



# ASPASA

Aggregate & Sand Producers  
Association of Southern Africa

PO Box 1983  
Ruimsig, 1732  
Email: [office@aspasa.co.za](mailto:office@aspasa.co.za)  
[www.aspasa.co.za](http://www.aspasa.co.za)

Unit 8, Coram Park,  
Ferero Road, Randpark Ridge  
Tel: 011 791 3327  
S26° 06' 08, 1" / E027° 56' 5"

---

## **GUIDELINE DOCUMENT: MPRDA: LEGAL COMPLIANCE AUDIT**

---

Developed by ASPASA for use by Members.



## **Introduction:**

ASPASA has been requested by a number of members to develop a Guideline Document to assist them with the audits that were done by the DMR.

---

## **Index:**

1. Critical Compliance Items
2. Required Documents
3. Ownership
4. Mine Economic Issues
5. Social and Labour Plans
  - 5.1 Preamble
  - 5.2 Human Resources Development Program
  - 5.3 Mine Community
  - 5.4 Measures to address housing and living conditions
  - 5.5 Downscaling and Retrenchments ( Future Forums)
  - 5.6 Financial Provisions
6. Mine Environmental Management
7. Mine Health and Safety Management
8. Mining Charter
  - 8.1 Elements of Scorecard
    - 8.1.1 Ownership
    - 8.1.2 Housing and Living Conditions
    - 8.1.3 Procurement and Enterprise Development
9. Legislation and Guidelines

## 1. Critical Compliance Items:

- 1.1 Ownership
- 1.2 Mine Economics
- 1.3 Social and Labour Plan
- 1.4 Mine Environmental Management
- 1.5 Mine Health and Safety Issues
- 1.6 Reporting as per the Mining Charter
- 1.7 Legislation and Guidelines

## 2. Required Documents:

The following documents must be available on the day of compliance audit, failure to do so is non-compliant:

- 2.1 Registered mining right contract as well as the attached regulation 42 plan.
- 2.2 Approved mining work programme
- 2.3 BEE Documents
- 2.4 Approved Social and Labour Plan
- 2.5 Approved EMP

## 3. Ownership:

### Introduction:

The DMR officials are requiring that BE Partners be present when Audits take place. The argument about this is due to the fact that they want to see the partners are active in the business. It is also expected that the BE Partners must drive transformation. The DMR is weary about fronting and window dressing taking place. This issue is a very sensitive issue in the process.

The other problem is that when BE Partners are not included in the business, then they complain to the DMR that they are unhappy.

A practical suggestion is to have the partners attending one of the audits, or to set up a crucial meeting so as to allow the issues to be cleared and thereafter to rely on this crucial meeting.

As there are different categories of ownership, each operation will have to work out how to ensure that the issue of BE Partners are covered and shown to be legitimate. There are various ways of setting up ownership, but there are also various problems and questions about some of them. The example of employee trusts have been seen to have problems as they often don't address present or future employees, children or other dependants.

What is crucial about these systems of complying to the BE requirements is that the communications has to be very good, constant and continuous. The community Trusts are also fraught with problems as it is often not clear who the trustees are. Questions such as who benefits, who gets paid, how does it work, what is the benefit, etc. are often raised.

### Short word of advice:

The warning to industry is that when lawyers draft their documents, they often don't understand the situation and complexities. The preferred system proposed, is the Employee Trust Ownership agreement.

The final word on this is to....communicate, communicate, communicate...

## MPRDA: LEGAL COMPLIANCE AUDIT GUIDELINE

---

Holders of the mining right are required to present their ownership to check the true participation of the HDSA into the company:

- The current status of shareholding of the entire company (Structure)
- Directors of the HDSA entity and level of participation
- How much is the debt
- How much has been paid so far
- How much is left to be paid
- Method of payment
- How is the BEE servicing the debt (%?)?
- How much is the BEE taking home (%)

During compliance audit avail all documents, signed when finalising the BEE deal, such as shareholders agreements, sale of shares, share certificates, operational agreements, as well as loan agreement, if any and any other documents related.

#### **4. Mine Economic Issues:**

Under this heading the mining/production staff have to be involved. It is not something that can be palmed off to the HR or other staff.

Holders of the mining rights made commitments based on the type of resource and size thereof and have committed to mine (quarry) in such a way agreed with the Regulator and as such becomes a problem when deviations have been noticed by the Regulator.

