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MINES AND MINERALS ACT

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CHAPTER 213

MINES AND MINERALS

Act No. 31 of
1995
41 of 1996
1 of 1997
8 of 1997
8 of 1998
5 of 1999
2 of 2000
5 of 2003
4 of 2006
Statutory
Instrument
166 of 1995

An Act to make provision with respect to prospecting for and mining minerals; to repeal the Mines and Minerals Act; and to provide for matters connected with or incidental to the foregoing.

[13th September, 1995]

PART I
PRELIMINARY

1. (1) This Act may be cited as the Mines and Minerals Act.

Short title and
commencement
Cap. 213

(2) This Act shall be come into operaion on 1st April, 2006.

(As amended by Act No. 5 of 2003 And No. 4 of 2006)

(3) Section *five* of this Act shall come into force on the 1st April, 2000.

(As amended by Act No. 2 of 2000)

2. (1) In this Act, unless the context otherwise requires-

Interpretation

"access agreement" means an agreement entered into between the holder of a mining right and any owner or occupier of land over which the right subsists, for the regulation of prospecting, mining or other activities authorised by the mining right to be carried on upon the land;

"artisan's mining right" means an artisan's mining right granted under Part VII;

"base metal" means a non-precious metal that is either common or more chemically active, or both common and chemically active ad includes iron, copper, nickel, aluminium, lead, zinc, tin, magnesium, cobalt, manganese, titanium, scandium, vanadium and chromium;

"building minerals" means minerals and rocks commonly used for building, road making or agricultural purposes and includes sand, clay, gravel, laterite, limestone, granite, phyllite and any other rock when so used;

"Commissioner-General" means the Commissioner-General appointed under the Zambia Revenue Authority Act; Cap. 321

"development agreement" means an agreement entered into under section *nine* in relation to a large-scale mining licence;

"Director" means the Director of Mines appointed under section *eighty-three*;

"gemstone licence" means a gemstone licence granted under Part IV;

"gemstone sales certificate" means a gemstone sales certificate granted under Part XIII;

"gemstones" means amethyst, aquamarine, beryl, corundum, diamond, emerald, garnet, ruby, sapphite, topaz, tourmaline and any other non-matelllic mineral substance, being a substance used in the manufacture of jewellery, that the Minister, by statutory instrument,

declares to be a gemstone for the purposes of this Act;

"holder" means the person in whose name a mining right is registered;

"large-scale mining licence" means a large-scale mining licence granted under Part III;

"local office", means an office of the Ministry established for any area;

"mine" means any place, pit, shaft, drive, level or other excavation, and any drift, gutter, lead, vein, lode, reef, saltpan or working, in or on or by means of which any operation connected with mining is carried on, together with all buildings, premises, erections and appliances, whether above or below the ground, that are used in connection with any such operation or for the extraction, treatment or preparation of any mineral or for the purpose of dressing mineral ores;

"mineral" means any material substance, whether in solid, liquid, or gaseous form, that occurs naturally in or beneath the surface of the earth, but does not include water, petroleum or any substance or thing prescribed by the Minister by regulation;

"mining" means the extraction of material, whether solid, liquid or gaseous from land or from beneath the surface of the earth in order to win minerals, and includes any operations directly or indirectly necessary or incidental thereto;

"Mining Advisory Committee" means the Mining Advisory Committee established by section *eighty-eight*;

"mining area" means an area of land subject to a licence or permit under this Act or an interim licence held under the Fourth Schedule that confers rights similar to the rights conferred by such a licence or permit;

"mining operations" means operations carried out in the course of mining;

"mining plant" means any building, plant, machinery equipment, tools or other property that has been used for mining, whether or not affixed to land, but does not include any timber or other material used or applied in the construction or support of any shaft, drive, gallery, terrace, race, dam or other work;

"mining right" means a licence or permit, or an artisan's mining right, granted under this Act or any interim licence held under the Fourth Schedule;

"petroleum" has the meaning ascribed to it in the Petroleum Act but does not include coal or oil shale; Cap. 435

"preliminary investigation rights" means rights granted under the proviso to subsection (1) of section *five*;

"prospect" means to search for any mineral by any means and to carry

out such works, and remove such samples, as may be necessary to test the mineral-bearing qualities of any land;

"prospecting area" means an area of land subject to a prospecting licence, a prospecting permit or an interim licence held under the Fourth Schedule that confers prospecting rights;

"prospecting licence" means a prospecting licence granted under Part III;

"prospecting operations" means operations carried out in the course of prospecting;

"prospecting permit" means a prospecting permit granted under Part IV;

"retention licence" means a retention licence granted under Part IV;

"royalty" means royalty chargeable under Parts III and VIII on the produce of a large-scale mining licence;

"small-scale mining licence" means a small-scale mining licence granted under Part IV;

"ZCCM" means Zambia Consolidated Copper Mines Limited.

(As amended by No. 2 of 2000, Act No.5 of 2003 and Act No. 4 of 2006)

(2) A reference, in any provision of this Act, to an authorised officer is a reference to a public officer, designated under section *eight-three*, who is duly authorised to exercise and perform the powers and functions conferred or imposed by that provision on an authorised officer.

(3) A reference in this Act to land subject to a mining right is a reference to an area of land in respect of which a mining right has been granted and subsists.

3. (1) All rights of ownership in, searching for, and mining and disposing of, minerals are hereby vested in the President on behalf of the Republic.

Rights to minerals
vested in the
President

(2) The provisions of this section have effect notwithstanding any right, title or interest which any person may possess in or over the soil in, on or under which minerals are found

PART II

MINING RIGHTS GENERALLY

4. Subject to the other provisions of this Act, rights of prospecting for, mining and disposing of, minerals may be acquired and held under and in accordance with this Act.

Acquisition of
mining rights

5. (1) A person shall not prospect for minerals or carry on mining operations except under the authority of a mining right granted under this Act:

Authority required for prospecting or mining

Provided that the Director may, for a period not exceeding ninety days, grant in writing, subject to such conditions (including conditions relating to work and expenditure), as the director may impose, the right to enter any area that is not subject to a mining right, or undertake an aerial survey, for the purpose of reconnaissance operations for the location of minerals by geophysical, geochemical and photogeological survey or by the study of surface geology.

(2) A right granted by the Director under the proviso to subsection (1) shall not confer on the holder exclusive rights over the area to which it relates or any preference or priority in respect of an application for a prospecting licence over any such area.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction-

(a) in the case of an individual, to a fine not exceeding fifty thousand penalty units or imprisonment for a term not exceeding two years, or to both; or

(b) in the case of a body corporate, to a fine not exceeding five hundred thousand penalty units.

