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Act

No. 25 of 2023

I assent

Dr. Lazarus McCarthy Chakwera
President
7th June, 2023

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SCHEDULE

An Act to make provision for the regulation and licensing of mining activities and mineral resources; for the establishment of the Mining and Minerals Regulatory Authority; and to provide for matters connected therewith and incidental thereto

ENACTED by the Parliament of Malawi as follows—

Part I—Preliminary

Short title and commencement

1. This Act may be cited as the Mines and Minerals Act, 2023, and shall come into force on such date as the Minister may appoint, by notice published in the *Gazette*, and the Minister may appoint different dates for coming into force of different parts of this Act.

Interpretation

2. In this Act, unless the context otherwise requires—

"annual ground rent" means annual ground rent payable under section 258;

"artisanal mining permit" means an artisanal mining permit issued pursuant to section 193;

"Authority" means the Mining and Minerals Regulatory Authority established under section 5;

"authorized officer" means an inspector or a person designated as such under this Act;

"building and industrial minerals" means basalt, clay, dolomite, granite, gravel, gypsum, laterite, limestone, marble, sand, sandstone, or salt, used for agricultural, building, road making or industrial purposes in Malawi, and includes such other minerals as may be prescribed;

"cadastre" means a system for defining, depicting and recording the location of mineral tenement areas and associated information;

"calendar year" means the one year time period commencing on January 1 and concluding on December 31;

"cooperative mining society" means a cooperative mining society registered pursuant to section 291;

"customary land" shall have the meaning assigned by the Land Act; Cap. 57:01

"Director General" means the Director General of the Authority appointed under section 17;

"district" means one of the administrative districts into which Malawi is divided in accordance with the Regional and District Boundaries and Place Names Act; Cap.18:04

"environment" shall have the meaning ascribed to the term under the Environment Management Act; No. 19 of 2017

"exploration" means any manner or method of exploring for the purpose of locating and evaluating mineral deposits and occurrences, to determine their characteristics, extent and economic value including bulk sampling, preparation of prefeasibility and feasibility studies and related laboratory testing, and such other operations necessary to identify, evaluate and prepare to apply for a mining licence;

"exploration licence" means an exploration licence granted under section 115;

"exploration licence area" means the area of land subject to an exploration licence;

"exploration work" means work activities associated with an approved exploration work programme;

"exploration work programme" means an exploration work programme that was approved in the grant of an exploration licence or an approved amended programme, that its holder is obliged to carry out;

"Geological Survey Reserve Area" means an area designated as a study area reserved for possible tendering pursuant to section 55;

"holder" means the person whose name is recorded in the Register as being the person granted rights pursuant to a mineral tenement;

"in default" means in breach of any provision of this Act, existing environmental laws or of any condition of a mineral tenement or an artisanal mining permit;

"inspector" means an inspector appointed under section 27;

"land" includes all lands within the territory of Malawi, including any land that is below water;

"large-scale mining licence" means a large-scale mining licence granted under section 51;

"large-scale mining licence area" means the area of land subject to a large-scale mining licence;

"lawful occupier", in relation to any customary land, includes any person who rents, leases or has the legal right to occupy certain

land and anyone who has user rights to such land by marriage or customary arrangements;

"local government authority" shall have the meaning ascribed to the term under the Local Government Act" Cap. 22:01

"Malawi Environment Protection Authority" means the Authority established under the Environment Management Act; No. 19 of 2017

"medium-scale mining licence" means a medium-scale mining licence granted under section 51;

"medium-scale mining licence area" means the area of land subject to a medium-scale mining licence;

"mine", when used as a noun, means any place, excavation or working in or on which any operation connected with mining is carried on, together with all buildings, premises, erections and appliances belonging or appertaining thereto, above or below the ground, for the purpose of winning, treatment, storing or preparing minerals, obtaining or extracting any mineral or metal by any mode or method or for the purpose of beneficiating mineral ores;

"mineral(s)" means any substance(s), including a radioactive mineral of any type, whether in solid, liquid or gaseous form, occurring naturally in or on the earth, formed by or subject to a geological process, but does not include—

(*a*) water, not being water taken from a borehole, well, excavation or natural saltpan for the extraction there from of a substance in solution therein and of commercial value; or

(*b*) soil which is not being taken from the earth for the extraction there from of a substance of commercial value contained therein or for the manufacture there from of a production of commercial value; or

(*c*) oil and gas, other than gas extracted from coal or shale deposits;

"mineral royalty" means a mineral royalty imposed on a mineral tenement holder pursuant to section 251;

"mineral tenement" means a non-exclusive prospecting licence, a reconnaissance licence, an exploration licence, a retention licence, a small-scale mining licence, a medium-scale mining licence or a large-scale mining licence, as the context requires, but does not include an artisanal mining permit;

"mining" when used as a verb, means intentionally to extract and remove minerals and includes any operations directly or indirectly necessary for or incidental to mining operations;

"mining licence" means a small-scale mining licence, medium-scale mining licence or large-scale mining licence, as the context requires;

"mining licence area" means an area of land subject to a mining licence;

"mining operation" means operations carried out in the course of mining or otherwise removing minerals from the land, treating and otherwise beneficiating the minerals with the intent to sell the resulting mineral product and includes quarrying;

"monument" shall have the meaning ascribed to the term under the Monuments and Relics Act; Cap. 29:01

"non-exclusive prospecting licence" means a non-exclusive prospecting licence granted under section 50;

"non-exclusive prospecting licence area" means the area of land subject to a non-exclusive prospecting licence;

"non-mechanised mining methods" means mining by the use of hand tools, handheld equipment and by small pumps with a hose diameter less than 75mm and such pumps' associated machinery, but not by larger pumps or any large machinery driven by electric, diesel, petrol or gas-powered motors;

"owner of land" means the lawful occupier or owner of land;

"precious stones" means rough and uncut diamonds, emeralds, rubies and sapphires, not forming part of any tool or instrument or abrasive powder used in an industrial process, and includes any other stones which may be prescribed;

"private land" shall have the meaning ascribed to the term under the Land Act; Cap. 57:01

"prospect" or "prospecting", when used as a verb, means intentionally to search for minerals and includes the determination of their extent and economic value;

"prospecting work programme" means a prospecting work programme that was approved in the grant of a non-exclusive prospecting licence that its holder is obliged to carry out;

"qualified community" means any community of more than three thousand persons which by tradition or by circumstances constitute a social community and—

(*a*) that reside within twenty kilometres of any boundary defining a large-scale mining licence area; or

(*b*) that the Authority has otherwise determined to be a qualified community:

Provided that where less than three thousand persons reside in the areas described in (*a*) and (*b*), the persons residing in the areas described in (*a*) and (*b*) collectively constitute a qualified community;

"radioactive mineral" means a mineral that is a radioactive material as defined in the Atomic Energy Act; Cap. 61:03

"reconnaissance activities" means the search for minerals by geophysical surveys, geochemical surveys, photo-geological surveys or other remote sensing techniques and surface geology in connection therewith but does not include drilling or trenching;

"reconnaissance licence" means a reconnaissance licence granted under section 50;

"reconnaissance licence area" means an area of land subject to a reconnaissance licence;

"reconnaissance work programme" means a reconnaissance work programme that was approved in the grant of a reconnaissance licence that its holder is obliged to carry out;

"register", when used as a verb, means to place legal instruments, including but not limited to any mineral tenement licence, in the official public records as required by this Act;

"Register", when used as a noun, means the Register required by section 30;

"registered address" means the address of a mineral tenement applicant or holder that appears in the Register as the address where all official notices and correspondence to that holder shall be sent;

"registration date" means the date on which a mineral tenement application was registered, or the date that a mineral tenement was issued under section 30 and 61, as the case may require;

"regulations" means regulations promulgated under section 307;

"relic" shall have the meaning ascribed to the term under the Monuments and Relics Act; Cap. 29:01

"reserved mineral" means gold, silver, precious stones and any other mineral which may be prescribed;

"reserved minerals licence" means a licence granted under section 206;

"Resident Mine Manager" means the individual person who is in charge and responsible for managing the day-to-day mining operations at a mine who resides at or near to the mine;

"retention licence" means a retention licence granted under section 51;

"retention licence area" means the area of land subject to a retention licence;

"small-scale mining" means mining using non-mechanised mining methods or limited mechanised mining methods as authorized by a small-scale mining licence;

"small-scale mining licence" means a small-scale mining licence granted under section 50; and

"small-scale mining licence area" means the area of land subject to a small-scale mining licence.

Objective of the Act

3. The objective of this Act is to regulate the development of the mineral resources of Malawi through adherence to sustainable development principles in order to—

(*a*) benefit the economy and promote the economic growth of Malawi;

(*b*) protect and improve the welfare of the present and future citizens of Malawi;

(*c*) provide an attractive and conducive environment for investment in the mining sector;

(*d*) minimize or prevent economic declines related to decreased mining activity by creating through training and other means a foundation for the future, social economic empowerment, uplifting and development of local communities and regions affected by mining; and

(*e*) manage environmental impacts for the benefit of all present and future generations of Malawians.

Ownership of minerals

4.—(1) Without prejudice to the exercise of any right under or pursuant to this Act, the entire property in minerals in, under or upon any land or waters in Malawi are vested in the Republic.

(2) Nothing in subsection (1) shall operate so as to affect a citizen of Malawi from taking minerals of any kind from customary land, to the extent and in the manner which custom permits, and from which it has been customary to take minerals of that kind for customary use.

(3) For the avoidance of doubt, the customary taking of minerals under subsection (2) does not include the taking of minerals for the

purpose of sale, for use in commercial activities or using mechanized mining methods but does include the taking of minerals by non-mechanised mining methods for personal, familial or community building purposes and for the production of handicraft.

(4) Subject to subsection (5), the ownership of minerals vests in a person who legally separates the minerals from the land, pursuant to an authorization under this Act, at the time that the mineral is separated from the land.

(5) Any mineral separated from the land other than in accordance with subsection (2) or under an authorization under this Act remains the property of the Republic.

Part II—Mining and Minerals Regulatory Authority

Division 1–Establishment of Mining and Minerals Regulatory Authority

Establishment of the Authority

5.—(1) There is hereby established the Mining and Minerals Regulatory Authority (in this Act otherwise referred to as the "Authority").

(2) The Authority shall—

(*a*) be a body corporate with perpetual succession; and

(*b*) do such things and perform such acts as bodies corporate may, by law, do or perform.

(3) The Authority shall perform its functions and exercise the powers provided for in this Act independent of the direction, influence or interference of any person or entity.

Functions of the Authority

6.—(1) The Authority shall regulate the mineral sector in the development and utilization of mineral resources in line with sustainable development principles and practices and for the benefit of Malawians.

(2) Without derogation from the generality of subsection (1), the Authority shall—

(*a*) regulate the mining sector;

(*b*) regulate the exportation of minerals;

(*c*) monitor the activities of licensees to ensure compliance with this Act and the terms and conditions of their licences;

(*d*) promote the harmonization of activities, plans and policies concerned with sustainable development and utilization of mineral resources and ensure their consistency with the overall national development policy;

(*e*) promote and regulate local beneficiation and downstream processing of minerals, including mineral value addition;

(*f*) facilitate disputes resolution or where necessary, resolving disputes, relating to the mining sector in consultation with relevant authorities; and

(*g*) perform any other functions as are necessary or incidental to the implementation of this Act.

Powers of the Authority

7. The Authority shall, in the discharge of its functions, have power to—

(*a*) receive and process mineral tenement applications;

(*b*) issue, review, approve, withhold, suspend and revoke, mining licences and permits;

(*c*) establish and maintain a web-based mining cadastre;

(*d*) inquire into and decide on disputes between mineral tenement applicants or holders and communities, in consultation with relevant authorities;

(*e*) determine Geological Survey Reserve Areas in consultation with the responsible Minister;

(*f*) carry out mine surveying and mineral auditing;

(*g*) provide technical advice and guidance in the administration of this Act and matters pertaining to the mining industry;

(*h*) impose administrative sanctions and penalties for breach of this Act;

(*i*) collect any fees prescribed under this Act; and

(*j*) do and perform all things or acts that are necessary or expedient for the execution of its functions, duties and powers under this Act.

Composition of the Authority

8.—(1) The Authority shall consist of nine members who shall be citizens and residents of Malawi comprising of—

(*a*) five members appointed by the Minister as follows—

(i) one person who is an accountant;

(ii) one person who is a mining engineer;

(iii) one person who has expertise in mining;

(iv) one person who is a legal practitioner; and

(v) one person who is a geologist; and

(*b*) the following *ex-officio* members or their designated representatives—

(i) the Secretary responsible for mining or his or her designated representative;

(ii) the Secretary responsible for local government or his or her designated representative;

(iii) the Secretary responsible for land or his or her designated representative; and

(iv) the Secretary responsible for trade or his or her designated representative.

(2) A person, other than an *ex-officio* member, shall not be qualified for appointment as a member of the Authority, if that person—

(*a*) is a holder of a political office;

(*b*) is an undischarged bankrupt; and

(*c*) would, for any other reason, be disqualified by law from serving as a trustee or director of a company.

(3) The Minister shall publish, in the *Gazette*, names of all members of the Authority, as first constituted, and every subsequent change in the membership.

Chairperson and Vice-Chairperson of the Authority

9. The Minister shall appoint the Chairperson and Vice-Chairperson of the Authority from among the members appointed under section 8(1).

Tenure of office

10. A member of the Authority, other than an *ex-officio* member, shall hold office for a term of three years and shall be eligible for re-appointment for one more term of three years.

Vacancies

11.— (1) The office of a member of the Authority, other than an *ex-officio* member, shall become vacant—

(*a*) on the expiry of the term of office of the member;

(*b*) if the member resigns from office in accordance with subsection (2);

(*c*) upon the death of the member;

(*d*) if the member knowingly fails to declare a conflict of interest relating to any matter under consideration by the Authority;

(*e*) if the member is absent, without a valid reason, from three consecutive meetings of the Authority, of which the member has had prior notice;

(*f*) upon the member becoming mentally or physically ill, where upon a suitably qualified medical practitioner certifies that the member is no longer, by reason of the illness, capable of performing duties of the office of member of the Authority;

(*g*) if he or she is guilty of conduct that brings disrepute to the Authority;

(*h*) upon the member being removed from a position of trust by a court of law;

(*i*) upon the member being removed from office in accordance with subsection (3); or

(*j*) if a situation arises that if the member had not been appointed, the member would have been disqualified from appointment as a member of the Authority.

(2) A member of the Authority, other than an *ex-officio* member, may at any time resign from his or her office by giving written notice to the Chairperson.

(3) The Minister may remove any member of the Authority, except an *ex-officio* member, on any of the following grounds—

(*a*) incompetence in the execution of the functions of the office of member;

(*b*) failure to declare a conflict of interest relating to any matter under consideration by the Authority;

(*c*) disclosure or publication to any other person or entity, other than in the course of duty, of any confidential information of the Authority obtained in the course of duty or otherwise;

(*d*) misconduct that brings the Authority into disrepute; or

(*e*) being compromised to the extent that his or her ability to impartially and effectively exercise the duties of his or her office is seriously in question.

(4) A vacancy in the membership of the Authority shall be filled, within sixty days of the occurrence of the vacancy, by the appointment of a new member by the Minister in accordance with section 8.

(5) A person appointed to fill a vacancy under subsection (4) shall serve the remainder of the term of office, but no person shall be appointed to fill a vacancy of the remainder of a term of office where the remainder of the term is less than six months.

(6) The period served by a person appointed under subsection (4) shall not be regarded as a term for purposes of section 10 unless the period is two years or more.

Meetings of the Authority

12.—(1) The Authority shall meet to conduct the business of the Authority at least once every three months, at such places and times as the Chairperson may, after consultation with the Director General, determine.

(2) The Chairperson of the Authority shall convene meetings of the Authority by giving members at least seven days written notice.

(3) The Chairperson may, on his own motion, convene an extraordinary meeting of the Authority at a place and time as the Chairperson may determine after consulting the Director General.

(4) The Chairperson shall, after consulting the Director General, convene an extraordinary meeting within three days of receipt of a request in writing signed by not less than four members specifying the purpose for which the meeting is to be convened.

(5) A quorum at every meeting of the Authority shall be constituted by five members.

(6) The Chairperson, or in his absence, the Vice-Chairperson, shall preside over meetings of the Authority, and in the absence of both the Chairperson and Vice-Chairperson, the members present and forming a quorum shall elect one of their number to preside over the meeting.

(7) A decision of the Authority on any question shall be by consensus but where this is not possible, the decision shall be determined by a majority vote of members present and voting, and where there is an equality of votes, the Chairperson or, in the absence of the Chairperson, the Vice-Chairperson or other member presiding, shall have a casting vote in addition to that person's deliberative vote.

(8) The Authority may, where necessary taking into account the nature of the matter to be deliberated, invite any person to attend its meeting or any of its committee meetings and participate in the deliberations or to make a presentation or to be asked questions on any matter, but the person so invited shall not be entitled to vote.

(9) The Director General shall serve as secretary at meetings of the Authority, and shall record and keep minutes of each meeting of the Authority and the minutes shall be confirmed at the subsequent meeting.

(10) The Authority may make rules to regulate its proceedings and business or the proceedings and business of any of its committees.

(11) The Director General, or other member of staff of the Authority as the Director General may designate, may attend a meeting of the Authority and of any of its committees and may address the meeting, but shall not vote on any matter.

(12) Where, at any meeting, the deliberations of the Authority or any of its committees concerns the Director General or any member of staff of the Authority designated to attend the meeting, the Authority or the committee, as the case may be, may exclude the Director General or the officer from the meeting.

Committees of the Authority

13.—(1) The Authority may, for the purpose of performing its functions under this Act, establish committees of the Authority, and delegate to any such committees any of its functions as it considers necessary.

(2) The Authority shall appoint a chairperson for each committee from amongst the members appointed under section 8 (1) (*a*).

(3) The Chairperson of the Authority shall not be a member of a committee.

(4) The Director General shall serve as secretary at meetings of each committee of the Authority or may, with the approval of the Chairperson, delegate a senior member of staff to serve as secretary at meetings of a committee.

(5) Without derogating the generality of subsection (1), the Authority shall establish a Minerals and Mining Technical Committee which shall be responsible for advising the Authority on all technical matters of the mining sector.

Co-opted persons

14. The Authority may, at its discretion, co-opt any person with specific knowledge, information or expertise to attend any of its meetings and address it on a matter, but such person shall not be eligible to vote at the meeting on any decision of the Authority.

Honoraria of members of the Authority

15.—(1) Members of the Authority and members of committees of the Authority shall be paid such allowances as the Minister shall determine, on recommendation of the Government department responsible for human resource development and management.

(2) The Authority may reimburse any reasonable expenses incurred in connection with the business of the Authority by a member of the Authority, a member of a committee of the Authority, a person co-opted in accordance with section 14 and a person invited to attend a meeting of the Authority in accordance with section 12(8) or a committee of the Authority.

Division 2–Administration

Secretariat

16. There shall be a secretariat of the Authority which shall consist of the Director General and other employees of the Authority appointed in accordance with this Act.

Director General of the Authority

17.—(1) The Authority shall, through public advertisement, appoint a Director General, who shall be the chief executive officer of the Authority and shall, subject to the general direction of the Authority, be responsible for the day to day operations of the Authority.

(2) Subject to subsection (1) the Director General shall be appointed on such terms and conditions as the Authority may, after consultation with the Minister responsible for public service, determine.

(3) A person shall not be appointed as Director General, unless the person— Cap. 30:12

(*a*) possesses a minimum qualification of a Master's degree from a reputable education institution accredited or recognized under the National Council for Higher Education Act, obtained subsequent to a bachelor's degree from an education institution accredited or recognized under the National Council for Higher Education Act; Cap. 30:12

(*b*) has proven and demonstrable work experience in the mining industry, finance, economics, engineering, accountancy, commerce, law, administration or any field relevant to the functions and responsibilities of the Authority;

(*c*) has not less than ten years' experience in executive management; and

(*d*) does not hold a political office.

(4) The office of the Director General shall be a public office.

Duties and responsibilities of the Director General

18.—(1) Subject to the general and special directions of the Authority, the Director General shall be in charge of the overall administration of the Authority and, in particular, shall be responsible for—

(*a*) the day-to-day administration and management of the affairs of the Authority;

(*b*) implementing the decisions of the Authority;

(*c*) keeping the Authority informed of the activities of the Authority;

(*d*) submitting strategic plans, action plans and budget support programmes to the Authority for approval;

(*e*) implementing the strategic plans, action plans and budget support programmes;

(*f*) ensuring that activities of the Authority comply with the relevant laws, policies and regulations;

(*g*) the administration, organization and control of the other officers and staff of the Authority;

(*h*) acting on behalf of the Authority; and

(*i*) the performance of any other duties and functions as may be assigned to him or her by the Authority.

(2) The Director General or, in his or her absence, such other member of staff of the Authority as he or she may designate, shall attend meetings of the Authority and of any committees of the Authority and may address such meetings, but shall not vote on any matter.

Tenure of office of the Director General

19. A Director General shall hold office for a term of three years, and shall be eligible for re-appointment for a further term.

Removal of the Director General

20.—(1) The Authority may terminate the appointment of a Director General where the Director General—

(*a*) is incompetent in the execution of the functions of the office;

(*b*) commits a misconduct that brings the office of the Director General or the Authority into disrepute;

(*c*) is declared or adjudged bankrupt by a competent court of law;

(*d*) fails to declare a conflict of interest relating to any matter under consideration by his or her office or the Authority;

(*e*) is convicted of an offence and sentenced to a term of imprisonment without the option of a fine;

(*f*) is involved in active politics; or

(*g*) is not able to perform the functions of his or her office by reason of physical or mental infirmity.

(2) The Authority shall not remove a Director General from office unless the Director General is given an opportunity to be heard.

Other staff of the Authority

21.—(1) The Authority shall employ other staff subordinate to the Director General, by way of public advertisement, and the appointment shall only be based on qualification, experience and capacity in matters relating to the operational requirements of the Authority.

(2) The Authority may, by directions in writing, delegate to the Director General the appointment, discipline and dismissal of members of staff in specified junior ranks and the Director General shall report to the Authority, at its next meeting, every appointment, disciplinary decision or dismissal made pursuant to this subsection.

(3) The members of staff of the Authority referred to in subsection (1) shall be appointed on such terms and conditions as the Authority shall determine after consulting the Government department responsible for human resource management and development.

(4) The Authority shall pay members of staff of the Authority such remuneration, allowances, pension, gratuity and other benefits as the Authority may, after consultation with the Minister responsible for public service.

Dismissal of staff of the Authority

22. Section 20 shall apply, with the necessary modifications, to dismissal of members of staff employed under section 21.

Division 3 – Funds and property of the Authority

Funds of the Authority

23.—(1) The funds and property of the Authority shall consist of—

(*a*) such sums as may, from time to time, be payable to the Authority from moneys appropriated by Parliament;

(*b*) such sums of money as may accrue to or be received by the Authority by way of fees, subsidies, contributions, subscriptions, charges, penalties, rents, interest or royalties from the Government or any person;

(*c*) any levy imposed pursuant to section 24;

(*d*) such sums of money or other property, real or personal, as may be acquired, purchased or received by or transferred to the Authority, whether by way of donation, devise, bequest, or otherwise; and

(*e*) sums of money or other property, real or personal, as may be donated to the Authority by a foreign Government, international agency, other external body of persons or individual.

(2) The funds and assets of the Authority shall exclusively be under the control of the Authority and shall be utilized solely for the purposes of this Act in accordance with the written directions of the Authority and for no other purpose.

(3) The Authority shall, at all times, comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement and Disposal of Public Assets Act.

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Cap. 37:03

Levy

24. The Minister, acting on the advice of the Authority, and in consultation with the Minister responsible for finance, may by order published in the *Gazette*, impose a levy on mining activities in, or minerals taken from, Malawi.

Accounting and audit

25.—(1) The Authority shall cause to be kept proper books of accounts and other records relating to its accounts in accordance with the Public Finance Management Act.

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(2) The accounts of the Authority shall be audited annually by the Auditor General, or by independent professional auditors appointed by the Authority after consulting the Auditor General, and the expenses of the audit shall be paid out of the funds of the Authority.

Financial year of the Authority

26.—(1) The financial year of the Authority shall be a period of twelve months in line with the Government financial year.

(2) The first financial year of the Authority may be such shorter or longer period than twelve months as the Authority shall determine but being not less than six months nor more than eighteen months.

Part III—Inspection, Geological Surveys and the Register

Division 1 – Inspection of Mining Activities

Appointment of inspectors

27. The Authority shall appoint such number of suitably qualified inspectors as are required to enforce compliance with the provisions of this Act.

Functions and powers of inspectors

28.—(1) An inspector shall exercise his or her powers, functions and duties subject to this Act subject and any general and specific directions of the Authority.

(2) An inspector shall, for the purposes of monitoring or enforcing compliance with this Act, have access at any time, to any land or premises where any activity related to minerals has been, is or will be carried on, including any accessory works, or land to which any such operations or accessory works relate for the purposes of—

(*a*) verifying compliance with the provisions of this Act and conditions of licences;

(*b*) perusing all technical, accounting and financial records and data, including but not limited to, all maps, drill logs and other drilling data, core, pulps, reports, surveys, assays, analyses, production reports, operations, technical, and any other business information, whether in electronic, digital or traditional paper form, related to the operation;

(*c*) investigating any incident or accident related to mining operations;

(*d*) questioning any person who has duties which, in the view of an inspector may be pertinent to the inspection being carried out or an enquiry being conducted;

(*e*) taking books, records, data, samples of any material and any other information, and make such examinations and enquiries as may be necessary to ascertain whether the provisions of this Act, any other applicable written law, standards and guidelines are being complied with; or

(*f*) exercising such other powers of inspection as are necessary for carrying out the provisions of this Act into effect.

(3) An inspector shall have the power to take photographs, make video recordings and collect any visual evidence of mining operations as is useful to document alleged transgressions, unsafe conditions or for any other reasonable purpose relating to inspection.

(4) Subject to subsection (3), the visual evidence shall remain confidential and only accessible by officers of the Authority except as when entered as evidence in any court of law.

(5) An inspector shall have the power and authority to immediately order, in accordance with section 29, the temporary suspension, of mining operations if the inspector in his or her sole and absolute discretion is convinced that the health and safety of those working at the mine, any member of the public or any aspect of the environment is seriously threatened.

(6) An inspector shall issue a receipt in respect of any books, records, data, samples or other things taken or removed by the inspector this section.

(7) Upon any claim received from the owner of any sample taken by an inspector, the inspector shall return the sample to the owner if it is not used within a reasonable period as evidence in connection with any offence in terms of this Act, or pay to such owner an amount equal to the reasonable market value of such sample.

(8) An inspector shall return books, records, data, samples or other things taken by the Inspector of Mines to the owner of the thing if it is not used within a reasonable period in evidence in connection with any offence in terms of this Act.

Emergency suspension order

29.—(1) An inspector may, immediately and at any time, in writing, issue an emergency suspension order directing that any operation which consists the subject of the order be temporarily suspended, regardless of whether the operations are the subject of a mineral tenement or not, until such arrangements are made that are in the opinion of the inspector necessary to prevent danger to life or property.

(2) An inspector who issues an emergency suspension order pursuant to subsection (1) shall, inform the Authority, within twenty-four hours of the order being issued.

(3) An inspector, in writing and with the signed concurrence of the Authority, may cancel or vary the terms of any emergency suspension order issued under subsection (1).

(4) An emergency suspension order made under this section shall lapse after fourteen days of its issuance, unless it is confirmed and extended, in writing, by the Authority.

(5) The Authority shall have the power to confirm, modify and extend an emergency suspension order made under subsection (1) and may not delegate this power.

(6) An emergency suspension order extended pursuant to subsection (5) shall remain in force until such time as the reason for imposing the suspension order is addressed to the satisfaction of the Authority.

(7) Where a mineral tenement is subject to an emergency suspension order that has been confirmed and extended pursuant to subsection (5) and it is of the opinion of the holder of the mineral tenement that such order is not reasonably justified, the holder may appeal to the Authority and, if dissatisfied with the decision of the Authority, apply for review of the decision in the High Court.

(8) A person, who fails to comply with an emergency suspension order issued pursuant to subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K30,000,000 and K1,000,000 for each day of default and to imprisonment for ten years.

Division 2 –Registration of Mineral Tenements

Register of mineral tenement applications and mineral tenements

30.—(1) The Authority shall cause to be maintained a Register of—

(*a*) every application for a mineral tenement;

(*b*) every mineral tenement granted; and

(*c*) of any dealings with, or affecting, a mineral tenement.

(2) The Register shall consist of a series of files and information comprising—

(*a*) a register of chronologically organized applications for mineral tenements;

(*b*) a register of non-exclusive prospecting licences;

(*c*) a register of reconnaissance licences;

(*d*) a register of exploration licences;

(*e*) a register of retention licences;

(*f*) a register of medium-scale mining licences;

(*g*) a register of large-scale mining licences;

(*h*) a register of small-scale mining licences;

(*i*) a register of reserved minerals licences;

(*j*) a register of cooperative mining societies and mining partnerships; and

(*k*) such other registers that are useful or necessary for the purpose of this Act.

(3) The Register and its constituent parts shall be organized in such manner as is approved by the Authority and may consist of hard copy materials, electronic information or both.

Registration of grantees of mineral tenements

31. Where a mineral tenement is granted, the Authority shall cause the name of the person to whom the mineral tenement is granted to be recorded in the Register as the registered holder of the mineral tenement.

Public access to the Register

32. The Register shall, at all reasonable times, be accessed by the general public, and members of the public may obtain copies of any licence or entry in the Register on payment of a prescribed fee.

Mistakes in records of the Register

33. Where the Authority is satisfied that there has been a mistake made in, or that some matter has been incorrectly entered in, the Register, the Authority shall rectify the Register by correcting that mistake or incorrect entry.

Liability for making false entries in the Register

34. A person who wilfully—

(*a*) makes, or causes to be made or concurs in making, a false entry in the Register; or

(*b*) produces or tenders in evidence a document falsely purporting to be a copy of or an extract from an entry in the Register or from an instrument placed on record with the Authority,

commits of an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for three years.

Part IV—Mineral Tenements

Division 1–General

Mineral tenement or artisanal mining permit required

35.—(1) Except as otherwise provided in this Act, a person shall not carry on reconnaissance, prospecting, exploration or mining operations, except under and in accordance with a mineral tenement or an artisanal mining permit granted under this Act.

(2) The Authority may direct a person whom the Authority suspects is carrying on unauthorized reconnaissance, prospecting, exploration or mining operations to provide any information required to enable the Authority to determine whether unauthorized operations are taking place.

(3) Where the Authority reasonably determines that a person is carrying on unauthorized operations, the Authority may—

(*a*) orally or in writing or by serving a notice, as the case may

call for, direct that person to cease their unauthorized operations; and

(*b*) take whatever action is reasonably necessary to remove that person from the land on which the unauthorized operations are taking place.

(4) A person who—

(*a*) carries on reconnaissance, prospecting, exploration or mining operations on any land without being duly authorized under this Act;

(*b*) refuses to comply with a direction under subsection (2);

(*c*) refuses to comply with a direction under subsection (3)(*a*);

(*d*) fails, neglects or refuses to comply with any direction lawfully given under this Act;

(*e*) when lawfully evicted or removed from land where unauthorized reconnaissance, prospecting, exploration or mining was taking place, re-enters or takes possession of such land;

(*f*) takes or removes from the mineral tenement area or artisanal mining permit area of another person any mineral without the authority of that person; or

(*g*) gives false or misleading information to an authorized officer with regard to an unauthorized reconnaissance, prospecting, exploration or mining operation,

commits an offence and shall, upon conviction, be liable to a fine of K20,000,000, and to imprisonment for a period of four years.

(5) Where a person is convicted of an offence under this section, the court may, in addition to imposing a penalty, order the offender to rehabilitate any land which it has damaged to the satisfaction of the Authority within a specified time.

(6) Where a person fails to carry out an order made under subsection (5), the court shall require the offender to pay the costs of rehabilitation of the land and such a sum determined is a debt to the Government and may be recovered in any court of competent jurisdiction.

Types of mineral tenements and artisanal mining permit

36.—(1) The following mineral tenements may be granted under this Act—

(*a*) non-exclusive prospecting licence, that grants the holder the non-exclusive right in the licence area, which area is defined by district boundaries, to do prospecting for all minerals;

(*b*) reconnaissance licence, that grants the holder the non-exclusive right in the licence area to do reconnaissance;

(*c*) exploration licence, that grants the holder the exclusive right in the licence area to explore for all mineral deposits and an exclusive priority right to apply for a mining licence;

(*d*) retention licence, that grants the holder the right to maintain the exclusive right to apply for a mining licence in the licence area when exploration has been completed but other specified conditions preclude mining at the present time;

(*e*) small-scale mining licence, that grants the exclusive right to mine minerals in the licence area using only small-scale mining methods as defined in section 2;

(*f*) medium-scale mining licence, that grants the exclusive right to mine all minerals in the licence area provided the scale of operation does not exceed any limit specified section 144; and

(*g*) large-scale mining licence, that grants the exclusive right to mine all minerals in the licence area.

(2) An artisanal mining permit, which is not a mineral tenement for the purposes of this Act, grants the right to the holder to temporarily mine for minerals used in local construction and handicraft, subject to restrictions on the scale of operation and manner in which the minerals can be mined.

Obtaining a mineral tenement

37. A mineral tenement may be obtained by a direct application process, or as a result of a tendering process.

Mineral tenement activities subject to other written laws

38. Where any act or conduct is regulated or prohibited by a written law, other than this Act, nothing in this Act shall be construed as authorizing the holder of a mineral tenement to perform the activity—

(*a*) otherwise than in accordance with the written law that applies to the specific act being performed; and

(*b*) without first obtaining a licence, permit, authority, or other official instrument required by the applicable law.

Certificates

39.—(1) The Authority may give a certificate with respect to any matter provided under this Act.

(2) Without prejudice to the generality of subsection (1) the certificates granted may include—

(*a*) a mineral tenement which has been granted, transferred, suspended, cancelled or expired on, or with effect from, a date specified in the certificate;

(*b*) any land, identified in the certificate which is, or was on a date specified in the certificate, subject to a mineral tenement;

(*c*) any condition specified in the certificate which is, or was on a date so specified, a condition of a mineral tenement;

(*d*) a certificate of surrender which was issued in respect of land identified, on a date specified, in the certificate given by the Authority; and

(*e*) a person named in the certificate which is, or was on a date specified in the certificate, the holder of a mineral tenement.

(3) A certificate of the Authority confirming the matters referred to in subsection (2) shall be received in proceedings before any court or tribunal as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.

Authority may require report from tenement holder

40.—(1) The Authority may require the holder of a mineral tenement to prepare a report on any subject matter related to the mineral tenement within such reasonable time as may be specified by the Authority.

(2) Where a holder of a mineral tenement is required under this section to provide a report addressing required subject matter by a specified date but he or she has refused or has substantially failed to do so, the person commits an offence.

Submission and ownership of reports, data and information

41.—(1) A person obligated by this Act to submit a report, data or other information, shall submit such report, data or information to the Authority unless another place or person is specified in the provision giving rise to the obligation.

(2) Where this Act requires a mineral tenement holder to submit any report, data or information to any ministry, department or agency of the Government, the report, data or information shall become the property of the Government.

(3) Subject to subsection (2), the submission of the report, data or information shall not impair the use of that report, data or information by the tenement holder during the term of its tenement.

