Home is where the mine is

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On 15 April 2016, the Minister of Mineral Resources published the draft Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry 2016 (“**the draft reviewed Mining Charter**”) for public comment, addressing among other issues, the targets to be met by the mining industry in respect of the housing and living conditions of mine workers.

In respect of the housing and living conditions of employees, the amendment to the Mining Charter published in 2010 provides that mining companies must implement measures for improving the standard of housing, including attaining the occupancy rate of one person per room, the conversion of hostels into family units, and the facilitation of home ownership options for mine employees.

The requirement to promote home ownership has been solidified with more defined outcomes in the draft Reviewed Mining Charter, which provides that mining companies must not only maintain the occupancy rate of one person per unit and maintain family units, but must also contribute towards home ownership options for mine employees. These ownership options may include offering different building packages to interested employees, subsidising the purchase of houses by employees, partnering with financial institutions to issue guarantees for home ownership on behalf of employees, and ensuring that any housing offered to employees is integrated within communities in mining and labour-sending areas.

While the requirement for mining companies to provide home ownership options for employees is not a completely new addition to the legislation (as it has always been envisaged in the Mining Charter, as well as the Principles for Housing Conditions set out in the Housing and Living Standards for the Minerals Industry published in 2009), the introduction of the requirement to make contributions towards home ownership options for employees marks a more aggressive approach by the Department of Mineral Resources (the "**department**") to ensure that this requirement is met by mining companies, and establishes more tangible criteria to be met by the mining companies (i.e., as opposed to the somewhat vague requirement to "take measures to facilitate" home ownership options for employees).

In this regard, the draft Reviewed Mining Charter states that the Department has identified various shortcomings in the manner in which the mining sector has implemented the Charter, and that not all those involved in the mining sector have embraced it in the spirit with which it was intended. This perceived non-compliance is therefore seemingly the catalyst for these measures taken by the Department to introduce more stringent requirements to be adhered to by the mining industry.

On the other end of the spectrum, it seems little has been done to address concerns raised by mining companies regarding the provision of housing for employees, including the affordability of such housing for the mining companies, employee indebtedness, as well as the high rates of urbanisation in mining areas, which result in high pressure on existing infrastructure such as sanitation, hospitals and schools.

In the event that the provisions of the draft Reviewed Mining Charter relating to mining housing living conditions are finalised in their current form, mining companies will be compelled to incur greater costs to fund the implementation of home ownership options. This is whether or not such companies elect to implement the ownership plans suggested in the draft Reviewed Mining Charter. In this regard, no mention has been made of possible tax and other incentives that may be provided to mining companies for the provision of mining housing to employees where it is intended that ownership will be transferred to the employees. The cost of providing housing will therefore fall squarely on mining companies and their employees.

For income tax purposes, mining companies are only entitled to claim a limited percentage of the expenditure incurred for the provision of housing for employees as capital expenditure, which is deductible from mining income, while the employees realise a taxable benefit possibly giving rise to an employees' tax (Pay-as-you-earn) liability, depending on the employees' level of income. The VAT implications of the transaction would also have to be borne in mind when considering the desirability of the various ownership options. These tax costs will have a direct impact on the overall funding costs to be incurred by the mining companies (as well as their employees) for the provision of housing.

The parties clearly need to reach a compromise on the measures that could be taken that would satisfy the need for the provision of much-needed housing while avoiding the creation of a cumbersome financial burden on a mining industry that is already taking strain. Should the draft Reviewed Mining Charter be finalised in its current form, mining companies will have three years to put structures in place for the funding of such housing, as well as for the management of their cash flows.

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