

South African Colliery Administrative and Financial Managers' Association (SACAFMA)

Changes to Preferential Procurement Legislation Framework and Potential Implications for the Coal Mining Industry



Confidential July 2012



Overview of Empowerment Legislation

2

Key Changes to Legislation and Potential Impacts for the Coal Mining Industry

4

Status of the Legislative Process

8

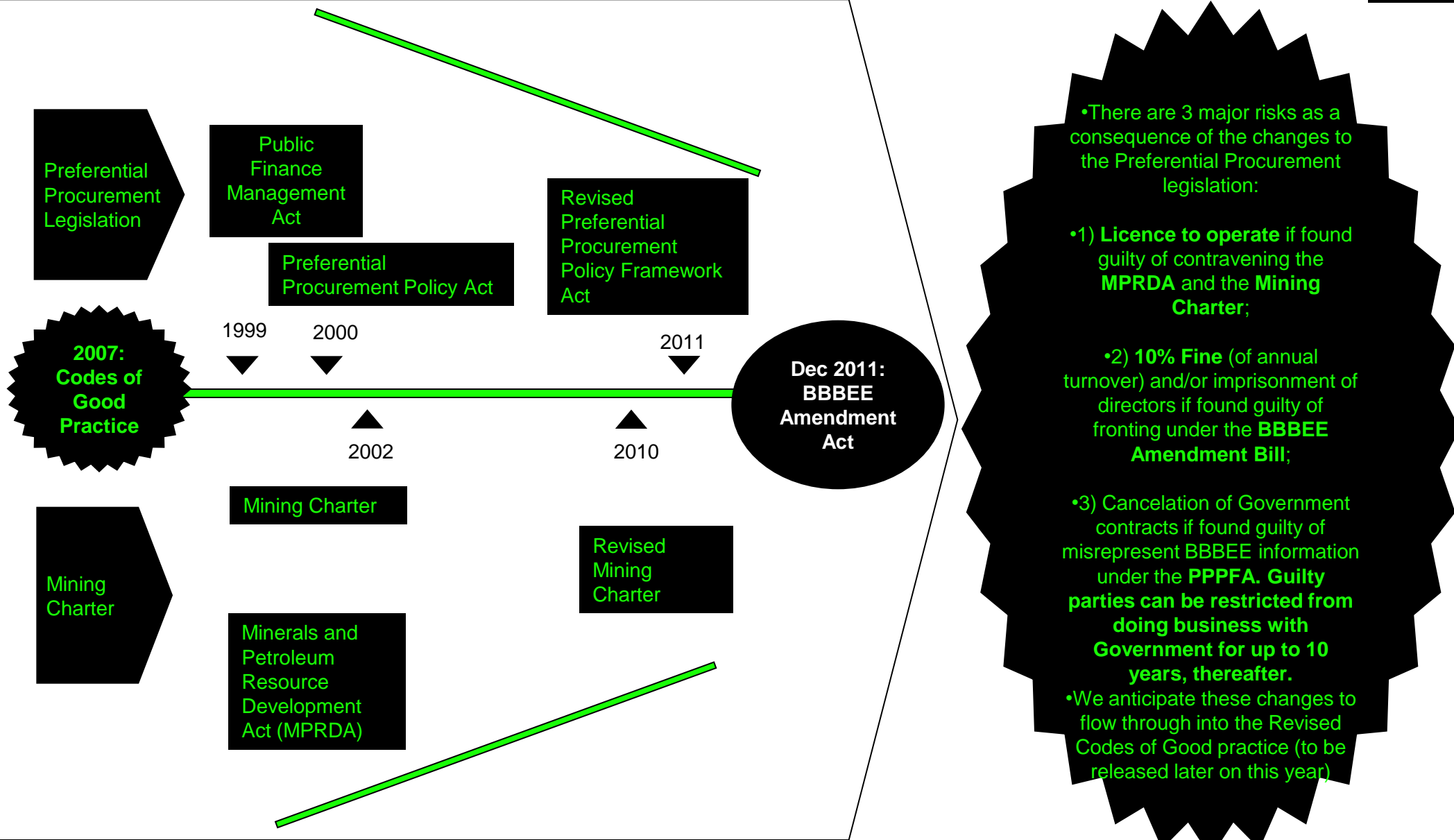
Recommended Next Steps

10

Our reason to exist is:

“To ensure that we make a meaningful impact on the lives of ordinary South Africans by being passionate about sustainable empowerment and always striving to be the best as we grow personally, grow our business and grow our clients”

The convergence of empowerment legislation is creating significant risks for mining companies



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The BBEE Amendment Bill and PPPFA are aimed at addressing fronting with stringent penalties of 10% of turnover or imprisonment