(4) Notwithstanding that the Government may be the owner of report, data and information submitted by a mineral tenement holder, the Government shall be restricted in the use of such report, data or information where the reports, data or information are to be treated on a confidential basis as provided in this Act.

(5) Unless otherwise specified in this Act, any information submitted by a mineral tenement holder shall remain confidential for as long as the licence is valid and two years after the expiry or termination of the licence.

Obligation of holder of terminated mineral tenement

42.—(1) When a mineral tenement terminates, the person who was the holder of that tenement immediately before the termination shall deliver to the Authority—

(*a*) all records which the former holder maintained pursuant to this Act with respect to its mineral tenement;

(*b*) all plans or maps of whatever nature, including but not limited to maps of the area of land that was subject to the tenement, geological maps and cross sections, pit designs, tailings dam designs, geological reports including interpretations, mineral analyses, aerial photographs, core logs, sample analyses and tests, including those analyses and tests related to the production of minerals sold or sent for processing, production records, and other data obtained and compiled by the holder in respect of the tenement area, and which were prepared by or on the instruction of the former holder; and

(*c*) such other documents as the Authority, by notice given to the former holder, may require the holder to deliver.

(2) Where a holder of a mineral tenement required under this section to deliver information as specified in subsection (1)(*a*), (*b*) or (c) by a specified date, refuses or substantially fails to do so, the person commits an offence.

Preservation of cores

43.—(1) The holder of a mineral tenement shall preserve all drill cores and drilling samples, except such amounts as may be required for assaying and testing, and at such time as the holder no longer requires them, or upon the expiry, surrender or cancellation of the tenement, shall advise the Authority about them.

(2) On receiving an advice under subsection (1), the Authority may request that the cores and drilling samples, or such of them as are required, and corresponding records and logs be provided to the Authority at such location as is specified by the Authority, and the holder of the mineral tenement shall comply with such a request at the holder's own cost.

(3) The obligation of the holder of a mineral tenement under subsection (1) shall cease three months after the tenement expires, is surrendered or is cancelled.

(4) The holder of a mineral tenement may at any time request the Minister to grant him or her permission to dispose of cores and drilling samples, and the Minister may grant such permission.

Registered addresses

44.—(1) An applicant for, and a holder of, a mineral tenement shall—

(*a*) have, and keep established after the mineral tenement is granted, a legal address in Malawi which is referred to in this Act as its "registered address"; and

(*b*) provide notice to the Authority within thirty days of any change or variation of the address.

(2) An applicant for, and the holder of, a mineral tenement may register an email and a facsimile address with the Authority for the purpose of receipt of notices and other information.

Attachment

45. The Authority, in writing, may request any mineral tenement holder to provide a temporary training attachment within its operations to an authorized officer or the minister for a period not exceeding thirty days, or such longer period as may be mutually agreed by the Authority and the tenement holder, and all reasonable costs associated with such attachment, except the officer's salary and related benefits, shall be the responsibility of the tenement holder.

Division 2 – Direct Application Process for Grant, Extension or Consolidation of Mineral Tenement

Preliminary examination of mineral tenement related applications

46.—(1) The Authority, at the time of the submission of an application for the grant, extension, expansion or consolidation of a mineral tenement, shall verify to its reasonable satisfaction the following matters—

(*a*) a substantial part of the land over which the application is made is available for the grant of that type of mineral tenement to the applicant under this Act;

(*b*) in the case of an application for the grant of a mining licence or the expansion of a mining licence area, the area applied for does not include or overlap any area which is the subject of an exploration licence or mining licence unless the applicant is the holder of such exploration or mining licence;

(*c*) the application—

(i) if submitted in hard copy, is in the prescribed form; or

(ii) if submitted electronically, is in the prescribed format using such system as is designated for this purpose by the Authority, and has been completed by inclusion of all the required particulars;

(*d*) the documents required under this Act to accompany an application have been submitted with the application;

(*e*) the prescribed application fee and any late fee due have been included or paid; and

(*f*) the application form, when submitted in a hard copy, has been submitted in triplicate and signed by or on behalf of the applicant.

(2) Where an application for the grant, extension, expansion or consolidation of a mineral tenement is not filed electronically, the Authority shall do the verification required under subsection (2) in the presence of the applicant or its agent.

Duties of the Authority where preliminary examination shows that requirements are not met

47.—(1) Where following a preliminary examination of the matters referred to in section 46, the Authority is not satisfied that all the matters have been verified and are complete, the Authority shall—

(*a*) not accept or register the application; and

(*b*) immediately return all documents to the applicant or its agent, or delete them if such documents were filed electronically.

(2) The Authority shall not accept or register an application that is incomplete.

Duties of the Authority where pre liminary examination shows that requirements are met

48. Where following a preliminary examination of the matters referred to in section 46, the Authority is satisfied that all the matters have been verified, the Authority shall—

(*a*) immediately—

(i) accept and register the application in the Register;

(ii) note the registration number on the application form or in the electronic registration system and in the Register;

(iii) note the date and time when the application was accepted and registered in the Register;

(iv) sign the application form, either manually or electronically; and

(v) give one copy of the application form back to the applicant or provide an electronic verification that the application has been accepted and registered; and

(b) as soon as possible but not later than five days thereafter—

(i) post the registered application on the website of the Authority; and

(ii) publicize the application as may be specified by the Authority from time to time.

Priority of application

49.—(1) Subject to this section and to section 46, where two or more applications are made for the grant of a mineral tenement over the same land or any part of the same land, the applicant, other than the applicant for a reconnaissance licence or non-exclusive prospecting licence, who first submits an application to the Authority shall have the right in priority over every other applicant to have their application considered and determined.

(2) Subject to subsection (3), where the Authority is satisfied that two or more applicants for the grant of a mineral tenement, other than a reconnaissance licence or non-exclusive prospecting licence, over the same land or any part of the same land were present in the office at the same time for the purpose of lodging applications for that mineral tenement, then despite the order in which the Authority receives the applications, the determination of the Authority as to which application was received earlier shall be *prima facie* evidence of that fact.

(3) The procedure specified in subsection (2) shall only be applicable in respect of applications which meet the requirements of section 46.

Granting process for non-exclusive prospecting, reconnaissance, small-scale mining licences and approval of tenement extensions

50.—(1) Subject to subsection (8), within—

(*a*) forty-five days from the registration date of an application for a non-exclusive prospecting licence or small-scale mining licence;

(*b*) sixty days from the registration date of an application for a reconnaissance licence or consolidation of mineral tenements pursuant to section 46;

(*c*) thirty days from the registration date of an application to—

(i) extend the term of a non-exclusive prospecting licence, reconnaissance licence, exploration licence or small-scale mining licence; or

(ii) expand the area of a small-scale mining licence; or

(*d*) ninety days from the registration date of an application to extend the term of a medium-scale or large-scale mining licence,

the Authority shall decide to grant or refuse the approval of the application.

(2) In the review of an application for the grant of a non-exclusive prospecting licence, reconnaissance licence or small-scale mining licence, or the extension of the term of a non-exclusive prospecting licence, reconnaissance licence, exploration licence, small-scale mining licence, medium-scale mining licence or large-scale mining licence, or to expand the area of a small-scale mining licence, the Authority, by notice or otherwise—

(*a*) shall consider the environmental factors set forth in section 261; and

(*b*) may—

(i) request the applicant to correct any defects or omissions;

(ii) confirm the information provided in the application;

(iii) cause such investigations to be made or such negotiations as necessary;

(iv) consult with other specialists and other parties as necessary;

(v) consult other relevant government entities; and

(vi) propose alterations in the application.

(3) The Authority shall not refuse an application to extend the term of a non-exclusive prospecting licence, reconnaissance licence, exploration licence, small-scale mining licence, medium-scale mining licence or large-scale mining licence without first giving the applicant prior notice of the intention to deny the application including the reasons therefore and inviting the applicant, within thirty days, to take the appropriate remedial measures or to present a documented statement in defence of the default.

(4) Where the Authority decides—

(*a*) to grant a licence, term extension or area expansion, the Authority shall—

(i) grant the licence, term extension or area expansion subject to such conditions as are required by this Act or are, in the opinion of the Authority, necessary;

(ii) in the case of the grant of a licence, sign the licence and register the signed licence in the Register; or

(iii) in the case of the extension of the term of a licence or area expansion, endorse the licence with the extended term or expansion and any changed conditions; and

(*b*) to deny the application, the Authority shall provide the applicant with written reasons for the refusal.

(5) The Authority shall not grant a licence with respect to a project for which an environmental and social impact assessment is required under the Environment Management Act, unless the Malawi Environment Protection Authority has certified in writing that the project has been approved by the Minister responsible for environmental matters or that an environmental and social impact assessment is not required under the Environment Management Act.

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(6) The Authority may serve on the applicant a notice specifying a date on which the applicant may make appropriate proposals to cure or otherwise remove the grounds for refusal or, as the case may be, make representations in relation thereto and acceptable to the Authority.

Granting process for exploration, retention, medium-scale and large-scale mining licences

51.—(1) Within—

(*a*) seventy days from the registration date of an application for an exploration licence or retention licence;

(*b*) one-hundred and thirty days from the registration date of an application for a medium-scale mining licence, or to expand the area of a medium-scale mining licence; or

(*c*) one hundred and ninety days from the registration date of an application for a large-scale mining licence, or to expand the area of a large-scale mining licence,

the Authority shall decide to approve or refuse the application.

(2) In the review of an application for the approval of an exploration licence, a retention licence, a medium-scale or large-scale mining licence, or the expansion of a medium-scale or large-scale mining licence area, the Authority, by notice or otherwise—

(*a*) shall consider the environmental factors set forth in section 261; and

(*b*) may—

(i) request an applicant to correct any defects or omissions;

(ii) consider any objections made pursuant to section 53;

(iii) confirm the information provided in the application;

(iv) cause such investigations to be made or such negotiations to be conducted as necessary;

(v) consult with specialists and other parties as necessary;

(vi) consult relevant government entities; and

(vii) propose alterations in the application.

(3) Where the Authority decides—

(*a*) to approve an application for a licence or to expand the area of a licence, the Authority shall—

(i) approve the licence or licence area expansion subject to such conditions as are required by this Act or are, in the opinion of the Authority, necessary; and

(ii) in the case of the approval to expand the area the subject of a medium-scale or large-scale mining licence, endorse the licence with the approved area and any changed conditions determined by the Authority; and

(*b*) to reject the application, the Authority shall notify the applicant of the refusal decision and the reasons for its refusal.

(4) The Authority may serve on the applicant a notice specifying a date on which the applicant may make appropriate proposals to cure

or otherwise remove the grounds for refusal or, as the case may be, make representations in relation thereto and acceptable to the Authority.

(5) The Authority shall not grant any licence with respect to a project for which an environmental and social impact assessment is required under the Environment Management Act, unless the Malawi Environment Protection Authority has certified in writing that the project has been approved by the Minister responsible for environmental matters or that an environmental and social impact assessment is not required under the Environment Management Act.

Application notices

52.—(1) An applicant shall, upon applying for a medium-scale mining licence or large-scale mining licence, publish in a newspaper with wide circulation in Malawi, a public notice that contains a summary of its proposed operations, the location, including a general description of the area in such detail that a person familiar with the area would have an understanding of its location, the cadastral coordinates defining the boundary of the applied for area and provide a copy of the public notice to the Authority.

(2) The Authority shall, upon receipt of an application for a medium-scale mining licence or large-scale mining licence, post the application form, but not necessarily any attachments required to be attached to such form by the applicant—

(*a*) in a publicly accessible area at the central headquarters of the Authority's office;

(*b*) on the website of the Authority; and

(*c*) in a publicly accessible place at the office of the District Authority of the district where land the subject of the application is located,

until such time as the application is determined.

(3) The Authority, by notice served on an applicant for the grant of a mineral tenement, may require the applicant to furnish the Authority, within such time as is specified in the notice—

(*a*) with such further information relevant to the application as may be described in the notice; and

(*b*) if the applicant, or any of the applicants, is a body corporate, with such information as may be described in the notice to enable the Authority to ascertain to what extent the controlling power in the direction of the affairs of the body corporate is a corporation incorporated outside Malawi, or an individual or individuals who reside outside Malawi.

Objections to grant of medium-scale or large-scale mining licence

53.—(1) A party may submit to the Authority, in writing, an objection, within thirty days of the date of the registration of an application for a medium-scale mining licence or large-scale mining licence or expansion of a medium-scale mining licence or large-scale mining licence area.

(2) At the end of the thirty days in subsection (1), the Authority shall convey any objections which have been received to the applicant.

Authority to register licence grant, extension, expansion or application refusal

54.—(1) Where the Authority refuses to grant an application for a mineral tenement, licence extension or licence area expansion, the Authority shall, within five days—

(*a*) note the refusal and the date of the refusal in the Register;

(*b*) notify the unsuccessful applicant of the refusal; and

(*c*) post the notice of refusal, which shall include the reasons for the refusal, on the website of the Authority.

(2) Where the authority grants a licence, pursuant to section 50 or 51, the Authority shall, within five days—

(*a*) inform the applicant indicating the place where the licence can be issued, or if it is to be issued electronically, how it can be accessed; and

(*b*) inform the applicant indicating the amount of annual ground rent that is payable before the licence can be issued,

and upon payment of the required annual ground rent or receipt of proof that such rent has been paid, the Authority shall—

(i) issue the licence to the successful applicant;

(ii) register in the Register the date on which the licence was registered as issued; and

(iii) post a copy of the licence on the website of the Authority.

(3) Where a successful applicant granted a mineral tenement fails to collect its granted licence or to pay required annual ground rent within thirty days of being informed by the Authority as per subsection (2), the licence shall be deemed null and void and the Authority shall record this in the Register.

(4) Where a holder of an exploration licence has applied for and been granted a retention or mining licence over land the subject of its exploration licence, the land shall be deemed surrendered on the date that the retention licence or mining licence is issued, and at the time that the retention licence or mining licence is issued, the exploration licence holder shall present its exploration licence to the Authority who shall endorse on it the reduced licence area.

(5) Where the Authority approves an application for the extension of the term of a licence or for the expansion of the licence area under section 50 and 51 or an application by an exploration licence holder for a retention licence or mining licence is approved on its area, the Authority shall, within two days—

(*a*) inform the applicant indicating the place where the licence can be endorsed, or if it is to be endorsed electronically, how it can be accessed;

(*b*) endorse the licence with its new term or area; and

(*c*) enter into the Register the date on which the term of the licence was extended or the area expanded or reduced.

(6) Where a successful candidate for the extension of its licence or expansion of its licence area fails to present its licence for endorsement, and the endorsement is not done electronically, within thirty days of being informed by the Authority as per subsection (5), the licence extension or expansion approval shall be deemed null and void, the Authority shall record this in the Register and shall not endorse the licence.

(7) Where, the holder of an exploration licence that is granted a retention licence or a mining licence over the land the subject of its exploration licence, fails to present its exploration licence for endorsement of the area to be excised (the area comprising the retention licence area or mining licence area) and such endorsement is not done electronically, within thirty days of being informed by the Authority as per subsection (5), the retention licence or mining licence, as the case may be, shall be deemed null and void, and the Authority shall record this in the Register and shall not endorse the exploration licence.

Division 3—Mineral Tenement Tendering Process

Temporary reservation for tendering purposes

55.—(1) The Minister may, propose to the Authority, areas of known mineralization to be temporarily reserved from mineral tenement application for the purpose of allowing the Department of Geological Survey to further study the mineral potential of the area for possible competitive tendering purposes.

(2) Subject to subsection (3), where the Authority determines that an area proposed under subsection (1) should be reserved for further study, it shall inform the Minister on the determination and the Minister shall, within thirty days of receiving the determination of the Authority, by notice published in the *Gazette*, designate the area as a Geological Survey Reserve Area for a period of up to two years and such reservation shall be effective on and from the date of publication of the notice.

(3) A Geological Survey Reserve Area shall not be designated over any land subject to a mineral tenement, except land the subject of a reconnaissance licence or non-exclusive prospecting licence, and where a Geological Survey Reserve Area purports to apply to land the subject of an existing mineral tenement other than a reconnaissance licence or non-exclusive prospecting licence, the area of that existing mineral tenement shall be deemed to be excised from the Geological Study Reserve Area.

(4) Where the Authority determines that all or part of a Geological Survey Reserve Area should be revoked, it shall inform the Minister and the Minister, within thirty days of receiving the determination of the Authority, shall, by notice published in the *Gazette*, revoke, in whole or in part as determined by the Authority, a reservation made under this section.

(5) A notice under subsection (2) or (4) shall specify the area of land under reservation by reference to a description of the land in latitude and longitude in the prescribed manner and shall have the shape of—

(*a*) one cadastral block; or

(*b*) more than one cadastral block, each of which shall share a common side with at least one other cadastral block.

(6) The Authority shall not accept or register any application for a mineral tenement, other than a reconnaissance licence, located wholly or partly within a Geological Survey Reserve Area.

(7) A local government authority which has promulgated by-laws for granting and regulating artisanal mining permits, may, with the prior permission of the Authority, grant artisanal mining permits within a Geological Survey Reserve Area for such limited time period and place as may be directed by the Authority.

(8) On the coming into effect of a Geological Survey Reserve Area under this section any—

(*a*) registered application for a mineral tenement over land the subject of the reservation shall be null and void with regard to that part of the area applied for which is within the boundaries of the Geological Survey Reserve Area, and the application shall be amended accordingly; and

(*b*) area of land the subject of any non-exclusive prospecting licence shall be deemed to be adjusted so that any land the subject of the Geological Survey Reserve Area is excluded from the licence area.

(9) A mineral tenement, other than a reconnaissance licence, shall

not be granted in any area located within a Geological Survey Reserve Area except under a competitive tendering process pursuant to section 56.

(10) At such time as a mineral tenement is granted pursuant to a competitive tendering process under section 56, such mineral tenement area is deemed excised from any Geological Survey Reserve Area in which it is located.

(11) Where a tendering process pursuant to section 56 is commenced on land the subject of a Geological Survey Reserve Area before the expiry date of the reservation, the reservation of the area shall be deemed extended until such time as the tendering process results in a mineral tenement being granted or the tendering process is terminated.

Competitive tender process for mineral tenement

56.—(1) Any part of a Geological Survey Reserve Area shall be available for competitive tendering under this section.

(2) Subject to subsection (4), the Authority may approve a competitive tender process to allocate mineral tenement areas that are located within a Geological Survey Reserve Area.

(3) A mineral tenement area approved for a tendering process under this section shall be in conformity with the requirements of section 284.

(4) The terms and conditions of a competitive tender process shall include at least the following—

(*a*) a definition of a qualified bidder;

(*b*) a requirement for payment of a tender prequalification application fee;

(*c*) a description of the prequalification process;

(*d*) a requirement for payment of a bid processing fee;

(*e*) a requirement that a successful bidder of the tender shall offer at least the minimum bonus payment stated in the competitive tender invitation;

(*f*) a requirement that the winning bidder shall be selected solely on the basis of the qualified bidder pledging the highest bonus payment; and

(*g*) requirement that open bidding (to which a member or members of the press shall be invited and allowed to report on the bidding results) shall be used and will be done in three rounds at only one meeting of prequalified bidders.

(5) The terms and conditions of a competitive tender process shall be posted on the website of the Authority.

(6) Before a tenement can be granted to the successful bidder of a tender process under this section, the bidder shall meet all requirements under this Act for the grant of that type of tenement.

(7) A bonus payment pledged by the winner of a tendering process under this section shall be payable upon the grant of the tenement to which the tendering process relates.

(8) Upon the grant of a mineral tenement under this section, the Authority shall post a copy of the licence on the website of the Authority.

Offence to unduly influence a competitive tender

57. A person, including a public officer, who influences or seeks to influence the outcome of a competitive bidding process initiated under this Division other than on the terms and conditions set out under section 56 commits an offence and shall, upon conviction, be liable to a fine as of K30,000,000 and imprisonment for ten years.

Division 4 – Transfer and Creation of Legal Interests

Transfer without approval has no force or effect

58. The transfer of a mineral tenement that is transferable, or an instrument by which an equitable interest in, or affecting, a mineral tenement that is transferable, shall be of no force or effect, unless the transfer has been approved pursuant to section 59.

Application to transfer a mineral tenement

59.—(1) A holder of an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence may apply to transfer the licence to another party.

(2) An application under subsection (1) shall be submitted to the Authority in the prescribed manner and shall include—

(*a*) an instrument of transfer in the prescribed form;

(*b*) a detailed statement describing the reasons for the requested transfer;

(*c*) an attestation by the transferee that the transferee—

(i) has the financial and technical capability to perform all obligations under the tenement and documentation to support the attestation;

(ii) meets all the eligibility requirements of this Act to hold the type of mineral tenement to be transferred;

(iii) shall assume all liability for acts or omissions that arose out of the obligations of the mineral tenement before the transfer of such title to the transferee; and

(iv) upon transfer of the mineral tenement, shall assume all obligations imposed on the mineral tenement by this Act, the regulations and the conditions set out in the licence; and

(d) the prescribed application fee or proof that such fee has been paid.

(3) Where any attestation provided pursuant to subsection (2) is found to be false—

(*a*) the person who makes the attestation is personally guilty of an offence and shall, upon conviction, be liable to a fine of K10,000,000; and

(*b*) if so decided by the Authority (in the case of a transfer of an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence) or if so decided by the Authority (in the case of a small-scale mining licence)—

(i) if the transfer decision is still pending, the mineral tenement transfer application shall be null and void; and

(ii) if the transfer application has been approved, any transfer of the mineral tenement shall be null and void and the mineral tenement obligations shall revert to the original mineral tenement licence holder and any instrument purporting to transfer or assign the mineral tenement shall be null and void.

(4) Upon receipt of an application to transfer a mineral tenement, the Authority shall determine whether the application meets all the requirements set out in subsection (2).

(5) Where the Authority determines that an application submitted under subsection (1) meets all the requirements of subsection (2), the Authority shall, within fourteen days, approve or refuse the application.

(6) Subject to subsection (7), the approval under subsection (5), the Authority may be subject to such conditions as the Authority may deem necessary in the circumstances.

(7) The Authority shall give its approval to the transfer of an exploration licence, a retention licence, a medium-scale mining licence or a large-scale mining licence where the transferee—

(*a*) is a person controlling, controlled by, or under common control with, the transferor;

(*b*) is a person eligible under this Act to hold that type of mineral tenement;

(*c*) has provided the attestations required by subsection (2)(c); and

(*d*) has demonstrated to the satisfaction of the Authority that transferee has the financial and technical capability to perform all obligations under the tenement.

(8) Where an application to transfer a mineral tenement is approved under subsection (6), the Authority shall—

(*a*) within fourteen days, notify the applicant of the approval;

(*b*) reissue to the transferee, with no change in its term, the mineral tenement licence with the new holder's name and any changed conditions specified by the Authority in the licence being transferred; and

(*c*) enter the details of the instrument of transfer in the Register.

(9) An instrument of transfer of a mineral tenement shall not convey a legal or equitable interest in a mineral tenement unless and until it has been registered under subsection (8).

(10) Where an application to transfer a mineral tenement is refused under subsection (5), the Authority shall, within fourteen days, notify the applicant that its application is refused and the reasons for the refusal.

Legal or equitable mineral tenement interest only by written consent

60. A person shall not create, transfer, assign, effect or deal with whether directly or indirectly, a legal or equitable interest in, or affecting, a mineral tenement, except by an instrument in writing.

Legal or equitable interest instrument to be registered

61.—(1) This section applies to—

(*a*) an instrument by which a legal or equitable interest (such as a right that is subleased, pledged, mortgaged, charged, hypothecated or subject to any security interest) in an existing or future mineral tenement is or may be created, partially assigned, or otherwise dealt with, whether directly or indirectly, which is not an instrument of transfer to which section 59 applies; and

(*b*) an instrument constituting a tribute agreement.

(2) For the purposes of this section, "tribute agreement" means an agreement made by the holder of a mining licence with any other person whereby that person may work the mining licence area on terms providing that the holder of the mineral tenement shall receive from that person a portion or percentage of the minerals won or the proceeds of their sale.

(3) A—

(*a*) legal or equitable interest created, assigned or otherwise dealt with by an instrument, either directly or indirectly; or

(*b*) tribute agreement,

shall not be valid unless and until the instrument or the

agreement has been registered under subsection (4).

(4) The parties to an instrument to which this section applies shall submit the instrument, to the Authority, in the prescribed form, and the Authority upon such receipt shall register the instrument in the Register.

(5) Subject to subsection (6), the Register containing the registration of instruments under subsection (4) shall be open and available to the public.

(6) The contents of an instrument registered under subsection (4) shall be treated as confidential and its contents shall not be made available to any person other than an authorized officer of the Authority, or as required for use in a court proceeding.

(7) The parties to an instrument registered under this section may jointly request the Authority to deregister an instrument previously registered under this section, and upon the request duly signed by all the parties to the instrument, the Authority shall deregister the instrument.

(8) Upon receipt of a court order to deregister an instrument approved under this section, the Authority shall deregister the instrument.

Liability of holder

62. The creation of a legal or equitable interest in, or affecting, a mineral tenement, shall not affect the liability of the holder of the mineral tenement for any breach of the conditions of the mineral tenement or of any of the provisions of this Act.

Change in control requires notification

63. The holder of a mineral tenement where the mineral tenement is held by a company and there is a change in who controls the company, such as a sale of a majority ownership interest or a majority of its shares, shall within fourteen days, notify the Authority.

Division 5– Consolidation of Mineral Tenements

Application of this Division

64. This Division applies to the consolidation of existing mining licences (in this Division referred to as "existing mining licences") into one tenement (in this Division referred to as "consolidated mining licence").

Tenement types which cannot be consolidated

65. The following tenement types shall not be consolidated—

(*a*) non-exclusive prospecting licence;

(*b*) reconnaissance licence; and

(*c*) exploration licence.

Application for mining licence consolidation

66. An application for the consolidation of existing mining licences shall be submitted, in triplicate, to the Authority in the prescribed form, no later than four months prior to the expiry of the soonest expiring existing mining licence and shall be accompanied by—

(*a*) the prescribed fee;

(*b*) a schedule in the prescribed form describing the corners of the boundary of the area in conformity with the requirements of section 284;

(*c*) a sketch map showing the boundary of the area to be consolidated and such other natural features and the location of villages, if any, as will allow the area to be correctly located;

(*d*) the applicant's proposed plans for the consolidated mining licence; and

(*e*) any environmental and social impact assessment report or certification of approval required by the Environment Management Act.

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Grant of a consolidated mining licence

67.—(1) The Authority may, upon being satisfied that the holder of two or more adjoining existing mining licence complies with the requirements prescribed under section 66, grant to the applicant a consolidated mining licence.

(2) A consolidated mining licence—

(*a*) shall be one of the existing mining licences, as prescribed, amended accordingly; and

(*b*) subject to subsection (3), may contain such—

(i) conditions as were attached to the existing mining licences; and

(ii) other conditions as the Authority may determine.

(3) Where an application for the consolidation of existing mining licences is submitted pursuant to subsection (1) and the conditions attached to the existing mining licences are not the same, the Authority shall determine the conditions attaching to the consolidated mining licence.

Term of a consolidated mining licence

68. The term of a consolidated mining licence shall expire on the expiry date of the existing mining licence with the latest expiration date.

Maximum area of a consolidated mining licence

69. The area of land over which a consolidated mining licence may be granted shall not exceed the maximum area specified by this Act for a mining licence of its type.

Shape of area of consolidated mining licence

70. Where one or more mining licences are consolidated, the resulting mining licence shall be in conformity with the requirements of section 284.

Effect of consolidation

71. Where an existing tenement is consolidated, the liability of the holder of that existing tenement—

(*a*) to pay annual ground rent, fee, royalties, penalty, compensation or other money or any other account, that is payable;

(*b*) to perform any obligation required to be performed; or

(*c*) for any act done or default made,

before the date of grant of the consolidated mining licence, shall not be affected.

Division 6– Surrender of Mineral Tenements

Application of this Division

72. This Division applies to the voluntary surrender of a mineral tenement area in whole or in part.

Application for surrender

73.—(1) The holder of a mineral tenement that wishes to surrender all or part of the land subject to its licence shall apply to the Authority for a certificate of surrender, in respect of the land, not less than three months before the date on which the holder wishes the surrender to have effect.

(2) An application for the surrender of all or part of a mineral tenement shall be submitted to the Authority in the prescribed form and manner.

(3) An application under subsection (1) shall—

(*a*) state the date on which the applicant wishes the surrender to have effect;

(*b*) include the particulars of the operations carried on in respect of the land to be surrendered; and

(*c*) be supported by such records and reports in relation to those operations as the Authority may reasonably require.

(4) Where a mineral tenement holder is applying to surrender only part of its tenement area, except in the case of a non-exclusive prospecting licence, the application shall include—

(*a*) a schedule in the prescribed form describing the corners of the boundary of the area to remain part of its tenement area in

latitude and longitude which shall be in conformity with the requirements of section 284; and

(*b*) a sketch map, in the prescribed form, showing the boundary of the area to remain part of its tenement area and such other natural features and the location of principal villages, if any, as will allow the area to be correctly located.

Restrictions on surrender of mining licence area

74.—(1) Application for the surrender of any part of a mining licence area where any part of the area sought to be surrendered is attached by a court of competent jurisdiction shall not be considered so long as such attachment remains in force.

(2) An application for the surrender of any part of a mining licence area shall not be considered unless the written consent to the application of all persons having interests registered against the mining licence has been delivered to the Authority.

(3) The Authority shall not approve a certificate of surrender—

(*a*) to an applicant that is substantially in default;

(*b*) to an applicant who fails to comply with any requirement of the Authority for the purposes of subsection 73(3) (*c*); or

(*c*) if the Authority is not satisfied that the applicant will leave the land to be surrendered and on which the applicant's operations have been carried on in a condition which is safe and which accords with good mining practice.

Duties of Authority on application to surrender

75.—(1) As soon as practicable after an application for surrender has been submitted under section 73, the Authority shall determine whether the mineral tenement holder has complied with any conditions of the tenement and this Act which relate to the cessation of operations, restoration of the land and surrender, on the area being surrendered.

(2) Without limiting the generality of subsection (1), the Authority shall determine in the case of an application to surrender the whole of a mineral tenement area that—

(*a*) annual ground rent, mineral royalty and fees relating to the mineral tenement have been paid;

(*b*) environmental, rehabilitation and closure obligations relating to the mineral tenement have been met;

(*c*) compensation payable to occupiers of land and landowners has been paid; and

(*d*) reports required to be submitted under this Act have been submitted in compliance with this Act;

(3) Where the Authority is satisfied that the applicant for a mineral tenement surrender has complied with the conditions of its licence and obligations under this Act, the Authority shall approve and sign a certificate of surrender in the prescribed form, either unconditionally or subject to such conditions as are specified in the certificate, in respect of the land to which the application relates.

(4) Where the Authority has signed a certificate of surrender pursuant to subsection (3), the Authority shall—

(*a*) register the surrender or partial surrender of area in the Register;

(*b*) in the case of a partial surrender, endorse the surrender of partial area on the mineral tenement licence;

(*c*) notify the applicant that the certificate of surrender has been approved and where the applicant can be issued the certificate or how it can be accessed electronically; and

(*d*) post the notice of the surrender or partial surrender continuously on the website of the Authority for a period of thirty days.

(5) In the case of the surrender of the whole of a mineral tenement and on the completion of the requirements of subsection (3), the Authority shall cancel the licence and after deducting from the security if any—

(*a*) any fee, annual ground rent, royalties, production levy, compensation, penalty or other money or any other account that is payable on or before the date of surrender; and

(*b*) any costs incurred by the Authority in ensuring that any other liabilities are met,

remit the balance, if any, to the former holder of the tenement.

(6) Where the Authority is satisfied that the holder of the mineral tenement has not complied with any condition of the tenement under subsections (1) or (2) or this Act, the Authority shall notify the holder in writing accordingly.

Effect of certificate of surrender

76.—(1) Land in respect of which a certificate of surrender is issued shall be treated as having been surrendered with effect from the date on which notice of the surrender is given pursuant to subsection 75(4)(c).

(2) The surrender of any land under a certificate of surrender shall not affect any liability incurred before the date on which the surrender has effect in respect of the land, and any legal proceedings that might have commenced or continued in respect of the liability against the

applicant for the certificate of surrender may be commenced or continued against the holder of the certificate.

(3) Where a holder of a mineral tenement surrenders its tenement in whole or in part, the liability of the holder—

(*a*) to pay annual ground rent, fee, royalties, penalty, compensation or other money or any other account, that is payable;

(*b*) to perform any obligation required to be performed; or

(*c*) for any act done or default made,

on or before the surrender takes effect, shall not be affected.

Rights of a holder on surrender

77. Notwithstanding anything to the contrary in this Act, where a mineral tenement is surrendered in whole or in part, every right, title and interest held (but not any liability) under the tenement in respect of the whole of the land or that part of the land which is surrendered, as the case may be, shall cease and terminate on the date on which the surrender is effective.

Obligation to mark boundaries after partial surrender of mineral tenement area

78.—(1) Where a holder of a medium-scale or large-scale mining licence has applied for and been granted a partial surrender of its tenement area, the holder shall, within thirty days of the effective date of surrender—

(*a*) survey the area of land to be retained as provided under section 154; and

(*b*) mark the boundaries of the remaining licence area as provided under section 155, and remove all markers from that area of land surrendered.

(2) Where a holder of a small-scale mining licence has applied for and been granted a partial surrender of its tenement area, within thirty days of the effective date of surrender, it shall mark the boundaries of the remaining licence area as provided under section 186.

(3) Where a holder of a mining licence has applied for and been granted a surrender of the whole of its mineral tenement, the holder, no later than thirty days of the effective date of surrender, shall remove all boundary markers it previously placed to mark the tenement boundary.

Division 7–Suspension, cancellation and expiry of a tenement

Suspension or cancellation of mineral tenement

79.—(1) Subject to this section, where a holder of a mineral tenement—

(*a*) fails to use, in good faith, the land the subject of its licence for the purpose for which the licence was granted;

(*b*) uses that land subject of its licence for any purpose other than the purpose for which its licence was granted;

(*c*) fails to comply with any requirement of this Act (not being exempted under this Act from doing so) with which it is bound to comply;

(*d*) fails to comply with a condition of its licence (not being exempted under this Act from doing so);

(*e*) fails to comply with a direction lawfully given under this Act or with a condition on which any certificate of surrender is issued or on which any exemption or consent is given under this Act;

(*f*) fails to comply with the conditions, relating to the exercise of its rights under its licence;

(*g*) fails to pay any amount payable by the licence holder under this Act within two months of the amount becoming due; or

(*h*) does or fails to do anything specified in this Act where the respective provision of this Act requires suspension or cancellation,

the Authority, on that ground, may, subject to subsections (3), (4) and (5) by notice in writing served on the holder of the mineral tenement licence, suspend or cancel the licence.

(2) The Authority shall not, under subsection (1), suspend or cancel a licence, other than an emergency suspension order as provided under section 26, unless—

(*a*) the Authority has, by notice in writing served on the holder of the licence, given not less than thirty days' notice of the Authority's intention to suspend or cancel the licence on that ground;

(*b*) the Authority has, in the notice, specified a date before which the holder of the licence, in writing, may submit any matter which it wishes the Authority to consider; and

(*c*) the Authority has taken into account—

(i) any action taken by the holder of the licence to remove that ground or to prevent the recurrence of similar grounds; and

(ii) any matters submitted to the Authority by the holder of the mineral tenement pursuant to paragraph (b).

