of life of all citizens and free the potential of each person.

Section 9 of the Constitution (1996) determines that no person may discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth and that national legislation must be implemented to prevent or prohibit unfair discrimination.

In terms of section 25 of the Constitution (1996), the state must take reasonable legislative and other measures to implement the nation's commitment to land reform, and other reforms to bring equitable access to all South Africa's natural resources. In terms of this section property is not limited to land.

Section 25(8) of the Constitution (1996) determines that the State may not be impeded from taking legislative and other measures to achieve land, water and related reform in order to redress the results of past racial discrimination.

The rationale for Broad-Based Black Economic Empowerment (BBBEE) is to establish an economy in which every South African is empowered. It will provide great socio-economic benefits in the long term, due to the fact that the more people excluded from the economy, the smaller the market becomes, and a larger market has benefits for all. Transformation is necessary to effect this growth and BEE is the chosen transformation mechanism (Allardyce, 2007:5-6).

2.3 THE STATUTORY AND REGULATORY FRAMEWORK APPLICABLE TO THE MINING INDUSTRY

In its report on the South Africa's Mineral Industry 2003/2004, the DME (2004:1) states that discriminatory policies excluded a large sector of the population from full participation in the South African minerals industry during the pre-1994 period. The Mineral and Petroleum Resources Development Act 28 of 2002, (MPRDA), which came into effect on 1 May 2004, constitutes the official policy concerning the exploitation of the country's minerals. The MPRDA addresses many issues, which including the following:

- Transformation of the minerals and mining industry;
- Promotion of equitable access to South Africa's mineral resources;
- Promotion of investment in exploration, mining and mineral beneficiation;
- Socio-economic development; and
- Environmental sustainability of the mining industry.

In the Vision, Mission and Mandate statements of the DME (2007), it is stated that its mandate is the provision of services for effectual transformation and governance of minerals and energy industries for economic growth and development, thereby improving quality of life.

In her speech at the Mining Summit on 12 September 2006, the honourable Minister of Minerals and Energy, Ms Buyelwa Sonjica, mentioned that the official economic policy of South Africa has always supported the principles of private enterprise and free market mechanisms. Unfortunately, due to serious market distortions created by the apartheid policies, the majority of blacks were excluded from participating in the mining industry and this must be rectified. After the new democratic Government came into power in 1994, it became necessary to conduct a thorough review of the country's mineral and mining policies and associated legislation. The honourable Minister continued by stating that a review of the policies and legislation commenced in April 1995 and that it consisted of the most comprehensive consultative process ever conducted for a mineral policy review. The Minister indicated that the policies have now been enshrined in the MPRDA which was passed by the South African Parliament in October 2002 and the MPRDA was implemented with effect from 1 May 2004.

2.3.1 The Mineral and Petroleum Resources Development Act 28 of 2002

As stated, discriminatory policies excluded a large sector of the population from full participation in the mining and minerals industry during the pre-1994 period. The MPRDA legislates the official policy concerning the exploitation of the country's minerals (Department of Minerals and Energy, 2007).

The preamble to the MPRDA (2002) gives effect to the transformation objectives of the Government. A number of the preambles relates to transformation and are subsequently discussed. The second preamble states that South Africa's mineral and petroleum resources belong to the nation and that the State is the custodian thereof. The fourth preamble recognises the need to promote local and rural development and the social upliftment of communities affected by mining. The fifth preamble contains the State's commitment to reform and bring about equitable access to South Africa's mineral and petroleum resources. The sixth preamble states the commitment to eradicate all forms of discriminatory practices and the seventh preamble contains the State's obligation, under the Constitution, to take legislative and other measures to redress the results of past racial discrimination.

Dale *et al.* (2005: MPRDA3) mention that a preamble to an Act is a recitation of the circumstances and reasons that give rise to the enactment of the statute. They also point out that the post-constitutional employment of preambles is not limited to setting out the circumstances and reason that brought about the legislation and frequently, as with the MPRDA, the preambles are aspirational rather than historical in content.

During a presentation at a conference in Johannesburg, on 26 July 2007, Ms T Muleza confirmed that the MPRDA seeks to give effect to Black Economic Empowerment (BEE) by placing all minerals in South Africa under the custodianship of the state and providing greater access to minerals by Historically Disadvantaged South Africans (HDSAs). The BEE objectives of the MPRDA include:

- Promoting equitable access to the nation's mineral and petroleum resources;
- Expanding opportunities for HDSAs, including women, to enter the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources; and
- Promoting economic growth and mineral and petroleum resources development in South Africa.

The fifth, six and seventh preambles are closely interlinked and are all animated by the constitutional conception of sustentative equality as equality is a core value of the Constitution. The fifth preamble tracks the words of section 25 of the Constitution. Preamble seven relates to the provisions of sections 9 and 25 of the Constitution, as discussed in paragraph 2 above (Dale *et al.*, 2005: MPRDA6-MPRDA8).

In granting custodianship of the mineral and petroleum resources to the State and through the empowerment of the State to grant rights in respect of these resources, the MPRDA places the State in a position to promote equitable access to the nation's mineral and petroleum resources to all the people of South Africa (Badenhorst *et al.*, 2006:13-5).

Included as one of the objects of the MPRDA (2002), is the expansion of opportunities for HDSAs, including women, to substantially and meaningfully enter the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources. Another object is to promote employment and advance the social and economic welfare of all South Africans.

Section 100 of the MPRDA (2002) deals with the transformation of the mining industry and determines that the Minister of Minerals and Energy must, within five years after its implementation, develop a code of good practice for the minerals and mining industry. The Minister must also develop a broad-based socio-economic empowerment charter that will set the framework, targets and time-table for effecting entry of HDSAs into the mining industry, within six months after its implementation.

According to Dale *et al.* (2005: MPRDA590), section 100 of the MPRDA provides for various standards, codes of good practice and charters aimed at transforming the minerals industry in South Africa.

2.3.2 Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry (Mining Charter)

The Mining Charter was published in General Notice 1639/2004 GG 26661 of 13 August 2004. Even though it is not stated specifically, it is presumed that it was published in terms of section 100 of the MPRDA (Dale *et al.*, 2005: App1).

The vision of the Mining Charter (2004:6) determines that all actions and commitments of the Mining Charter are in pursuit of a shared vision of a globally competitive 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 Mining Charter is to create an industry that will proudly reflect the promise of a non-racial South Africa.

Dale *et al.* (2005: App-4) mention that the Mining Charter is not legally a contract or agreement, but rather a statutory instrument. This is due to the fact that, as referred to in section 100 of the MPRDA, and in paragraph 1 of the Mining Charter, it will apply to the South African mining industry and the mining industry is not a legal entity/person.

Mr Rocha, Deputy Director-General of the DME, during a presentation at a conference on 29 August 2005, indicated that the Mining Charter must address:

- Skills development of HDSAs;
- Socio-economic development of hosting and labour-sending communities;
- Socio-economic development of all HDSAs from the proceeds of activities of mining operations;
- HDSA involvement or participation in procurement chains of operations;
- HDSA ownership, participation in or benefit from mining and prospecting;
- HDSA participation in or control of management of such operations; and
- HDSA ownership of or participation in beneficiation.

Mr M Booysen (2006) indicated that subsequent to the enactment of the MPRDA, the DME published the Mining Charter. The Mining Charter, which was developed in terms of section 100 of the MPRDA, contains nine pillars of empowerment, namely;

- Human resources development;
- Employment equity;
- Migrant labour;
- Mine community and rural development;
- Housing and living conditions;
- Procurement;
- Ownership and joint ventures;
- Beneficiation; and
- Reporting.

According to the preamble to the Mining Charter (2002:6), the history of South Africa resulted in blacks, mining communities and women being largely excluded from participating in the mainstream economy. It is the stated intention of the mining industry to adopt a proactive strategy of change to foster and encourage BEE and transformation. It is an imperative to redress the historical and social inequalities as stated in the Constitution. The policy objective of the MPRDA is to expand opportunities for HDSAs to enter the mining and minerals industry. The scarcity of skills as a barrier for HDSAs, must be removed to enable them to enter into the mining sector.

The key objectives of the MPRDA and the Mining Charter will be realised only when South Africa's mining industry succeeds in the international market place where it seeks a large part of its investment and sells its products and when the socio-economic challenges facing the mining industry are addressed in a significant and meaningful way. The transfer of ownership must be achieved in a transparent manner and for fair market value (SA, 2004:6-7).

The Mining Charter (2004:9) states its objectives as the following:

- Promote equitable access to the nation's mineral resources to all the people of South Africa;
- Substantially and meaningfully expand the opportunities for HDSAs, including women, to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources;
- Utilise the existing skills base for the empowerment of HDSAs;
- Expand the skills base of HDSAs in order to serve the community;
- Promote employment and advance the social and economic welfare of mining communities and the major labour-sending areas; and
- Promote beneficiation of South Africa's mineral commodities.

In a presentation by Ms T Muleza, at a conference held in Johannesburg on 26 July 2007, she indicated that the Mining Charter gives effect to the BEE objectives of the MPRDA by setting frameworks, targets and timetables for the entry of HDSAs into the mining industry. The Mining Charter targets the entire mining industry by setting standards in respect of the nine pillars of the Mining Charter.

Woolley (2005:23) states that the Mining Charter was a significant departure from the previous approach of 'ownership' and 'control'. The Mining Charter's stated obligation is to transfer 15% of the mining industry's assets into HDSA hands within five years, and with a commitment to increase this to 26% by 2014. This level of participation will ensure a critical mass of black involvement that should be enough to ensure the self-perpetuation of BEE in the mining industry.

Ms T Muleza (2007) further stated that the prevailing view of the Mining Charter within the mining industry is that it applies to the mining industry, to the exclusion of the Codes of Good Practice. The Mining Charter is not as extensive on targets as the Codes of Good Practice. However, the Mining Charter provides for other aspects to be measured which are not contained in the Codes of Good Practice.

2.3.3 Scorecard for the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry (Mining Charter Scorecard)

The Mining Charter (2004:3) introduced the Mining Charter Scorecard which is designed to facilitate the application of the Mining Charter. The Mining Charter Scorecard intends to reflect the spirit of the Mining Charter, and progress made in achieving the aims of the Mining Charter will be measured in terms of the Scorecard.

In a presentation at a conference held at Sandton on 24 March 2004, Mr B Swanepoel, Chief Executive of Harmony Gold Mining, was of the opinion that the purpose of the Mining Charter Scorecard is to demonstrate compliance with the Mining Charter. The Mining Charter, with its nine areas of scoring, is applicable to the local mining industry.

Bredell (2004) indicates that the Minister will take into account the entire Mining Charter Scorecard in decision making. The total performance of a company, in terms of the Mining Charter Scorecard, will play a significant role in respect of the conversion of 'old-order' rights to 'new-order' rights.

Mr Rocha, the then Chief Director of the Department of Minerals and Energy, in a presentation at a conference held in Johannesburg on 24 June 2003, conveyed that the Mining Charter Scorecard is an administrative tool which will assist applicants to comply with the Mining Charter and will assist the DME to measure applicants' compliance. The Mining Charter Scorecard will also be used as an enforcement tool,

once rights have been converted. This statement was confirmed by Ms T Muleza (2007) when she mentioned that the Mining Charter Scorecard was designed to facilitate the application of the Mining Charter requirements for the conversion of old-order mining rights into new-order mining rights. The Mining Charter Scorecard is used to measure and monitor the extent to which companies comply with the various targets set in the Mining Charter, utilizing a 'tick box approach'. The targets are set out in a table which provides blocks for checking whether or not a company has complied with the targets.

2.3.4 Regulations promulgated under the MPRDA

Dale *et al.* (2005: App1-App2) confirm that some elements of the Mining Charter also found their way into the provisions of the MPRDA Regulations, prescribing the content of the Social and Labour Plan (SLP) that must be filed together with an old-order mining right for conversion.

In terms of regulation 41 of the MPRDA (2002:23), the objectives of the SLP are to promote employment and advance the social and economic welfare of all South Africans, to contribute to the transformation of the mining industry and to ensure that holders of mining rights contribute towards the socio-economic development of the areas in which they are operating. Regulation 46 (2002:23-24) requires that a SLP must address three major areas:

- Human resources development;
- Local economic development; and
- Management of downscaling and retrenchment.

Ms S Brandt (2004) indicated that the pillars of the Mining Charter overlaps with the requirements to be addressed in the SLP, to be submitted by mining companies, in support of applications for conversion from old-order mining rights to new-order rights, as well as all new applications for mining rights. The overlaps are quite significant and have a long-term impact on mining companies. To clarify and illustrate the overlaps that occur, it was described as indicated in the table below:

Table 1: Overlap between the Mining Charter and the Social and Labour Plan

Mining Charter		***The MPRDA and Regulations***
The Scorecard		***The Social and Labour Plan***
1. Human Resources development Plan		Part 1: Preamble and introduction
2. Employment Equity		Part 2: Human Resources Development
3. Migrant Labour		Part 3: Local Economic Development Programmes
4. Mine Community and Rural Development		
5. Housing and Living Conditions		Part 4: Closure and retrenchment management
6. Procurement		
7. Ownerships and Joint Ventures		Part 5: Financial Provisions
8. Beneficiation		
9. Reporting		Part 6 Undertaking

2.3.5 Clarification of the application of the Broad-Based Socio-Economic Empowerment Charter (Clarification Document)

Subsequent to the publication of the Mining Charter, the DME released the Clarification Document on 14 July 2004. The purpose of this document was to clarify misconceptions that might have arisen as a result of the interpretation and application of the MPRDA and the Mining Charter with regard to unused rights and pending applications (Dale *et al.*, 2005:App-8).

The Clarification Document provides for specific BEE participation during the conversion of unused old-order rights and for pending applications for prospecting rights. This required BEE participation of 51% in former Stated-owned mineral rights and 26% for all new applications for prospecting rights (SA, 2004:3).

This only applied to the one-year transitional period (Department of Minerals and Energy, 2004:3). The transitional period, as determined in item 8 of Schedule II, Transitional Arrangements of the MPRDA (2002:108), came to an end on 30 April 2005, a year after the implementation of the MPRDA.

2.3.6 Social and Labour Plan Guidelines for the mining and production industries (SLP Guidelines)

In terms of the Social and Labour Plan (SLP) Guidelines for the mining and production industries (Department of Minerals and Energy, 2004:4), the purpose of the MPRDA is, amongst others, to transform the mining and production industries. To ensure effective transformation, the MPRDA requires the submission of a SLP as a prerequisite for the granting of mining or production rights. The SLP requires applicants to develop and implement human resources development programmes, employment equity plans, local economic development programmes and processes to save jobs and manage downscaling.

The purpose of the SLP Guidelines is to assist applicants for mining rights when preparing the prescribed SLPs. In addition, the objective of a SLP is to:

- Promote employment and advance social and economic welfare of all South Africans;
- Contribute to the transformation of the mining industry; and
- Ensure that holders of rights contribute towards the socio-economic development of the areas in which they are operating as well as the areas from which the majority of the workforce is sourced.

A SLP is valid until a closure certificate has been issued (Department of Minerals and Energy, 2004:4-5).

The Minister of Minerals and Energy, Ms Buyelwa Sonjica, in her budget vote to the National Assembly on 30 May 2007, mentioned that the DME utilises the MPRDA, through its requirements for a SLP, to intensify the struggle against poverty. She stated that it must be ensured that communities, where mining activities take place, must survive beyond the depletion of the ore-body. Mining companies are expected to act as catalyst for positive change in areas where there could be very few opportunities for economic and social development.

Brandt (2005) indicated that a SLP is a mechanism for demonstrating commitment to:

- Complying with the specific requirements of the MPRDA;
- Contributing to achieving the objectives of transformation within the minerals and mining industry;
- Specific targets and timeframes;

- Facilitate HDSA involvement at all levels of the operation;
- Facilitate women in mining-related occupations;
- Preferential procurement;
- Local economic development projects in specific timeframes; and
- Closure and retrenchment preparedness.

2.4 OTHER LEGISLATION, CODES AND GUIDELINES RELATED TO TRANSFORMATION OF THE MINING SECTOR

The Mining Charter (2002:7) indicates that other legislation is available that will assist with socio-economic empowerment.

Mr N Pretorius (2005), during a conference in Johannesburg, confirmed that, in addition to the Constitution and the MPRDA, the following legislation also plays a role in transformation:

- The Employment Equity Act 55 of 1998;
- The Competition Act 89 of 1998;
- The Skills Development Act 97 of 1998;
- The Preferential Procurement Policy Framework Act 5 of 2000,and
- The Broad-Based Black Economic Empowerment Act 53 of 2003

Below, a brief exposition of the key-related stipulations of these Acts will be made.

2.4.1 The Employment Equity Act 55 of 1998

The preamble to the Employment Equity Act 55 of 1998 recognises that as a result of apartheid and other discriminatory laws and practices, there are disparities in employment, occupation and income within the national labour market and that these disparities create pronounced disadvantages for certain categories of people that cannot be redressed simply by repealing discriminatory laws.

The preamble further states that the Act aims to:

- Promote the constitutional right of equity and the exercise of true democracy;
- Eliminate unfair discrimination in employment;
- Ensure the implementation of employment equity to redress the effects of discrimination;

- Achieve a diverse workforce broadly representative of the people of South Africa;
- Promote economic development and efficiency in the workforce; and
- Give effect to the obligations of South Africa as a member of the International Labour Organisation.

2.4.2 The Competition Act 89 of 1998

According to the preamble to the Competition Act 89 of 1998, it is recognised that apartheid and other discriminatory laws and practices resulted in excessive concentrations of ownership and control within the national economy, inadequate restraints against anti-competitive trade practices and unjust restrictions on full and free participation in the economy by all South Africans. The economy must be open to greater ownership by a larger number of South Africans. It indicates that credible competition law and effective structures to administer that law are necessary for an economy to function efficiently. An efficient, competitive economic environment, balancing the interest of workers, owners and consumers and focused on development, will be beneficial to all South Africans.

The purpose of the Competition Act 89 of 1998 is to:

- Provide all South Africans equal opportunity to participate fairly in the economy and achieve a more effective and efficient economy;
- Provide for markets consumers have access to, and can freely select the quality and variety of goods and services they desire;
- Create greater capability and an environment for South Africans to compete effectively on international markets;
- Restrain particular trade practices which undermine a competitive economy;
- Regulate the transfer of economic ownership in keeping with public interest;
- Establish independent institutions to monitor economic competition; and
- Give effect to the international law obligations of South Africa.

2.4.3 The Skills Development Act 97 of 1998

The purpose of the Skills Development Act 97 of 1998 is to provide an institutional framework to devise and implement national as well as sector and workplace strategies to develop and improve the skills of the South African workforce. It aims at

integrating those strategies within the National Qualifications Framework contemplated in the South African Qualifications Authority Act. It provides for learnerships that lead to recognised occupational qualifications. The Skills Development Act also provides for financing skills development by means of a levy-financing scheme and a National Skills Fund. It also provides for and regulates employment services.

2.4.4 The Preferential Procurement Policy Framework Act 5 of 2000

The Preferential Procurement Policy Framework Act 5 of 2000 gives effect to section 217 of the Constitution (1996) by providing a framework of the procurement policy as contemplated in the Constitution. Section 217(2) of the Constitution determines that the State is not prevented from implementing a procurement policy for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

2.4.5 The Broad-Based Black Economic Empowerment Act 53 of 2003 (BEE Act)

In terms of the BEE Act (2004:2), the purpose thereof is to establish a legislative framework for the promotion of BEE; to empower the Minister of Trade and Industry to issue codes of good practice and to publish transformation charters; to establish the BEE Advisory Council, and to provide for matters connected therewith.

The BEE Act is an enabling framework that allows for the development of Codes of Good Practice. The Codes of Good Practice provide a framework for the measurement of BBBEE across all sectors of the economy (Department of Trade and Industry, 2005:4).

According to Balshaw and Goldberg (2005:71), an important aspect of the BEE Act pertains to Transformation Charters which the Minister of Trade and Industry must publish in the Government Gazette for general information. The Minister of Trade and Industry must promote a Transformation Charter for a particular sector of the economy if the aforementioned Minister is satisfied that it has been developed by major stakeholders in that particular sector and that it complies with the objects of the BEE Act. The legislative framework is therefore designed to facilitate the

promulgation of the Codes of Good Practice and as such is primarily characterised as enabling legislation.

Ms T Muleza (2007) contended that the BEE Act is the cornerstone of BEE in South Africa. She indicated that the BEE Act aims to:

- Promote economic transformation to enable meaningful participation of black people in the economy;
- Achieve a substantial change in the racial composition of ownership and management structures and skilled occupations in existing and new enterprises;
- Increase the extent to which communities, worker and cooperatives own and manage enterprises;
- Increase the extent to which black women own and manage enterprises;
- Promote investment programmes;
- Empower rural and local communities; and
- Promote access to finance for BEE.

Ms Muleza (2007) also indicated that the BEE Act, through the Codes of Good Practice, provides a mechanism for measuring BEE.

2.4.6 The Codes of Good Practice

According to the Department of Trade and Industry (DTI) (2005:2), no framework exists for the measurement of BBBEE. Even though the strategy outlined a broad-based scorecard, with weightings, it did not contain detail on measurement principles and the application of the scorecard. Subsequently, the Codes of Good Practice was published in General Notice 112/2007 GG 29617 of 9 February 2007.

The Codes of Good Practice provides a standard framework for the measurement of BBBEE across all sectors of the economy which means that no industry will be disadvantaged over another when presenting their BEE credentials. The intention of the Codes of Good Practice is to level the playing field for all entities operating within the South African economy by providing clear and comprehensive criteria for measurement of BBBEE (Department of Trade and Industry, 2005:4).

According to the DTI (2005:6), since published, the Codes of Good Practice is binding on all organs of state and public entities. Therefore, Government must apply *the Codes of Good Practice when entering into decisions affecting the following:*

- Procurement;
- Licensing and concessions;
- Public-private partnerships; and
- Sale of state-owned entities.

By deduction, private sector enterprises must apply the Codes of Good Practice should they wish to interact with organs of the state and public entities in one or more of the activities mentioned above, including tendering for business and applying for licences and concessions (Department of Trade and Industry, 2005:6-7).

The stated purpose of the Codes of Good Practice is to provide principles and guidelines to assist and advise both the public and private sectors in their implementation of the objectives of BBBEE. The legislation has created an enabling framework, which is supplemented by the Codes of Good Practice, which provides the detail in respect of the implementation of BBBEE (Balshaw & Goldberg, 2005:72).

Booysen (2006) mentions that the Codes of Good Practice differ significantly from the Mining Charter. The Mining Charter is an attempt to provide regulatory certainty on BEE for the mining and minerals industry, while the BEE Act and the Codes of Good Practice is aimed at providing a uniform vision for BEE throughout the South African Economy.

2.5 CONCLUSION

This chapter focused on the legislation, charter and guidelines directly applicable to the South African mining and minerals industry. The Constitution provides the Government with a mandate to implement measures to redress the past injustices, imposed by the apartheid regime, and to achieve social and economic transformation in South Africa. As part of its commitment to give effect to this mandate, the Government enacted the MPRDA, which was implemented on 1 May 2004. The MPRDA has specific requirements with regard to transformation and it also introduced the Mining Charter. The Mining Charter imposes specific targets and timeframes to achieve transformation in the mining and minerals industry. The Mining

Charter focuses on skills development, socio-economic development of hosting and labour-sending communities, socio-economic development of all HDSAs from the proceeds of activities of the operations, participation in procurement, ownership, participation and management of mining and prospecting operations and participation in beneficiation. The DME also issued various documents to provide clarification on transformation requirements and guidelines for the preparation of SLPs. In addition, the regulations promulgated under the MPRDA provide guidance and direction on the transformation requirements to be addressed. Other legislation which has an impact on transformation in the mining and minerals industry was discussed briefly. It is noticeable that the Mining Charter and the Codes of Good Practice have a significant role to play in the transformation of the mining and minerals industry.

In the next chapter an in-depth look will be taken into the aims, objectives and targets of the Mining Charter and the Codes of Good Practice.

CHAPTER 3

BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY AND THE CODES OF GOOD PRACTICE

3.1 INTRODUCTION

In the previous chapter the legislation with regard to social and economic transformation applicable to the minerals and mining industry as well as the applicable charters and guidelines, were discussed. From the discussion it became evident that two major policy documents of the Government have a significant impact on the social and economic transformation of the minerals and mining industry. These are the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry (Mining Charter), which is governed by the Department of Minerals and Energy and the Codes of Good Practice on Black Economic Empowerment (Codes of Good Practice), which falls under the jurisdiction of the Department of Trade and Industry. In this chapter an in-depth look will be taken into the Mining Charter and the Codes of Good Practice and its aims and targets to determine whether any overlap occurs between the pillars of the Mining Charter and those of the Codes of Good Practice.

3.2 THE BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY (MINING CHARTER)

The notion of Broad-Based Black Economic Empowerment (BBBEE) lies at the heart of the initiative of the Government to transform the manner in which the South African economy operates. It envisages participation to be measured in terms of ownership, management and skills development, as well as the eradication of poverty (Badenhorst *et al.*, 2006:23-1).

Woolley (2005:23) mentions that the release of the Mining Charter in 2002 was a significant departure from the past approach of ownership control. The Mining Charter has stated obligations and targets with a level of participation that will ensure

a critical mass of black involvement which should be sufficient to ensure self-perpetuation of BBBEE.

In terms of section 100 of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA), the Minister of Minerals and Energy must, within 6 months from 1 May 2004, develop a Mining Charter. The Mining Charter must set the framework, targets and time-table for effecting the entry of Historically Disadvantaged South Africans (HDSAs) into the minerals and mining industry.

3.2.1 Development of the Mining Charter

Dale *et al.* (2006:MPRDA593), in their commentary on the Mining Charter, indicates that on 11 October 2003 representatives of the Department of Minerals and Energy (DME), the Chamber of Mines, the South African Mining Development Association and the National Union of Mineworkers signed a document recognising that the Mining Charter correctly reflects the outcome of the consultation process initiated by the Minister of Minerals and Energy.

The statutory obligation placed on the Minister of Minerals and Energy to develop the Mining Charter entails an obligation to develop a policy as to how administrative decisions are to be taken and this power of the Minister must be seen as separate from the power to adopt regulations in terms of the MPRDA. The Mining Charter represents an attempt to develop a charter as envisaged by the MPRDA (Badenhorst *et al.*, 2006:23-3-23-4).

The Mining Charter (2004:7-8) reflects the abovementioned, where it is stated that the signatories of the Mining Charter have developed the Mining Charter to provide a framework for progressing the empowerment of HDSAs in the mining and minerals industry. The signatories of the Mining Charter acknowledge the provisions of section 100 of the MPRDA, which states that to ensure the Government attains its objectives to redress historical social and economic inequalities, as stated in the Constitution (1996), the Minister of Minerals and Energy must develop the Mining Charter within six months from the date on which the MPRDA took affect.

To give effect to the Minister's obligation to develop the Mining Charter, the Mining Charter and Scorecard for the Broad-based Socio-Economic Empowerment Charter for the South African Mining Industry (Mining Charter Scorecard) were published in

General Notice No 1639/2004, Government Gazette No 26661 of 13 August 2004 (Dale *et al.*, 2006:App1).

The Mining Charter (2004:8) states that it applies to the South African mining industry. In turn, the Mining Charter gives effect to the BEE objectives of the MPRDA by setting a framework, targets and timetable for the entry of HDSAs into the mining industry (Muleza, 2007).

3.2.2 Vision of the Mining Charter

The Mining Charter (2004:6) indicates that all the actions and commitments set out in the Mining Charter are in pursuit of a shared vision of a globally competitive mining and minerals industry. It 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 Mining Charter is to create an industry that will proudly reflect the promise of a non-racial South Africa.

This finds echo in the mandate of the DME, where it is stated that its mandate is to provide services for effectual transformation and governance of minerals and energy industries for economic growth and development, thereby improving quality of life (Department of Minerals and Energy, 2007).

3.2.3 Preamble to the Mining Charter

During her budget vote on 30 May 2007, the Minister of Minerals and Energy (2007) indicated that, when the people of South Africa bestowed upon the Government the mandate to govern the country, the first step was to initiate the relevant reforms which would enable them to successfully affect the mandate of good governance and government. The minister stated that the time has now arrived to successfully implement the policies formulated which were mainly aimed at redressing the imbalances of the apartheid past.

The preamble to the Mining Charter (2004:6) confirms this as it recognizes:

- The history of South Africa, which resulted in blacks, mining communities and women largely being excluded from participating in the mainstream economy. The formal mining industry stated its intention to adopt a proactive strategy of change to foster BEE and transformation at the tiers of ownership,

management, skills development, employment equity, procurement and rural development;

- The imperative of redressing historical and social inequalities as stated in the Constitution (1996);
- The policy objective stated in the MPRDA is to expand opportunities for HDSAs to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources;
- The scarcity of skills has been identified as a barrier to enter into the mining sector; and
- The slow progress made with employment equity in the minerals and mining industry.

The preamble to the Mining Charter (2004:7) also notes that:

- It is the Government's stated policy that, whilst playing a facilitating role in the transformation of the ownership profile of the mining industry, it will allow the market to play a key role in achieving this end and it is not the Government's intention to nationalise the mining industry;
- The key objectives of the MPRDA and the Mining Charter will only be realised when South Africa succeeds in the international marketplace; and
- Transfer of ownership must take place in a transparent manner and transfer of ownership must be for fair market value.

Dale *et al.* (2006:App9) confirm that the points of departure, as contained in the preamble provide general guidelines on how the Mining Charter and Mining Charter Scorecard should be implemented.

3.2.4 Objectives of the Mining Charter

Ms B Sonjica, Minister of the DME, indicated that the pillars of the Mining Charter are aimed at benefiting HDSAs in mining, namely: minimum requirements of ownership, developing human resources, furthering employment equity, improving housing and living conditions of the communities affected by mining and to ensure preferred HDSA procurement status. The Mining Charter also advances the local beneficiation of South Africa's mineral products. The overarching objective of the Mining Charter is to create a non-racial mineral and mining industry (Department of Minerals and Energy, 2006:4).

Badenhorst *et al.* (2006:23-3) confirms that the Mining Charter must describe how the objectives of the MPRDA should be achieved. The objectives consist of the following:

i) Promote equitable access to the nation's mineral and petroleum resources to all the people of South Africa;

ii) Substantially and meaningfully expand opportunities for HDSAs, including women, to enter into the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources;

iii) Promote economic growth and mineral and petroleum resources development in South Africa;

iv) Promote employment and advance the social and economic welfare of all South Africans; and

v) Ensure that holders of rights contribute towards the socio-economic development of the area in which they are operating.

The aforementioned is confirmed in the Mining Charter (2004:9) where it indicates that its objectives are to promote equitable access to the nation's mineral resources to all the people of South Africa; to substantially and meaningfully expand opportunities for HDSAs, including women, to enter into the mining and minerals industries and to benefit from the exploitation of the nation's mineral resources; to utilise the existing skills base for the empowerment of HDSAs; to expand the skills base of HDSAs in order to serve the community; to promote employment and advance the social and economic welfare of mining communities and the major labour-sending area; and to promote beneficiation of South Africa's mineral commodities.

These objectives were partly gleaned from the provisions of section 2 of the MPRDA and also find an echo in the prescribed social and labour plan which must be lodged in support of applications for the conversion of old-order mining rights (Dale *et al.*, 2006:App9).

3.2.5 Nine pillars of the Mining Charter

Ms T Muleza (2007), an attorney at the firm Bowman Gilfillan, indicated that the Mining Charter targets the entire mining operation by setting standards in respect of nine pillars. The nine pillars of the Mining Charter is described as human resources

development; employment equity; migrant labour; mine community and rural development; housing and living conditions; procurement; ownership and joint ventures; beneficiation; and reporting.

From the abovementioned it is evident that the Mining Charter consists of nine pillars. The detail of each individual pillar of the Mining Charter will be discussed in the section that follows directly hereafter.

3.2.5.1 Human Resources Development

The Mining Charter records the existence of a number of problems and maps out a way in which these problems should be addressed by all stakeholders (Dale *et al.*, 2006:App12).

During a speech at the Mining Indaba, Ms B Sonjica, Minister of the DME, recognised the challenge of skills shortage throughout the world, but mentioned that she is convinced that skills development is a challenge for all stakeholders in the mining industry. Collective solutions should be found to this challenge in the short to medium term (Department of Minerals and Energy, 2007:3).

This sentiment is reverberated in the Mining Charter (2004:10-11) when it states that the South African labour market does not provide enough of the skills required by the mining industry and that stakeholders must work together to fill the skills gap. This should be achieved in the following manner:

- Interface with statutory bodies such as the Mine Qualifications Authority (MQA), in the formulation of comprehensive skills development strategies which include a skills audit;
- Interface with education authorities and provide scholarships to promote mining-related educational advancement, especially in the fields of mathematics and science at school level;
- Provide scholarships and to ensure that the number of registered learnerships in the mining industry rises from its current levels of 1200, to not less than 5000 learnerships by March 2005;
- The provision, through the MQA, of skills training opportunities to miners during employment in order to improve their income-earning capacity after mine closure;

- The Government's commitment, in its bi-lateral relations with relevant countries, to secure training opportunities for HDSAs, as well as exchange opportunities with mining companies operating outside South Africa;
- Through the MQA and in collaboration with academic institutions, DME, Non-Governmental Organisations and the Gender Commission, must provide training courses in mining entrepreneur skills;
- Mining companies must offer every employee the opportunity to become functionally literate and numerate by the year 2005;
- Career paths must be implemented to provide HDSAs opportunities to progress in their chosen careers; and
- Develop systems through which employment groups can be mentored as a means of capacity building.

In supporting this, Adv S Nogxina, the Deputy Director General of the DME (2006), mentioned in his address to the Chamber of Mines that, in order to empower people to enable them to find employment, diversified and comprehensive skills development must be promoted. The DME will continue to support other institutions involved in education and training, including training programmes below education at tertiary level.

3.2.5.2 Employment Equity

In terms of the Mining Charter (2004:11-12), companies must publish employment equity plans and achievements. Mining companies must subscribe to the establishment of targets, particularly in junior and senior management categories and spell out their plans for employment equity at management level and to achieve 40% HDSA participation in management level by 30 April 2009. Subsidiaries of multinational companies must focus on overseas placement and training programmes for HDSAs. A talent pool of HDSAs must be identified and these HDSAs must be fast tracked, which should include quality operational exposure. The inclusion and advancement of women to participate in mining and to achieve 10% women participation in mining by 30 April 2009 must be addressed, and setting and publishing targets and achievements are required.

Dale *et al.* (2006:App13) confirm the abovementioned in the interpretation of the Mining Charter, in which it is stated that the Mining Charter contains undertakings

that mining companies must publish employment equity plans and achievements to establish targets for HDSAs in the management of companies, to ensure higher levels of participation and advancement of women in the mining industry and to identify a talent pool and to fast track those included in the talent pool. It is also indicated that South African subsidiaries of multinational companies undertook to focus on HDSAs in their overseas placement and training.

Ms B Mabusela (2007) indicated that employment equity should provide plans to address the targets and timeframes imposed by the Mining Charter and details on how these targets would be met.

3.2.5.3 Migrant Labour

In respect to foreign migrant labour, the Mining Charter (2004:12) reflects that non-discrimination against foreign migrant labour must be ensured. The Mining Charter Scorecard (2004:4) indicates that mining companies must subscribe to government and industry agreements to ensure non-discrimination against foreign migrant labour.

The aforementioned statement will find applicability in Interstate agreements to non-discriminating conditions of employment. An example of such an agreement is that agreement between South Africa and Mozambique in which it is agreed that Mozambican workers will not be treated less favourably in respect of remuneration, food, accommodation, etc. Therefore the Mining Charter will bind mining companies to agreements such as these, and mining companies are under an obligation to ensure non-discrimination against foreign migrant labour (Barker, 2004:11-12).

3.2.5.4 Mine Community and Rural Development

The Deputy President of South Africa, Ms Phumzile Mlambo-Ngcuka (2005), indicated that all parties have agreed on rural development and that focus should be placed on infrastructure planning, budgeting and expenditure in the three spheres of government for economic infrastructure (transport, communications and power) and social infrastructure (education, health and other facilities). It was also agreed to implement skills training and to create the capacity to take advantage of economic opportunities. The training is intended to include generic components for employment, for self-employment and training for disabled ex-mineworkers.

Ms B Mabusela (2007) mentions that the main purposes of local economic development are to change the quality of life of the people, eradicate poverty through sustainable projects, address an identified need within a community and to share the wealth created with all South Africans.

The Mining Charter (2004:12) requires stakeholders, in partnership with the South African Government, to co-operate in the formulation of integrated development plans for communities where mining takes place, as well as within major labour-sending areas, with special emphasis on development of infrastructure.

Mining companies will have to show that they have made an effort to engage the local mining community and major labour-sending area communities. Engagement with local authorities should be aimed at the formulation of integrated development plans (Dale *et al.,* 2006:App14).

3.2.5.5 Housing and Living Conditions

In terms of the Mining Charter (2004:12), stakeholders, the Mine Health and Safety Council, the Department of Housing and organised labour must establish measures for improving the standard of housing, which include the upgrading of hostels, conversion of hostels to family units and the promotion of homeownership options for mine employees. Measures for improving nutrition of mine employees must also be established.

In terms of the Mining Charter, a plan must be provided on the promotion of homeownership amongst employees. Where employees are accommodated in hostels, plans must be provided on upgrading these hostels. In addition, all plans should be integrated with the plans of the local municipality (Ntombela, 2007).

3.2.5.6 Procurement

Ms D Ntombela (2007), Chief Director Mineral Regulation and Administration in the DME, defines a procurement progression plan as a plan that gives HDSA suppliers preferred status and which identifies current levels of procurement in terms of capital goods, consumables and services. It is a commitment to a progression of procurement over a 3 to 5-year period.

The Mining Charter (2004:13) breaks procurement down into three levels which consist of capital goods, services and consumables. HDSAs must be given preferred supplier status at all three levels. Stakeholders undertake to:

a) Identify current levels of procurement from HDSA companies;
b) Commit to a progression of procurement from HDSA companies over a 3 to 5-year time frame reflecting the genuine value added by the HDSA provider;
c) Encourage existing suppliers to form partnerships with HDSA companies, in instances where no HDSA company tenders to supply goods or services; and
d) Help develop HDSA procurement capacity and access the DTI assistance programmes to achieve this.

The challenges encountered with procurement are that it currently has the tendency of taking away procurement from the local people. The availability of capital goods, locally, poses a major risk. Procurement should be focused on major activities and not only on small-time projects, such as catering and cleaning (Mabusela, 2007).