6. The following mining rights may be granted under this Act:

Types of mining rights

- (a) a prospecting licence;
- (b) a retention licence;
- (c) a large-scale mining licence;
- (d) a prospecting permit;
- (e) a small-scale mining licence;
- (f) a gemstone licence;
- (g) an artisan's mining right.

7. (1) A mining right shall not be granted except to an individual or a company.

Certain persons disqualified from holding mining rights

(2) A mining right shall not be granted to or held by-

- (a) an individual who-
- (i) is under the age of eighteen years;

(ii) is or becomes an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any written law, or enters into any agreement or scheme of composition with his creditors, or takes advantage of any legal process for the relief of bankrupt or insolvent debtors; or

(b) a company which is in liquidation, other than liquidation which forms part of a scheme for the reconstruction of the company or for its amalgamation with another company.

(3) An artisan's mining right shall not be granted to a person who is not a citizen of Zambia.

(4) Any document or transaction purporting to grant a mining right to any person not entitled to hold the right shall be void and of no effect.

8. (1) A mining right, and the rights conferred by it, shall be subject to the provisions of this Act and the regulations made under this Act, the conditions attached to it at the time it is granted and, to the extent that the amendment of such conditions during the currency of the mining right is permitted under this Act, to the conditions as amended from time to time.

Restrictions on mining rights

(2) In the case of large-scale mining licence, this section has effect subject to section *nine*.

9. (1) For the purpose of encouraging and protecting large-scale investments in the mining sector in Zambia, the Minister may, on behalf of the Republic, enter into an agreement relating to the grant of a large-scale mining licence.

Development agreements

(2) An agreement referred to in subsection (1) shall be known as a development agreement, and may contain provisions which notwithstanding the provisions of any law or regulation shall be binding on the Republic in relation to-

(a) mining operations under a large-scale mining licence, or the financing of any mining operations under such a licence;

(b) the circumstances or the manner in which the Minister or the director shall exercise any power or discretion conferred on them by this Act in respect of the licence; and

(c) the settlement of disputes arising out of or relating to the agreement, the administration of this Act, or the terms or conditions of a large-scale mining licence, including provisions relating to the settlement of any such dispute by international arbitration.

(d) the privatisation of the ZCCM and any matters specified in the

First Schedule in respect of which the Minister responsible for finance the Minister responsible for mines and minerals development may, after consultation with any Minister responsible for any relevant portfolios, make such stability commitments in relation to the said matters affecting the enforcement or effect of the relevant Development Agreement as the Ministers may consider necessary; and

(e) such other matters as the Minister may consider appropriate.

(As amended by Act No. 41 of 1996 and repealed and replaced by Act No. 2 of 2000)

9A. (1) In this section-

"environmental law" means any law regulations in force from time to time in the republic, including the common law, which have as a purpose or effect the protection of, or prevention of, pollution or harm to the environment, including man and his property, or to human health, resulting from pollution or harm to the environment, or the provision of remedies for harm or damage to the environment or to human health;

Assumption of liabilities

"environmental liability" means any liability to third parties incurred or arising out of or in connection with-

(a) any death, injury, disease or disability of any person; or

(b) any physical damage to or loss of enjoyment of property or assets of any person.

and which are or have been caused by acts or omissions regulated under or addressed by environmental law;

"environmental plan" means any environmental plan as amended from time made pursuant to any Development Agreement under section *nine* and agreed between the Government and any purchaser or transferee of any of the assets of ZCCM or of any of the equity or assets of its subsidiaries;

"liability" means any liability whether actual or contingent, present or future and whenever and howsoever incurred;

"manager" means any person who undertakes or has undertaken responsibility for the management or operation of any assets of ZCCM or of any assets of any subsidiary of ZCCM (including any management or operation pursuant to a security interest) where such assets have been transferred to a transferee;

"mine safety law" means the provisions contained in any law or regulations in force from time to time in the Republic which relate to mine safety or occupational safety;

"mine safety liability" means any liability to third parties incurred or arising out of or in connection with any death, injury, disease or disability of any worker or former worker which are or have been caused by acts or omissions regulated under or addressed by mine safety laws;

"third party" means any person (including State entities, ZCCM and any purchaser, transferee, manager or subsequent owner of any equity or assets of ZCCM or of any equity or assets of any subsidiary of ZCCM where applicable) who, but for the provisions of this section, would have rights of action against ZCCM or any purchaser, transferee, manager or subsequent owner of any ZCCM's assets, or any equity or assets of any subsidiary of ZCCM, in respect of any liabilities described herein;

"trade liability" means any liability to a third party incurred or arising in respect of, or, in connection with, supplies or purchases of goods or services to or by ZCCM or any of its subsidiaries;

"transferee" means-

(i) any person to whom any of the assets of ZCCM are transferred, and shall include any subsidiary of ZCCM are transferred;

(ii) any person to whom any of the assets or equity of any subsidiary of ZCCM are transferred; or

(iii) any person to whom assets or equity which were previously transferred under paragraphs (i) or (ii) are subsequently transferred.

(2) Notwithstanding any other law or regulation or any other provision of this Act, the State shall assume the liabilities set out in subsection (3) and the liabilities shall vest in the State immediately upon transfer pursuant to this section and shall be recoverable against the State as a civil debt and the purchaser, transferee, manager or subsequent owner shall have no liability or obligation in respect thereof where any assets of, or equity or assets of subsidiaries of ZCCM are transferred in part or in whole whether to a subsidiary of ZCCM, prior to the disposal by ZCCM of its interest in such subsidiary or to the disposal by such subsidiary of any of its assets in whole or in part, or to a purchaser or other transferee.

(3) The following are the liabilities referred to in subsection (2) that the State shall assume-

(a) any environmental liability, or mine safety liability incurred or arising out of or relating to:

- (i) the operations of ZCCM or any of its subsidiaries; or
- (ii) the condition of the assets of ZCCM or of any of its subsidiaries;

in each case in the period prior to the date on which any of the assets thereof are transferred to the purchaser or transferee;

(b) any trade liability in respect of goods or services supplied to or purchased by ZCCM in the period prior to the date on which the first transfer occurs pursuant to the privatisation of ZCCM of-

- (i) assets or any interest in any such assets of ZCCM; or
- (ii) assets or equity of its subsidiaries or any interest in such assets or equity;

Provided that the State shall, upon assumption of such trade liability, acquire a claim against ZCCM in an amount equal to the trade liability assumed;

(c) subject to the exclusions in subsection (4), any environmental liability, or mine safety liability relating to the assets previously held ZCCM or by any of its subsidiaries whensoever they accrue to the extent that they arise from or relate to the operations of the purchaser or transferee thereof after the transfer thereto.