Mining work program must outline the following:

- Type of mineral(s) the holder planned to mine and the method thereof
- Financial year of the mine (quarry)
- Actual annual production versus estimated one
- Working capital versus working cost as estimated
- Mining plan for the next twelve months done by a qualified surveyor (which will indicate resources estimates and resources statement / remaining life of mine)
- Holders of the mining rights are required to make a presentation of their operations based on the program they have committed to follow, failure to do that would be seen as a contravention of the mining right contract. Any deviation with production or changes on operations to be informed to the Regulator before the audit.
- The holder of the mining right must also provide a copy of the latest audit financial statement as required by section 28 (2)(b) of the MPRDA.
- Provide a proof of returns submitted to Minerals Bureau in Pretoria as required by section 28 (a) of the MPRDA.
- Know how much has been mined out and the remaining area to be mined as per mining plan (in terms of hectares).
- Submit annual report detailing the extent of the holder's compliance with the provisions of section 2(d) and (f), Charter contemplated in section 100 and the social and labour plan.
- Section 2(d) states that the objects of the Act is to substantially and meaningfully expand opportunities for historically disadvantaged persons, including women, to enter the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources.
- Section 2(f) states that objects of the Act are to promote employment and advance the social and economic welfare of all South Africans.

### 5. Social Labour Plans:

When dealing with Social and Labour Plans then some attention must be given when taking over an operation. Check what was committed to and amend/change immediately. Don't wait until the audit from the DMR.

#### **What must be reported:**

- Quarries are required to implement their commitments made on their social and labour plan.
- The quarry must report on the following SLP elements.
  - a. ABET
  - b. Internship
  - c. Bursary
  - d. Learnership
  - e. Career Progression
  - f. Mentorship
  - g. Difficult to fill vacancies
  - h. Employment Equity
  - i. Women in Mining
  - j. Housing and living conditions
  - k. Future Forum
  - l. Portable Skills
  - m. Local Economic Project/s
  - n. Procurement
  - o. Financial Provision

#### **How it must be done:**

- Quarries must report that they have appointed a skills development facilitator and provide a registration number with the relevant SETA.
- Complete form Q which indicates the educational level of the employees including contractors.
- Each element of SLP has targets and the mine must implement the SLP according to those targets.
- The first element is ABET.

#### **Reason for ABET:**

- The South African Statistics 2011 reveals that 20.8%, both male and female, has no schooling. 27.7% has attended primary school, 9.7% completed primary while 70.7% has attended secondary school such as the Government introduced the Adult Basic Education and Training to all mines, big and small, to implement this as a compliance issues.
- Quarries are required to motivate their employees to attend ABET where there is resistance, employees must state their reasons in writing and append their signatures.
- Quarries are required to encourage their employees to attend ABET training to a stage where they can do N courses.

### **Internship:**

- South Africa has a high rate of unemployment, not because people are not qualified, but because they do not have work experience and everyone needs to employ people with experience.
- The Government also introduced the internship programs to all sectors, to give those who have qualifications and work experience to complete in the Labour Market.
- The internship program has no basic salary attached to it, but whoever participates into the program receives stipend and on maximum period of 12-36 months depending on the operation.
- Quarries are obliged to implement their commitment as a compliance issue in this regard.

### **Bursaries:**

- Due to the scarce skills in South Africa, the country is facing employers are directed to provide bursaries to equip the youth with the necessary skills required.
- Concerns: Quarries state they train people, but other mining companies take them before they can even benefit from the fact that everyone is looking for artisans and not everyone is willing to train them.
- Bursary scheme programs are required to be provided to employees and non-employees, especially to be trained on the skills the Employer is lacking.
- There are targets set for each year in the approved SLP during compliance audit, quarries are required to demonstrate the results meaning, present the number of people taken, names, areas of origin, institution and type of qualification as well as the status thereof.
- Whenever there is a backlog, indicate the means that were applied to avoid the backlog, but failed. For example: indicate the method that was used to attract the candidates whether it is through advertisement or internal.
- Present the plan going forward in addressing the short falls.

### **Learnership Training:**

- This program is offered to those who have no qualifications, but have grade 10 or grade 12, and wish to acquire practical skills.
- Quarries make commitments in their SLP to train people and take them to training at SETA's and in return offer them practical training at the work place.
- The learnerships like internships, do not get a salary, but stipend and the duration differs from quarry to quarry, and depends on the program.

### **Career Progression Path:**

- Quarries are required to develop individual development plans for each employee.