3.2.5.7 Ownership and Joint Ventures

The Mining Charter (2004: 13-14) indicates that ownership and participation can be divided into active and passive involvement. Active involvement is described as HDSA-controlled companies which control 50% plus 1 vote and includes management control; strategic joint ventures or partnerships with 25% plus 1 vote, which include a management agreement that provides for joint management and control; and collective investment through employee share ownership schemes and mining dedicated unit trusts in which the majority ownership is HDSA-based. Passive involvement refers to ownership greater than 0% and up to 100%, with no involvement in management. In order to increase participation and ownership by HDSAs in the minerals and mining industry, the Mining Charter (2004:14-15) indicates that:

- 26% HDSA ownership of the mining industry assets must be achieved within 10 years (30 April 2014);
- Where a mining company has achieved HDSA participation in excess of any set target in a particular operation, such excess may be utilised to offset any shortfall in its other operations; and

- Transactions must take place in a transparent manner and for fair market value. Progress will be reviewed after 5 years to determine whether any further steps are required to achieve the 26% target.

Dale *et al.* (2006:App16) mention that the Mining Charter does not finally prescribe the way in which ownership of HDSAs in a mining company or a mining project will be measured. It is stated that ownership could be market share, measured by attributable units of South African production controlled by HDSAs. The Mining Charter allows for flexibility and provides that excess HDSA participation in a mining operation can be credited to other operations, owned by the same company.

In a presentation by Mr Mfetoane, Director at the DME during a workshop held at Gallagher Estate on 1 August 2007, he indicated that the DME considers a number of issues when evaluating any ownership transactions. The DME investigates the legal form of the transaction, the financing models used and the encumbrances on the BEE partner. The DME also determines who is claiming the credits and how broad the broad-based empowerment actually is. The amount of value circulating in the hands of the empowering partner and the actual financial loss (facilitation) suffered by the empowering party, are also considered.

3.2.5.8 Beneficiation

The wording in the Mining Charter leaves little doubt that the concept of beneficiation refers to activities beyond mining and processing and includes the production of final consumer goods (Dale *et al.* 2006:App16). The Mining Charter (2004:15) applies to mining companies in respect of their involvement in beneficiation activities, specifically activities beyond mining and processing, and includes production of final consumer products. Mining companies will be able to offset the value of the level of beneficiation achieved, against HDSAs ownership commitments. It was agreed to identify the mining companies' current level of beneficiation and to indicate to what extent they can grow the baseline level of beneficiation. The need for value addition to South Africa's mineral products has become a paramount issue in the economy and is seen as essential for its future development. If South Africa intends to remain competitive in a global sense, higher levels of value addition, firstly to primary minerals and secondly to processed minerals, are needed before products are exported. South Africa should endeavour to become more of an industrial power, especially bearing in mind the development of the two new giants, China and India. If

South Africa can develop a stronger and more diversified economy than at present, it should enable the country to deliver benefits of a higher standard of living to all South Africans, and to be able to compete on equal terms with other major players (Nogxina, 2006:11).

3.2.5.9 Reporting

In the Mining Charter (2004:16) it is recognised that the achievement of the objectives as set out in the Mining Charter, and as discussed in paragraph 2.4 above, entails an ongoing process and that reporting is required on an annual basis. A review mechanism was established which provides flexibility to the company's commitments. Dale *et al.* (2006:App18) add that these annual reports have to be verified by the external auditors of the mining company.

3.2.6 Mining Charter Scorecard

The Mining Charter Scorecard (2004:3) was introduced to give effect to the provisions contained in the Mining Charter and is designed to facilitate the application of the Mining Charter for the conversion of all "old-order rights" into "new-order rights", within a five-year conversion window period, but recognising the full ten-year period. The Mining Charter Scorecard will be used by the Minister of the DME in the decision-making process. The Mining Charter Scorecard will measure progress in respect of the nine pillars of the Mining Charter.

With regard to the Mining Charter Scorecard, Dale *et al.* (2006:App13-App16) mention that, in relation to employment equity plans, the Mining Charter Scorecard seems to look at a mining company's history as it was cast in the past tense. With regard to HDSAs in management, the mining company must provide a plan on how the targets will be achieved. Referring to mine community and rural development, the Mining Charter Scorecard requires mining companies to show the effort made to consult with mine and host communities, as well as the local authorities, in respect of integrated development plans. Regarding housing and living conditions, measures are required for improving the standard of housing, upgrading of hostels, conversion of hostels to family units and to promoting homeownership must be established whilst monitoring systems with regard to procurement. The Mining Charter requires 26% HDSA ownership of the mining industry assets within ten years and the Mining Charter Scorecard adds a further target of 15% HDSA ownership within five years.

Table 2 below provides detail on the pillars (elements) and its sub-elements, to be measured in terms of the Mining Charter Scorecard.

Table 2: The Mining Charter Scorecard:

DESCRIPTION	5 YEAR TARGET				10 YEAR TARGET
Human Resources Development					
• Has the company offered every employee the opportunity to be functional literate and numerate by the year 2005 and are employees being trained?	Yes		No		
• Has the company implemented career paths for HDSA employees including skills development plans?	Yes		No		
• Has the company developed systems through which empowerment can be mentored?	Yes		No		
Employment Equity					
• Has the company published its employment equity plan and reported on its annual progress in meeting the plan?	Yes		No		
• Has the company established a plan to achieve a target of HDSA participation in management of 40% within five years and is it implementing the plan?	Yes		No		
• Has the company identified a talent pool and is it fast tracking it?	Yes		No		
• Has the company established a plan to achieve the target for women participating in mining of 10% within 5 years and is it implementing the plan?	Yes		No		
Migrant Labour					
• Has the company subscribed to government and industry agreements to ensure non-discrimination against foreign labour?	Yes		No		
Mine community and rural development					
• Has the company co-operated in the formulation of integrated development plans and is the company co-operating with government in the implementation of these plans for 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 expenditures and show a plan).	Yes		No		
Housing and living conditions					
• For company provided housing has the mine, in consultation with stakeholders, established measures for improving the standard of housing, including the upgrading of the hostels, conversion 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?	Yes		No		
• For company provided nutrition has the mine established measures for improving the nutrition of mine employees? Companies will be required to indicate what they have done to improve nutrition and show a plan to progress the issue over time and is implementing the plan?	Yes		No		
Procurement					
• Has the mining company given HDSA's preferred supplier status?	Yes		No		
• Has the mining company identified current level of procurement from HDSA companies in terms of capital goods, consumables and services?	Yes		No		
• Has the mining company indicated a commitment to a progression of procurement from HDSA companies over a 3 – 5 year time frame in terms of capital goods, consumables and services and to what extent has the commitment been implemented?	Yes		No		
Ownership & Joint Ventures					
• Has the mining company achieved HDSA participation in terms of ownership for equity or attributable units of production of 15 percent in HDSA hands within 5-years and 26 percent in 10-years?	Yes		No		
Beneficiation					
• Has the mining company identified its current level of beneficiation?	Yes		No		
• Has the mining company established its base line level of beneficiation and indicated the extent that this will have to be grown in order to qualify for an offset?	Yes		No		
Reporting					
• Has the company reported on an annual basis its progress towards achieving its commitments in its annual report?	Yes		No		

(Source: Mining Charter, 2004:4)

3.3 THE CODES OF GOOD PRACTICE ON BLACK ECONOMIC EMPOWERMENT

The Codes of Good Practice on Black Economic Empowerment (Codes of Good Practice) finds its origin in section 9 of the Broad-Based Black Economic Empowerment Act 53 of 2003 (BEE Act). Section 9 of the BEE Act determines that the Minister of Trade and Industry may issue Codes of Good Practice on Black Economic Empowerment (BEE) (SA, 2004:9).

The Department of Trade and Industry (DTI) (2007:1) indicates that when the BEE Act was promulgated, a number of sectors of the economy had drafted industry charters on BEE and transformation.

Some of the industry charters contained scorecards loosely based on the broad-based scorecard and other were merely written undertakings of commitment to transformation. In addition, some of these charters were drafted prior to the release of the BEE strategy and stakeholders therefore had little point of reference in terms of broad-based elements and weightings. It was apparent that issues surrounding the measurement and acceleration of BEE had to be addressed (Department of Trade and Industry, 2007:1).

The BEE Act, which allows for the development of Codes of Good Practice, is an enabling legislative framework. The Codes of Good Practice provide a framework for the measurement of BBBEE across all sectors of the economy. This has the effect that no industry will be disadvantaged over another when presenting BEE credentials (Department of Trade and Industry, 2007:8-9).

Balshaw and Goldberg (2005:72) confirm the aforementioned by indicating that it is the stated purpose of the Codes of Good Practice to provide principles and guidelines to assist and advise both the public and private sectors in their implementation of the objectives of BBBEE. The legislation has created the enabling framework, which is supplemented by the Codes of Good Practice, that provides the detail with regard to the implementation of BBBEE.

3.3.1 Applicability of Codes of Good Practice

According to the DTI (2007:12-13), the Codes of Good Practice is binding on all organs of state and public enterprises. This means that, as provided in section 10 of the BEE Act, Government must apply the Codes of Good Practice when entering into decisions affecting the following areas:

- Procurement;
- Licensing and concessions;
- Public-private partnerships; and
- Sale of state-owned assets.

Therefore by deduction, private sector enterprises must apply the Codes of Good Practice should they wish to interact with organs of state and public enterprises in one or more of the matters referred to above (Department of Trade and Industry. 2007:12-13).

The Codes of Good Practice will be applied by decision makers when reporting and making economic decisions. As an example, the Codes of Good Practice will be implemented by decision makers in reporting on BEE spend and initiatives, making economic decisions based on BEE criteria and selecting and implementing BEE initiatives. As a result the Codes of Good Practice is important to the management of enterprises interacting with public and private sector entities, making decisions based on the Codes of Good Practice (Department of Trade and Industry, 2007:13).

3.3.2 Organisation and Content of the Codes of Good Practice

According to the Codes of Good Practice (2007:10), the elements of BBBEE are organised in ten individual Code Series. Each Codes Series in turn, consist of one or more Statements, totalling 20 Statements overall.

A summary of the organization and contents of these Codes is provided in the Interpretive Guide to the Codes of Good Practice. Details of the organisation and contents of the Codes are provided in Table 3 below (Department of Trade and Industry, 2007:10):

Table 3: Guide to the organisation and contents of the Codes of Good Practice

CODE	STATEMENT
Code 000 Framework for the measurement of BBBEE (carries general principles and Generic Scorecard)	Statement 000 The general principles and the generic scorecard
	Statement 003 Guidelines for the development and gazetting of transformation charters and sector codes
	Statement 004 Guidelines for special entities
Code 100 Measurement of the Ownership Element of BBEEE (Measures the effective ownership of enterprises by black people)	Statement 100 The general principles for measuring ownership
	Statement 102 The recognition in the sale assets
	Statement 103 The recognition of equity equivalents for multinationals
Code 200 Measurement of the Management Control Element of BBBEE (measures effective control of enterprises by black people)	Statement 200 The general principles for measuring control
Code 300 Measurement of the Employment Equity Element of BBBEE (Measures initiatives intended to achieve equality in the workplace)	Statement 300 The general principles for measuring employment equity
Code 400 Measurement of the Skills Development Element of BBBEE (Measures the extent to which employees carry out initiatives designed to develop the competencies of black people)	Statement 400 The general principles for measuring skills development
Code 500 Measurement of the Preferential Procurement Element of BBBEE (Measures the extent to which enterprises buy goods from BEE-compliant suppliers)	Statement 500 The general principles for measuring preferential procurement
Code 600 Measurement of the Enterprise Development Element of BBBEEE (Measures the extent to which enterprises carry out initiatives aimed at contributing to enterprise development)	Statement 600 The general principles for measuring enterprise development
Code 700 Measurement of the Socio-Economic Development Element of BBBEE (Measures the extent to which enterprises carry out initiatives contributing to socio-economic development and promoting access to the economy for black people)	Statement 700 The general principles for measuring socio-economic development
Code 800 Qualifying Small Enterprises	Statements 800 to 807 General principles for qualifying small enterprises in all the elements of the scorecard
Code 900 Public-Private Partnerships	To be gazetted as a code once aligned with the generic codes

(Source: Department of Trade and Industry, 2007:10)

3.3.3 Codes and Statements contained within the Codes of Good Practice

Applying the Codes of Good Practice to an enterprise simply means that an enterprise will be measured in accordance with a broad-based scorecard, contained in the Codes therein. Hence a measured enterprise's BEE status will be measured according to the targets and weightings contained in the applicable broad-based scorecard, as well as the measurement principles contained in the corresponding Statements. A measured enterprise will receive a score out of 100, which will confer upon it a corresponding BEE status according to its BEE contributions (Department of Trade and Industry, 2007:14).

3.3.3.1 Code Series 000: Framework for measuring BBBEE:

Code Series 000 provides the framework for measuring BBBEE and contains Statements 000, 003 and 004. These Statements are discussed below.

3.3.3.1.1 Statement 000 – the organisation of the Codes of Good Practice, the elements of BBBEE and the Generic Scorecard

According to the DTI (2007:23), Statement 000 resolves certain fundamental and key issues surrounding BBBEE and the application thereof, by outlining the framework in which the measurement of BBBEE must take place. These interpretation principles outline key principles with respect to fronting, the key principle being that substance must always take precedence over form. In addition, key generic measurements principles are provided.

The Codes of Good Practice (2007:7) indicates that Statement 000 is arranged in the following manner:

Objectives of Statement 000: This is stated as the specification on interpretative principles of BBBEE, the application of the Codes of Good Practice and the basis of measurement, the specification of the qualifying thresholds to qualify as exempted micro-enterprises (EME) or qualifying small enterprises (QSE). It also provides the method of measuring start-up enterprises, provides the elements of BBBEE to be measured in terms of the Generic Scorecard, and provides the Generic Scorecard. The statement also provides the basis for determining compliance with the Codes of

Good Practice, and specifies the transitional period and the duration of the Codes of Good Practice (SA, 2007:8).

Key principles: The Codes of Good Practice (2007:8) states that it is a fundamental principle that substance takes precedence over form and that interpretation should be consistent with the requirements of the BEE Act. The basis for measurement under the Codes of Good Practice is the BBBEE compliance at the time of measurement. Any misrepresentation may lead to the disqualification of the entire scorecard and any initiatives which split, separate or divide enterprises to ensure eligibility as an EME, QSE or start-up enterprise, may also lead to disqualification of the entire scorecard. Evidence or supporting documents must be provided to support initiatives.

Application of the Codes of Good Practice: The Codes of Good Practice apply to all public entities, any public trading entity which undertakes any business with any organ of state, public entity or any other enterprise. The Codes of Good Practice also applies to any enterprise that undertakes any business, directly or indirectly, with any entity which is subject to measurement in terms of the Codes of Good Practice (SA, 2007:9).

Eligibility as an Exempted Micro-Enterprise (EME): Any enterprise with a total annual revenue of R5 million or less qualifies as an EME and is deemed to have a BBBEE status of a "Level Four Contributor". Should an EME ownership by black people be more than 50%, such EME will receive the status of a "Level Three Contributor" (SA, 2007:9).

Eligibility as a Qualifying Small Enterprise (QSE): Any enterprise with an annual total revenue of between R5 million and R35 million, qualifies as a QSE. A QSE must select any four of the seven Elements of BBBEE for the purpose of measurement under the QSE Scorecard (SA, 2007:9-10).

Start-up Enterprises: The Codes of Good Practice (2007:10) states that a start-up enterprise must be measured as an EME for the first year and also has a BBBEE status as a "Level Four Contributor". However, independent confirmation must be provided that it is indeed a start-up enterprise. If a start-up enterprise tenders for a contract with a value higher than R5 million, but less than R35 million, the QSE Scorecard must be submitted.

The Elements of BBBEE in terms of the Generic Scorecard: The Codes of Good Practice (2007:10) indicates the seven elements of BBBEE as ownership, management and control, employment equity, skills development, preferential procurement, enterprise development and socio-economic development.

The Generic Scorecard: Balshaw and Goldberg (2005:75) indicate that the relevant concepts and construct for the application of the Generic Scorecard include:

- Core components;
- BBBEE elements;
- Weightings;
- Code references;
- Indicators;
- Indicator weightings;
- Targets;
- Bonus and preferential weighting provisions;
- Sub-minimum scores; and
- Recognition levels.

According to the Codes of Good Practice (2007:11), the Generic Scorecard contains the elements of the scorecard and the weightings. Table 4 provides a summary of the elements and provides the Code Series in which the mechanism for measurement of each element is specified.

Table 4: Elements, weightings and Code Series references of the Generic Scorecard

Element	**Weighting**	**Code series reference**
Ownership	20 points	100
Management Control	10 points	200
Employment Equity	15 points	300
Skills Development	15 points	400
Preferential Procurement	20 points	500
Enterprise Development	15 points	600
Socio-Economic Development Initiatives	5 points	700

The Codes of Good Practice (2007:11) indicates that the overall performance of a measured entity against the Generic Scorecard is used to obtain the BBBEE Status of the entity, as described in Table 5.

Table 5: Qualification of BBBEE Status

BBBEE Status	Qualification on the Generic Scorecard	BBBEE recognition level
Level One Contributor	≥100 points	135%
Level Two Contributor	≥85 points but <100 points	125%
Level Three Contributor	≥75 points but <85 points	110%
Level Four Contributor	≥65 points but <75 points	100%
Level Five Contributor	≥55 points but <65 points	80%
Level Six Contributor	≥45 points but <55 points	60%
Level Seven Contributor	≥35 points but <45 points	50%
Level Eight Contributor	≥25 points but <35 points	10%
Non-Compliant Contributor	<30 points	0%

Enhanced recognition for certain categories of black people: Through the Codes of Good Practice, various categories appear which advance the interest of certain categories of black people, including women, which should comprise between 40% and 50% of the beneficiaries of all the elements of the Generic Scorecard. This also applies to black people with disabilities, black youth, black people living in rural areas and unemployed black people, who must form between 2% and 3% of the beneficiaries of all the Elements of the Generic Scorecard (SA, 2007:11).

Framework for the accreditation of BEE verification agencies: The Codes of Good Practice (2007:11-12) determines that the DTI will issue guidelines on the BEE compliance verification process. Accreditation of BEE verification agencies will be conducted by South African National Accreditation System (a national accreditation body). The DTI also encourages the establishment of an independent industry body that will provide guidance to the verification industry. The DTI and the Accreditation Body will implement the mechanisms required to ensure that Verification Certificates are accurate and reliable. In addition, the DTI will establish a publicly accessible database containing information underlying each Verification Certificate.

Transitional period: For the first year after the commencement of Statement 000, a measured entity may elect to use the Generic Scorecard or the Transitional

Scorecard. Thereafter all BBBEE measurement will be subject to measurement in term of the Generic Scorecard (SA, 2007:12).

Duration of the Codes: The Codes of Good Practice remains in effect until it is amended, substituted or repealed in terms of the provisions of section 9 of the BEE Act. The Minister of the DTI will review the Codes of Good Practice after ten years, subsequent to its implementation. However, annual reviews will take place to monitor the implementation of BBBEE (SA, 2007:12).

3.3.3.1.2 Statement 003 – Guidelines for Developing and Gazetting Transformation Charters and Sector Codes

As transformation began to gain momentum in South Africa, various sectors of the economy began drafting documents of intent that summarised each sector's commitments with respect to transformation. There was no overall framework against which to benchmark the individual charters and no guidance on the level of stakeholder involvement. Statement 003 provides a comprehensive regulatory framework to guide the development of transformation charters (Department of Trade and Industry, 2007:27).

According to the Codes of Good Practice (2007:14), Statement 003 will provide objectives and procedures for the development and gazetting of Transformation Charters and Sector Codes. Statement 003 also provides a recommended model for the development of Transformation Charters. The objectives of Statement 003 are to specify the manner of gazetting Transformation Charters, the process for developing and gazetting Sector Codes, provide clarification on the status of Transformation Charters, Sector Codes and enterprise BBBEE plans. It also specifies the recommended approach for the development of Transformation Charters (SA, 2007:14).

Any Transformation Charter gazetted, is evidence of the commitment to promote BBBEE of the relevant sector and it is not binding on organs of the state or public entities. Even though a Transformation Charter may be gazetted for a specific industry, the Codes Series, as defined in the Codes of Good Practice, remain applicable to that sector. Statement 003 provides a recommended model for the development of Transformation Charters (Department of Trade and Industry, 2007:27-30).

3.3.3.1.3 Statement 004 – Scorecards for Specialised Enterprises

According to the DTI (2007:32), Statement 004 aims to address various shortcomings in BEE transactions concluded by providing incentives on the Ownership Scorecard to ensure inclusion of women, black designated groups and black new entrants, and further ensures that only real economic interest in the hands of black people is measured.

The objectives of Statement 004 are to provide guidance concerning the treatment of Ownership for Specialised Enterprises, such as companies limited by guarantee, Higher Education Institutions and Non-Profit Organisations. The general principles are that public entities and other enterprises wholly owned by the organs of State are incapable of evaluating black ownership. In addition, Higher Education Institutions are not public entities under the Public Finance Management Act of 1999 and they are also not able to measure black ownership. Non-profit Organisations and Public Benefit Organisations generally do not have beneficial ownership and where any of the aforementioned requires evidence of their BBBEE compliance, they will utilise the Adjusted Generic Scorecard. If these entities are also QSE, the Adjusted QSE Scorecard must be used (SA, 2007:20).

According to the Codes of Good Practice (2007:21), the Adjusted Generic Scorecard utilizes only six elements of the Codes of Good Practice. Details of the Adjusted Generic Scorecard are provided in Table 6 below.

Table 6: Elements, weightings and Code Series references of the Adjusted Generic Scorecard

Element	**Weighting**	**Code series reference**
Management Control	15 points	200
Employment Equity	15 points	300
Skills Development	20 points	400
Preferential Procurement	20 points	500
Enterprise Development	15 points	600
Socio-Economic Development Initiatives	15 points	700

In accordance with the Codes of Good Practice (2007:21), measured entities, subject to measurement in terms of the Adjusted QSE Scorecard, must choose four of the six Elements of BBBEE against which compliance with BBBEE will be measured. The Elements are indicated in Table 7.

Table 7: Elements, weightings and Code Series references of the Adjusted Qualifying Small Enterprise Scorecard

Element	Weighting	Code series reference
Management Control	25 points	200
Employment Equity	25 points	300
Skills Development	25 points	400
Preferential Procurement	20 points	500
Enterprise Development	25 points	600
Socio-Economic Development Initiatives	25 points	700

The status of socio-economic development contributions of these specialised enterprises is not dependant on the enterprise's scorecard result, but rather on the nature of the contribution itself and the identity of that contribution's beneficiaries (SA, 2007:21).

3.3.3.2 Code Series 100: Measurement of the Ownership Element of BBBEE:

Code Series 100 deals with the measurement of the Ownership Element of BBBEE and contains three Statements. Details on Statements 100, 102 and 103 are provided below.

3.3.3.2.1 Statement 100 – General Principles for Measuring Ownership

The objectives of Statement 100 are to specify the scorecard for measuring the ownership element of BBBEE and to define the key principles associated with ownership. It specifies the measurement principles applicable to the various enterprises and provides specific measurement principles applicable to equity instruments. The Statement also specifies the formula for measuring voting rights, economic interest, realisation points and bonus points. An enterprise receives points for participation of black people in its rights to ownership and black people may hold

rights in a measured entity as direct participants, or through participation in some form of business (SA, 2007:23-24).

Tait (2006) mentions that the ownership element of BEE is measured using the Ownership Scorecard. When the business being measured is a QSE, the scorecard used differs from the Ownership Scorecard.

The Codes of Good Practice (2007:24-35) indicates that black participation in Broad-Based Ownership Schemes, Employee Share Ownership Schemes and Trusts are also measurable in terms of the Ownership Scorecard. Measured entities have the option to include or exclude Private Equity Funds, Section 21 Companies and companies with limited guarantees from measurement in terms of its Ownership Scorecards.

The Ownership Scorecard provides for the allocation of bonus points under certain circumstances. An example of such an instance is that a measured entity with 25% black economic interest, can receive a maximum of 2 bonus points for a 10% holding of economic interest by black new entrants (Department of Trade and Industry, 2007:24-35).

Statement 100 contains rules on Broad-Based Ownership Schemes, Employee Share Ownership Schemes, Trusts, Employee Schemes as well as measurement of voting rights, economic interest, calculation of net value, sale or loss of shares by black participants and calculation of bonus points (SA, 2007:30:35).

Balshaw and Goldberg (2005:77) summarize Statement 100 on Equity Ownership by stating that it recognises and measures the Ownership Element of an entity with respect to voting rights and economic interest associated with that particular equity holding. Voting rights afford the right to determine the strategic and operational policies of an enterprise, while economic interest results in the accumulation of wealth by black people in terms of either benefits or distribution schemes.

The ownership scorecard provides the indicators and method for calculating the ownership score.

Table 8: Ownership Scorecard

Category	Ownership indicator	Weighting points	Compliance target
2.1	Voting rights		
	2.1.1 Exercisable voting rights in the enterprise in the hands of black people	3	25% + 1vote
	2.1.2 Exercisable voting rights in the enterprise in the hand of black women	2	10%
2.2	Economic interest		
	2.2.1 Economic interest of black people in the enterprise	4	25%
	2.2.2 Economic interest of black women in the enterprise	2	10%
	2.2.3 Economic interest of the following black natural people in the enterprise	1	25%
	2.2.3.1 Black designated people		
	2.2.3.2 Black participants in employee ownership schemes		
	2.2.3.3 Black beneficiaries of broad-based ownership schemes; or		
	2.2.3.4 black participants in co-operatives		
2.3	Realisation points		
	2.3.1 Ownership fulfilment	1	Refer to paragraph 10.1
	2.3.2 Net value	7	Refer to Annexure C paragraph 4
2.4	Bonus points		
	2.4.1 Involvement in the ownership of the enterprise of black participants	2	10%
	2.4.2 Involvement in the ownership of the enterprise of black participants:	1	10%
	2.4.2.1 in employee ownership schemes;		
	2.4.2.2 of broad-based ownership schemes; or		
	2.4.2.3 co-operatives		

(Source: Codes of Good Practice, 2007:23)

3.3.3.2.2 Statement 102 – Recognition of the Sale of Assets

According to the Codes of Good Practice (2007:37), the objectives of Statement 102 set out the conditions where sale of assets, equity instruments and other businesses will be recognised and indicate how ownership points will be determined.

Statement 102 provides an alternative avenue for black people to acquire ownership and control of enterprises and economic resources. This statement defines specific requirements for recognition of ownership resulting in the disposal of assets or businesses to an associated enterprise (Department of Trade and Industry, 2007:46).

A key principle in the recognition of ownership in the sale of assets is that a seller may transfer the benefit of any recognition earned to another enterprise that is part of the same group structure. The transfer cannot be reversed and can only have one recipient (Department of Trade and Industry, 2007:48).

3.3.3.2.3 Statement 103 – Recognition of Equity Equivalents for Multinationals

The DTI (2007:49) indicates that multinationals in South Africa are bound by global practice regarding the sale of shares and Statement 103 provides an alternative means of contributing towards the Ownership Element of BBBEE. This allows South African operations of multinationals to compete with other South African businesses. It is expected that South African multinationals must sell equity in fulfilment of the objectives of BBBEE. It is a key principle of Code 100 that foreign multinationals, which have no restrictions on their ability to sell equity in countries in which they operate, should do so in their South African operations.

The objectives of Statement 103 of the Codes of Good Practice (2007:41) are to define the means by which multinationals may apply for recognition of equity equivalent programmes and specify how the contribution will be measured towards contributing to the Ownership Element of BBBEE.

3.3.3.3 Code Series 200: Measurement of the Management Control Element of BBBEE

Code Series 200 deals with the measurement of the Management Control Element of BBBEE and consists of Statement 200.

Statement 200: General Principles for Measuring Management Control:

The objectives of Statement 200 are to specify the Management Element of BBBEE; to define the key measurement principles associated with the Management Control Element; and to provide calculations for measuring compliance (SA, 2007:46).

According to the DTI (2007:53), the Management Control Element of the Generic Scorecard aims at addressing various key issues relating to black management and control of enterprises, which consist of:

- Representation of black people at executive board level;

- Involvement of black people in daily operations and key strategic decision making at the most senior level;
- Black people represented in positions that are key to the functioning of companies; and
- The inclusion of women in daily operations and strategic decision making at the most senior level.

Tait (2006) contends that the recognition of management control in Statement 200 seeks to ensure that black people have sufficient influence on the strategic direction and core management of the enterprise and it draws a distinction between participation on the board of an enterprise and executive management participation.

The Codes of Good Practice (2007:46) provides guidance on the definition of senior top management, which is indicated as positions that include chief executive officers, chief operating officers, chief financial officers and people holding similar positions. Guidance on top management includes, amongst others, positions such as chief information officers, heads of marketing, heads of sales and heads of human resources.

The management control scorecard provides the indicators and method for calculating the ownership score.

Table 9: Management Control Scorecard

Category	**Management control indicator**	**Weighting points**	**Compliance target**
2.1	Board participation		
	2.1.1 Exercisable voting rights of black board members using the adjusted recognition for gender	3	50%
	2.1.2 Black executive directors using the adjusted recognition for gender	2	50%
2.2	Top Management		
	2.2.1 Black senor top management using the adjusted recognition for gender	3	40%
	2.2.2 Black other top management using the adjusted recognition for gender	2	40%
2.3	Bonus points		
	Black independent non-executive board members	1	40%

(Source: Codes of Good Practice, 2007:46)

3.3.3.4 Code Series 300: Measurement of the Employment Equity Element of BBBEE

The measurement of the Employment Equity Element of BBBEE is dealt with in Code Series 300. This code series consists of Statement 300, which is discussed below.

Statement 300: General Principles for Measuring Employment Equity:

Ms L Tait (2006) expressed the view that employment equity is a mechanism used to achieve equity in the workplace by promoting equal opportunities and fair treatment to redress the disadvantages in employment experienced by black people.

Statement 300 provides the scorecard for measuring Employment Equity contributions to BBBEE. In addition, Statement 300 also defines the key measurement principles for measuring Employment Equity and the formula for calculating the score for Employment Equity. The information submitted to the Department of Labour under the Employment Equity Act 55 of 1998, must be used in calculating the Employment Equity score of a measured entity (SA, 2007:51). The DTI (2007:58) indicates that the Employment Equity Element of the Generic Scorecard intends to address key matters relating to the representation of black employees.

Table 10: Employment Equity Scorecard

Category	Measurement criteria	Weighting points	Compliance target	
			Years 0-5	Years 6-10
2.1.1	Black disabled employees as a percentage of all employees using the adjusted recognition for gender	2	2%	3%
2.1.2	Black employees in senior management as a percentage of all employees using the adjusted recognition for gender	5	43%	60%
2.1.3	Black employees in middle management as a percentage of all employees using the adjusted recognition for gender	4	63%	75%
2.1.4	Black employees in junior management as a percentage of all employees using the adjusted recognition for gender	4	68%	80%
2.1.5	Bonus points for meeting or exceeding the EAP targets in each category under 2.1.1. to 2.1.4	3		

(Source: Codes of Good Practice, 2007:55)

3.3.3.5 Code Series 400: Measurement of the Skills Development Element of BBBEE

The purpose of Code Series 400 is to measure the Skills Development Element of BBBEE and contains Statement 400.

Statement 400: General Principles for Measuring Skills Development:

The objectives of Statement 400 are to specify the scorecard for measuring the Skills Development Element of BBBEE; define the key measurement principles; and provide the formula for measuring Skills Development (SA, 2007:55).

Skills Development refers to the development of core competencies in black people to facilitate their interaction in the strategic business objectives of the organisation, as well as the mainstream economy. This element focuses on core and technical skills that would enable black people to participate meaningfully in the broader economy (Balshaw & Goldberg, 2005:79).

The DTI (2007:64) states that the Skills Development Element of the Generic Scorecard intends to address a number of key issues in the representation of black people.

Table 11: Skills Development Scorecard

Category	Skills development element	Weighting points	Compliance target
2.1.1	Skills development expenditure on any program specified in the Learning Programme Matrix		
	2.1.1.1 Skills development expenditure on learning programmes specified in the Learning Programme Matrix for black employees as a percentage of leviable amount using the adjusted recognition for gender	6	3%
	2.1.1.2 Skills development expenditure on learning programmes specified in the Learning Programme Matrix for black employees with disabilities as a percentage of leviable amount using the adjusted recognition for gender	3	0.3%
2.1.2	Learnerships		
	2.1.2.1 Number of black employees participating in learnerships or Category B, C and D Programmes as a percentage of total employees using the adjusted recognition for gender	6	5%

(Source: Codes of Good Practice, 2007:60)

3.3.3.6 Code Series 500: Measurement of the Preferential Procurement Element of BBBEE

Code Series 500 deals with the measurement of the Preferential Procurement Element of BBBEE. This code consists of Statement 500, which will be discussed below.

Statement 500: General Principles for Measuring Preferential Procurement:

Preferential Procurement will be used to drive transformation throughout the economy by encouraging procurement only from suppliers that are compliant with the BBBEE Scorecard. As an incentive to procure from QSEs and EMEs, Statement 500 has a specific indicator for recognition of BEE procurement spend from QSEs and EMEs, by allocating specific exclusive scorecard points to procurement from these entities (Department of Trade and Industry, 2007:70).

The Preferential Procurement Element encourages and facilitates the adoption of BBBEE by aligning business imperatives to BBBEE as opposed to the previous narrow measure that focused on shareholding only. According to Code 500, it will create economic empowerment benefits indirectly, but meaningfully, as it multiplies the effects of private and public sector intervention to promote BBBEE (Tait, 2006).

The Codes of Good Practice (2007:60) indicates that Statement 600 specifies a Preferential Procurement Scorecard; the key measurement principles applicable to calculating Preferential Procurement contributions; a basis for awarding of an enhanced recognition status to certain categories of Preferential Procurement; principles applicable when calculating BBBEE procurement spend; and the formula for calculating the individual criteria specified for Preferential Procurement Scorecard.

The preferential procurement scorecard provides the indicators and method for calculating the ownership score. Details of the criteria, weighting points and compliance targets are provided in the preferential procurement scorecard which appears in Table 12 below.

Table 12: Preferential Procurement Scorecard

Category	Criteria	Weighting points	Compliance target	
			Years 0-5	Years 6-10
2.1.1	BBBEE procurement spend from all suppliers based on the BBBEE procurement recognition levels as a percentage of total measured procurement spend	12	50%	70%
2.1.2	BBBEE procurement spend from qualifying small enterprises or exempted micro enterprises based on the BBBEE procurement recognition levels as a percentage of total measured procurement spend	3	10%	15%
2.1.3	BBBEE procurement spend from any of the following suppliers as a percentage of total measured procurement spend: 2.1.3.1 Suppliers that are 50% black-owned (3 out of 5 points); or 2.1.3.2 Suppliers that are 30% black women-owned (2 out of 5 points)	5	15%	20%

(Source: Codes of Good Practice, 2007:60)

3.3.3.7 Code Series 600: Measurement of the Enterprise Development Element of BBBEE

The measurement of the Enterprise Development Element of BBBEE is addressed in Code Series 600. This code consists of one statement, and details on Statement 600 are provided below.

Statement 600: General Principles for Measuring Enterprise Development:

The main purpose of enterprise development is to encourage companies to invest in supplier development initiatives. This will ultimately enable a company's supply chain to successfully deliver efficiently and cost-effectively (Woolley, 2005:76).

Statement 600 of the Codes of Good Practice (2007:66) indicates that the objectives of the statement are to specify the Enterprise Development Scorecard; the key measurement principles for calculating Qualifying Enterprise Development contributions; and the formula for calculating individual criteria.

Balshaw and Goldberg (2005:80) indicate that the aim of Code 600 is to assist and accelerate the development of financial and operational capacity of entrepreneurial enterprises that contribute towards BBBEE and that the intended beneficiaries are small to medium black-owned enterprises.

The Enterprise Development Element of the Generic Scorecard aims addressing specific challenges facing QSEs and EMEs and other black-owned entities in advancing businesses from merely surviving to sustainability and profitability. Code Series 600 seeks to address the high failure rate among black-owned start-ups due to lack of access to financing and other businesses support, as job creation cannot be attained without growth of the small-business sector (Department of Trade and Industry, 2007:82).

The enterprise development scorecard provides the indicators and method for calculating the ownership score.

Table 13: Enterprise Development Scorecard

Criteria	Weighting points	Compliance target
Average annual value of all enterprise development contribution and sector specific programmes made by the measured entity as a percentage of the target	15	3% of NPAT

(Source: Codes of Good Practice, 2007:66)

3.3.3.8 Code Series 700: Measurement of the Socio-Economic Development Element of BBBEE

Code Series 700 deals with the measurement of the Socio-Economic Development Element of BBBEE. Details contained within Statement 700 are provided below.

Statement 700: General Principles for Measuring Socio-Economic Development:

Woolley (2005:80) indicates that corporate social investment must rest on three dimensions. Firstly, it must involve the entire company. Secondly, it must be strategic investments in the business environment to enable the company to build capacity of future clients in areas that will be needed by the business, such as skills. Thirdly,

corporate social investment must be conducted in collaboration and partnership with other businesses in the area, so as to have a combined impact.

Statement 700 specifies the Socio-Economic Development and Sector Specific contributions Scorecard; the key measurement principles applicable when calculating Socio-Economic Development contributions; and the formula for calculating the individual criteria of the Socio-Economic Development Scorecard (SA, 2007:73).

According to the DTI (2007:88), the majority of black people in South Africa are still unable to access the mainstream economy owing to lack of education and poverty. It is recognised that social initiatives cannot always be linked to financial independence. Socio-economic development initiatives should strive to facilitate access to the mainstream economy for black people. This should be achieved by encouraging socio-economic development contributions linked to improving the financial circumstances of beneficiaries such as:

- Provision of development capital for communities;
- Training or mentoring to beneficiary communities, which will assist these communities in increasing financial capacity; and
- Offering preferential terms to beneficiary communities when procuring goods or services such as early payment of invoices.

The socio-economic development scorecard provides the indicators and method for calculating the ownership score.

Table 14: Socio-Economic Development Scorecard

Criteria	Weighting points	Compliance target
Average annual value of all socio-economic development contribution by the measured entity as a percentage of the target	5	1% of NPAT

(Source: Codes of Good Practice, 2007:73)

3.3.3.9 Code Series 800: Codes of Good Practice for Qualifying Small Enterprises (QSE)

A much needed solution to the challenge of BEE and small enterprises has been presented in the form of the QSE Scorecard and its corresponding statements. All EMEs with a turn-over of less than R5 million per annum are deemed to have a BEE status of Level Four Contributors. If an EME has more than 51% BEE ownership, it is

classified as a Level Three Contributor. QSEs are companies with an annual turnover of more than R5 million but less than R35 million (Department of Trade and Industry, 2007:7).