(4) Notwithstanding subsection (3) the liabilities assumed by the State under paragraph (c) of subsection (3) shall not include-

(a) any environmental liability to the extent that the liability arises from, or relates to, acts or omissions which constitute an unremedied failure by the purchaser or transferee of any asset of ZCCM or by any equity in or assets of any of its subsidiaries, to comply with the purchaser's or transferee's environmental plan;

(b) any environmental liability which arises out of operations of the purchaser or transferee in the period after the last date provided in the Development Agreement made under this Act by which the purchaser's or transferee's operations are due to achieve full compliance with the environmental requirements applicable under the environmental plan and with any environmental law;

(c) any mine safety liability which-

(i) is otherwise covered by any statutory compensation scheme or is recoverable under any insurance held by the purchaser or

transferee;

(ii) arises other than out of a breach of statutory duty or negligence of the purchaser or transferee which breach or negligence relates to the condition at the date of transfer of the assets transferred to the purchaser or transferee;

(iii) is attributable to any act or omission which constitutes an unremedied failure by the purchaser or transferee to comply with the environmental plan or mine safety law in circumstances where the purchaser or transferee holds no applicable exemption or safety letter; or

(iv) arises out of operations after the expiry of the period specified for completion of the remedial safety programmes contained in the environmental plan.

(5) Notwithstanding any other law, regulation or any other provisions of this Act, any transfer by ZCCM or any subsidiary of ZCCM of its property, assets or equity (or any interest in property, assets, or equity) made under an agreement executed by ZCCM or any of its subsidiaries shall confer good title on the purchaser or transferee and such property, assets or equity (or any interest in property, assets or equity) shall not be capable of seizure or attachment to satisfy any claim, order or judgement of a court, tribunal or arbitration arising out of any monies due and owing or trade liabilities arising and attaching in each case prior to the vesting of such assets in the purchaser or transferee:

Provided that any monies due and owing or trade liability referred to in this section shall by virtue of this Act vest in the State and shall be recoverable as a civil debt against the State.

(6) Subject to subsection (5), but withstanding any other law or regulation or any other provisions of this Act, any person with a claim in relation to any liability which arises out of the acts or omissions of ZCCM or any of its subsidiaries or which arises out of the condition of any assets of ZCCM or of any of its subsidiaries prior to the date on which any such assets of ZCCM or the assets or equity of any of its subsidiaries were transferred to the purchaser or transferee shall institute any action against-

(a) the State, if such liabilities fall within subsection (3) of this section; and

(b) against ZCCM or any of its subsidiaries, if such liabilities fall outside subsection (3) of this section;

and in each case no action shall lie against the purchaser, any transferee,

manager or any subsequent owner of any such assets of ZCCM or any equity in or assets of its subsidiaries.

(7) Subject to the provisions of subsections (2), (3) and (6), any person with a claim in relation to any liability arising out of acts or omissions occurring after, or both before and after, the date on which any assets of ZCCM or any assets or equity of any subsidiary were transferred may bring an action against the purchaser, transferee or subsequent owner but only in respect of damage or injury which is caused by acts or omissions occurring after such transfer and which does not relate to a liability falling within subsection (3) (c) in respect of which action shall lie against the State only.

(8) In hearing any action referred to in subsection (6) or subsection (7), the court shall, where applicable, determine the proportion of damage attributable to the period after such transfer and, subject to the provisions of subsections (2), (3), (6) and (7), shall make an order against the purchaser, transferee or any subsequent owner of the assets of ZCCM or any equity or assets of any of its subsidiaries in respect of that proportion of the damage only for which it may be liable hereunder.

(9) This section shall apply only in relation to those transfers of assets of ZCCM or any transfers of any equity in or any assets of any subsidiary of ZCCM and any related liabilities, which transfers are completed on or after 1st February, 2000; and the first transfer referred to in subsection (3) (b) shall be the first transfer which is completed after 1st February, 2000.

9B. (1) Whenever any property, equity, assets (or any interest in any property, equity or assets) rights, liabilities and obligations are transferred to the purchaser or transferee of of any part of or the whole of the equity or assets of ZCCM or part of or the whole of the assets of any of its subsidiaries in respect of which transfer a written law provides for registration, the transferee shall make an application in writing to the appropriate authority for registration of the transfer.

(2) The registration authority referred to in subsection (1) shall make such entries in the appropriate register and shall give effect to such transfer and where applicable issue to the purchaser or transferee concerned a certificate of title in respect of the property or make necessary amendments to the register as the case may be and shall make endorsement on the Deed relating to the title, rights or obligations concerned and no registration fees or other duties shall be payable in respect thereof.

(As amended by Act No. 2 of 2000)

Waiver of fees in relation to transfer of property assets, etc.

10. (1) Subject to this Act, where more than one application for a mining right over the same area of land is duly lodged and received, the applications shall be disposed of in the order in which they are received.

Priority of applications for mining rights

(2) Every application for a mining right duly made by an applicant who has tendered any fee as prescribed by or under this Act shall be registered immediately in a register maintained for the purpose, and each application so registered shall be assigned a number, and the date and time when the application was received shall be indicated on an official receipt handed to the applicant or his authorised agent or sent to the applicant by registered mail.

11. Before a mining right is issued, the Director may require that the land over which the mining right is to be issued be properly surveyed in accordance with legal requirements

Survey of land

PART III

LARGE-SCALE MINING OPERATIONS

Prospecting Licences

12. A prospecting licence confers on the holder of the licence exclusive rights to carry on prospecting operations in the prospecting area for the minerals specified in the licence and to do all such other acts and things as are necessary for or reasonably incidental to the carrying on of those operations.

Rights conferred by prospecting licence

13. (1) An application for a prospecting licence shall be made to the Minister in the prescribed form and shall be accompanied by the prescribed fee.

Application for prospecting licence

(2) The application shall include-

(a) in the case of an applicant who is an individual, his name, address and nationality and in respect of a company that is an applicant,

its registered name and address and the names, addresses and nationalities of the directors and of any shareholder who is the beneficial owner of more than five per centum of the issued capital;

(b) a full description of the area of land over which the licence is sought and a plan of the area prepared in such manner and showing such particulars as the Minister may reasonably require;

(c) a statement of the minerals to be searched for;

(d) details of any mining right previously granted to the applicant; and

(e) such further information as may be prescribed by the Minister by statutory instrument.