## **MPRDA: LEGAL COMPLIANCE AUDIT GUIDELINE**

---

- Identify a talent tool to be fast tracked in line with the needs of the company.
- Quarry has provided a comprehensive plan with targets, timeframe and how the plan would be implemented, in return, fail to provide results and the reason why they failed to meet their own targets.
- Link your career progression program with mentorship since some career progression needs internal assessment through mentorship.

### **Mentorship Plan:**

- Mentorship must be linked with the individual development programmes
- Identify areas of development that requires mentoring.
- Identify mentees and mentors within the operation.
- There must be an agreement between the mentee and mentor.
- Ensure that there is real interaction between the parties.
- Have a system in place to monitor progress.

### **Difficult to Fill Vacancies:**

- On this element, the quarry must report on the vacancies which could not be filled for the past twelve months based on the need of the operation. (Form R)
- Quarries are also required to identify the areas which will be difficult to fill due to scarcity.

### **Employment Equity:**

- The purpose of this element is to ensure diversity as well as participation of HDSA at all decision making positions and core occupational categories in the quarry industry.
- The SLP and the Mining Charter indicate that mining companies must achieve a minimum of 40% in all levels and represent the demographics of the country.
- This can be achieved by implementing career progression and mentoring.

### **Women in Mining:**

- This is seen as a separate element but is part of the employment equity and the emphasis is to ensure that women are given opportunity in core business, not in supportive services.
- Employers should not see women as weak, mentally and physically unable to work on operation or operating big machines.
- The attitude needs to change because 60% of women are willing to take any challenge as long as they can put bread on their table.

## **MPRDA: LEGAL COMPLIANCE AUDIT GUIDELINE**

---

- The target is set and agreed to by the State and the employer houses.
- It becomes a compliance issue.

### **Portable Skills:**

- Portable skill is a skill the employee needs to acquire and use after mining, when he/she has retired or stops working.
- There are skills that are seen as portable, however they assist employees to move from one job to another, but are mandatory training skills. Eg: operating of different equipment, dumber, front end loader, excavator, etc.
- The employees should identify their own portable skill training, of their own choice, but employers should advise them.

### **Measure to address Housing and Living Conditions:**

- South Africa experienced a great deal of problems with people who live in hostels far away from their families, as a result the spread of the HIV/AIDS disease became more of a problem.
- For this reason those employers who have hostels were given until 2014 to convert the hostels into single family units.
- Those mining companies who do not have hostels are obliged to know where their employees stay, i.e: renting back rooms, owning or informal settlements, etc.
- Quarries should also assist to facilitate home ownership to all employees who qualify.

### **Nutrition:**

- Quarries often ask about measures to address nutrition and this item is not clearly defined or understood.
- Quarries should know their employees diets. What about those who do not supply meals to their employees and how do they address this issue.
- Some Employers, SLP's make provision for supplements in a form or Morvite or Maheu, to be given to employees and it is found that management do not know or they do not want to supply as committed, then this becomes a non-compliant issue.
- Nutrition includes wellness of employees, as it known if there are employees with chronic diseases and what do employers do about this, do employers allow employees to go for check-ups, collect medication without taking those hours off their payroll.

### **Future Forums:**

- Most employers in the Quarry industry already have this in place, but other names are used.
- There must be terms of reference or constitution of the future forum established and attended by

## MPRDA: LEGAL COMPLIANCE AUDIT GUIDELINE

---

management, organized labour and employee representatives.

- The DMR requires to see a copy of the constitution, minutes, agenda and attendance register of those meetings.
- Keep those minutes, agenda and attendance register of the meetings and submit during reporting or on request.

### **Legal Economic Projects:**

- Quarries are required to identify projects within the Municipalities where they are operating as well as the area where the majority of their labour force is sourced.
- The said projects will be assessed for its sustainability.
- One can see if the project will be sustainable or not, by developing a proper project plan and implementation.
- Experience shows that projects led by Co-operatives do not become successful even if they have a proper project plan and implementation. The reason being that not all of them will focus on the success of the project, but demand income generated from it.
- If no proper monitoring is done, it will be realised that the DMR will report that the Co-operatives don't work well and complaints are received.

### **Procurement:**

- There is a prescribed called Form T, where quarries are required to record the information from their suppliers and Service Providers. Form T is incomplete and often the DMR will need to add columns to add additional information about what you have bought, ownership, contact details. There are good practical examples of how these issues are done.
- Form T can be redesigned by quarries on excel to include the outstanding information which the DMR often requires.
- Quarries are required to have a strategy to develop SMME by assisting them to understand Tenders, how to complete tender forms and financial matters.
- Quarries are also required to encourage joint Ventures from Suppliers who are not 26%.
- Establish a database system to capture new suppliers into the system.