As these small enterprises are vital for job creation and economic growth and already contribute approximately 35% of South Africa's gross domestic product and employ more than half the number of people employed in the private sector, the Codes of Good Practice aims at easing the regulatory burden on small enterprises. Small enterprises are already struggling under financial and capacity constraints and therefore QSEs will only have to comply with four of the seven pillars of the QSE Scorecard (Department of Trade and Industry, 2007:7).

The DTI (2007:93-94) indicates that, unlike the Generic Scorecard, the QSE Scorecard allocates an equal number of 25 weighting points to each of the seven elements of BBBEE, but each QSE only has to elect four elements of compliance, totalling a 100 points. To enable the measurement of QSE, Code Series 800 provides Statements 800 to 807 to provide specifically for the measurement of BBBEE of QSEs.

3.3.3.9.1 Statement 800 – The framework for the QSE Scorecard and EMEs

According to the Codes of Good Practice (2007:79), this statement provides objectives, clarifies eligibility and provides the QSE Scorecard.

3.3.3.9.2 Statement 801 – Ownership for QSEs

Statement 801 provides the scorecard and the measurement guideline for QSEs regarding ownership (Department of Trade and Industry, 2007:95).

3.3.3.9.3 Statement 802 – Management Control for QSEs

Statement 802 provides detail and the Scorecard on how QSEs will be measured in terms of Management Control and that the measurement principles are the same as those in Statement 200, but with only two indicators (Department of Trade and Industry, 2007:97).

3.3.3.9.4 Statement 803 – Employment Equity for QSEs

Statement 803 provides a table with criteria to be used for calculating a score for Employment Equity. A measured entity will receive points in proportion to the extent that it meets the targets for participation of black people and black women at management level (SA, 2007:82).

3.3.3.9.5 Statement 804 – Skills Development for QSEs

The DTI (2007:101) mentions that the Skills Development element of the QSE Scorecard is a lot less complex than that of the Generic Scorecard. Statement 804 contains the Skills Development Scorecard for QSEs and it consists of only one indicator, namely Skills Development Spend on learning programmes for black employees, as a percentage of leviable amounts.

3.3.3.9.6 Statement 805 – Preferential Procurement for QSEs

The Codes of Good Practice (2007:84) indicates that the criteria for QSE Preferential Procurement Scorecard comprises the BEE procurement spend from all suppliers based on the BEE procurement recognition levels as a percentage of total measured procurement spend.

3.3.3.9.7 Statement 806 – Enterprise Development for QSEs

Some QSEs may have a turnover of a little more than R5 million per annum, whilst others with a greater turnover may be better positioned to contribute to Enterprise Development. Some successful QSEs are in a better position than corporate managers to mentor and advise micro and survivalist enterprises on how to grow and become sustainable. Statement 806 attempts to address this by recognising QSEs contribution in respect of investments, loans, guarantees, provision of seed capital, access to credit, interest-free loans, relaxed security requirements, time spent on training and mentoring of black entrepreneurs or start-up enterprises (Department of Trade and Industry, 2007:113).

3.3.3.9.8 Statement 807 – Socio-Economic Development Contributions for QSEs

The DTI (2007:120) indicates that in respect of the QSE Scorecard, it has been simplified to contain only one indicator. The indicator measures all social development contributions to defined beneficiaries, as well as contributions to certain approved projects.

3.4 CONCLUSION

In this chapter an in-depth look was taken into the Mining Charter and the Codes of Good Practice. The Mining Charter is applicable to the mining industry, whilst the Codes of Good Practice is binding on all organs of state and public enterprises and Government must apply the Codes of Good Practice when entering into decisions regarding procurement, licensing and concessions, public-private partnerships and sale of state-owned assets. Therefore, private sector enterprises must comply with the Codes of Good Practice, should these companies wish to interact with organs of state and public enterprises.

Measurement of compliance with the Mining Charter is done in terms of the Mining Charter, which constitutes a single scorecard containing the nine pillars (elements) of the Mining Charter in which targets are provided, but it is without any weighting of the element. In contrast, the Codes of Good Practice introduces a Generic Scorecard which measures the seven elements of the Codes of Good Practice. Each pillar, or element of the Codes of Good Practice, is represented by a specific Code, with detailed Statements. Each of these Codes is measured by an individual Code-specific Scorecard. The score achieved on the individual Code-specific Scorecards are then captured on the Generic Scorecard to achieve a BBBEE status. These Scorecards all contain specific Elements to be measured and the weightings of each of the Elements in calculating the score. The Codes of Good Practice also differentiates between measured enterprises on the basis of its annual turnover.

Therefore it has been confirmed that some of the pillars of the Mining Charter overlap with those of the Codes of Good Practice, especially with regard to ownership, skills development, employment equity and preferential procurement, resulting in the achievement of one of the research objectives referred to in Chapter 1.

In the following chapter an in-depth look will be taken into the implications of the Codes of Good Practice on mining companies.

CHAPTER 4

IMPLICATIONS OF THE CODES OF GOOD PRACTICE ON THE SOUTH AFRICAN MINING INDUSTRY

4.1 INTRODUCTION

From the discussion in Chapter 3 of the thesis it became evident that the Mining Charter and Codes of Good Practice contain a number of BEE compliance elements (pillars) which are similar. Even though the nine pillars of the Mining Charter, to a certain extent encapsulate all seven pillars of the Codes of Good Practice, the Mining Charter introduces a number of mining industry specific areas to be measured.

In this Chapter an in-depth look will be taken into the implications of the Codes of Good Practice on a mining company, including the potential negative and positive impacts, should a mining company decide to adopt the principles of the Codes of Good Practice. To give effect to the research objectives of this research, it is necessary to investigate these impacts in order to determine which aspects of the Codes of Good Practice a mining company will have to comply with, if any, to ensure that it remains competitive or gains a preferred status as a supplier to public and private enterprises.

4.2 APPLICABILITY OF THE CODES OF GOOD PRACTICE TO THE SOUTH AFRICAN MINING INDUSTRY

It could be argued that large corporations, due to its public image, financial ability and resources, are more in touch with their social responsibly and their focus in terms of BEE and upliftment. The general attitude towards BEE changed from being negative to very positive (Anon (F), 2007:1).

The Codes of Good Practice (2007:9) confirms its applicability to all entities measurable under the Codes of Good Practice which includes all public entities, any enterprise that undertakes business with the state and any other enterprise that undertakes any business, be it direct or indirect, with any entity that is subject to measurement in terms of the Codes of Good Practice.

According to the DTI (2007:12), the Codes of Good Practice is binding on all organs of state and public entities in South Africa and the Government must apply the Codes of Good Practice when entering into decisions affecting the following areas:

- Procurement;
- Licensing and concessions;
- Public-private partnerships; and
- The sale of state-owned assets.

Lester (2005:3) indicates that sectors such as the petroleum and mining have developed charters before the Codes of Good Practice were implemented. These sectors now find themselves under considerable pressure to reconsider those charters and to seek to achieve a high a degree of harmonisation with the Codes of Good Practice.

Allardyce (2007:3) contends that the Codes of Good Practice applies to any private sector business which is subject to measurement under the Codes of Good Practice and which may be required to provide evidence of its own level of compliance with the Codes of Good Practice, to its customers.

A number of sectors of the economy, most notably mining and finance, have each created their own empowerment charters. Most of these charters fall within the Codes of Good Practice, except the Mining Charter. The marrying of the MPRDA with the Codes of Good Practice may be possible during 2009, when the Mining Charter is up for review and a decision could be made as to whether the mining industry goes across codes (Secombe, 2007).

Tait (2006) indicated that private sector businesses providing goods and services to other businesses which are subject to Broad-Based Black Economic Empowerment (BBBEE) compliance, will generally find themselves subject to BBBEE compliance as well. As such, the pressure to become BBBEE compliant applies not only to businesses interacting with the public sector, but also those interacting with the private sector.

Mr K Lester, an attorney at the firm Cliffe Dekker, indicated in a presentation on the Codes of Good Practice on 19 April 2005, that the Codes of Good Practice has the force of law. Transformation charters must be substantially harmonised to the Codes

of Good Practice, and the Government's wider powers in terms of the Broad-Based Black Economic Empowerment Act 53 of 2003 (BEE Act) are enforceable across all sectors.

The DTI, in its Interpretive Guide to the Codes of Good Practice, indicates that the Codes of Good Practice is binding on all organs of state and public entities. This has the effect that Government must apply the Codes of Good Practice when entering into decisions affecting procurement, licensing and concessions, public-private partnerships and the sale of State-owned entities. Thus, by deduction, private sector enterprises must apply the Codes of Good Practice should they wish to interact with organs of the State and public entities in one or more of the areas mentioned earlier. The Codes of Good Practice intends to encourage private sector enterprises to apply the Codes of Good Practice in interaction with other private sector enterprises. This requirement is mainly due to the fact that preferential procurement will effectively impinge on most private sector enterprises through the chain of supply, and all industry charters are required to be aligned with the Codes of Good Practice (Department of Trade and Industry, 2007:12-13).

The aforementioned created practical difficulties and in an effort to resolve it, the mining industry, the DME and the DTI reached agreement that the Mining Charter would take precedence over the Codes of Good Practice when companies apply for the conversion of its mining rights. It is quoted that the Mining Charter had been enacted before the BEE Act and as it was promulgated in terms of the MPRDA, gave it special status (Smith, 2005).

ANON (D) (2007) reiterates the aforementioned by indicating that currently two charters are enacted. These are the Mining Charter and Scorecard, contained in the MPRDA and the Petroleum and Liquid Fuels Charter and Scorecard. The Government is bound by these charters until the relevant acts have been amended.

4.2.1 Relationship between the Codes of Good Practice and the Mining Charter

The relationship between the Codes of Good Practice and the Mining Charter and Scorecard is uncertain. Currently, there are two schools of thought. The first school of thought contends that the Mining Charter and Scorecard apply to the mining industry, to the exclusion of the Codes of Good Practice. The second school of

thought is of opinion that, where the Mining Charter and Scorecard are silent on issues of interpretation or measurement of Black Economic Empowerment (BEE), the general approach is to apply the approach of the Codes of Good Practice (Muleza, 2007).

The DTI (2007) indicated that the Codes of Good Practice is subordinate legislation and therefore does not supersede existing legislation in its current format. As Government is the biggest procurer of public goods and services, an enterprise that does not transform its operations in terms of the Codes of Good Practice will be at a severe disadvantage when seeking to do business with organs of the state and public entities.

The DTI accepted that the Mining Charter would remain separate until at least 2009. The reason for this being the fact that the DME is better placed to deal with the concerns of a very "jittery" mining industry (Secombe, 2007).

Muleza (2007) continues by adding that the prevailing view is that the Mining Charter applies to the exclusion of the Codes of Good Practice as the Mining Charter is vested in legislation that predates the implementation of the BEE Act and the Codes of Good Practice. In addition, the BEE Act has no provision that overrides the Mining Charter. This approach is consistent with the views of the DME and the DTI. The mining industry must accommodate both the Mining Charter and Codes of Good Practice and should implement measures to integrate it.

Booysen (2006:18-19), an attorney at Webber Wentzel Bowens, indicates that BEE is a process of development and that the BEE provision of the MPRDA is a further development in the overall BEE process. It will be an oversimplification by the mining industry to hold that the Mining Charter applies to the South African mining industry and that the Codes of Good Practice applies to other aspects of BEE. Each step in the development process will change the approach as BEE progresses.

4.3 INDIRECT REQUIREMENTS PLACED ON THE SOUTH AFRICAN MINING INDUSTRY BY THE CODES OF GOOD PRACTICE

It could be argued that the will to change is more prevalent at state and semi-state organisations being that they put pressure on the different size enterprises to become BEE compliant. What gets measured gets managed. Hence to measure a

company's BEE compliance is to know the company's status with regard to BEE compliance and what is needed to improve. More companies are adopting BEE management as part of their management process (Anon (F), 2007:1-3).

According to Tait (2006), it is imperative that entrepreneurs, managers, directors and officials should understand the impacts of the Codes of Good Practice on their business, the economy and society as a whole and that they are empowered to reassess and reengineer business strategies to meet BEE and sustainable growth objectives. The Codes of Good Practice is going to drive business behaviour for the next ten years. BEE in South Africa has commenced and is growing in volume and in substance. The growing economic pressure from client to supplier for a BEE Scorecard is increasing the commitment to sustainable BEE initiatives (Anon (E), 2007).

The Mining Charter is an attempt to provide regulatory certainty on BEE for the mining industry, while the BEE Act and Codes of Good Practice are aimed at providing a uniform vision of BEE throughout the South African economy. The most significant difference in the Mining Charter and the Codes of Good Practice is the method of scoring, ownership and procurement (Booysen, 2006:2).

The Codes of Good Practice identifies different scorecards or methods of measuring BEE for enterprises, with statements which explain how each indicator should be measured and a system of weightings and targets which are used to establish the BEE contribution of a particular enterprise, out of a score of 100 points. The Mining Charter is used to measure and monitor the extent to which companies comply with the various targets set in the Mining Charter, utilizing a tick box approach. The targets are set out in a table which provides blocks for checking whether or not a company has complied with the set targets (Muleza, 2007).

ANON (E) (2007) mentions that the main driving factor for the success of BEE Scorecards is the procurement policy. Every company with an independently verified scorecard will have to contact its suppliers for their scorecards. The company will receive more points for purchasing larger sums from companies with higher scores on their scorecards therefore preferential procurement will lead to the spiralling of BEE participation. In this regard the Preferential Procurement policy by Government is seen as an effective tool to promote BEE in the South African economy. A system

of measuring suppliers to Government is discussed in Code 500 of the Codes of Good Practice (Anon (A), 2007).

Booysen (2006:19) indicates that compliance with the Codes of Good Practice, through the procurement compliance provisions of the Codes of Good Practice placed on customers of mining companies, required mining companies to comply with the provisions of the Codes of Good Practice. To illustrate the indirect impact of the Codes of Good Practice on the mining industry, the following example is provided. Should a coal mining company wish to supply coal to Eskom which is a public entity, the mining company will have to comply with the Codes of Good Practice. However, for the granting of the mining right, compliance with the Mining Charter is required. As illustrated in the example, when organs of state and public entities purchase mineral products, the Codes of Good Practice will apply to mining companies, as well.

In an interview (Booyens, 12 November 2007) with Mr S Laubscher, from Xstrata Coal, indicated that a mining company will have to comply with both the Mining Charter and the Codes of Good Practice if it intends to continue with mining operations in South Africa, as the mining company's customers will be measured in terms of the Codes of Good Practice. Therefore customers will opt to do business with suppliers that will enable them to obtain a higher score in terms of the Generic Scorecard. Mr A Cronje, Regional Manager, Gauteng Region of the DME previously shared the same view during a presentation on 29 August 2006 where he indicated that South African mining companies will have to comply with the Codes of Good Practice when trading with the minerals it has mined.

During an interview (Booyens, 13 November 2007) with Mr P Jordaan, General Manager at Sasol Mining, he mentioned that the Codes of Good Practice is indirectly applicable to mining companies as it would be necessary to demonstrate compliance with the Codes of Good Practice to its customers, especially where potential customers are state or public institutions, such as Eskom. It would be crucial for a mining company to adopt the principles of the Codes of Good Practice, in addition to complying with the Mining Charter, if it wishes to gain or retain its competitive advantage over other suppliers of similar mineral products.

Ms G Chemaly, Legal Advisor at Pamodzi Gold, during an interview (Booyens, 17 October 2007), indicated that the Codes of Good Practice do not have a significant

impact on a gold mining company with regard to a competitive advantage, as the selling of gold is regulated and the price determined internationally. She added that the Codes of Good Practice do have an impact on obtaining other permits and licences, such as those required for the establishment of discard dumps and pumping and disposal of excess water. These permits are not regulated by the DME and the relevant state departments may require compliance with the Codes of Good Practice, before these permits or licences are granted.

4.4 POTENTIAL IMPACTS ON SOUTH AFRICAN MINING COMPANIES IF THEY ADOPT THE CODES OF GOOD PRACTICE

Even though the South African mining industry is legally obliged to comply only with the requirements of the Mining Charter, the Codes of Good Practice have a significant indirect impact on mining companies. In this section, the positive and negative impacts of adopting the principles of the Codes of Good Practice are discussed.

4.4.1 Potential positive impacts if mining companies adopt the principles of the Codes of Good Practice

Booysen (2006:20) indicated that mining companies will obtain a competitive advantage if they adopt the principles of the Codes of Good Practice, as mining companies with BEE credentials will become preferential suppliers. If mining companies intend to improve their BEE scores in terms of the Codes of Good Practice, they must apply Statement 500 to their suppliers. This will be an advantage when a mining company is subject to the provisions of the Codes of Good Practice and when organs of state and public entities, such as Eskom, decide from whom they purchase mineral products.

Mr Scholes, from Werksmans Attorneys (as quoted by Secombe, 2007), explains that the Mining Charter is very restrictive on the structuring of empowerment and most empowerment deals would fail on a very strict interpretation of the requirements. The Mining Charter has no flow-through principle, but the DME does apply it, as provided in the Codes of Good Practice.

Mfetoane (2007), Director Licensing and Legal Compliance in the DME, emphasises the fact that every organ of state and all public entities must take into account and, as

far as reasonably possible, apply any relevant Code of Good Practice issued in terms of the BEE Act. The BEE status of companies, in terms of the Codes of Good Practice, will determine whether the public and private sectors will prefer to interact and procure from companies with higher BEE status.

Complying with the Codes of Good Practice is essential for any mining company who wishes to succeed in the South African economy by becoming a preferential supplier in terms of the Codes of Good Practice. This will place a mining company in a favourable position when tendering as a supplier (Booysen, 2006).

During an interview (Booyens, 1 August 2007) with Mr A Lipshitz from Mashala Resources, he mentioned that a mining company will derive significant benefits by adopting the principles of the Codes of Good Practice. The most significant benefit is that a mining company will have a competitive advantage over its competitors when tendering for contracts to supply mineral products to organs of state and public entities, especially the coal mining industry. In addition, this will also ensure that no complications arise when applying for other permits and licences from state departments other than the DME.

Muleza (2007) raises the view that, by adopting the principles of the Codes of Good Practice, some level of consistency and the same format of rating will be achieved when measuring suppliers to mining companies.

Should mining companies be able to comply with the provisions of the Codes of Good Practice, it would ensure leveraging of suppliers with other mining companies and an increase in transformation or accreditation (Streuderst, 2005).

Jordaan (2007) expresses the view that compliance with the Codes of Good Practice will place a mining company at a competitive advantage when tendering for business with organs of state. In addition, if a mining company adopts the provisions of the Codes of Good Practice in tendering for business to the private sector, it will also place the mining company at a competitive advantage, as the client would be able to obtain a higher score in terms of the Codes of Good Practice, especially if its suppliers are BEE accredited in terms of the Codes of Good Practice.

Bekker (2006) mentions that mining companies, who have clients in South Africa, will experience difficulty if they do not adopt the principles of the Codes of Good Practice.

Even though the Codes of Good Practice is not directly applicable to the mining industry, by applying the principles of the Codes of Good Practice, it provides clarity and simplifies the BEE process. He continues by adding that mining companies will be faced with difficulty in obtaining other operating licences as these does not fall within the ambit of the MPRDA.

By adopting the principles of the Codes of Good Practice, mining companies will avoid the complications that may arise when they apply for other licences or permits from the state, other than prospecting or mining rights. To obtain a licence, such as a water licence, which is not subject to the MPRDA or Mining Charter, a mining company will be required to comply with the Codes of Good Practice (Booysen, 2006:20).

4.4.2 Potential negative impacts if mining companies adopt the principles of the Codes of Good Practice

Booysen (2006:2-14) showed that certain discrepancies exist between the Codes of Good Practice and the Mining Charter, resulting in a dual measurement system should a company wish to comply with both. The Codes of Good Practice differ significantly in the following aspects:

- The method of scoring;
- The ownership component; and
- Procurement requirements.

During an interview with Mr Jordaan, General Manager at Sasol Mining (Booyens, 13 November 2007), he confirmed the aforementioned and indicated that the elements measured in terms of the Mining Charter and the Codes of Good Practice are significantly different and require a mining company to implement different measurement systems for both the Mining Charter and the Codes of Good Practice.

The Codes of Good Practice use a scorecard approach to measure BEE, based on the seven elements of the Codes of Good Practice and provide a system of weightings and targets to establish the BEE contribution of a company. The Mining Charter, however, sets standards in respect of the nine pillars of the Mining Charter and utilises the Mining Charter Scorecard, with various targets, utilising a tick box

approach to measure and monitor the extent to which mining companies comply with the Mining Charter (Muleza, 2007).

Chemaly (2007) indicates that the different scorecards and elements to be measured have a negative impact, since a mining company will have to implement a dual system in measuring performance and report compliance. As the relevant scorecards are not compatible, a mining company will have to allocate additional resources to ensure that reporting is done on all the respective elements to the standard required in terms of the Mining Charter and the Codes of Good Practice.

Mfetoane (2007), Director Licensing and Legal Compliance in the DME, is of opinion that the DME will not take into account or provide any credits to companies which comply with the Codes of Good Practice. The mining industry is subject to the Mining Charter and the DME will only take the requirements of the Mining Charter into consideration when measuring a mining company's BEE compliance. Even though compliance with the Mining Charter is a requirement for obtaining the rights to operate, compliance with the Codes of Good Practice is still required in cases where a mining company intends to conduct business with an organ of state or applies for permits or licences, not administered by the DME. The DME has no involvement in these matters and the responsibility to comply, even if compliance with both the Mining Charter and the Codes of Good Practice is required, remains with the relevant mining company.

Lipshitz (2007) indicates that a significant negative impact on especially smaller mining companies is the increase of administrative activities and resources required to implement and maintain a dual reporting system. Mining companies should be allowed to concentrate on its core business and should not be drawn into unnecessary and costly Government programmes.

4.4.3 Summary of the potential impact if mining companies adopt the principles of the Codes of Good Practice

In the light of the contents of paragraphs 4.1 and 4.2 above, the impacts on mining companies, if they adopt the principles of the Codes of Good Practice, are summarized in Table 15 below.

Table 15: Summary of the impacts if a mining company adopt the principles of the Codes of Good Practice

Positive Impacts	Negative Impacts
Obtain a competitive advantage by becoming a preferential supplier.	Dual measurement system.
Use of flow-through principle in empowerment structures.	Different methods of scoring.
Place a mining company in a favourable position when tendering to supply mineral products to state and public entities.	Different application of ownership component.
Provides some level of consistency during measurement.	Different procurement requirements.
Eliminates complications when apply for licences, permits, etc from state departments, other than the DME	Allocation of additional resources and manpower.
Ensures leveraging of suppliers	Increase in administrative burden and reporting requirements.
Accredited BEE status in terms of Codes of Good Practice will ensure preferred interaction and procurement from the state, public and private sectors.	DME will not acknowledge compliance with the Codes of Good Practice.
Clarity on BEE process.	

4.5 CONCLUSION

In this chapter the implications of the Codes of Good Practice on the South African Mining Industry were discussed. It is evident that even though mining companies only need to comply with the Mining Charter to acquire the rights required to prospect or mine, compliance with the Codes of Good Practice is also required to obtain rights, permits or licences from other organs of State. Thus a mining company is obliged to comply with the Mining Charter, as well as the Codes of Good Practice.

In addition, should a mining company wish to sell its mined mineral products to the state or a public entity, this will require the mining company to comply with the provisions of the Codes of Good Practice. To gain a competitive advantage over other suppliers of mineral products to the state, public entities and private companies, it would be advantageous for the mining company to adopt the principles of the Codes of Good Practice. In the light of the aforementioned, mining companies

cannot ignore the provisions of the Codes of Good Practice and cannot function in isolation thereof.

However, due to the fact that the Mining Charter and the Codes of Good Practice are designed to measure performance in respect of BEE compliance, the inherent differences between the pillars or elements of the Codes of Good Practice and the Mining Charter will require a mining company to implement a dual measurement system. This complicates BEE compliance measurement and places a significant burden on mining companies and their resources.

To better understand measurement systems, the principles, theories and models of measuring performance will be investigated in the next chapter.

CHAPTER 5

PERFORMANCE MANAGEMENT AND MEASUREMENT: THEORETICAL PERSPECTIVES

5.1 INTRODUCTION

The previous chapters of the thesis provided detailed information on the Mining Charter and Codes of Good Practice. The Mining Charter is directly applicable to the mining industry with regard to compliance with Black Economic Empowerment and the acquisition of rights to operate, whilst the Codes of Good Practice is indirectly applicable.

From the discussions it is noted that both the Mining Charter and the Codes of Good Practice are utilized as performance measurement and management instruments. To understand the requirements of performance management and measurement, the principles, theories and models of measuring performance will be investigated in this chapter. It is necessary to understand the principles of performance measurement and management in order to determine whether the Mining Charter and Codes of Good Practice, in its current format, will be sufficient for mining companies to measure performance against, and compliance with, both the Mining Charter and the Codes of Good Practice. These perspectives are of critical importance should no combined or composite indicators exist, and such combined indicators and performance measurement instrument needs to be developed, as stated in the fourth objective of this research.

Firstly, performance management will be explored where after performance measurement will be investigated. Lastly, performance management and measurement models and techniques will be investigated.

5.2 DEFINING PERFORMANCE, PERFORMANCE MANAGEMENT AND PERFORMANCE MEASUREMENT

Before the principles and theories of performance management and performance measurement can be discussed, it is necessary to understand the concepts of performance, performance management and performance measurement.

5.2.1 Performance

According to the OED (1999:1060), performance can be defined as "the action or process of performing a task or function". Kaydos (1991:18) indicate that performance is defined as how well something does what it is supposed to do. Van der Waldt and Du Toit (1997:203) mention that when work commences, the actual results must be monitored. Measures should coincide with the organization's objectives and focus on the critical points, thus contributing to the achievement of the organization's objectives.

Rummler and Brache (quoted by Spangenberg, 1994:26) describe three levels of performance, being organisation, process and job/performer. They attach significance to the role of processes in effective performance.

According to Mwita (quoted by Van der Waldt 2004:38), performance is achieved if it is defined as embracing three interrelated variables. These are indicated as behaviours (processes), outputs (services and products) and outcomes (value added or impact). Performance therefore is an integrated, systematic approach to improve organizational performance, to achieve corporate strategic aims and promote its mission and values.

Campbell (1999:402) goes further by defining performance as behaviour or action that is relevant for the organisation's goals and that can be scaled (measured) in terms of the relevant level of proficiency that is presented by a particular action or set of actions. The identification of goals and the judgement concerning what is relevant for the goals, are critical elements in designating what is performance or not.

Many acceptable definitions of performance management and performance appraisal exist, but the key difference to bear in mind is that performance management is an ongoing process, while performance appraisal is one method often used by management as part of an ongoing performance management scheme (Caron, 2007:1).

5.2.2 Performance Management

The OED (1999:864) defines management as "the process of managing" and managing is indicated as "administer and regulate resources under one's control". Smither (1998:7) defines performance as the record of outcomes produced on a specific job function, activity, or behaviour during a specific time period.

Performance management, as a concept, can be summarised as an approach or system for managing people, which entails planning employee performance, facilitating the achievement of work-related goals and reviewing performance as a way of motivating employees to achieve their full potential, in line with the organisation's objectives (Spangenberg, 1994:1).

Performance management should be viewed as the total system of gathering relevant information, providing specific feedback to individuals and work groups and applying the information gathered for the improvement of the organisation's effectiveness (Smither, 1998:23).

Performance management is a cyclical process aimed at improving performance (e.g. achievement of business objectives). Performance management involves measurement, appraisal, action and monitoring (Anon, (G) 2007). In a nutshell, performance management is the measurement, gathering, processing and evaluating of data, in order to introduce a positive change in the performance of the area in question (Anon, (H) 2007).

Performance management is a much wider concept than performance appraisal and comprises a set of techniques used by a manager to plan, direct and improve performance of subordinates in line with achieving the overall objectives of the organization (Fay, 1990 quoted by Spangenberg, 1994:14).

Armstrong (quoted by Viedge, 2004:205) builds on the aforementioned by defining performance management as a means of getting better results from organizations, teams and individuals by understanding and managing performance within an agreed framework of planned goals, standards and attributes/competence requirements.

Van der Waldt (2004:40) clarifies performance management by indicating that performance management, as an approach to management, seeks to harness the

endeavours of individual managers and workers towards an organization's strategic goals. Firstly, goals must be defined as it defines the outputs required to achieve these goals. Secondly, it gains the commitment of individuals or teams to achieve these outputs and thirdly, it monitors outcomes.

In summary, performance management is the day-to-day management of people to produce desired results. It is not a once- or twice-a-year meeting where goals are set or performance is rated. Performance management is the essence of business, namely delivering on the strategy so as to satisfy customer needs. Performance measurement is a subset in the performance management process (Viedge, 2004:207).

5.2.3 Performance Measurement

According to the OED (1999:883-884), measurement is "an amount, size, or extent as established by measuring" and measure: "to asses the extent, quality, value, or effect".

Performance measurement is an ongoing, repetitive process, with the actual frequency dependent on the type of activity being measured (Stoner, 1982:593).

According to Simons (quoted by Schmitz & Platts, 2007:2), performance measurement and control systems are described as the formal, information-based routines and procedures that managers use to maintain or alter patterns in organizational activities. Performance measurement is essential for achieving and maintaining high levels of productivity and quality, for good management control and planning and for developing and motivating an organization (Kaydos, 1991:51).

Van der Waldt (2004:48-50) argues that the central idea behind performance measurement is for an institution to formulate the envisaged performance and to indicate how this performance will be measured by defining performance indicators. The objective of performance measurement is to establish a baseline of activity by which future activities, including change in activity, can be evaluated and judged.

The United States General Accounting Office (1998:3-4) confirms that performance measurement is the ongoing monitoring of and reporting on program accomplishments, particularly progress towards pre-established goals. Performance

measures may address the type or level of program activities conducted (process), the direct products and services delivered by a program (outputs) and the results of those products and services (outcomes). Performance measurement focuses on whether a program has achieved its objectives, expressed in measurable performance standards.

For purposes of this research the definition of the United States Department of Energy will be most applicable. In its Handbook of Techniques and Tools (1995:1-3), the United States Department of Energy defines performance measurement as a process not simply concerned with collecting data with a predefined performance goal or standard. Performance measurement is an overall management process involving prevention and detection aimed at achieving conformance of the work, product or service to the customer's requirements. It is a process of optimization, through increased efficiency and effectiveness of the process or product. These actions must occur in a continuous cycle, allowing for the expansion and improvement of the process or product as better techniques are discovered and implemented.

5.3 PRINCIPLES AND THEORIES OF PERFORMANCE MANAGEMENT

Spangenberg (1994:131) is of opinion that, to achieve strategic goals, performance has to be managed. This includes activities such as obtaining regular feedback on product performance in the market place; feeding back this information to the relevant departments; facilitating cross-functional problem solving; and adjusting goals, when required.

Performance of any organisation is crucial, because it holds the key to success, and for excellent performance, one needs to adopt performance management. All levels in the organisation depend on the management of performance. The management of performance is designed to assist employees and to compile a performance index. Performance management always encourages collaboration between employees and superiors (Anon (I), 2007:1).

According to Heathfield (2007:1), performance management provides the following benefits at an employee level:

- It defines the purpose of the job, job duties and responsibilities;
- It defines performance goals with measurable outcomes;

- It defines the priority of each job's responsibility and goal;
- It defines performance standards for key components of the job;
- It provides feedback about employee performance;
- It maintains a record of performance; and
- It develops and administers a coaching and improvement plan.

Van der Waldt (2004:42) expands on this by indicating that performance management provides the following benefits to the organisation:

- Clarification on the strategy and makes it accessible;
- Transforms strategy into operations and vision into action;
- Ensures clarity on roles and responsibilities;
- Provides clarification on the expectations; and
- Improves accountability and participation.

5.3.1 Broad processes of performance management

Cascio (2003:331) contends that the broad process of performance management requires a manager to do three things well, namely to define performance, facilitate performance and encourage performance.

- *Define performance:* A manager who creates a performance definition ensures that each individual or team knows what is expected of him/her, and that they stay focused on effective performance. This is achieved by paying careful attention to three key elements, namely goals, measures and assessment.
- *Facilitate performance:* This is to eliminate road blocks to successful performance and to provide adequate resources to get a job done right and on time, as well as the careful selection of employees.
- *Encourage performance:* It is important to encourage performance, especially good performance, which includes the provision of sufficient amount of rewards, in a timely and fair manner.

At the organisational and process levels, managing performance entails ensuring that goals are set and measured, that feedback on performance is obtained and disseminated to the right people. Problem-solving mechanisms must be in place, resources must be optimally allocated and effective coordination between functions must be maintained (Spangenberg, 1994:45).

According to Fox and Uys (as quoted by Van der Waldt, 2004:40), performance management consists of three elements of a system process with sequential logic that is able to predict the future plan. The three elements are:

- Performance planning, which forms part of the overall strategic planning of an institution with a view to allowing employees to perform optimally in order to reach the organisational goals.
- Performance monitoring, which has to do with the day-to-day supervision of performance, recording actual performance on the job and pre-empting performance problems.
- Performance appraisal, which comprises the application of a system of measuring performance.

Performance management can be implemented through management reporting of key performance indicators (KPIs) or the use of the balanced scorecard and similar frameworks (Anon (K), 2007:1).

5.3.2 Performance management models

A number of performance management models are available. These models need to be investigated as it may be used as basis for the development of a measurement model for measuring compliance against the composite indicators of the Mining Charter and Codes of Good Practice. In the light of this a number of performance management models and techniques will be briefly discussed below.

Young (2007:1) states that the ideal performance management system is one that energizes the people in an organisation to focus efforts on improving things that really matter. A system must give people the information and freedom that they need to realize their potential within their own roles and that aligns their contribution with the success of the organisation.

5.3.2.1 Pratt and Whitney Performance Management Process Model

Spangenberg (1994:37-38) indicates that the Pratt and Whitney Performance Management Process Model displays commendable features such as starting at the right place, measuring behaviour in addition to results, more than one assessment

per annum, use of self-assessment, use of performance assessment based on demonstrated behaviours and actual accomplishments, rather than numerical ratings and use of recognition in addition to rewards. The process involves the creation of a shared vision, clarification of individuals' roles and provision of fair evaluation.

5.3.2.2 Systems Model of Performance Management

The systems approach to performance management is set out in an input-process-output framework. The aim of a systems model is to describe performance management as a total system and to show the relationship between the various elements and the system's alignment to other major systems. The inputs consist of strategic drivers such as corporate strategy, leadership and culture. The process entails developing an organisational mission, goals, and strategic capabilities. This includes formulating goals, designing structures and managing performance. The outputs consist of short-term issues such as production, efficiency and satisfaction as well as long-term issues such as stabilisation of performance management and organisational adaptability and development. The linkages between process and outputs include business strategy and human resource systems (Spangenberg, 1994:38-39).

5.3.2.3 The Three Es Model

Van der Waldt (2004:179) mentions that the British Audit Commission's Three Es model refers to the measures of economy, efficiency and effectiveness. Economy refers to the cost of the inputs that are used to produce outputs, efficiency relates to the inputs and outputs which entail the cost of the input used per unit of output and effectiveness illustrates the extent to which the outputs of a programme are successful in achieving the stated objectives or priorities.

5.3.2.4 Quality Management Models

While quality refers to terms such as inspection, process control, auditing and standards, it includes management systems, continued improvement, customer satisfaction, market focus, teamwork and the wellbeing of employees. A variety of tools and techniques are available, such as the South African Quality Institute, the ISO 9000 Forum and the DIN ISO 9000-9004 quality assurance system. These provide indication to companies as to how to develop quality management and

quality assurance systems. It also provides a standard to external and internal audits to asses the degree of quality management (Van der Waldt, 2004:182).

5.3.2.5 Business Excellence Framework and the European Foundation for Quality Management

Van der Waldt (2004:183-184) voices the opinion that the Business Excellence Model (BAQF) is promoted worldwide by various quality organizations, including the European Foundation for Quality Management (EFQM). The BAQF is a generic model that allows a holistic approach to be taken to the management of an organization's quality system. Both models are based on self assessment, improving overall performance. The major difference between the BAQF and the EFQM models is that the EFQM requires explicit evidence of leadership. The BAQF is also more prescriptive than the EFQM as it sets performance standards for all the processes within the units.

5.3.2.6 South African Excellence Foundation and Model

According to Van der Waldt (2004:184-185), the BAQF and the EFQM were the catalysts for the development of the South African Excellence Foundation's Model. This model is a generic plan that can be applied to both the public and private sectors. The model provides a framework and direction which encourages a culture of performance excellence. Managers can use the model as a starting point, to improve efficiencies in their departments, due to the fact that the model affords the opportunity to evaluate empirical facts to determine what leads to business success and deliverables.

5.3.2.7 Process Mapping and Flow Charts

Van der Waldt (2004:195-196) indicates that a process is a series of connected steps or actions to achieve an outcome. The most commonly used methods for designing and analysing processes consist of process maps and flow charts. Graphic presentation of the logical steps of a process promotes better understanding of how the work is to be done. This presents opportunities for identification of problems and non-value-adding steps, which can lead to process improvement. The process approach is a system which states that identifying, understanding and managing of interrelated processes as a system will contribute to an organization's effectiveness

and efficiency in achieving its objectives. Process mapping, as the first process of performance management, consists of a tool that enables the documentation, analysis, improvement, streamlining and redesign of the way a department performs its work.

5.3.2.8 The Balanced Scorecard

One approach that promises to provide an all-encompassing strategic performance management system is the very popular balanced scorecard. The balanced scorecard provides a structure of translating strategy into individual performance contracts, and, through the process adopted, generates understanding about strategy, as well as engendering commitments to employee's individual goals. In some important aspects it differs from management by objectives, yet it relies on the same mechanisms once the individual objectives have been translated into human actions (Viedge, 2004:209).

The balanced scorecard is a management tool which assists managers in revealing to them employee's and other stakeholder assumptions made about their organisations. This is achieved as it reveals the linkages or cause-effect relationship between objectives in the perspectives of financial, customers, internal business processes, learning and growth. It is difficult to manage these perspectives effectively and a balanced scorecard reflects a balanced view of an organization's performance (Van der Waldt, 2004:187-189).