BBEE Bill

PPPFA

Applicability

- JSE listed Public companies
- Organs of State
- Public Sector

- Government Business Enterprises
- Organs of State
- Public Sector

Key issues

- BBBEE Act trumps all other BEE legislation (Mining Charter)
- Definitions introduced for 'Fronting' and 'BBEE transaction'
- Broader definitions for 'Empowerment' and 'Black people'
- Criminalisation of Fronting under Amendment Bill
- Establishment of BBEE Commission to monitor transformation across sectors
- Local content procurement is priority and minimum threshold to be determined to each sector (not yet finalised by dti)
- Mandatory BBBEE reporting to Commission (annually)
- Establishment of IRBA to regulate BBEE verification industry

- Effective from 7th December 2011
- Tenders to be evaluated in 2 stages:
 - Functionality & local content
 - Price & BBBEE status used as basis for tender valuation:
 - 90/10 rule applies for tenders > R1m
 - 80/20 rule applies for tenders < R1m

Penalties for non compliance

- Cancellation of contracts
- 10% of entity's annual turnover
- Imprisonment (up to 10 years)

- Disqualification of tender
- Government agents can claim cost & damages against guilty parties
- Restrict future Business with Government entities
- Institute criminal proceedings against guilty party



Current suppliers to Eskom and coal exports through the National Ports Authority will be under pressure to improve their BBBEE status as a direct implication of the PPPFA and PFMA

Legal standing Of PFMA

Accounting officers

- Section 39 of the PFMA addresses the responsibilities of Accounting Officers with regards to budgetary controls of the Enterprises

Supply Chain Management guide

Issued in terms of the PFMA. Chapter 4 of the guide addresses Acquisition Management for public entities

- Paragraph 4.7.4 provides guidelines on the purchasing and bidding process. If the value of goods or services being procured exceed R 100 000, and there are sufficient suppliers in the market to bid for the contract, then an Official Bid must be advertised in the Government Tender Bulletin.

Treasury regulations

National Treasury regulations (Government Gazette number 29644) provides guidance on the strategic plans for public entities.

- Paragraph 5.2.3(a) states that the strategic plans must be prepared for at least 3 years. The plan must address the purchases of goods and services
- If a public entity has not entered into a long term contract with a supplier, then, the contracts may have to go out on tender every 3 years.

Implications for Collieries

Procurement processes:

- However, in terms of the Supply Chain Management Guide, Eskom is supposed to re-issue the tender at least once every 5 years.
- The Supply Chain Guide works in conjunction with the PPPFA in determining how to award contracts in terms of pricing and functionality
- Transnet's BEE policy requires suppliers to be at least a Level 5 BEE Contributor status

Implications of PPPFA:

- Coal exports through Transnet's National Ports Authority will be subjected the conditions of the PPPFA.
- There will be increased pressure on Coal Companies to produce valid BBBEE certificates when submitting tenders (10 of the 100 points will be evaluated based on the bidders' BBBEE Level contributor Status).

The numbers suggest a good BBEE performance throughout the industry but the quality of reported information will need to be monitored to guard against fronting

MINING SECTOR BBEE PERFORMANCE*								
Company Name	Ownership (20)	Management & Control (10)	Employment Equity (15)	Skills Development (15)	Preferential Procurement (20)	Enterprise Development (15)	Socio Economic Development (5)	Total BEE Score (100)
COAL MINING COMPANIES								
Optimum Coal	21	7.53	4.1	12	18.02	15	5	82.65
Anglo Coal	16.83	2.13	4.2	8.66	14.9	15	5	66.72
Xstrata Coal	7.94	0.86	3.69	8.59	17.44	15	1.4	54.92
The Eastside Coal company	18	3.5	3.94	0	19.23	0	0	44.67
Coal Mine Average	15.94	3.51	3.98	7.31	17.40	11.25	2.85	62.24
OTHER MINING COMPANIES								
Merafe Resources	21	7.6	6.49	6.78	15	8.9	5	70.77
Trans hex Group	10.6	6.39	8.07	7.41	18	15	5	70.47
African Rainbow Minerals	18.78	5.92	7.39	7.35	11.91	11.09	3.92	66.36
Exxaro Resources	21.15	7.47	4.61	6	14.61	0	5	58.84
Anglogold Ashanti	16	3.13	2.07	3.91	12.41	2.23	5	44.75
BHP Billiton	0	10	6.1	0	15.4	15	4.58	51.08
Other Mining Average	14.59	6.75	5.79	5.24	14.56	8.70	4.75	60.38
Total Mining Average	15.27	5.13	4.89	6.28	15.98	9.98	3.80	61.31

•Coal Mining companies are currently subjected to dual BBEE reporting: 1) DMR reporting is essential for license to operate; 2) DTI Generic Scorecard reporting is key to secure state contracts (i.e Eskom).

•Legislative changes to the BBEE framework will enforce BOTH a quantitative and qualitative assessment of performance in the near future.

*Please note that the scores presented in this table were not verified in detail by us, however, we are placing reliance on data that has been provided by various verification agencies as well as the BEE scores that have been included in Financial Mail's TOP Empowerment Companies report (2011 edition).