### **Financial Provision for The SLP:**

- The financial provision must reflect the budget for three items:
  1. HRD
  2. LED
  3. Management of Downscaling and Retrenchment
- HRD has several items which are ABET, internship bursary, learnership, career progression, budget for mentorship is only applicable where mentors were taken for training, then total spent can be included, but is not every one who put budget to mentorship.

## MPRDA: LEGAL COMPLIANCE AUDIT GUIDELINE

---

- Employer needs to indicate the budget, total spent and the balance from the planned total budget.

### When must it be done:

- The Social and Labour Plan guideline indicates that holders of the rights must submit an annual report to the Director General, read clause 18 of the Mining right contract.
- Clause 18 states that the holder must submit a implementation report, 3 months before the financial year of the Company.
- Again the same clause 18 states that the holder of the mining right must submit an annual report 3 months after the financial year of the company.
- There is also twelve months reporting which is according to the calendar year.

### Which reports are required:

- The quarry has the obligation to the DMR in terms of the mining right contract to submit the following reports:
  - I. Implementation Report
  - II. Annual Report
  - III. Mining Charter Report

All these reports must be submitted to the DMR Regional Office where the right was issued.

### What goes into the report:

#### I. Implementation Plan

Quarries are required to put the next year's target into documents as well as the backlog realised during the past financial year. The reason why it is required 3 months before the financial year is that the Regulator assumes that everything planned for year gets implemented fully.

#### II. Annual Report

Quarries are required to report on the training achievements and the following must be accompanying the report:

- Name of service provider
- Quotation and invoice
- Proof of payment
- Attendance register
- List of people attending the training
- Certificated if completed

There is no profarma when drafting the report, but follow the items of the SLP.

#### III. Mining Charter

The Department of Mineral Resources has provided a template to be used when reporting on mining charter, but this was not done across the board, only on request for those who never submitted manually. Such templates were requested from the Gauteng Region and shared with some of the

colleagues.

Mines are advised to submit such reports or consult the relevant Regional Office for the Template Remember to use Registered SDFs. SDF not a production person or function SDFs are Legal Appointments.

- This is a five year plan that the mine (quarry) developed in order to achieve the objectives of the Act read together with section 100 of the Act.
- The holders of the mining right is required to appoint skills facilitator in house or outsourced.
- The said skills facilitator must be registered with the relevant SETA and have a registration number. It is important for the Regulator to know details.
- The company itself should also register with the relevant SETA (MQA) and have a number. Company to submit skills development plan on a yearly basis.
- The social and labour plan must be divided into six sections:
  1. Section 1 : Preamble
  2. Section 2: Human Resources Development Program
  3. Section 3: Mine community
  4. Section 4: Process pertaining to management of downscaling and retrenchment
  5. Section 5: Financial Provision
  6. Section 6: Undertaking

### 5.1 **Preamble**

The purpose of the preamble is to detail with all the information regarding skills facilitator, confirmation that the company has registered with the SETA (MQA) and state the number, indicate the labour force in terms of any labour sending area including mine communities, as indicated in the SLP guideline.

### 5.2 **Human Resources Development Program (HRD)**

*(Note: this issue has to be expanded on)*

The HRD program should cover the following:

- Compliance with skills development legislation.
- Skills development plan to outline how the Mine (Quarry) intends to offer employees development of requisite skills in respect of learnerships, bursaries, artisans, ABET and any other training initiatives reflective of demographics: Mines (quarries) need to have proof that they have completed form Q that will indicate number and educational levels of the workforce.
- Determine the current illiteracy level and ABET needs.
- Provide the targets to be trained and the timeframe; and

Mines (quarries) are required to present how their commitment has been implemented by providing lists of people trained, service providers, invoices, proof of payment as well as the back log and the manner in which the backlog is going to be addressed. Mines (quarries) have been warned for not training people from the community.

### 5.3 **Mine Community (Engagement)**

- The holders of mining rights are directed in terms of the provisions of the MPRDA to contribute towards socio economic development of the areas in which they are operating in as well as the areas from which the majority of the workforce is sourced.
- Mines (Quarries) are required to consult with the community as well as the relevant municipality in order to establish LED projects, it can be an infrastructure project or income generating project.

## MPRDA: LEGAL COMPLIANCE AUDIT GUIDELINE

---

- During compliance audits mines are required to present the stages undertaken in implementing the said projects, how much already has been spent, evidence and how much is left as well as outlining involvement and marketing of such a project.
- Mines are also to present the employment created by the said projects and plans going forward. If nothing has been done mines (quarries) are advised not to wait for the audit but to keep the Regulator informed.