(3) The Authority shall not, under subsection (1)(*g*), suspend or cancel a licence on a ground referred to subsection (1)(*g*), if, before the date specified in a notice referred to in subsection (2), the holder of the licence pays the amount of money concerned together with an amount of interest, if any, which the Authority considers reasonable in all the circumstances of the case.

(4) The Authority may, by notice in writing served on the holder of a mineral tenement, cancel the holder's licence—

(*a*) if the holder, being an individual—

(i) is adjudged bankrupt; or

(ii) enters into any agreement or scheme of composition with his or her creditors or takes advantage of any law for the benefit of debtors in satisfaction of his or her debts; or

(*b*) if, in the case of a holder that is a body corporate, an order is made or a resolution is passed winding up the affairs of the corporation, unless winding up is for the purpose of amalgamation or reconstruction and the Authority has been given notice thereof.

(5) Where two or more persons constitute the holder of a mineral tenement, the Authority shall not, under subsection (6), cancel the licence on the occurrence, in relation to one or only some of the persons constituting the holder, of an event entitling the Authority to so cancel the licence, unless the Authority is satisfied that any other person or persons constituting the holder are unwilling, or would be unable, to carry out the duties and obligations of the holder of the licence.

(6) A person, who fails to comply with a suspension order issued under this section commits an offence and shall, upon conviction, be liable to a daily fine of K1,000,000 commencing on the date that the suspension order was to be effective, and to imprisonment for ten years.

Duties of Authority on cancellation of a mineral tenement

80.—(1) The Authority shall, immediately after the cancellation of a mineral tenement—

(*a*) register the cancellation in the Register;

(*b*) post a notice of the cancellation in a publicly accessible area at the central headquarters of the Authority for a period of thirty days; and

(*c*) post a notice of cancellation on the website of the Authority for a period of thirty days.

(2) After registering the cancellation in accordance with subsection (1) but only after any certificate of closure required under section 273 has been issued, the Authority, after deducting from the security, if any, provided by the mineral tenement holder—

(*a*) any fee, annual ground rent, royalties, compensation, penalty or other money or any other account that is payable on or before the date of cancellation; and

(*b*) any costs incurred by the Authority in ensuring that any other liabilities are met,

shall remit the balance, if any, to the former holder of the mineral tenement.

Duties of Authority on expiry of a mineral tenement

81.—(1) The Authority shall, immediately after the expiry of a mineral tenement, register the expiry in the Register.

(2) After registering the expiry in accordance with subsection (1) but only after any certificate of closure required under section 273 has been issued, the Authority, after deducting from any security, if any, provided by the mineral tenement holder—

(*a*) any fee, annual ground rent, royalties, compensation, penalty or other money or any other account, that is payable on or before the date of expiry; and

(*b*) any costs incurred by the Authority in ensuring that any other liabilities are met,

shall remit the balance of that security, if any, to the former holder of the mineral tenement.

Effect of cancellation or expiry on rights and liabilities

82. On cancellation or expiry of a mineral tenement or artisanal mining permit—

(*a*) all rights conferred by or enjoyed under the mineral tenement or permit shall cease as from the date of cancellation or expiry;

(*b*) any obligation or liability incurred before the cancellation or expiry shall not be affected; and

(*c*) any legal proceedings that might have been commenced or continued against the former holder of the mineral tenement or permit holder may be commenced or continued.

Division 8–Removal of Property

Removal of property from expired, abandoned, surrendered, cancelled mineral tenement area

83. Where a mineral tenement area has been wholly or partly surrendered, abandoned, cancelled, or expired, the Authority may, by notice served on the person who is or was the holder of the mineral tenement, direct that person to remove or cause to be removed from the area, all property brought into that area by any person engaged or concerned in the activities authorized by the mineral tenement, or to make arrangements that are satisfactory to the Authority with respect to the area.

Refusal to remove property

84. A person to whom a written notice is given under section 83 who refuses or fails to comply with the directions required by the notice within the period specified in the notice by which the direction was given, commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 for each day of noncompliance.

Consequences of failure to remove property

85. Where a person who has been given a direction under section 83 has failed to comply with the direction, the Authority—

(*a*) may do or cause to be done all or any of the things required by the notice;

(*b*) may remove or cause to be removed, in such manner as the Authority thinks fit, all or any of the property from the area removed from a mineral tenement area; and

(*c*) may dispose of, sell or cause to be sold by public auction, as the Authority thinks fit, all or any of the property referred to in paragraph (b) that belongs, or that the Authority reasonably believes to belong, to the person to whom the direction was notified.

Deduction of proceeds for failure to remove property

86. The Authority may deduct from the proceeds of a sale of property under section 85 that belongs, or that the Authority believes to belong, to a particular person—

(*a*) all or any part of any costs and expenses incurred by the Authority under section 85 in relation to that property;

(*b*) all or any part of any costs and expenses incurred by the Authority in relation to the doing of anything required by a direction under section 85 to be done by the person; and

(*c*) all or any part of any fees or amounts due and payable under this Act by the person.

Property removal costs incurred by the Authority

87. The costs and expenses incurred by the Authority under section 85 shall be those in relation to—

(*a*) the removal, disposal or sale of property, and are a debt due by the owner of the property to the Authority; and

(*b*) the doing of anything required by notice under section 83 to be done by a person who is or was the holder of a mineral tenement, are a debt that is owed by that person to Malawi, and to the extent to which the costs and expenses are not recovered under section 86 are recoverable in a court of competent jurisdiction, as a debt due to Malawi.

Penalty for obstructing efforts to remove property

88. A person who, without reasonable excuse, obstructs, molests, hinders or prevents the—

(*a*) the holder or prior holder of a mineral tenement from removing its property from any area it has surrendered or otherwise had removed from its mineral tenement area; or

(*b*) the Authority from removing property pursuant to section 85,

commits an offence and shall, upon conviction, be liable to a

fine of K10,000,000 and K1,000,000,000 for each day of default and or to imprisonment for ten years.

Part VI—Non-exclusive Prospecting Licence

Eligibility for non-exclusive prospecting licence

89.—(1) A non-exclusive prospecting licence holder shall be—

(*a*) a Malawian citizen;

(*b*) a cooperative mining society registered pursuant to section 288;

(*c*) a mining partnership registered pursuant to section 288;

Cap. 46:03 (*d*) a company registered under the Companies Act, that is one hundred per cent owned by Malawian citizens;

Cap. 46:03 (*e*) a company duly incorporated under the Companies Act, that is one hundred per cent owned by Malawian citizens; or

Cap. 5:03 (*f*) an association incorporated under the Trustees Incorporation Act, that comprises only Malawian citizens.

(2) A person shall hold a maximum of two non-exclusive prospecting licences.

(3) A non-exclusive prospecting licence shall not be issued to a person unless that person intends, within the limits of the person's competence and resources, to in good faith and fact undertake and commit to perform prospecting activities.

(4) Where it is determined after a non-exclusive prospecting licence been issued to a holder who does not meet the eligibility requirements of this section, the Authority shall—

(*a*) determine the licence null and void;

(*b*) inform the holder of the determination; and

(*c*) record the determination in the Register.

(5) A person who knowingly and falsely attests in an application for a non-exclusive prospecting licence that the applicant meets the eligibility requirements of subsection (1) commits an offence and shall, upon conviction be liable, to a fine of K5,000,000 or to imprisonment for one year.

Application for non-exclusive prospecting licence

90.—(1) A person shall apply to the Authority for a non-exclusive prospecting licence.

(2) An application for a non-exclusive prospecting licence shall be in the prescribed form and shall—

(*a*) in the case of an application by—

(i) an individual, provide the full name, address (which shall

be the registered address upon the grant of the licence) and nationality of the individual;

(ii) mining cooperative society or mining partnership, provide the name of each member of the society or the partnership and his nationality, and the address (which shall be the registered address upon the grant of the licence) to which all correspondence relating to the licence shall be sent; or

(iii) a company, provide the names and nationalities of all its members or directors and, if a corporation with share capital, the name and nationality of any person who is the beneficial owner of more than five per cent of the issued share capital, and the company's address (which shall be the registered address upon the grant of the licence);

(*b*) identify up to three contiguous districts wherein the approved prospecting work programme will be executed; and

(*c*) be accompanied by—

(i) in the case of a company, a copy of the company's certificate of registration;

(ii) a statement describing in reasonable detail the prospecting work programme proposed to be carried out in the area of land over which the licence is sought, including an estimate of the cost of performing the programme;

(iii) a statement describing the potential effect of the prospecting work programme on the environment, and on any known monument, shrine or relic in the requested licence area, and including a description of the applicant's plans for environmentally responsible prospecting activities;

(iv) a description of any circumstances that may require the licence to be granted subject to particular conditions;

(v) other materials as may be prescribed;

(vi) any other material addressing matters that the applicant wants to be considered; and

(vii) the prescribed application fee or proof that such fee has been paid.

(3) The application submitted in relation to subsection (2) may be withdrawn by the applicant through the submission of a notice of withdrawal to the Authority.

(4) An application for a non-exclusive prospecting licence shall be processed in accordance with Part IV, Division 2.

Term of non-exclusive prospecting licence

91.—(1) The term of a non-exclusive prospecting licence shall be one year.

(2) A non-exclusive prospecting licence may be extended, under section 92, once for an additional term of one year.

(3) The term of a non-exclusive prospecting licence commences on the date on which the licence is granted.

Extension of non-exclusive prospecting licence term

92.—(1) A holder of a non-exclusive prospecting licence may, not later than thirty days prior to the expiry of its licence, apply to extend the term of the licence in respect of all or any of the districts to which it relates.

(2) An application to extend the term of a non-exclusive prospecting licence shall—

(*a*) be submitted in the prescribed form and manner;

(*b*) be accompanied by a brief summary report on prospecting activities carried out to the present time and an explanation of why the time extension is justified;

(*c*) describe in reasonable detail the prospecting work programme proposed to be carried out in the area of land over which the licence is sought, including an estimate of the cost of performing the programme;

(*d*) include an attestation, signed by the applicant, that it represents and promises to undertake and perform in good faith the proposed prospecting work programme;

(*e*) describe the potential effect of the prospecting work programme on the environment, and on any known monument, shrine or relic in the requested licence area, and including a description of the applicant's plans for environmentally responsible prospecting activities; and

(*f*) describe any circumstances that may require the licence to be amended subject to particular conditions;

(i) address other matters as may be prescribed;

(ii) include other material addressing matters that the applicant wants to be considered; and

(iii) be accompanied by the prescribed application fee or proof that such fee has been paid.

(3) Subject to subsections (4) and (5), the Authority—

(*a*) may approve the application to extend the term of the licence with or without variation of the conditions of the licence, for a period that when added to the original term of the licence will not exceed two years; and

(*b*) if not satisfied, shall refuse to extend the term.

(4) A term of a non-exclusive prospecting licence shall not be extended unless the applicant—

(*a*) has undertaken and performed prospecting activities, in good faith, within the limits of its competence and resources during the initial term of the licence; and

(*b*) represents and promises in a written attestation to undertake and perform in good faith further prospecting activities as required by this Act.

(5) The term of a non-exclusive prospecting licence shall not be extended or otherwise amended or modified in any way if the applicant is in default of its obligations under this Act or the conditions of the licence.

(6) Except as otherwise provided in this section, an application for the extension of a non-exclusive prospecting licence shall be processed in accordance with Part IV, Division 2.

Size and shape of non-exclusive prospecting licence area

93. A non-exclusive prospecting licence may authorize the holder of the licence to prospect in up to three contiguous districts, or in any district.

Mineral tenement area is excised from non-exclusive prospecting licence area

94.—(1) Where a mineral tenement, other than a reconnaissance licence or a non-exclusive prospecting licence, is granted to any person and that tenement's area overlaps all or a portion of a non-exclusive prospecting licence area, the area of overlap shall be deemed to be excised from the non-exclusive prospecting licence area.

(2) A holder of a non-exclusive prospecting licence shall not prospect on land subject to an—

(*a*) exploration licence;

(*b*) retention licence; or

(*c*) mining licence.

Rights of non-exclusive prospecting licence holder

95.—(1) A holder of a non-exclusive prospecting licence shall have the non-exclusive right to conduct prospecting activities in its licence area subject to the conditions of its licence, this Act and all other applicable law.

(2) Without limiting the generality of subsection (1), the holder of a non-exclusive prospecting licence shall have the right in its licence area, to—

(*a*) prospect for any mineral, except those mineral types, if any, specifically exempted in the licence;

(*b*) use prospecting methods, other than methods that use that heavy machinery such as recalculating drills and excavators, unless use of heavy machinery is specially allowed in the licence;

(*c*) enter upon any part of the land for prospecting, subject to first obtaining permission from lawful occupiers and landowners, if any (or where land is customary land, from the local government authority or traditional authority as the case may require) in that part of the land entered upon;

(*d*) request a land access order pursuant to section 221;

(*e*) take and remove specimens and samples not exceeding such limit as is required for prospecting and to analyse said specimens;

(*f*) erect camps and temporary buildings and installations including installations in any water;

(*g*) remove any camps, temporary buildings or installations the holder erected; and

(*h*) surrender all or part of the licence area subject to meeting surrender requirements imposed under this Act.

Obligations of non-exclusive prospecting licence holder

96.—(1) A holder of a non-exclusive prospecting licence shall in its licence area—

(*a*) within the limits of its competence and resources, carry on in good faith, prospecting operations in accordance with the conditions of its licence, this Act and applicable law;

(*b*) annually expend at least the minimum amount specified in its licence;

(*c*) furnish the Authority with information relating to its prospecting as the Authority may reasonably require or as may be prescribed;

(*d*) carry out promptly any directives relating to its prospecting operations which may be given to the holder by the Authority or an Inspector of Mines for the purposes of ensuring safety or good prospecting practices;

(*e*) not mine for minerals;

(*f*) not use heavy machinery such as recalculating drills and excavators unless use of such heavy machinery is specially allowed in the licence conditions;

(*g*) pay compensation for damages caused by its work as required by section 216;

(*h*) submit reports required by section 97; and

(*i*) do all other things required by this Act and as prescribed.

(2) Where the Authority determines that the holder of a non-exclusive prospecting licence failed to substantially comply with—

(*a*) any obligation arising under subsection (1) (*a*), (*b*), (*c*), (*d*) or (i) or the Authority, at its discretion, may commence the process to suspend or cancel the licence; or

(*b*) any obligation arising under subsection 1 (*e*), (*f*), (*g*) or (*h*)the Authority, without delay, shall commence to cancel the licence pursuant to section 79.

Non-exclusive prospecting licence reporting obligation

97.—(1) A holder of a non-exclusive prospecting licence shall submit to the Authority semi-annual progress reports at such time, in such form and manner, as prescribed.

(2) A semi-annual progress report as required by subsection (1) shall include the following information pertaining to the prescribed reporting period—

(*a*) a summary of the prospecting work undertaken in connection with the licence during the six-month reporting period;

(*b*) descriptions of any mineral occurrence discoveries; and

(*c*) such other information as is prescribed.

(3) Subject to subsection (4), until a non-exclusive prospecting licence expires or is cancelled or surrendered, a report submitted under subsection (1) shall not be made available to any person outside the Authority nor shall its content be revealed except to the extent necessary to publish statistical information concerning the geology and mineral resources in Malawi or for the Authority to give advice to the Minister on a confidential basis.

(4) A holder of a non-exclusive prospecting licence may consent for a report which the holder has submitted under subsection (1) to be disclosed prior to the expiry or cancelation or surrender of the licence subject to such conditions as the holder may specify in writing to the Authority.

(5) Nothing in this section precludes a holder of a non-exclusive prospecting licence from disclosing any report it has submitted pursuant to subsection (1) to any party.

(6) Subject to subsection (3), a report submitted under subsection (1) shall be available for perusal and copying by members of the public.

Transfer of non-exclusive prospecting licence

98. A non-exclusive prospecting licence shall not be transferred or assigned to another party.

Part VI—Reconnaissance Licence

Eligibility for reconnaissance licence

99.—(1) A reconnaissance licence holder shall be—

(*a*) a company, duly incorporated; or

(*b*) registered as a foreign company,

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under the Companies Act, that has the technical competence and financial ability to fulfil the licence obligations.

(2) The Authority shall not grant a reconnaissance licence to a company—

(*a*) if any director of the company or any major shareholder of the company holding a controlling interest in such company has been convicted of an offence under this Act requiring imprisonment, or was an officer of the Authority, at the time the company first applied for the grant of the licence; or

(*b*) if the company is a former reconnaissance licence holder whose former licence has been cancelled and it has applied for a reconnaissance area that in whole or in part overlaps the former licence reconnaissance area, if such application is made within two years of the date of such licence cancellation.

Application for a reconnaissance licence

100.—(1) A person shall apply for a reconnaissance licence to the Authority in the prescribed form and manner and shall have attached to it—

(*a*) a schedule, in the prescribed form, describing the corners of the proposed reconnaissance licence area as prescribed in section 289;

(*b*) a sketch map, in the prescribed form, showing the boundary of the proposed reconnaissance licence area;

(*c*) a copy of the company's certificate of registration in Malawi;

(*d*) a proposed reconnaissance work programme giving particulars of the work proposed to be carried out in the area of land over which the licence is sought, that—

(i) describes in detail the activities to be performed;

(ii) gives an estimate of the cost of the activities to be performed;

(iii) gives the time period required for completion of the programme; and

(iv) contains such other information as may be prescribed;

(*e*) a statement giving particulars of the technical and financial resources available to the applicant;

(*f*) a statement describing the potential effect of the

reconnaissance work programme on the environment, including a description of the applicant's plans for environmentally responsible reconnaissance activities;

(*g*) a description of any circumstances that may require the licence to be granted subject to particular conditions; and

(*h*) the prescribed application fee or proof that such fee has been paid.

(2) The application submitted in relation to subsection (1) may be withdrawn by the applicant through the submission of a notice of withdrawal to the Authority

(3) An application for a reconnaissance licence shall be processed in accordance with Part IV, Division 2.

Reconnaissance work programme

101.—(1) When assessing a proposed reconnaissance work programme submitted pursuant to an application for the grant or extension of the term of a reconnaissance licence, the Authority—

(*a*) shall consider whether the proposed reconnaissance work programme submitted by the applicant—

(i) provides for a substantial increase in the acquisition and interpretation of reconnaissance data from the area of the reconnaissance licence; and

(ii) meets all prescribed content requirements; and

(*b*) may request the applicant to provide further information and amend the application or reconnaissance work programme.

(2) The Authority may prescribe the contents of a reconnaissance work programme.

Term of reconnaissance licence

102.—(1) A term of a reconnaissance licence shall be one year.

(2) A reconnaissance licence may be extended, under section 103, only once, for a further term of one year.

(3) A term of a reconnaissance licence shall commence on the date on which the licence is granted.

Extension of reconnaissance licence term

103.—(1) A holder of a reconnaissance licence may, not later than sixty days prior to the expiry of its licence, apply to extend the term of its licence in respect of all or any part of the reconnaissance licence area.

(2) An application to extend the term of a reconnaissance licence shall—

(*a*) be submitted in the prescribed form;

(*b*) be accompanied by the prescribed fee;

(*c*) state the period for which the term extension is being sought;

(*d*) be accompanied by a brief summary report on reconnaissance activities carried out to the present time and an explanation of why the time extension is justified;

(*e*) be accompanied by a proposed reconnaissance work programme giving particulars of the work proposed to be carried out;

(*f*) provide an estimate of the cost of carrying out the proposed programme;

(*g*) describe any significant effect which the carrying out the reconnaissance work programme would be likely to have on the environment, and include a description of the applicant's plans for environmentally responsible reconnaissance activities; and

(*h*) include such other materials as may be prescribed.

(3) An applicant applying to extend the term of a reconnaissance licence who wishes to reduce the size of its licence area shall submit in their application—

(*a*) a schedule, in the prescribed form, describing the corners of the boundary of the reduced reconnaissance licence area as prescribed in section 289; and

(*b*) a sketch map, in the prescribed form, showing the boundary of the reduced area.

(4) Upon receipt of an application duly made to extend the term of a reconnaissance licence, the Authority—

(*a*) may approve the application to extend the term of the licence with or without variation of the conditions of the licence, for a period that when added to the original term of the licence will not exceed twenty-four months; and

(*b*) if not satisfied, shall refuse to extend the term.

(5) Except as otherwise provided in this section, an application for the extension of a reconnaissance licence shall be processed in accordance with Part IV, Division 2.

Size and shape of reconnaissance licence area

104. The area of land over which a reconnaissance licence is granted or its term extended shall be—

(*a*) no more than 100,000 square kilometres;

(*b*) no less than one hectare; and

(*c*) in conformity with the requirements of section 289.

Restrictions on grant of reconnaissance licence area

105.—(1) The Authority shall not grant a reconnaissance licence over any land—

(*a*) subject to a mineral tenement, except land the subject of a reconnaissance licence or a non-exclusive prospecting licence; or

(*b*) closed to mineral tenements under this Act or any applicable law.

(2) Where a reconnaissance licence purports to apply to land closed to the grant of a mineral tenement or that is subject to an exploration licence, retention licence or mining licence, that area shall be deemed to be excised from the reconnaissance licence area.

No expansion of reconnaissance licence area

106. Land that was not part of a reconnaissance licence area at the time the licence was granted shall not be added to the licence area after the date on which the licence was granted.

Mineral tenement area is excised from reconnaissance licence area

107. Where a mineral tenement, other than a reconnaissance licence or a non-exclusive prospecting licence, is granted to a person and that tenement's area overlaps with all or a portion of a reconnaissance licence area, the area of overlap shall be deemed to be excised from the reconnaissance licence area as of the date the other tenement is granted.

Rights of reconnaissance licence holder

108.—(1) A holder of a reconnaissance licence shall have the non-exclusive right to conduct reconnaissance activities in, on and over the reconnaissance licence area in accordance with its approved reconnaissance work programme.

(2) Without limiting the generality of subsection (1), where the holder's approved reconnaissance work programme so allows, the holder of a reconnaissance shall have the right in its licence area, subject to environmental and all other applicable law, to—

(*a*) erect camps and temporary buildings and installations;

(*b*) erect installations in any waters;

(*c*) remove any camps, temporary buildings or installations the holder erected;

(*d*) fly over the area for the purpose of performing geophysical and/or aerial surveys;

(*e*) use remote sensing to gather data and useful information to understand the area's geological, environmental and geographical attributes;

(*f*) enter upon any part of the land for the purpose of carrying out reconnaissance on that land, subject to first obtaining permission of lawful occupiers and landowners, if any, in that part of the land;

(*g*) request a land access order pursuant to section 221;

(*h*) take and remove specimens and samples not exceeding such limit as is required for reconnaissance and to analyse said specimens;

(*i*) surrender part or all of the licence area subject to meeting the surrender requirements imposed under this Act; and

(*j*) do all other things necessary or expedient for the undertaking of reconnaissance on the land.

Right to use airborne and remote sensing activities

109.—(1) A reconnaissance licence holder shall have the right to fly over any land, where necessary, for the purpose of the exercise of any right under section 108.

(2) The right to fly over land as provided under subsection (1) does not exempt a reconnaissance licence holder from the need arising under any other applicable law to obtain prior over-flight permission.

(3) Where the holder of a reconnaissance licence uses remote sensing methods in its reconnaissance work and it would be impractical to avoid gathering information on areas bordering or surrounded by its reconnaissance licence area, the holder shall be permitted to gather such information even though it may pertain to such areas not included in its licence area.

(4) A reconnaissance licence holder that has obtained information on land not the subject of its reconnaissance licence area as permitted under subsection (3), shall not report or share with any other person that information, other than information of a general nature, obtained on that area except with the prior written permission of the mineral tenement holder.

(5) For the purposes of subsection (4), information of a general nature includes data other than data specific to determining the specific attributes of a mineral occurrence.

Surface disturbance prohibited without permission

110.—(1) A holder of a reconnaissance licence shall not engage in drilling, trenching or excavation, or any other activity that substantially disturbs the surface of the land covered by the reconnaissance licence, except when authorized to do so by the Authority.

(2) A holder of a reconnaissance licence may apply to the Authority to disturb the surface of the land the subject of its licence, and, in exceptional and limited circumstances, the Authority, by written consent, may allow a limited exception to the restrictions under subsection (1).

(3) Nothing in this section shall prohibit the holder of a

reconnaissance licence from collecting surface samples, chipped samples, stream sediment samples and other samples of a similar nature.

Obligations of reconnaissance licence holder

111.—(1) A holder of a reconnaissance licence shall—

(*a*) conduct reconnaissance activities in accordance with its approved reconnaissance work programme, the conditions of its licence, this Act and applicable written law, in a professional manner consistent with good practice in the mining industry;

(*b*) commence reconnaissance fieldwork, if the fieldwork is part of its approved reconnaissance work programme, within ninety days of the licence registration date and notify the Authority no later than ninety days past the licence registration date whether fieldwork has commenced, in the prescribed form and manner;

(*c*) expend annually at least the minimum amount specified in its licence;

(*d*) provide any attachment required or agreed under section 45;

(*e*) pay the prescribed annual ground rent required under section 255;

(*f*) pay compensation for damages caused by its work as required by section 216;

(*g*) submit reports required by section 112; and

(*h*) do all other things required by this Act and as prescribed.

(2) Where the Authority determines that a holder of a reconnaissance licence has failed to substantially comply with—

(*a*) any obligation arising under subsection (1) (*a*), (*b*), (*c*), (*d*) or (*h*), or the Authority, at his discretion, may commence the process to suspend or cancel the licence; or

(*b*) any obligation arising under subsection (1) (*e*), (*f*) or (*g*), the Authority, without delay, shall commence the process to cancel the licence pursuant to section 86.

Reconnaissance licence reporting obligation

112.—(1) A holder of a reconnaissance licence shall submit to the Authority the following reports—

(*a*) semi-annual progress reports; and

(*b*) termination report.

(2) A holder of a reconnaissance licence shall submit the reports required by subsection (1) at such time and form as prescribed.

(3) A semi-annual progress report required by subsection (1) shall include at least the following information pertaining to the prescribed reporting period—

(*a*) a summary of the reconnaissance work undertaken in connection with the licence during the six-month reporting period;

(*b*) such other information as is prescribed.

(4) The termination report required by subsection (1) shall include at least the following information—

(*a*) a summary of all work undertaken in connection with the licence;

(*b*) such additional information as is required to give full details of all work undertaken in connection with the licence so as to convey accurately and comprehensively the aims of the work, the procedures adopted and the conclusions reached, and containing all data which may be of relevance to the geology and mineral resources in the reconnaissance licence area including—

(i) images of all aerial photographs taken in the course of carrying out the reconnaissance programme;

(ii) all geological, geochemical and geophysical maps, profiles, tapes, diagrams and charts made by or for the licence holder;

(iii) copies of all tests and analyses made by or for the licence holder; and

(iv) copies of all reports made by or for the licence holder, including interpretations concerning the mineral prospects in the reconnaissance area;

(*c*) statement of the total costs incurred by the licence holder in the performance of the reconnaissance programme; and

(*d*) such other information as is prescribed.

(5) Subject to subsections (6) and (7), until a reconnaissance licence expires or is cancelled or surrendered, a report submitted under subsection (1) shall not be made available to any person outside the Authority nor can its content be revealed except to the extent necessary to publish statistical information concerning the geology and mineral resources in Malawi or for the Authority to give advice to the Minister on a confidential basis.

(6) A holder of a reconnaissance licence may consent for a report which it has submitted under subsection (1) to be disclosed prior to the expiry or cancelation or surrender of the reconnaissance licence subject to such conditions as the holder may specify in writing to the Authority.

(7) Nothing in this section shall preclude a holder of a reconnaissance licence from disclosing any report which it has submitted pursuant to subsection (1) to any party.

(8) Subject to subsection (5), a report submitted under subsection (1) shall be available for perusal and copying by the general public.

Transfer of reconnaissance licence

113. A reconnaissance licence cannot be transferred or assigned to another party.

Part VII—EXPLORATION LICENCE

Eligibility for exploration licence

114.—(1) An exploration licence holder shall be—

(*a*) a company, duly incorporated; or

(*b*) registered as a foreign company,

under the Companies Act, that has the technical competence and financial ability to fulfil the licence obligations. Cap. 46:03

(2) An exploration licence shall not be granted or transferred to—

(*a*) a company—

(i) if any director of the company or any major shareholder of the company holding a controlling interest in such company has been convicted of an offence under this Act requiring imprisonment, or was an authorized officer at the time the company first applied for the grant or transfer of the licence; or

(ii) if the company is a former exploration licence holder whose former licence has been cancelled and it has applied for an exploration area that in whole or in part overlaps the former licence exploration area, if such application is made within two years from the date of such licence cancellation; or

(*b*) a registered foreign company, unless it has designated a legal practitioner, licensed to practice law in Malawi and who is a resident in Malawi, as its registered agent for purposes of accepting notices under this Act and legal service of process under the laws of Malawi.

Application for an exploration licence

115.—(1) A person shall submit an exploration licence shall to the Authority in the prescribed form and shall have attached to it—

(*a*) a schedule, in the prescribed form, describing the corners of the proposed exploration licence area as prescribed in section 284;

(*b*) a sketch map, in the prescribed form, showing the boundary of the proposed exploration licence area;

(*c*) a copy of the company's certificate of registration in Malawi, and a statement that provides the name and place of incorporation, the names and nationalities of the directors or equivalent officers and, if the company has share capital, the name of any person who is the beneficial owner of more than five percent of the issued share capital;

(*d*) a proposed exploration work programme giving particulars of the work proposed to be carried out in the area of land over which the licence is sought, that—

(i) describes in detail the activities to be performed;

(ii) identifies the minerals of primary interest;

(iii) gives an estimate of the cost of the activities to be performed;

(iv) gives the time period required for completion of the programme; and

(v) contains such other information as may be prescribed;

(*e*) a detailed description of any infrastructure requirements;

(*f*) a statement giving particulars of the technical and financial resources available to the applicant, including proof of adequate funds to pay for the first two years of the proposed exploration work;

(*g*) a statement describing the potential effect of the exploration work programme on the environment, including a description of the applicant's plans for environmentally responsible exploration;

(*h*) a description of any circumstances that may require the licence to be granted subject to particular conditions;

(i) any other material addressing matters that the applicant wants to have considered; and

(*j*) the prescribed application fee or proof that such fee has been paid.

(2) The application submitted in relation to subsection (1) may be withdrawn by the applicant through the submission of a notice of withdrawal to the Authority.

(3) Except as otherwise provided in this section, an application for the grant of an exploration licence shall be processed in accordance with Part IV, Division 2.

Term of exploration licence

116.—(1) The initial term of an exploration licence shall be five years.

(2) A term of an exploration licence shall commence on the date the licence is granted.

(3) A holder of an exploration licence may apply for an extension of the term of its licence for a period of up to three years pursuant to section 117.

(4) An application under subsection (3) for an extension of the term of exploration licence may be made on not more than two occasions.

Extension of exploration licence term

117.—(1) The holder of an exploration licence may, not later than ninety days prior to the expiry of its licence, apply to extend the term of its licence for a term of up to three years.

(2) An application to extend the term of an exploration licence shall—

(*a*) be submitted to the Authority in the prescribed form;

(*b*) be accompanied with the prescribed fee;

(*c*) state the period for which the term extension is sought;

(*d*) be accompanied by a brief summary report on exploration work carried out to the present time and an explanation of why the time extension is needed;

(*e*) be accompanied by a proposed exploration work programme meeting prescribed requirement giving particulars of the work to be carried out;

(*f*) provide an estimate of the cost of carrying out the proposed exploration work programme;

(*g*) describe any significant effect which the carrying out of the exploration work programme will likely have on the environment and measures that will be taken to mitigate harm; and

(*h*) include such other materials as may be prescribed.

(3) An applicant applying to extend the term of its exploration licence shall in its application reduce the size of its last approved licence area by at least half and shall submit in its application—

(*a*) a schedule, in the prescribed form, describing the corners of the boundary of the reduced exploration licence area as prescribed in section 284; and

(*b*) a sketch map, in the prescribed form, showing the boundary of the reduced area.

(4) Where application of the requirement in subsection (3) to reduce the licence area would result in a licence area of less than twenty-five square kilometres, the applicant may request and have approved an area of up to twenty-five square kilometres.

(5) The Authority shall approve an application to extend the term of an exploration licence if the licence holder has—

(*a*) complied with the application requirements under this section;

(*b*) substantially complied with the terms and conditions of its licence;

(*c*) met the minimum annual expenditure requirements of section

124;

(*d*) submitted all reports required under section 126;

(*e*) paid all compensation required by section 216;

(*f*) paid all annual ground rent as required by section 255; and

(*g*) submitted a reasonable exploration work programme for the period of extension.

(6) Where the Authority has determined that all required conditions set out in subsection (5) are met, the Authority shall endorse the licence with the extended term and may vary the conditions of the licence in light of the new exploration work programme and other changed circumstances.

(7) Where the Authority has determined that one or more of the requirements set out in subsection (5) have not been met, the Authority shall not approve the application and shall, within fourteen days of the determination, inform the applicant the reasons for the refusal.

(8) Where a holder of an exploration licence has registered an application to extend the term of its licence and the Authority refuses to approve the application, the holder may appeal the decision, within thirty days of being notified of the refusal, to the High Court.

(9) Where the High Court has determined on appeal that all the requirements of subsection (5) were met by the applicant, the Authority shall endorse the licence with the extended term and any changed conditions specified by the Court.

(10) Except as otherwise provided in this section, an application for the extension of an exploration licence shall be processed in accordance with Part IV, Division 2.

Size and shape of exploration licence area

118. An area of land over which an exploration licence is granted or its term extended shall be—

(*a*) no more than 2,500 square kilometres;

(*b*) no less than one hectare; and

(*c*) in conformity with the requirements of section 284.

Overlapping licences may be allowed in limited circumstances

119.—(1) The Authority may, with the prior written permission of the holder of an exploration licence and subject to such conditions and limitations as the holder may determine, grant one or more small-scale mining licences within that holder's exploration licence area.

(2) A holder of an exploration licence that has granted the Authority permission to grant one or more small-scale mining licences in its

licence area under subsection (1)—

(*a*) may at any time rescind its permission, or change the conditions and limitations of such permission; and

(*b*) may direct that any or all small-scale mining licences granted in its licence area not be extended past their current term,

by informing the Authority in writing.

(3) Where the permission of the exploration licence holder given under subsection (1) is a general permission, the Authority shall, without delay, inform the holder upon the registration of any small-scale mining licence application made in its exploration licence area, and the holder may withdraw permission for that licence to be granted.

(4) A small-scale mining licence granted pursuant to subsection (1) shall—

(*a*) be deemed to expire on the date that any mining licence is granted to a holder of an exploration licence over land the subject of its exploration licence; and

(*b*) include, as a condition in the licence, that the term of the licence shall end on the date that a mining licence is granted to a holder of an exploration licence over land the subject of its small-scale mining licence.

(5) The expiry of a small-scale mining licence by application of subsection (4) shall not provide grounds for any compensation claim by the holder of the expired small-scale mining licence.

Exploration licence area to not be extended without licence

120. Land that was not part of an exploration licence area at the time the licence was granted shall not be added to the licence area after the date on which the licence was granted.

Restrictions on grant of exploration licence

121.—(1) The Authority shall not grant an exploration licence over land which—

(*a*) constitutes an existing mineral tenement, other than land the subject of a non-exclusive prospecting licence or reconnaissance licence;

(*b*) is the subject of a registered mineral tenement application that predates the exploration licence application, other than an application for a reconnaissance licence or non-exclusive prospecting licence; or

(*c*) which is otherwise closed to mining under this Act or any other written law.