14. (1) The Minister shall, within sixty days of receipt of an application duly made, grant a prospecting licence to the applicant, unless-

Grant of
prospecting licence

(a) he is disqualified from holding a prospecting licence under section *seven*;

(b) he is the holder of another mining right and is in breach of any condition of that right or in breach of any of the provisions of this Act or the regulations in relation thereto;

(c) the area of land for which he has made application, or a part of it, is subject to another mining right, or extends to or is included in, an area in respect of which the Director has granted preliminary investigation rights on conditions which impose work or expenditure obligations, unless in any such case the applicant is himself the holder of that right; or

(d) the area of land for which application has been made covers or includes an area of land for which application has been made by another person who has priority over the applicant.

(2) A prospecting licence shall-

(a) state the date of the grant of the licence, the period, not exceeding two years, for which it is granted and the conditions on which it is granted;

(b) specify the minerals in respect of which it is granted; and

(c) include a description and plan of the prospecting area.

(3) There shall be appended to a prospecting licence the programme of prospecting operations, as accepted by the Minister, which shall form part of the conditions of the licence.

(4) In determining the date for the commencement in force of the licence, the Minister may take account of any period not exceeding six

months from the date of the grant which is required by the applicant to make any necessary preparations for prospecting operations.

15. (1) A prospecting licence shall, on application, be renewed by the Minister for such period, not exceeding two years, as the licensee may require, if the holder of the licence-

Renewal of
prospecting licence

(a) undertakes to carry out during the renewal period an adequate programme of prospecting operations; and

(b) relinquishes fifty per centum of the initial prospecting area on a first renewal, and fifty per centum of the balance on a second renewal, or such other size of area as may be agreed between the Director and the holder; and

(c) is not in breach of any condition of his licence or in breach of any of the provisions of this Act or the regulations in relation thereto:

Provided that the Minister shall not reject an application for renewal by virtue of this paragraph unless the applicant has been given details of his default and has failed to remedy it within such reasonable time as the Minister has allowed or, where a default is not capable of remedy, has not offered in respect thereof reasonable compensation.

(2) Where the Minister considers it necessary for the completion of a feasibility study commenced by the holder into the prospects for recovery of any mineral deposit and its commercial significance, the licence may be renewed for such further period as the Minister may authorise but not exceeding one year.

16. The holder of a prospecting licence-

Obligations of
holder of
prospecting licence

(a) shall commence prospecting operations within ninety days, or such further period as the Minister may allow, after the date of the grant of the licence or such other date as is stated in the licence as its commencement date;

(b) shall give notice to the Minister of the discovery of any mineral deposit of possible commercial value within thirty days of the discovery; and

(c) shall expend on prospecting operations not less than the amount prescribed or required by the terms and conditions of the licence to be so expended.

17. Except for the purpose of having the mineral analysed determining the value of the mineral or conducting tests on the mineral, the holder of a prospecting licence shall not remove any mineral from the prospecting area without the written permission of the Director and shall, when so removing any mineral, comply with such conditions as the Director may

Removal of
minerals

specify in the written permission.

Retention Licences

18. A retention licence confers on the holder exclusive rights to apply for a large-scale mining licence within the area for which the retention licence has been granted.

Rights conferred by retention licence

19. (1) The holder of a prospecting licence may apply to the Minister for the grant of a retention licence on the grounds that-

Application for retention licence

(a) he has identified a mineral deposit within the prospecting area which is potentially of commercial significance; and

(b) the mineral deposit cannot be developed immediately by reason of adverse market conditions or other economic factors which are, or may be, of a temporary character.

(2) An application for a retention licence shall be accompanied by studies and assessments by appropriate experts or consultants acceptable to the Minister on-

(a) the extent and prospects for recovery, and the commercial significance, of the mineral deposit and the relevant market conditions and trends and economic factors; and

(b) the impact of mining operations for the recovery of the mineral deposit on the environment and ways and means of eliminating or minimising any adverse effects;

and such other information as the Minister may reasonably require as to the proposals of the applicant for the retention and development of the deposit.

20. (1) The Minister, if he is satisfied that commercial development of the deposit is not presently possible for the reasons specified in the application, but may be possible within a period of six years, may grant a retention licence to the applicant over that part of the prospecting area which the Minister, after consultation with the applicant, anticipates is, or might be, required to mine the deposit identified by the applicant.

Grant of retention licence

(2) Without limiting the power of the Minister to impose conditions on a mining right, the conditions of the licence may include conditions for the preservation of the mineral deposit.

(3) A retention licence may be granted for a period not exceeding three years.

21. (1) If the Minister remains satisfied that commercial development

Renewal of

is not possible at the expiry of a retention licence, the licence may, on the application of the holder, be renewed for a single period of three years.

retention licence

(2) Before renewing such a licence, the Minister may require the holder to provide him with such updated studies and assessments of the prospects of the development and commercial exploitation of the mineral deposit as may reasonably be required.

22. If the Minister is satisfied that commercial mineral development of an area that is subject to a retention licence has become possible during the currency of the licence, he may, by notice to the holder of the licence, require the holder to apply for a large-scale mining licence in respect of the area concerned and may, at any time thereafter, cancel the retention licence.

Cancellation of retention licence

Large-Scale Mining Licences

23. (1) A large-scale mining licence confers on the holder exclusive rights to carry on mining and prospecting operations in the mining area, and to do all such other acts and things as are necessary for or reasonably incidental to the carrying on of those operations.

Rights conferred by large-scale mining licence

(2) Without limiting the generality of subsection (1), the holder of a large-scale mining licence may himself or by his servants and agents-

(a) enter on to the mining area and take all reasonable measures on or under the surface for the purpose of mining operations;

(b) erect the necessary equipment, plant and buildings for the purposes of mining, transporting, dressing or treating the mineral recovered in the course of mining operations;

(c) dispose of any mineral product recovered;

(d) prospect within the mining area for any mineral; and

(e) stack or dump any mineral or waste products.

24. (1) The holder of a prospecting licence is entitled to the grant of a large-scale mining licence for the mining of minerals within the prospecting area.

Application for large-scale mining licence

(2) An application for a large-scale mining licence shall be made to the Minister in the prescribed form and shall be accompanied by the prescribed fee.