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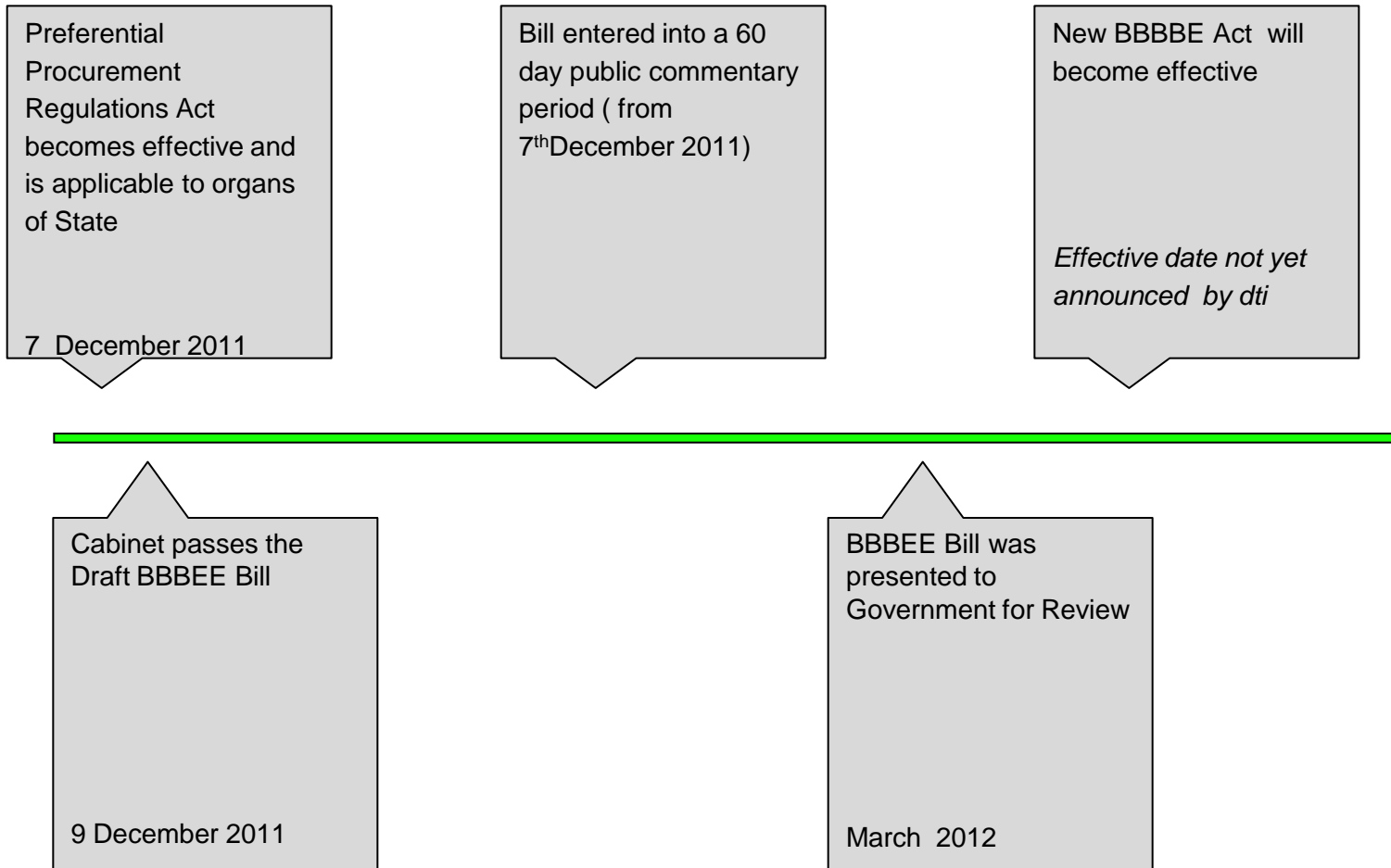
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The PPPFA is effectively in place whereas the BBEE Bill is currently undergoing a DTI review process before it will become the New BBBBE Act



- The BBBEE Bill is still not cast in stone as it still undergoing an intensive review process prior to promulgation;
- The PPPFA is effective as of 7th December 2011;
- The 'stipulated minimum threshold' that is indicated in both Acts is yet to be set by Minister however these targets should be closely monitored by all stakeholders

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The uncertainties contained in the legislative framework will require mining companies to take proactive steps



1. Companies should review current procurement processes and measure themselves against the proposed legislative changes in identifying the gaps/loopholes
2. Define and agree on a common definition of 'local content' conditions to be set for the procurement pillar
 - Lobby with industry bodies (Chamber of Mines) and key stakeholders during the public hearing process of the Amendment Bill for a set definition for the coal mining industry
3. Develop a process to align MPRDA with the Codes
4. Develop a fronting framework tool to detect possible fronting risks.

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