(2) Where an exploration licence purports to apply to any land closed to the grant of an exploration licence or that is subject to a pre-existing mineral tenement other than a reconnaissance licence or non-exclusive prospecting licence, that closed or pre-existing tenement area is deemed to be excised from the exploration licence area.

(3) An exploration licence shall not be granted to an applicant unless—

(*a*) the applicant meets all the eligibility requirements under section 114;

(*b*) the applicant has demonstrated adequate and available access to financial resources, technical competence and experience to carry on effective exploration including proof of adequate finances to carry-out the first two years of its proposed exploration work programme; and

(*c*) the proposed exploration work programme is sufficient in scope and scientific content that it can be expected to produce information that will result in additional exploration and advance the likelihood that the exploration licence area will be developed.

Rights of exploration licence holder

122.—(1) Subject to this Act, the conditions stipulated in the licence and applicable law, an exploration licence, while it remains valid and in effect, confers on the holder of the licence the exclusive right to conduct exploration in the licence area in accordance with its approved exploration work programme.

(2) Without limiting the generality of subsection (1), a holder of an exploration licence shall have the right within its licence area to—

(*a*) search for all types of minerals and mineral occurrences;

(*b*) apply on an exclusive first-come, first-considered basis for retention licence(s) or mining licence(s);

(*c*) erect camps and temporary buildings;

(*d*) erect installations in any waters for exploration purposes;

(*e*) remove any camps, temporary buildings or installations the holder erected;

(*f*) fly over the area for the purpose of performing geophysical or other aerial surveys;

(*g*) use remote sensing to gather data and useful information to understand the area's geological, environmental and geographical attributes;

(*h*) enter upon any part of the licence area for the purpose of carrying out exploration on that land;

(*i*) request a land access order pursuant to section 221;

(*j*) conduct drilling, trenching and pitting works;

(*k*) take and remove specimens and samples not exceeding such limit as is required for exploration and to analyse said specimens;

(*l*) surrender part or all of the licence area subject to meeting the surrender requirements imposed under this Act; and

(*m*) do all other things necessary or expedient for the undertaking of exploration on the land.

(3) The right of an exploration licence holder to apply on an exclusive first-come first-considered basis for retention licence(s) or mining licence(s) as provided in subsection (2) (*b*) means that a retention licence or mining licence shall not be granted to any party other than the holder of the exploration licence, except with the prior written permission of the exploration licence holder, for any land the subject of the exploration licence as long as the exploration licence remains valid for that area of land.

Obligations of exploration licence holder

123.—(1) A holder of an exploration licence shall—

(*a*) conduct exploration in accordance with its approved exploration work programme, the conditions of its licence, this Act and applicable law, in a good and professional manner consistent with good practice in the mining industry;

(*b*) commence exploration fieldwork, where the fieldwork is part of its approved exploration work programme, within one hundred and eighty days of the fieldwork has commenced;

(*c*) provide any attachment required or agreed under section 45;

(*d*) notify the Authority when there is change in the control of the company that holds the licence, such as a sale of a majority ownership interest or a majority of its shares, as required under section 63;

(*e*) pay compensation for damages caused by its work as required by section 216;

(*f*) pay the prescribed annual ground rent required under section 255;

(*g*) submit all reports required under section 126 and otherwise by this Act;

(*h*) expend in, on, or in relation to the exploration licence area the minimum annual amount required under section 124; and

(*i*) do all other things required by this Act and as prescribed.

(2) Where the Authority determines that the holder of an

exploration licence failed to substantially comply with—

(*a*) any obligation arising under subsection (1)(*a*), (*b*), (*c*), (*d*) or (i), the Authority, at its discretion, may commence the process to suspend or cancel the licence; or

(*b*) any obligation arising under subsection (*1*) (*e*), (*f*), (*g*) or (*h*), the Authority, without delay, shall commence to cancel the licence pursuant to section 79.

Annual minimum exploration expenditure requirement

124.—(1) The minimum expenditure required to be spent annually in connection with an approved exploration work programme shall be as prescribed.

(2) Acceptable expenditures to meet the requirement of section 123(1) (h) shall be those directly connected with the acquisition and interpretation of exploration data from the area of the exploration licence, including related laboratory and prefeasibility and feasibility work and other activities as are prescribed.

(3) Without limiting subsection (2), acceptable expenditures for the purposes of this section shall not include expenditures in respect of the purchase of—

(*a*) a mineral tenement; or

(*b*) land or buildings.

Obligation of exploration licence holder to keep accurate records

125.—(1) A holder of an exploration licence shall keep at its registered address full and accurate records of all its exploration work.

(2) Without prejudice to subsection (1), a holder of an exploration shall keep record of the—

(*a*) number of persons currently employed by it;

(*b*) costs incurred;

(*c*) location of trenches, drill holes, and where any samples were obtained;

(*d*) strata penetrated, with detailed logs of the strata;

(*e*) mineral occurrences discovered;

(*f*) results of any geophysical survey;

(*g*) results of any analysis of samples removed from land the subject of the licence;

(*h*) geological interpretations of the records maintained under paragraphs (*c*) to (*g*);

(*i*) reports prepared using data and information resulting from the exploration work programme;

(*j*) other work done in connection with the licence area; and

(*k*) such other information as may be prescribed.

(3) Where any of the information listed in subsection (2) is not otherwise required to be submitted to the Authority, a holder of an exploration licence shall include that information in its annual technical report submitted pursuant to section 126.

Exploration licence reporting obligations

126.—(1) A holder of an exploration licence shall submit to the Authority the following reports—

(*a*) annual exploration expenditure report;

(*b*) annual mid-year progress report;

(*c*) annual end of year technical report; and

(*d*) termination report.

(2) A holder of an exploration licence shall submit the reports required under this section at such time and form as prescribed.

(3) The annual exploration expenditure report required under this section shall include at least the following information pertaining to the prescribed annual reporting period—

(*a*) information sufficiently detailed to determine the total amount of expenditure by the licence holder that qualifies to meet annual minimum work obligations of the exploration licence under section 124 and for the Authority to verify such amounts; and

(*b*) such other information as is prescribed.

(4) The Authority may require a holder of an exploration licence to provide to the Authority an independent audit of an annual exploration expenditure report required under this section when any matter in the report is suspicious.

(5) The annual mid-year progress report required under this section shall include at least the following information pertaining to the prescribed reporting period—

(*a*) a summary of the exploration work undertaken in connection with the licence;

(*b*) description of mineral occurrence discoveries which may have mining potential; and

(*c*) such other information as is prescribed.

(6) The annual end of year technical report required under this section shall include at least the following information pertaining to the prescribed annual reporting period—

(*a*) a summary of all work undertaken in connection with the licence;

(*b*) additional information as is required to give full details of all work undertaken in connection with the licence so as to convey accurately and comprehensively the aims of the work, the procedures adopted and the conclusions reached, and containing all data which may be of relevance to the geology and mineral resources in the exploration licence area; and

(*c*) any incidents of non-compliance by the licence holder with the requirements of this Act (including the conditions of the exploration licence) and, in respect of each such incident—

(i) the cause of the non-compliance; and

(ii) the actions taken, or proposed to be taken, by the licence holder to remedy the non-compliance and prevent its recurrence; and

(*d*) such other information as is prescribed.

(7) The termination report required by subsection (1) shall—

(*a*) be submitted not later than sixty days from the date of surrender, expiry or cancellation of the exploration licence; and

(*b*) include—

(i) a summary of all exploration work and results obtained during the entire term of the licence; and

(ii) the subject matter referred to in subsection (6) in respect of the period commencing at the end of period covered in the previous annual end of year technical report up to the date of licence expiry, surrender or cancellation; and

(iii) such other information as is prescribed.

(8) Subject to subsection (9), until an exploration licence expires or is cancelled or surrendered, or if an exploration licence area has been converted to a mining licence area, until such mining licence has expired or been cancelled or surrendered, a report submitted under subsection (1) shall not be made available to any person outside the Authority nor can its content be revealed except to the extent necessary to publish statistical information concerning the geology and mineral resources in Malawi or for the Authority to give advice to the Minister on a confidential basis.

(9) A holder of an exploration licence, or if the exploration licence area has been converted to a mining licence area, the holder of such mining licence, may consent for a report which it has submitted under subsection (1) to be disclosed prior to the expiry or cancellation or surrender of the exploration licence or mining licence to which it relates subject to such conditions as the holder may specify in writing to the Authority.

(10) Nothing in this section shall preclude a holder of an exploration licence from disclosing any report which it has submitted pursuant to subsection (1) to any party.

(11) Subject to subsection (8), a report submitted under subsection (1) shall be available for perusal and copying by the general public.

Automatic extension of term for administrative reason

127.—(1) Where a holder of an exploration licence applies for a mining licence over all or part of land in the exploration licence area and the processing of the mining licence application has not been completed by the date on which the exploration licence expires, the exploration licence shall not terminate and its term shall automatically extend until—

(*a*) notice is given to the applicant of the refusal to grant the mining licence; or

(*b*) the date the mining licence is registered.

(2) Land not the subject of the mining licence application shall be deemed surrendered from the exploration licence area on the date the exploration licence would have expired if this section had not applied.

Mining licence is excised from exploration licence area

128.—(1) In accordance with sections 135 and 151, where a retention licence or mining licence is granted and that licence's area overlaps all or a portion of an exploration licence, the area of overlap is deemed to be excised from the exploration licence.

(2) Notwithstanding that an area of overlap may be deemed excised from an exploration licence under subsection (1), the exploration licence shall remain in force for any land the subject of the exploration licence that was not part of the overlapping area.

Effect of surrender of exploration licence area

129. Where a holder of an exploration licence has surrendered all or part of its licence area, the exploration licence may continue to have effect notwithstanding the fact that the exploration licence area has ceased to have the same shape, dimensions or area as originally described as the exploration licence area due to land being surrendered.

Transfer of exploration licence

130. A holder of an exploration licence may apply to transfer its licence pursuant to Part IV, Division 4.

Part VIII—Retention Licence

Eligibility for retention licence

131.—(1) A retention licence applicant shall be a holder of a valid exploration licence whose exploration licence area includes the entire area to which the retention licence application relates.

(2) A retention licence holder shall be a company—

(*a*) duly incorporated; or

(*b*) registered as an external company,

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under the Companies Act, that has the technical competence and financial ability to fulfil the licence obligations.

Application for retention licence

132.—(1) An application for the grant of a retention licence shall be submitted to the Authority in the prescribed form and shall be accompanied by—

(*a*) a schedule, in the prescribed form, describing the corners of the proposed retention licence area as prescribed in section 284;

(*b*) a sketch map, in the prescribed form, showing the boundary of the proposed retention licence area;

(*c*) a copy of the company's certificate of registration in Malawi;

(*d*) a copy of the applicant's exploration licence to which the retention licence area relates;

(*e*) a statement justifying the application that provides all the information required to meet the assessment requirements under section 133;

(*f*) a proposed retention work plan meeting the assessment requirements under section 133, including the estimated cost of implementing the plan;

(*g*) a statement describing the potential effect of the retention work plan on the environment, including a description of the applicant's plans for environmentally responsible activities;

(*h*) a description of any circumstances that may require the licence to be granted subject to particular conditions;

(*i*) any other material addressing matters that the applicant wants to have considered; and

(*j*) the prescribed application fee or proof that such fee has been paid.

(2) The application submitted in relation to subsection (1) may be withdrawn by the applicant through the submission of a notice of withdrawal to the Authority.

(3) An application for a retention licence shall be processed in accordance with Part IV, Division 2.

Justification and plans for a retention licence

133.—(1) In assessing an application for a retention licence, the Authority shall consider whether—

(*a*) it has been demonstrated that the applicant has located a mineral deposit which is of commercial significance; and

(*b*) the mineral deposit cannot justifiably be mined at the present time utilizing proven technology for one of the following reasons—

(i) adverse current mineral market conditions, which are, or may be, of a temporary nature;

(ii) adverse current financing conditions, which are, or may be, of a temporary nature;

(iii) adverse current infrastructure conditions, which are, or may be of a temporary nature;

(iv) a feasibility study (but not a prefeasibility study) has been commissioned which has a firm delivery date but which has not yet been completed;

(v) difficulties in obtaining requisite Government approvals are involved before mining can commence or that prevent mining or restrict it in a manner that is, or subject it to conditions that are, for the time being impracticable; or

(vi) agreement or resettlement or compensation arrangements with lawful occupiers or owners of land have not successfully progressed;

(*c*) exploration work has progressed as far as is practicable at the time and therefore a retention licence is necessary; and

(*d*) the proposed plan submitted by the applicant—

(i) provides for annual assessments that determine whether any condition underlying the statement required by section 132 (1) (*e*) justifying the application for the licence has changed; and

(ii) is appropriate to the circumstances, and

may request the applicant to provide further information or to amend the application or the submitted proposed plan.

(2) The statement required by section 132 (1) (*e*) justifying the application for a retention licence shall contain expert assessments by qualified persons acceptable to the Authority relating to—

(*a*) the commercial significance of the mineral deposit and the relevant market conditions and trends and economic factors; and

(*b*) such other information as the Authority may reasonably require to be included in the application proposal of the applicant.

(3) The Authority, may from time to time issue guidelines on the required content of proposed retention work plans, and any proposed plan submitted under section 132 (1) (*f*) shall conform to the guidelines.

Restrictions on grant of retention licence

134.—(1) The Authority shall not grant a retention licence over any land that was not the subject of a current and valid exploration licence on a date that the retention licence application was registered.

(2) The Authority shall not approve a retention licence unless the holder of the exploration licence applying for the retention licence—

(*a*) at the time the retention licence is applied for has —

(i) fully satisfied its obligations under this Act to pay annual ground rent pursuant to section 255;

(ii) spent in all years, except the present year, at least the minimum annual exploration expenditure required under section 124; and

(iii) submitted all reports required by section 126; and

(*b*) has, to the satisfaction of the Authority demonstrated that—

(i) it has located a mineral deposit which is of commercial significance;

(ii) one or more of the reasons justifying the licence set out in section 133(1)(b) reasonably apply; and

(iii) exploration work has progressed as far as is practicable at the time.

Effect of grant of retention licence on exploration licence area

135. The retention licence area shall cease to be part of exploration licence area to which it related, once the Authority grants a retention licence.

Term of retention licence

136.—(1) A retention licence may be granted—

(*a*) for a term based on the justification provided by the applicant but shall not exceed five years; and

(*b*) such term shall not be extended.

(2) A term of a retention licence shall commence on the date on which the licence is granted.

Size and shape of retention licence area

137. The area of land over which a retention licence is granted shall be—

(*a*) not be more than twenty-five square kilometres;

(*b*) not less than one hectare; and

(*c*) in conformity with the requirements of section 284.

No expansion of retention licence area

138. Land that was not part of a retention licence area at the time the licence was granted shall not be added to the licence area after the date on which the licence was granted.

Rights of retention licence holder

139. A holder of a retention licence—

(*a*) may to implement its approved plan for the licence area;

(*b*) may request a land access order pursuant to section 221; and

(*c*) has the exclusive right to apply for a mining licence, in respect of the retention licence area.

Obligations of retention licence holder

140.—(1) A holder of a retention licence shall—

(*a*) conduct its activities in accordance with its approved plan, the conditions of its licence, this Act and applicable law, in a good and professional manner consistent with good practice in the mining industry;

(*b*) expend annually at least the minimum amount specified in its licence to implement its approved plan;

(*c*) prepare, implement and update the community engagement plan required under section 289;

(*d*) notify the Authority when there is change in the control of the company that holds the licence, such as a sale of a majority ownership interest or a majority of its shares, as required under section 70;

(*e*) provide any attachment required or agreed under section 51;

(f) pay the prescribed annual ground rent required under section 255;

(*g*) submit the annual report required under section 141; and

(h) do all other things required by this Act and as prescribed.

(2) Where the Authority determines that a holder of a retention licence has failed to substantially comply with—

(*a*) any obligation arising under subsection (1)(*a*), (*b*), (*c*), (*d*) or (*e*), the Authority, at its discretion, may commence the process to suspend or cancel the licence; or

(*b*) any obligation arising under subsection (1) (*f*) or (*g*), the Authority, within fourteen days from the date of the determination, shall commence to cancel the licence pursuant to section 79.

Retention licence reporting obligation

141.—(1) A holder of a retention licence shall submit an annual report to the Authority.

(2) The holder of a retention licence shall submit the report required under this section at such time and form as prescribed.

(3) The annual report required under this section shall include at least the following information pertaining to the prescribed reporting period—

(*a*) a detailed update on the situation which justified the grant of the retention licence including why the retention licence is still needed;

(*b*) efforts undertaken by the retention licence holder to ensure that it will apply for a mining licence before its retention licence expires; and

(*c*) such other information as may be prescribed.

(4) Subject to subsection (5), until a retention licence expires or is cancelled or surrendered, a report submitted under subsection (1) shall not be made available to any person outside the Authority nor shall its content be revealed except to the extent necessary to publish statistical information concerning the geology and mineral resources in Malawi or for the Authority to give advice to the Minister on a confidential basis.

(5) A holder of a retention licence may consent for a report which it has submitted under subsection (1) to be disclosed prior to the expiry or cancellation or surrender of the retention licence subject to such conditions as the holder may specify in writing to the Authority.

(6) Nothing in this section shall preclude a holder of a retention licence from disclosing any report which it has submitted pursuant to subsection (1) to any party.

(7) Subject to subsection (4), a report submitted under subsection (1) shall be available for perusal and copying by the general public.

Transfer of retention licence

142. A holder of a retention licence may apply to transfer its licence pursuant to Part IV, Division 4.

Part VIII—Medium and Large-Scale Mining Licences

Agreements with respect to the grant of medium and large scale mining licences

143. The Minister, on behalf of the Republic, may enter into an agreement (not inconsistent with this Act or any prevailing law) with any person with respect to all or any of the following matters—

(*a*) the grant to that person, or to any person (including any body corporate to be formed) identified in the agreement, of a medium or large-scale mining licence on the condition, if any, specified in the agreement;

(*b*) condition or the conditions to be included in the medium or large-scale mining licence as granted or renewed; or

(*c*) any matter incidental to or connected with the foregoing.

When large-scale mining licence is required

144. A large-scale mining licence shall be required for any mining operation that does or will exceed any of the following limits—

(*a*) in the case of extraction of minerals from primarily alluvial mineral deposits, if annual throughput is more than 1,000,000m3 per year;

(*b*) in the case of underground mining operations, where annual combined run-of-mine ore and waste production is more than 500,000 tonnes per year (waste material not exiting mine mouth to be excluded);

(*c*) in the case of open-cast mining operations extracting minerals from primarily non-alluvial deposits, where annual combined run-of-mine ore, rock, waste and overburden production is more than 5,000,000 tonnes per year;

(*d*) where after construction is complete, the licence holder employs or contracts more than 1,000 employees or workers within Malawi on a typical working day (including all shifts) that are in some way involved with the mining project; or

(*e*) where capital investment in the mining project over its first ten year will or does exceed 250,000,000 United States Dollars.

Eligibility for medium-scale or large-scale mining licence

145.—(1) A medium-scale mining licence holder or large-scale mining licence holder shall—

(*a*) be a company duly incorporated under the Companies Act; and

(*b*) have the technical competence and financial ability to fulfil the licence obligations.

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(2) A large-scale mining licence holder shall be legally constituted in such a way that the Government may elect to acquire a free ownership equity interest in the company as provided for under section 260.

(3) A medium-scale mining licence or large-scale mining licence shall not be granted or transferred to a company—

(*a*) if any director of the company or any major shareholder of the company holding a controlling interest in such company has been convicted of an offence under this Act, or was an officer of the Commission, at the time the company first applied for the grant or transfer of the licence; or

(*b*) if the company is a former mining licence holder whose former licence has been cancelled and it has applied for a mining licence area that in whole or in part overlaps its former mining licence area, if such application is made within two years from the

date of such licence cancellation.

(4) A person shall not be eligible to apply for a medium-scale mining licence or large-scale mining licence over an area that is the subject of an exploration licence except the holder of that exploration licence or any person authorized by the holder of that exploration licence to apply.

(5) Any medium-scale mining licence or large-scale mining licence initially granted to a person that does not meet the eligibility requirements under this section shall be null and void.

Application for medium-scale or large-scale mining licence

146.—(1) An application for the grant of a medium-scale mining licence or large-scale mining licence shall be submitted to the Authority in the prescribed form and shall be accompanied by—

(*a*) the prescribed fee or proof that such fee has been paid;

(*b*) proof of the company's incorporation under the Companies Act;

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(*c*) the names and nationalities of the directors or equivalent officers and, if the company has share capital, the name of any person who is the beneficial owner of more than five percent of the issued share capital;

(*d*) evidence that the applicant has the technical competence to fulfil the licence obligations;

(*e*) evidence that the applicant has the financial ability or a credible plan to obtain adequate financing to fulfil the licence obligations;

(*f*) an attestation that the applicant is not barred under subsection (3) from being granted the mining licence;

(*g*) documentation proving that the project has received approval if so required by the Environment Management Act and a copy of the environmental and social impact assessment report that supported such approval;

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(*h*) a schedule, in the prescribed form, describing the corners of the proposed mining licence area as prescribed in section 284;

(*i*) a sketch map, in the prescribed form, showing the boundary of the proposed mining licence area;

(*j*) a boundary survey, as required under section 154, or a waiver as provided by the Authority under section 154;

(*k*) an attestation that the area applied for has been marked out as required under section 155;

(*l*) a justification for the period for which the licence is sought;

(*m*) where the area applied for is subject to an exploration licence that is held by the applicant, a copy of the applicant's exploration licence;

(*n*) a report, which may be part of a prefeasibility or feasibility study, prepared by a geologist giving details of the mineral deposits in the area of land over which the licence is sought—

(i) including details of all known mineral resources, minerals proved, estimated or inferred, and ore reserves in accordance with section 287; or

(ii) where the nature of the operation, because of the mineral to be mined, the scale of operation or other circumstance, does not warrant the estimation of mineral resources and reserves (such as a quarry for aggregate), a statement justifying why the applicant should not be required to submit mineral resource and reserve estimates;

(*o*) a detailed justification for the requested licence area taking into account the restriction set out in section 147(2) and the requirement that such area shall be justified, in the case of a medium-scale mining licence, by the required prefeasibility study or in the case of a large-scale mining licence, by the required feasibility study, and shall not include any area where mineral potential has not been proved or inferred other than land essential for mining plant and operations;

(*p*) a report providing the name of each lawful occupier and landowner of lands located in, or partly in, the licence area applied for and, in the case of more than one such holding, the boundaries of each holding within the area of the proposed mining licence;

(*q*) a description of plans and initiatives for planned, sustained economic and social development in the region and local communities affected by the mining operation, and in the case of a large-scale mining licence, any community development agreements that have already been approved;

(*r*) in the case of an application for a medium-scale mining licence,

(i) a community engagement plan meeting the requirements of section 294;

(ii) a prefeasibility study meeting the requirements of section 156;

(iii) a mining operations plan meeting the requirements of section 157;

(iv) a mine site plan meeting the requirements of section 161;

(v) a mine waste management plan meeting the requirements

of section 169;

(vi) a rehabilitation and closure plan meeting the requirements of section 263;

(vii) a resettlement management plan meeting the requirements of section 163;

(viii) an employment and training plan meeting the requirements of section 158; and

(ix) a goods and services procurement plan meeting the requirements of section 159;

(s) in the case of an application for a large-scale mining licence,

(i) an attestation that the company has been legally constituted in such a way to meet the requirements of subsection (2);

(ii) a community engagement plan meeting the requirements of section 289;

(iii) a feasibility study (not a prefeasibility study) meeting the requirements of section 156;

(iv) a mining operations plan meeting the requirements of section 157;

(v) an employment and training plan meeting the requirements of section 158;

(vi) a goods and services procurement plan meeting the requirements of section 159;

(vii) a mine site plan meeting the requirements of section 161;

(viii) a mine waste management plan meeting the requirements of section 162;

(ix) a rehabilitation and closure plan meeting the requirements of section 263;

(x) a resettlement management plan meeting the requirements of section 163; and

(xi) a business development assistance plan meeting the requirements of section 160;

(*t*) any other materials required to be included in the application by this Act or as prescribed;

(*u*) a description of any circumstances that may require the licence to be granted subject to particular conditions; and

(*v*) any other material addressing matters that the applicant wants to have considered.

(2) The application submitted in relation to subsection (1) may be withdrawn by the applicant through the submission of a notice of withdrawal to the Authority.

(3) Except as otherwise provided under this Part, an application for a medium-scale mining licence or large-scale mining licence shall be processed in accordance with Part IV, Division 2.

Restrictions on grant of medium-scale or large-scale mining licence

147.—(1) The Authority shall not grant a medium-scale mining licence or large-scale mining licence over land which—

(*a*) constitutes any part of an existing mining licence, unless the applicant is the holder of that existing mining licence, and the application includes an application to surrender that portion of the existing mining licence that overlaps the area applied for;

(*b*) constitutes any part of a retention licence or exploration licence, unless the applicant is the holder of such retention or exploration licence or the holder of such licence has given its written consent to allow the application to be granted;

(*c*) is the subject of a registered application for the grant of a mineral tenement that predates the medium-scale mining licence or large-scale mining licence application, other than an application for a reconnaissance licence or non-exclusive prospecting licence; or

(*d*) is otherwise closed to mining under this Act or any other applicable law.

(2) The Authority shall not grant a medium-scale mining licence or large-scale mining licence to an applicant unless—

(*a*) the applicant meets all the eligibility requirements under section 145;

(*b*) the applicant has demonstrated adequate and available access to financial resources, technical competence and experience to carry out its proposed operations; and

(*c*) all required plans have been submitted and such proposed plans are to the satisfaction of the Authority.

Authority to assess proposed plans

148.—(1) In assessing an application for a medium-scale mining licence or large-scale mining licence, the Authority shall consider whether—

(*a*) the proposed plans submitted by the applicant—

(i) will benefit Malawi, taking into account any objections received under section 53;

(ii) provide for the development of the mineral deposits situated on the land in accordance with good mining industry practice for the particular mineral or minerals to be mined, produced, beneficiated and sold;

(iii) will ensure the efficient production of the mineral

resources concerned;

(iv) provide clear evidence that the area of land over which the licence is sought is not in excess of the area reasonably required to carry out the proposed plans;

(v) objectively evaluate and take into account due consideration of internationally recognized standards of care and practice when addressing environmental, social and safety factors;

(vi) provide adequately for the protection of the environment, in which case evidence that the applicant has complied with the requirements of the Environment Management Act, related environment policies and regulations will be conclusive of adequate protection under this section; and

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(vii) meet the content requirement for such plans as set forth in this Act and as are prescribed; and

(*b*) the consents and permissions required by applicable law have been obtained.

(2) In assessing required plans supporting an application for a medium-scale mining licence or large-scale mining licence, the Authority may request an applicant to provide further information and proposals.

(3) When the Authority considers that an applicant has reasonably satisfied the requirements of subsections (1) and (2), the Authority shall approve the applicant's proposed plans as approved plans.

(4) When the Authority is dissatisfied with an applicant's proposed plans or a plan, before refusing the application, the Authority shall notify the applicant and such notice shall—

(*a*) contain details of the Authority's dissatisfaction; and

(*b*) specify a date on or before which the applicant shall, if it wishes to pursue the application—

(i) make such alterations or comply with such conditions as are specified;

(ii) submit, for the consideration of the Authority, any matters including new proposed plans generally or in respect of a particular matter; and

(iii) contain a statement to the effect that the application will be refused if the applicant fails to satisfactorily respond to the concerns of the Authority.

(5) Where, pursuant to Part IV Division 2, the Authority approves an application for a medium-scale mining licence or large-scale mining licence, the plans approved by the Authority shall be made a condition of the licence.

Term of a medium or large-scale mining licence

149.—(1) The term of a medium-scale mining licence or large-scale mining licence shall be for a term of up to twenty-five years or for the life of the mine, whichever is shorter.

(2) The term of a medium-scale mining licence or large-scale mining licence commences on the date on which the licence is granted.

(3) A holder of a medium-scale mining licence or large-scale mining licence may apply, pursuant to section 150, for an extension of up to fifteen years to the term of its licence.

(4) There shall not be limit on the number of term extensions that may be granted to the holder of a medium-scale mining licence or large-scale mining licence.

Extension of medium-scale or large-scale mining licence term

150.—(1) A holder of a medium-scale mining licence or large-scale mining licence may, not later than one year prior to the expiry of its licence, apply to extend the term of its licence for a period of up to fifteen years past the date the licence was granted or last extended.

(2) An application to extend the term of a medium-scale mining licence or large-scale mining licence shall—

(*a*) be submitted in the prescribed form;

(*b*) accompanied by the prescribed fee or proof that such fee has been paid;

(*c*) state the period for which the term extension is sought;

(*d*) include documentation proving that the project term extension has received approval if such approval is required by the Environment Management Act;

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(*e*) if the extension of the licence term is sought in respect of only a portion of the mining licence area, be accompanied by—

(i) a schedule, in the prescribed form, describing the corners of the boundary of the reduced licence area as prescribed in section 284; and

(ii) a sketch map, in the prescribed form, showing the boundary of the reduced area;

(*f*) be accompanied by a report, prepared by a geologist, giving details of the mineral deposits in the area of land over which the licence term extension is sought—

(i) including details of all known mineral resources, minerals proved, estimated or inferred, and ore reserves in accordance with section 287; or

(ii) where the nature of the operation, because of the mineral to be mined, the scale of operation or other circumstance, does not warrant the estimation of mineral resources and reserves

(such as a quarry for aggregate), a statement justifying why the applicant should not be required to submit mineral resource and reserve estimates;

(*g*) be accompanied by a report including—

(i) a summary of mining activities carried out to the present time;

(ii) why the time extension is needed and the justification for the length of the term extension requested;

(iii) the capital investment to be made in, and estimated production costs and revenue forecasts in respect of the period of extension;

(iv) any expected changes in methods of mining and treatment;

(v) any expected increase or reduction in mining operations and the estimated life of the mine; and

(vi) a summary of rehabilitation and reclamation work done on the applicant's mined out areas;

(*h*) be accompanied by all the latest plans that the licence holder is required to implement and update which may include—

(i) a community engagement plan meeting the requirements of section 289;

(ii) a mining operations plan meeting the requirements of section 157;

(iii) an employment and training plan meeting the requirements of section 158;

(iv) a goods and services procurement plan meeting the requirements of section 159;

(v) a mine site plan meeting the requirements of section 161;

(vi) a mine waste management plan meeting the requirements of section 162;

(vii) a rehabilitation and closure plan meeting the requirements of section 263;

(viii) a resettlement management plan meeting the requirements of section 163; and

(ix) in the case of a large-scale mining licence, a business development assistance plan meeting the requirements of section 160; and

(i) include such other materials as may be prescribed.

(3) Subject to subsection (4), the Authority shall approve an application to extend the term of a medium-scale mining licence or large-scale mining licence if the licence holder has—

(*a*) complied with the application requirements under this section;

(*b*) substantially complied with the terms and conditions of its licence and its obligations under this Act and any other written law;

(*c*) periodically updated those of its plans that the Act requires to be periodically updated;

(*d*) submitted all reports required under section 168;

(*e*) paid all compensation required by section 216;

(*f*) paid all annual ground rent as required by section 255;

(*g*) submitted a reasonable justification for why the licence term should be extended; and

(*h*) submitted reasonable plans for the period of extension.

(4) The Authority shall not extend the term of a medium-scale mining licence or large-scale mining licence pursuant to an application made under subsection (1) if—

(*a*) the term extension is not justified by the quantity and quality of the mine's reserves or the land area is not required to support mining operations on other lands;

(*b*) the development of the mining licence area has not proceeded with reasonable diligence;

(*c*) the licence holder has not implemented all the plans that it is required to implement under this Act and updated those plans that it is required to update;

(*d*) the applicant is in default of any obligation that would require the licence to be cancelled; or

(*e*) the Authority is of the opinion that the mining project is of such importance to the economy of Malawi that the decision of whether to approve the term expansion should be made after consultation with the Minister in which case the Authority shall consult the Minister on the application.

(5) Where the Authority has determined that all required conditions set out in subsection (3) are met and none of the reasons prohibiting an extension under subsection (4) apply, the Authority shall approve the application and shall inform the Authority to endorse the extension on the licence and may reasonably vary the conditions of the licence in light of the licence holder's updated plans and other changed circumstances.

(6) Where the Authority determines that a medium-scale or large-scale mining licence extension application should not be approved, the Authority, within fourteen days of the determination,

shall inform the applicant including the Authority's reasons for the refusal.

(7) Where a holder of a medium-scale or large-scale mining licence has registered an application to extend the term of its licence and the Authority has refused to approve the application, the holder may appeal the decision, within thirty days of being notified of the refusal, to the High Court.

(8) Where the High Court has determined on appeal that all the requirements of subsection (4) were met by the applicant, the Authority shall endorse the licence with the extended term and any changed conditions specified by the Court.

(9) Except as otherwise provided in this section, an application for the extension of a medium-scale or large-scale mining licence shall be processed in accordance with Part IV, Division 2.

Effect of grant of medium-scale or large-scale mining licence on exploration licence area

151. When a medium-scale mining licence or large-scale mining licence is granted and the mining licence area overlaps with any land the subject of an exploration licence, the area of such overlap shall be deemed to be excised from the exploration licence area on the date that the mining licence is registered.

Size and shape of medium-scale or large-scale mining licence area

152.—(1) The area of land over which a mining licence is granted shall—

(*a*) be necessary for the purpose of mining the known minerals and shall be justifiably established as necessary in the applicant's prefeasibility study, in the case of a medium-scale mining licence, or feasibility study, in the case of a large-scale mining licence;

(*b*) be at least one hectare; and

(*c*) have the shape as prescribed in section 284.

(2) Land thought to be prospective for minerals but where mineral reserves have not been identified, measured and confirmed (except in the case of quarry operations) and such land has not been shown reasonably necessary for the purpose of mining operations in the applicant's prefeasibility or feasibility study shall not be included in a mining licence area.

Application for expansion of medium-scale or large-scale mining licence area

153.—(1) An application for the grant of a medium-scale or large-scale mining licence area expansion shall be submitted to the Authority in the prescribed form and shall by accompanied by—

(*a*) the prescribed fee or proof that such fee has been paid;

(*b*) a detailed justification for the requested new licence area taking into account that the requested area shall not include any

area where mineral potential has not been proved other than land essential for mining plant and operations;

(*c*) a schedule, in the prescribed form, describing the corners of the new boundary of the mining licence area as prescribed in section 284;

(*d*) a sketch map, in the prescribed form, showing the boundary of the new area and such other natural features and the location of principal villages, if any, as will enable the area to be correctly located;

(*e*) a survey of the new boundary as required under section 154, or a waiver as provided by the Authority under section 154;

(*f*) a statutory declaration that the proposed new boundary has been marked out in accordance with section 155;

(*g*) revised plans where any previously approved plan required by this Act will be affected by the area expansion;

(*h*) a copy of the required plan;

(*i*) documentation proving that the project has received approval if so required by the Environment Management Act and a copy of the Environmental and Social Impact Assessment report that supported such approval; No. 19 of 2017

(*j*) a report providing the name of each lawful occupier and landowner of lands located in, or partly in, the new area applied for and, in the case of more than one such holding, the boundaries of each holding within the new proposed mining licence area;

(*k*) any other materials required to be included in the application by this Act or as prescribed;

(*l*) a description of any circumstances that may require the licence expansion to be granted subject to particular conditions; and

(*m*) any other material addressing matters that the applicant wants to have considered.