(3) Every application for a large scale mining licence shall include or be accompanied by-

- (a) a statement of the period for which the licence is sought;
- (b) a comprehensive statement of the mineral deposits in the area over which the licence is sought, including details of all known minerals proved, estimated or inferred, ore reserves and mining conditions;
- (c) the proposed programme for mining operations, including a forecast of capital investment, the estimated recovery rate of ore and mineral products, and the proposed treatment and disposal of ore and minerals recovered;
- (d) the applicant's environmental plan, including his proposals for the prevention of pollution, the treatment of wastes, the protection and reclamation of land and water resources, and for eliminating or minimising the adverse effects on the environment of mining operations;
- (e) details of expected infrastructure requirements;
- (f) the applicant's proposals with respect to the employment and training of citizens of Zambia;
- (g) particulars of the prospecting licence held by the applicant;
- (h) a full description of the land within the prospecting area for which the large-scale mining licence is sought and a plan of the proposed mining area prepared in such manner and showing such particulars as the Minister may reasonably require;
- (i) such further information as the Minister may reasonably require for the disposal of the application.

(4) The applicant shall commission and produce to the Minister an environmental impact study on the proposed mining operations, to be prepared by persons who, in the opinion of the Minister, are suitably qualified and competent to do so.

25. (1) Subject to the other provisions of this Act, on application by the holder of a prospecting licence, the Minister shall grant a large-scale mining licence in respect of the whole or such part of the prospecting area as the applicant may require if, taking account of any relevant stipulation in a development agreement-

Grant of
large-scale mining
licence

- (a) it is established, or may be reasonably inferred, that there are sufficient deposits or reserves of minerals to justify their commercial exploitation;
- (b) the area of land over which the licence is sought is not in excess of the area reasonably required to carry out the applicant's proposed programme for mining operations;
- (c) judged by recognised standards of good mining practice, the

applicant's proposed programme for mining operations would ensure the efficient and beneficial use of the mineral resources of the area over which the licence is sought;

- (d) the applicant's environmental plan conforms to specifications and practices established by national standards for the management of the environment as it is affected by mining operations;
- (e) taking account of the size and nature of the proposed mining operations, the applicant's proposals for the employment and training of citizens of Zambia are adequate; and
- (f) the applicant is not in breach of any condition of his prospecting licence or in breach of any of the provisions of this Act or the regulations:

Provided that the Minister shall not reject an application by virtue of this paragraph unless the applicant has been given details of his default and has failed to remedy it within such reasonable time as the Minister has allowed or, where a default is not capable of remedy, has not offered in respect thereof reasonable compensation.

(2) A large-scale mining licence shall be granted for such period, not exceeding twenty-five years, as the applicant may require.

(3) A large-scale mining licence shall-

- (a) state the date of the grant of the licence, the period for which it is granted and the conditions on which it is granted; and
- (b) include a description and plan of the area of land over which it is granted.

(4) There shall be appended to a large-scale mining licence-

- (a) the programme of mining operations;
- (b) the applicant's environmental plan; and
- (c) the applicant's proposals for the employment and training of citizens of Zambia;

as accepted by the Minister, which shall form part of the conditions of the licence.

26. (1) The holder of a large-scale mining licence may, at any time not later than one year before the expiry of the licence, apply to the Minister for the renewal of the licence in respect of all or any part of the mining area.

Renewal of large
scale mining
licence

(2) An application for renewal shall be made to the Minister in the prescribed form and shall be accompanied by the prescribed fee.

(3) An application under this section shall include or be accompanied by-

- (a) a statement of the period, not exceeding twenty-five years, for which the renewal is sought;
- (b) details of-
 - (i) the latest proved, estimated and inferred ore reserves;
 - (ii) the capital investment to be made in, and production costs and revenue forecasts in respect of, the period of renewal;
 - (iii) any expected changes in methods of mining and treatment;
 - (iv) any expected increase or reduction in mining activities and the estimated life of the mine;
- (c) a proposed programme of mining operations for the period of renewals;
- (d) if the renewal is sought in respect of part only of the mining area, a plan identifying that part.

(4) Except as provided by subsection (5), on an application duly made under this section, a large-scale mining licence shall be renewed by the Minister for a period not exceeding twenty-five years, and the Minister may renew the licence with or without a variation of the conditions of the licence.

(5) The Minister may reject an application for renewal after taking into account of any relevant stipulation in a development agreement-

- (a) the development of the mining area has not proceeded with reasonable diligence;
- (b) minerals in workable quantities do not remain to be produced;
- (c) the programme of intended mining operations will not ensure the proper conservations and use in the national interest of the mineral resources of the mining area; or
- (d) the applicant is in breach of any condition of his licence or in breach of any of the provisions of this Act or the regulations:

Provided that the Minister shall not reject an application by virtue of this paragraph unless the applicant has been given details of his default and has failed to remedy it within such reasonable time as the Minister has allowed or, where a default is not capable of remedy, has not offered in respect thereof reasonable compensation.

27. The holder of a large-scale mining licence shall-

Obligations of
holder of

(a) develop the mining area, and carry on mining operations, with due diligence and in compliance with his programme of mining operations and his environmental plan;

large-scale mining licence

(b) employ and train citizens of Zambia in accordance with his proposals as appended to the licence; and

(c) demarcate the mining area, and keep it demarcated in the prescribed manner.

28. (1) The holder of a large-scale mining licence shall give notice to the Minister-

Suspension of production

(a) at least ninety days in advance, if, without abandonment of his licence, he proposes to suspend production from his mine; and

(b) at least thirty days in advance, if he proposes to curtail such production;

and shall, in either case, give reasons for such suspension or curtailment.

(2) The holder of a large-scale mining licence shall forthwith inform the Minister of the suspension or curtailment of production from his mine due to causes beyond his control.

(3) On receiving notice under subsection (1), or if he otherwise becomes aware of any suspension or curtailment of production, the Minister shall cause the matter to be investigated and may, subject to the terms of any relevant development agreement-

(a) give his approval, on such conditions as he may determine (including provision for the extension of any licence), to the suspension or curtailment of production; or

(b) direct the holder to resume full production at the mine within such date as he may specify.

PART IV

SMALL-SCALE MINING OPERATIONS

Prospecting Permits

29. A prospecting permit confers on the holder exclusive rights to carry on prospecting operations in the prospecting area for the minerals (not being gemstones) specified in the licence, and to do all such other acts and things as are necessary for or reasonably incidental to the

Rights conferred by prospecting permit

carrying on of those operations.

30. (1) An application for a prospecting permit-

Application for
prospecting
permit

(a) shall be made to the Director; and

(b) shall be in the prescribed form and shall be accompanied by

(i) the prescribed fee; and

(ii) a tax clearance certificate issued under section eighty one B of the
Income Tax Act.

