

Policy structure and financing in need of a rethink

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A rethink into the structuring and financing of black economic-empowerment (BEE) deals in the mining sector is needed, reports financial and equity services provider Bravura Equity Services.

Bravura associate **Johan Koorts** explains that the Department of Minerals and Energy (DME) is eager to see BEE participation by prospective BEE participants on terms that are nonrestrictive in terms of funding to the participants.

“Typically, financial institutions would offer finance to prospective BEE participants which carries a high finance charge as the finance provider is in effect taking an equity view on the company’s shares. As a result, BEE participants carry high finance charges while seeing equity returns that often do not match these funding charges. Should the BEE participant be unable to meet the repayment terms, the financial institutions would typically acquire the shares that the BEE participant held in the company as repayment,” says Koorts.

He adds that Bravura offers transaction structures to mines and prospective BEE investors on terms that are tailor-made to suit the needs of both the mine and the BEE participants. These transaction structures typically allow BEE participants to subscribe for shares in the mine at a nominal value while securing the mine’s current market capitalisation to existing shareholders. Bravura associate **Neil Davis** says that this is in line with Bravura’s aim to develop transactions that have long-term sustainability and which can also support the broad-based community of the mine.

Davis reports that the typical manner of BEE investment is no longer encouraged by the DME. “The DME discourages a silent investor who is just a face on the board of directors and thus has little influence and constructive input in the management of the company. The DME wants active participation from BEE investors which will enable both the company and the BEE investor to benefit from their active involvement,” says Davis.

The DME has stressed that the major groups that are to benefit from new-order mining rights are the company, the workforce, its individual BEE partners and the community in which the mine is situated.

Koorts further notes that the timely conversion from the old-order rights to the new-order rights is going to prove challenging for both mines and the DME.

“The DME has set BEE targets of 15% BEE participation by 2009 and 26% BEE participation by 2014. As many mines dragged their feet with the conversion process or failed to obtain an appropriate BEE participant or adequate funding for the transaction, there will be serious administrative pressure on the DME towards the April 30, 2009, deadline. This is as a result of mines scrambling to finalise and submit deals before the deadline to avoid the risk of losing their mining rights,” says Koorts.

He adds that the uncertainty around the proposed rewording of the legislation governing BEE investment may present additional challenges.

“For instance, the DME proposed to change the wording of section 11 of the Mineral and Petroleum Resources Development Act (MPRDA) to read ‘any change in shareholding has to be reported to and

approved by the DME'. This will be challenging, as it relates to any changes in investment from 1% to 100%." Koorts also notes that this will be practically impossible for listed companies whose shares are traded freely on a daily basis.

To curtail this, a significant amount of communication is required between the company, its advisers and the DME. However, uncertainties, such as the one mentioned above, will deter new investment, especially foreign investment, into the mining industry.

Koorts adds that owing to soaring commodity and mining share prices, it is becoming increasingly difficult for new BEE parties to participate using typical funding structures. However, innovative ideas to transactions and funding structures provide much-needed alternatives for sustainable transactions.

Davis reports that there are many factors that a company needs to consider in the mining rights conversion process. He says that there are certain requirements that need to be met according to the Mining Charter and the MPRDA. The main considerations that companies need to consider are how previously disadvantaged individuals and groups will benefit from the project, as well as how sustainable the project is. These considerations are typically difficult to accommodate in traditional BEE transaction structures.

Bravura was formed in 1999 with the intention of filling a market gap for integrated and innovative equity and debt solutions. Corporate finance houses of the day tended to focus on equity and most lacked substantial debt structuring skills, a situation that still persists.

Bravura is an equity and debt house that specialises in a holistic approach to equity and debt-structured solutions that offer optimal investment returns for its clients through the application of innovative, lateral business strategies and balance sheet restructuring.

In addition, in response to the South African economic and commercial landscape, Bravura has developed significant expertise in BEE advisory services, and is now one of the leading firms in this field.

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