(2) An application for a medium-scale mining licence or large-scale mining licence area expansion shall be processed in accordance with Part III, Division 2.

Boundary survey required

154.—(1) Subject to subsection(2), prior to the grant of a medium-scale mining licence or large-scale mining licence or the expansion of the area of a medium-scale or large-scale mining licence the boundary of the land the subject of the licence application shall be surveyed as provided for in subsection (3).

(2) Upon a written application, the Authority may waive the

requirements under this section relating to a boundary survey and instead may allow surface demarcation points to be established using global positioning system coordinates based on the transformation of Cadastral Coordinates to global positioning system coordinates, and the Authority shall provide, for free, the parameters for the transformation between Cadastral Coordinates and global positioning system coordinates.

(3) A boundary survey under this section shall—

(*a*) be made by a registered land surveyor or under the direction of a registered land surveyor;

(*b*) be at the cost of the applicant;

(*c*) conform to any survey guidelines issued from time-to-time by the Authority, but if no guidelines have been issued, to the class of survey permitted under the general survey directions of the Government department responsible for land survey matters; and

(*d*) conform to the schedule in the licence application form describing the corners of the boundary of the land as prescribed in section 284.

(4) A copy of the boundary survey made under this section shall be submitted to the Authority either—

(*a*) at the time of submission of the licence application or licence area expansion application; or

(*b*) subject to subsection (6), at any time thereafter but before the grant of the licence.

(5) When a boundary survey is submitted under subsection (4), the Authority shall immediately register the survey in the Register and—

(*a*) if the survey confirms that all the land the subject of the application is available for the purposes for which the application was made, cause a summary copy of the survey schedule to be published as a public notice in a newspaper with wide circulation in Malawi and post a copy on the website of the Authority; or

(*b*) if only part of the land is available—

(i) prepare a schedule of the land that is available for the licence in the prescribed form in substitution of the schedule submitted with the survey;

(ii) cause a copy of the revised schedule to be published in a newspaper with wide circulation in Malawi; and

(iii) send a copy of the revised schedule to the applicant.

(6) When, at the time of submission of an application, a boundary survey is not available, the application may proceed, and if the

Authority is prepared to grant the tenement subject to the survey confirming the availability of a substantial portion of the land applied for, the Authority shall give to the applicant notice to submit a survey within thirty days which shall be dealt with by the Authority under subsection(5).

(7) Where, in a case to which subsection (6) applies, the applicant submits a boundary survey and the land is available for the purposes for which the application was made, the Authority may grant the application.

(8) Where an applicant fails to submit a boundary survey under this section and no waiver has been granted by the Authority or the survey reveals that none of the land the subject of the application is available for the purposes for which the application was made, the application shall be refused.

(9) Where there is a dispute as to the location of a boundary of a tenement, the Authority shall arrange for the disputed boundary to be surveyed and the costs shall be met by the party or parties claiming a location of the boundary different from that surveyed.

(10) Where the Authority considers that any party may default on the payment for a survey under subsection (9), the Authority, prior to arranging the survey, may require each party to submit a bond sufficient to cover the cost of the boundary survey.

(11) The Authority may, when a land surveyor is denied access to land the subject of the boundary survey, grant to a land surveyor the right to enter upon land in accordance with section 285.

(12) A person carrying out a boundary survey under this section shall not interfere with the activities undertaken on the land the subject of the survey.

(13) A person interfering with a boundary survey being made pursuant to this section commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and K100,000 for each day of default or to imprisonment for one year.

Demarcation of medium-scale or large-scale mining licence area

155.—(1) The boundaries of a mining licence area shall be consistent with the requirements in section 284.

(2) Subject to subsection (7), an applicant for the grant of a medium-scale mining licence or large-scale mining licence or for an expansion of the area of a medium-scale or large-scale mining licence, before submitting its application, shall—

(*a*) mark out each corner of the land over which the tenement is sought by erecting a distinctively coloured metal or concrete post

standing at least one metre above the surface or such survey marks as are permitted under the survey directions of the Surveyor General; and

(*b*) either—

(i) clear lines along the boundaries of the land or place distinctively coloured metal or concrete markers at sufficiently close spacing to indicate clearly the boundaries of the land; or

(ii) to the satisfaction of the Authority, comply substantially with the requirements of paragraph(*a*) and subparagraph (*b*) (i) to the extent that the land has been sufficiently identified to be located in the field.

(3) An applicant shall maintain the posts and markers or cleared lines established in accordance with subsection (1) until such time as the application for the grant of the licence or area expansion has been determined.

(4) A holder of a medium-scale mining licence or large-scale mining licence tenement shall maintain posts and markers or cleared lines established in accordance with subsection (1) and as prescribed during the term of its licence.

(5) The Authority, pursuant to section 285, may grant to a person not otherwise authorized under this Act the right to enter land for the purposes of marking out and maintaining posts or markers or cleared lines as required under this section.

(6) A person carrying out any work as required or authorized by this section shall not interfere with the activities undertaken on the land over which the licence is sought.

(7) The requirements under subsection (1) do not apply to any part of the boundary of the land the subject of the application or licence that is underwater.

(8) A person damaging, destroying or removing any marker placed pursuant to this section without the prior written permission of the applicant for or the holder of the respective mining licence commits an offence and shall, upon conviction, be liable to a fine of K500,000 or to imprisonment for one month.

Content of prefeasibility or feasibility study

156.—(1) A prefeasibility study shall contain such information as is prescribed.

(2) A feasibility study shall contain such information as is prescribed and shall be prepared by an expert in preparing such studies.

Mining operations plan

157.—(1) An application for a medium-scale or large-scale mining licence shall be accompanied by a mining operations plan.

(2) A mining operations plan shall be based on the applicant's prefeasibility study, in the case of an application for a medium-scale mining licence, or feasibility study, in the case of an application for a large-scale mining licence, and shall include, covering the first ten years of the licence period—

(*a*) a detailed description of how the site will be developed;

(*b*) a detailed description how the mine will be constructed;

(*c*) a detailed description of the infrastructure;

(*d*) a detailed description of the mining method to be used;

(*e*) the production schedule; and

(*f*) such other information that demonstrates that the mining operations constitute good mining practice.

(3) A holder of a medium-scale mining licence or large-scale mining licence shall periodically, as prescribed, update its mining operations plan.

Employment and training plan

158.—(1) An application for a medium-scale or large-scale mining licence shall be accompanied by the applicant's proposed employment and training plan, which shall contain such information as is prescribed with respect to the recruitment of foreigners and the employment and training of Malawian citizens.

(2) A holder of a medium-scale mining licence, and the holder of a large-scale mining licence shall comply with its approved employment and training plan.

(3) A holder of a mining licence shall give employment preference to Malawian citizens—

(*a*) to the maximum extent practicable consistent with efficient operations; and

(*b*) in so far as the Malawian citizens are qualified to perform corresponding work and without hazard to the safety of mining operations.

(4) A holder of a mining licence shall implement a non-discriminatory employment policy that gives training preference to both men and women that are lawful occupiers and owners of the mining licence area and to other persons customarily resident in neighbouring communities who have the aptitude to acquire the necessary skills and expertise.

(5) A holder of a large-scale mining licence shall take into account

employment and training provisions, if any, set out in its community development agreements, if any, when recruiting and training employees.

(6) An employment and training plan shall—

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(*a*) comply with the Gender Equality Act and provide measures to create a working environment that is free of sexual harassment and any form of discrimination on the basis of sex; and

(b) seek to promote the participation of women in employment and training opportunities, targeting a percentage of the jobs for women including management, technical professionals, clerical, skilled labourers and unskilled labourers.

(7) A holder of a mining licence shall not—

(*a*) import from outside Malawi unskilled labour for the carrying out of any of its mining operations undertaken under the licence;

(*b*) employ or in any way use child labour; or

(*c*) promote trafficking in persons by recruiting trafficked persons.

(8) A holder of a mining licence shall not be hindered from employing employees of its own selection for technical and specialized work that, to the satisfaction of the Authority, requires specialised training or long experience.

(9) Subject to other written law, the holder of a mining licence may employ a reasonable number of non-Malawian workers who have specialized skills, knowledge or experience.

(10) For the purpose of subsection (9), a "reasonable number of non-Malawian workers" means with regard to—

(*a*) initial mine development, no more than fifty percent of the mining licence holder's workforce;

(*b*) after the mining has commenced on a commercial scale, no more than seventy-five percent of the mining licence holder's related workforce; and

(*c*) after mining minerals on a commercial scale for ten years, no more than ten percent of the mining licence holder's related workforce.

(11) The holder of a mining licence required to have an approved employment and training plan shall—

(*a*) annually submit an employment and training plan report in such form and manner and containing such information as may be prescribed; and

(*b*) periodically, as prescribed, update its employment and training plan.

Goods and services procurement plan

159.—(1) An application for a medium-scale mining licence or large-scale mining licence shall be accompanied by the applicant's proposed goods and services procurement plan, which shall contain such information as is prescribed.

(2) A holder of a medium-scale mining licence, and the holder of a large-scale mining licence shall comply with its approved goods and services procurement plan.

(3) A holder of a mining licence required to have an approved goods and services procurement plan shall give preference to procuring goods and services from supplier and contractor entities owned by Malawian citizens, including equal opportunities to entities owned by Malawian women, provided such supplier and contractor entities offer terms as to prices, quantities, qualities and delivery schedules that are at least comparable to terms offered by non-Malawian contractors and suppliers to the maximum extent practicable consistent with efficient operations.

(4) A holder of a mining licence required to have an approved goods and services procurement plan shall demonstrate in its goods and services procurement plan how it intends to assist Malawian suppliers and contractors, including those owned or operated by women, to build the capacity to supply a greater part of its project's goods and services needs over time.

(5) A holder of a large-scale mining licence shall take into account goods and services provisions, if any, set out in its community development agreements, if any, when procuring goods and services.

(6) A holder of a mining licence shall not be hindered from procuring goods and services from providers outside Malawi that, to the satisfaction of the Authority, are available from only specialized suppliers and contractors.

(7) A holder of a mining licence required to have an approved goods and services procurement plan shall–

(*a*) annually submit a goods and services procurement plan report in such form and manner as are be prescribed; and

(*b*) periodically, as prescribed, update its goods and services procurement plan.

Business development assistance plan

160.—(1) An application for a large-scale mining licence shall be accompanied by the applicant's proposed business development assistance plan, which shall contain such information as is prescribed.

(2) A business development assistance plan shall describe how a holder of a large scale mining licence intends to assist business entities owned or operated by—

(*a*) lawful occupiers or owners of land in the licence area;

(*b*) persons in neighbouring communities;

(*c*) women resident in the vicinity of the mining operations; and

(*d*) other Malawian citizens;

to build the capacity to own and operate sustainable businesses.

(3) A holder of a large-scale mining licence shall comply with its approved business development assistance plan.

(4) For the purpose of subsection (2), a sustainable business need not be, but can be, associated with mining operations.

(5) A holder of a large-scale mining licence shall, in its operations, take into account business development provisions, if any, set out in its community development agreements, if any.

(6) A holder of a large-scale mining licence shall—

(*a*) annually submit a business development assistance plan report in such form as prescribed; and

(*b*) periodically, as prescribed, update its business development assistance plan.

Mine site plan

161.—(1) An application for a medium-scale mining licence or large-scale mining licence shall be accompanied by the applicant's proposed mine site plan, which shall contain such information as is prescribed.

(2) A holder of a medium-scale mining licence or large-scale mining licence shall comply with its approved mine site plan.

(3) A holder of a medium-scale mining licence or large-scale mining licence shall, at all times, maintain an up-to-date mine site plan.

(4) A holder of a medium-scale mining licence or large-scale mining licence shall, whenever a mine site plan is updated, send a copy to the Authority.

(5) A holder of a medium-scale mining licence or large-scale mining licence shall ensure that a copy of a mine site plan is always be available at the mine site.

(6) A holder of a medium-scale mining licence or large-scale mining licence who fails to comply with subsection (3), (4) and (5), commits an offence.

Mine waste management plan

162.—(1) An application for a medium-scale mining licence or large-scale mining licence shall be accompanied by the applicant's proposed mine waste management plan, which shall contain such information as is prescribed.

(2) A holder of a medium-scale mining licence or large-scale mining licence shall comply with its approved mine waste management plan.

(3) A holder of a medium-scale mining licence or large-scale-mining licence shall periodically, as prescribed, update its mine waste management plan.

(4) An applicant for a medium-scale mining licence or large-scale mining licence and the holder of mining licence that submits a revised mine waste management plan shall consult with lawful occupiers and owners of land, if any, regarding the disposition of mine wastes on their lands with the objective to facilitate the sustainable and safe future use of their lands.

(5) Where a holder of a medium-scale mining licence or large-scale mining licence fails to comply with subsection (2) or (3) the Authority shall initiate the process provided under section 79 to suspend or cancel the licence.

Resettlement management plan

163.—(1) Where the operations of a holder of a mineral tenement, other than a medium-scale mining licence or large-scale mining licence, require the resettlement of persons resident on the tenement area—

(*a*) the holder shall notify the Authority before affecting any resettlement of such persons; and

(*b*) the Authority, may require the holder to prepare and to implement a resettlement management plan in accordance with this section or to take such other actions or refrain from such actions as the Authority may direct.

(2) An applicant for a medium-scale mining licence or large-scale mining licence shall submit a resettlement management plan as a proposed plan attached to its mining licence application.

(3) A holder of a mining licence shall manage any displacement of persons caused by its operations through—

(*a*) resettlement processes, if acquiring or gaining access to land causes any physical displacement; or

(*b*) compensation processes, as provided for under section 219, if acquiring or gaining access to land causes economic displacement but no physical displacement.

(4) A proposed resettlement management plan shall contain such information as is prescribed in the Land Acquisition and Compensation Act and any other written law.

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(5) The holder of a mining licence required to have a resettlement management plan shall implement its approved resettlement management plan and may apply, in the prescribed manner, for approval to revise its plan.

Community development agreements

164.—(1) A holder of a large-scale mining licence shall assist in the development of qualified communities affected by its operations to promote sustainable development, enhance the general welfare and the quality of life of the inhabitants and shall recognize and respect the rights, customs and traditions of local communities that are consistent with the Constitution.

(2) Subject to subsection (5), a holder of a large-scale mining licence shall implement a community development agreement with each community that meets the definition of a "qualified community" as defined in section 2 that is willing and able to enter into a community development agreement.

(3) Subject to subsection (5), a commercial production shall not commence on a large-scale mining licence area until the mining licence holder has all community developments agreement required by this section—

(*a*) ratified and endorsed by the qualified community and the large-scale licence holder; and

(*b*) subsequently approved by the Authority.

(4) The Authority shall approve any community development agreement that has been ratified and endorsed by a qualified community and the holder of a large-scale mining licence where all prescribed community development agreement mandatory content requirements are satisfied.

(5) Where a community that meets the requirements to be a qualified community is unwilling or unable to ratify a community development agreement pursuant to the prescribed procedures and the prescribed requirements have been otherwise met, the respective large-scale mining licence owner shall be relieved of its obligation to enter into a community development agreement with that qualified community until such time as the qualified community ratifies the agreement.

(6) A community development agreement shall come into force twelve months after commencement of commercial production.

(7) A holder of large-scale mining licence and a qualified community may submit a revised and ratified community development agreement for approval by the Authority in the prescribed form and containing such content as prescribed.

(8) Where a qualified community that is entitled to a community development agreement believes that it lacks the capacity to effectively negotiate a community development agreement, the qualified community may request the holder of a large-scale mining licence to collaborate with community or non-governmental organisations or local authority find appropriate expertise in order to build the capacity for the community to effectively negotiate the agreement, including provision of such funds to the qualified community for capacity-building as are reasonable in the circumstances.

(9) A holder of a large-scale mining licence shall comply with its approved community development agreements.

(10) A copy of any community development agreement approved under this section, including an updated community development agreement, shall be—

(*a*) available to the public at the office of the Authority and a local government authority of the area; and

(*b*) shall be posted by the Authority on the website of the Authority until such time as the agreement is no longer in effect.

(11) A holder of a large-scale mining licence shall—

(*a*) expend on community development no less than zero point four-five percent of its annual gross sales revenues, in such manner, at such time and on such activities as are prescribed;

(*b*) submit annually, at such time and in the form as prescribed, a community development expenditure report;

(*c*) submit semi-annually, at such time and in the form as prescribed, a community development agreement report for each community development agreement associated with its mining licence; and

(*d*) periodically, as is prescribed, update its community development agreement(s).

(12) A holder of a tenement that fails to substantially comply with subsection (11) (*b*) or (11) (c) commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and a daily fine of K500,000 for every day of default until the day on which the report is accepted, as prescribed.

(13) Where a large-scale mining licence is transferred to another party, the transferee shall assume all rights and obligations of the transferor under any community development agreements entered into by the transferor relating to that large-scale mining licence.

(14) The Authority may suspend, without limit a large-scale mining licence if the licence holder fails to substantially comply with prescribed requirements to—

(*a*) identify all qualified communities;

(*b*) have and implement approved and ratified community development agreements with all qualified communities; or

(*c*) expend the minimum annual amount on community development.

(15) The decision by the Authority regarding the suspension under subsection (14) may be subject to review by the High Court.

(16) A holder of an authorization to conduct large-scale mining operations that is in force but that was granted prior to the adoption of this Act is required to comply with this section and shall be in compliance with this section no later than one year from the effective date of this Act.

(17) For avoidance of doubt—

(*a*) a holder of a large-scale mining licence shall annually expend, pursuant to its approved community development agreements, the amount required by subsection (11) (a) but may voluntarily spend on community development in excess of this amount; and

(*b*) a community development agreement is a legally binding contract between a qualified community and the holder of large-scale mining licence, and any party to the agreement may bring an action before the High Court to enforce terms of the agreement.

Revision of approved plans

165.—(1) A holder of a medium-scale mining licence or large-scale mining licence may, at any time, apply to the Authority, for a revision of its approved plans.

(2) A holder of a medium-scale mining licence or large-scale mining licence that is required to periodically update any plan specified under this Act shall submit its proposed updated plan for approval in conformity with this section.

(3) An application under subsection (1) shall—

(*a*) in the prescribed form;

(*b*) be accompanied by the prescribed fee or proof that such fee has been paid;

(*c*) specify the grounds on which a revision is sought, which may include, but are not limited to the following—

(i) an updated plan is required by this Act or by the regulations;

(ii) events beyond the reasonable control of the holder of the mining licence have prevented the holder from carrying out the approved plan;

(iii) experience has demonstrated that the plan is not succeeding;

(iv) the holder of the mining licence wishes to develop the mine or conduct mining operations or conduct operations ancillary to mining in a manner different from that originally proposed; or

(v) the holder of mining licence wishes to reduce or suspend production because—

(*a*) at the time, economic or marketing conditions are such that the mining operation is not economically viable; or

(*b*) difficulties in obtaining requisite approvals prevent mining or restrict it in a manner that is, or subject it to conditions that are, for the time being impracticable; and

(*d*) include the proposed varied plan.

(4) The Authority—

(*a*) shall consider any application for revision submitted under this section in accordance with this Act and as prescribed;

(*b*) may require the applicant to provide further information or to amend any revised plan submitted with the revision; and

(*c*) may approve or refuse the revision.

(5) An applicant whose application for the revision of an approved plan has been refused by the Authority twice may apply to the High Court to review the decision of the Authority.

(6) Where the Authority—

(*a*) has approved a requested revision of an approved plan, the Authority, shall register in the Register the approved revision which shall—

(i) be in the prescribed form;

(ii) be substituted for the previously approved plan; and

(iii) include on the mining licence such further conditions as the Authority considers necessary; or

(*b*) refuses a requested revision of an approved plan, the Authority shall notify the applicant that the revision has been refused including the reasons for the refusal.

Obligations of a mining licence holder

166.—(1) A holder of a medium-scale mining licence or large-scale mining licence shall—

(*a*) conduct mining operations during the term of its licence as described in its approved plans, according to the conditions of its licence and in accordance with this Act;

(*b*) notify the Authority when there is change in the control of the company that holds the licence, such as a sale of a majority ownership interest or a majority of its shares, as required under section 63;

(*c*) provide any attachment required or agreed under section 45;

(*d*) demarcate, and keep demarcated, the area the subject of the licence as required by section 155;

(*e*) submit all reports required under section 168 and otherwise by this Act;

(*f*) give notice of commencing development and commercial production as required by section 169;

(*g*) pay the prescribed annual ground rent required under section 255;

(*h*) pay compensation for damages caused by its work as required by section 216;

(*i*) within six months of any export, submit to the Authority, a sales account in respect of the minerals exported; and

(*j*) do all other things required by this Act and as prescribed.

(2) Subject to subsection (*b*), where the Authority determines that the holder of a medium-scale mining licence or large-scale mining licence has failed to substantially comply with any obligation arising under this Act, whether it be set out in this Act, the regulations or as a condition to the licence, and a specific fine or penalty is not provided for that breach, the Authority, at its discretion, may commence the process provided under section 79 to suspend or cancel the licence.

(3) Where the Authority determines that a holder of a medium-scale mining licence or large-scale mining licence has failed substantially to comply—

(*a*) with subsection (1) (*a*), (*e*), (*f*), (*g*), (*h*) or (*i*); or

(*b*) with any obligation arising under this Act and this Act specifies that a breach of that obligation requires the licence to be

cancelled,

the Authority shall commence the process provided under section 79 to cancel the licence.

Obligation of mining licence holder to keep accurate records

167.—(1) A holder of a medium-scale mining licence or large-scale mining licence shall keep at its registered address full and accurate records of all its mining activities.

(2) Without prejudice to the generality of subsection (1), a holder of a medium-scale mining licence or large-scale mining licence shall keep the following information—

(*a*) number of persons currently employed by it and their nationalities;

(*b*) copies of all maps, geological reports including interpretations, mineral analyses, aerial photographs, core logs, sample analysis and tests, including those analyses and tests related to the production of minerals sold or sent for processing where such information;

(*c*) mineral production records;

(*d*) systematic financial records and such other books of account and financial records as the Authority may require; and if the holder is engaged in any other activity not connected with its mining operation it shall maintain separate books of account in respect of its mining operations on the licence area;

(*e*) reports, statements, returns or submissions required by the Companies Act; Cap. 46:03

(*f*) accident and injury reports;

(*g*) information on work done in connection with the licence area; and

(*h*) such other information as may be prescribed.

Medium-scale and large-scale licence reporting obligations

168.—(1) A holder of a medium-scale mining licence or large-scale mining licence shall submit to the Authority the following reports—

(*a*) in respect of each calendar year, a report giving full details of all work undertaken on or in connection with the licence including particulars of production of minerals, development work and exploration;

(*b*) in respect of the period from the date when the licence was registered up to the date of surrender of the whole or any portion of the mining licence, or expiry or cancellation of the licence, a final summary report which summarizes all work undertaken on and all production from—

(i) in the case of the surrender of a portion of the mining

licence area–that portion; and

(ii) otherwise–from the whole of the mining licence area,

and which also meets the requirements of paragraph (*a*) in relation to the period since the last report was submitted under that paragraph; and

(c) in respect of each calendar month, a monthly statement of operations.

(2) A holder of a medium-scale mining licence or large-scale mining licence shall submit the reports required by subsection (1) at such time, in the prescribed form.

(3) Subject to subsection (4), until a mining licence expires or is cancelled or surrendered, a report submitted under subsection (1) shall not be made available to any person outside the Authority nor can its content be revealed except—

(*a*) to the extent necessary to publish statistical information concerning mining in Malawi;

(*b*) for the Authority to give advice to the Minister on a confidential basis; or

(*c*) to any Government department responsible for the collection of taxes or royalties.

(4) A holder of a mining licence may consent for a report which it has submitted under subsection (1) to be disclosed prior to the expiry, cancellation or surrender of its licence subject to such conditions as the holder may specify in writing to the Authority.

(5) Nothing in this section shall preclude a holder of a mining licence from disclosing any report it has submitted pursuant to subsection (1) to any party.

(6) Subject to subsection (3), a report submitted under subsection (1) shall be available for perusal and copying by general public.

Obligation to commence mine development and maintain production

169.—(1) Subject to subsections (4) and (6), a holder of a large-scale mining licence shall—

(*a*) commence substantial on-site mine development within eighteen months measured from the date that the mining licence is registered;

(*b*) commence substantial mineral production no later than sixty months measured from the date that the mining licence is registered;

(*c*) maintain continuous commercial production, as is prescribed, after mineral production has commenced; and

(*d*) notify, with reasons, the Authority—

(i) no later than thirty days after temporarily ceasing mineral production; and

(ii) at least three hundred and sixty-five days prior to permanently ceasing mineral production.

(2) Subject to subsections (4) and (6), the holder of a medium-scale mining licence shall—

(*a*) commence substantial on-site mine development within six months measured from the date when the mining licence has been registered;

(*b*) commence substantial mineral production no later than twelve months measured from the date that the mining licence has been registered;

(*c*) maintain continuous commercial production, as is prescribed, after mineral production has commenced;

(*d*) notify the Authority no later than thirty days after temporarily ceasing mineral production; and

(*e*) notify the Authority at least ninety days prior to permanently ceasing mineral production.

(3) A holder of a medium-scale mining licence or large-scale mining licence shall notify the Authority at the prescribed times and in the prescribed form of—

(*a*) the date on which on-site mine development commenced;

(*b*) the date on which commercial mineral production commenced; and

(*c*) the design capacity of the mine(s) and any processing plants located in the licence area.

(4) The time limits set out in subsections (1)(*a*) and (1)(*b*) or 2(*a*) and 2(b) are the maximum time limits allowable but if lesser time limits have been approved in the mining licence holder's approved plans, such lesser time limits apply.

(5) A mining licence proposal shall not provide for time limits greater than those set out in subsections 1(*a*) and 1 (*b*) or 2 (*a*) and 2 (*b*), and any time limit in an approved plan that exceeds such time limits shall be null and void, and in such case, the respective time limits in subsections 1(*a*) and 1 (*b*), or 2 (*a*) and 2 (*b*) shall apply.

(6) Where a holder of a mining licence is unable to meet a deadline specified in this section because it has not been able to acquire a permission or authorization required by applicable law, and the Authority is of the opinion that—

(*a*) the holder has made a good faith effort to acquire such permission or authorization; and

(*b*) by providing the holder additional time, there is a reasonable expectation that the permission or authorization is obtainable,

the Authority may extend the deadline and any such new deadline shall be recorded by the Authority in the Register.

(7) Upon application by the holder of a medium-scale mining licence or large-scale mining licence, the Authority may grant an extension or exception, of a definite period, to any deadline specified or obligation imposed under subsections (1) or (2).

(8) The Authority shall promptly commence, as provided for in section 79, to cancel a mining licence when its holder has failed to comply with any provision of subsection (1) or has not obtained an extension pursuant to subsection (6).

Obligation to designate a Resident Mine Manager

170.—(1) A holder of a medium-scale mining licence or large-scale mining licence shall designate a Resident Mine Manager.

(2) A holder of a medium-scale mining licence or large-scale mining licence shall provide to the Authority a notice containing the name, qualifications and contact details of the holder's Resident Mine Manager responsible for supervising mining operations—

(a) before commencing commercial mineral production; and

(b) within fourteen days of the date that the holder's previously identified Resident Mine Manager is replaced.

Obligation to submit independently prepared audit

171. A holder of a large-scale mining licence shall annually submit to the Authority, in duplicate, an audited financial report on its mining operation prepared by an independent auditor.

Rights of medium-scale or large-scale mining licence holder

172.—(1) Subject to this Act and any conditions contained in the licence, a medium-scale mining licence or large-scale mining licence, so long as it is valid and in effect, confers on the holder of the licence the exclusive right to conduct exploration, development and mining operations in the mining licence area in accordance with its approved plans.

(2) Without limiting the generality of subsection (1), the holder of a medium-scale mining licence or large-scale mining licence, subject to environmental and any other written law, shall have the right in its licence area to —

(*a*) implement all measures in the mining licence area, including the use of necessary equipment and erecting necessary structures and installations, plants and buildings for mining, and transporting, dressing, treating, smelting or refining any mineral recovered in

accordance with its approved plans;

(*b*) hire employees;

(*c*) retain consultants, independent contractors and other agents;

(*d*) request a land access order pursuant to section 221;

(*e*) develop and utilize water for mining purposes;

(*f*) sell and otherwise market any mineral product recovered from or beneficiated or otherwise treated in the licence area; and

(*g*) surrender part or all of the licence area subject to meeting the surrender requirements imposed under this Act.

Notice of changes in production

173.—(1) A holder of a medium-scale mining licence or large-scale mining licence shall give notice to the Authority whenever its production in a calendar quarter is less than twenty percent of its planned production for that quarter and such notice shall explain the reason for the lower production levels.

(2) Where production from a medium-scale or large-scale mining licence area ceases, is suspended or curtailed, the holder shall, within thirty days of the cessation, suspension or curtailment, give written notice thereof to the Authority.

(3) A holder of a medium-scale mining licence or large-scale mining licence that fails to comply with subsections (1) or (2) commits of an offence and liable on conviction, to a fine of K10,000,000 plus K1,000,000 for every day in default.

Premature closure

174.—(1) Where a holder of a medium-scale mining licence or large-scale mining licence permanently ceases mining operations on its licence area before the expiry date of its licence, it shall apply to cancel the licence no later than twelve months before ceasing operations on the land.

(2) A mining licence holder who fails to comply with subsection (1) commits of an offence.

Coordinated mining operations

175. Where the holders of two or more mineral tenements have entered into an agreement to jointly build, operate, share or coordinate infrastructure or mining facilities they shall before doing so, inform the Authority, in writing, describing the nature of the arrangement.

Notice of poor or wasteful practices

176.—(1) Where the Authority considers the holder of a mining licence is using poor or wasteful mining or treatment practices, the Authority shall—

(*a*) notify the holder in writing, describing in detail the poor or wasteful practices, and

(*b*) require the holder to show cause, by submitting a written

response to the Authority within such period as the Authority shall specify in the notice, that the practices are not poor or wasteful and describing why the mining operation should continue to be conducted using the practices.

(2) Where, within the period specified in a notice given to the holder of a mining licence pursuant to subsection (1), the holder fails to satisfy the Authority that poor or wasteful practices are not being used, that the alleged practices are not poor or wasteful, or the use of those practices is justified, the Authority may give notice to the holder directing the holder to either cease using any or all of those practices by such date as is so specified or, in the alternative, the Authority may proceed to cancel the mining licence as provided under section 79.

(3) Before giving any direction under subsection (2) or initiating the process to cancel the mining licence, the Authority shall provide the holder of a mining licence reasonable opportunity to submit written descriptions of the holder's concerns, defences and comments.

Transfer of medium-scale or large-scale mining licence

177. A holder of a medium-scale mining licence or large-scale mining licence may apply to transfer its licence to another party pursuant to Part IV, Division 4.

Part X—Small-Scale Mining Licence

Eligibility for small-scale mining licence

178. A small-scale mining licence holder shall be—

(*a*) an individual who is a Malawian citizen;

(*b*) a mining cooperative society registered pursuant to section 288;

(*c*) a mining partnership registered pursuant to section 288;

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(*d*) a company registered under the Companies Act, that is one hundred percent owned by Malawian citizens;

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(*e*) a company duly incorporated under the Companies Act, that is one hundred percent owned by Malawian citizens; or

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(*f*) an association incorporated under the Trustees Incorporation Act that comprises only Malawian citizens.

Application for small-scale mining licence

179.—(1) A person shall not engage in small-scale mining without a small-scale mining licence.

(2) An application for the grant of a small-scale mining licence shall be submitted to the Authority in the prescribed form, accompanied by the prescribed fee or proof that such fee has been paid and shall—

(*a*) in the case of an application by—

(i) an individual, provide the full name, address (which shall

be the registered address upon the grant of the licence) for notifications and nationality of the individual;

(ii) a mining not cooperative society or mining partnership, provide the registration number assigned pursuant to a registration obtained under section 288, and the address (which shall be the registered address upon the grant of the licence) to which all notifications shall be sent; or

(iii) a company, provide the names and nationalities of all its members or directors and, if a corporation with share capital, the name and nationality of any person who is the beneficial owner of more than five percent of the issued share capital, and the company's address(which shall be the registered address upon the grant of the licence) for notifications;

(*b*) state the period applied for and the justification for that length of period; and

(*c*) be accompanied by—

(i) if the applicant is a company, a copy of the company's certificate of registration;

(ii) a schedule, in the prescribed form, describing the corners of the proposed small-scale mining licence area as prescribed in section 284;

(iii) a sketch map, in the prescribed form, showing the boundary of the proposed small-scale mining licence and such other natural features and the location of principal villages and neighbouring mineral tenements, if any, as will enable the area to be correctly located;

(iv) a statement giving particulars of the proposed mining operations, including—

(*a*) a description of the mining method;

(*b*) the potential effect of the proposed mining operations on the environment, and on any known monument, shrine or relic in the requested licence area, and including a description of the applicant's plans for environmentally responsible mining;

(*c*) the potential impact on the local population, if any, and proposals for mitigation and compensation measures;

(*d*) any particular risks (whether to health or otherwise) involved in mining the minerals and proposals for their control or elimination; and

(*e*) the proposed marketing arrangements for the sale of the mineral production;

(v) a description of any circumstances that may require the licence to be granted subject to particular conditions;

(vi) documentary evidence that consent to use the land for mining purposes has been given to the applicant by lawful occupiers or landowners of the land the subject of the application, if any;

(vii) any other material addressing matters that the applicant wants to be considered;

(viii) other materials as may be prescribed; and

(ix) the prescribed application fee or proof that such fee has been paid.

(3) An application for a small-scale mining licence shall be processed in accordance with Part IV, Division 2.

Restriction on grant of small-scale mining licence

180. A small-scale mining licence shall not be granted to an applicant in an area that is subject to—

(*a*) a small-scale mining licence, a medium-scale mining licence, or a large-scale mining licence;

(*b*) an exploration licence (except as provided for under section 119), unless the applicant is the holder of the exploration licence; or

(*c*) a retention licence, unless the applicant is the holder of the retention licence.

Effect of grant of small-scale mining licence on other tenement area

181. At the time that a small-scale mining licence is granted to the holder of a reconnaissance licence, non-exclusive prospecting licence or exploration licence, the land the subject of the small-scale mining licence ceases to be part of the reconnaissance licence, non-exclusive prospecting licence or exploration licence area to which it was related.

Term of small-scale mining licence

182.—(1) A small-scale mining licence shall be valid for an initial term of two years and the term may be extended, pursuant to section 183, for further periods not exceeding two years at a time.

(2) The term of a small-scale mining licence shall commence on the date on which the licence is granted.

(3) There shall be no limit on the number of term extensions that may be granted to the holder of a small-scale mining licence.

Extension of small-scale mining licence term

183. — (1) A holder of a small-scale mining licence, not later than thirty days prior to the expiry of its licence may apply to extend the term of its licence for a term of up to two years past the date the licence was registered or last extended.

(2) An application to extend the term of a small-scale mining licence shall—

(*a*) be submitted in the prescribed form and manner;

(*b*) state the period for which the term extension is sought;

(*c*) be accompanied by a brief summary report on mining activities carried out to the present time and an explanation of why the time extension is justified;

(*d*) describe rehabilitation and reclamation work done on the applicant's mined out areas;

(*e*) include an updated statement giving particulars of the proposed mining operations, including—

(i) a description of the mining method;

(ii) the potential effect of the proposed mining operations on the environment, and on any known monument, shrine or relic in the requested licence area, and including a description of the applicant's plans for environmentally responsible mining;

(iii) the potential impact on the local population, if any, and proposals for mitigation and compensation measures;

(iv) any particular risks (whether to health or otherwise) involved in mining the minerals and proposals for their control or elimination; and

(v) the proposed marketing arrangements for the sale of the mineral production;

(*f*) include such other materials as may be prescribed; and

(*g*) be accompanied by the prescribed application fee or proof that the fee has been paid.