According to Rossouw *et al.* (2003:200), the quest for a new approach to the evaluation of value creation associated with the information age has led to the development of the balanced scorecard. The balanced scorecard retains the traditional financial measures, but augments the evaluation of an organization's success by adding measures to evaluate the success of the organization to create future value through investment in customers, suppliers, employees, processes, technology and innovation. The attributes of and rationale for the balanced scorecard is as follows:

- Traditional financial measures worked well for the industrial era, but are out of step with the skills and competencies organizations are trying to master today;
- No single measure can provide clear performance targets or focus attention on the critical areas of business;

- Traditional measures can give misleading signals for continuous improvement and innovation;
- Traditional measures are backward-looking;
- A balanced scorecard view gives management a comprehensive view of a business;
- The balanced scorecard is a process, it translates the vision and strategies into action;
- The balanced scorecard can be used for performance appraisal;
- Current operational and physical measures involve a bottom-up approach; and
- The balanced scorecard is a management system that can motivate breakthrough improvements in critical areas such as products, processes, customers and markets.

Figure 1 below provides a schematic view of the balanced scorecard, according to Kaplan and Norton (quoted by Rossouw *et al.*, 2003:204)

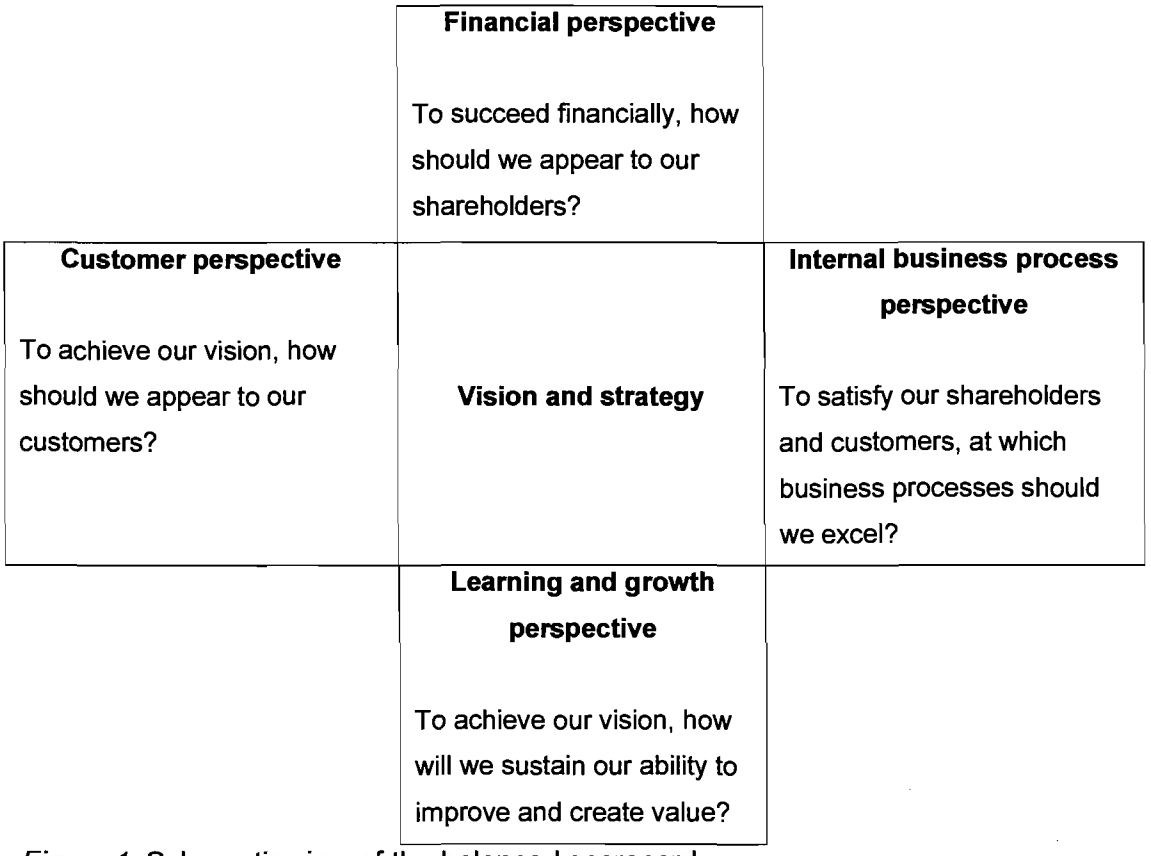

Figure 1: Schematic view of the balanced scorecard

A well-constructed balanced scorecard allows individual scorecards to be devised which then represent a piece of the strategic puzzle. When all the pieces are put together, the big picture should emerge. The individual scorecard will mirror the corporate scorecard, although it is conceivable that some employees will not have objectives in all four quadrants. What they will have is a format that has objectives, measures, targets and initiatives (Viedge, 2004:215).

In summary, Viedge (2004:203) contends that to enable people to perform in line with the strategy of the organisation is a complex task and that the organisations that get it right, understand the human nature and the psychology of people at work. This implies having a culture and systems that are people friendly. To get people to perform effectively, organisations must set the stage for this performance and then have to facilitate it in ways that individuals find it acceptable and appealing.

5.4 PRINCIPLES AND THEORIES OF PERFORMANCE MEASUREMENT

The central idea of performance measurement is for an organization to formulate the envisaged performance and to indicate how this performance can be measured by defining performance indicators (Van der Waldt, 2004:48).

Anderson *et al.* (1995:1-4) indicates that performance measurement is primarily managing outcome and one of its main purposes is to reduce or eliminate overall variation in the work product or process. The goal is to arrive at sound decisions about actions affecting the product or process and its output.

Kaydos (1991:51) is of opinion that performance measurement is essential for achieving and maintaining high levels of productivity and quality, for good management control and planning and for developing and motivating an organisation. He mentions that the most valuable benefit of proper performance measures is a sound understanding of how the production system works and the forces that drive it.

It is dangerous to measure one's value to the organisation in terms of past performance or on the basis of former standards. This form of obsolesce is common in organisations that fail to shift their missions in response to changing market conditions (Whetten & Cameron, 1995:363).

The ability of any private or public sector organisation to function effectively or even to survive without knowledge of financial performance, programs, services, client concerns, employee issues or new innovations is highly doubtful. Performance measurement provides a frame of reference in which business plan elements are directly linked to a series of performance measures. The performance measures provide a feedback system in terms of identifying accomplishments needed to reward merit and outline issues that interfere with the attainment of the organisation's strategic direction (Anon (L), 2007:1-2).

Performance measurement systems succeed when the organisation's strategy and performance measure are in alignment and when senior managers convey the organisation's mission, vision, values and strategic direction to employees and external stakeholders. The performance measures give life to the mission, vision and strategy by providing a focus that informs each employee how they contribute to the success of the company and its stakeholders' measurable expectations (Artley & Stroh, 2001:11).

Van der Waldt (2004:49) expanded by indicating that performance measurement fulfils a number of functions which consist of transparency, learning, appraising and sanctioning:

i) Transparency occurs when an organisation makes it clear what products it supplies and, by means of an input-output analysis, determines the cost involved;
ii) Learning comprises the steps taken by an origination when it utilises performance measurement as a means to enable further learning;
iii) Appraising consists of performance-based appraisal of the functioning of an organisation; and
iv) Sanctioning follows appraisal by applying positive sanctioning if performance is good and negative sanctioning when performance is poor.

Thompson and Strickland (1998:36) indicate that setting objectives converts the strategic vision and directional course into specific performance targets. Objectives represent a managerial commitment to achieving specific outcomes and results. Unless an organisation's long-term direction and business mission are translated into specific performance targets and managers are pressured to show progress in reaching these targets, vision and mission statements are likely to end up as nice words, window dressing and unrealised dreams of accomplishment.

For objectives to function as yardsticks of organisational performance and progress, they must be stated in quantifiable or measurable terms and must also contain deadlines for achievement. They must also spell out how much of what kind of performance, by when, and generalities must be avoided. Spelling out the organisation objectives in measurable terms and then holding managers accountable for reaching their assigned targets within a specified timeframe substitutes purposeful strategic decision making for aimless actions and confusion over what to accomplish and provides a set of benchmarks for judging the organisation's performance (Thompson & Strickland,1998:36).

To add to the aforementioned, the Canadian Government (quoted by Van der Waldt, 2005:51-52) designed a process for measuring performance which is provided in Table 16 below.

Table 16: Canadian Government process of measuring performance

Steps	**1**	**2**	**3**	**4**	**5**
	Establish profile (vision)	**Set operational goals/targets**	**Select key measures/indicators**	**Prepare data collection**	**Report performance**
Tasks	Agree on mission and objectives. Define impacts: • Direct • Medium term • Long term Define reach: • Client/ users • Intermediaries • Other stakeholders Define activities	Activities/ Outputs: • Planned quantities • Planned costs • Specifications • Timeframes Reach: • Planned quantities • Planned costs • Timeframe Impacts: • Planned quantities • Planned costs • Specifications • Timeframe	Activity and output measures. Reach measures. Impact measures	Data. Sources. Means of collection. Frequency. Responsibilities. Systems: • Availability • Needed	User(s). Content: • Resources • Reach • Results Frequency. Responsibilities.
End product	Profile document	Operational plan	Listing of key indicators	Plan for data collection	Performance reports

Cox (quoted by Van der Waldt, 2004:50) contends that performance measurement is not a single tool or practice, but is a cluster of tools with a common foundation which is applied to different practices such as policy analysis and performance appraisal.

The goal of performance measurement is to establish a baseline activity or benchmark by which future activities and change in activities can be evaluated and judged.

Regardless of the measures used, the objectives of performance measurement are to create reliable and valid measures that adequately sample the performance and to do so in a manner that is not contaminated by conditions that are beyond the influence of the person being assessed. Meeting the objectives of measuring performance fairly, accurately and effectively is far more difficult than it may appear to those who have not attempted to construct such measures (Ilgen & Pulakos, 1999:7-8).

5.4.1 Performance measurement models

Various performance rating methods, formats and models are used to measure performance. A number of these models are discussed below.

5.4.1.1 Generalised Organisational Performance Measurement System Model

Lockamy and Cox (1994:26-35) described the Generalised Organisational Performance Measurement System Model (GOPMSM) as a measurement system that allows for the assessment of progress towards developing and maintaining competitive edges to support customers' needs and the assessment of various resources' effect on the organisation's ability to achieve its goal. The GOPMSM is a modified version of the performance measurement system developed by Cox and Blackstone. This model has three main functions comprising the finance function, the resource function and the customer function.

- *Finance function:* The finance function uses accounting data to track financial performance in terms of revenue, cost, profit, assets and liabilities and provides the means for planning and controlling the organisation and provides the ability to track actual against budgeted expenses.
- *Resource function:* The resource function includes research and development, design engineering, procurement, production, warehousing and distribution. This function is designed to regulate the effective use of the organisation's resources engaged in development, creation and delivery of goods and services.

- *Customer function:* This includes marketing, sales and field services and links the organisation to the market.

5.4.1.2 Performance Scorecards

According to Chang and Morgan (2000:xxi-xxiii), performance scorecards allow a company to manage successfully and achieve more favourable results by focussing on the vital measures that matter to customers, employees and stakeholders. Scorecards support deployment of business strategies, provide visibility on process problems and help ensure that customers' needs are met. A performance scorecard is a set of business measures linked to business strategies and goals. A single scorecard is used at a specific level of an organisation to monitor and manage that specific area of the business. Defining the measures for a single scorecard is typically straightforward and easily accomplished. Performance scorecards are not isolated and are linked vertically and horizontally to other scorecards in an organisation. Vertical linkages connect scorecards to organisational strategy and goals, whilst horizontal linkages provide feedback that keeps managers and work teams on strategic priorities and organisational aims. As an example, a mid-level manager's scorecard in which the linkages are summarised, is provided in Figure 2 below.

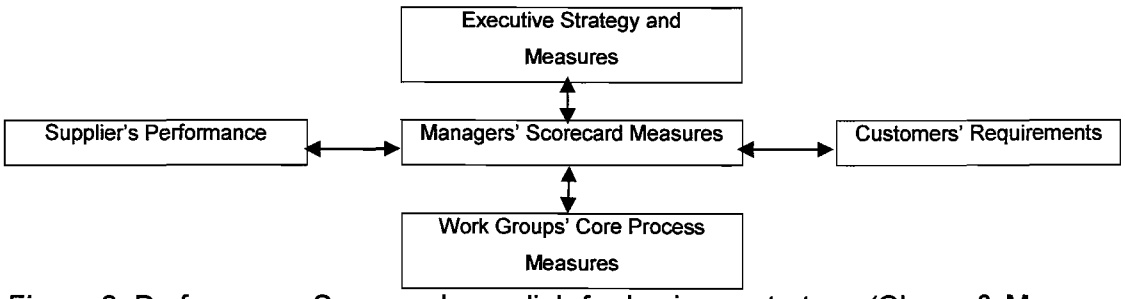

Figure 2: Performance Scorecard as a link for business strategy (Chang & Morgan, 2000:xxiii)

Chang and Morgan (2000:xxiii-xxiv) show that performance scorecards include charts and graphs that depict historical and/or projected performance of the key measures. Charts are used during management reviews to evaluate performance to targets, monitor trends, identify strengths and weaknesses and provide feedback on management actions. The development of a performance scorecard involves six phases:

- Collect;
- Create;
- Cultivate;
- Cascade;
- Connect; and
- Confirm.

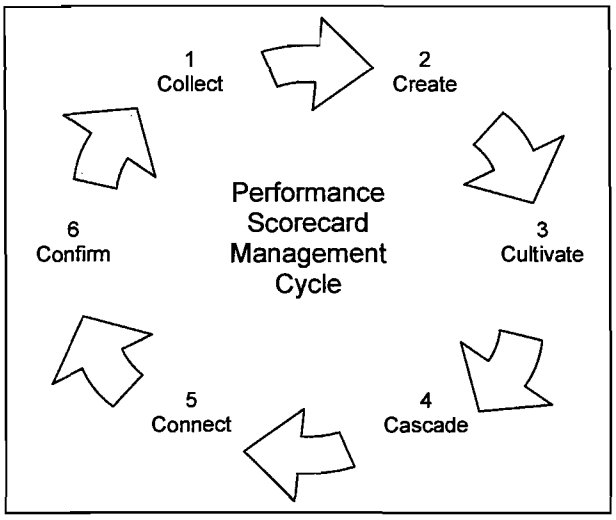

Figure 3: Performance Scorecard Management Cycle
(Source: Chang & Morgan, 2000:xxiv)

5.4.1.3 Behaviour Oriented Rating Methods

Cascio (2003:341-345) indicated a number of behaviour orientated or absolute rating systems. These are discussed below.

- ***Narrative essay:*** The narrative essay is the simplest type of absolute rating system. It consists of the written description of an employee's strengths, weaknesses and potential, including suggestions for improvement. This requires the rater to be knowledgeable about an employee's performance.
- ***Ranking:*** During ranking the rater orders all employees from highest to lowest, from best to worst. Caron (2007:2) adds by indicating that a manager is typically asked to assess the overall performance of an employee by ranking them in relation to other employees.
- ***Paired comparison:*** This is a more systematic method of comparing employees to one another. In this method each employee is compared with every other employee in terms of an overall categorisation such as present

value to the organisation. The rater is required to choose the better of each pair and the employee is ranked on the basis of the number of times the relevant employee was rated superior.

- ***Forced distribution:*** Employees are compared with one another and the overall distribution of rating is forced into a normal or bell-shaped curve, under the assumption that a small portion of employees are truly outstanding.
- ***Behavioural checklist:*** The rater is provided with a series of statements that describe a job-related behaviour. It is then checked to what extent each statement describes an employee. This method includes the Likert method of summed ratings, where a declarative statement is made, followed by several response categories. Flippo (1980:209) summarises checklists as a method utilised where the rater does not evaluate employee performance it is merely reported.
- ***Critical incidents:*** These are brief anecdotal reports by supervisors of the things employees do that are particularly effective or ineffective in accomplishing objectives. Caron (2007:3) expands by indicating that critical incidents focus the evaluator's attention on those behaviours that are key in making a difference between executing a job effectively and executing it ineffectively. The manager documents the employee's on-the-job behaviours and separates each behaviour or incident as satisfactory or unsatisfactory.
- ***Graphic rating scales:*** This method is used very often and a number of graphic rating scales exist. Even though the graphic rating scale may not yield the depth of essay or critical incidents, it is less time consuming to develop and to administer. Results are allowed to be expressed in quantifiable terms and may consider more than one performance dimension. As the scales are standardised, it facilitates comparison across employees. Flippo (1980:207) expresses the view that graphic scales are the most commonly used traditional, systematic method of performance appraisal.
- ***Behavioural anchored rating scales:*** This is a variation of the simple graphic rating scale and is also referred to as BARS. BARS defines the dimensions to be rated in behavioural terms and uses critical incidents to describe various levels of performance. Therefore, BARS provides a common frame of reference for raters. According to Caron (2007:3), BARS uses the constituents of critical incidents and graphic rating scales and applies careful job analysis to determine the behaviours required for a particular job.

5.4.1.4 Results-Oriented Rating Methods

Cascio (2003:345-346) indicated that management by objectives and work planning review are often used as rating methods and these are discussed below.

Management by Objectives (MBO): MBO is a process of managing which relies on goal setting to establish objectives for the organisation as a whole, for each department, for each manager of the various departments and for each employee. MBO is not a measure of an employee's individual behaviour it rather measures the employee's contribution to the success of the organisation. To establish objectives, three issues need to be addressed. Firstly, agreement is required on the major objectives for a given period of time. Secondly plans need to be developed on how and when these objectives will be accomplished and thirdly, agreement must be reached on the yardstick for determining whether the objectives have been met (Cascio, 2003:345). MBO approaches tend to emphasise a participative, but joint determination of objectives, followed by a participative but joint evaluation of success, in periodic appraisal interviews (Flippo, 1980:218).

The salience of goal setting is very well recognized to the extent that it has been incorporated in several formal management tools such as MBO (Whetten & Cameron, 1995:369). The principle behind this approach is to compare expected performance with actual performance. This approach was devised as a method of incorporating performance planning into performance appraisal (Caron, 2007:4). The concept of MBO adopts the philosophy of management that emphasizes integration between external control (by managers) and self-control (by subordinates). It can apply to any manager or individual, no matter what level or function, and to any organisation, regardless of size (Hersey & Blanchard, 1982:120).

Van der Waldt and Du Toit (1997:295) summarize MBO as a process for integrating individual and organisational objectives and that it is based on the view that joint participation of employees and management in which organisational objectives are converted into more specific individual objectives. They continue by adding that objectives can be seen as a point of departure in the management process and as a specific function of the institution.

In 1995 Drucker (quoted by Viedge, 2004:208) wrote about MBO, saying that effective management must direct the vision and efforts of all managers towards a

common goal. It must ensure that the individual manager understands what results are demanded of him. Superiors must understand what to expect of each of their subordinate managers. Each manager must be motivated to maximum efforts in the right direction and while encouraging high standards of workmanship, it must make them the means to the end of business performance, rather than the ends in themselves.

The thinking that leads to MBO made eminent business sense, yet the way it was implemented merely added another bureaucratic and energy sapping process which caused more harm than good. MBO failed as it became a paper exercise only, rather than what it was meant to be: a paper exercise to direct, support and reinforce the one-on-one management process. The same defect is repeated time and time again with performance management systems (Viedge, 2004:208).

Work planning and review: This method is similar to MBO, but it places stronger emphasis on the periodic review of work plans by the supervisor and subordinate to identify goals attained, problems encountered and the need for training (Cascio, 2003:345-346).

Van der Waldt (2004:53) expressed the view that an organisation needs to decide what it wants to accomplish and how this accomplishments will be measured, monitored and managed. With this in mind, the importance of performance indicators will be discussed in the subsequent section.

5.4.2 Performance indicators

Miles (quoted by Cloete & Wissink, 2004:225) defined an indicator as a measuring instrument used to give concrete, measurable, but direct value to an otherwise un-measurable, intangible concept.

According to Jacob (2007:20), indicators are needed in order to make the process of investigation manageable. Indicators do not have any objective validity in themselves, but are, as defined by the OED, "a thing that serves to give an indication [a sign, symptom or hint] or suggestion of something else".

Van der Waldt (2004:53) indicates that to monitor and evaluate policy processes, performance and outcomes, a set of key performance measures and indicators must

be in place. Performance indicators are measures that describe how well a programme is achieving its objectives. Performance indicators define the data to be collected and the measurement of progress and enable the comparison, over time, of results actuality achieved in relation to the planned results.

Patten (quoted by Jacob, 2007:22) explains that an indicator needs to be reasonable, useful, and a meaningful measure of the intended outcome. Outcome statements need to be clear, specific and measurable, but getting clarity and specificity is separate from selecting measures. The reason for separating the identification of a desired outcome from its measure is to ensure the utility of both.

Most performance indicators tell an organisation how it has performed in the past, thus a lag indicator. It is important to classify measures according to whether it will tell an organisation about the past or give an early indication of what is likely to happen in the future. Therefore it is important to look at lead indicators that provide early warning of what is likely to happen in the future (Anon (M), 2007:1).

According to Bullen (1991:2), performance indicators are usually seen as numerical measures of achievement that are easy to collect and use. In theory, performance indicators can only be derived for things over which one has control. However, in practice people do not have absolute control over anything and so "having control" is really a matter of whether there is enough control for one's purpose. He continues by quoting the definition of the Australian Office of Public Management "*a performance indicator defines the measurement of a piece of important and useful information about performance of a program expressed as a percentage, index, rate or other comparison which is monitored at regular intervals and is compared to one or more criterion*".

5.4.2.1 Types of indicators

Jacob (2007:20) mentions that there is no given set of correct indicators for assessing a particular type of impact, but a range of possible signs, symptoms or hints by which impacts can be observed, measured or detected with varying degrees of certainty. Indicators must make sense for the purpose it is used for.

According to Van der Waldt (2004:55-56), various types of indicators are used to measure the different aspects of performance. Typical indicators and the uses thereof are described below:

- *Input indicators* – measure input to a process and are typically cost related. It usually includes the relevant day-to-day operations;
- *Process indicators* – describe how well an organisation uses its resources in producing and rendering services. It covers activities and operations which convert inputs into outputs and is an internal type of indicator;
- *Output indicators* – refer to products produced by processing inputs and can be used to hold the organisation accountable;
- *Outcome indicators* – measure the extent to which goals and objectives are being met and are usually based on the results of different variables acting together. It forms an important diagnostic tool and tends to be a lag indicator as the outcome of various outputs can only be measured after the outputs have been produced. This is difficult to measure, as it is influenced by external factors; and
- *Composite indicators* – measure several indicators together to indicate overall performance and simplify a long list of indicators and identify the complex relationships between them into one index. This is useful in summarising performance within specific areas.

According to Jacob (2007:20), various types of indicators are used and these are indicated as quantitative indicators, qualitative indicators, SMART indicators and spiced indicators:

- *Quantitative indicators* – indicators that are answered in numerical form;
- *Qualitative indicators* – indicators that are answered in verbal form;
- *SMART indicators* – indicators that are specific, measurable, attainable, relevant and time-bound. This indicator is also a quantitative indicator; and
- *Spiced indicators* - indicators that are subjective, participatory, interpreted, cross-checked, empowering, diverse and focus more on relevance of indicators to different stakeholders and their accurate representation of complex realities.

The DPLG (quoted by Van der Waldt, 2004:57), mentions that a performance indicator must, where possible, be quantitative seeing that it is more reliable; be relative to allow for comparison across similar situations; be verifiable to validity the

sources of data; be practical by ensuring data can be obtained in a timely and cost effective manner; be reliable for confident decision making; and be sensitive in determining the manner of scoring.

Shaw (2007:3-4) indicates that not every aspect of an organisation's activities can be expressed in terms of money and non-financial indicators should be used. Non-financial indicators relate to manufacturing and production, sales and marketing, people, research and development and the environment.

5.4.2.2 Use of indicators

No particular type of indicator is inherently more useful and credible than the other. The selection of any particular set of indicators from the total possible range of relevant indicators is inevitably based on an underlying theoretical understanding of what types of impacts are important (Jacob, 2007:20).

Baseline measurements should be used to describe the present situation and to identify needs. Targets are then developed to highlight the target to be achieved. All users of indicators should take note that indicators do not provide answers to why differences exists as indicators raise the questions and suggest where problems may be present (Van der Waldt, 2004:57).

Bullen (1991:3-4) expressed the opinion that, if performance indicators are used as the judge of performance in an unthinking way, wrong conclusions will be drawn. Where rewards or funding are based on performance indicators, organisations being judged and rewarded may start to fudge the figures to obtain rewards, irrespective of performance. Table 17 provides information on the correct and incorrect use of indicators.

Table 17: The use and abuse of performance indicators (Alberta Treasury quoted by Van der Waldt, 2004:58)

Use	Abuse
Monitoring	Snap judgement
Investigation	Inappropriate comparison
Analysis and research	Superficial interpretation
Benchmarking	Poorly founded criticism

Leading to:	Leading to:
Improved accountability	Excuses
Learning	Complacency
Service improvement	Skewed priorities

5.4.3 Performance measures

The distinction between performance indicators and performance measures are imprecise and in practice indicators are often understood to be synonymous with concrete measures of project performance. Due to the inadequacies of directly quantifiable measures, focus has switched to using quantifiable indicators of performance (Van der Waldt, 2004:64).

Performance measurement is required to understand the gap between actual and expected levels of achievement and when corrective actions may be warranted. The results indicated by a performance measure will generally be compared with expectations specified by a performance target. Hence performance measures should correspond with the performance targets and indicate the extent to which the organisation is achieving these performance expectations. Performance measures are important sources of feedback for effective management (Anon (O), 2007:6).

A company's key performance factors (or measures) could include both quality and productivity measures and are a direct result of the strategy the business uses to survive in the market place (Kaydos, 1991:55).

Pet-Armacost (2000:4) expanded on this when she indicated that performance measures are a means of objectively assessing programs, products, activities or services. Performance measures should be related to an organisation's mission and goals. Performance measures must also indicate how an objective will be measured, when it will be measured and who will do the measurement.

ANON (J) (2007:3) indicated that to measure performance effectively, an organisation must recognise which measures are unique to certain functions and which are common across groups, departments, business units and the supply chain. The goal is to find a limited number of straightforward measures for the supply chain that are tied to the common strategy.

According to Kaydos (1991:61), defining compatible performance measures can have a positive impact on performance in two ways. Firstly, resources committed to non-productive tasks become available for activities that really count. Secondly, by ensuring everyone is moving in the same direction, waste caused by conflicts and confusion is reduced.

The most important principle of good performance measure design is that of relevance. The measure must be directly relevant to the purpose intended. Examples of principles are validity, completeness, reliability, time comparability, peer comparability, robustness, communicability, time perspective and drive-chain status (Anon (N), 2007:1).

The Department of Trade and Industry of the United Kingdom (2007:4) indicates that a performance measure must be:

- Meaningful, unambiguous and widely understood;
- Owned and managed by the teams within the organisation;
- Based on high level of data integrity;
- Such that data collection is embedded within normal procedures;
- Able to drive improvement; and
- Linked to critical goals and key drivers of the organisation.

Anderson *et al.* (1995:1-4) raise the point that performance measures tell the organisation something important about its products, services and the processes that produce them. It is a tool to help organisations understand, manage and improve what they do. Performance measures inform an organisation:

- How well its is doing;
- Whether it is meeting its goals;
- Whether customers are satisfied;
- Whether its processes are in statistical control; and
- Whether and where improvements are necessary.

Anderson *et al.* (1995:1-4) continue by adding that a performance measure is composed of a number and unit measure. The number provides a magnitude (how much) and the unit provides the number with a meaning (what). Performance measures are always tied to a goal or an objective (target). Performance measures can be represented by single dimensional units such as hours, meters, number of

reports, number of errors, length of time, etc. However, more often multidimensional units of measure are used. These are performance measures expressed as ratios of two or more fundamental units. This may be units such as miles per gallon (a performance measure of fuel economy), number of accidents per million hours worked, or number of on-time vendor deliveries per total number of vendor deliveries. Most performance measures can be grouped into one of six general categories which consist of effectiveness, efficiency, quality, timelines, productivity and safety.

Artley and Stroh (2001:36) indicate that, in addition to the aforementioned, performance measures are divided into five types. These five types are:

i) Input measures – used to understand the human and capital resources utilised to produce the outputs and outcomes;
ii) Process measures – used to understand the intermediate steps in producing a product or service;
iii) Output measures – used to measure the product or service provided by the system or organisation and delivered to customers;
iv) Outcome measures – used to evaluate the expected, desired or actual results to which the outputs of the activities or service have the intended effect; and
v) Impact measures – used to measure the direct or indirect effect or consequences resulting from achieving the program goals.

In expanding on the five types of performance measures, Artley and Stroh (2001:36) mention that performance measures may also be categorised as leading, lagging and/or behavioural. These types of measures are defined below:

- *Lagging measures* – measures performance after the fact;
- *Leading measures* – are predictive of future performance; and
- *Behavioural measures* – measures the underlying culture or attitude of personnel or the organisation.

Whether an organisation is in the manufacturing or service sector, in choosing an appropriate range of performance measures, it will, however, be necessary to balance them, to make sure that one dimension or set of dimensions of performance is not stressed to the detriment of others. The mix chosen will in almost every instance be different (Shaw, 2007:1).

5.5 CONCLUSION

From the content of this chapter it is evident that there is a distinct difference between performance management and performance measurement. Performance management is a multi-dimensional management process, whilst performance measurement is a cluster of tools with a common foundation. Performance management can be summarised as the measurement, gathering, processing and evaluating of data, in order to introduce a positive change in performance. Performance measurement is the ongoing monitoring of and reporting on program accomplishments and achieving of goals.

A number of performance management and measurement models and techniques were discussed and it was established that organisations have a variety of models to choose from, such as the Balanced Scorecard for performance management and Performance Scorecards or Management by Objectives for performance measurement.

To enable the measurement of an organisation's performance and progress, indicators need to be identified. These indicators must be stated in quantifiable or measurable terms and must also contain deadlines for achievement and the performance required. Performance indicators are measures that describe how well a programme is achieving its objectives and that there is no real distinction between performance indicators and measures. Performance indicators are usually seen as numerical measures of achievement that are easy to collect and use. Performance indicators or measures should be related to an organisation's mission and goals and must indicate the way in which an objective will be measured, when it will be measured and who will do the measurement.

In the next chapter the emphasis will be on determining whether any combined/composite indicators or a single performance measurement instrument exist with regard to measuring compliance with the Mining Charter as well as the Codes of Good Practice. It will also be investigated whether mining companies intend to comply with the Codes of Good Practice.

CHAPTER 6

COMPLYING WITH THE MINING CHARTER AND THE IMPACT OF THE CODES OF GOOD PRACTICE ON THE MINING INDUSTRY: EMPIRICAL FINDINGS

6.1 INTRODUCTION

Seeing that both the Mining Charter and the Codes of Good Practice are to be utilized as performance measurement and management instruments, the previous chapter provided information on performance management and measurement. In this chapter findings will be provided from data gathered from various respondent groupings, including mining companies, Black Economic Empowerment advisors and attorneys, as well as the national departments of Minerals and Energy and Trade and Industry, on the actions required by mining companies to comply with the Mining Charter as well as the Codes of Good Practice.

The research question relating to which aspects of the Codes of Good Practice a mining company will have to comply with to remain competitive or become a preferred supplier to public and private enterprises will be addressed in this chapter. The results of the investigation indicating whether any combined/composite indicators and a single performance measurement instruments exist that will enable a mining company to measure its performance against the requirements of both the Mining Charter and the Codes of Good Practice, will also be provided. It will also address the research objective of analysing the Department of Minerals and Energy's role in measuring mining companies' performance against both the Mining Charter and the Codes of Good Practice.

In this chapter detail will be provided with regard to empirical data obtained to ascertain whether any combined/composite indicators and single performance measurement instrument exist within the mining industry which will enable mining companies to measure performance against, and compliance with both the Mining Charter and the Codes of Good Practice. The triangulation of data is ensured through literature studies, applicable legislation and interviews with the relevant stakeholders.

However, before these results are provided, it is necessary to provide information on the methodology applied during this research.

6.2 METHODOLOGY

For purposes of this research a qualitative research approach has been utilised. Qualitative research tends to focus on an in-depth understanding of small samples (Naudé, 2005:2).

A common thread running through the research setting, under qualitative research, is the need for developing initial understanding of the matter at hand (Struwig & Stead, 2003:19).

Kruger (2006:25) expresses the view that approaches such as case studies can be described as qualitative research. In qualitative research, the researcher is the main research instrument and becomes part of the research situation. On the basis of thorough knowledge and his own insight, the researcher must deal with the objects of the study, so that responsible conclusions can be drawn from the research.

According to Bell (2005:1), the research instrument selected is aimed at obtaining answers and the instrument is merely a tool to enable the researcher to gather data, and therefore it is important to select the correct tool for the job.

As the research requires an in-depth understanding of the subject being researched and it requires attention to detail and working with people, qualitative research was conducted. Qualitative research was conducted by means of literature studies, investigations into the legislation and policies applicable, as well as interviews and questionnaires.

6.2.1 Primary data collection

Primary data collection methods involve individuals collecting data for themselves using means such as interviews and questionnaires. The main feature of primary data collection is that the information collected is unique to the individual and his research and is not seen by anyone else until after it has been published. A number of methods for collecting data may be used (Anon (Y), 2008:1).

Mouton (1996:36) expressed the view that data collection consists of participant observation, interviewing, un-obstructive measurement and systematic observation.

Sampling procedures for qualitative research differ from quantitative research since qualitative research focuses primarily on the depth and richness of the data. Therefore qualitative research generally selects samples purposefully, whilst quantitative researchers do not select samples as stringently. Qualitative researchers must carefully consider why they have selected a particular sample (Struwig & Stead, 2003:121).

In selecting the sample of respondents to be interviewed, they were selected to ensure that a representative sample is obtained from various size mining companies, Black Economic Empowerment (BEE) Advisors, attorneys, the Department of Minerals and Energy (DME) and the Department of Trade and Industry (DTI). In addition, literature studies were conducted on the actions and steps being taken by other major mining companies. The respondents within the mining industry were selected based on their experience within the mining industry, the position they hold within the respective companies and their involvement with the Mining Charter and the Codes of Good Practice.

Similarly the BEE Advisors were selected based on their involvement with the implementation of the Mining Charter and Codes of Good Practice, advice given to companies on Broad-Based Black Economic Empowerment (BBBEE) and the reputation of the relevant BEE Advisors. The views of attorneys are required seeing that the decision whether to adopt a particular BEE policy may have legal consequences. Attorneys also provide legal interpretation of the applicable legislation and they are involved in the formulation of BEE agreements.

The respondents from the respective Government departments were selected based on the positions they hold within the relevant Government department, experience within the industry and the role the position plays in applying the Mining Charter and Codes of Good Practice. Specific attention was given to select respondents that are involved in policy matters and implementing policy. Through careful selection of the respondents and based on the aforementioned criteria, it was ensured that data collected is reliable and valid. Through literature studies, responses could be verified for reliability and validity. Table 18 provides a summary of the positions and experience of the respondents.

Table 18: Summary of biographical information of respondents

Industry	
Position	**Experience (years)**
Commercial Manager (previously Manager Legal Services)	12
Legal Advisor	12
Manager Mining Charter and Continues Improvement	22
Manager Corporate Affairs and Head, Legal Services	15
Company Director	15
Company Director	13
Company Director and attorney	17
Company Director and attorney	25
Government Departments	
Position	**Experience (years)**
Deputy Director-general Mineral Policy and Promotion	11
Chief Director Mineral Promotion	25
Regional Manager	10
Regional Manager	7
Deputy-Director Administration and Systems	14
Deputy Director Minerals and Mining Board	11
Director Licensing and Legal Compliance	11
Director Black Economic Empowerment	5

6.2.1.1 Interviews

Interviewing is a technique that is primarily used to gain an understanding of the underlying reasons and motivations for people's attitudes, preferences or behaviour (Anon (Z), 2008:7).

If data is collected by means of personal interviews, the interviewer visits the participants at their homes or workplace. Interviews, as data collection method, can vary between unstructured to standardised, structured interviews. Structured interviews consist of the posing of a number of pre-determined questions from a questionnaire. Unstructured interviews are suited to determine a number of variables of a specific field of interest. Semi-structured interviews are categorised in-between the aforementioned two types of interviews. Even though all participants are asked the same questions, the interviewer may adapt the formulation of the questions and terminology to be understandable to the participant (Huysamen, 1993:148-149).

According to Berg (quoted by Struwig & Stead, 2003:98), there are three common types of interviews with regard to primary data collection for qualitative research. These consist of standardised interviews, semi-standardised interviews and the un-standardised interviews. Semi-Standardised interviews were conducted during this research.

Semi-Standardised interviews comprise a combination of the structured and unstructured interviews. Predetermined questions are posed to each participant in a systematic and consistent manner, but the participants are given the opportunity to discuss issues beyond the questions. This enables the interviewer to obtain multiple responses to set questions and allows for detailed responses (Struwig & Stead, 2003:98). This type of interview is focused by asking certain questions, but with scope for the respondent to express him or herself at length (Anon (Z), 2008:8).

No significant difficulties were encountered in conducting the semi-standardised interviews. However, obtaining detailed responses on some of the questions seemed to be more challenging, especially with questions posed to Government officials. Obtaining personal information from Government officials also seemed to be a sensitive matter.

Struwig and Stead (2003:86) indicate that observations and asking questions are the two basic data collection methods for quantitative research. Regardless of which of the two methods are used, some procedures must be devised to standardise the data collection process and thereby standardise the data collected. The most used data collection methods consist of:

- Personal interviews;
- Telephone surveys; and
- Mail surveys.

As only personal and telephonic interviews were conducted, only these will be briefly discussed below:

6.2.1.1.1 Personal interviews

Struwig and Stead (2003:86-87) indicate that personal interviews are the most versatile and flexible method for the following reasons:

- Unstructured interviews of variable length and relatively long questionnaires may be used;
- Interviews can be adapted to the situation (individual and context); and
- If required, both the interviewer and respondent can provide further explanations or clarifications.

During the interviews open-ended questions were used to gather data for this research. Open-ended questions allow respondents to answer freely and allow for further clarification, if required. This approach is best suited to obtain the answers to the research questions posted in Chapter 1 of this thesis. The research questions are also open-ended. To obtain suitable answers, the respondents must be able to answer freely, and to obtain clarification the researcher must be able to ask follow-up questions.

Many researchers believe that personal interviews provide more accurate information than mail questionnaires and telephone interviews. The physical presence of an interviewer tends to have a positive effect on the accuracy of the data obtained. Personal interviews provide a good response rate as the interviewer is often able to persuade individuals to take part in the research (Struwig & Stead, 2003:86-87).