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(2) The application shall include-

(a) a statement of the minerals, other than gemstones, for which the
applicant wishes to prospect;

(b) a description and sketch of the area of land for which the permit
is sought, sufficient to enable identification of the area and to provide a
plan to be annexed to the permit;

(c) a statement of the sum the applicant intends to expend on his
prospecting operations; and

(d) a description of any mining right which has previously been
granted to the applicant or for which he has previously made an
application.

(As amended by Act No. 5 Of 2003)

31. (1) The director shall, within thirty days of receipt of an application
duly made, grant a prospecting permit to the applicant, unless-

Grant of
prospecting permit

(a) he is disqualified under section *seven* from holding the permit.

(b) the area over which he seeks a prospecting permit is already
subject to a mining right; or

(c) the applicant is or was in breach of any condition of any other
mining right or in breach of any of the provisions of this Act or the
regulations:

Provided that the Director shall not reject an application by
virtue of this paragraph unless the applicant has been given details of his
default and has failed to remedy it within such reasonable time as the
director has allowed or, where a default is not capable of remedy, has
not offered in respect thereof reasonable compensation.

(2) A prospecting permit shall-

(a) state the date of the grant of the permit, the period for which it is
granted and the conditions on which it is granted;

- (b) specify the minerals in respect of which it is granted; and
- (c) include a description and plan of the prospecting area.

(3) There shall be appended to a prospecting permit the programme of prospecting operations, as accepted by the Director, which shall form part of the conditions of the licence.

(4) The area of a prospecting permit shall not exceed ten square kilometres.

(5) A prospecting permit shall not be granted for a period exceeding two years, and shall not be renewed.

32. The holder of a prospecting permit shall give notice to the local office of the discovery of any mineral deposit of possible commercial value within thirty days of the discovery.

Obligations to give notice of discovery

33. Except for the purpose of having the mineral analysed, determining the value of the mineral or conducting tests on the mineral, the holder of a prospecting permit shall not remove any mineral from the prospecting area without the written permission of the authorised officer at the local office and shall, when so removing any mineral, comply with such conditions as that officer may specify in the written permission.

Removal of minerals

Small-scale Mining Licences

34. (1) A small-scale mining licence confers on the holder exclusive rights to carry on mining operations in the mining area for minerals other than gemstones, and to do all such other acts and things as are necessary for or reasonably incidental to the carrying on of those operations.

Rights conferred by small-scale mining licence

(2) Without limiting the generality of subsection (1), the holder of a small-scale mining licence may himself or by his servants and agents-

- (a) enter into or upon the mining area and take all reasonable measures on or under the surface for the purpose of mining operations;
- (b) erect the necessary equipment, plant and buildings for the purposes of mining, transporting, dressing or treating the mineral recovered by him in the course of the mining operations;
- (c) dispose of any mineral products recovered;
- (d) prospect within the mining area for any mineral; and
- (e) stack or dump any mineral or waste product.

35. (1) The holder of a prospecting permit may, at any time during the

Application for

currency of his permit, apply to the Director for a small-scale mining licence over any part of the prospecting area.

small-scale mining licence

(2) An application for a small-scale mining licence shall be in the prescribed form and shall be accompanied by

(a) the prescribed fee; and

(b) a Tax clearance certificate issued under section eighty-one B of the Income Tax Act.

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(3) Every application under this section shall-

(a) describe the area, not exceeding four hundred hectares, over which a small-scale mining licence is sought, with a sketch plan in sufficient detail to enable identification of the area;

(b) identify the relevant prospecting permit;

(c) describe to the best of the applicant's knowledge and belief the mineral deposits in the area over which the licence is sought;

(d) describe the proposed programme of mining operations, which shall include a forecast of investment, the estimated recovery rate of ore and the applicant's proposals for its treatment and disposal;

(e) state the duration, not exceeding ten years, for which the small-scale mining licence is sought; and

(f) include such further information as the Director may reasonably require for disposing of the application.

(As amended by Act No. 5 of 2003)

36. (1) The director shall, within thirty days of receipt of an application duly made, grant a small-scale mining licence to the applicant, unless-

Grant of small-scale mining licence

(a) the applicant has, under section *thirty-nine*, been required to apply for a large-scale mining licence;

(b) the applicant is disqualified under section *seven*, or the area over which he seeks a small-scale mining licence is already subject to a mining right;

(c) the area in respect of which a small-scale mining licence is sought is in excess of the area required to mine the deposits identified by the applicant;

(d) the area of land for which application has been made covers or includes an area of land for which application has been made by another person who has priority over the applicant; or

(e) the applicant is or was in breach of any condition of any other

mining right or in breach of any of the provisions of this Act or the regulations:

Provided that the Director shall not reject an application by virtue of this paragraph unless the applicant has been given details of his default and has failed to remedy it within such reasonable time as the Director has allowed or, where a default is not capable of remedy, has not offered in respect thereof reasonable compensation.

(2) A small-scale mining licence shall-

(a) state the date of the grant of the licence, the period for which it is granted and the conditions on which it is granted; and

(b) include a description and plan of the area of land over which it is granted.

(3) There shall be appended to a small-scale mining licence the programme of mining operations, as accepted by the Director, which shall form part of the conditions of the licence.

37. (1) The holder of a small-scale mining licence may apply to the Director for a renewal of the licence.

Renewal of
small-scale mining
licence

(2) An application for renewal shall be in the prescribed form and shall be accompanied by the prescribed fee.

(3) On an application made under this section, the Director shall renew the small-scale mining licence for the period specified in the application, not exceeding ten years, unless-

(a) the development of the mining area has not proceeded with reasonable diligence; or

(b) minerals in workable quantities do not remain to be produced; or

(c) the applicant is in breach of any condition of his licence or in breach of any of the provisions of this Act or the regulations:

Provided that the director shall not reject an application by virtue of this paragraph unless the applicant has been given details of his default and has failed to remedy it within such reasonable time as the Director has allowed or, where a default is not capable of remedy, has not offered in respect thereof reasonable compensation.

38. The holder of a small-scale mining licence shall-

(a) develop the mining area, and commence and carry on mining operations, with due diligence and in accordance with the programme of mining operations; and

Obligations of
holder of
small-scale mining
licence

(b) demarcate the mining area, and keep it demarcated, in the prescribed manner.