(3) Subject to subsection (4), the Authority shall approve an application to extend the term of a small-scale mining licence if the licence holder has—

(*a*) complied with the application requirements under this section;

(*b*) substantially complied with the terms and conditions of its licence and its obligations under this Act and any other written law;

(*c*) submitted all reports required under section 189;

(*d*) paid all annual ground rent as required by section 255;

(*e*) paid all compensation required by section 216;

(*f*) submitted a reasonable justification for why the licence should be extended; and

(*g*) submitted a reasonable work programme for the period of extension.

(4) The term of a small-scale mining licence shall not be extended

pursuant to an application made under subsection (1)–

(*a*) unless the Authority is satisfied that the applicant has carried on, in good faith, within the limits of its competence and resources, mining operations in the small-scale mining licence area and intends to continue doing so; or

(*b*) if the applicant has not carried out effective rehabilitation and reclamation of the applicant's mined out areas to the satisfaction of the Authority.

(5) Where the Authority has determined that all required conditions set out in subsection (3) are met and none of the reasons prohibiting an extension under subsection (4) apply, the Authority shall inform the Authority to endorse the extension on the licence and may reasonably vary the conditions of the licence in light of the new mining work programme and other changed circumstances.

(6) Where a holder of a small-scale mining licence has registered an application to extend the term of its licence and the Authority has refused to approve the application, the holder may, within fourteen days of being notified of the refusal, apply to the High Court, for review of the decision of the Authority.

(7) Where a holder of a small-scale mining licence has registered an application to extend the term of its licence and the Authority has approved the application but has imposed new conditions on the licence, the licence holder may apply to the High Court for review of any or all of the new conditions, within fourteen days of being notified of the approval.

(8) Except as otherwise provided in this section, an application for the extension of a small-scale mining licence shall be processed in accordance with Part IV, Division 2.

Size and shape of small-scale mining licence area

184. An area of land over which a small-scale mining licence is granted or its term extended shall be—

(*a*) no more than two hectares;

(*b*) no less than one hectare; and

(*c*) in conformity with the requirements of section 284.

Expansion of small-scale mining licence area

185.—(1) An application for the grant of a small-scale mining licence area expansion shall be submitted to the Authority in the prescribed form and shall be accompanied by—

(a) the prescribed fee or proof that such fee has been paid;

(b) a schedule, in the prescribed form, describing the corners of the proposed small-scale mining licence expanded area as prescribed in section 284;

(*c*) a sketch map, in the prescribed form, showing the boundary of the proposed small-scale mining licence expanded area and such other natural features and the location of principal villages and neighbouring mineral tenements, if any, as will enable the area to be correctly located; and

(*d*) a statement giving particulars of the proposed expanded mining operations, including—

(i) the justification for expanding the licence area;

(ii) description of the mining method;

(iii) the potential effect of the proposed expanded mining operations on the environment, and on any known monument, shrine or relic in the requested licence area, and including a description of the applicant's plans for environmentally responsible mining;

(iv) the potential impact on the local population, if any, and proposals for mitigation and compensation measures;

(v) any particular risks (whether to health or otherwise) involved in mining the minerals and proposals for their control or elimination;

(vi) the proposed marketing arrangements for the sale of the mineral production;

(vii) a description of any circumstances that may require the licence conditions, if any, to be changed;

(viii) documentary evidence that consent to use the expanded land area land for mining purposes has been given to the applicant by lawful occupiers or landowners of the land the subject of the application, if any;

(ix) any other material addressing matters that the applicant wants to be considered; and

(x) other materials as may be prescribed.

(2) An application for a small-scale mining licence area expansion shall be processed in accordance with Part IV, Division 2.

Demarcation of small-scale mining licence area

186.—(1) A holder of a small-scale mining licence shall mark out the boundary of its licence area with markers at least one metre high from the ground level each visible from its two neighbouring markers.

(2) A holder of a small-scale mining licence shall at all times maintain visible markers marking out the boundaries of its licence area.

(3) Where a holder of a small-scale mining licence has failed to comply with the requirements of subsection (1) or (2), the Authority

may proceed to cancel the licence under section 79.

(4) When there is a dispute as to the location of any small-scale mining licence boundary marker, a party challenging the location may in writing request the Authority to determine the correct location.

(5) When the Authority in exercising its powers under subsection (4), it may, where necessary—

(*a*) establish the boundary marker locations through the use of a global positioning system device; or

(*b*) arrange for the disputed boundary to be surveyed and boundary markers to be located accurately,

and the costs shall be met by the party or parties claiming a location of the boundary different from that marked.

(6) Notwithstanding that boundary marker locations established under subsection (5) may be less accurate than locations established by a survey, boundary marker locations established pursuant to subsection (5) deemed to be accurate and boundaries defined by such markers shall be the boundaries of the mineral tenement.

(7) Where the Authority considers that any party may default on the payment for a survey under subsection (5)(*b*), the Authority may, prior to arranging the survey, require the party to submit a deposit sufficient to cover the cost of the survey.

(8) Where the results of a boundary survey arranged by the Authority pursuant to subsection (5)(*b*) indicate that boundary markers have been located in substantial error, the Authority shall serve on the holder of the small-scale mining licence that placed the makers erroneously a notice of demand to pay to the Authority the costs of the survey, and the Authority shall refund any deposit made under subsection (7).

(9) Where a holder of a small-scale mining licence fails to reimburse the Authority for the amount specified in a notice of demand within thirty days of the notice, the Authority shall proceed to cancel the licence under section 79.

(10) The Authority, when a land surveyor is denied access to land the subject of a survey to be made under this section, may grant to a land surveyor the right to enter upon land in accordance with section 285.

(11) A person carrying out a survey under this section shall not interfere with the activities undertaken on the land the subject of the survey.

(12) A person interfering with a survey being made or markers

being relocated pursuant to this section commits of an offence and shall, upon conviction, be liable to a fine of K500,000 or to imprisonment for one month.

(13) A person not authorized by this Act who damages, destroys or removes any marker placed pursuant to this section without the prior written permission of a holder of the mining licence commits of an offence and shall, up on conviction, be liable to a fine of K500,000 and to imprisonment for one month and the cost of repairing the damage.

Rights of small-scale mining licence holder

187.—(1) Subject to this Act and any condition of its licence, a holder of a small-scale licence shall have the exclusive right to carry on mining operations in its licence area.

(2) Without limiting the generality of subsection (1), a holder of a small-scale mining licence, subject to environmental and any other written law, shall have the right in its licence area, to—

(*a*) enter and occupy the land for the purpose of mining all mineral types specified in the licence and carry on such operations and undertake such works as may be necessary or expedient for that purpose and for the purpose of treating those minerals;

(*b*) apply for and be granted permission, by endorsement of the Authority on the licence, to mine minerals other than those originally specified in the licence;

(*c*) use only non-mechanised mining methods, as defined in section 2 or such limited mechanised mining methods as are specified in the licence by the Authority;

(*d*) sell and otherwise market and dispose of any mineral product recovered from or beneficiated or otherwise treated in the mine area;

(*e*) stack or dump any mineral or waste products in a manner approved by the Authority;

(f) request a land access order pursuant to section 221; or

(*g*) surrender part or all of the licence area subject to meeting the surrender requirements imposed under this Act.

(3) A limited mechanised mining method shall not include the use of backhoes, bulldozers, excavators, dredges and similar large equipment.

Obligations of small-scale mining licence holder

188.—(1) A holder of a small-scale mining licence shall—

(a) within the limits of its competence and resources, carry on in good faith, mining operations in the licence area in accordance with the conditions of its licence, this Act and any other written law;

(*b*) mark out the licence area in accordance with section 186;

(*c*) commence mining within one-hundred and eighty days from the registration date of its licence;

(*d*) furnish the Authority with information relating to its mining operations as the Authority may reasonably require or as may be prescribed;

(*e*) if not personally supervising the mining operations under the licence, employ a competent person for the purpose of supervising its mining operations provided that all such competent persons shall be approved by the Authority and shall carry with them such means of identification as the Authority may direct;

(*f*) carry out rehabilitation and reclamation of mined out areas;

(*g*) keep accurate records of winnings from the licence area and such records shall be produced for inspection on demand by the Authority or a duly authorised officer;

(*h*) carry out promptly any directives relating to its mining operations which may be given to the holder by the Authority or an Inspector of Mines for the purposes of ensuring safety or good mining practices;

(*i*) not employ in the licence area more than fifty labourers;

(*j*) sell the minerals obtained in accordance with such restrictions as may be prescribed;

(*k*) submit reports required by section 189;

(*l*) not use mechanised mining methods, except such limited mechanisation as specified in the licence by the by the Authority; and

(*m*) do all other things required by this Act and as prescribed.

(2) Where the Authority determines a holder of a small-scale mining licence has failed to substantially comply with—

(*a*) any obligation arising under subsection (*1*) (*a*), (*b*), (*c*), (*d*), (e), (*f*), (*g*) or (*m*), the Authority, at his discretion, may commence the process to suspend or cancel the licence; or

(b) any obligation arising under subsection (*1*) (*h*), (*i*), (*j*), (*k*) or (l) the Authority, without delay, shall commence the process to cancel the licence pursuant to section 79.

Small-scale mining licence reporting obligation

189.—(1) A holder of a small-scale mining licence shall submit to the Authority semi-annual reports.

(2) A holder of a small-scale mining licence shall submit the reports required by subsection (1) at such time, in the form prescribed.

(3) A semi-annual report required by subsection (1) shall include at least the following information pertaining to the prescribed reporting period—

(*a*) a summary of the mining work undertaken in connection with the licence during the six-month reporting period;

(*b*) the type and quantity of any minerals mined;

(*c*) a description of the how the minerals mined were disposed of including the total value of all mineral sales;

(*d*) a summary of all royalties paid;

(*e*) a description of any accidents that occurred that led to death or significant bodily harm and what steps have been taken to avoid a recurrence;

(*f*) a summary of rehabilitation and reclamation work; and

(*g*) such other information as is prescribed.

(4) Subject to subsection (5), until a small-scale mining licence expires or is cancelled or surrendered, a report submitted under subsection (1) shall not be made available to any person outside the Authority nor shall its content be revealed except to the extent necessary to publish statistical information concerning mining in Malawi or for the Authority to give advice to the Minister on a confidential basis.

(5) A holder of a small-scale mining licence may consent for a report which he has submitted under subsection (1) to be disclosed prior to the expiry or cancellation or surrender of the licence subject to such conditions as the holder may specify in writing to the Authority.

(6) Nothing in this section shall preclude a holder of a small-scale mining licence from disclosing any report which it has submitted pursuant to subsection (1) to any party.

(7) Subject to subsection (4), a report submitted under subsection (1) shall be available for perusal and copying by the general public.

Notice to remedy dangerous or defective mining operations

190.—(1) Where an authorized officer considers any mining operation under a small-scale mining licence or anything, matter or practice in or connected with, any such mining operation to be so dangerous or defective that in his or her opinion it is likely to cause bodily injury to any person, the officer may give notice in writing of it to the holder of the licence.

(2) A notice issued pursuant to subsection (1) may require the danger or defect to be remedied or removed, either immediately or within such time as may be specified, and if the authorized officer

considers it necessary, order the mining operations to be suspended until the danger is removed or the defect remedied to his or her satisfaction.

(3) A holder of a small-scale mining licence to whom notice has been given under subsection (1), shall comply with the notice.

(4) Where a holder of a small-scale mining licence intends to object to any requirement or order given by the authorised officer, the holder shall forthwith cease the mining operations or that part of the operations affected by the notice and appeal to the Authority against the order.

(5) On an appeal made to the Authority pursuant to subsection (4), the Authority shall inquire into the matter and its decision thereon may be appealable before the Authority and later before the High Court for review.

Transfer of small-scale mining licence

191. A small-scale mining licence shall not be transferred or assigned to another party.

Part XI—Artisanal Mining Permit

Limited power of Local government authorities to regulate artisanal mining Cap. 22:01

192.—(1) Subject to subsection (4), the Constitution and the Local Government Act, this Act confers the power on a local government authority to grant and regulate artisanal mining permits and to make by-laws for this purpose.

(2) Without limiting the generality of subsection (1), a local government authority may in its by-laws provide for artisanal mining permit application and granting processes, fees, enforcement and all other matters as are reasonably required to grant and regulate such permits.

(3) The Minister, upon the advice of the Authority, from time to time, may issue guidelines on the required minimum content of by-laws to regulate artisanal mining permits.

(4) Any by-laws made by a local government authority to grant and regulate artisanal mining permits shall conform to such guidelines as are issued under subsection (3) and shall not conflict with any provision of this Act, and if any provision of any by-law does so conflict, that provision is of no effect to the extent of the conflicting matter.

(5) Subject to subsection (6), any local government authority that grants artisanal mining permits shall annually, no later than February 28th, submit to the Authority a report summarizing the number of artisanal mining permits it issued in the previous year, their purpose,

the minerals mined and the amounts, and any enforcement issues that arose and how they were resolved.

(6) The Authority, from time to time, may issue guidelines on the required minimum content of annual local government authority artisanal mining permit reports and any such report submitted by a local government authority shall conform to such guidelines.

Artisanal mining permit not available in some areas

193. A local government authority shall not grant an artisanal mining permit in any area where the local government authority responsible for that area has not made by-laws for the purposes of granting and regulating artisanal mining permits.

Authority may require a mineral tenement

194. The Authority may, in consultation with the local government authority, direct the holder of an artisanal mining permit to suspend its mineral production and apply for a mineral tenement where, in the Authority's opinion, the nature, circumstances or size of the operation requires a mineral tenement, and any artisanal mining permit holder so directed shall comply with the Authority's direction or permanently cease mining in its permit area.

Eligibility for artisanal mining permit

195.—(1) An artisanal mining permit holder shall be—

(*a*) an individual who is a Malawian citizen; or

(*b*) a company registered under the Companies Act, that is one hundred percent owned by Malawian citizens; or Cap. 46:03

(*c*) a company duly incorporated under the Companies Act, that is one hundred percent owned by Malawian citizens. Cap. 46:03

Restriction on granting of artisanal mining permit

196.—(1) An artisanal mining permit shall only be granted to an applicant who meets the section 195 eligibility requirements.

(2) An artisanal mining permit may only be granted to mine minerals used in local area construction, such as sand, gravel, stones, clay, aggregate, earth and minerals used for the customary making of pottery and bricks, provided that an artisanal mining permit operation—

(*a*) is temporary, for a period not exceeding one year;

(*b*) will not have a significant impact on the environment;

(*c*) will not significantly impact on existing land use;

(*d*) will produce minerals only for local use near to the artisanal mining permit area;

(*e*) will not use mechanized means to extract the minerals;

(*f*) will not conduct underground mining or have any pit in excess of five meters from the natural contour of the land;

(*g*) except in the case of clay for bricks, will not produce over

1,000 tonnes of minerals during the entire term of the permit; and

(*h*) in the case of clay for bricks, will not produce in excess of such amount of clay that can be used to manufacture 100,000 standard bricks during the entire term of the permit.

(3) An artisanal mining permit shall not be used for the purpose of mining precious stones, rare earth minerals, coal or any metallic mineral.

Artisanal mining permit conditions

197.—(1) An artisanal mining permit shall contain conditions that require a permit or licence holder—

(*a*) to keep a copy of the permit at the mine site whenever mining is taking place;

(*b*) to use safe practices whenever mining;

(*c*) to use only non-mechanised mining methods, as defined in section;

(*d*) not to use any powered machinery in its mining operations except for the purpose of loading material in, or moving material from, the area where those operations are performed;

(*e*) not to employ or use child labour;

(*f*) not to conduct underground mining;

(*g*) not to mine in any open-pit deeper than five metres below the natural surface of the ground;

(*h*) not to use explosives;

(*i*) not to discharge water from any sluice, pump or other equipment that qualifies as non-mechanised mining equipment as per the definition provided in section 2 except into a holding pond, settlement dam or similar structure or apparatus designed to protect any waterway from the discharge of silt, solids and other suspended matter;

(*j*) to keep the licence area free of alcohol and illicit drugs and make sure that miners are not intoxicated or under the influence of illicit drugs or homebrew; and

(*k*) to comply with any other conditions as the granting authority may determines.

(2) Any artisanal mining permit holder who fails to comply with the conditions set out in subsection (1), whether or not such condition is set out in its permit, commits of an offence and shall, upon conviction; be liable to a fine of K5,000,000 and to imprisonment for twelve years.

Cancellation of artisanal mining permit

198.—(1) Notwithstanding any provisions made by a local government authority to grant and regulate artisanal mining permits, including cancellation provisions, the Authority in consultation with the local government authority may cancel an artisanal mining permit if in the Authority's opinion it is in the best interests of Malawi to do so.

(2) When the Authority cancels an artisanal mining permit, the Authority shall inform the permit holder the reasons why the permit was cancelled.

(3) Any party aggrieved by a decision of the Authority to cancel an artisanal permit may, within thirty days of the permit being cancelled, apply for review by the High Court.

(4) For avoidance of doubt, the provisions of section 79 do not apply to the cancellation of an artisanal mining permit.

Obligations of artisanal mining permit holder

199. A holder of an artisanal mining permit shall within the limits of its competence and resources, carry on in good faith, mining operations in its permit area in accordance with the conditions of its permit, this Act and any other written law;

Local government authority obligation to file permit with the Authority

200. A local government authority that issues an artisanal mining permit shall, within thirty days of issuing the permit, provide a copy of the permit to the Authority, who shall maintain a record of all artisanal mining permits currently in force.

Transfer of artisanal mining permit

201. An artisanal mining permit or any interest therein shall not be transferred, assigned or dealt with in any other way unless such act is done in accordance with a by-law made for that purpose by the local government authority that granted the permit.

Right to inspect

202. The Authority or any authorized officer shall have the right to inspect any artisanal mining permit area, record or other matter relating to an artisanal mining permit in the same manner as if the artisanal mining permit were a mineral tenement.

Part XII—Reserved Minerals

Possession of reserved minerals

203.—(1) Subject to this Part, a person shall not—

(*a*) possess any reserved mineral in its raw state unless the possessor is—

(i) a holder of a mineral tenement and the reserved mineral was extracted from, or on, its licence area;

(ii) a reserved minerals licence holder or is an authorized

agent acting on that licence holder's behalf; or

(iii) a person who has acquired the reserved mineral from a holder of a reserved minerals licence;

(*b*) purchase in Malawi any reserved mineral in its raw state unless the purchaser—

(i) has a reserved minerals licence or is an authorised agent of such a licence holders; or

(ii) purchased the reserved mineral from a holder of a reserved minerals licence; and

(*c*) sell or otherwise dispose of reserved minerals in their raw form unless the seller—

(i) is a holder of a mineral tenement and the reserved mineral was extracted from its licence area or was recovered from materials processed on its licence area;

(ii) has a reserved minerals licence; or

(iii) is a person who has acquired the reserved mineral from a holder of a reserved minerals licence.

(2) For avoidance of doubt—

(*a*) a jeweller, refiner or other commercial enterprise in Malawi who buys reserved minerals in a raw state for a manufacturing process (such as cutting, polishing, setting or refining) or for reselling;

(*b*) an educational institution which buys reserved minerals for the purpose of training persons to cut, polish, set or otherwise prepare such minerals; and

(*c*) the holder of a mineral tenement who buys or acquires reserved minerals in a raw state or allows others to use its facilities for processing reserved minerals,

shall possess a reserved minerals licence.

(3) A person who possesses, purchases or sells any reserved mineral in its raw state in contravention of subsection (1) commits an offence and shall, upon conviction be liable on conviction to a fine of K10,000,000 and to imprisonment for two years.

Possession by museums, educational or scientific establishments

204. Nothing in section 203 shall operate to prevent a museum, educational or scientific establishment from possessing or purchasing reasonable amounts of reserved minerals for the purpose of display, teaching or scientific study.

Application for reserved minerals licence

205. An application for a reserved minerals licence or licence extension shall be made to the Authority in the prescribed form and shall be accompanied by the prescribed fee.

Grant of reserved minerals licence

206.—(1) The Authority may grant a reserved minerals licence to—

(*a*) any licensed bank in Malawi;

(*b*) a company, duly incorporated under the under the Companies Act; or Cap. 46:03

(*c*) any individual person who—

(i) is eighteen years of age or older;

(ii) is a fit and proper person to hold such a licence and who, in the opinion of the Authority, appears to understand the provisions of this Act, to such an extent so as to enable him carry out the obligations imposed under this Act; and

(iii) has not been convicted an offence under this Act or an offence involving dishonesty or fraud.

(2) A reserved minerals licence shall be valid for one year from the date of issue and may be renewed on payment of the prescribed fee.

(3) A reserved minerals licence shall not be transferable.

(4) Notwithstanding subsections (1) and (2), the Authority may grant a reserved minerals licence to a government agency on such terms and conditions as the Authority determines.

Cancellation of reserved minerals licence

207. The Authority may, by notice in writing to a holder of a reserved minerals licence, cancel the licence if, after inquiry, the Authority is satisfied that–

(*a*) the holder is not a fit and proper person to hold a reserved minerals licence;

(*b*) the holder is in breach of its obligations under this Act or the conditions of its licence; or

(*c*) the holder has been convicted of an offence which renders him unfit to hold the licence.

Rights of reserved minerals licence holder to purchase reserved minerals

208. A reserved minerals licence holder shall have the right to purchase and sell raw reserved minerals from and to any mineral tenement holder and from and to any other reserved minerals licence holder.

Obligations of reserved minerals licence holder

209. A reserved minerals licence holder—

(*a*) is prohibited from purchasing any reserved minerals in their raw form from any person unless that person is the holder of a mineral tenement or is a reserved minerals licence holder;

(*b*) shall at all times keep at its registered premise for business in Malawi its licence and shall produce the licence upon request by an authorized officer;

(*c*) shall deal in reserved minerals in such manner as is prescribed; and

(*d*) shall report on its dealings in the prescribed manner.

Inspection of premises and equipment

210.—(1) A reserved minerals holder's premises and register may be inspected at any time during regular business hours by an authorised officer, and any such person may test the balances for accuracy and take extracts from and make copies of any part of the dealings register.

(2) Any person who obstructs any such inspection made pursuant to this section commits an offence and shall, upon conviction be liable to a fine of K5,000,000 and to imprisonment for twelve years.

Records and information on reserved minerals licence holders

211. The Authority shall keep a register of reserved minerals licence holders in which at least the following information shall be recorded—

(*a*) the registration number of each licence;

(*b*) the name, and address of the place of business of each dealer; and

(*c*) such other particulars as the Authority may require.

Discovery of reserved minerals by contractor

212.—(1) A contractor who is constructing public works that inadvertently discovers reserved minerals in the course of its work shall inform the discovery to the Authority within thirty days of its discovery.

(2) Subject to subsection (1), the land where the discovery is made shall not be subject to an exploration licence, retention licence or mining licence or closed to mining.

(3) A contractor that has informed the Authority of a discovery pursuant to subsection (1) may apply to the Authority, for a mineral tenement on an exclusive priority basis for a period of sixty days from the date that the Authority was so informed.

(4) Where a contractor that is constructing public works discovers reserved minerals that a person not familiar with mining would reasonably consider to have commercial mining potential and fails to report such discovery as required under subsection (1), that contractor commits of an offence and shall be upon conviction, to a fine of K1,000,000.

PART X11I—RESTRICTIONS, SURFACE RIGHTS AND COMPENSATION

Exercise of right by holders

213.—(1) Where a mineral tenement granted under this Act includes public land already reserved for a public purpose (such as a forest reserve, protected forest reserve, game reserve, national park, environmental protection area, watershed, monument, etc.,), the holder shall not enter upon that land until such time as it has met the requirements of section 38(*b*).

(2) A holder of a mineral tenement or artisanal mining permit shall not enter upon the land the subject of its tenement or permit except with the written consent of—

(*a*) the Authority, in respect of any land dedicated as a place of burial or which is a place of religious significance after consultation with the appropriate responsible authorities; and

(*b*) the lawful occupier thereof, in respect of—

(i) any land which is the site of, or which is within one hundred metres of, any inhabited, occupied or temporarily unoccupied permanent house or building;

(ii) any land within fifty metres of land which has been cleared or ploughed or otherwise bona fide prepared for the growing of, or upon which there are growing, agricultural crops (including orchards or fuel-wood) plantations;

(iii) any land from which, during the year immediately preceding, agricultural crops have been harvested; or

(iv) any land which is the site of, or within one hundred metres of, any cattle dip-tank, dam, or other body of water, not being public water as defined in the Water Resources Act. Cap. 72:03

(3) Notwithstanding the generality of subsection (1), a holder of a mineral tenement or artisanal mining permit shall not enter upon the land the subject of its tenement or permit except with the written consent of—

(*a*) the responsible railway administration, in respect of any land reserved for the purpose of any railway track, or which is within fifty metres of the boundaries of any land so reserved;

(*b*) the local government authority having control over the township, in respect of any land within, or within 200 metres of the boundaries of, any township;

(*c*) the Authority, after consultation with the authority having control thereof, in respect of any land comprising a street or road reserve as defined in the Public Roads Act, or airport or airfield; Cap. 69:02 or

(*d*) a holder of the petroleum production licence concerned, in

respect of a production area as defined in section 3 of the Petroleum (Exploration and Production) Act. Cap. 69:02

(4) Where any consent required under subsection (2)(*b*), in the opinion of the Authority, is being unreasonably withheld, the Minister, on such conditions (if any) as the Authority may determine, may direct in writing that the need for the consent be dispensed with and, in that event, subsection (2)(*b*) shall not have effect so far as it requires the consent of the lawful occupier concerned to be given.

(5) Any consent under this section may be given unconditionally or subject to such conditions as are specified in the instrument of consent.

Disputes about land

214. Any dispute as to whether or not section 229(2)(*b*) applies in respect of any land or as to whether any person is a lawful occupier of that land shall be decided by the Authority whose decision may be subject to review by the High Court.

Rights of surface owners and occupiers

215.—(1) A lawful occupier or owner of any land in a reconnaissance licence area, non-exclusive prospecting licence area, exploration licence area or retention licence area retains all its rights including any right to graze livestock upon, to cultivate the surface of the land, to occupy and otherwise use the land to the extent of the lawful occupier's or owner's right.

(2) The rights conferred by a reconnaissance licence, non-exclusive prospecting licence, exploration licence or retention licence shall be exercised reasonably and in good faith so as to minimize any adverse effect on the interests of a lawful occupier and owner of land, or adversely affect the land subject to the licence, or on which rights under the licence are exercised, consistent with the reasonable and proper conduct of operations pursuant to the licence.

(3) A holder of a mining licence shall have an exclusive right to use both the surface and the subsurface of the land the subject of its licence but may allow lawful occupiers and owners of the land to do such things on the surface of its licence area that do not unduly interfere with its operations.

Compensation of lawful occupiers and owners of surface lands

216.—(1) A holder of a mineral tenement shall be liable to pay compensation to lawful occupiers and owners of land the subject of its tenement, adjoining its tenement and in the vicinity of its tenement for all loss or damage suffered or foreseen to be suffered by them as a result of the holder's activities.

(2) Where a mineral tenement holder's activities are carried out by a person other than the mineral tenement holder, such as an agent or independent contractor, all losses or damage resulting from activities

carried out on the holder's behalf shall be compensated by the holder as if such activities had been carried by the holder.

(3) The amount and type of the compensation payable to a lawful occupier or owner of land, as the case may be, pursuant to this section may be determined by the mutual agreement of the lawful occupier or owner of land and the mineral tenement holder or, if not so agreed, may be determined by the Authority pursuant to section 219.

(4) Where compensation is being assessed or negotiated, women shall be consulted in their individual capacities in order to arrive at a fair compensation for loss of property, land or income, which will be paid directly to them.

(5) Where the holder of a mineral tenement and the party to be compensated are able to agree on the amount and manner of compensation to be paid, the mineral tenement holder shall submit to the Authority a copy of a compensation agreement signed by the holder and the party to be compensated.

(6) A compensation agreement submitted pursuant to subsection (5) shall be treated by the Authority and other relevant authorities involved as confidential and any such agreement shall not be disclosed to any person outside the Authority without the prior written permission of the parties to the agreement.

(7) Subject to subsection (8), compensation to which lawful occupiers and owners of land are entitled includes but is not limited to compensation for—

(*a*) the deprivation of the possession or use of the natural surface of the land due to resettlement, destruction or damage to the natural surface of the land;

(*b*) any damage to the natural surface of the land;

(*c*) the severance of land or any part thereof from other land held by the lawful occupier or owner of land;

(*d*) any loss or restriction of a right of way, easement or other right;

(*e*) the loss of, or damage to, buildings, livestock, crops, perennial and fruit trees, forests and natural resources that sustain livelihoods, that economic trees, fences, gates, equipment, water wells, infrastructure or other improvements;

(*f*) in the case of productive land or impacted business or any income generation activity, loss of earnings, including that arising from unreasonable delay of resettlement; and

(*g*) disruption of agricultural activities on the land, including

loss of food crops where resettlement is unduly delayed.

(8) In determining the amount of compensation for any of the circumstances referred to in subsection (7), regard shall be made to the following—

(*a*) whether or not the circumstance is permanent;

(*b*) if a circumstance is not permanent, the actual or anticipated period of time of the circumstance;

(*c*) whether the asset is moveable or immoveable;

(*d*) costs of physical relocation;

(*e*) all related transactions costs;

(*f*) the effect of a circumstance not only on the present generation of people but also on future generations of people; and

(*g*) if compensation has been paid or is payable under any other law.

(9) No compensation shall be payable and no claim for compensation can lie, whether under this Act or otherwise—

(*a*) in consideration of permitting entry on to the land for of a mineral tenement;

(*b*) in respect of the value of any mineral which is or may be on or in the land; or

(*c*) for the use of public infrastructure or waters,

other than as provided for in this Act.

Lawful occupier and owner of land to be given advance notice of intent

217. A holder of a non-exclusive prospecting licence, reconnaissance licence, exploration licence or retention licence, before entering upon the ground to commencing reconnaissance, prospecting, exploration or retention work in any private land, shall inform any lawful occupier and owner of land, where known, a minimum of thirty days in advance of the holder's intention to commence activities on the land in which the lawful occupier and owner of land has an interest.

Liability and redress

218.—(1) A holder of a mineral tenement or artisanal mining permit shall be strictly liable for any harm or damage caused by mining operations or mineral processing operations and shall compensate any person to whom the harm or damage is caused.

(2) Liability shall attach to the person who directly contributes to the act or omission which results in the harm or damage.

(3) Where two or more persons constitute, or constituted, the holder of a mineral tenement or artisanal mining permit, those persons are jointly and severally liable for the payment of any costs and

expenses which may be recovered under this section from the person who is or was the last holder of the mineral tenement or artisanal mining permit, but without prejudice to any right of contribution existing between them.

(4) Where any harm or damage is caused to the environment or biological diversity beyond that provided for in a mineral tenement holder's approved plans, compensation shall include the cost of reinstatement, rehabilitation or clean up measures which are incurred and where applicable, the cost of preventive measures.

Compensation dispute resolution

219.—(1) Where there is a dispute on the amount of compensation to be paid by a holder of a mineral tenement to—

(*a*) a lawful occupier or owner of land the subject of the holder's mineral tenement; or

(*b*) a person affected by the holder's project,

the parties to the dispute shall first attempt to resolve the disputed matter by negotiation between themselves.

(2) Where the parties to a compensation dispute are unable to resolve the disputed matter by their own negotiation, any party to the dispute may refer the matter to the Authority who shall arrive at a determination in consultation with the secretary responsible for lands.

(3) Where a compensation dispute has been referred to the Authority for determination under subsection (2), the Authority may—

(*a*) require a hearing to determine the amount of compensation; or

(*b*) refer the matter for mediation under section 220,

and shall determine the amount of compensation to be paid within sixty days of the date on which the compensation dispute was first referred to the Authority.

(4) Where the Authority requires a hearing under subsection (3), the Authority shall notify—

(*a*) the affected parties;

(*b*) the principal secretary responsible for lands; and

(*c*) other such persons, traditional leaders, local authorities, and valuation experts as the Authority deems are appropriate,

of the place, date and time of the hearing.

(5) A person, whether or not the recipient of a notice under subsection (4), that is a lawful occupier or owner of land the subject of the hearing has the right to attend the hearing and to be heard.

(6) The Authority may determine whether a hearing convened under this section may be open to the public.

(7) Where the Authority, in consultation with the principal secretary responsible for lands, has made a determination of the amount of compensation to be paid by the holder of a mineral tenement under this section, the Authority shall provide a copy of the determination to all parties the subject of the determination and to the Authority.

(8) A party the subject of a compensation determination made by the Authority under this section who is dissatisfied with the determination may appeal the determination to the court.

Mediation

220.—(1) The Authority may refer any dispute arising between a mineral tenement holder and—

(*a*) a lawful occupier or owner of land the subject of the holder's mineral tenement; or

(*b*) a person affected by the holder's project, or a qualified community,

for mediation.

(2) The Authority may refer a dispute for mediation on the Authority's own initiative or at the request of a party to the dispute.

(3) Before the Authority refers a dispute for mediation, the Authority shall consult with the disputing parties and attempt to obtain a resolution of the matter and may request from the relevant persons a written statement of their concerns that resulted in the dispute.

(4) The purpose of the mediation under this section shall be limited to resolving the matters that are in dispute.

(5) Under this section mediation—

(*a*) shall be conducted by—

(i) a mediator chosen by agreement of the parties to the mediation; or

(ii) if the parties are not able to agree on a mediator, the Authority shall appoint an independent person with suitable training, qualifications and experience; and

(*b*) may end at any time by decision of the mediator or by agreement of the parties to the mediation.

(6) Under this section mediation shall include—

(*a*) the parties to the dispute;

(*b*) a representative of the Authority;

(*c*) a representative from the Ministry responsible for lands; and

(*d*) such other persons as the mediator conducting the mediation considers appropriate.

(7) The mediator who conducted the mediation, as soon as practicable after the mediation is conducted or should have been conducted, shall prepare a report to the parties to the mediation and the Authority about—

(*a*) whether the mediation was conducted;

(*b*) if the mediation failed, the reasons for the failure; and

(*c*) if the mediation succeeded, the means of resolving the dispute, including any actions to be taken by the parties.

Land access order

221.—(1) Where a mineral tenement holder is denied access to any area that is the subject of its tenement by a lawful occupier or owner of that land, the holder, after a reasonable effort to negotiate access, may—

(*a*) notify in writing the Authority the details of the land access problem; and

(*b*) request a land access order.

(2) The Authority, as soon as is practicable after receiving a notification submitted pursuant to subsection (1), but in no case longer than thirty days, shall commence a land access order process in the prescribed manner.

(3) The Authority, in consultation with the principal secretary responsible for lands, may issue a land access order, and any mineral tenement holder and lawful occupier or owner of land identified in the order shall act in accordance with such order.

(4) An affected lawful occupier or owner of land aggrieved by the decision of the Authority to issue a land access order or with the terms of any such land access order made under this section, within thirty days of the date the order is made, may apply for review by the High Court.

(5) A mineral tenement holder aggrieved by the decision of the Authority to refuse a land access order or with the terms of any land access order made under this section, within thirty days after the date the order is refused or made, apply for review by the High Court.