Mouton and Marais (1990:93) indicate that a solid interpersonal relationship between the researcher and the participants is an advantage as it acts to neutralize initial distrust. As for this research, the researcher was known and had previous interactions with a number of the respondents. This had a positive impact which assisted in these respondents trusting the researcher and responding more freely.

6.2.1.1.2 Telephone surveys

Huysamen (1993:151-152) explains that during telephone interviews, the interviewer asks a number of questions from a predetermined questionnaire and notes the responses of the interviewee. However, the interviewer has less control over the interview situation.

Telephone interviews have a major advantage due to the speed at which it can be conducted. Respondents tend to answer briefly to open-ended questions over the telephone, but it is difficult to maintain their interest and to obtain personal

information. Telephone interviews are cheaper than personal interviews (Struwig & Stead, 2003:87-88).

During this research, telephone interviews were extremely successful. The fact that a large number of the respondents and the researcher had previous interactions and that all respondents were knowledgeable of the research topic, ensured that respondents participated freely in the interview. This ensured that the interest of the respondents was maintained throughout the duration of the interview.

6.2.1.2 Types of questionnaires

The foundation of all questionnaires is the question. The questionnaire must translate the research objectives into specific questions and the answers to the questions will provide the data for hypothesis testing. The question must motivate the respondent to provide the information being sought (Frankfort-Nachmias & Nachmias, 1992:239).

For the collection of primary data by means of posing a number of questions, a standardised form or questionnaire to record all the responses, is required. Two main types of questionnaires can be developed. These are interviewer-administered questionnaires and self-administered questionnaires (Struwig & Stead, 2003:87). During the interviews conducted for the collection of data for this research, an interviewer-administered questionnaire was used.

6.2.1.3 Types of questions

The content of the question is only one important aspect in the construction of questionnaires. The researcher must also consider the structure of the question and the format of the response categories accompanying the questions (Frankfort-Nachmias & Nachmias,1992:242).

According to Huysamen (1993:132-133), questions may be open or closed, to enable respondents to formulate the answers themselves. Questions can also be multiple-choice by nature.

Bell (2005:137) expands on the aforementioned and points out that the more structured a question is the easier it is to analyse. Youngman (quoted by Bell,

2005:137-138) lists seven types of questions. These questions comprise open or verbal; list; category; ranking; quantity; grid and scale questions.

Open-ended questions allow respondents to answer freely, in their own words and to express what they think. This type of question is useful when further clarification is required and influences the respondent less than the multiple-choice or dichotomous question (Struwig & Stead, 2003:92). This is confirmed by Frankfort-Nachmias and Nachmias (1992:243) when they stated that open-ended questions are not followed by any kind of specified choice and the respondents' answers are recorded in full. This research made use of open-ended questions.

To obtain the data required to address the research questions, open-ended questions allow for the respondent react freely to the questions. Open-ended questions also provide the respondents with the opportunity to seek clarification on the questions and the researcher to obtain more detail or clarification on particular responses.

Duval (2005:6) summarizes the design of questionnaires by indicating that it should be short, simple and interesting. He also stated that questions should measure one thing at a time, leading questions should be avoided, unfamiliar words or abbreviations should not be used and terms for which the definition can vary, must be avoided.

6.3 FINDINGS ON RESEARCH CONDUCTED

In this chapter the responses and information obtained from mining companies, other stakeholders, the DME and the DTI will be provided. The information reflected below has been obtained utilizing semi-standardised and telephonic interviews with the various role-players. Data collected from the interviews were correlated with other sources of information such as literature reviews, the applicable legislation and Government policy. In applying the aforementioned it was possible to address the research questions and to achieve the research objectives.

Kingston (as quoted by Goldwyer, 2007:20) mentions that transformation defines the South African regulatory environment in which companies have to operate. Until such time as BBBEE targets have been met and a new empowered equilibrium has been reached, companies will have to accelerate transformation across all sectors of the

economy as a matter of corporate strategy. While BEE affects every sector of the South African economy, the sheer scale of the mining industry and the inroads made by many established players in transformation, can teach investors important lessons. In Anglo American's Transformation Report (2006:6) examples of such inroads may be seen in the BEE transactions concluded between Anglo American, Kumba Iron Ore, as well as Anglo Inyosi Coal.

The sample of respondents was selected to ensure that a representative sample is obtained from various size mining companies, BEE Advisors, attorneys, the DME and the DTI. To ensure relevancy, persons with more than ten years' experience in the mining industry were selected, based on their position within the company, their involvement with regard to the Mining Charter and Codes of Good Practice and the role they play with regard to compliance.

In respect of the Government departments, respondents were selected based on the position they hold and the role they plan with regard to the Mining Charter and Codes of Good Practice. As the mining industry comprises a vast number of companies in diversified fields, as well as diversified clients and customers, it is not possible to include all the mining companies in this research. In selecting the sample, a case study-approach was utilised as this is often the most suitable approach applied in qualitative research. Mining companies were selected randomly, with a view to obtaining data from small, medium and large mining companies, mining minerals such as gold, platinum and coal. Utilising the case-study approach, data was also obtained from other mining companies, not specifically interviewed. Even though all the mining companies included in this research have head offices in Johannesburg, they operate a number of mines in various Provinces of South Africa. These mining companies predominately operate in the Gauteng, Mpumalanga, North West, Free State, Kwa-Zulu Natal and Limpopo Provinces.

The experience of the persons interviewed is provided in Figures 4 and 5 below and the age distribution is contained in Figure 6.

Figure 4: Summary of experience of persons interviewed in the mining industry.

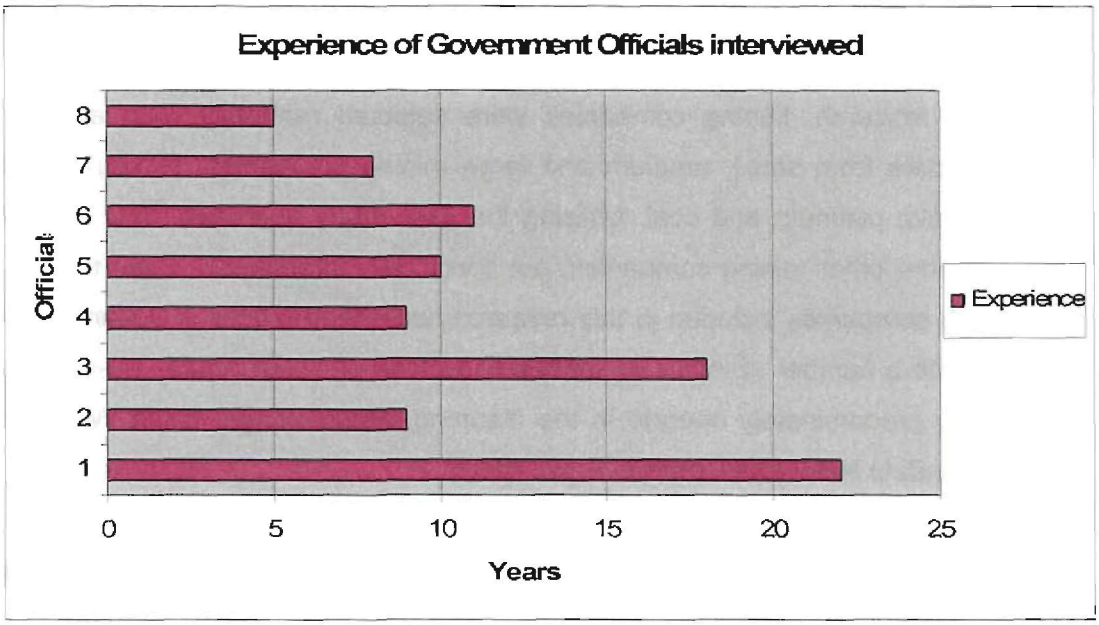

Figure 5: Summary of experience of persons interviewed in the Government

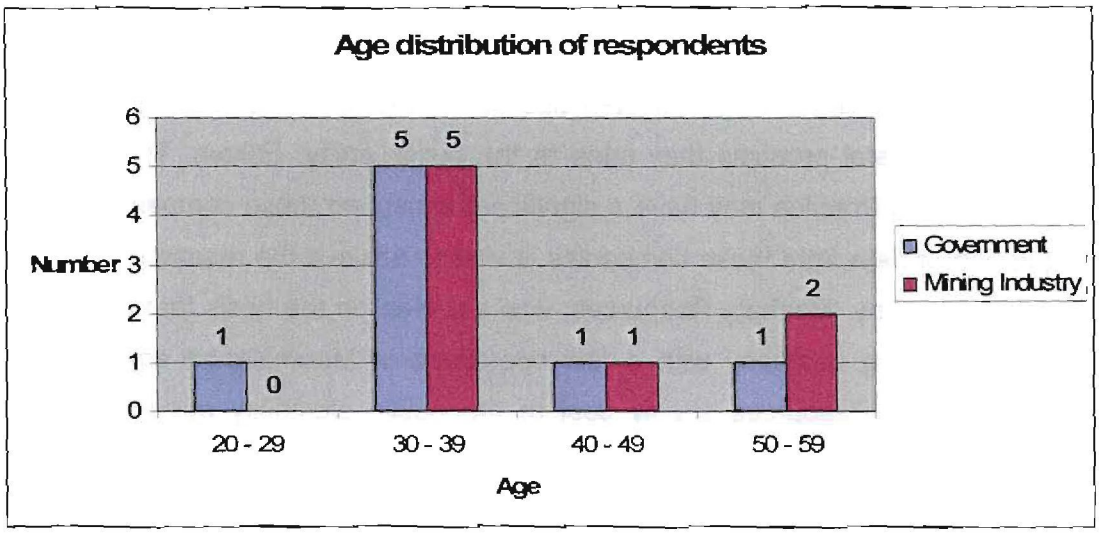

Figure 6: Age distribution of respondents

From the abovementioned summary it can be deducted that the respondents in the mining industry have been involved in transformation and BEE for a longer period than their counterparts in the Government. This may also be attributed to the fact that formalisation of BEE is a fairly new field within Government, as the MPRDA and the BEE Act only came into effect from 2004 and onwards, and BEE practitioners in the Government is a new field. On the other hand, BEE and transformation in the mining industry commenced as far back as the late 1980's.

6.3.1 Mining companies

Creamer (2007:3-4) reports that the Government and the mining industry have drafted the Mining Charter which sets the framework, targets and timetable for effecting the entry of HDSAs into the South African mining industry. There has been some confusion as to how the Mining Charter will be affected by the Codes of Good Practice. The Codes of Good Practice outline what companies need to do in terms of ownership, management control, employment equity, skills development, preferential procurement, enterprise development and socio-economic development, to fulfil Government's BEE policy requirements. To address the confusion, the DTI, DME and the Chamber of Mines have reached agreement that the Mining Charter is to be left as it is and that the Codes of Good Practice will not affect the Mining Charter until at least 2009. Meanwhile, the DTI has requested mining companies to align their procurement and enterprise development policies with the spirit of the Codes of Good Practice.

Interviews were conducted with four mining companies. The companies were selected based on its size and the market to which it sells its products. A number of coal mining companies were selected due to the fact that coal mining companies supply the mineral products they mine to the public entity, Eskom. Therefore, the Codes of Good Practice may have a significant impact on these companies and the acquisition of data from these companies is vital to achieve the research objectives. The first company, Mashala Resources, was selected on the basis that it is a small BEE coal mining company with a few operations in Mpumalanga and Kwa-Zulu Natal. Mashala Resources supply coal to the public electricity generation entity, Eskom. The second company, Pamodzi Gold is a junior gold mining company with operations on the east and west rand of Gauteng, Orkney, in the North West Province and Welkom in the Free State Province. Pamodzi Gold is a listed black-owned mining company. Gold is a regulated commodity and the sale thereof is limited to Rand Refineries only, thus providing a different perspective as the sale of its product is not necessarily a driver for complying with the Codes of Good Practice. The third company, Sasol Mining is a large coal mining company which predominantly mines coal for its own purposes at five operations in Mpumalanga and one in the Free State. The fact that Sasol Mining sells its mineral product to a company within the Sasol Group will provide important data with regard to the impact of the Codes of Good Practice on linked companies. The forth company is Xstrata Coal, a subsidiary company of the fifth largest public mining company in the world. Xstrata mines seven commodities in nineteen countries. Xstrata Coal is the world's largest exporter of thermal coal and the fifth largest producer of hard coking coal and semi-soft coal. Xstrata Coal mines coal, predominantly in the Mpumalanga Province. In addition to the coal exported by Xstrata Coal, coal is also sold to Eskom. It is important to note that the views of a number of multinational mining companies with regard to BEE, are discussed in paragraph 3.4 below.

6.3.1.1 Mashala Resources

Mashala Resources is an empowered small sized coal mining company with a number of operations that supply coal to Eskom. Mr A Lipshitz, a qualified attorney and Commercial Manager and previously Manager Legal Services, was selected as a respondent due to his position in the company and, as functional manager, he has the responsibility to ensure compliance with the MPRDA, the Mining Charter and other legalisation. During an interview (Booyens, 11 December 2007) with Mr A Lipshitz, he responded to the question pertaining to whether Mashala Resources will

be impacted upon by the Codes of Good Practice; that complying with the Codes of Good Practice is optional and that it is a legal requirement to comply with the Mining Charter only. To the question whether Mashala Resources intends to comply with both the Mining Charter and the Codes of Good Practice, the view was expressed that complying with the Mining Charter and the Codes of Good Practice, is a business imperative. Mashala Resources has a two-phased approach. The initial phase is to ensure compliance with the provisions of the Mining Charter and the second phase is to ensure compliance with the provisions of the Codes of Good Practice. Any company wishing to do business within the South African economy will have to comply with the Codes of Good Practice, not only to continue doing business, but also to obtain other licences and permits not governed by the MPRDA. Therefore, there will be significant implications if a mining company does not comply with the provisions of the Codes of Good Practice.

Asked whether Mashala Resources has implemented any measures to comply with the Codes of Good Practice, Mr Lipshitz (2007) confirmed that Mashala Resources has already appointed consultants to assist in measuring compliance with the Codes of Good Practice. On the issue whether Mashala Resources has any systems to enable reporting on the Mining Charter and Codes of Good Practice, Mr Lipshitz expressed the view that Mashala Resources is obliged to implement a dual reporting system to enable it to report on both the Mining Charter and Codes of Good Practice. This has a significant impact on Mashala Resources. Due to the fact that it is a small company, the company does not have the resources or manpower to perform dual reporting and will have to implement measures to address this. The difference in the elements of the Mining Charter and the Codes of Good Practice is providing a significant complication due to the fact that issues such as housing and living conditions, home ownership and beneficiation are not contained within the Codes of Good Practice. Even if the Mining Charter is updated and revised to conform to the Codes of Good Practice, a mining company will still have to comply with the elements of the Mining Charter as these are imbedded in the Social and Labour Plan (SLP) and therefore legally binding on the mining company, for the life of the mine. The SLP, which includes a number of the pillars of the Mining Charter, becomes part of a mining company's licence to operate and draws mining companies into activities which are not their core business.

Lipshitz (2007) indicates that the most significant statements of the Codes of Good Practice to comply with, will be Statement 500 dealing with procurement and

Statement 600, relating to enterprise development, as this is essentially the same as the requirements of the Mining Charter.

With regard to whether Mashala Resources has any combined (composite) indicators and a performance measurement instrument that will enable them to measure performance against the requirements of the Mining Charter and the Codes of Good Practice, Mr Lipshitz (2007) stated that he is not aware of any such composite indicators or a combined measurement instrument. He continued to add that mining companies are left to their own devises as the DME, and for that matter, the DTI has not offered any assistance or guidance to the mining industry in dealing with the complications created by the Mining Charter and the Codes of Good Practice.

In conclusion, Lipshitz (2007) indicated that the Mining Charter is very rigid in the manner in which it measures compliance. A significant number of BEE is excluded from recognition by the Mining Charter which, in terms of the Codes of Good Practice, is often recognized. The Codes of Good Practice also take away a considerable amount of administration regarding the verification of suppliers, due to the accreditation provisions of the Codes of Good Practice. Even though BEE is necessary to normalize the South African economy, misguided social engineering should be avoided.

6.3.1.2 Pamodzi Gold

Ntsele (2007:2) expressed the opinion that Pamodzi Gold is the first black controlled and owned junior gold mining company which was created on 11 December 2006, with the listing of Pamodzi Gold on the Johannesburg Securities Exchange (JSE). This listing launched a new chapter in the history of junior gold mining in South Africa. It is envisaged that Pamodzi Gold will be the vehicle used to consolidate the South African junior gold mining sector.

Pamodzi Gold's annual report (2007:17) states that the company secretary plays an important role in assisting Pamodzi Gold in complying with statutory regulations, tabling information on relevant regulatory and legislative changes and giving guidance to its directors.

Therefore the company secretary was identified as a suitable person to interview in an effort to obtain Pamodzi Gold's perspective of the impact of the Codes of Good

Practice on their operations. In an interview (Booyens, 9 January 2008) with Ms G Chemaly, the Legal Advisor and Company Secretary of Pamodzi Gold, she indicated that Pamodzi Gold is the holding company of seven individual subsidiary gold mining companies.

During the interview, Ms Chemaly (2008) raised the point that the Codes of Good Practice has an indirect impact on mining companies and even though not a legal requirement, it is beneficial to be Codes of Good Practice compliant, if listed on the JSE. This removes any concerns that potential investors may have with regard to the South African Government's BEE requirements and allows a company to raise funds for further BEE transactions.

Complying with both the Mining Charter and the Codes of Good Practice will have its advantages as companies have a responsibility to assist in achieving the Government's transformation objectives, especially in the case of Pamodzi Gold, as it is a BEE-owned and controlled mining company (Chemaly, 2008).

Chemaly (2008) indicated that the sale of gold is regulated and therefore there is no specific benefit in complying with the Codes of Good Practice, from the selling of its product point of view. However, not complying with the Codes of Good Practice may influence the company's ability to obtain licences and permits not regulated in terms of the MPRDA. In cases where Government grants and assistance is required to avoid mine closures, this may be of significance. Pamodzi Gold has not implemented specific systems to report on both the Mining Charter and the Codes of Good Practice. As compliance with the Mining Charter is compulsory, reporting in this regard is done in Pamodzi Gold's annual report. In addition, according to Pamodzi Gold's annual report (2007:19), the audit and risk management committee is responsible to monitor and review, amongst others, compliance with applicable legislation and requirements of regulatory authorities.

To confirm its compliance with the Mining Charter, in the Annual Report of Pamodzi Gold (2007:28-29), it is stated that Pamodzi Gold is committed to identify and harness local and regional resources and opportunities to stimulate new economic and employment opportunities. Social upliftment will be advanced through the implementation of various social projects and Pamodzi Gold will continually strive to implement community projects. Pamodzi Gold also embarked on the development of initiatives to create job opportunities for HDSAs.

With regard to the difference in the elements of the Mining Charter and the Codes of Good Practice and whether it will pose a problem, Ms Chemaly (2008) is of opinion that it would be preferred if the two methods of measurement could be aligned or combined. This will reduce uncertainties and alleviate pressure on resources. Pamodzi Gold is of intention to comply with as much as possible of the provisions of the Codes of Good Practice to ensure that it retains all the permits and licences required to mine.

Pamodzi Gold does not have any specific instrument or system or any composite indicators to enable the measurement of performance against the Mining Charter and the Codes of Good Practice. Pamodzi Gold is currently not taking any actions and is neither engaged in any consultations in an effort to clarify the requirements or obtain composite indicators (Chemaly, 2008).

Ms Chemaly (2008) indicated that, due to the fact that Pamodzi Gold is a BEE-owned and managed mining company, this significantly reduces the pressure of complying with the Mining Charter and Codes of Good Practice. Pamodzi Gold has not approached or engaged the DME in any discussions with regard to complying with the Mining Charter and Codes of Good Practice.

6.3.1.3 Sasol Mining

According to Sasol's Annual Review and Summarized Financial Information Report 2006 (2006:4), Sasol Mining currently mines approximately 46 million tons of saleable coal per year, for Sasol's South African petrochemical plants and exports approximately 4 million tons of coal annually.

Cox (2006:10) indicates that Sasol is deeply cognisant of its responsibility as a leading South African corporate citizen. Whilst Sasol's business philosophy and moral conscience is guiding Sasol, Sasol has to refer to the Codes of Good Practice for direction. The need to redress the decades-long injustices of the past has to be achieved in tandem with the need to ensure investment, job creation and opportunities for all.

Sasol Mining has appointed Mr M Ramokhothoane in the position of Manager Mining Charter and Continuous Improvement with the specific responsibility to ensure

compliance with the Mining Charter and to ensure that Sasol Mining adheres to all BEE-related legislation, including the Codes of Good Practice. Based on his position within Sasol Mining and his experience within the mining industry, Mr Ramokhothoane was selected as a respondent.

During an interview (Booyens, 15 January 2008) with Mr Ramokhothoane, he mentioned that to his understanding, the Codes of Good Practice have a significant impact on Sasol Mining. Sasol Mining will have to comply with the Codes of Good Practice due to it being part of the Sasol Group. Even though Sasol Mining is subject to measurement of BEE, in terms of the Mining Charter, it supplies coal to Sasol Synfuels. Sasol Synfuels is subject to measurement in terms of the Codes of Good Practice. Sasol Mining and Sasol Synfuels are both subsidiaries of Sasol Limited. Sasol Limited is the measured entity for purposes of the Codes of Good Practice and aims to acquire an accreditation level of at least a Level Four Contributor. This has the effect that all Sasol Limited's subsidiaries, including Sasol Mining, must comply with the provisions of the Codes of Good Practice. To achieve a high score in terms of the Codes of Good Practice, Sasol Limited, through Sasol Synfuels and its other subsidiaries, must ensure that its suppliers' BEE credentials are as high as possible. Therefore Sasol Mining, as a supplier to Sasol Synfuels, has no alternative but to comply with both the Mining Charter and the Codes of Good Practice.

The integration of Sasol's business is confirmed by the statement made in the Sasol Annual Financial Statement (2006:30), where it is mentioned that the Sasol Limited group is an intergraded oil and gas group with substantial chemical interests, based in South Africa and operating in numerous other countries throughout the world. Sasol manufactures and markets liquid fuels, gas and chemicals. In addition, the group operates coal mines to provide feedstock for its synthetic fuel and chemical plants.

In response to the question whether there will be any implications for Sasol Mining, if it is decided not to comply with the provisions of the Codes of Good Practice, Mr Ramokhothoane (2008) mentioned that for Sasol Mining to obtain and retain its licence to operate, it is essential to comply with the provisions of the Mining Charter. Even though not a legal requirement, a company that does not comply with the requirements of the Codes of Good Practice, may easily be stigmatized as not conducting business in the spirit of transformation and this may have significant negative consequences. Sasol Mining has already implemented various measures to

comply with the Mining Charter and has included Mining Charter compliance in a project created to ensure continuous improvement. The project, called Project 2010, has a specific theme which is dedicated to Mining Charter compliance. A critical component of Mining Charter compliance is the Social and Labour Plan (SLP). The SLP addresses six of the pillars of the Mining Charter and plays a significant role in ensuring that mining companies do meet the transformation objectives of the Government.

Sasol Mining and the Sasol Group are currently investigating ways and means to ensure compliance with the Codes of Good Practice. However, due to the fact that Sasol Mining will have to comply with the Mining Charter and the Codes of Good Practice, it will have to develop specific measures that will ensure compliance with both. This has resulted in mining companies having to satisfy "two bosses". The fact that there is a significant difference in the elements to be measured in terms of the Mining Charter and Codes of Good Practice complicates compliance with both significantly. The major difference in the percentage of ownership requirements in the Mining Charter and the Codes of Good Practice, to obtain maximum score in terms of the Codes of Good Practice, makes it very difficult to be measured in terms of both, without significantly changing existing BEE transactions. The Mining Charter is also very specific on human resources development and requires significant local economic development (LED) projects. Even though the Codes of Good Practice require skills development, it is less restrictive than the Mining Charter. Other complicating factors are issues such as the improvement of housing and living conditions, improvement of nutrition of employees and providing for downscaling and retrenchment, which are important in terms of the Mining Charter, but do not feature in the Codes of Good Practice at all. The Mining Charter requires significant investment in LED, which is pursued vigorously by the DME. LED projects are aimed solely at improving the livelihoods of the poorest of the poor and the DME does not recognise socio-economic development (SED), whilst the Codes of Good Practice only requires SED. In terms of the Generic Scorecard for the Codes of Good Practice, SED only accounts for 5 points out of the total of 100 (Ramokhothoane, 2008).

Ndimande (2007:37) indicated that the six elements of Sasol Mining's BEE Procurement Programme acknowledge the need to focus in a structured manner on the drivers and support functions that enable transformation through BEE Procurement, whilst managing the interfaces and relationships between the

elements. Compliance with the elements/pillars of the Mining Charter and Codes of Good Practice of the Sasol business in Secunda will be achieved through the specific elements of preferential procurement and enterprise development.

According to Ramokhothoane (2008), the question relating to which aspects of the Codes of Good Practice a mining company would select to comply with, is an interesting question. From a Sasol Mining perspective, compliance with all the elements will be sought, but ownership is a major issue. Issues such as enterprise development, skills development, social investment and procurement are all addressed by the Mining Charter and are often more stringent than the requirement of the Codes of Good Practice. As procurement, skills development, employment equity and enterprise development account for a large number of points and if socio-economic development is included, mining companies should attempt to obtain the highest possible scores on these elements. However, no combined/composite indicators exist to assist with integrated measurement of compliance with the Mining Charter and Codes of Good Practice. Mining companies will have to devise a method or instrument to measure the different elements or pillars.

Ramokhothoane (2008) confirmed that the DME has provided extensive assistance and guidance in ensuring compliance with the Mining Charter, especially through the development of Sasol Mining's SLP. Even though only limited engagement took place, no information could be obtained from the DME pertaining to their views on how mining companies should address the requirements of both the Mining Charter and the Codes of Good Practice.

Mr Ramokhothoane (2008) concludes by stating that if clear guidelines and direction were provided to the mining industry, by the DME and DTI, directly after the implementation of the Codes of Good Practice, progress with transformation would have been significantly faster. In the absence of direction, the mining companies' attention was focused on compliance, whilst with direction and guidance, BEE could have been included as a business imperative a lot sooner. The confusion caused by the differences between the Mining Charter and Codes of Good Practice have resulted in mining companies not knowing where to focus their energy, resulting in lost opportunities.

6.3.1.4 Xstrata Coal

Xstrata Coal is the world's largest exporter of thermal coal and the fifth largest producer of hard coking coal and semi-soft coal. Headquartered in Sydney, Australia, Xstrata Coal has interests in Australia, South Africa and Colombia (Anon (Q), 2008).

In its Annual Report for 2006 (2006:22), Xstrata Coal indicated that with the implementation of the MPRDA and the Mining Charter, it is a requirement for existing mining companies to convert its current rights to new-order rights. To enable a mining company to obtain conversion of its rights, it must satisfy the mining industry BEE requirements.

Mr S Laubscher, the Manager Corporate Affairs and Head, Legal Services, as well as company secretary of Xstrata Coal was identified as a suitable respondent due to his position in the company, his experience in the mining industry and the fact that he has the responsibly to advise and guide Xstrata Coal concerning compliance with the MPRDA, the Mining Charter and BEE.

Ratshikhopa (2006) indicated during a presentation on BEE and the new South Africa, hosted in Cape Town by the McCloskey Group, that each mining company should develop a business case for implementing the Mining Charter and it is recommended that mining companies should not merely refer to Mining Charter compliance, but rather transformation. In the light of this, Xstrata Coal has established a transformation committee to attend to transformation, including Mining Charter compliance.

The Xstrata Coal transformation agenda is not a programme that is based on a whim or what is politically acceptable, but the transformation drive is based on important business and social considerations. The transformation agenda is not seen as a standalone initiative or an addition to the company's core business, it is a line function of every section. Government has a political agenda, companies are faced with demands from other stakeholders, such as labour, and there is pressure from interest groups such as civil organizations and environmentalists. In addition to all this, there is the moral necessity to uplift those communities that were discriminated against during the apartheid years (Ratshikhopa, 2005:18).

Henderson (2005:26) indicated that transformation and addressing inequalities in the mining sector is no longer driven by law. Xstrata Coal also focuses on transformation beyond its business goals through social responsibility programmes in which various issues are addressed, which include education and health.

In an interview (Booyens, 21 January 2008) conducted with Mr S Laubscher, he stated that the Codes of Good Practice will have a significant impact on Xstrata Coal as its suppliers will have to comply with the Codes of Good Practice. Xstrata Coal is also a supplier of commodities to other non mining-related entities. Xstrata Coal does not want to be caught short once alignment is obtained between the Mining Charter and the Codes of Good Practice. Xstrata Coal is part of the Xstrata Group and compliance with the Codes of Good Practice is a group-wide approach throughout all its divisions. Xstrata Coal does not intend to only comply with the requirement of the Mining Charter and Codes of Good Practice as it is a business imperative to go beyond mere legal compliance.

Irrespective of the various charters, the real measurement of BEE will be conducted in terms of the Codes of Good Practice and Xstrata Coal has appointed an external auditor to measure compliance in terms of the Codes of Good Practice. No systems are available to measure compliance with the Mining Charter and the Codes of Good Practice. A dual system is required to enable reporting on compliance with both the Mining Charter and Codes of Good Practice. However, compliance with the Mining Charter will be used for official reporting to the DME, whilst compliance with the Codes of Good Practice will be used for internal reporting, within Xstrata Coal only. Xstrata Coal has allocated specific resources to ensure that the measurement of compliance with the Mining Charter and Codes of Good Practice can take place (Laubscher, 2008).

All the elements of the Codes of Good Practice are of equal importance and Xstrata Coal intends to meet them all. Xstrata Coal has entered into agreements with BEE partners which exceed the Mining Charter requirements and Xstrata Coal is committed to do the right things, not merely to comply. As a result of this, Xstrata Coal is doing very well on social development. It is ensured that projects fit the requirements of the Social and Labour Plan (SLP) and Xstrata Coal will continue to implement the SLP commitments, irrespective of whether the Mining Charter is changed in the years to come. Extensive procurement and enterprise development are taking place and all projects are aimed at improving the socio-economic

conditions of the areas in which Xstrata Coal operates. This includes businesses wider than mining (Laubscher, 2008).

With regard to compliance with the Codes of Good Practice in relation to licensing and procurement requirements in other legislation than the MPRDA, Mr Laubscher (2008) expressed the view that the MPRDA regulates the mining industry, including BEE compliance in terms of the Mining Charter therefore compliance with the Codes of Good Practice may not necessarily be a requirement from other Government departments for granting licences and permits.

Xstrata Coal has not developed any composite indicators to assist with measuring compliance with the Codes of Good Practice and the Mining Charter. Xstrata Coal has only recently commenced the process of measuring compliance in terms of the Codes of Good Practice and no measurement instrument, measuring compliance with both the Mining Charter and Codes of Good Practice, is available (Laubscher, 2008).

According to Mr Laubscher (2008), Xstrata Coal has never discussed compliance with the Codes of Good Practice with the DME and the DME has not discussed any matter pertaining to the Codes of Good Practice with Xstrata Coal, either. However, extensive engagement took place on compliance with the Mining Charter.

Mr Laubscher (2008) raised the point that compliance with the Mining Charter will come to an end in 2014, whilst the Codes of Good Practice will only come to an end in 2017. In the light of this, all mining companies will have to comply with the Codes of Good Practice during the period 2014 and 2017, in any event.

6.3.1.5 Summary of responses

To obtain an overview of the responses on some of the issues obtained during the interviews, the most significant findings are summarised in Table 19 below.

A summary of the elements of the Codes of Good Practice, the interviewed mining companies intend to comply with, is provided in Figure 7.

Table 19: Summary of mining companies' responses

Question	Mashala Resources	Pamodzi Gold	Sasol Mining	Xstrata Coal
Will the Codes of Good Practice have an impact on your business?	Yes	Yes	Yes	Yes
Does your company intend to comply with both the Codes of Good Practice and the Mining Charter?	Yes	Yes	Yes	Yes
Will there be any implications on your mining company if it is decided not to comply with the provisions of the Codes of Good Practice?	Yes	Yes	Yes	Yes
Has your company implemented any measures to comply with the Codes of Good Practice?	Yes	No	Yes	Yes
Do you have the systems to enable reporting on both the Codes of Good Practice and the Mining Charter?	No	No	No	No
Will the difference in the elements to be measured pose a significant problem?	Yes	Yes	Yes	Yes
To which aspects of the Codes of Good Practice does your company intend to comply with to remain competitive or become a preferred supplier to public and private enterprises?	Preferential procurement; Enterprise development; Corporate	Ownership; Management control; Employment Equity; Skills development; Preferential procurement; Enterprise development; Corporate Social Investment	Management control; Employment Equity; Skills development; Preferential procurement; Enterprise development; Corporate Social Investment	Ownership; Management control; Employment Equity; Skills development; Preferential procurement; Enterprise development; Corporate Social Investment
Do any combined/composite indicators and performance measurement instruments exist that will enable your company to measure its performance against the requirements of both the Mining Charter and the Codes of Good Practice?	No	No	No	No
Has the DME provided any assistance and guidance to your company with regard to measuring compliance with both the Mining Charter and Codes of Good Practice?	No	No	No	No
Any other matters you may think are of significance in this regard?	If the Mining Charter is updated mining	Being a BEE-owned and managed mining company	If clear guidelines and direction were provided to the	The Mining Charter expires during 2014. The Codes of Good

	companies will still have to comply with the elements of the Mining Charter as these are imbedded in the SLP	reduces the pressure of complying to the Mining Charter and Codes of Good Practice	mining industry, progress with transformation would have been significantly faster	Practice expires during 2017. Mining companies will have to comply with the Codes of Good Practice from 2014 to 2017

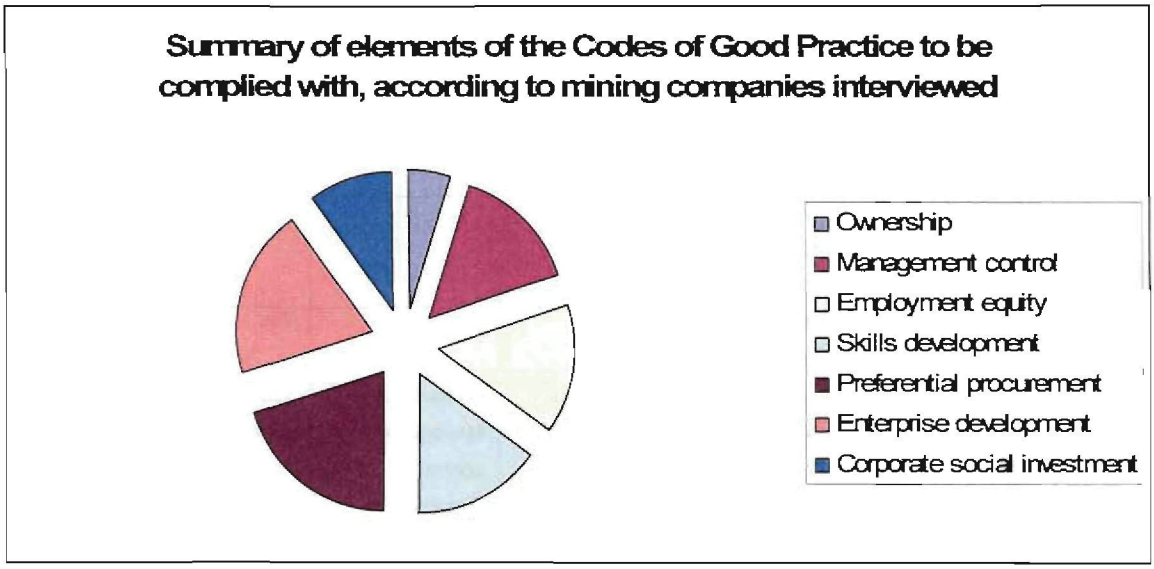

Figure 7: Summary of the elements of the Codes of Good Practice to which the interviewed mining companies intend to comply with

From the abovementioned table it is evident that the respondents are of the view that mining companies must at least comply with the preferential procurement and enterprise development elements of the Codes of Good Practice. However, as far as practically possible, compliance with all the elements should be aspired to. The responses of the mining companies can be attributed to the fact that it has become a business imperative to comply with the provisions of the Codes of Good Practice, in addition to the Mining Charter. This also confirms the matters identified during the literature study which indicated that a mining company will have to adopt the principles of the Codes of Good Practice if it wishes to remain competitive in the South African economy. To engage in business with the state or public entities and to obtain licences other than those required by the MPRDA, mining companies will have to comply with the Codes of Good Practice. However, from the responses it was determined that no composite indicators or a single performance measurement instrument is available to allow mining companies to measure compliance in terms of

the Mining Charter and the Codes of Good Practice, as single process. Currently the DME is providing assistance with regard to complying with the Mining Charter, but no assistance is forthcoming with regard to the implications of the Codes of Good Practice on the mining industry.

6.3.2. Black Economic Empowerment Advisors

A number of other stakeholder or role-players are involved in the application of the Codes of Good Practice and the Mining Charter. One of these stakeholder groups is Black Economic Empowerment (BEE) Advisors, which provide an advisory or consultancy service relating to BEE matters. These BEE Advisors do not only provide a service to industry, they are often approached by Government to assist with the development of policy, such as the Codes of Good Practice. In some instances these advisors also provide training in the Codes of Good Practice.

The South African Government will utilize a number of policy instruments to achieve its objectives for transformation. These include legislation and regulation, preferential procurement, institutional support and financial assistance schemes. In addition, government will seek partnerships with the private sector to accelerate transformation (Anon (A), 2007:3).

6.3.2.1 Business Map Investment Strategy Advisors

Business Map, headed by Jenny Cargill, has provided an extensive investment advisory service to business in South Africa, since 1993. This service includes advice on BEE matters, BEE transactions, the application of the Codes of Good Practice, the Mining Charter and associated matters. In the light of this Ms Cargill, a Director of Business Map, was identified as a respondent.

Business Map stated that South Africa has elected to implement BEE, a policy intended to correct historical, racial and gender imbalances. However, BEE is also viewed as part of a strategy of growth and policy makers have indicated that without BEE, it is unlikely that the economy will grow at the high rates anticipated by the Government (Anon (R), 2008:1).

BEE has taken centre stage in the South African business environment and the DTI recently introduced the Broad-Based Black Economic Empowerment Act 53 of 2003

(BEE Act), as well as the publishing of its own BEE strategy, through which it is indicated what the Government actually expects. In this regard, since its establishment, Business Map has been at the forefront of monitoring empowerment and advising on associated matters (Anon (X), 2008:1).