39. The Minister may require-

- (a) any applicant for a small-scale mining licence; or
- (b) the holder of a small-scale mining licence, if the Minister considers on reasonable grounds that the holder is engaged in mining operations on a substantial scale;

to apply for a large-scale mining licence, and, in any such case, the provisions of this Act shall apply, with any necessary modifications, to the applicant as if he were the holder of the prospecting licence who applies for a large-scale mining licence.

Requirement to convert small-scale mining licence to large-scale mining licence

Gemstone Licences

40. A gemstone licence confers on the holder the same exclusive rights as a prospecting permit and a small-scale mining licence, but only in relation to gemstones.

Rights conferred by gemstone licence

41. An application for a gemstone licence shall be in the prescribed form, accompanied by the prescribed fee and a tax clearance certificate, and shall include or be accompanied by-

Application for gemstone licence

- (a) a description and sketch of the area of land for which the licence is sought, in sufficient detail to enable officers at the local office to identify the area and to provide a plan to be annexed to the licence; and
- (b) a statement, to the best of the applicant's knowledge and belief, of the gemstone deposits in the area over which the licence is sought;
- (c) the proposed programme for mining operations, including a forecast of investment and the estimated recovery rate of ore and gemstones; and
- (d) such further information as the Director may reasonably require for disposing of the application.

(2) In subsection (1) "tax clearance certificate means a tax clearance certificate issued under section eighty-one B of the Income Tax Act.

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42. (1) The Director shall, within thirty days of receipt of an application duly made, grant a gemstone licence to the applicant, unless-

Grant of gemstone licence

- (a) the Minister has, under section *forty-five*, required the applicant to apply for a large-scale mining licence;
- (b) the applicant is disqualified under section *seven* or the area over which he seeks a small-scale mining licence is already subject to a mining right;

(c) the area of land for which application has been made covers or includes an area of land for which application has been made by another person who has priority over the applicant; or

(d) the applicant is or was in breach of any condition of any other mining right or in breach of any of the provisions of this Act or the regulations:

Provided that the Director shall not reject an application by virtue of this paragraph unless the applicant has been given details of his default and has failed to remedy it within such reasonable time as the Director has allowed or, where a default is not capable of remedy, has not offered in respect thereof reasonable compensation.

(2) A gemstone licence shall be in such form as may be prescribed, and shall have annexed thereto a plan of the mining area.

(3) A gemstone licence may be granted over an area not exceeding four hundred hectares and for such period, not exceeding ten years, as the applicant may require.

43. (1) The holder of a gemstone licence may apply to the Director for a renewal of his licence.

Renewal of
gemstone licence

(2) An application for renewal shall be in the prescribed form and shall be accompanied by the prescribed fee.

(3) On an application made under this section, the Director shall renew the licence for such period, not exceeding ten years, as the applicant may require, unless-

(a) the development of the mining area has not proceeded with reasonable diligence;

(b) minerals in workable quantities do not remain to be produced; or

(c) the applicant is in breach of any condition of his licence or in breach of any of the provisions of this Act or the regulations:

Provided that the Director shall not reject an application by virtue of this paragraph unless the applicant has been given details of his default and has failed to remedy it within such reasonable time as the Director has allowed or, where a default is not capable of remedy, has not offered in respect thereof reasonable compensation.

44. The holder of a gemstone licence shall give notice to the Director of the discovery of any mineral deposit of possible commercial value within thirty days of the discovery.

Obligation to give
notice of discovery

45. The Minister may require-

Requirement to

- (a) any applicant for a gemstone licence; or
- (b) a person who has held a gemstone licence for a period of five years, if the Minister considers on reasonable grounds that the holder is engaged in mining operations on a substantial scale;

convert gemstone licence to large-scale mining licence

to apply for a large-scale mining licence, and, in any such case, the provisions of this Act shall apply, with any necessary modifications, to the applicant as if he were the holder of a prospecting licence who applies for a large-scale mining licence.

PART V

VARIATION, ETC. OF LICENCES AND PERMITS

46. (1) The holder of a licence or permit may, in accordance with an approval given under this section, make amendments to-

Amendment of terms of licence or permit

- (a) the programme of mining operations; or
- (b) any environmental plan, or any programme for the employment or training of citizens of Zambia, that forms part of the conditions of the licence

(2) Particulars of any proposed amendment shall be served on the Minister, in the case of a licence granted under Part III, and on the director, in any other case.

(3) The Minister or the Director shall determine whether or not to approve the amendment and, if he decides to approve the amendment, the terms and conditions, if any, on which such approval is granted.

47. (1) At any time during the currency of a prospecting licence or prospecting permit, the holder may re-orientate his area:

Alteration of prospecting area

Provided that-

- (a) no part of the re-orientated area shall overlap any area already subject to another mining right; and
- (b) at least twenty-five per centum of the re-orientated area shall consist of land that was included in the prospecting areas as it was before re-orientation.

(2) At any time during the currency of prospecting licence or prospecting permit, the holder may, with the permission of the Minister

and subject to such conditions as he may impose in relation to the prospecting operations to be carried on under the licence, increase the size of the prospecting area:

Provided that the prospecting area, as so increased, shall not exceed such areas as may be prescribed by the Minister by statutory instrument.

(3) Each of the rights given under subsections (1) and (2) may be exercised once during the total period of the currency of the licence and any renewals thereof.

48. (1) At any time during the currency of a large-scale mining licence or a small-scale mining licence, the holder may apply- Enlargement of mining area

(a) to the Minister, in the case of a large-scale licence; and

(b) to the director, in the case of a small-scale mining licence;

for the enlargement of the mining area and the Minister or the Director may, subject to this section, approve the application or refuse to do so.

(2) An application under this section shall not be approved if to do so would prejudice neighbouring mining rights.

(3) An approval under this section may be given unconditionally or subject to such conditions as the Minister or the Director may determine, and any such conditions shall be specified in the document signifying approval under this section.

(4) An approval under this section, together with any conditions to which it is subject, shall be endorsed on the applicant's licence and the licence shall be deemed to be amended in accordance with the endorsement.

49. (1) The holder of a licence or permit who wishes to abandon all or any part of the land subject to the licence or permit shall apply to the Director, not later than ninety days before the date on which he wishes the abandonment to have effect, for a certificate of abandonment. Abandonment of land subject to licence or permit

(2) Subject to this section, the Director shall issue to the applicant a certificate of abandonment either unconditionally or subject to such conditions relating to the abandoned land as the Director may determine.