(6) Where an appeal is lodged under subsection (4) or (5) the land access order shall have full effect until disposal of the appeal.

(7) Without affecting any proceeding that may be brought against

a mineral tenement holder in respect of the contravention of a land access order, if the mineral tenement holder contravenes such an order, a lawful occupier or owner of land to which the order relates may deny the mineral tenement holder access to the land until—

(*a*) the mineral tenement holder ceases the contravention; or

(*b*) the contravention is remedied to the reasonable satisfaction of the lawful occupier or owner of land.

(8) Where a mineral tenement holder has been denied access to its tenement area by a lawful occupier or owner of land in contravention to a land access order issued by the Authority under subsection (3), the mineral tenement holder may appeal in writing to the Authority for a determination of whether such denial was unreasonable or in contravention of the land access order.

(9) Where the Authority, in consultation with the principal secretary responsible for lands, determines under subsection (8), that land access was denied by a lawful occupier or owner of land unreasonably or in contravention of a land access order, such lawful occupier or owner of land commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 plus K50,000 for each day of default and to imprisonment twelve months.

Part XIV—Enforcement

Division 1–Inspections

Inspection programme

222. The Authority, on the advice of the inspectors, shall establish an inspection programme, including announced and unannounced inspections, to monitor compliance with the requirements of this Act, the regulations or conditions of a mineral tenement.

Conduct of inspections

223.—(1) An authorized officer may conduct any inspections and carry out such other examination, as may be necessary, to confirm and verify compliance with the provisions of this Act, the regulations and conditions of a licence.

(2) Except for an unannounced inspection of a mineral tenement area, an authorized officer, before making an inspection of a mineral tenement, shall give reasonable notice to the licence holder that an inspection is to be carried out on a mineral tenement area.

(3) Before exercising any of his or her inspection powers, where there is any person who is, or appears to be in charge of the area, structure, vehicle, vessel, aircraft, building machinery, equipment or matter or thing in respect of which the power is about to be exercised,

the authorized officer shall identify himself or herself to that person and to any person to whom the officer is about to give a direction.

Inspection results and reports

224.—(1) An authorized officer shall document the results of an inspection in a report, which the officer shall submit to the Authority, within thirty days of the inspection.

(2) The Authority shall make inspection reports available to the person to whom the inspection report relates and any other entities as required or useful.

(3) The report referred to in subsection (1) shall be recorded and a copy of the inspection report shall be kept by the Authority.

Lawful occupier and owners to cooperate

225. A person who is a lawful occupier, owner or person in charge of any land, building, structure or place, or the person in charge of any vehicle, trailer, vessel, barge, aircraft, machinery or equipment, shall provide an authorized officer with all reasonable facilities and assistance, including the provision of necessary means of transport for the effective exercise of the authorized officer's powers.

Division 2 – Powers of authorised officers

Powers, authority and duties of authorized officer

226.—(1) An authorized officer shall have the powers, authority and duties attributed to that officer pursuant to the officer's appointment under this Act and as attributed to an authorized officer under this Act.

(2) For the purposes of this Act, an authorized officer, at all reasonable times, may—

(*a*) enter any land, operations, mineral tenement area, artisanal mining permit area, structure, vehicle, vessel, aircraft, building or place that, in the authorized officer's opinion, has been, is being or may be used in connection with reconnaissance, prospecting, exploration or mining activities in the furtherance of any purpose or reason that is beneficial to such officer in the execution of the officer's assigned duties;

(*b*) do all things which are necessary to ascertain whether the provisions of this Act are being complied with;

(*c*) inspect and test any machinery or equipment that, in the authorized officer's opinion, has been, is being or may be used in connection with any of the activities referred to in paragraph (*a*);

(*d*) take or remove for the purpose of analysis or testing, for use in evidence in connection with an alleged offence against this Act, samples of soil, rocks, minerals or other substances from a mine or any area where any of the activities referred to in paragraph (*a*) are being carried;

(*e*) inspect, take extracts from, and make copies of, any document relating to any of the activities referred to in paragraph (a);

(*f*) examine books, accounts, vouchers or records of any kind (whether kept in hard copy or electronically), required to be kept under this Act, and taking copies of such books, accounts, vouchers, documents or records;

(*g*) make such measurements and tests, and take photographs and video-graphic recordings, as the authorized officer considers necessary for the purposes of carrying out his or her duties and functions under this Act;

(*h*) with respect to the health and safety of persons employed or contracted by a holder of a mineral tenement or in connection with any of the activities referred to in paragraph (*a*), issue directions to and impose restrictions on the holder or any persons so employed, by instrument in writing;

(*i*) order, by instrument in writing—

(i) the cessation of activities on or in, and the withdrawal of all persons from, any structure or building that is being used in connection with any of the activities referred to in paragraph (*a*); or

(ii) the discontinuance of the use of any machinery or equipment, which the authorized officer considers unsafe, unless and until such action as is necessary for safety and specified in the instrument is taken and complete; and

(*j*) make such examinations and inquires as are necessary to ensure that the provisions of this Act, and any directions issued, conditions imposed or orders made under this Act, are being complied with.

(3) Where the premises referred to in subsection (2) consist of a private dwelling-house, an authorized officer shall not enter unless he or she has previously obtained the permission of the owner or occupier of the private dwelling-house or has first obtained a search warrant pursuant to applicable law.

Power to require name and address

227.—(1) An authorized officer may direct a person to state the person's name and address if the authorized officer—

(*a*) finds the person committing an offence against this Act; or

(*b*) has reasonable grounds to suspect that the person has committed an offence against this Act.

(2) A person, who fails to comply with a direction by an authorized officer under subsection (1), commits an offence and liable on conviction, to a fine of K1,000,000 and to imprisonment for two months.

Power to require answers to questions

228.—(1) When an authorized officer has reasonable grounds to believe that—

(*a*) an offence against the Act has been committed; and

(*b*) a person may be able to give information about the offence,

the authorized officer may direct the person to answer questions about the offence.

(2) A person, who fails to comply with a direction by an authorized officer under subsection (1), commits an offence and liable on conviction, to a fine of K1,000,000 and to imprisonment for two months.

Power to arrest without warrant

229.—(1) An authorized officer or police officer, without a warrant, may arrest any person reasonably suspected of being involved in a minerals related offence punishable with imprisonment for one month or upwards, if such person refuses to give his or her name and residence or gives a name and residence that there is reason to believe is false or if there is reason to believe that such person will abscond.

(2) An authorized officer or police officer making an arrest under this section, without unnecessary delay, shall take or send the person arrested to the officer in charge of the nearest police station.

Power to seize and sell minerals, etc

230.—(1) An authorized officer may seize one or more of the following—

(*a*) minerals that, on reasonable grounds, the officer believes were mined, removed, sold or processed in contravention of—

(i) this Act;

(ii) a term or condition of a mineral tenement or artisanal mining permit; or

(*b*) a boat, barge, vehicle or trailer in which is found or which is towing, minerals to which subsection (1) (*a*) applies.

(2) A boat, barge, vehicle or trailer seized under subsection (1) (*b*) shall be released from seizure when the minerals thereon or towed thereby is delivered to a location required by the authorized officer who made the seizure.

(3) When minerals are seized under subsection (1)—

(*a*) the authorized officer who made the seizure, without delay, shall provide a receipt to the person from whom the minerals were seized (if known), shall cause the minerals to be made safe and shall inform the Authority;

(*b*) the Authority shall cause an investigation to made as to the owners of the minerals; and

(*c*) where the investigations is—

(i) able to reasonably determine the owner, the Authority shall inform the owner where the owner may take possession of the minerals; or

(ii) unable, after a reasonable effort, to determine the owner, the Authority may sell or auction the minerals with the proceeds to be treated in the same way as the payment of a penalty for a violation.

(4) An authorized officer that seizes minerals pursuant to the power granted under this section and who fails to inform the Authority in order to personally benefit from the seizure, commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 plus five times the value of the minerals seized and to imprisonment twelve months.

(5) Where there is a dispute as to whether the grounds under which any mineral was seized and sold under this section were reasonable and in contravention of either this Act or a term or condition of a mineral tenement or artisanal mining permit, the net proceeds of the sale shall be held by the Authority pending determination by a court of competent jurisdiction.

Power to seize or destroy equipment at unauthorized mining site

231.—(1) At any site where mining activities are being done without a legal authorization provided under this Act, the Authority may cause to be seized any and all equipment, both mobile and fixed and whether owned by the person illegally extracting minerals, by any person transporting them or by any other person, at the site, and the Government may sell such equipment by public tender with the proceeds to be treated in the same way as the payment of a penalty for a violation.

(2) A person, or that person's proxy, from whom the equipment was seized under subsection (1) may not participate in an auction for that equipment or be present at the auction.

(3) Where it is the Authority's opinion that the proceeds that could be obtained from a sale of equipment pursuant to subsection (1) would be inadequate to justify the direct and indirect costs of the auction process, the Authority may order the equipment destroyed or otherwise rendered inoperable.

(4) A seizure and sale of equipment or the destruction or rendering of equipment inoperable under this section is independent of any penalty that may apply to an individual or company that mines minerals without an authorization provided under this Act.

(5) In any legal action for damages brought by the owner of equipment sold, destroyed or rendered inoperable under this section, there is no justification for such legal action if it can be shown that the equipment was located at any site where mining activities were being done without a legal authorization and the legal action shall be dismissed accordingly.

Division 3 – Directions and Orders

Authority may direct appearance

232. The Authority, by notice in writing, may direct any mineral tenement holder, or any person employed or contracted by a tenement holder, to appear before the Authority or any officer of the Authority at a reasonable time and place and give information regarding operations in the area of the tenement, and the tenement holder or other person shall comply with the notice.

Authorized officer may direct provision of information

233.—(1) An authorized officer may serve a written notice directing an individual, whether or not the holder of a mineral tenement, to provide to the him or her for inspection any documents, reports, books, plans, maps or other records relating to—

(*a*) information required to be kept in accordance with this Act or the conditions of a mineral tenement;

(*b*) information necessary or useful for the enforcement of any provision of this Act; or

(*c*) the carrying out of any activity which is related to reconnaissance, prospecting, exploration, retention or mining.

(2) A notice under subsection (1) shall—

(*a*) state the individual to whom it is issued (which in the case of information required from a company may be a director, manager, senior officer, employee or contractor of the company);

(*b*) state the information that is required;

(*c*) state the time within which the information is to be provided;

(*d*) state why the information is required; and

(*e*) state the procedure by which review of or appeal from the notice may be made.

(3) A notice under subsection (1) may be directed to any individual the authorized officer believes on reasonable grounds has knowledge of a matter, or has possession or control of a document dealing with a matter, for which the information is required.

(4) An individual, who fails to comply with a direction made under subsection (1) within a reasonable time, commits an offence and shall, upon conviction be personally liable to a fine of K1,000,000 and to imprisonment for one month.

Search warrant for minerals

234. On the complaint on oath, of an authorized officer, stating the officer's belief that any mineral liable to the payment of any mineral royalty is concealed or hidden in any place, a magistrate may issue a warrant to search for the mineral.

Police to assist Authorised Officers, etc.

235. All members of the Police Service, when required by an authorized officer discharging the officer's duties under this Act, shall act in aid of the authorized officer in the exercise and discharge by the authorized officer of the officer's powers, functions and duties under this Act.

Appeal of direction or order

236.—(1) Unless otherwise provided by the section of this Act giving rise to the matter, any person who is aggrieved by a decision, direction or order of an authorized officer may appeal to the Authority.

(2) The Authority shall, upon receipt of an appeal under subsection (1), as soon as practicable, but in any event within sixty days of receiving the appeal, hear and dispose of the appeal.

(3) The Authority shall within ninety days of the last date of a hearing conducted as required under subsection (2), record its decision in writing and deliver it to the appealing party.

(4) The filing of an appeal under this section shall not affect the operation of the decision, direction or order appealed from while the disposition of the appeal is pending.

Rescission or substitution of decisions

237. On an appeal under section 236, the Authority, as the case may be, may rescind or affirm the decision, direction or order in substitution therefore, and that decision or direction shall subject to review by the High Court.

Division 4 – Offences

General penalty

238.—(1) A person who acts in contravention, or fails to comply in any respect with a provision, of this Act commits an offence.

(2) A person who commits an offence against this Act for which no penalty is provided elsewhere in this Act or regulations made under this Act, shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for five years and a penalty K50,000 for every day of continuation of the commission of the offence.

Offences by body corporate

239. When an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or be attributed to any neglect on the part of a director, officer, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he or she as well as the body corporate, shall be guilty of

that, and personally liable for the, offence.

Offences by persons

240. A person who—

(*a*) in, or in connection with, any application under this Act or in response to any invitation or requirement of the Minister, the Authority or an authorized officer under this Act, knowingly or recklessly gives information which is false or misleading in a material manner;

(*b*) in any report, return, affidavit or attestation submitted in pursuance of any provision of this Act, knowingly or recklessly includes or permits to be included any information which is false or misleading in a material manner;

(*c*) places or deposits, or is accessory to the placing or depositing, any mineral or substance in any place with the intention of misleading any other person as to the mineral possibilities of that place; or

(*d*) mingles or causes to be mingled, with samples or minerals or mineral products derived from minerals, any substances that may enhance the value or in any way change the nature of the sample, mineral or mineral product, with the intention to cheat, deceive or defraud,

commits an offence and upon conviction is, in the case of an individual, to imprisonment for two years, or in the case of a body corporate, to a fine of K5,000,000.

Offence to refuse assistance or to obstruct authorized officer

241. A person who is a lawful occupier, owner or person in charge of any land, building, structure or place, or the person in charge of any vehicle, trailer, vessel, barge, aircraft, machinery or equipment who, without reasonable excuse—

(*a*) fails to provide an authorized officer with all reasonable facilities and assistance (including the provision of necessary means of transport) for the effective exercise of the authorized officer's powers to inspect;

(*b*) obstructs, molests or hinders an authorised officer in the exercise of his or her powers;

(*c*) does not provide an authorized officer access for the purpose of being inspected or interferes with an inspection; or

(*d*) knowingly or recklessly makes a statement or produces a document that is false or misleading in a material particular to an authorized officer engaged in carrying out his or her duties and functions under this section,

commits an offence and shall, upon conviction, be liable on conviction to a fine of K10,000,000 and to imprisonment for four years.

Offence to obstruct mineral tenement holder's operations

242. A person who, without reasonable excuse—

(*a*) obstructs, molests, hinders or prevents the holder of a mineral tenement, in or from the doing of any act which that holder is authorized to do by this Act; or

(*b*) unlawfully interferes with any machinery, plant, road, work or property on, in, under or over any mineral that is used in the exercise of a right conferred by or under this Act,

commits an offence and shall, upon conviction, be liable to a fine of K30,000,000 and to imprisonment for ten years.

Offence for authorized officer to trade

243. An authorized officer shall not, as principal or agent, trade in minerals or be or become interested in any mineral tenement or artisanal mining permit, and an officer that does so commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for two years.

Offence to unlawfully possess minerals

244. A person who—

(*a*) has in his or her possession any mineral; and

(*b*) on being required to do so by an authorized officer, refuses or fails to give an account to the satisfaction of the authorized officer of the manner in which he or she came into possession of the mineral,

commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for twelve months.

Offence to receive minerals unlawfully obtained

245. A person, who receives any minerals knowing them to have been unlawfully obtained, commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for two years.

Offence to demand money for non-interference

246. A person who demands a payment from a mineral tenement holder, other than a payment to which that person is entitled to receive under this Act, and who—

(*a*) unlawfully interferes or threatens to interfere with or obstructs or threatens to obstruct any reconnaissance, prospecting, exploration, retention, mining or other operations authorised by or under this Act unless the tenement or licence holder agrees to such payment; or

(*b*) unlawfully interferes or threatens to interfere with any machinery, plant, road, transmission line, work or property on, in, under or over any tenement that is used in the exercise of a right conferred by or under this Act unless the tenement or licence holder agrees to such payment,

commits an offence and shall, upon conviction, be liable, to a

fine of K10,000,000 and to imprisonment for two years.

Offences relating to annual ground rent and mineral royalty

247. A person who wilfully with intent to evade, or to assist any other person to evade, annual ground rent or royalties—

(*a*) makes an incorrect return by omitting or understating any matter used in the assessment of annual ground rent or mineral royalty;

(*b*) omits from a return made under this Act any land area, amount of mineral, value of mineral or any other information used in the assessment of annual ground rent or mineral royalty that should be included;

(*c*) makes any false statements or entry in any return made for the purposes of annual ground rent or mineral royalty;

(*d*) gives any false answer, whether verbally or in writing, to any question or request for information about annual ground rent or mineral royalty asked or made in accordance with the provisions of this Act;

(*e*) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records relating to annual ground rent or mineral royalty; or

(*f*) makes use of any fraud, art or contrivance whatsoever or authorises the use of any such fraud, art or contrivance related to annual ground rent or mineral royalty,

commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and treble the amount of annual ground rent or mineral royalty which has been undercharged in consequence of each such offence, or would have been undercharged if any such return, statement, accounts or information had been accepted as correct, or would have been undercharged if such fraud, art or contrivance had not been detected, and to imprisonment for five years.

Ground rent, mineral royalty and fees to be paid despite proceedings for penalties

248. The institution of proceedings for, or the imposition of a penalty, fine or term of imprisonment under this Act does not relieve any person from liability to pay any annual ground rent, mineral royalty or fee for which that person is liable.

Savings for criminal proceedings

249. The provisions of this Act shall not affect any criminal proceedings under any other written law.

Division 5- Administrative Penalties

Administrative penalties

250.—(1) Notwithstanding any penalties imposed under this Act or any written law for contravention of this Act, the Authority may impose administrative penalties in respect of the contravention.

(2) The administrative penalties imposed pursuant to subsection (1) may include—

(*a*) giving the person a written warning;

(*b*) directing that person to do a specified act or refrain from doing a specified act for one or more of the following purposes—

(i) to remedy the effects of the contravention;

(ii) to compensate persons who have suffered loss because of the contravention; and

(iii) to ensure that the person does not commit further contravention of this Act;

(*c*) requiring the directors, officers or employees, or licence holder to pay a monetary penalty as may be prescribed in the regulations;

(*d*) publication of non-compliant licence holders in the newspaper of widest circulation or website of the Authority where the holder persistently breaches this Act or regulations; or

(*e*) recommend to relevant authorities or agencies of Government for sanctions under respective law governing that person as a professional employment of business misconduct.

Part XV—Fiscal Provisions

Mineral royalties shall be payable on the production of minerals

251. A holder of a mineral tenement shall pay mineral royalties.

Failure to pay mineral royalty or tax

252.—(1) Where a mineral tenement holder fails to pay any mineral royalty or tax related to its operations on or before the date due or any renewal thereof allowed by the government authority for the administration of mineral royalty and tax revenue collection, that government authority, by written notice served on the holder of the mineral tenement (and copied to the Authority), may prohibit the transport, sale, pledging or other transfer of any interest in minerals produced from the mineral tenement area, or from any other mineral tenement area held by the same holder, until all outstanding mineral royalty payments and taxes have been paid or until an arrangement has been made, acceptable to that government authority, for the

payment of the mineral royalty, tax, or both.

(2) A holder of a mineral tenement who contravenes or fails to comply with a notice issued under subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 plus double the value of the minerals transport, sale, pledging or other transfer and, to imprisonment for two years.

(3) Where a tenement holder that is required to pay mineral royalty in accordance with any written law has failed to do so, the government authority for the administration of mineral royalty shall inform the Authority of the identity of the tenement holder, the tenement registration number and the date on which—

(*a*) such mineral royalty payment was due; and

(*b*) the date, if ever, on which the mineral royalty due was paid,

and the Authority shall record such information in the Register.

(4) Where a mineral tenement holder that is required to pay mineral royalty in accordance with any written law has not paid such mineral royalty as required under the Taxation Act, the Authority shall commence the process to cancel the licence pursuant to section 79. Cap. 41:01

Sales to affiliated company

253.—(1) Any mineral or mine product sale or disposal commitment by the holder of a mineral tenement to an affiliated company shall be made only at prices based on or equivalent to arm's length sales and in accordance with such terms and conditions at which such sale or disposal agreement would be made if the parties had not been affiliated.

(2) Where any mineral or mine product produced in a mineral tenement is sold or otherwise disposed of to an affiliated company the holder of the mineral tenement shall—

(*a*) report such sale or disposal to the Authority at such time and in such form and manner as is prescribed; and

(*b*) provide to the Authority, in such manner as is prescribed, a copy of all information, data, sales contracts, commissions, prices and receipts used in computing the prices pertaining to such sale or other disposal so that a determination can be made that the sale or disposal meets the requirement of subsection (1).

(3) Any information submitted pursuant to subsection (2) shall be treated as confidential and shall not be disclosed to any party outside the Authority except such information may be shared with any department of Government that levies and collects taxes or royalties based in any way on the value of a mine product sale or disposal transaction.

(4) For the purpose of this section and any related regulations "affiliated company" means any company—

(*a*) in which the mineral tenement holder holds five percent or more of the shares or ownership;

(*b*) which holds five percent or more of the mineral tenement holder's shares or ownership;

(*c*) affiliated by the same definition in paragraphs (*a*) or (*b*) to an affiliated company of the mineral tenement holder is itself considered an affiliated company; or

(*d*) or entity that the head of the Government agency responsible for the collection of taxes or royalties has identified as an affiliated company, for any reason whatsoever, and has so informed the mineral tenement holder by official notice.

(5) Where the holder of a mineral tenement fails to comply with subsections (1) or (2) the Authority shall proceed to cancel its licence under section 79.

Determination of fees and annual ground rent

254.—(1) The Minister, on the recommendation of the Authority and subject to section 256, shall prescribe the level of any fee or ground rent required to be paid to the Government.

(2) The Authority, may from time to time establish the manner in which any fee or annual ground rent payable under this Act is to be paid.

Annual ground rent

255.—(1) A holder of a reconnaissance licence, exploration licence, retention licence or mining licence shall pay ground rent annually in such form, manner and amount as are prescribed and to report such payment to the Authority in the prescribed form.

(2) A holder of a non-exclusive prospecting licence or artisanal mining permit is not required to pay annual ground rent.

(3) Subject to subsection (4), in respect of each tenement for which annual ground rent is payable, the annual ground rent is based on the mineral tenement area times the prescribed annual ground rent per unit area for that type of tenement and shall be paid annually before December 31 in advance of the calendar year for which the annual ground rent is being paid.

(4) In the year that a mineral tenement is granted, the ground rent payable is the annual ground rent amount for the tenement area prorated for the time period between the date on which the tenement was granted and December 31 and shall be paid at the time the tenement is issued.

(5) Where a mineral tenement is due to expire before the end of a

calendar year, the annual ground rent payable for that year is based on a full calendar year, and no portion of the annual ground rent paid is refundable.

(6) Annual ground rent payments shall be submitted in whole, partial payments are not allowed and shall not be accepted.

(7) Except in the first year of a mineral tenement, when any annual ground rent payment required under subsection (1) is paid after the December 31 payment deadline, a late payment penalty, in addition to the annual ground rent payable, shall be paid by the tenement holder equal to the amount of annual ground rent payable.

(8) For the avoidance of doubt, the amount of annual ground rent payable when payment has not been affected by the December 31 payment deadline is twice the amount that would have been payable had the annual ground rent been paid by the payment deadline date.

(9) Where a mineral tenement holder that is required under subsection (1) to pay annual ground rent has failed to pay annual ground rent due for the calendar year and any late payment penalty required under subsection (7) by—

(*a*) January 31 of that calendar year, the Authority shall—

(i) notify the tenement holder that such payments are past due; and

(ii) provide a copy of the notice to the Authority, who shall without delay, post the notice on the website of the Authority.

(*b*) February 28th of that calendar year, the Authority shall commence the process to cancel the licence pursuant to section 79.

(10) The failure of a mineral tenement holder to receive a notice pursuant to subsection (9) (*a*) does not excuse non-payment.

(11) Where a mineral tenement is held in common by many, all those having an interest in the tenement are held jointly and severally liable for the payment of the annual ground rent in respect of the tenement.

Payments related to mineral tenements are public debts

256.—(1) Any annual ground rent, fee, security, financial assurance or other payment required to be paid under this Act to the Government of Malawi, are debts due to Malawi and are recoverable in a court of competent jurisdiction.

(2) The Authority shall give written notice to the party owing any debt described above in subsection (1) and demand payment of the debt within thirty days.

(3) In any proceeding, whether of a civil, criminal or legislative nature, pursuant to this section, a certificate of the Authority

certifying that amounts of specified payments or payments due, those related to any payment or payment due of annual ground rent, fee or any other payment related to mineral tenements that have been paid or are payable, whether the persons who prepared the record of the information or received the payments are known, shall be received without prejudice as evidence of that fact, but subject to the right to investigate and produce evidence in rebuttal.

(4) Where two or more persons constitute the holder of a mineral tenement and any annual ground rent, fee, security, financial assurance or other payment related to the mineral tenement becomes payable, those persons shall be jointly and severally liable for each payment; but without prejudice to any contractual right of contribution existing between them.

(5) Fees payable to the Authority shall attract an interest penalty for late payment as prescribed.

Responsible authorities for tax and royalty collection may inspect records

257. The Malawi Revenue Authority shall have—

(a) the same rights as the Authority to inspect the financial records of the holder of any mineral tenement; and

(b) the right to require the tenement holder to hire an independent auditor to perform the inspection and prepare an independent report on such matters as the responsible authority may direct.

Automatic adjustment or periodic review of fees and annual ground rents

258.—(1) A method for automatically adjusting prescribed levels of fees and annual ground rents on an annual basis that is based on reference to a publicly accessible economic index may be prescribed.

(2) Any economic index prescribed pursuant to subsection (1) shall be prescribed by the Minister only after consultation and agreement with the Minister responsible for finance.

(3) Where an annual automatic fee and annual ground rent adjustment method has been prescribed pursuant to subsection (1), the Authority shall make available to the public an annually updated table of the adjusted fee and annual ground rent levels based on that method.

(4) Where the Authority has made available a table of updated fees and annual ground rents pursuant to subsection (3), the most recent such table of fees and annual ground rents are deemed to be the fees and annual ground rents that apply until such time as a subsequent table of fees and annual ground rents is made available by the Authority.

(5) Where an annual automatic fee and annual ground rent

adjustment method has not been prescribed pursuant to subsection (1)—

(*a*) the Authority shall review and recommend to the Minister, at least once in every three years, changes to the prescribed levels of fees and annual ground rents taking into account inflation and other changed circumstances; and

(*b*) the Minister shall prescribe updated fee and annual ground rent levels at least once in every three year period.

Compliance with fiscal transparency requirements and guidelines

259.—(1) The Authority, in consultation with the Commissioner General of the Malawi Revenue Authority, may, from time to time, issue mandatory or voluntary guidelines with regard to the keeping of fiscal payment records, the submission of information relating to fiscal payments by mineral tenement holders to any authority of the Government and require any other information or reports that may be useful to provide fiscal related transparency for the extractive industries.

(2) A holder of a mineral tenement shall conform to mandatory guidelines issued pursuant to subsection (1) with regard to fiscal transparency record keeping and reporting for the extractive industries.

(3) A holder of a mineral tenement that fails to substantially comply with subsection (2) commits an offence and liable on conviction, to a fine of K10,000,000 plus K100,000 for each day of continued non-compliance.

Part XVI—Government Ownership Interest

Government participation option

260.—(1) Nothing contained in this section shall affect the entitlement of the Government to receive taxes, royalties, ground rents, fees or any levy or compensation payable to it under this Act or any other written law.

(2) The Government shall have the right, but not the obligation, to acquire, directly or through a Government nominee, without cost, a free equity ownership interest in any mining project that will be subject to a large-scale mining licence.

(3) The Government shall have a limited-time option to exercise its right to a free equity ownership interest in a mining project commencing at the time that a large-scale mining licence application is submitted and terminating on the date that the mining licence application is granted or denied.

(4) At the time that the Authority considers a large-scale mining

licence application but before it decides the application it shall recommend in a notice to the Minister whether the Government should elect to acquire free equity ownership interest in the associated mining project.

(5) The Minister shall, within thirty days of a notice under subsection (4), decide, after consultation with the Minister responsible for finance, and notify the Authority whether the Government shall exercise its right to acquire the free equity ownership interest in the mining project, and if so, the percentage.

(6) Where the Minister fails to notify the Authority of his or her decision within the time period stipulated in subsection(5), it should be deemed that the Government has elected not to exercise its right to a free equity ownership interest in the mining project.

(7) Within fourteen days of receipt of a notice under subsection (5) the Authority shall notify the mining licence applicant of the Minister's decision.

(8) A large-scale mining licence applicant receiving a notice under subsection (7) may withdraw its application but its application fee shall not be refunded.

(9) Where a large-scale mining licence applicant has been notified that the Government shall exercise its right to a free equity ownership interest in the mining project and of the percentage and the applicant does not withdraw its application pursuant to subsection (8), the applicant shall—

(*a*) provide to the Government such percent of equity ownership, in such form and manner as directed or agreed with the Authority, on a free, sustained, non-dilutable and non-contributing equity basis; and

(*b*) enter into a shareholder or other ownership agreement with the Government that clearly identifies the Government's rights as a minority shareholder or owner with regards to when and how profit, dividend and other distributions will be determined and made.

(10) Where the Government has elected to exercise its right to a free equity ownership interest, no large-scale mining licence may be issued to an applicant prior to the applicant meeting the requirements of paragraphs (*a*) and (*b*) of subsection (9).

(11) Nothing in subsection (9) shall be read or construed as authorizing the Government to enter in an agreement relating to the payment of any applicable tax, duty, fee or other fiscal impost, or to grant in respect thereof any exemption or reduction.

(12) Subject to any written agreement between the Government or the nominee of the Government made pursuant to subsection (9), the holder of a large-scale mining licence shall be free to deal with that free equity ownership interest as it deems fit pursuant to its constituent law.

(13) A company that is a large-scale mining licence holder and that has provided a free equity ownership interest to the Government pursuant to subsection (9) shall have on its Board, a Board member nominated by the Minister.

(14) The Government as the holder of a free equity ownership interest derived under this section is not responsible for meeting the past, present or future exploration, development, operating, reclamation or any other costs of the project to which the free equity ownership interest relates.

(15) Where the Government divests all or a portion of its free equity ownership interest derived under this section to another party, that party, from the date of divestment, shall be subject to all future liabilities of the project to which the equity ownership relates in proportion to the ownership interest it holds.

(16) Nothing in this section precludes the Government from any other or further participation in a mining project that may be agreed with the holder of a mining licence on a market value basis.

Part XVII—Protection of the Environment

Environmental considerations
No. 19 of 2017

261. The Authority in deciding whether or not to approve any mineral tenement, shall take into account—

(*a*) environmental protection and management principles set out in the Environment Management Act;

(*b*) principles of sustainable development in order to ensure that exploitation of mineral resources serves present and future generations;

(*c*) effects on human health and environment; and

(*d*) where development of the proposed project may affect a neighbouring country, consultations with the respective relevant government authorities of the respective countries.

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Mineral tenement application may require submissions required by other laws

262.—(1) Where the Environment Management Act requires an Environmental and Social Impact Assessment report be prepared and approved for an activity or operation and the applicant for a mineral tenement is proposing that type of activity or operation, the mineral tenement applicant shall attach—

(*a*) a copy of its approved Environmental and Social Impact Assessment report to its application along with a certification from the Malawi Environment Protection Authority that the project has been approved by the Minister responsible for environmental matters; or

(*b*) a copy of its Environmental and Social Impact Assessment report along with an explanation that the report has been submitted under the Environment Management Act and is pending approval.

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(2) For avoidance of doubt, a mineral tenement may be approved by the Authority, as the prior to certification from the Malawi Environment Protection Authority that the project has been approved by the Minister responsible for environmental matters but the Authority shall not grant a mineral tenement until such time as the required certification has been provided or it has been determined that project does not require approval under the Environment Management Act.

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Cap. 61:03

(3) Where the Atomic Energy Act requires a licence or licences be approved for an activity or practice and the applicant for a mineral tenement is proposing that type of activity or practice, the mineral tenement applicant shall attach a copy of its approved licence(s) or a copy of its licence application(s) to its mineral tenement application.

(4) For avoidance of doubt, a mineral tenement may be granted prior to the grant of any licence required under the Atomic Energy Act, but the activity or practice permitted by such licence cannot be performed until such time as the licence is granted.

Cap. 61:03

(5) Where any other applicable law requires the completion of reports, studies, statements, evaluations and assessments with respect to the effect of an activity or operation prior to the grant of an authorisation for that activity or operation, and the applicant for a mineral tenement is proposing that type of activity or operation, the applicant shall attach a copy of such reports, statements, evaluations and assessments to its mineral tenement application.

Rehabilitation and mine closure plan

263.—(1) An application for a medium-scale or large-scale mining licence shall be accompanied by the applicant's proposed rehabilitation and mine closure plan, which shall contain such information as is prescribed.

(2) A holder of a medium-scale or large-scale mining licence shall comply with its approved rehabilitation and mine closure plan.

(3) A holder of a large-scale mining licence shall in its operations take into account rehabilitation and mine closure provisions, if any, set out in its community development agreements, if any.

(4) A holder of a mining licence required to have a rehabilitation and mine closure plan shall—

(*a*) submit an annual rehabilitation and mine closure plan report in such form and manner as are prescribed; and

(*b*) periodically update and have approved its rehabilitation and mine closure plan, in the prescribed manner.

Contents of rehabilitation and mine closure plan

264.—(1) A rehabilitation and mine closure plan proposal submitted with a mining licence application shall include—

(*a*) a physical closure plan, which includes dismantling of infrastructure, machinery, equipment and buildings, underground workings and open pit workings;

(*b*) environmental rehabilitation of the land area affected by mining operations including rehabilitation throughout the life of the mine;

(*c*) a social mitigation plan for the workforce and affected communities from the beginning of mining operations up to and including post closure;

(*d*) mechanisms for consultation with affected and interested communities and mine workers from the commencement of operations up to and including mine closure;

(*e*) post closure monitoring to ensure the safety and health of affected environment and communities; and

(*f*) other matters which may be prescribed.

(2) Where a rehabilitation and mine closure plan submitted under this Act includes the provisions for a mine closure scheme under the provisions of the Environment Management Act, the proposed plan submitted under this Act shall be reviewed and approved by the Authority specified in the Environment Management Act.

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Financial assurance

265.—(1) This section shall not apply to the holder of a small-scale mining licence.

(2) A holder of a medium-scale or large-scale mining licence for which rehabilitation and mine closure plan has been approved shall—

(*a*) submit a financial assurance in accordance with the Regulations to support the performance of rehabilitation and mine closure plan obligations and to ensure that the Government will not be responsible for meeting the costs of performing those obligations should the holder fail to implement its approved plan; and

(*b*) adjust its financial assurance periodically in accordance with any updated rehabilitation and mine closure plan approved pursuant to section 263(4)(b).

(3) Where the Authority, in consultation with the Malawi Environment Protection Authority, is not satisfied with the amount of financial assurance proposed in a proposed reclamation and mine closure plan or in a proposed updated reclamation and mine closure plan, the Authority, in consultation with the Malawi Environment Protection Authority, may appoint an independent assessor to conduct the assessment and determine the amount of financial assurance required.

(4) A holder of a mining licence required to provide a financial assurance shall not commence mining and ancillary operations pursuant to its mining licence until a financial assurance has been submitted in accordance with this section and the Regulations.