During an interview (Booyens, 17 January 2008) with Ms Cargill, she indicated that the Codes of Good Practice will have an impact on the mining industry. Even though the view was expressed that the MPRDA is the main legislation applicable to the mining industry and that the Mining Charter governs BEE in the mining industry, the mining industry should not be required to be measured in terms of any other legislation regulating BEE. However, to survive in the South African economy, adopting the principals of the Codes of Good Practice, in addition to the requirements of the Mining Charter, will be beneficial to mining companies. Transformation is a priority for the South African Government and it may be perceived that a company is not willing to transform, should it not apply the Codes of Good Practice.

If a mining company has acquired a particular BEE status in terms of the Mining Charter and the BEE targets have been met, this must be recognised by the Codes of Good Practice. The only manner in which to achieve this would be to provide a mechanism for parallel recording of BEE compliance. It would be necessary to translate the rating mechanisms of the Mining Charter into a comparable rating with the Codes of Good Practice. The different measures applicable pose a challenge as it is preferable to be measured only once. Separate record keeping would be required to provide for the different elements, and such a dual system will place an added burden on the resources of a mining company, especially the small and medium mining companies (Cargill, 2008).

An added complication is the uncertainty whether a mining company would be able to obtain any points for the procurement element of the Codes of Good Practice if it has not reached the 50% BEE ownership target. BEE ownership in terms of the Mining Charter is set at 26% therefore if a mining company is BEE compliant with regard to ownership in terms of the requirements of the Mining Charter, it is not compliant with the minimum requirements of the Codes of Good Practice and therefore cannot score points with regard to procurement. The difference in the elements or pillars, as contained in the Mining Charter and the Codes of Good Practice will pose a problem. Measurement in terms of the Codes of Good Practice will place a mining company on

a certain level of BEE compliance, whilst the Mining Charter does not have any levels of BEE compliance (Cargill, 2008).

Cargill (2008) indicates that no composite indicators are available and to address this, the Mining Charter must have equivalent levels of BEE compliance, comparable to those in the Codes of Good Practice. With regard to assistance provided to the mining industry by the DME, Ms Cargill (2008) confirmed that the DME is heavily involved in advising the mining industry on compliance with the Mining Charter, but expressed the concern that there is tension between the DME and the DTI with regard to the application of the Codes of Good Practice, by mining companies. The DME and DTI are almost at opposite sides, each fighting for its own mandate.

Cargill (2008) mentions that scoring in terms of the Mining Charter is not as relevant due to the fact that mining companies are evaluated by the DME. On the other hand, during measurements of compliance with the Codes of Good Practice, no Government department is involved, as it is conducted by an accredited rating agency. This provides an objective form of measurement, as a company's performance against the scorecard is evaluated by an independent party. The only way of removing uncertainty and avoid dual reporting would be for the DME and the DTI to align the Mining Charter and the Codes of Good Practice. In the interim, a conversion table in which the level of BEE compliance in terms of the Mining Charter is converted to a level of compliance in terms of the Codes of Good Practice would be extremely helpful.

6.3.2.2 *Transcend Corporate Advisors*

Transcend is a leading BEE compliance advisory firm with extensive experience in aspects relating to the Mining Charter and the Codes of Good Practice. Two of its directors were instrumental in the development of the Codes of Good Practice. Transcend is also involved in the development of a code of good practice for the minerals industry.

Ms L Tait, an Executive Director of Transcend, was identified as a respondent due to her extensive involvement in the development of the Codes of Good Practice. She also provides guidance and advice to a number of large companies with regard to BEE compliance. Her expertise in BEE and the Codes of Good Practice are widely

acknowledged and she also presents training courses on the Codes of Good Practice.

During an interview (Booyens, 17 January 2008) with Ms L Tait, she indicated that the Codes of Good Practice have a huge impact on the mining industry and that this is worsened due to the uncooperativeness of the DME to align the Mining Charter with the Codes of Good Practice and preferring to attend to BEE in their own way. To remain in business within the existing BEE and transformation environment in South Africa, mining companies will have to comply with the Codes of Good Practice, irrespective of the legislation applicable to them. The DME should align the Mining Charter with the Codes of Good Practice without any delay as there is no alignment between the Mining Charter and the Codes of Good Practice, which detracts from obtaining effective transformation.

A major cause for concern is the fact that the DME and DTI are not talking to each other to determine ways and means to align the Mining Charter and Codes of Good Practice. Compliance with both requires mining companies to implement dual systems of measurement, which is not only increasing costs but places a strain on resources as well. It is also senseless as it is counter productive. If a mining company sells its products to companies measured in terms of the Codes of Good Practice, the knock-on effect of the Codes of Good Practice will require mining companies to comply with the requirements of the Codes of Good Practice. This has the consequence that a number of mining companies have adopted the principles of the Codes of Good Practice and only accept accreditation of its suppliers in terms of the provisions of the Codes of Good Practice (Tait, 2008).

Tait (2008) raised the opinion that the only solution to the uncertainties caused by the different elements of the Mining Charter and Codes of Good Practice, would be for mining companies to comply with the Codes of Good Practice only, irrespective of the requirements of the MPRDA and the Mining Charter. No composite indicators or measuring instrument exist and the DTI and DME should set personal issues aside and agree on how the Mining Charter should be aligned with the Codes of Good Practice. Until such time as the DTI and the DME have resolved the impasse, they should provide a method of translating compliance with the Mining Charter to a level of compliance, in terms of the Codes of Good Practice.

It is a major cause for concern that the DME has not attempted to assist mining companies with regard to clarification on compliance with the Mining Charter and Codes of Good Practice. The uncooperativeness of the DME to align the Mining Charter with the Codes of Good Practice is adding to the confusion. However, the DTI, as lead agent with regard to BEE, should not remain weak and concede to the pressure placed on them by the DME. The DTI must show strong leadership and should be more assertive and must engage the DME more strongly. This will result in the amendment of the applicable legalisation thus paving the way for alignment and effective, integrated and sustainable transformation. Transcend has on numerous occasions requested the DME and the DTI to provide alignment, but to no avail (Tait, 2008).

6.3.2.3 L Allardyce

Ms L Allerdyce was identified as a suitable respondent as she is a practicing attorney and a specialist on BEE and the Codes of Good Practice. She provides an extensive advisory service with regard to the interpretation and compliance with the Codes of Good Practice. She also presents training courses in the interpretation and application of the Codes of Good Practice.

In order for companies to be competitive within the South African market, it is the belief that it is an imperative for companies to adopt a proactive and progressive approach to BBBEE, thereby improving productivity and competitiveness (Allardyce, 2008:1).

In an interview (Booyens, 30 November 2007) with Ms L Allerdyce, she contended that private companies are not legally required to comply with or be rated in terms of the Codes of Good Practice. However, through procurement and the knock-on effect that it has in the value stream, it will become difficult for companies to survive in the South African economy if they do not adopt the principles of the Codes of Good Practice. To comply with the Codes of Good Practice will become a business imperative.

Ms Allardyce (2007) confirmed that the mining industry is subject to the Mining Charter, but the mining industry will be required to comply with the Codes of Good Practice with regard to acquiring other licences and permits, not regulated by the MPRDA. She continued by indicating that the equity and management components

of the Codes of Good Practice equate, to a large extent, to the ownership and management components of the Mining Charter. The Codes of Good Practice require the establishment of industry charters. Even though the Mining Charter does not exactly corresponded with the requirements of the charters described in the Codes of Good Practice, it is the industry charter for the mining industry. In respect of the mining industry, until amended, the Mining Charter remains the most important BEE policy to adhere to. Therefore if a non-mining company is contracting with a mining company, the non-mining company will have to adhere to the requirements of the Mining Charter.

To survive in the South African context and to obtain or retain a competitive advantage, it is essential that all companies, including mining companies, adopt the principles of the Codes of Good Practice. Mining companies may have to implement a dual system of reporting until such time as the DME and the DTI have agreed on a method of aligning the requirements of the Codes of Good Practice and the Mining Charter. For the benefit of the economy, and transformation, it would make sense if the Mining Charter is amended to be in line with the Codes of Good Practice. The DME should be urged to align the Mining Charter with the Codes of Good Practice, during the revision of the Mining Charter in 2009.

6.3.2.4 Decti Rating Agency

Johan Streuderst, Chief Executive Officer of Decti Rating Agency indicated that the Mining Charter measures direct ownership and management of suppliers in its procurement pillar and not the five other scorecard elements of suppliers. The Codes of Good Practice has been designed to be input driven and if suppliers spend money or resources on training, enterprise development and socio-economic development, they receive points on the scorecard (Ndaba, 2007:16).

Streuderst, indicated that the Codes of Good Practice provide a substantially improved framework over the Mining Charter, seeing that the Codes of Good Practice is private-sector friendly, interpretable and objective. The Mining Charter has limited targets and no weightings, does not portray objectivity and is open to interpretation. He contended that the Mining Charter should be reviewed where it impacts on supplier companies that have to comply with the Codes of Good Practice. Some mining companies are suppliers to non-mining companies, such as sand, lime and cement producers, which again supply to construction or retail companies. The

construction and retail companies must comply with the Codes of Good Practice and must measure their procurement according to the recognition levels of the Codes of Good Practice and not according to the Mining Charter. This presents a challenge as mining companies must comply with the Mining Charter, with no detailed score, weightings or targets. The construction or retail company will not receive any points on its own scorecard if the BEE ownership of a mining company is below 50%. There is a feeling that alignment should take place between the Codes of Good Practice and the Mining Charter (Ndaba, 2007:16-17).

6.3.2.5 Summary of responses

During the interviews with the BEE Advisors to determine whether mining companies should comply with the Codes of Good Practice and related matters, some significant matters were identified. These matters are summarised in Figure 8 below.

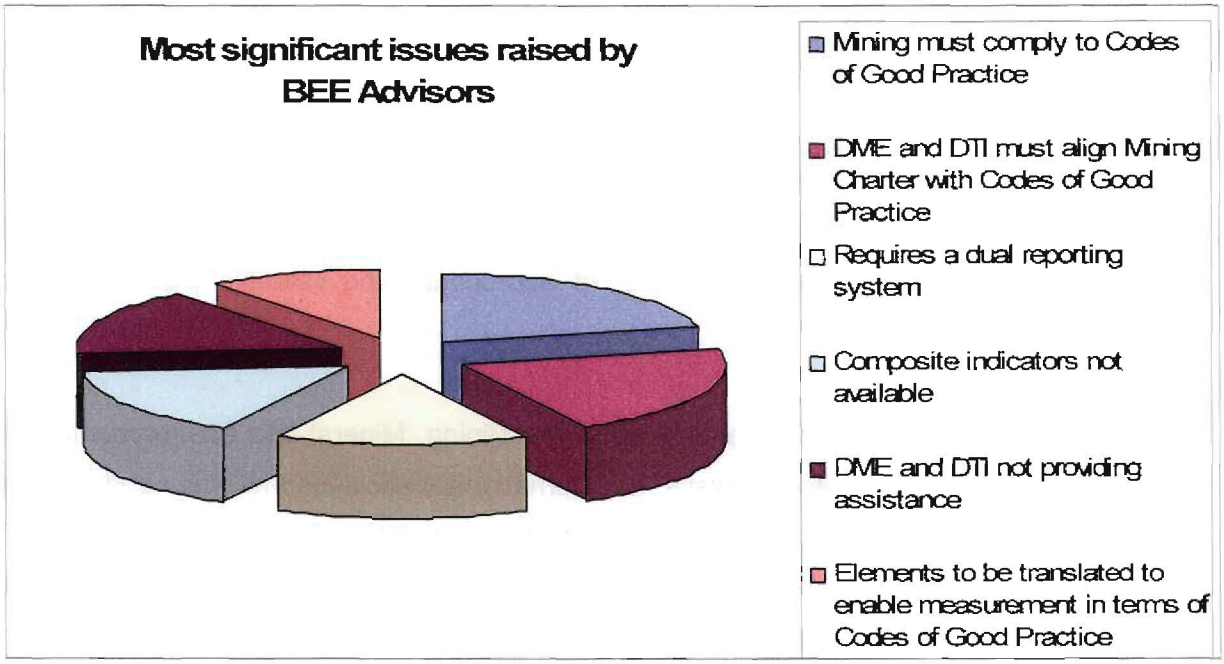

Figure 8: Summary of issues identified by BEE Advisors

BEE Advisors share the view that the mining industry must comply with the Codes of Good Practice, but that composite indicators or a single performance measurement instrument, is not available. They indicated that the DTI and DME must align the Mining Charter with the Codes of Good Practice. However, the DTI and DME are not providing assistance and mining companies are left to their own devices to measure performance against the requirements of the Mining Charter and the Codes of Good Practice. In the light of the aforementioned, a measurement instrument is required,

but in the absence of any assistance from the DTI and DME, this places mining companies in a difficult position. This also confirms the findings of the literature studies.

6.3.3 Attorneys

Another major stakeholder involved in the interpretation and the application of the Mining Charter and the Codes of Good Practice is the legal fraternity. As mining companies are legally obliged to comply with the MPRDA and the Mining Charter and the fact that the Codes of Good Practice was promulgated under the BEE Act, the decision to which BEE policy a mining company must comply, may have legal consequences. In addition, due to the legal nature of legislation, attorneys provide legal interpretation of the applicable legislation. Attorneys are also extensively involved in the formulation of BEE agreements. In this section the views of two major legal firms will be provided.

6.3.3.1 Webber Wentzel Bowens Attorneys

Webber Wentzel Bowens is a leading South African full-service law firm. The firm has been established almost 140 years ago and since then it has developed an enviable reputation as a consistent provider of appropriate and valuable legal assistance (Anon (U), 2008).

Mr M Booysen, a partner and Head of the Mining, Mineral and Environmental Law Unit at Webber Wentzel Bowens, an internationally acclaimed attorney and recipient of international awards from Who's Who Legal in 2003, Euro Money in 2003 and 2007 and Chambers Global in 2008, was identified as a respondent. He was selected due to his expertise on BEE and related matters and his knowledge of the mining industry and mineral legislation. He has also presented a number of papers on the Mining Charter and the Codes of Good Practice at various conferences.

Until recently, South Africa has been subjected to a myriad of BEE compliance requirements. The Codes of Good Practice were published with the intent to bring clarity and uniformity to compliance targets and BEE measurement methodology. Entities which intend to do business with Government or are dependent on Government licences or concessions for conducting their business, must demonstrate their level of BBBEE compliance. Webber Wentzel Bowens also

provides regulatory and compliance advice on issues such as the interaction between the Codes of Good Practice and various charters which govern enterprises within specific sectors and the interpretation of the Codes of Good Practice (Anon (V), 2008).

Webber Wentzel Bowens also contends that private enterprises are not obliged by law to apply the Codes of Good Practice. However, insofar as private enterprises may seek licences, concessions, contracts or partnerships with any organ of state or public entity, they may be prejudiced by their failure to ensure that their BEE status is at least as good as that of others also seeking these benefits. The commercial pressure to implement BEE also trickles down to entities which do not themselves seek any licences, concessions, contracts, etc, by means of the procurement element of the Codes of Good Practice (Anon (W), 2008:2).

Booysen (2006:19-20), an attorney at Webber Wentzel Bowens voiced the opinion that mining companies will be required to comply with the Codes of Good Practice through the procurement compliance requirements imposed on the customers of mining companies. He advised mining companies to apply the procurement section of the Codes of Good Practice to their suppliers. Mining Companies will have to comply with the Codes of Good Practice and the Mining Charter, especially when products are supplied to the state and public entities, such as Eskom. Booysen was of the view that, even though the granting of rights to mining companies will require Mining Charter compliance, in reality compliance with the Codes of Good Practice is necessary for any mining company who wishes to succeed in the South African economy.

In an interview (Booyens, 22 January 2008) with Mr M Booysen, he confirmed his view discussed above and indicated that mining companies will have to comply with the Codes of Good Practice in addition to the Mining Charter. To remain competitive within the South African economy and to ensure that a mining company demonstrates its commitment to transformation, it has no alternative but to comply with the Codes of Good Practice.

6.3.3.2 Deneys Reitz Attorneys

Deneys Reitz was established in the early 1920's and is one of the largest corporate law firms in South Africa. The firm has earned an undisputed reputation for its

independence, competence and integrity and was voted the Africa Law Firm of the Year 2006, by legal publishers Chambers and Partners (Anon (T), 2008).

In its publication: Doing Business in South Africa 2007/2008 (Anon (S), 2007:29), Deneys Reitz stated that BBBEE involves the economic empowerment of all black people. Two primary mechanisms have been introduced to ensure that the South African Government's socio-economic strategies are implemented. These are the Codes of Good Practice and sector charters. Several transformation charters have already been concluded such as mining, petroleum, maritime, agriculture, health, tourism, and information communications technology. The transformation charters do not bind government when such charters are converted to sector codes. If the transformation charters are not converted to sector codes, the Codes of Good Practice should be used to measure BBBEE. Deneys Reitz confirms that all organs of state and various specified public entities will be obliged to take into account the BEE status of the party concerned when implementing preferential procurement policies, selling state enterprises, entering into public-private partnerships, etc. Non-compliance will not result in criminal sanction, but will mean that government support will not be forthcoming. A knock-on effect is created in the sense that compliance will require those seeking compliance themselves, to enter into business relationships with parties who are in turn compliant.

6.3.3.3 Summary of responses

In terms of the aforementioned, the legal firms are of the view that mining companies will have to comply with the Codes of Good Practice, in addition to the Mining Charter. Even though it is not a legal requirement and failure to comply will not result in prosecution, mining companies will be obliged to adopt the principles of the Codes of Good Practice to remain competitive in the South African economy, especially if mineral commodities are sold to state and public entities.

6.3.4 Other stakeholders

In addition to the preceding interviews and discussions and in an attempt to obtain a better understanding of what mining companies are exposed to, the views of a number of multinational mining companies, which play a significant role in the South African mining industry and who are at the forefront of transformation, will subsequently be discussed.

6.3.4.1 Anglo American

According to the Anglo American Annual Review for 2006 (2006:8,22-23), Anglo American is a large multinational company of which its mining inserts are focused on platinum, diamonds, base metals, coal, ferrous metals and industrial minerals. One of the major challenges for a modern mining company is to ensure and retain its social licence to operate and to play a part in creating benefits for local communities. Anglo American has initiated a leading edge methodology for assisting in the management of its social and economic impacts. The Socio-Economic Assessment Toolbox (SEAT) consists of assessment and stakeholder identification tools. SEAT assists all Anglo American's operations to understand communities better, to form partnerships with governments and community-based groups, and to enhance impacts in areas such as enterprise development, social investment, training and procurement.

In its Transformation Report (2006:6-8), Anglo American indicates that it has been the pioneer in BEE in South Africa for two decades. As the largest private-sector investor in South Africa, Anglo American has committed itself to sustainable empowerment and considers transformation a strategic imperative. The transfer of a share of the ownership, management and benefits of the South African mining industry into the hands of people previously excluded from the economy, is a Government priority. This has been closely linked to the conversion of mining licences under the MPRDA. The Mining Charter sets out a number of criteria against which mining companies are measured. These include employment equity, human resources development, procurement, ownership, migrant labour, housing and communities, beneficiation, mine community and rural development. Non-mining South African-based companies are subject to measurement in terms of the Codes of Good Practice. The Codes of Good Practice encompasses equity ownership, management control, employment, skills development, procurement, enterprise development and socio-economic development.

Berry (2006) indicated that Anglo American has been attending to transformation since the late 1980's, even before the democratization of South Africa and BEE legislation. It is essential that with equity, education must be provided and through this the mining company will benefit in years to come. Mining companies are expected to meet and exceed the Mining Charter requirements.

6.3.4.2 Exxaro Resources

According to Exxaro Resources' annual report for 2006 (2006:1, 15-17), it is the largest South African-based diversified resources group with interest in the coal, mineral sands, base metals, industrial minerals and iron ore commodities. Collectively, seven coal mines produce 42.7 million tons per annum of thermal coal for consumption by the national power utility, Eskom. Even though Exxaro is South African-based, it enjoys global presence. Exxaro has exceeded the key South African legislative requirements for transformation.

Exxaro Resources signalled the turning point in the transformation of the South African mining industry, because it represents this country through diversity, empowerment and development at every level, from supporting entrepreneurship in the communities around Exxaro Resources' operations and fulfilment in the workplace, to national socio-economic development initiatives (Fauconnier, 2006:15).

Exxaro Resources, in its annual report (2006:17) reported that it is encouraged by the improved co-operation with Government, in particular the DME, and that Exxaro Resources will co-operate fully with the DME, as it strengthens its resources to manage volumes of applications ahead of the 2009 deadline. With regard to sustainable development, Fauconnier (2006:33-34) mentioned that sustainability underpins the manner in which Exxaro Resources does business and this is reflected in a formal charter that defines the goals and commitments to stakeholders. This is cascaded throughout the group, in the integration of sustainability and measurable performance indicators in the economic, social and environmental aspects of Exxaro Resources' business. Since sustainability is considered the foundation of Exxaro Resources' future, an approach is adopted that initiatives will compliment the Government's identified priorities.

6.3.4.3 Impala Platinum Holdings

In its annual report for 2007 (2007:6), Impala Platinum Holdings (Implats) indicated that it is a leading producer of platinum with operations in the Bushveld complex in South Africa, and the Great Dyke complex in Zimbabwe.

According to Roux (2007:11) Implats has made progress on other aspects of transformation, in addition to the BEE deal with Royal Bafokeng Holdings. A

transformation committee, reporting at board level, has been established and this committee is responsible for compliance and the implementation of the relevant programmes and processes.

An area of perceived risk is the ability of mining companies to meet the requirements of the South African mineral legislation. Implats does not perceive this to be a risk, as Implats has made significant progress with regard to legislative compliance. Implats is in continued discussion with the DME and believes that issues can be resolved. The process of meeting the DME requirements are indeed the marrying of the systems and structures of Implats with the DME requirements. This has been a complex process which has resulted in a learning process for both Implats and the DME (Brown, 2007:16).

Implats states in its response to the Mining Charter report (2007:2) that Implats is committed to the transformation of the South African economy through BEE and is embracing the principles of the Mining Charter. Transformation, as envisaged in the Mining Charter, is an imperative for mining companies active in the South African mining industry. Implats, through its response to Mining Charter report, reports on the progress made in respect of nine pillars of the Mining Charter.

6.3.4.4 Summary of responses

In terms of the opinions raised by the aforementioned multinational mining companies, it is a business imperative to ensure transformation of the South African mining industry. All these companies have implemented a number of actions to ensure compliance with, and exceed the South African Government's transformation objectives.

6.3.5 Combined summary of responses of all stakeholders

Table 20 below provides a summary of the respective responses obtained from the respondents discussed in this section in relation to the research questions posed in Chapter 1.

Table 20: Combined summary of responses of all stakeholders

Description	Mining Industry (7)	BEE Advisors (4)	Attorneys (2)
The Mining Charter and Codes of Good Practice overlap	Yes	Yes	Yes
Mining companies may be impacted upon if they do not comply with the provisions of the Codes of Good Practice	May not be able to sell mineral products or obtain licences required by legislation other than the MPRDA	May lose competitive advantage as it is a business imperative	Not legally required and cannot be prosecuted
Mining companies will have to select various elements of the Codes of Good Practice, to comply with, to remain competitive or become a preferred supplier to public and private enterprises	Yes, particularly the preferential procurement and enterprise development elements. If possible all elements must be complied with	Comply with all the elements, if possible	Yes
Composite indicators are available that will enable a mining company to measure its performance against the requirements of both the Mining Charter and the Codes of Good Practice	No	No	No
A performance measurement instrument exist that will enable a mining company to measure its performance against the requirements of both the Mining Charter and the Codes of Good Practice	No	No	No
The Department of Minerals and Energy is playing a role in measuring mining companies' compliance performance against both the Mining Charter and Codes of Good Practice	Only Mining Charter, no assistance with Codes of Good Practice	No assistance provided. DME and DTI must align the Mining Charter with the Codes of Good Practice	No

The conclusion that may be drawn from the aforementioned summary is that the selected stakeholders are of the view that mining companies will be impacted upon by the Codes of Good Practice. Mining companies will have to adopt the principles of the Codes of Good Practice, as it is not only a business imperative, but also required to remain competitive and a preferred supplier, especially if mineral products are sold

to state or public entities. Mining companies will aspire to meet as many as possible of the elements of the Codes of Good Practice.

However, no composite indictors or a single performance measurement instrument is available to measure compliance against the requirements of both the Mining Charter and the Codes of Good Practice. Even though the DME is providing assistance with regard to Mining Charter compliance, no assistance is provided with regard to complying with the Codes of Good Practice.

6.4 ROLE OF THE DEPARTMENT OF MINERALS AND ENERGY IN TRANSFORMATION

The DME is responsible for implementing and administering the MPRDA and Mining Charter and is mandated to ensure the transformation of the mining industry. The respondents from the DME were selected based on their positions within the DME relating to mineral policy and promotion and the role these respondents play with regard to implementing the Mining Charter and BEE. Therefore the Chief Director Mineral Policy and Promotion, Chief Director Mineral Promotion, two Regional Managers, Director Licensing and Legal Compliance, Deputy Director Administration and Systems and Deputy Director Minerals and Mining Board were identified as respondents.

In the 2006/2007 annual report of the DME (2007:13-14), Minister Sonjica stated that the firm foundation of transformation policies generated over the years, since the advent of South Africa's democratic dispensation, has provided the DME with a solid platform to place emphasis on implementation and monitoring the impact of these policies, going forward. The Minister stated that the DME's agenda of transforming the mining sector is on track.

In her budget vote (2007:1), Buyelwa Sonjica, Minister of Minerals and Energy raised the point that the DME will intensify the fight against poverty, address the challenges of a second economy, provide basic services and reduce the cost of doing business in South Africa. As the DME is responsible for key sectors in the South African economy, it is well placed to heed the call made by President Mbeki to drive towards a sustainable energy supply and mineral wealth that is shared by all people of South Africa. The Minister of the DME added (2007:8-9) that the DME utilizes the MPRDA, through the requirements of a Social and Labour Plan (SLP), to intensify the struggle

against poverty and that mining companies are expected to act as catalyst for positive economic and social development in the areas in which they operate. It is encouraging to see that some progress is being made in terms of ensuring that the mineral wealth of South Africa is shared by all South Africans and she applauded those who have embraced the transformation agenda and who have taken visible steps to voluntarily comply with and in some cases exceed the requirements.

Several black-owned mining companies are now beginning to play an important role in the mining industry. The past few years have seen the emergence of several BEE companies of substantial size. Mining has thus become a focus of the Reconstruction and Development Programme in terms of entrepreneurial development, BEE and stimulation of employment and economic growth (Anon (C), 2007:2).

Adv Nogxina, Director-general of the DME, stated in the DME's annual report of 2006/2007 (2007:8) that transformation and sustainable development within the mining industry are being achieved through rigorous implementation of the MPRDA and the Mining Charter. While all the pillars of the Mining Charter are equally important, it is through the human resources development and employment equity pillars that a contribution to the Joint Initiative on Priority Skills can be made by the mining industry. Some mining companies have included this in their SLPs. Procurement from BEEs has also increased significantly and the DME will continue to monitor that the beneficiaries are indeed BEEs.

During an interview (Booyens, 25 January 2008) with Mr S Sikhosana, Chief Director Mineral Promotion in the DME, he indicated that mining companies should comply with the Mining Charter and not the Codes of Good Practice, as there is no link between the two. The DME will utilize the Mining Charter, which is law under the MPRDA, to ensure the Government's transformation objective is met. Even though the Mining Charter is silent on the matter, there is a limited linkage with the procurement element of the Codes of Good Practice. The majority of mining companies are well aware that compliance with the Mining Charter is required instead of compliance with the Codes of Good Practice. Confusion is presently outside the mining industry with regard to companies buying or selling products or services to the mining industry, as these companies are subject to measurement in terms of the Codes of Good Practice. These companies must comply with the Codes of Good Practice. On how this is integrated and addressed, is left to the DTI.

Sikhosana (2008) confirmed that the Mining Charter and the Codes of Good Practice are not aligned and the respective Government departments will have to engage in discussions to find alignment. Currently no specific discussions, to obtain alignment, are taking place between the DME and the DTI. Mr Sikhosana indicated that the DME advises mining companies to comply with the Mining Charter and he expressed the view that the ownership requirement of 26%, in terms of the Mining Charter, is seen as sufficient to meet the requirements of the Codes of Good Practice, which starts at 25% BEE ownership.

The Minister of Minerals and Energy raised the point that the uncertainties between the Mining Charter and the Codes of Good Practice have a significant impact on 300 to 400 multinational and original equipment manufactures and suppliers operating in and depending on the mining industry. The Minister confirmed that mines are not governed by the Codes of Good Practice, so their procurement is in no-man's land, since it requires narrow-based compliance as required by the Mining Charter. However, suppliers are not subjected to the Mining Charter, but to the Codes of Good Practice. The effect of this is that the DME leaves interpretation of the Mining Charter, which has no clear targets and weightings, to those companies that are dependent on the mining industry for their turnover (Ndaba, 2007:16).

During an interview (Booyens, 4 February 2008) with Adv S Malebe, DME Regional Manager, Mpumalanga Region, Adv Malebe mentioned that the DME regions are not close to the DME and DTI discussions with regard to the alignment of the Codes of Good Practice and the Mining Charter. Even though the Regional Managers are contacted often by the mining industry in this regard, they are not involved in discussions with the DTI and they are not attending any meetings with the DTI. However, discussions are taking place between DME Head Office and the DTI. Adv Malebe stressed the point that she has no information to the effect that any combined/composite indicators or measurement instrument currently exists to enable mining companies to measure performance against the provisions of the Mining Charter and Codes of Good Practice.

It is important that the DME and DTI find each other, as Government should not compete amongst itself. Cooperation is required between the two Government departments to provide clarification of what is required with regard to BEE, which in turn will have a positive impact on the mining industry (Malebe, 2008).

During a discussion (Booyens, 14 November 2007) with Mr Mfetoane, Director Licensing and Legal Compliance in the DME, he expressed the opinion that the DME will not take into account or provide any credits to companies who comply with the Codes of Good Practice. The mining industry is subject to the Mining Charter and the DME will only take the requirements of the Mining Charter into consideration when measuring a mining company's BEE compliance.

Compliance with the Mining Charter is a requirement for obtaining the rights to operate, compliance with the Codes of Good Practice may still be required in cases where a mining company intends to conduct business with an organ of state or applies for permits or licences, not administered by the DME. The DME has no involvement in these matters and the responsibility to comply, even if compliance with both the Mining Charter and the Codes of Good Practice are required, remains with the relevant mining company (Mfetoane, 2007).

In an interview (Booyens, 22 January 2008) with Ms K Kewuti (2008), DME Acting Regional Manager, Free State Region, she pointed out that the DME is developing a code of good practice for the minerals industry. The DME has a specific mandate in terms of the MPRDA and the Mining Charter to ensure transformation of the mining industry is obtained. Since an integrated process is required to ensure that the transformation objectives of the Government are achieved, all Government departments will have to work together to achieve the overall transformation objectives. However, the Regional Offices of the DME, which work with mining companies on a daily basis and which are the first point of contact with the mining industry, are currently not involved in the development of a code of good practice for the minerals industry nor with any discussion with the DTI with regard to the application of the Codes of Good Practice on mining companies. The DME ensures compliance with the Mining Charter and adoption of the principles of the Codes of Good Practice is up to the relevant mining companies. The DME has no composite indicators, but the Mineral Policy Development Chief Directorate of the DME is attending to the code of good practice specific to the minerals industry.

With regard to transformation, in addition to the Mining Charter, section 10 of the MPRDA (2004:84) determines that a code of good practice for the minerals industry must be developed within five years of the implementation of the MPRDA.

Mr Sikhosana (2008), Chief Director Mineral Promotion in the DME, indicated that the DME is in the process of developing a code of good practice for the minerals industry, as required in terms of section 100 of the MPRDA. However, this code is not related or linked to the Codes of Good Practice and it will not be available for some time yet.

During an interview (Booyens, 25 January 2008) with Mr N Hoek, Deputy Director Administration and Systems in the DME, Mr Hoek mentioned that the DME is currently in the process of drafting a code of good practice for the minerals industry. He indicated that the code of good practice for the minerals industry is being developed by the Minerals and Mining Development Board. The DTI is a member of the Minerals and Mining Development Board and will therefore be able to participate in the development of a code of good practice for the minerals industry. Mr Hoek added that the Minerals and Mining Development Board has appointed a sub-committee with representatives from Government departments, the mining industry and other role-players, to assist with the drafting of a code of good practice for the minerals industry.

The South African Mining Development Association (SAMDA) reported that, with regard to the development of a code of good practice for the minerals industry, it was agreed that the Minerals and Mining Development Board will be leading the process, as this falls within its legal framework (Anon (P), 2007:2).

In an interview (Booyens, 29 January 2008) with Ms E Breytenbach, Deputy Director Minerals and Mining Board, the secretariat for the Minerals and Mining Development Board and all its subcommittees, she confirmed that the Minerals and Mining Development Board has established the minerals code of good practice subcommittee, which is chaired by Ms B Radebe. Various role-players in the mining industry which include the DME, the DTI, the National Union of Mine Workers, the Petroleum Agency of South Africa, communities, legal representatives and consultants are represented on the subcommittee. Even though the DTI is supposed to be represented in the subcommittee, it has, as yet, not been involved at all.

SAMDA indicated that it is part of a sub-committee established to develop and draft a code of good practice for the minerals industry. The first draft was submitted to the Minerals and Mining Development Board on 20 July 2007 and it is expected that the final draft will be completed by the end of 2007 (Radebe, 2007:4).

The code of good practice subcommittee has drafted a proposal for the development of a code of good practice for the minerals industry which was submitted to the Minerals and Mining Development Board. However, the code of good practice for the minerals industry still needs to be developed. Transcend Corporate Advisors are assisting the subcommittee with regard to the development of the proposed code of good practice for the minerals industry. Extensive discussions are taking place between the DME, the Chamber of Mines and SAMDA regarding the content of the document and a release date is not yet available (Breytenbach, 2008).

Ms Breytenbach (2008) raised the point that even though the DTI is currently not partaking in the drafting of a code of good practice for the minerals industry, the Mining Charter and Codes of Good Practice are taken into account during the drafting of the code of good practice for the minerals industry.

The Chief Directorate: Mineral Policy of the DME is responsible for reviewing policies, amending legislation and conducting research into mine environmental policy to achieve transformation and to attract new investment to the South African mineral industry (Department of Minerals and Energy, 2005:7).

During a telephonic interview (Booyens, 30 January 2008) with Ms F Zikalala, Deputy Director-general Mineral Policy and Promotion, she stressed the fact that the DME has a significant role to play in transformation of the mining industry, especially through the application of the MPRDA and the Mining Charter. Even though other Government policies exist with regard to BEE, such as the Codes of Good Practice, the mining industry is legally obliged to comply with the Mining Charter.

The Directorate Mineral Policy is attending to the code of good practice for the minerals industry and in this process will also revise the Mining Charter. Even though there is currently no link between the Mining Charter and the Codes of Good Practice, some discussions were held with the DTI to clarify the uncertainties caused in the mining industry due to the fact that the Mining Charter and Codes of Good Practice are not aligned. The DME is committed to achieve the transformation objectives of the Government and will ensure that it achieved (Zikalala, 2008).

During the interview Ms Zikalala (2008) requested that the questionnaire be forwarded to her to allow her to respond in detail. However, during a follow-up to

determine when a response may be provided, Ms Zikalala indicated that she was no longer willing to provide additional information.

6.4.1 Summary of responses

With regard to the data gathered from the DME, it has emerged that the DME is focusing on the implementation and administration of the Mining Charter and the MPRDA, including the drafting of a code of good practice for the minerals industry. However, the DME is not playing a significant role in assisting mining companies' with compliance with the Codes of Good Practice. A summary of the responses from the officials within the DME are provided in Table 21.

Table 21: Summary of DME responses

Question	Sikhosana	Kewuti	Mfetoane	Hoek	Breytenbach	Malebe	Zikalala
What is the role of the DME in meeting the transformation objectives of the Government?	MPRDA and Mining Charter	Application of the Mining Charter	MPRDA and Mining Charter	Mining Charter and codes of good practice for the minerals industry	Mining Charter and codes of good practice for the minerals industry	Application of the Mining Charter	MPRDA and Mining Charter
Is there any link between the Mining Charter and the Codes of Good Practice	No, but a linkage with procurement exists	No	Yes	No	No	Yes	No specific link
Is the DME interacting with the DTI on the alignment of the Mining Charter and the Codes of Good Practice?	No specific discussions	No	No	Limited	Limited	Yes	Limited
Does the DME play any role in ensuring compliance with the Codes of Good Practice?	No	No	No	No	No	No	No response

Question	Sikhosana	Kewuti	Mfetoane	Hoek	Breytenbach	Malebe	Zikalala
Will the Mining Charter be brought inline with the Codes of Good Practice, once it has to be reviewed?	No, revision will be based on the status of BEE in the mining industry	No	Discussions ongoing with the DTI	No	Provisions of the Codes of Good Practice will be considered	Discussions ongoing with the DTI	No response
Will the DME provide any composite/ combined indicators?	No	No	No	May be considered	May be included in revision of Mining Charter	No	No response
Any other matters you may think are of significance in this regard?	Mining Charter to be reviewed during 2009	Code of good practice for the minerals industry are being developed	If compliance with both are required, it is up to mining company how it is done	Code of good practice for the minerals industry are being developed, with DTI involvement	Mining Charter to be reviewed in 2009. Code of good practice for the minerals industry are being developed, with DTI involvement	Government departments must find each other to provide mining companies with clarification	None

From the aforementioned it can be deduced that the DME is currently only involved in ensuring that the mining industry complies with the provisions of the Mining Charter and that no link exists between the Codes of Good Practice and the Mining Charter. Limited interaction is taking place between the DME and the DTI with a view to aligning the Mining Charter and the Codes of Good Practice. The DME is in the process of updating the Mining Charter and developing a code of good practice for the minerals industry and this process may be used to align the two approaches. No composite indicators or a single measurement instrument are available and the DME and the DTI will not provide such indicators or instrument in the immediate future. This corresponds with the data collected from the role-players in the mining industry.

In conclusion, the statement made by Minister Sonjica, the Minister of the DME, summarises the aforementioned when she stated that there is a feeling that alignment between the Codes of Good Practice and the Mining Charter needs to take place to avoid uncertainty and to provide clarity to all stakeholders. Delays will influence effective transformation and create an artificial smokescreen for compliance by mines (Ndaba, 2007:16).

6.4.2 Review of the Mining Charter

The Mining Charter (2004:17) indicates that the Mining Charter may be reviewed, if required.