### **5.4 Measures to address housing and living conditions (not all quarries use hostels)** – *(Needs more work).*

- Mines are required to know and present information regarding the status of available dwellings for employees;
- Present the preferred requirements for housing and living conditions of the workforce.
- Present the occupancy rate if employees staying in hostels but in terms of the mining charter all hostels supposed to be converted to the required standards as per section 100(1)(a) of the MPRDA.

### **5.5 Downscaling and retrenchment** *(Future Forums)*

- Holders of the mining rights are required to report whether future forums have been established.
- Who constitutes future forum?
- How often were meetings held?
- Terms of reference of the future forum.
- When last did the future forum have a meeting?
- Evidence of such meeting, e.g. minutes, agenda and attendance register.
- Failure to present the above is a non-compliance because it is the commitment made by all holders of the mining rights in the approved SLP.

### **5.6 Financial Provision**

The financial provisions pertain to social and labour plan only and the holders are.

- Required to add all the budget of elements of HRD; LED and Management of Downscaling and Retrenchment to the provisions.
- Contribution committed on the SLP annually
- Any budget set aside for the purposes of training workforce with portable skills.
- Holders of the mining rights are required to indicate how much has been used versus the budget.

## **6 MINE ENVIRONMENTAL MANAGEMENT** *(More work and add information)*

- Mines (Quarries) are required to present how they are managing the environment on a day to day basis. (use ASPASA's About Face audit to support this)
- Mines (quarries) have listed activities inside an approved EMP and they need to present how the impact created by these activities are managed.
- There should be monitoring and evaluation of certain activities and these need to be presented when it was monitored, the results on how the operation is addressing the negative impacts to be identified if any.
- The mining rights holders must present how it obtained approval from other stakeholders like Water Affairs and any other legislation they need to comply with.
- Holders of the mining right is required to submit the Environmental Impact Assessment report by-annually.
- Review financial provision and submit the results to the DMR annually.

- Failure to adhere to the commitment and directives is non-compliance with the terms and conditions of the approved EMP and the mining right contract.

### 7 **MINE ENVIRONMENTAL MANAGEMENT VERSUS MINE HEALTH AND SAFETY COMPLIANCE ISSUES** – *(More Work)*

According to the DMR environmental experts they are saying “MHS is about occupational health and machineries whereas NEMA is about activities that impacts on the environment, compliance with MHS is as per standard and code of practice whereas with NEMA it is about what you as a mine are committed to do and mitigation measure you put in place”.

Holders of the mining rights or any right issued in terms of the provisions of the MPRDA/NEMA should be able to differentiate between the two (see ASPASA’s programmes that clearly differentiate).

### 8 **MINING CHARTER REPORTING**

- Holders of the mining right are required to take note of the following:

Mining charter reports as per the score cards need statistics only and is currently done online while annual report has the same information but has evidence attached to it and the same evidence should be made available if DMR Head Office need it for evidence.

The Mining Charter Scorecard has got compliance targets to be achieved and reporting period is end of March every year.

#### **8.6 Elements of Scorecard**

##### 8.6.1 Ownership

Holders of mining rights are required to report on level of compliance with 26% HDSA ownership, their involvement on day to day running of business.

##### 8.1.2 Housing and living conditions (if applicable to quarries)

Holders are required to report on conversation and upgrading of hostels to attain the occupancy rate of one person per room as well as family units to indicate how far they are because in terms of the mining charter all hostels supposed to be converted by this reporting period (31 March 2015)

##### 8.6.2 Procurement and enterprise development

- \* The holders of the mining right are required to report the level of procurement from BEE entity classified into the following:

- Capital goods 40%
- Services 70%
- Consumable goods 50%

The above targets are the 2014 target and mines (quarries) are required to report on level of compliance of each mine (quarry) and should keep a database on form T as prescribed. Holders of mining rights are required to present the new entrances for the financial year and also present their level of intervention to develop SMME’s.

**9 LEGISLATIONS AND GUIDELINES**

1. MPRDA
2. BLACK ECONOMIC EMPOWERMENT ACT
3. SOCIAL AND LABOUR PLAN GUIDELINE
4. MINE ECONOMICS GUIDELINE
5. NATIONAL ENVIRONMENTAL MANAGEMENT ACT
6. MINE HEALTH AND SAFETY ACT
7. MINING CHARTER

*PS: More work on Clause 18*