(5) Where rehabilitation and mine closure plan is approved to satisfy both the provisions of this Act and the Environment Management Act, only one financial assurance is required to satisfy the requirements of both this Act and the Environment Management Act.

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(6) For purposes of this Act, a financial assurance may include—

(*a*) an irrevocable, unconditional letter of credit issued to the Authority by a bank or a parent company;

(*b*) a security, guarantee or performance bond issued to the Malawi Environment Protection Authority by a bank or a company legally able to do so;

(*c*) security interests in unencumbered assets, goods, documents of title, securities, chattels, instruments, monies, intangibles or interests arising from assignment of accounts including a pledge of assets;

(*d*) a trust fund held by and administered by a recognized and competent entity; or

(*e*) a combination of the foregoing securities in paragraphs (*a*) through (d).

(7) Where the holder a mining right fails to fully implement its approved rehabilitation and mine closure plan, or is unable to manage its approved mitigation of environmental impacts, the Authority in consultation with the Malawi Environment Protection Authority, may upon written notice to such a holder, use all or part of the financial assurance to rehabilitate or manage the negative environmental impacts in question.

(8) The requirement for the holder of a mining licence that is required to provide a financial assurance to maintain a financial assurance shall remain in force until the Authority, in consultation with the Malawi Environment Protection Authority, issues a closure certificate to the holder under section 273:

Provided that—

(*a*) the Authority may retain such portion of the financial assurance that is in the form of assets or funds as may be required to rehabilitate the closed prospecting, exploration or mining operation in respect of latent or residual environmental impacts; and

(*b*) any assets or funds that are in surplus of the requirement under paragraph (*a*) of this proviso shall be returned to the holder.

(9) The provision of a financial assurance made under this section does not relieve the holder of a mining licence from its obligation to rehabilitate its licence area.

Finalisation of rehabilitation and mine closure plan

266.—(1) This section shall not apply to the holder of a small-scale mining licence or to the holder of a medium-scale mining licence that has obtained an exemption from the requirement to have an approved rehabilitation and mine closure plan.

(2) Two years before the planned closure of a mine, a holder of a mining licence shall prepare and submit a final revision of its rehabilitation and mine closure plan for approval.

(3) A final rehabilitation and mine closure plan shall include the final end use of the mining licence area and the areas covered by any other tenements granted in connection with the mining project.

(4) A final rehabilitation and mine closure plan will not be considered final until it is approved in the prescribed manner.

(5) Despite the expiry or cancelation of a mining licence, the prior holder of that licence shall remain liable to implement its approved final rehabilitation and mine closure plan until issued a closure certificate pursuant to section 273.

Use of financial assurance by Authority

267.—(1) Where a mining licence is cancelled or expires, or a liquidator, receiver or similar insolvency official is appointed to the holder of the mining licence or the holder of the mining licence fails to implement mine rehabilitation and closure obligations which are not remedied within ninety days of receipt of notice by the Authority, the Authority may draw upon any applicable financial assurance provided by the holder in accordance with section its rehabilitation and mine closure plan.

(2) Where a financial assurance is drawn upon by the Authority, that financial assurance can only be used by the Authority for the purposes of implementing the rehabilitation and mine closure obligations in the holder's last approved rehabilitation and mine closure plan.

(3) Upon being issued with a closure certificate pursuant to section 273, a holder of a mining licence shall be relieved from its obligation to provide a financial assurance, and where the financial assurance consists of funds or assets, such funds or assets remaining shall be returned to the holder, except as required under section 281(8)

Conditions for protection of the environment and health

268.—(1) The conditions subject to which a mineral tenement is granted, its term extended or its area enlarged shall include such conditions relating to the environment as may be prescribed and as determined by the Authority or the Malawi Environment Protection Authority.

(2) The Authority after consultation with relevant authorities for a particular mineral tenement, may determine conditions with respect to—

(*a*) the conservation and protection of the environment including;

(i) land, water, air, soil, flora and fauna;

(ii) features of cultural, archaeological, historical, geological, social and economic interest in or on the land subject to the mineral tenement; and

(iii) protection of human health, in consultation with the principal secretary responsible for health;

(*b*) the minimization of the effects of mining on adjoining or neighbouring areas and their inhabitants;

(*c*) the rehabilitation, levelling, re-grassing, reforesting and contouring of any part of a non-exclusive prospecting licence area, exploration licence area or mining licence area that may be damaged, altered or adversely affected by exploration or mining operations;

(*d*) the filling in, sealing or fencing off, of excavations, shafts and tunnels, as may be prescribed in the Regulations, or as the Authority may in any particular case determine, provided that the methods utilized in implementing the remedial work shall, after due consideration of the geology, engineering requirements and other factors, use available technology common in the international mining industry involving similar remedial good practice, and the decision on what method to use shall be both practical and cost-effective.

(3) The holder of a mining licence operating an open-pit mine shall not be required to refill the pit unless failure to do so would result in an appreciable danger to the public.

Authority may issue environmental guidelines pertaining to mining

269. The Authority after consultation with the Malawi Environment Protection Authority, may from time to time issue—

(*a*) environmental guidelines for the conduct of mining by the holders of small-scale mining licences, and the holder of a small-scale mining licence shall to conform to such guidelines;

(*b*) environmental guidelines for the conduct of reconnaissance, prospecting and exploration work, and the holder of a reconnaissance licence, non-exclusive prospecting licence or exploration licence shall use its best efforts to conform to such guidelines; and

(*c*) guidelines for the content of environmental plans to be submitted as part of an application for reconnaissance licences, non-exclusive prospecting licences and exploration licences.

Rehabilitation on surrender, cancellation or expiry

270.—(1) When a mineral tenement over any land is partially surrendered, cancelled or expires, the Authority may, by written notice served on the person who is or was the last holder of the mineral tenement, direct the person to take such steps within such time as may be specified in the notice, to rehabilitate, in relation to any land included in the mineral tenement which is no longer subject to the mineral tenement, taking into account any obligations arising out of an approved rehabilitation and mine closure plan or under the Environment Management Act.

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(2) A person who fails to substantially comply with directions served pursuant to subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 plus K100,000 for each day of continued non-compliance and to imprisonment for one year and shall be ineligible to be granted any mineral tenement.

Rehabilitation by Authority at holder's expense

271.—(1) Where a person to whom written notice is given under section 270 fails to comply with the notice, the Authority, after having notified the holder of the holder's default and having given the holder a reasonable period to carry out the necessary rehabilitation, shall cause the necessary steps to be taken to execute it, and the costs thereof and incidental thereto shall be a debt due to Malawi.

(2) Where a debt due to Malawi under subsection (1) is not paid, the Authority shall on behalf of Malawi seek to recover the debt in a court of competent jurisdiction.

(3) In any proceedings instituted for the recovery from a person to whom a written notice was given under subsection (1) of a debt due,

a certificate of the Authority that a specified amount is the amount of the debt due shall be received as evidence of that fact; but the debtor shall have the right to present evidence disputing both the existence of the debt and its amount.

(4) A debt due by any person to Malawi under this section is recoverable notwithstanding that the person is convicted of an offence under section 270.

Environmental protection notice

272.—(1) The Malawi Environment Protection Authority, in consultation with the Authority, may cause to be served on a person who is the holder of a mining licence, a written notice directing the person to take specified steps within a specified time, for the protection of the environment.

(2) A person to whom notice is given under subsection (1) who, without reasonable excuse, fails or neglects to comply with the direction commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for one year and shall be ineligible to be granted any mineral tenement.

(3) A legal action brought under this section against a person shall not absolve that person from prosecution under any other applicable law for a similar offence.

Issuance of certificate of closure

273.—(1) A holder of a medium-scale mining licence or large-scale mining licence shall remain responsible for any environmental liability, pollution or ecological degradation, and the management thereof, until the Authority has issued a certificate of closure to the holder.

(2) The holder of a medium-scale mining licence or large-scale mining licence, as the case may be, shall apply for a certificate of closure upon the—

(*a*) surrender of any portion of its licence area; and

(*b*) upon the expiry or cancellation of its licence.

(3) An application for a certificate of closure shall be made to the Authority no later than one hundred and eighty days from the date of the surrender or expiry or cancellation, as the case may be, in the prescribed form and shall be accompanied by an environment risk report.

(4) For the purposes of subsection (1), environment risk report means a report that identifies the environmental risks associated with the respective land area and closure of operations and the steps that have been taken to mitigate or manage those risks.

(5) The Authority shall not issue a certificate of closure upon the

expiry or cancellation of a medium-scale mining licence or a large-scale mining licence until such time as the licence holder has completed the approved rehabilitation and closure plan required by this Act.

(6) The Authority shall consult with the Malawi Environment Protection Authority and other relevant authorities before issuing a certificate of closure to ensure that impacts of potential health and safety and environmental matters have been addressed.

Part XVIII—Disputes

Authority to inquire and resolve disputes

274. Except as otherwise provided in this Act, the Authority, in consultation with relevant authorities, may inquire into and decide disputes between persons engaged in reconnaissance, prospecting, exploration or mining activities, either among themselves, or in relation to themselves and parties with a legal interest (other than the Government) not so engaged, in connection with—

(*a*) the boundaries of any mineral tenement area;

(*b*) any act committed or omitted, or alleged to have been committed or omitted during the course of, or ancillary to, reconnaissance, prospecting, exploration or mining activities;

(*c*) the assessment and payment of compensation or any other consideration pursuant to this Act;

(*d*) any other matter described in the Regulations; or

(*e*) may refer the dispute for judicial determination.

Authority may refuse to decide dispute

275. Subject to section 276, the Authority may in its discretion, refuse to decide any dispute referred to the Authority under this Part and, if the Authority does so, the Authority shall notify the parties to the dispute in writing accordingly.

Authority shall hear compensation dispute

276. The Authority shall not refuse to act under section 275 regarding any compensation to be assessed for the purpose of section 274.

No court action until the Authority refuses to hear dispute

277. A person shall not commence proceedings in a court in respect of any dispute of a kind referred to in section 274, unless the Authority has refused pursuant to section 275 to decide the dispute.

Authority may issue decision, direction or order to resolve

278. The Authority may issue any decision, direction or order which may be necessary for the purpose of the administration of this Part, and may order the payment, by any party to a dispute, of such compensation as may be reasonable, to any other person who is a party to the same dispute.

Referral of directions and orders to High Court

279. The Authority may send a copy of any direction or order made by the Authority to the Registrar of the High Court, and the High Court shall enforce the direction or order of the Authority in the same manner in which it would enforce its own orders; but no such direction or order shall be so enforced until the period for an appeal under section 280 has passed or, if there is such an appeal within that period, unless the Authority rejects the appeal or the appeal is withdrawn.

Authority's decision, direction or order may be appealed

280. A person aggrieved by a decision, direction or order of the Authority made or given pursuant to this Part may apply for review by the High Court within a period of thirty days after the date on which notice of the decision, direction or order is given to that person.

Where appeal not allowed

281. Where the Authority has, pursuant to section 279, refused to decide a dispute, the matter may be referred by the disputing parties or a disputing party to the High Court.

Period of limitation regarding appeals to the High Court

282. Where the Authority refuses, pursuant to section 279, to decide a dispute, the period of limitation of bringing an appeal to the High Court with respect to the matter giving rise to the dispute commences on the date the Authority so refuses.

Enforcement fees

283. The fees payable upon the enforcement of a direction or order made by the Authority under this Part shall be those which would be payable upon the enforcement of a like or order made by the High Court.

Part XIX—Miscellaneous

Shape of a mineral tenement

284.—(1) For the purposes of this Act—

(*a*) a mineral tenement shape shall be rectilinear; and

(*b*) a mineral tenement shall consist only of one contiguous part.

(2) The boundaries of a mineral tenement shall be defined based on the coordinate reference system as required by the Government department responsible for land survey matters.

Grant of right to enter land

285.—(1) The Authority may, at any time, in the prescribed form, grant the right to enter land to a person who has been denied access to enter land by any party where that person requires access to meet an obligation or to do work associated with a task required by this Act.

(2) Without limiting the generality of subsection (1), the Authority may grant a right to enter land to—

(*a*) a person or persons contracted by the Authority, for the

purpose of carrying out geological, geotechnical, safety or any other investigations;

(*b*) a person conducting a boundary survey required by section 154;

(*c*) a person marking a boundary required by section 160;

(*d*) a person conducting work for the purposes of developing or executing a community engagement plan under section 289;

(*e*) a person not otherwise authorized under this Act, the right to enter land for the purpose of conducting studies for infrastructure or other works relevant to a mining project; and

(*f*) any other person who has been denied access to land where the Authority is of the opinion that the person requires access for any purpose related to this Act.

(3) An application for the grant of a right to enter land shall be submitted in the prescribed form.

(4) A person who has been granted the right to enter land the subject of a mining licence pursuant to subsection (2) must report to the mine manager and is bound by any site rules that deal with health and safety.

(5) An officer of the Authority, an officer of the ministry responsible for mining or a person who is a contractor of the Authority has the inherent right to enter any land for the purpose of carrying out geological, geotechnical, safety or any other investigations and does not require a written permission to do so.

(6) A person denying a person access to land where that denied person has been granted a right to enter that land under this section commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for one year.

Owner, occupier may request proof from holder

286. A person exercising any right under a mineral tenement on any land, if requested to do so by any lawful occupier or owner of the land or a local government officer, shall produce evidence that the person is the holder, or an agent or employee of the holder, of such a mineral tenement, and if the person fails to do so, the person may be treated as trespasser.

Reporting of resources and reserves

287.—(1) Subject to subsection (2), where this Act requires the reporting of mineral resources or reserves, such reporting shall be based on a reporting standard in widespread use by the international mining community acceptable to the Authority.

(2) The Authority, upon the advice of the Director of Geological Survey, may issue guidelines on the reporting of resources and

reserves and any reporting of resources or reserves required under this Act must conform to such guidelines.

Cooperative mining society and mining partnership

288.—(1) Any group comprising individual persons, each of whom is a Malawian citizen, that desire to pool their technical, financial and other resources for the purpose of prospecting or small-scale mining may apply to the Authority to register as a cooperative mining society or mining partnership.

(2) The applicants applying to register a cooperative mining society or mining partnership shall provide such documentation as the Authority may require.

(3) The Authority may approve an application submitted pursuant to subsection (2), and upon the Authority's approval of the application the Authority shall register the cooperative mining society or mining partnership including the names of all its members in the Register.

(4) A cooperative mining society or mining partnership registered pursuant to this section is eligible to apply for and be granted a non-exclusive prospecting licence or small-scale mining licence.

(5) A non-exclusive prospecting licence or small-scale mining licence granted to a cooperative mining society or mining partnership shall include the name of the cooperative mining society or mining partnership and shall have appended to it a list of all the members of the cooperative mining society or partners, as may be the case.

(6) Members of a cooperative mining society or mining partnership that is granted a non-exclusive prospecting licence or small-scale mining licence may individually or in any group of its members or partners, prospect or mine according to the licence conditions and subject to all obligations imposed by this Act for that type of licence.

Community engagement plan

289.—(1) A holder of an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence shall develop a community engagement plan in collaboration with local government authorities, traditional leaders, communities, organizations, women and minority groups in the area in proximity to the tenement.

(2) Where more than one tenement is held by the same tenement holder in a localized area, the tenement holder may register a single community engagement plan that provides for community engagement in that area.

(3) A holder of an exploration licence, retention licence, medium-scale or large-scale mining licence shall update its community engagement plan at least once every three years.

(4) A community engagement plan required under subsection (1) and an updated community engagement plan required under subsection (3) shall be submitted to the Authority for verification and registration in the prescribed form and accompanied by the prescribed fee.

(5) A community engagement plan shall include at least the following—

(*a*) detailed strategies to conduct awareness programmes, community consultations and to disseminate information;

(*b*) grievance mechanisms to address concerns and issues relating to the licence holder's operations and the process to be used in addressing these concerns and issues; and

(*c*) such other content as is prescribed.

(6) The Authority shall register in the Register, a community engagement plan that substantially meets all subsection (5) requirements.

(7) The Authority shall not register a community engagement plan that does not substantially contain all the content required under subsection (5).

(8) When a community engagement plan is registered, the Authority shall post a copy of the plan, and any updated plan, on the website of the Authority for such time period as the mineral tenement to which it relates remains valid.

(9) The holder of a medium-scale mining licence or large-scale mining licence shall not commence mine development on its tenement area until its community engagement plan has been registered by the Authority.

(10) A holder of an exploration licence, retention licence or mining licence shall execute its registered community engagement plan.

(11) The Authority may suspend the operations of the holder of an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence on its tenement area when the holder thereof has failed to—

(*a*) have its community engagement plan or updated plan registered; or

(*b*) has substantially failed to its implement its community engagement plan,

and such suspension shall have effect until such time as the Authority is satisfied that holder of the licence has remedied the reason for which the licence was suspended.

(12) A holder of a mineral tenement whose licence has been suspended pursuant to subsection (11) may within thirty days of receipt of the decision by the Authority if he or she is aggrieved by the decision, apply to the High Court for the review of the decision.

(13) The holder of an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence shall annually submit a community engagement plan report to the Authority at such time, in such manner and in such form as are prescribed.

(14) The Authority, pursuant to an application made under section 285, may grant a person the right to enter land for the purposes of developing or executing a community engagement plan.

(15) A person who has been granted the right to enter land the subject of a mining licence pursuant to subsection (14) shall report to the mine manager and is bound by any site rules that deal with health and safety.

(16) A community engagement plan registered pursuant to subsection (6) and any community engagement plan report submitted under subsection (13) shall be made available to the public by the Authority.

Actions not subject to this Act
Cap. 63:01
Cap. 66:07

290.—(1) In this section, "forest" and "forest officer" have the respective meanings assigned by section 2 of the Forestry Act, and "protected area" and "national park officer" have the respective meanings assigned by section 2 of the National Parks and Wildlife Act.

(2) Subject to this section and the Regulations, nothing in this Act shall operate to prevent—

(*a*) a person from removing from land, in respect of which the person is a lawful occupier or owner reasonable quantities of building and industrial minerals for the purpose of construction on any land of any dwelling house, factory, workshop or store, including the outbuildings or appurtenances thereof for use by that person: provided that the removal shall not unduly interfere with the activities of a mineral tenement holder and that the mineral removed shall not be sold or otherwise worked for profit;

(*b*) any forest officer, game control officer or national parks officer, in his or her official capacity, from removing in a protected area (national park, wildlife reserve or and forest reserve), as the case may be, building and industrial minerals for the purposes of building, bridge-building, road-making and other public and government construction purposes in the reserve or park; provided

that the removal does not unduly interfere with the activities of a mineral tenement holder;

(*c*) the temporary mining of quarry and fill minerals taken from the right of way upon which a road is situated for use in the construction of that road (such as borrow pits); and

(*d*) the exercise, by the Minister or any authorised officer, of the rights under section 26(*a*) of the Land Act. Cap. 57:01

(3) A person who enters upon land the subject of a mining licence, pursuant to subsection (2) shall report to the mine manager and shall be bound by any site rules that deal with health and safety.

Authorization to take minerals from licence area

291. Nothing in any act referred to in section 290 shall be treated as authorizing a person to enter upon and take any mineral from an exploration licence area, a retention licence area or a mining licence area without the written consent of the holder of the exploration licence, retention licence or mining licence concerned.

Disputes regarding taking of minerals

292. Any dispute as to whether or not a person is entitled to take minerals pursuant to section 290 shall be decided by the Authority, whose decision may upon application by the aggrieved, be reviewed by the High Court.

Scientific investigation

293.—(1) The Minister, by instrument in writing, may consent to the carrying on, by any person or institution, of activities in the course of a bona fide scientific investigation (other than an investigation which is intended to locate minerals for the purpose of that person applying for a mining licence) with respect to the geology or mineral resources of Malawi.

(2) An instrument of consent under this section shall specifically authorize the person or institution to whom it is issued to carry on the activities specified in the instrument—

(*a*) in a certain, clearly described area;

(*b*) for a time period with an expiration date; and

(*c*) subject to certain conditions, if any.

(3) For the avoidance of doubt, a person or institution that has obtained an instrument of consent under this section is not required to also obtain a mineral tenement to do the things authorized in the instrument of consent.

(4) Subject to subsections (5) and (6), a person or institution that has been granted an instrument of consent under this section may enter onto any land specified in the instrument of consent to carry on any activities specified in the instrument of consent.

(5) A person or institution that has been authorized by an instrument of consent under this section to enter onto any land or place referred to in the instrument of consent shall before entry on that land first inform the owners or lawful occupiers of that land, if any.

(6) Where the commission or omission of any act is regulated or prohibited by a written law (other than this Act) nothing in this section shall be constructed as authorizing the person or institution specified in the instrument of consent to perform the act—

(*a*) other than in accordance with the written law; and

(*b*) without first obtaining the licence, permit, authority or other instrument (if any), required under the written law to perform the act.

(7) Where an instrument of consent has been obtained by a person or institution under this section, that person or institution, or any company affiliated with that person or institution, is ineligible to apply for a mining licence over any land the subject of the instrument of consent for a period of one year from the expiration date of the instrument of consent.

Geological samples for non-mining purposes

294.—(1) The Authority, by instrument in writing, may consent to the taking, by any person or institution, of geological and other mineral related samples not intended for determining mining potential.

(2) For the avoidance of doubt, a person or institution that has obtained an instrument of consent under this section is not required to also obtain a mineral tenement to take geological and other mineral related samples as authorized in the instrument of consent.

Export of minerals without a permit

295.—(1) Subject to subsection (2), a person who exports any minerals that have commercial value from Malawi other than under and in accordance with a minerals export permit granted under section 296 commits an offence and shall, on conviction, be liable in the case of—

(*a*) an individual, to a fine of K10,000,000 plus double the value of the minerals exported illegally and to imprisonment for a term of two years, and if such individual is not a citizen of Malawi, to deportation from Malawi and prohibited from returning to Malawi; or

(*b*) a body corporate, to a fine of K20,000,000 plus double the value of the minerals exported illegally, and with respect to individuals in management, to imprisonment for two years or a fine similar to that imposed under paragraph (*a*) and in accordance

with section 239.

(2) The Minister may prescribe any type or class of minerals that do not require a permit prior to their exportation, and subsection (1) shall not apply with respect to such minerals.

Permit to export minerals

296.—(1) The Authority may grant to a person a minerals export permit, in the prescribed form, to export minerals from Malawi on conditions determined by the Authority and specified in the permit.

(2) A person granted a minerals export permit is not exempt from complying with the requirements of any other applicable law relating to the export of minerals.

(3) An application for a minerals export permit shall be submitted to the Authority—

(*a*) in the prescribed form; and

(*b*) accompanied by the prescribed fee or proof that such fee has been paid.

(4) When the Authority, pursuant to subsection (1), grants a minerals export permit—

(*a*) the Authority shall record the details of the permit in the Register and issue the permit; and

(*b*) the signed permit shall be provided to the government authorities responsible for the administration of mineral royalty, customs duty and tax revenues.

(5) An inspector may, at any reasonable time, inspect any shipment of minerals destined for export.

Authority may prohibit mineral exports for non-payment of royalty

297. Notwithstanding any permit granted pursuant to section 296, the Authority may—

(*a*) prohibit the export of any mineral or mineral product consignments unless or until any and all royalties that are due and payable under applicable law with regard to the mineral or mineral product has been paid to or secured by Malawi; and

(*b*) provide for examination of mineral consignments.

Authorization of President to acquire land

Cap.58:04

298.—(1) Where the President considers that any land is required to secure the development or utilization of the mineral resources of Malawi, the President, on recommendation of the Authority, may direct the land be compulsorily acquired and compensation be paid in accordance with the Lands Acquisition and Compensation Act.

(2) For the purposes of compulsory land acquisition, mining operations shall be deemed to be a purpose of public utility.

Information regarding minerals

299.—(1) Except as otherwise provided under this Act, the Authority shall maintain good and accurate records of the ownership of mineral tenements, all payments related to mineral tenements due under this Act, whether of annual ground rent or of any other nature, and such information shall be a matter of public record and available for legislative and public review.

(2) The Authority shall ensure that all records related to mineral tenements are accurate and not false or misleading.

(3) A person who knowingly prepares, produces, releases or discloses false or misleading information regarding mineral tenements shall be prosecuted to the fullest extent of the law for such a wrongful act or acts.

(4) The Authority may direct the holder of a mineral tenement, at a reasonable time and place specified in the direction, to make available to, or produce for inspection by, the Authority or an authorized officer, all books, accounts, vouchers, documents or records of any kind, concerning the mineral tenement.

(5) Where the Authority has reason to believe that a person is capable of providing financial information or producing or making available books, documents, electronic data and information in any form relating to minerals obtained, or the value of minerals obtained, he may, by instrument in writing served on that person, order that person—

(*a*) to furnish the Authority in writing, within the period and in the manner specified in the instrument, any such information;

(*b*) to require the person or another person specified in the instrument to answer questions relating to minerals obtained, or the value of minerals obtained at such time and place as specified; or

(*c*) to produce or make available to the person or persons specified in the instrument, at such time and place as is so specified, books or documents in his or her custody, power or control relating to minerals obtained or the value of minerals obtained.

(6) Where books or documents are made available to the Authority pursuant to a requirement under subsection (4) or (5), the Authority may make copies of, and take extracts from, the books, documents and other forms of data, including electronic data.

(7) A person shall not—

(*a*) refuse or fail to comply with a requirement under subsection (4) or (5) to the extent to which the person is capable of

complying;

(*b*) purport to comply with such a requirement, but knowingly furnish information that is false or misleading in a material particular;

(*c*) when attending before the Authority or any person in pursuance of such a requirement to produce or make available books, documents or other information, knowingly make a statement or produce a document which is, or produce books which are, false or misleading in a material particular; or

(*d*) when producing or make available books or documents, knowingly produce any book or document which is, false or misleading in a material particular.

(8) A person who contravenes subsection (7) commits an offence and shall, upon conviction, be liable to a fine of K3,000,000 and to imprisonment for two years.

(9) A person, whether a government employee or not, who has access to financial information provided under subsection (4) or (5) shall not—

(*a*) knowingly record, make a statement or produce a document which is false or misleading in a material particular; or

(*b*) when making books or documents available pursuant to such a requirement, knowingly make available, release or otherwise disclose information regarding mineral tenements, including but not limited to books, records or other financial information related to mineral tenements, which is false or misleading in a material way.

Annual reports

300.—(1) The Authority shall cause to be prepared and submitted to the Minister, within three months after the end of each financial year, an annual report on the general conduct of the affairs of the Authority and the activities carried out during that financial year.

(2) The report submitted under subsection (1) shall be in the format prescribed by the Minister, and there shall be appended to the report—

(*a*) an audited statement of financial position;

(*b*) an audited statement of income and expenditure; and

(*c*)such other information as the Minister may consider appropriate.

(3) The Minister shall, as soon as practicable, but not later than six months after the end of the financial year, lay before Parliament a copy of the annual report.

Confidentiality

301.—(1) The Authority shall treat with strict confidence information provided by an applicant for registration, licence or permit or holder of a certificate, licence or permit or any other information considered exclusive to the person who provided the information in compliance with this Act.

(2) Not withstanding subsection (1), the Authority may release the information upon being served with an order to release the information by a court of competent jurisdiction.

(3) Where the Authority releases information under a court order, the Authority shall release only such information as it is required to release by the court order and shall as soon as practically possible notify the pending disclosure or disclosure, as the case may be, to the person who provided the information to the Authority.

Oath of secrecy

302. Every—

(*a*) member of the Authority;

(*b*) member of a committee of the Authority;

(*c*) member of staff of the Authority; or

(*d*) person invited to attend a meeting of the Authority pursuant to section 12(8),

shall, upon assumption of his or her office or before attending the first meeting, take an oath of secrecy in the form set out in the Schedule.

Protection from liability

303.—(1) A person shall not bring a court action or other proceeding personally against any member of the Authority, a member of a committee of the Authority, an officer of the Authority, an officer of the ministry responsible for mining, in respect of any act or omission done in good faith in the course of carrying out the provisions of this Act.

(2) Where, in any proceeding, a question arises on whether or not an act or omission was done in good faith in the course of carrying out the provisions of this Act, the burden of proving that the act or omission was not done in good faith in the course of carrying out the provisions of this Act shall be on the person alleging that it was not so done.

Common seal

304.—(1) Subject to this section, the common seal of the Authority shall be kept by the Director General and shall not be used, except in the manner authorized.

(2) All deeds, instruments, contracts and other documents shall be considered to be duly executed by or on behalf of the Authority —

(*a*) where they are required to be under seal, if sealed with the

common seal and authenticated by the Chairperson or any other member nominated in that behalf by the Authority and the Director General or any other officer authorized by the Authority; or

(*b*) where they are not required to be under seal, if executed in that behalf by a member or officer authorized by the Authority for that purpose.

(3) A deed, instrument, contract or any other document executed in accordance with subsection (2) shall, in law, bind the Authority, its assignees and its successors and may be varied or discharged in the same manner that it was executed.

(4) All courts and other persons acting in a judicial capacity shall take judicial notice of the common seal of the Authority affixed to any document and shall presume, unless otherwise proven, that it was duly affixed.

Service of documents, declarations, notices

305.—(1) A document, declaration or notice required or permitted to be served on, or given to, a person under or for the purposes of this Act, may be served or given—

(*a*) in the case of an individual (other than the Minister,)—

(i) by serving it personally upon the individual;

(ii) by sending it by courier service or registered mail to the person at the person's registered mailing address, as provided under section 44;

(iii) by transmitting it by electronic mail to the person's registered email address, as provided under section 44;

(iv) by transmitting it by facsimile to the person's registered facsimile address, as provided under section 44; or

(v) by sending or transmitting it to the address or email address provided in a prescribed form for the purpose of that notice.

(*b*) in the case of the Authority, by serving it personally upon the Authority, or by sending it by courier service or registered mail to the central office of the Authority, or by submitting it electronically to the Authority using such system as the Authority may maintain for this purpose.

(*c*) in the case of a body corporate or other legal entity—

(i) by leaving it at the registered address of the body corporate with some individual employed by the body corporate and not less than eighteen years of age;

(ii) by sending it by courier service or registered mail to the body corporate at the registered address, as provided under section 44 of the body corporate;

(iii) by transmitting it by electronic mail to the registered email address provided by the body corporate to the Authority, as provided under section 44;

(iv) by transmitting it by facsimile to the registered facsimile address provided by the body corporate to the Authority, as provided under section 44;

(v) by sending or transmitting it to the address or email address provided in a prescribed form for the purpose of that notice; or

(vi) by delivering it to some individual in the employment or acting on behalf of the body corporate that is authorized by the body corporate, or agrees to accept service of or to receive the document, declaration or notice.

(2) Where a person has more than one place of residence or business, a document or notice may be served or given to the person under this section at any of those places.

(3) Any notices, service, declarations and other communications given or made shall be deemed to have been given—

(*a*) where delivered personally, on the day of personal delivery;

(*b*) where sent by registered post, is deemed to have been effected or delivered under this section, unless the contrary is proved, seven days after the date it was deposited in the post, unless the deemed day is on a weekend or a national holiday, in which case the date of delivery shall be the next business day;

(*c*) where delivered by courier, on the day of delivery confirmation;

(*d*) where sent by facsimile, on day of receipt by the sender of a transmission control report from the dispatching machine showing the relevant facsimile machine number and the result of the transmission as "OK", or similar response; and

(*e*) where sent by email, on day of receipt by the sender of a transmission control report from the dispatching server machine showing the receiving server identification and its confirmation of message received, or similar response.

Malawian citizen

306.—(1) Where for the purposes of this Act proof is required by an authority that a person is a Malawian citizen, the person claiming such citizenship shall provide such evidence as is directed by the concerned authority.

(2) Evidence that supports proof of citizenship, but which is not sufficient in itself to prove Malawian citizenship, may include—

(*a*) a letter from a traditional leader;

(*b*) a letter from the District Commissioner where the person resides;

(*c*) a passport; or

(*d*) an identification card issued under Malawian law.

Regulations

307.—(1) The Minister, on the recommendation of the Authority, shall make regulations prescribing all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, but without any limitation of the generality of subsection (1), the regulations may include regulations for—

(*a*) reconnaissance, prospecting and exploring of minerals and the carrying on of related activities, and for those purposes the conduct of activities, the methods which may or may not be used and duties of specified persons in relation to reconnaissance, prospecting or exploration work;

(*b*) mining for minerals and the carrying on of related activities, and for those purposes the conduct of works, the methods which may or may not be used and the duties of specified persons in relation to mining operations;

(*c*) functions of officers acting in the administration of this Act;

(*d*) regulation of matters relating to, mine occupational safety, health and environment;

(*e*) form, content and manner of submitting of applications for any matter related to mineral tenements;

(*f*) form, content and time and manner of submitting reports and other information;

(*g*) training of citizens of Malawi and matters related to the environment and sustainable development;

(*h*) reporting of cases of accident or death occurring in the course of reconnaissance, prospecting, exploration, retention or mining operations, or in any related activities, and the holding of inquiries into accidents;

(*i*) demarcation of mineral tenement areas;

(*j*) the circumstances in which fees or annual ground rents may be charged and the amounts thereof;

(*k*) conduct of searches in connection with mineral tenements, or interests created therein, the granting of certificates in connection therewith, and the effect of any such certificate;

(*l*) content of by-laws for the purpose of granting and regulating artisanal mining permits;

(*m*) system for defining shapes of mineral tenements;

(*n*) location of mineral tenement areas on the ground;

(*o*) registration of mineral tenements and other instruments;

(*p*) exercise of rights in, and the obligations to be performed, including work and reporting obligations, in relation to, land subject to a mineral tenement;

(*q*) transfer of, and the creation of shares in, a mineral tenement, and the respective rights of the transferor and transferee;

(*r*) consolidation, expansion, extension, surrender or cancellation of mineral tenements;

(*s*) safety standards in mineral exploration, exploitation and transportation; and

(*t*) penalties for contravening the provisions of this Act.

Cap. 1:01

(3) Any regulation made under this Act, notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, may prescribe a fine of up to ten million Kwacha and imprisonment for up to two years for contravention of any provision of this Act or a regulation.

Repeals and savings
No. 8 of 2019

308.—(1) The Mines and Minerals Act is hereby repealed.

(2) Any subsidiary legislation made under the repealed Act in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended, revoked or repealed by subsidiary legislation made under this Act.

(3) Any investigation, inquiry, legal proceedings commenced immediately before the commencement of this Act, shall continue as though they were commenced under this Act.

(4) Any remedy in respect of any liability, penalty, forfeiture or punishment imposed or issued immediately before the commencement of this Act, shall be imposed or enforced shall continue on the terms and conditions subsisting before the commencement of this Act.

(5) Anything duly done or commenced immediately before the commencement of the Act, shall continue as though it was done under this Act.

(6) A mining licence, permit or claim granted under the repealed Act that was in force immediately before the commencement of this Act shall be deemed to be a mining licence granted under this Act.

SCHEDULE (s.302)

OATH OF SECRECY

I,…….....…….., being a member of the Authority/member of a committee of the Authority/member of staff of the Authority/ having been invited to attend a meeting of the Authority, do hereby swear that I will freely without fear or favour, affection, or ill-will, discharge the functions of a member/member of staff /invitee of the Authority and that I will not directly, or indirectly reveal any matter related to such functions to any unauthorized person or otherwise than in the course of duty. So, help me God/Allah.

SWORN at …….....…this …. day ...… .....

of ……..., 20… Deponent

Before me: ……
Commissioner for Oaths

Passed in Parliament this thirteenth day of April, two thousand and twenty three.

FIONA KALEMBA
Clerk of Parliament