Creamer (2007:7) reports that the DME has indicated that there will be a review of the Mining Charter during 2010. Given the long gestation period and the potential for chagrin in reviews of this kind, the sooner the debate begins, the better. Since the publication of the Mining Charter, the DTI has published the Codes of Good Practice. The Codes of Good Practice is far stronger on measurement of BEE than the Mining Charter. The DME has indicated that the review will not be a one-sided affair and that the mining industry will be included in the revision of the Mining Charter.

During an interview, Mr Sikhosana (2008), Chief Director Mineral Promotion in the DME indicated that the DME will revise the Mining Charter during 2009. The revision is required due to the fact that the targets provided for the first five years of the Mining Charter will expire, and new targets must be set. The DME will consider the current status of transformation and BEE in the mining industry to determine the new targets to be met during the period May 2009 to April 2014.

Ms E Breytenbach (2008), Deputy Director Minerals and Mining Board, confirmed the abovementioned when she indicated that the Minerals and Mining Development Board is attending to the revision of the Mining Charter, as provided for in the MPRDA. The main purpose of the revision is to ensure that transformation and the BEE targets of the DME are being achieved. The Minerals and Mining Development Board is also developing a code of good practice for the minerals industry.

6.5 THE DEPARTMENT OF TRADE AND INDUSTRY

The DTI is responsible for the administration and implementation of the BEE Act and the Codes of Good Practice. The DTI is the lead agent with regard to BEE compliance in South Africa and plays a pivotal role in transforming the South African economy. Mr T Tambani, the Director Black Economic Empowerment, was identified as a respondent due to his position within the DTI and his direct involvement in the implementation, application and interpretation of the Codes of Good Practice.

In a presentation by the DTI to Parliamentary Portfolio Committee on Trade and Industry, it was acknowledged that the Codes of Good Practice is not binding on private sector institutions and failure to comply does not expose businesses to the possibility of prosecution. However, the framework that is established by the BEE Act and the Codes of Good Practice create a set of incentives for businesses to promote BEE. If businesses do not transform, there will be significant disadvantages when seeking to do business with the state or state-owned enterprises (De Villiers, 2007:1).

During an interview (Booyens, 29 January 2008) with Mr T Tambani, he confirmed that no link exists between the Codes of Good Practice and the Mining Charter. Mining companies have no option but to comply with the Mining Charter. Mr Tambani (2008) expressed the view that the two pieces of legislation, being the Mining Charter and the Codes of Good Practice, do not talk to each other. The DTI and the DME are not engaged in any meaningful discussions to find a solution to the differences between the Mining Charter and the Codes of Good Practices and no actions are being taken to assist mining companies to comply with both the Mining Charter and the Codes of Good Practice.

According to De Villiers (2007:1), the DTI raised the point in Parliament that the Codes of Good Practice is subordinate legislation and does not supersede existing legislation, such as the MPRDA and Mining Charter, in their current format. The BEE requirements of such legislation remain law and are not altered by the Codes of Good Practice. However, if any legislation is silent on transformation, the Codes of Good Practice become applicable. Government has embarked on a process of alignment of current policies and existing legislation.

The DTI indicated to the Parliamentary Portfolio Committee that it is planning an extensive marketing and communications strategy to ensure that Government departments and institutions and later private enterprises are educated on the application of the Codes of Good Practice. The objectives of the BEE Act and the Codes of Good Practice are to change the behaviour of the private sector. During a cabinet discussion it was pointed out that the behaviour can be changed only in those businesses in the private sectors that have to deal closely with Government, through doing business or requiring licence, permits, etc. (De Villiers, 2007:2).

The DTI and the DME have reached an agreement that DTI will be participating in the review of the Mining Charter, which review is due during 2009. In the meantime the DTI has no specific requests or instructions for mining companies and is not providing any assistance to mining companies with regard to complying with the provisions of the Codes of Good Practice. The elements or pillars contained in the Mining Charter differ significantly from those contained in the Codes of Good Practice, but currently no discussions are taking place between the DTI and the DME to align the elements or to provide composite indicators to the mining industry. If mining companies intend to adopt the principles of the Codes of Good Practice it is up to that company to decide, but they will still have to be measured in terms of the Mining Charter (Tambani, 2008).

6.6 CONCLUSION

The findings of the empirical research were provided in this chapter. Various interviews were conducted with role-players within the mining industry and within the Government. In addition, some literature studies were conducted to determine what other mining companies are doing with regard to BEE. To ensure the validity of data collected, respondents were selected based on their expertise and experience in the field of BEE, Mining Charter compliance as well as application of the Codes of Good Practice.

Throughout the interviews conducted, it became evident that a significant disconnection currently exists between the DME and the DTI and that no significant effort is being made to provide assistance to mining companies with regard to the applicability of the Codes of Good Practice to the mining industry. All the Government respondents indicated that only the Mining Charter is applicable to the mining industry. However, the responds from the mining industry indicated that mining companies will have no alternative but to comply with the Codes of Good Practice in addition to complying with the Mining Charter.

Various respondents indicated that the difference in the elements or pillars of the Mining Charter and the Codes of Good Practice presents a significant challenge. Currently no composite indicators are available and the DTI and DME are not intending to provide such composite indicators, at least not until the revision of the Mining Charter in 2009/2010. In the meantime mining companies must apply a dual reporting system, because a single measurement instrument is not available to

measure compliance with both the Mining Charter and the Codes of Good Practice, as a single process. Table 22 below provides a brief comparison of the findings of this research.

Table 22: Comparison of responses from the mining industry with those of the Government

Description	Mining Industry and stakeholders response	Government response
The Codes of Good Practice is applicable to the mining industry	Yes	No
Mining companies would benefit from complying with the Codes of Good Practice	Yes	No
There is a link between the Mining Charter and the Codes of Good Practice	Yes	No
The DME is providing assistance to the mining industry with regard to complying with the Codes of Good Practice	No	No
Close interaction is taking place between the DME and DTI to align the Mining Charter and Codes of Good Practice	No	No
Combined or composite indicators are available to measure compliance with both the Mining Charter and Codes of Good Practice	No	No
A performance measurement instrument is available to measure performance against the targets of the Mining Charter and Codes the of Good Practice	No	No

From the contents of this chapter it is evident that mining companies intend to comply with the Codes of Good Practice, as well as the Mining Charter. Complying with both will be beneficial, as mining companies will gain a competitive advantage when engaging with Government or public entities in order to conduct business or obtain licences. It was established that the mining industry is of the view that there is an indirect link between the Codes of Good Practice and Mining Charter. However, the DME and DTI are currently not providing any assistance to mining companies with regard to the Codes of Good Practice. Importantly, no composite indicators or a single performance measurement instrument is available to assist mining companies in measuring performance against the requirements of the Codes of Good Practice and the Mining Charter.

The aforementioned realises the research objectives and answers the research questions, which include determining whether mining companies should ignore the

provisions of the Codes of Good Practice and function in isolation thereof. It was also determined to which aspects of the Codes of Good Practice mining companies intend complying with to ensure that it remains competitive or gain a preferred status as a supplier to public and private enterprises. It was also found that no composite indicators or a single performance measurement instruments exists, which will enable mining companies to measure performance against, and compliance with the requirements of both the Mining Charter and the Codes of Good Practice. Therefore, composite indicators and a single performance measurement instrument needs to be developed to enable mining companies to measure performance against both the Mining Charter and the Codes of Good Practice. Lastly, the role the DME plays in measuring mining companies' performance against both the Mining Charter and Codes of Good Practice was investigated.

In the next chapter a summary of this research will be provided, as well as recommendations based on the findings of this research. In the absence of composite indicators and a single performance measurement instrument, by applying the principles of performance management and measurement as discussed in Chapter 5 of this thesis, composite indicators and a single performance measurement instrument will be developed. Such a measurement instrument will assist the mining industry in measuring performance against the requirements of the Mining Charter and the Codes of Good Practice until such time as the DME and the DTI have reached alignment in respect of the Mining Charter and Codes of Good Practice.

CHAPTER 7

SUMMARY AND RECOMMENDATIONS: A MEASURING INSTRUMENT TO MEASURE PERFORMANCE AGAINST COMPOSITE INDICATORS IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINING CHARTER AND CODES OF GOOD PRACTICE

7.1 INTRODUCTION

In this chapter a summary will be provided of the matters discussed in this thesis to determine whether a mining company will be able to measure performance against the requirements of the Mining Charter and Codes of Good Practice, without adopting a new method of measuring the combined/composite indicators. Thereafter, the development of a measuring instrument, to measure the combined/composite indicators of the Mining Charter and Codes of Good Practice, will be addressed. This measuring instrument is the culmination of all research findings of this research and serves as the main contribution.

7.2 SUMMARY

The South African minerals and mining industry has been the cornerstone of the South African economy for more than a century and is still contributing significantly to economic growth, job opportunities and foreign exchange earnings. Mining activities largely focus on commodities such as diamonds, gold, coal and platinum. In many cases the mining industry is the driving force behind the development of extensive and efficient infrastructure. Due to the large role the minerals and mining industry plays in the South African economy, this contributes significantly to the creation of the country's secondary industries. Through the years the mining industry has developed into a resourceful sector of the economy with a high degree of technical expertise, through which it became a leading supplier of minerals and mineral products, globally.

Through the years the minerals and mining industry flourished and created significant wealth. However, due to the discriminatory policies of the apartheid regime, a large

section of the South African population was excluded from partaking in the minerals and mining industry and could therefore not share in the wealth created by the minerals and mining industry. This was achieved by systematically and purposefully restricting non-white South Africans from meaningfully participating in the economy. The apartheid policies confined the creation of wealth to a racial minority and also ensured the underdevelopment of black communities.

This systematic disempowerment prohibited black people from generating self-employment and entrepreneurship by confining blacks to homelands. These areas usually lacked infrastructure and blacks were often removed from their place of residence. Forced racial segregation and prohibiting property ownership severely impacted on the ability of blacks to partake in the economy. The job reservation policies enforced prior to 1994 and the inferior education system for blacks had a significant negative effect on technical and science skills, which in turn contributed to the current skills shortage in South Africa.

With the democratisation of South Africa in 1994, the Government set itself the objective of redressing the injustices of the past. This objective was encapsulated in the Constitution of the Republic of South Africa (Act 108 of 1996, section 9), where it is stated that the injustices of the past be recognized, and that the Constitution, as the supreme law of South Africa, must heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights.

In an effort to redress the results of past discrimination, the Government of South Africa adopted a process of Black Economic Empowerment (BEE). To ensure transformation is achieved, the Government has adopted and implemented various polices and legislation in terms of its BEE mandate under the Constitution (1996). The most significant of these being:

- The Employment Equity Act 55 of 1998;
- The Competition Act 89 of 1998;
- The Skills Development Act 97 of 1998;
- The Preferential Procurement Policy Framework Act 5 of 2000;
- The Mineral and Petroleum Resources Development Act 28 of 2002, (MPRDA); and
- The Broad-Based Black Economic Empowerment Act 53 of 2003 (BEE Act).

The mining industry, as one of the largest sectors of the economy, has a major role to play in transformation and BEE in South Africa. The mining industry should ensure that it plays a role in providing opportunities for previously excluded South Africans to become role-players in the minerals and mining industry. The mining industry, as one of the largest employers in South Africa, is also ideally positioned to address the skills shortage and to uplift the communities, through job creation and poverty alleviation.

The Government's role in the minerals and mining industry is of a regulatory and supportive nature. The responsibility to regulate the minerals and mining industry falls under the jurisdiction of the Department of Minerals and Energy (DME). The DME is responsible for the application and administration of the MPRDA. The MPRDA, which came into effect on 1 May 2004, legislates the official policy concerning the country's minerals and the transformation of the mining industry. It is the stated intent of the MPRDA to reform and bring about equitable access to South Africa's mineral and petroleum resources and to take legislative action, as required in terms of the Constitution and to redress the results of past racial discrimination. The most significant issues to be addressed by the MPRDA are:

- Transformation of the minerals and mining industry;
- Promotion of equitable access to mineral resources;
- Promotion of investment in exploration, mining and beneficiation;
- Socio-economic development; and
- Environmental sustainability of the mining industry.

To ensure that transformation of the mining industry is achieved, the DME and the mining industry agreed on the Broad-Based Socio-Economic Empowerment Charter (Mining Charter). The aim of the Mining Charter is to promote equitable access to mineral resources, expand opportunities for Historical Disadvantaged South Africans (HDSAs) to enter into the minerals industry and to utilise the existing skills base to empower HDSAs. The Mining Charter also aims at expanding the skills base of HDSAs to serve the community, to promote employment and advance the social and economic welfare of mining communities. The promotion of the beneficiation of mineral commodities within South Africa must also be achieved. To enable measurement of performance against the targets of the Mining Charter, the Mining Charter Scorecard was introduced. The purpose of the Mining Charter Scorecard is

to enable the Minister of the DME to adjudicate the performance of mining companies against the targets and objectives of the Mining Charter.

In an effort to standardise BEE and to ensure that the transformation objectives of the Government are met, the BEE Act was promulgated. The purpose of the BEE Act is to establish a legislative framework for the promotion of BEE and to enable the Minister of the Department of Trade and Industry (DTI) to issue the Codes of Good Practice. The Codes of Good Practice was implemented on 9 February 2007 and it provides an enabling framework for the measurement of Broad-Based Black Economic Empowerment (BBBEE), across all sectors of the economy. The intention of the Codes of Good Practice is to provide a level playing field for all entities operating within the South African economy.

From the discussion on the Mining Charter it became evident that the mining industry is regulated by the MPRDA and performance with regard to BEE is measured in terms of the Mining Charter. The Mining Charter has nine pillars, or indicators, which consist of:

- Human resources development;
- Employment equity;
- Migrant labour;
- Mine community and rural development;
- Housing and living conditions;
- Procurement;
- Ownership and joint ventures;
- Beneficiation; and
- Reporting.

The Mining Charter Scorecard aims at measuring performance against the objectives and targets of the Mining Charter. Each indicator or pillar has a number of sub-indicators to be measured. It uses a binary scoring method in which a number of dichotomous questions are asked and the mining company must respond with either a "yes" or "no" answer. It does not provide for the qualification of a particular response. The Mining Charter Scorecard measures performance at two specific points in time, a 5-year period (30 April 2009) and a 10-year period (30 April 2014). In addition, the Mining Charter Scorecard, as a measuring instrument, provides no weightings or ratings for the indicators to be measured. Measurement is done by

mining companies on an annual basis and such measurement is submitted to the DME for verification.

The Codes of Good Practice is binding on all organs of State and public enterprises when entering into decisions affecting procurement, licensing and concessions, public-private partnerships and sale of state-owned assets. Even though not legally required to comply with the provisions of the Codes of Good Practice, private sector enterprises are indirectly required to apply the Codes of Good Practice, should they wish to interact with organs of state and public enterprises in any of the aforementioned matters.

The Codes of Good Practice is applicable to all sectors of the economy and serves as a comprehensive measurement instrument, consisting of a Generic Scorecard and seven individual scorecards, one for each element. The seven elements or indicators are contained in seven statements within the Codes of Good Practice, which consists of:

- Ownership
- Management control;
- Employment equity;
- Skills development;
- Preferential procurement;
- Enterprise development; and
- Socio-economic development.

The Codes of Good Practice contains a Generic Scorecard to measure overall BEE performance with individual scorecards for each of the seven elements through which performance is measured, per element. The element-specific scorecards provide specific weightings and ratings for the sub-indicators of each individual element. The results of the score obtained on each of the individual scorecards are captured on the Generic Scorecard in order to obtain an overall score. Once a score has been achieved, the level of BBBEE compliance is determined by utilising the table contained in the Codes of Good Practice. According to this table, nine levels of BEE status can be achieved. The lowest level is that of a Non-Compliant Contributor. This level is achieved with a score of less than 30 points on the Generic Scorecard, which equates to 0% BEE procurement recognition level. The highest level is that of a Level One Contributor, with a score of 100 points on the Generic Scorecard, which equates

to 135% BEE procurement recognition level. For a company to remain competitive and to acquire Government contracts, as well as licences and permits not regulated by the MPRDA, a minimum BEE status of a Level Four Contributor is preferable. To achieve a Level Four Contributor status, a company must achieve a score between 65 and 74 points on the Generic Scorecard. A Level Four Contributor achieves a BEE procurement recognition level of 100%. Measurement of BEE performance against the Codes of Good Practice is conducted by an independent accrediting agency, and certification is valid for one year.

The Mining Charter is applicable to the mining industry whilst the Codes of Good Practice is binding on all organs of State and public enterprises and Government must apply the Codes of Good Practice when entering into decisions regarding procurement, licensing and concessions, public-private partnerships and sale of state-owned assets. Therefore, private sector enterprises must comply with the Codes of Good Practice, should these companies wish to interact with organs of state and public enterprises.

Measuring performance on achieving the BEE targets of the Mining Charter is done in terms of the Mining Charter Scorecard, which constitutes a single scorecard, containing the nine pillars (elements) of the mining charter. The Codes of Good Practice, on the other hand, utilises a Generic Scorecard which measures the seven pillars (elements) of the Codes of Good Practice. Each pillar, or element of the Codes of Good Practice, is represented by a specific code with detailed statements of which each is measured by an individual code-specific Scorecard.

To illustrate the difference, similarities and overlaps in some instances, it is necessary to provide a comparison of the relevant elements and indicators of the Mining Charter Scorecard with the elements and indicators of the Codes of Good Practice.

Table 23 below provides a summary of the elements and indicators, including areas where the relevant elements and indicators of the Codes of Good Practice are similar to those contained in the Mining Charter.

Table 23: Summary of elements and indicators of the Mining Charter and the Codes of Good Practice

Mining Charter	Codes of Good Practice
Human Resources Development	**Skills Development**
Has the company offered every employee the *opportunity to be functional literate and numerate* by the year 2005? Are employees being trained?	Skills development expenditure on any program specified in the Learning Programme Matrix
Has the company implemented career paths for HDSA employees including skills development plans?	Skills development expenditure on learning programmes specified in the Learning Programme Matrix for black employees as a percentage of leviable amount using the adjusted recognition for gender
Has the company developed systems through which empowerment can be mentored?	Skills development expenditure on learning programmes specified in the Learning Programme Matrix for black employees with disabilities as a percentage of leviable amount using the adjusted recognition for gender
	Learnerships
	Number of black employees participating in learnerships or Category B, C and D Programmes as a percentage of total employees using the adjusted recognition for gender
Employment Equity	**Employment Equity**
Has the company published its employment equity plan and reported on its annual progress in meeting the plan?	Black disabled employees as a percentage of all employees using the adjusted recognition for gender
Has the company established a plan to achieve a target of HDSA participation in management of 40% within five years and is it implementing the plan?	Black employees in senior management as a percentage of all employees using the adjusted recognition for gender
Has the company established a plan to achieve the target for women participating in mining of 10% within 5 years and is it implementing the plan?	Black employees in middle management as a percentage of all employees using the adjusted recognition for gender
Has the company identified a talent pool and is it fast tracking it?	Black employees in junior management as a percentage of all employees using the adjusted recognition for gender
	Bonus points for meeting or exceeding the EAP targets in each category
	Management Control
	Exercisable voting rights of black board members using the adjusted recognition for gender
	Black executive directors using the adjusted recognition for gender
	Black senior top management using the adjusted recognition for gender
	Black other top management using the adjusted recognition for gender
	Black independent non-executive board members
Migrant Labour	
Has the company subscribed to government and industry agreements to ensure non-discrimination against foreign labour?	
Mine Community and Rural Development	**Socio-Economic Development**
Has the company co-operated in the formulation of integrated development plans? Is the company co-operating with government in the implementation of these plans for 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 expenditures and show a plan).	Average annual value of all socio-economic development contribution by the measured entity as a percentage of the target

Housing and Living Conditions	
For company-provided housing, has the mine, in consultation with stakeholders, established measures for improving the standard of housing, including the upgrading of the hostels, conversion 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?	
For company-provided nutrition, has the mine established measures for improving the nutrition of mine employees? Companies will be required to indicate what they have done to improve nutrition and show a plan to progress the issue over time and is it implementing the plan?	
Procurement	**Preferential Procurement**
Has the mining company given HDSAs preferred supplier status?	BBBEE procurement spend from all suppliers based on the BBBEE procurement recognition levels as a percentage of total measured procurement spend
Has the mining company identified current level of procurement from HDSA companies in terms of capital goods, consumables and services?	BBBEE procurement spend from qualifying small enterprises or exempted micro enterprises based on the BBBEE procurement recognition levels as a percentage of total measured procurement spend
Has the mining company indicated a commitment to a progression of procurement from HDSA companies over a 3 to 5-year time frame in terms of capital goods, consumables and services and to what extent has the commitment been implemented?	BBBEE procurement spend from any of the following suppliers as a percentage of total measured procurement spend: Suppliers that are 50% black-owned (3 out of 5 points); or Suppliers that are 30%black women-owned (2 out of 5 points)
	Enterprise Development
	Average annual value of all enterprise development contribution and sector-specific programmes made by the measured entity as a percentage of the target
Ownership & Joint Ventures	**Ownership**
Has the mining company achieved HDSA participation in terms of ownership for equity or attributable units of production of 15 percent in HDSA hands within 5-years and 26 percent in 10-years?	***Voting rights*** Exercisable voting rights in the enterprise in the hands of black people Exercisable voting rights in the enterprise in the hand of black women
	Economic interest Economic interest of black people in the enterprise Economic interest of black women in the enterprise Economic interest of the following black natural people in the enterprise Black designated people Black participants in employee ownership schemes Black beneficiaries of broad-based ownership schemes; or Black participants in co-operatives
	Realisation points Ownership fulfilment Net value
	Bonus points Involvement in the ownership of the enterprise of black participants Involvement in the ownership of the enterprise of black participants: in employee ownership schemes; of broad-based ownership schemes; or co-operatives
Beneficiation	
Has the mining company identified its current level of beneficiation?	
Has the mining company established its base line level of beneficiation and indicated the extent that this will have to be grown in order to qualify for an offset?	
Reporting	
Has the company reported on an annual basis its progress towards achieving its commitments in its annual report?	

One of the research objectives reflected in Chapter 1 of the thesis is to determine the extent to which the pillars and elements of Mining Charter and Codes of Good Practice overlap. The aforementioned summary provides a clear indication of the areas of overlap.

The implementation of the Codes of Good Practice caused major confusion as to which BEE policy the mining industry needs to comply with. The DME, DTI and mining industry had some discussions and due to the fact that the Mining Charter was developed in terms of the provisions of the MPRDA, prior to the BEE Act and the release of the Codes of Good Practice, it was agreed that mining companies must only comply with the Mining Charter. However, as the Codes of Good Practice is binding on all organs of state in their interactions relating to procurement, licensing and concessions, public-private partnerships and sale of state-owned assets, any company intending to do business with the Government, or obtain licences and permits, will be required to illustrate its BEE status, in terms of the Codes of Good Practice, irrespective of whether or not it is a mining company. Private sector enterprises are not legally required to comply with the Codes of Good Practice and cannot be prosecuted or acted against if they do not comply, but to enter into business with Government or obtain licences and permits, private sector enterprises will have to comply with the Codes of Good Practice.

Through the knock-on effect of the procurement element of the Codes of Good Practice, any company who provides goods and services to other companies, who are engaged in business with the Government or public enterprises, will have to comply with the requirements of the Codes of Good Practice. Due to this the pressure to comply with the Codes of Good Practice applies not only to businesses conducting business with Government and public enterprises, but also to those interacting with other private companies, including mining companies.

To determine the impact of the Codes of Good Practice on the South African mining industry, an in-depth look was taken into the implications of the Codes of Good Practice on the mining industry. It was determined that various positive and negative impacts exist. The findings indicated that the positive impacts out-weigh the negative impacts. Mining companies will have to comply with both the Mining Charter and the Codes of Good Practice if they intend to continue with mining operations in South Africa, as the mining company's customers will be measured in terms of the Codes of

Good Practice. Therefore, mining companies and its customers will opt to do business with suppliers that have a high level of BEE status, in terms of the Codes of Good Practice, which in turn will enable them to obtain a higher score on their own Generic Scorecard. This is especially applicable to South African mining companies when trading with the minerals it has mined.

Complying with the Codes of Good Practice is essential for any mining company who wishes to succeed in the South African economy. It will provide a mining company with a competitive advantage when supplying products to the state, public enterprises or other private entities being measured in terms of the Codes of Good Practice. Having a BEE status of at least a Level Four Contributor will result in the company becoming a preferential supplier, above those who have a lower BEE status, as per the Codes of Good Practice. The most significant negative impact is that, due to the differences that exist between the elements or pillars of the Codes of Good Practice and the Mining Charter, it has the result that a dual measurement system is required. Implementing a dual measurement system increases administrative activities and requires additional resources, which in turn places a strain on the resources of mining companies.

The preceding summary addresses the research objectives to determine the implications if mining companies decide not to comply with the provisions of the Codes of Good Practice, as well as which elements of the Codes of Good Practice a mining company will have to comply with, to remain competitive or become a preferred supplier to public and private enterprises.

The Mining Charter and Codes of Good Practice are policies regulated and administered by the DME and the DTI respectively. The purpose of the Mining Charter is to specifically measure performance of BEE in the mining industry. The Codes of Good Practice measures performance in achieving BEE targets in terms of the Codes of Good Practice in all sectors of the economy. As both these policies are designed to be performance measurement instruments, it was necessary to investigate the concepts of performance management and measurement, as well as the principles, theories and models of measuring performance. It was necessary to understand the principles of performance measurement and management to determine whether the Mining Charter and the Codes of Good Practice, in the current format of each, will be sufficient for the mining industry to measure performance

against, and compliance with, both the Mining Charter and the Codes of Good Practice.

Performance management entails the development and implementation of systems and methods to translate the objectives of management into performance terms. Performance measurement is a process through which data is collected in relation to a predefined performance goal or standard. Performance measurement, as an overall management process, entails prevention and detection aimed at achieving conformance of the work product or service to the specified requirements which occur in a continuous predefined cycle.

Various performance management models, tools and techniques are available. A number of models for performance management were discussed, such as the Pratt and Whitney Performance Management Model, Systems Model of Performance Management, the Three Es Model, Quality Management Models and the Balanced Scorecard.

As the Mining Charter and Codes of Good Practice utilise scorecards as a method of measuring performance, the Balanced Scorecard has the closest resemblance to these scorecards. The Balanced Scorecard is a concept for measuring whether the activities of an organisation are meeting its objectives in terms of vision and strategy. The Balanced Scorecard does not only focus on financial outcomes, but also on the human issues, thereby the Balanced Scorecard helps to provide a more comprehensive view of business, which in turn assists companies to act in their best long-term interests. In addition, the Balanced Scorecard allows individual scorecards to be devised, as is the case with the Codes of Good Practice, which then represents a piece of the strategic puzzle. When all the pieces are put together, the big picture emerges as demonstrated in the Generic Scorecard of the Codes of Good Practice.

With regard to performance measurement, a number of performance rating methods, formats and models were investigated, which included the Generalised Organisational Performance Measurement System Model, Performance Scorecards, Behaviour Oriented Rating Methods, Results-Oriented Rating Methods, of which Management by Objectives is probably the most well known.

The measurement of performance of compliance with the provisions of the Mining Charter and Codes of Good Practice is scorecard-based. Performance Scorecards,

as a performance measurement model, is potentially the most applicable to this research. Performance Scorecards allow a company to manage its activities successfully and achieve better results. This is achieved by focussing on the vital measures that matter to customers, employees and other stakeholders. Performance Scorecards support deployment of business strategies, provide visibility on process problems and help ensure that targets are met.

For any performance measurement to be effective and to monitor and evaluate policy processes, performance and outcomes, key performance measures and indicators are required. Performance indicators and performance measures are often understood to be synonymous. Performance indicators are measures that describe how well a programme is achieving its objectives. These performance indicators need to be reasonable, useful and a meaningful measure of the intended outcome. Indicators must be clear, specific and measurable. Performance indicators are usually seen as numerical measures. In comparing the Mining Charter with the theory, it appears that the performance indicators of the Mining Charter (pillars) are not sufficiently clear, specific and measurable. In contrast, the elements of the Codes of Good Practice comply with these requirements as the indicators are clear, weighted and measurable.

However, the significant differences in the formulation and application of measuring performance against the pillars or elements of the Mining Charter to that contained in the Codes of Good Practice, cannot be readily compared. This poses mining companies with a challenge as no clear, specific and measurable indicators are available, which a mining company can use to measure performance with regard to complying with the requirements of both the Mining Charter and the Codes of Good Practice. Various types of indicators exist, but due to the fact that measurement of performance is required against two different sets of indicators, being those of the Mining Charter and those of the Codes of Good Practice, it would be necessary to obtain composite indicators. Composite indicators measure several indicators together, indicating overall performance and simplify a lengthy list of indicators. It identifies the complex relationships between indicators into one index. Therefore composite indicators, providing clear, specific and measurable indicators, will have to be developed to assist mining companies in measuring compliance with the Codes of Good Practice and the Mining Charter.

To determine the actions required by mining companies to measure compliance with the Mining Charter, as well as the Codes of Good Practice, interviews were conducted, data collected and information obtained from various stakeholders. The sample selected included a number of mining companies, BEE Advisors, attorneys as well as the DME and the DTI. The mining companies indicated that compliance with the Codes of Good Practice, in addition to the Mining Charter, is a business imperative and crucial to success in the South African economy. Some mining companies indicated that compliance with a selected number of the elements of the Codes of Good Practice, especially preferential procurement and enterprise development, must be attained. It was also indicated that, as far as practically possible, considering the requirements of the Mining Charter, mining companies aim to comply with as many of the elements of the Codes of Good Practice as possible. The relevant mining companies indicated that no composite indicators, nor a combined measurement instrument, are available to enable measurement of performance against both the requirements of the Mining Charter and the Codes of Good Practice. Even though some mining companies have implemented measures to comply with the Codes of Good Practice, no single system for measurement of compliance with the Mining Charter and the Codes of Good Practice is available. In addition, no substantial assistance or support is forthcoming from the DME and the DTI to assist mining companies in this regard.

BEE Advisors and attorneys practising in the field of BEE also expressed the view that mining companies must voluntarily comply with the Codes of Good Practice. They also confirmed that no composite indicators or a single measurement instrument is available to enable mining companies to measure performance against the BEE targets of the Mining Charter and Codes of Good Practice. It was indicated that currently no purposeful interaction between the DME and the DTI is taking place in an effort to align the Mining Charter and the Codes of Good Practice. Whilst the Government is attempting to resolve the impasse between the DTI and the DME, the mining industry requires the elements of the Codes of Good Practice to be translated into a system by which mining companies will be able to measure compliance with the Codes of Good Practice and the Mining Charter.

The DME indicated that the mining industry must adhere to the Mining Charter and that there is no link between the Mining Charter and the Codes of Good Practice. The DME is extensively involved in activities to assist mining companies in complying with the Mining Charter, but no assistance or guidance is provided to mining companies

with regard to compliance with the Codes of Good Practice. The DME is not attending to any activity that will result directly in aligning the Mining Charter with the Codes of Good Practice. The DTI confirmed that no such alignment is taking place. However, the DME is considering the updating of the Mining Charter during 2009/2010 and is also in the process of developing a code of good practice, specifically for the minerals industry, as required by the MPRDA. For this purpose a specific subcommittee was established by the Minerals and Mining Development Board. This code of good practice for the mineral industry has no direct link with the Codes of Good Practice. It was indicated that, during the updating of the Mining Charter and the development of a code of good practice for the minerals industry, the subcommittee will involve the DME, the DTI, the mining industry and other stakeholders. It is envisaged that some aspects of the Codes of Good Practice may be addressed in these policy documents. Both the DME and the DTI confirmed that currently no composite indicators to measure compliance with both the Mining Charter and the Codes of Good Practice exist and that the respective Government departments are not engaged in specific discussions to develop and provide such composite indicators. A single measurement instrument is also not available. The DME requires mining companies only to comply with the Mining Charter and compliance with the Codes of Good Practice is a decision left to mining companies. Devising a method of measuring compliance with both the Mining Charter and the Codes of Good Practice is also left to the mining industry.

In this process the role of the Department of Minerals and Energy was analyzed to determine its role in measuring mining companies' compliance performance against both the Mining Charter and Codes of Good Practice, thus realizing the research objective in this regard.

Mining companies are legally obliged to comply with the Mining Charter, but complying with the Codes of Good Practice will ensure that mining companies survive in the South African economy. In addition, it will provide mining companies with a competitive advantage when tendering for Government business and the sale of mineral products. This places mining companies in a difficult position since no measurement instrument or composite indicators are available to enable mining companies to measure performance against the elements of the Mining Charter and the Codes of Good Practice, as a single process. No performance measurement instrument or composite indicators are currently being developed by either the DME

or the DTI and the updating of the Mining Charter or the code of good practice for the minerals industry is not expected to be available until 2009/2010.

In the light of the aforementioned, it was found that no combined or composite indicators exist and no combined measurement instrument is available. In the absence thereof, such composite indicators and a combined performance measurement instrument need to be developed.

The aforementioned addressed the research objective of determining whether any combined indicators and performance measurement instruments exist within the mining industry which will enable mining companies to measure performance against, and compliance with, both the Mining Charter and the Codes of Good Practice and if not, to develop such composite indicators and a performance measurement instrument.

7.3 RECOMMENDATION

To enable mining companies to measure compliance with the Mining Charter and the Codes of Good Practice, will require the development of composite indicators as well as a measurement instrument. It is important to bear in mind that the purpose of the development of composite indicators is to assist mining companies to measure BEE performance as required by the Mining Charter and to translate this into measurable performance against the elements of the Codes of Good Practice. The composite indicators will be developed by utilising the pillars of the Mining Charter as a basis, but also incorporating the elements of the Codes of Good Practice in a scorecard approach. The next part of this chapter will be dedicated to the development of a composite scorecard for the mining industry and will be in fulfilment of the research objective dealing with the development of combined/composite indicators and a performance measurement instrument.

7.3.1 Composite Indicators

From the theory discussed previously, it was determined that performance indicators define the measurement of a piece of important and useful information concerning performance of a program expressed as a percentage, index, rate or other comparison which is monitored at regular intervals and is compared to one or more criterion. During the discussion on the theory of performance measurement,

reference was made to performance indicators and performance measures and it was mentioned that the distinction between performance indicators and performance measures are imprecise and are, in practice often understood to be synonymous. Performance indicators should be expressed in units of measure that are the most meaningful to those who must use it or make decisions based on the indicators.

It was also determined that various types of indicators are used to measure the different aspects of performance. For the purposes of this research composite indicators will be required. Composite indictors measure several indicators together to indicate overall performance, simplify a lengthy list of indicators and identify the complex relationships between them, into one index.

Mining companies are legally required to comply with the Mining Charter in respect of the measurement of performance in achieving the BEE targets. During the development of composite indicators, the pillars and indicators of the Mining Charter will be used as a point of departure, where after these will be referenced against the elements and indictors of the Codes of Good Practice. From this, composite indicators will be developed.

7.3.1.1 Human Resources Development

The first indicator of the Mining Charter, under human resources development (HRD) determines whether a mining company has provided every employee with the opportunity to be functionally literate and numerate and to be trained. Even though the offering of the opportunity to become literate and numerate should have been made by 2005, implementation of these programmes is a requirement, over the life of the mine, as a commitment in the Social and Labour Plan (SLP). In the Codes of Good Practice the indicators for skills development as contained in Statement 400: Skills Development, through which learning programmes for black employees, including disabled black employees, are measured, measure performance based on financial expenditure. The measurement of performance against the Mining Charter is not financially motivated, therefore the composite indicator will require mining companies to include expenditure in future reporting. In addition, the core activities of mining are not conducive to the employment of persons with disabilities and this will have to be accommodated in positions outside core business. As some indicators in the Mining Charter are not present in the Codes of Good Practice, these indicators will be incorporated as indicators. The composite indicators are detailed below.

(i) Expenditure and implementation of skills development, for black employees through learning programmes, including the opportunity to be functionally literate and numerate.

(ii) Expenditure and implementation of skills development through learning programmes for black employees with disabilities.

The second indicator of HRD in the Mining Charter requires a company to implement career paths for Historically Disadvantaged South Africans (HDSAs), including skills development plans. Even though not a specific requirement in terms of the Mining Charter, learnerships are included in the SLP, resulting in mining companies being measured in terms of its performance on implementing learnerships and skills development. The Codes of Good Practice requires detail on the number of employees participating in learnerships in institutional-based theoretical instruction, as well practical learning with an employer in a simulated work environment, recognised or registered structured experiential learning in the workplace and occupationally-directed instructional work-based learning. The composite indicator is provided below:

(iii) HDSAs participating in learnerships as part of career paths and in accordance with skills development plans.

The last indicator of HRD consists of the development of systems through which empowerment groups can be mentored. The Codes of Good Practice does not have a similar indicator. The last indicator for HRD therefore is:

(iv) Development of systems through which empowerment groups are mentored.

7.3.1.2 Employment Equity

It is a legal requirement to publish an employment equity (EE) plan in terms of the Employment Equity Act. This includes the appointment of persons with disabilities and therefore specific indicators dealing with persons with disabilities will not be incorporated in the composite indicators. Mining companies will therefore forfeit the two points allocated thereto, in terms of the Codes of Good Practice.

The first indicator of the Mining Charter entails the publishing of an EE plan and the annual progress report in meeting the plan. The Codes of Good Practice does not have such an indicator. The indicator is:

(i) Publishing and annual reporting on progress of the employment equity plan.

The second indicator of the Mining Charter requires mining companies to achieve 40% HDSA in management by 30 April 2009. According to Statement 300: Employment Equity of the Codes of Good Practice, it requires a percentage of black employees in senior management, middle management and junior management with compliance targets, of all such employees, over a five-year period and increasing over a next five-year period. As the Mining Charter does not provide a target for HDSAs in management beyond 30 April 2009, the representation of HDSAs in management, for the second 5-year period, was calculated as the average representation required by the Codes of Good Practice. The composite indicator is:

(ii) 40% HDSA participation in management, spreading equality through the levels of senior, middle and junior management by 30 April 2009 and 70% by 30 April 2014.

The third EE indicator in the Mining Charter requires mining companies to identify a talent pool and fast tracking employees in the talent pool. This will be included as an indicator:

(iii) Talent pool for the fast tracking of HDSA employees.

The fourth indicator of EE requires a mining company to establish a plan to achieve 10% women in mining by 30 April 2009. The Codes of Good Practice provides for women through the adjusted recognition for gender formula. However, including women in core business of mining is a major objective of the Mining Charter and therefore a target for the respective five-year periods are included. The composite indicator to be used is indicated below:

(iv). 10% participation of women in core mining activities by 30 April 2009 and 20% by 30 April 2014.

The Codes of Good Practice in Statement 200: Management Control, provides for indicators to measure HDSA management control. This is not specifically provided for in the Mining Charter, but the EE indicators of the Mining Charter incorporate a number of these issues, especially with regard to HDSAs in management. This will not be addressed any further as it is already part of indicators 2 and 3 above.

As mining companies are required to have HDSA representation on Board level, this should be incorporated. The composite indicators to be used in this regard are:

(v) 50% of board members to be HDSA members with exercisable voting rights.
(vi) 50% of directors to be HDSA executive directors.

7.3.1.3 Migrant Labour

The Mining Charter requires a mining company to subscribe to Government and industry agreements to ensure non-discrimination against foreign migrant labour. This is merely a statement and it could be questioned whether it should be included as an indicator. However, the protection of foreign migrant labour against exploitation and discrimination warrants this statement. An indicator of similar nature is not present within the Codes of Good Practice as it is a mining industry specific requirement. The composite indicator will be:

(i) Subscription to Government and mining industry agreements regarding non-discrimination against foreign migrant labour.

7.3.1.4 Mine Community and Rural Development

Even though provided as a single indicator, mine community and rural development (MCRD) actually consists of a number of indicators. To ensure that the indicators are clear and can be measured individually, it is necessary to divide it into individual indicators. The first indicator of MCRD requires mining companies to cooperate in the formulation of integrated development plans (IDPs) of the local municipality. The second indicator requires a mining company to cooperate with Government in the implementation of the IDPs in areas where mining takes place, as well as major labour-sending areas. The third indicator requires a mining company to demonstrate its engagement with local mine communities and communities from the major labour-sending areas. Indicators one and three may be combined as it both involves

consultation. The indicator contained in Statement 700: Socio-Economic Development of the Codes of Good Practice requires a company to indicate the average annual value spent on socio-economic development, which should be equal to 1% of net profit after tax. The composite indicators will be as follows:

(i) Partake in and cooperate with the local municipality and consult with communities in the formulation of IDPs.
(ii) Implement IDPs through local economic development projects, as contained in the company's Social and Labour Plan, of which the average annual value is not less than 1% of net profit after tax.

7.3.1.5 Housing and Living Conditions

In accordance with the Mining Charter, a mining company must improve the housing and living conditions of its employees as well as the nutrition of mine employees. This is a mining industry specific indicator and a similar or related indicator is not present in the Codes of Good Practice, therefore it will be incorporated as an indicator. However, a single indicator is provided for housing and living conditions and nutrition, but these actually consist of a number of indicators. To ensure that the indicators are clear and can be measured individually, it is necessary to separate it into the following indicators:

(i) Establish measures to improve company-provided housing, in consultation with stakeholders.
(ii) Upgrade hostels, including the conversion of units into family units, in consultation with stakeholders.
(iii) Promote homeownership for mine employees.
(iv) Improvement of company-provided nutrition to mine employees.
(v) Provision of a plan to progress nutrition over time.

7.3.1.6 Procurement

The first indicator of the Mining Charter requires a mining company to provide preferred status to HDSA suppliers. The second indicator requires mining companies to identify the level of procurement from HDSA companies in terms of capital goods, consumables and services. This indicator is similar to the first indicator of Statement 500: Preferential Procurement of the Codes of Good Practice, but the Codes of Good

Practice focuses on expenditure only. Even though implied in the Mining Charter, the composite indicator will specifically include expenditure. The Mining Charter makes no distinction between Qualifying Small and Exempted Micro Enterprises and therefore it will not be incorporated in the composite indicators. This will have the result that mining companies will forfeit three points on the Codes of Good Practice Scorecard. The third indicator of the Mining Charter requires a mining company to indicate progression of procurement from HDSA companies in terms of capital goods, consumables and services. This indicator could be amended to incorporate the requirement of the third indicator of preferential procurement of the Codes of Good Practice as this deal with procurement from 50% black-owned or 30% black women-owned suppliers. In addition, Statement 600: Enterprise Development of the Codes of Good Practice, requires companies to spend 3% of net profit after tax on enterprise development. The Mining Charter requires the progression of procurement, but does not specify the amount to be spent on progressing procurement from HDSAs. This should be brought in line with the enterprise development requirements of the Codes of Good Practice. The composite indicators are:

(i) Proof of HDSA suppliers being given a preferred supplier status.
(ii) Procurement spend from all HDSA suppliers based on capital goods, consumables and services, as a total of the measured procurement spend.
(iii) Progression of procurement from HDSA suppliers as a percentage of total measures spend on capital goods, consumables and services from:
    a. Suppliers that are 50% black-owned; or
    b. Suppliers that are 30% women-owned.
(iv) Development of enterprises to assist with development of HDSA suppliers to the value of 3% of net profit after tax.

7.3.1.7 Ownership and Joint Ventures

According to the indicator in the Mining Charter, a mining company must achieve 15% HDSA participation by 30 April 2009 and 26% by 30 April 2014. Statement 100: Ownership of the Codes of Good Practice is more expansive as it focuses on broad-based ownership, whilst the Mining Charter does not necessarily require this. However, it is important to note that with ownership less than 25% + 1 vote, a company will not be able to accrue any points in terms of the Codes of Good Practice

and that only BEE ownership transactions with BEE ownership at 25% + 1 vote will be recognised.

The first and second indicators of the Codes of Good Practice, being voting rights and economic interest, are applicable to the mining industry as all BEE transactions must demonstrate ownership, control and economic value in the hands of the BEE partners. However, the third indicator would be difficult to achieve as BEE transactions in mining is of high value and often requires external, long-term funding and is therefore not included in the composite indicator. This will have the effect that mining companies will forfeit eight points in terms of the Codes of Good Practice. With regard to indicator four, mining companies may be able to accrue some points, especially if new entrants are brought into the mining industry, which is also one of the objectives of the Mining Charter. The composite indicators consist of the following:

Ownership of the mining company in the hands of HDSAs, with:

(i) Voting rights of 25% + 1 vote, by HDSAs.
(ii) 10% voting rights in the hands of black women.
(iii) 25% economic interest in the hands of HDSAs.
(iv) 10% economic interest in the hands of black women.
(v) 2.5% economic interest in the hands of HDSA employee ownership schemes, HDSA ownership schemes, or HDSA cooperatives.
(vi) 10% Ownership in the hands of new entrants into the mining industry.

7.3.1.8 Beneficiation

The Mining Charter requires a mining company to identify its current levels of beneficiation. The second indicator requires mining companies to establish its baseline level and indicate the requirements to grow beneficiation in order to qualify for an offset. This is a mining industry-specific requirement and the Codes of Good Practice has no indicators in this regard. This indicator will have to be incorporated as a composite indicator. However, it is provided as two indicators with more than one measurable in respect of indicator two. In order to facilitate proper performance measurement, it would be necessary to provide clear and measurable indicators:

(i) Status of current levels of beneficiation.
(ii) Detailed baseline level of beneficiation.
(iii) Measures to grow beneficiation in order to qualify for an offset.

7.3.1.9 Reporting

It is a mining-specific indicator for a mining company to report in its annual report its performance with regard to BEE and the achievement of the targets of the Mining Charter. No such indicator is contained within the Codes of Good Practice, but mining companies will be measured against this indicator.

(i) Publication of progress with regard to achieving the BEE targets and commitments in the mining company's annual report.

7.3.2 Development of a Performance Measurement Instrument

In the preceding section the indicators of the Mining Charter and those of the Codes of Good Practice were combined into composite indicators. Now that these composite indicators are available, it is necessary to develop a performance measurement instrument.

As determined during the discussions on the theory of performance management and measurement, a performance measurement instrument must be able to measure the actual status of performance. To ensure this, clear measurement criteria and performance standards, targets and indictors will be required to be measured on a numerical scale. This measurement instrument must take into consideration the main areas of performance required by the Mining Charter and the Codes of Good Practice. According to the theory of performance measurement, the foundation of a successful performance management instrument is that it measures only what is important and focuses on the measurement of these important issues.

Various performance management models were investigated in Chapter 5 of the thesis. Performance measurement is recognised, amongst others, as an important element of the Quality Management models discussed previously. The Balanced Scorecard model was also discussed in depth. This model takes a systematic approach to assessing internal results, while probing the external environment, and requires that the number of measures or indicators be limited to a vital few. In applying the Balanced Scorecard, the financial perspective becomes the lead perspective. A balanced approach allows the company to consider all the important measures at the same time and, through measurement, incorporate long-term

strategies into the management system. The balanced approach also allows for the translation of vision and strategy into a tool that effectively tracks performance against the established goal.

The approach to be adopted in the development of a performance measurement instrument will be based on the scorecard performance management model, modified to suit the purpose of measuring performance to the targets of the Mining Charter and Codes of Good Practice.

The scorecard approach will allow for the development of individual scorecards for each of the nine pillars of the Mining Charter containing the composite indicators, which then represent a piece of the strategic puzzle. When all these individual scorecards are put together, the big picture will emerge from the result obtained from the Composite Scorecard for the Mining Industry. Scorecards support deployment of business strategies, provide visibility on process problems and help ensure that targets are met. A performance scorecard is a set of business measures, linked to business strategies and goals.

The model to be utilised is similar to the approach adopted by the Codes of Good Practice. This was done in an effort to ensure consistency with the performance measurement tool in relation to the Codes of Good Practice. The purpose of the Composite Scorecard for the Mining Industry is to enable mining companies, in addition to measuring performance against the targets of the Mining Charter, to determine their level of performance against the Codes of Good Practice. To ensure that mining companies remain competitive or maintain and obtain a preferred suppliers status, a BBBEE status of a Level Four Contributor must be achieved. Therefore the weightings applied to the relevant composite indicators are aimed at achieving this level of BBBEE status, whilst taking into consideration the requirements of the Codes of Good Practice. The current method of measuring performance against the targets of the Mining Charter, which uses a binary scoring method where a number of questions are posed and the mining company has to respond with a "yes" or "no" response, and which does not provide for the qualification of a particular response, will be replaced with clear measurement criteria and performance standards, targets and indicators, measurable on a numerical scale.

7.3.2.1 Mining Charter pillar-specific scorecards

To enable the development of the Composite Scorecard for the Mining Industry it is necessary to incorporate the composite indicators into nine Mining Charter pillar-specific scorecards. As each pillar of the Mining Charter will have an individual scorecard, this will allow the individual measurement of indicators applicable to that pillar. The score achieved on each of the nine pillar-specific scorecards will be transferred to the Composite Scorecard for the Mining Industry.

To develop a composite measuring instrument, the skills development element of the Codes of Good Practice has been incorporated under the human resources development pillar of the Mining Charter. Management control and employment equity elements of the Codes of Good Practice have been combined under the employment equity pillar of the Mining Charter. Similarly, the preferential procurement and enterprise development elements of the Codes of Good Practice were combined under the procurement pillar of the Mining Charter, and the socio-economic development element was included under the mine community and rural development pillar of the Mining Charter. The aforementioned is illustrated in Table 23 on page 182.

To determine the weightings, those points that would not be achievable by a mining company in terms of the Codes of Good Practice, totalling 20 points, due to major incompatibilities between the Mining Charter and Codes of Good Practice, were allocated to those performance indicators specifically required by the Mining Charter.

The nine scorecards, comprising the nine pillars of the Mining Charter, with the composite indicators incorporated therein, will be provided in the section to follow.

7.3.2.1.1 Human Resources Development Scorecard

The human resources development scorecard will take into consideration the composite indicators and through the allocation of weightings to the indicators and inclusion of the relevant targets, it would be possible to determine the score obtained. The scorecard is provided in Table 24 below.

Table 24: Human Resources Development Scorecard

Item	Composite Indicator	Weighting points	Target	Total points
1	Expenditure and implementation of skills development, for black employees through learning programmes, including the opportunity to be functionally literate and numerate.	6	3%	
2	Expenditure and implementation of skills development through learning programmes for black employees with disabilities.	2	0.3%	
3	HDSAs participating in learnerships as part of career paths and in accordance with skills development plans.	6	5%	
4	Development of systems through which empowerment groups are mentored.	1	Annually	
Total points for Human Resources Development				

7.3.2.1.2 Employment Equity Scorecard

In the Employment Equity Scorecard the requirements of the relevant pillar of the Mining Charter, and the employment equity and management control elements of the Codes of Good practice, are combined. This amounts to a total combined 25 points for the aforementioned two elements of the Codes of Good Practice. However, as a result of the differences in the requirements of the Mining Charter and the Codes of Good Practice, mining companies will only be able to score a maximum of 20 points.

Table 25: Employment Equity Scorecard

Item	Composite Indicator	Weighting points	Targets		Total Points
			5-year target	10-year target	
1	Publishing and annual reporting on progress of the employment equity plan.	1	Annually	Annually	
2	HDSA participation in management, spreading equality through the levels of senior, middle and junior management.	10	40%	70%	
3	Talent pool for the fast tracking of HDSA employees.	1	Annually	Annually	
4	Participation of women in core mining activities.	3	10%	20%	
5	Board members to be HDSA members with exercisable voting rights.	3	50%	50%	
6	Directors to be HDSA executive directors.	2	50%	50%	
Total points for Employment Equity					

7.3.2.1.3 Migrant Labour Scorecard

The Mining Charter requires a mining company to subscribe to Government and industry agreements to ensure non-discrimination against foreign migrant labour. This is a Mining Charter-specific requirement and scoring against this indicator is required. Table 26 provides the relevant scorecard.

Table 26: Migrant Labour Scorecard

Item	Composite Indicator	Weighting points	Target	Total points
1	Subscription to Government and mining industry agreements regarding non-discrimination against foreign migrant labour.	2	Annually	
Total points for Migrant Labour				

7.3.2.1.4 Mine Community and Rural Development Scorecard

The various composite indicators are described in the Mine Community and Rural Development Scorecard. In addition, the socio-economic development element of the Codes of Good Practice has been incorporated in this scorecard as it closely resembles local economic development. However, a target for compliance, consisting of the target required by the Codes of Good Practice, has now been incorporated. The indicators, as contained in the Mining Charter, have also been separated into discernable indicators to ensure that the indicators are clear and individually measurable.

Table 27: Mine Community and Rural Development Scorecard

Item	Composite Indicator	Weighting points	Target	Total points
1	Partake in and cooperate with the local municipality and consult with communities in the formulation of IDPs.	1	Annually	
2	Implement IDP through local economic development projects, as contained in the company's Social and Labour Plan, of which the average annual value is not less than 1% of net profit after tax.	5	1% of net profit after tax, annually	
Total points for Mine Community and Rural Development				

7.3.2.1.5 Housing and Living Conditions Scorecard

This is a mining industry-specific requirement and a similar or related indicator is not present in the Codes of Good Practice. The scorecard provides the various indicators individually to ensure effective measurement.

Table 28: Housing and Living Conditions Scorecard

Item	Composite Indicator	Weighting points	Target		Total points
			5-year target	10-year target	
1	Establish measures to improve company-provided housing, in consultation with stakeholders.	1	30 April 2009	30 April 2014	
2	Upgrade hostels, including the conversion of units into family units, in consultation with stakeholders.	1	30 April 2009	30 April 2014	
3	Promote homeownership for mine employees.	1	30 April 2009	30 April 2014	
4	Improvement of company-provided nutrition to mine employees.	1	30 April 2009	30 April 2014	
5	Provision of a plan to progress nutrition over time.	1	30 April 2009	30 April 2014	
Total points for Housing and Living Conditions					

7.3.2.1.6 Procurement Scorecard

The Procurement Scorecard, in addition to the Mining Charter requirements, combines the preferential procurement and enterprises development elements of the Codes of Good Practice. Seeing that not all the indicators of the Codes of Good Practice can be met by the mining industry, due to the fact that the Mining Charter does not provide for Qualifying Small or Exempted Micro-Enterprises, the three points for procuring from these enterprises cannot be incorporated into the Procurement Scorecard. Therefore a mining company can only score a maximum of 32 points out of the 35 points for the preferential procurement and enterprise development elements of the Codes of Good Practice. Table 29 below contains the Procurement Scorecard.

Table 29: Procurement Scorecard

Item	Composite Indicator	Weighting points	Target		Total points
			5-year target	10-year target	
1	Proof of HDSA suppliers being given a preferred supplier status.	1	30 April 2009	30 April 2014	
2	Procurement spend from all HDSA suppliers based on capital goods, consumables and services, as a total of the measured procurement spend.	12	50%	70%	
3	Progression of procurement from HDSA suppliers as a percentage of total measures spend on capital goods, consumables and services from:				
	Suppliers that are 50% black-owned.	2	15%	20%	
	Suppliers that are 30% women-owned.	2	15%	20%	
4	Average annual value of development of enterprises to assist with development of HDSA suppliers.	15	3% of net profit after tax, annually		
Total points for Procurement					

7.3.2.1.7 Ownership and Joint Ventures Scorecard

According to the indicator in the Mining Charter, a mining company must achieve 15% HDSA participation by 30 April 2009 and 26% by 30 April 2014. It does not provide for measurement for the periods in-between the five-year measurement periods. However, with ownership less than 25% + 1 vote, a company will not be able to accrue any points in terms of the Codes of Good Practice. Therefore the Ownership and Joint Venture Scorecard only recognises BEE ownership transactions with BEE ownership at 25% + 1 vote.

Table 30: Ownership and Joint Ventures Scorecard

Item	Composite Indicator	Weighting points	Target	Total points
1	Voting rights of, by HDSAs.	3	25% + 1 vote	
2	Voting rights in the hands of black women.	2	10%	
3	Economic interest in the hands of HDSAs.	4	25%	
4	Economic interest in the hands of black women.	2	10%	
5	Economic interest in the hands of HDSA employee ownership schemes, HDSA ownership schemes, or HDSA cooperatives.	1	2.5%	
6	Ownership in the hands of new entrants into the mining industry.	3	10%	
Total points for Ownership and Joint Ventures				

7.3.2.1.8 Beneficiation Scorecard

The Mining Charter, as a mining industry-specific indicator, requires a mining company to identify its current levels of beneficiation. The Beneficiation Scorecard, as indicated in Table 31 below, addresses these indicators. It is provided as two indicators, with more than one measurable in indicator two. In order to facilitate proper performance measurement, clear and measurable indicators are provided.

Table 31: Beneficiation Scorecard

Item	Composite Indicator	Weighting points	Target	Total points
1	Status of current levels of beneficiation.	1	Annually	
2	Detailed baseline level of beneficiation.	1	Annually	
3	Measures to grow beneficiation in order to qualify for an offset.	3	30 April 2009	
Total points for Beneficiation				

7.3.2.1.9 Reporting Scorecard

It is a mining-specific indicator to report a mining company's performance with regard to BEE and to achieving the targets of the Mining Charter. The Reporting Scorecard is reflected in Table 32 below.

Table 32: Reporting Scorecard

Item	Composite Indicator	Weighting points	Target	Total points
1	Publication of progress with regard to achieving BEE targets and commitments in the mining company's annual report.	2	Annually	
Total points for Reporting				

In terms of the above, individual scorecards have been developed for each of the nine pillars of the Mining Charter, in which the requirements of the Codes of Good Practice have been incorporated, as far as the requirements of the Mining Charter allow. Now that all the composite indicators have been incorporated into pillar-specific scorecards, it is necessary to develop a composite scorecard. In the next section the Composite Scorecard for the Mining Industry will be provided.

7.3.2.2 Composite Scorecard for the Mining Industry

The Composite Scorecard for the Mining Industry will comprise a main scorecard, with points allocated to each pillar of the Mining Charter. Each pillar of the Mining Charter has an individual scorecard, as discussed previously, which allows for the individual measurement of indicators applicable to that specific pillar. The score achieved on each of the nine pillar-specific scorecards is transferred onto the corresponding section of the Composite Scorecard for the Mining Industry. Once all the scores achieved on the individual scorecards are reflected on the main scorecard, it is possible to determine the total score achieved.

A conversion table will then be utilised to convert the total score achieved on the Composite Scorecard for the Mining Industry to a score in terms of the Codes of Good Practice. To determine the weightings, those points that would not be achievable by a mining company, due to major incompatibilities between the Mining Charter and Codes of Good Practice, have been deducted from the score in terms of the Codes of Good Practice. Hence it is possible for a mining company to obtain a maximum BBBEE status of a Level Three Contributor. Table 33 below provides the pillars and the weightings in terms of the Composite Scorecard for the Mining Industry.

Table 33: Composite Scorecard for the Mining Industry

Item	Pillar	Weighting	Total points
1	Human Resource Development	15 points	
2	Employment Equity	20 points	
3	Migrant Labour	2 points	
4	Mine Community and Rural Development	6 points	
5	Housing and Living Conditions	5 points	
6	Procurement	32 points	
7	Ownership and Joint Ventures	13 points	
8	Beneficiation	5 points	
9	Reporting	2 points	
Total points on the Composite Scorecard for the Mining Industry			

To illustrate the spread of points on the Composite Scorecard for the Mining industry, the points allocated to each of the pillars of the Mining Charter are provided in Figure 9 below.

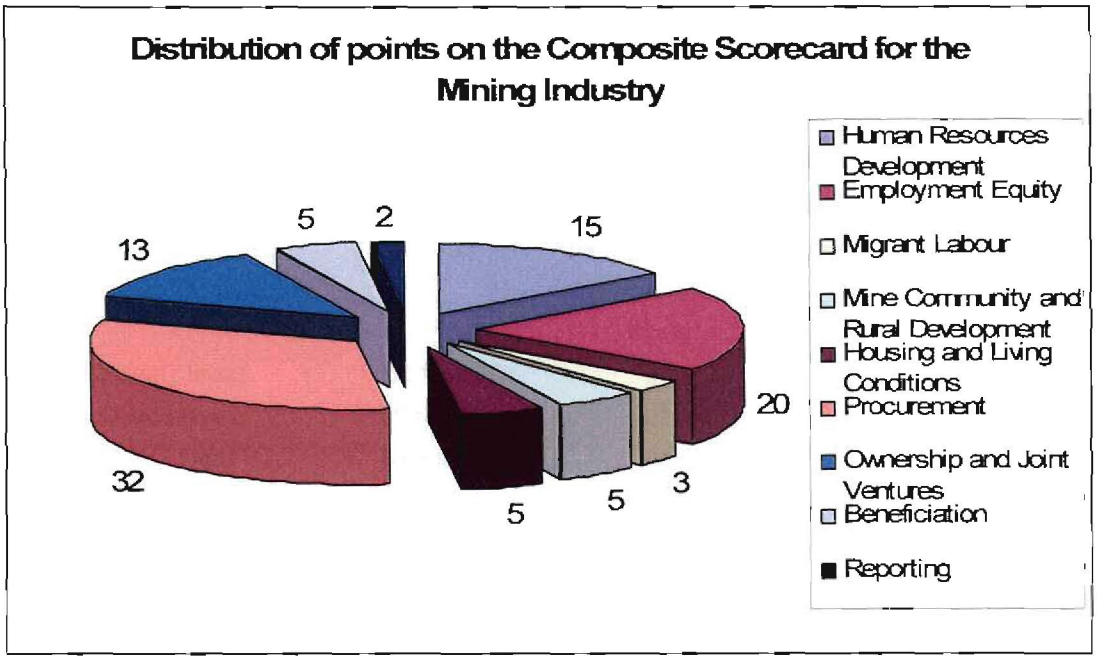

Figure 9: Distribution of points on the Composite Scorecard for the Mining Industry

Table 34 below provides a comparison of the points allocated in terms of the Composite Scorecard for the Mining industry in relation to the points allocated in terms of the Generic Scorecard of the Codes of Good Practice.

Table 34: Comparison of points

Pillar with elements of Codes of Good Practice incorporated	Composite Scorecard for the Mining Industry Weighting	Codes of Good Practice Weighting
Human Resource Development	15 points	15 points
Employment Equity	20 points	25 points
Migrant Labour	3 points	
Mine Community and Rural Development	5 points	5 points
Housing and Living Conditions	5 points	
Procurement	32 points	35 points
Ownership and Joint Ventures	13 points	20 points
Beneficiation	5 points	
Reporting	2 points	
Total points	**100 points**	**100 points**

Once a mining company has been scored in terms of the Composite Scorecard for the Mining Industry and the points have been determined, an adjustment is required to enable the conversion of the points achieved to determine an equivalent score in

terms of the Codes of Good Practice. The relevant conversion table appears as Table 35 below.

Table 35: Conversion Table for the Composite Scorecard for the Mining Industry

Points achieved on the Composite Scorecard for the Mining Industry	Deduction of points allocated for Items 3, 5, 8 and 9	Final points achieved	Equivalent BBBEE status as per Codes of Good Practice
≥ 90 to 100	15	≥75 but < 85	Level Three Contributor
≥ 80 but < 90	15	≥ 65 but < 75	Level Four Contributor
≥ 70 but < 80	15	≥ 55 but < 65	Level Five Contributor
≥ 60 but < 70	15	≥ 45 but < 55	Level Six Contributor
≥ 55 but < 60	15	≥ 40 but < 45	Level Seven Contributor
≥ 45 but < 55	15	≥ 30 but < 40	Level Eight Contributor
< 45	15	< 30	Non-compliant Contributor

By utilising the Composite Scorecard for the Mining Industry and the Conversion Table described above, a mining company will be able to measure its performance against the Mining Charter and by converting the score achieved, the BBBEE contributor level in terms of the Codes of Good Practice can be determined.

7.4 APPLICATION OF THE COMPOSITE SCORECARD FOR THE MINING INDUSTRY

The following will provide guidance and assistance on how the Composite Scorecard for the Mining Industry should be applied. The weighting points in the scorecards represent the maximum number of points for each of the indicators. For a mining company to score the maximum points on each scorecard, it must meet or exceed all the targets of the Scorecards.

7.4.1 Human Resources Development Scorecard

A mining company must provide the percentage of its leviable amount in terms of the Skills Development Act 97 of 1998 and provide the percentage of this expenditure spent on black employees only. The same calculation is required for black employees with disabilities. Regarding learnerships, the number of black employees must be provided as a percentage of all employees. Therefore if a mining company

has spent 1.5% of its leviable amount on black employees, it can only score three points on indicator one of the Human Resources Development Scorecard.

In respect of indicator number four, once a mentoring programme is in place, a mining company will score one point. To retain this point, proof must be provided annually that such mentoring programme is still being applied.

Human Resources Development Scorecard (Table 24)

Item	Composite Indicator	Weighting points	Target	Total points
1	Expenditure and implementation of skills development, for black employees through learning programmes, including the opportunity to be functionally literate and numerate.	6	3%	
2	Expenditure and implementation of skills development through learning programmes for black employees with disabilities.	2	0.3%	
3	HDSAs participating in learnerships as part of career paths and in accordance with skills development plans.	6	5%	
4	Development of systems through which empowerment groups are mentored.	1	Annually	
Total points for Human Resources Development				

7.4.2 Employment Equity Scorecard

In the Employment Equity Scorecard a point is awarded if progress with BEE is published in the mining company's annual employment equity report, as required by the Employment Equity Act 55. Proof of the submission of this report is required.

To determine the score obtained for HDSAs in management, it is necessary to determine the number of black employees, including women, at all levels of management. The level of management must be defined by each mining company based on its unique circumstances. If the five-year target is reached before the relevant deadline, a mining company will score the full ten points. However, if a mining company has made progress with HDSA in management, but has not reached the targets, it must use the current percentage achieved in calculating the score. If a mining company currently has 20% HDSA in management, it will be able to achieve five points on indicator two on the Employment Equity Scorecard. The same approach applies to indicators four, five and six.

In respect of the talent pool indictor, as described in indicator three, once in place a mining company will score the relevant point and on submission of proof, annually, will retain the point.

Employment Equity Scorecard (Table 25)

Item	Composite Indicator	Weighting points	Targets		Total Points
			5-year target	10-year target	
1	Publishing and annual reporting on progress of the employment equity plan.	1	Annually	Annually	
2	HDSA participation in management, spreading equality through the levels of senior, middle and junior management.	10	40%	70%	
3	Talent pool for the fast tracking of HDSA employees.	1	Annually	Annually	
4	Participation of women in core mining activities.	3	10%	20%	
5	Board members to be HDSA members with exercisable voting rights.	3	50%	50%	
6	Directors to be HDSA executive directors.	2	50%	50%	
Total points for Employment Equity					

7.4.3 Migrant Labour Scorecard

To obtain points for migrant labour, a mining company must provide annual confirmation that it is subscribing to Government and industry agreements to ensure non-discrimination against foreign migrant labour.

Migrant Labour Scorecard (Table 26)

Item	Composite Indicator	Weighting points	Target	Total points
1	Subscription to Government and mining industry agreements regarding non-discrimination against foreign migrant labour.	2	Annually	
Total points for Migrant Labour				

7.4.4 Mine Community and Rural Development Scorecard

The one point allocated to indicator one will be achieved on submission of proof of consultations with the local municipality and communities. The five points on local development projects will be obtained only if a mining company's expenditure on local economic development exceeds 1% of net profit after tax, annually.

Mine Community and Rural Development Scorecard (Table 27)

Item	Composite Indicator	Weighting points	Target	Total points
1	Partake in and cooperate with the local municipality and consult with communities in the formulation of IDPs.	1	Annually	
2	Implement IDP through local economic development projects, as contained in the company's Social and Labour Plan, of which the average annual value is not less than 1% of net profit after tax.	5	1% of net profit after tax, annually	
Total points for Mine Community and Rural Development				

7.4.5 Housing and Living Conditions Scorecard

The points available in terms of the Housing and Living Conditions Scorecard can be claimed once a mining company has provided proof that the targets of the relevant indicators have been achieved or exceeded, on or before the periods specified in the scorecard.

Housing and Living Conditions Scorecard (Table 28)

Item	Composite Indicator	Weighting points	Target		Total points
			5-year target	10-year target	
1	Establish measures to improve company-provided housing, in consultation with stakeholders.	1	30 April 2009	30 April 2014	
2	Upgrade hostels, including the conversion of units into family units, in consultation with stakeholders.	1	30 April 2009	30 April 2014	
3	Promote homeownership for mine employees.	1	30 April 2009	30 April 2014	
4	Improvement of company-provided nutrition to mine employees.	1	30 April 2009	30 April 2014	
5	Provision of a plan to progress nutrition over time.	1	30 April 2009	30 April 2014	
Total points for Housing and Living Conditions					

7.4.6 Procurement Scorecard

To claim the point contained in indicator one, a mining company must be able to demonstrate that it is providing HDSA suppliers with a preferred procurement status. To claim maximum points in terms of indicator two, a mining company must provide proof that it is spending 50% or more of its procurement expenditure on capital goods, consumables and services, on HDSA suppliers, within the respective five-year targets. If currently 25% of procurement expenditure is on procurement from HDSAs, a mining company will only be able to achieve six points in respect of indicator two. Additional points are available if procurement from HDSA companies with more than 50% black ownership or more that 30% women ownership.

The fifteen points for the development of HDSA suppliers can only be obtained if a mining company's expenditure on supplier development meets or exceeds 3% of net profit after tax, annually.

The Procurement Scorecard is a critical part of BEE compliance as a mining company may score up to thirty two points in respect thereof.

Procurement Scorecard (Table 29)

Item	Composite Indicator	Weighting points	Target		Total points
			5-year target	10-year target	
1	Proof of HDSA suppliers being given a preferred supplier status.	1	30 April 2009	30 April 2014	
2	Procurement spend from all HDSA suppliers based on capital goods, consumables and services, as a total of the measured procurement spend.	12	50%	70%	
3	Progression of procurement from HDSA suppliers as a percentage of total measures spend on capital goods, consumables and services from:				
	Suppliers that are 50% black-owned.	2	15%	20%	
	Suppliers that are 30% women-owned.	2	15%	20%	
4	Average annual value of development of enterprises to assist with development of HDSA suppliers.	15	3% of net profit after tax, annually		
Total points for Procurement					

7.4.7 Ownership and Joint Ventures Scorecard

It is important to note that the Ownership and Joint Venture Scorecard only recognises BEE ownership transactions with BEE ownership at 25% + 1 vote. This is a minimum requirement for a mining company to obtain recognition for the other elements of the Codes of Good Practice. Therefore any BEE transaction with BEE participation of less than 25% will not score any points in respect of indicator one on the Ownership and Joint Venture Scorecard.

However, points may accrue in terms of the other five indicators, based on the percentage of compliance at the time of measurement. Therefore, if current economic interests in the hands of HDSAs are at 12.5%, a score of two points will be achieved. Similarly, if black women have an economic interest of 5%, a mining company will achieve a score of one point and if the BEE transaction places 10% or more ownership in the hands of new black entrants, three points will be achieved.

Ownership and Joint Ventures Scorecard (Table 30)

Item	Composite Indicator	Weighting points	Target	Total points
1	Voting rights of, by HDSAs.	3	25% + 1 vote	
2	Voting rights in the hands of black women.	2	10%	
3	Economic interest in the hands of HDSAs.	4	25%	
4	Economic interest in the hands of black women.	2	10%	
5	Economic interest in the hands of HDSA employee ownership schemes, HDSA ownership schemes, or HDSA cooperatives.	1	2.5%	
6	Ownership in the hands of new entrants into the mining industry.	3	10%	
Total points for Ownership and Joint Ventures				

7.4.8 Beneficiation Scorecard

To enable a mining company to qualify for the two points contained in indicators one and two, proof must be provided of the status of current levels of beneficiation as well as detailed baseline information of beneficiation. To claim the points for indicator three, proof of measures to grow beneficiation is required.

Beneficiation Scorecard (Table 31)

Item	Composite Indicator	Weighting points	Target	Total points
1	Status of current levels of beneficiation.	1	Annually	
2	Detailed baseline level of beneficiation.	1	Annually	
3	Measures to grow beneficiation in order to qualify for an offset.	3	30 April 2009	
Total points for Beneficiation				

7.4.9 Reporting Scorecard

In the Reporting Scorecard a point is awarded if progress with regard to achieving the BEE targets of the Mining Charter is published in the mining company's annual report.

Reporting Scorecard (Table 32)

Item	Composite Indicator	Weighting points	Target	Total points
1	Publication of progress with regard to achieving BEE targets and commitments in the mining company's annual report.	2	Annually	
Total points for Reporting				

7.4.10 Composite Scorecard for the Mining Industry

The Composite Scorecard for the Mining Industry consists of a main scorecard. The score achieved on each of the nine pillar-specific scorecards, indicated above, is transferred onto the corresponding section of the Composite Scorecard for the Mining Industry.

Once all the scores achieved on the individual scorecards are reflected on the main scorecard, the total score is determined by adding the points. The total points achieved on the Composite Scorecard for the Mining Industry reflects a mining company's progress with BEE.

Composite Scorecard for the Mining Industry (Table 33)

Item	Pillar	Weighting	Total points
1	Human Resource Development	15 points	
2	Employment Equity	20 points	
3	Migrant Labour	2 points	
4	Mine Community and Rural Development	6 points	
5	Housing and Living Conditions	5 points	
6	Procurement	32 points	
7	Ownership and Joint Ventures	13 points	
8	Beneficiation	5 points	
9	Reporting	2 points	
Total points on the Composite Scorecard for the Mining Industry			

Once a mining company's score has been determined, it is necessary to convert this score to an equivalent score in terms of the Codes of Good Practice. The Conversion Table is used to convert the score achieved on the Composite Scorecard for the Mining Industry, to an equivalent score in terms of the Codes of Good Practice.

Conversion Table for the Composite Scorecard for the Mining Industry (Table 35)

Points achieved on the Composite Scorecard for the Mining Industry	Deduction of points allocated for Items 3, 5, 8 and 9	Final points achieved	Equivalent BBBEE status as per Codes of Good Practice
≥ 90 to 100	15	≥75 but < 85	Level Three Contributor
≥ 80 but < 90	15	≥ 65 but < 75	Level Four Contributor
≥ 70 but < 80	15	≥ 55 but < 65	Level Five Contributor
≥ 60 but < 70	15	≥ 45 but < 55	Level Six Contributor
≥ 55 but < 60	15	≥ 40 but < 45	Level Seven Contributor
≥ 45 but < 55	15	≥ 30 but < 40	Level Eight Contributor
< 45	15	< 30	Non-compliant Contributor

If a mining company has scored between 70 and 79 points on the Composite Scorecard for the Mining Industry, it will then qualify as a Level Five Contributor in terms of the Codes of Good Practice.

7.5 CONCLUSION

From this research it became evident that BEE plays a significant role in the South African economy. The Government has implemented various measures to ensure

transformation is achieved. The implementation of these policies has an effect on the mining industry. Even though the mining industry is legally required to comply only with the provisions of the Mining Charter, the Codes of Good Practice also has an impact on the mining industry and it would be beneficial to mining companies to also measure performance with regard to BEE in terms of the Codes of Good Practice.

The Mining Charter and Codes of Good Practice contain different elements or indicators which complicate measurement of performance. To limit the impact on mining companies and to avoid a dual reporting system, a combined performance measurement instrument is required. No composite indicators or combined performance measurement instrument exists. The DTI and DME are currently not providing any assistance to mining companies in this regard. Indications are that a possible solution to the difficulties encountered by mining companies in measuring BEE performance in terms of the Mining Charter and the Codes of Good Practice may only be forthcoming during 2009/2010.

To address the BEE performance measurement dilemma of mining companies, composite indicators were developed. These composite indicators were incorporated into the Composite Scorecard for the Mining Industry. This scorecard-based performance measurement instrument will enable mining companies to measure performance in terms of the requirements of the Mining Charter and allow for the translation of this performance into a value in terms of the Codes of Good Practice. The scorecard model allows for the establishment of a main scorecard with individual elements-specific scorecards, supporting the main scorecard, and this approach was applied in this instance. Thus the Composite Scorecard for the Mining Industry and nine supporting scorecards were developed. With the provision of a conversion table, the points achieved on the Composite Scorecard for the Mining Industry can be converted to determine the BBBEE status of a company in terms of the Codes of Good Practice. For a mining company to gain a competitive edge, a Level Four Contributor status is required. The composite indicators of the Composite Scorecard for the Mining Industry will allow a mining company to obtain a maximum BBBEE status as a Level Three Contributor.

The Composite Scorecard for the Mining Industry will allow mining companies to measure performance in terms of the Mining Charter, as well as the Codes of Good Practice, thus realising the research objective of identifying whether any overlap occurs between the pillars of the Mining Charter and the elements of the Codes of

Good Practice. It was also determined which aspects of the Codes of Good Practice a mining company will have to comply with to ensure that it remains competitive or gains a preferred status as a supplier to public and private enterprises. The research also determined that no composite indicators exist and no single performance measurement instrument is available within the mining industry, which will enable mining companies to measure performance against, and compliance with both the Mining Charter and the Codes of Good Practice. In the absence of such combined or composite indicators, composite indicators and a performance measurement instrument was developed.

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