(3) An application under this section-

(a) shall identify the land to be abandoned and, if the application applies to only a part of the land subject to the licence or permit, shall include a plan clearly identifying both the part to be abandoned and the

part to be retained;

(b) shall state the date on which the applicant wishes the abandonment to take effect;

(c) shall give particulars of the operations which have been carried on under the licence or permit on the land to be abandoned; and

(d) shall be supported by such records and reports in relation to those operations as the director may reasonably require.

(4) A certificate of abandonment shall take effect on the date on which it is granted to the applicant, and-

(a) where the certificate relates to the whole of the land subject to the holder's licence or permit, the licence or permit shall be cancelled with effect from the same date; and

(b) in any other case, the licence or permit shall be amended to take account of the abandonment.

(5) The abandonment of any land does not affect any liability incurred before the date on which the abandonment has effect in respect of the land, and any legal proceedings that might have been commenced or continued in respect of any liability against the applicant for the certificate may be commenced or continued against that applicant.

50. (1) Subject to this section, where the holder of a licence or permit-

Suspension or
cancellation of
licence or permit

(a) has at any time contravened a condition of the licence or permit that is expressed in the licence or permit, or in any document attached to it or otherwise forming part of it, to be a condition whose contravention may result in revocation or suspension of the licence;

(b) fails to comply with any requirement of this Act or the regulations;

(c) fails to comply with a direction lawfully given under this Act or the regulations or with a condition on which any certificate of abandonment is issued or on which any exemption or consent is given under this Act or the regulations; or

(d) fails to pay any amount payable by him under this Act or the regulations within thirty days after the amount becomes due;

the Minister may, by notice in writing served on the holder of the licence, suspend or cancel the licence or permit.

(2) The Minister shall not suspend or cancel a licence or permit on grounds referred to in any of paragraphs (a) to (c) of subsection (1) unless-

- (a) he has first served on the holder a default notice specifying the grounds on which the licence may be suspended or cancelled; and
- (b) the holder has failed within a period of sixty days from the date on which the default notice was served, or such longer period as the Minister may allow, to remedy the default specified, or where such default is not capable of being remedied, has failed to offer in respect thereof reasonable compensation.

(3) The Minister shall not suspend or cancel a licence or permit on the ground referred to in paragraph (d) of subsection (1) if, within a period of sixty days from the date on which the default upon which the default notice was served (or such longer period as the Minister may allow) the holder, in addition to paying the amount overdue, pays interest on that amount at the prescribed rate.

(4) The Minister may, by notice in writing to the holder of a licence or permit, cancel the licence or permit on the occurrence of an event which, as provided by section *seven*, renders that person ineligible to hold a mining right.

(5) On the cancellation of a licence or permit under this section, the rights of the holder thereunder cease, but the cancellation does not affect any liability incurred before cancellation, and any legal proceedings that might have been commenced or continued against the former holder may be commenced or continued against him.

51. Where, over a continuous period of three years or longer, the holder of a small-scale mining licence has failed to carry on mining operations in accordance with his proposed plan of mining operations and over such period has in each year of production recovered less than fifty per centum of the ore which should have been recovered under his estimated recovery rate, the Minister may, if he thinks fit, cancel the licence.

Termination of small-scale mining licence for insufficient production

52. Where the holder of a gemstone licence has failed to carry on mining operations in accordance with his proposed plan of mining operations and the gross proceeds of sale of minerals from an area subject to a gemstone licence in each of any three successive years is less than half of the deemed turnover applicable to that licence in each of those years, the Minister may, if he thinks fit, cancel the licence.

Termination of gemstone licence for insufficient production

53. Where-

- (a) the holder of a licence or permit applies, during its currency, for a renewal of the licence or permit;
- (b) the holder of a prospecting licence applies, during the currency

Transitional extension of licences or permits pending certain applications

of the licence, for a retention licence or for a large-scale mining licence over all or part of the prospecting area;

(c) the holder of a prospecting permit applies, during the currency of the permit, for a small-scale mining licence over all or part of the prospecting area; or

(d) the holder of a retention licence applies, during the currency of the licence, for a large-scale mining licence over all or any part of the area which the retention licence is granted;

the current licence or permit shall continue in force until the date of the renewal or grant for which application is made or until the application is refused.

54. (1) No licence or permit shall be transferred without-

Transfer of licence
or permit

(a) the consent of the Minister, in the case of a licence granted under Part III; or

(b) the consent of the Director, in the case of any other licence or permit.

(2) Consent under this section shall not be unreasonably withheld.

(3) An application for consent under this section shall contain such particulars as may be prescribed, shall be in the prescribed form and shall be accompanied by the prescribed fee.

(4) No mining right may be transferred to a person disqualified under section *seven* from holding that right.

(5) In this section, "transfer" includes a sale, mortgage, charge or other assignment or encumbrance.

(6) Any transaction purporting to transfer a mining right in contravention of this section shall be void and of no effect.

55. (1) A company that holds a mining right shall not, after the date of the grant of the right, without the written consent of the Minister-

Transfer of control
of company

(a) register the transfer of any share or shares in the company to any particular person or his nominee; or

(b) enter into an agreement with any particular person; if the effect of doing so would be to give that person control of the company.

(2) On an application for consent under this section, the Minister may call for and obtain such information as is reasonably necessary, but such consent shall not be unreasonably withheld.

(3) For the purposes of this section-

(a) a person is deemed to have control of a company-

(i) if the person or his nominee holds, or the person and his nominee together hold, a total of fifty per centum or more of the equity shares of the company; or

(ii) if the person is entitled to appoint, or to prevent the appointment of, half or more than half of the number of directors of the company;

(b) "equity shares" has the meaning ascribed to it in the Companies Act. Cap. 388

PART VI

MINING RIGHTS AND SURFACE RIGHTS

56. (1) The holder of a licence or permit shall not exercise any of his rights under this Act or the licence or permit-

Restriction of rights of entry by holder of licence or permit

(a) without the written consent of the appropriate authority, upon-

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(i) any land dedicated as a place of burial;

(ii) any land containing any ancient monument or national monument, as defined in the National Heritage Conservation Commission Act;

(iii) any land which is the site of or is within ninety metres of any building or dam owned by the Republic; or

(iv) any land forming part of a Government aerodrome as defined in the Air Navigation Regulations made under the Aviation Act;

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(b) without the written consent of the owner or legal occupier thereof or his duly authorised agent-

(i) upon any land which is the site of or which is within one hundred and eighty metres of any inhabited, occupied or temporarily uninhabited house or building;

(ii) within forty-five metres of any land which has been cleared or ploughed or otherwise prepared in good faith for growing of farm crops or upon which farm crops are growing;

(iii) upon any land which is the site of or is within ninety metres of any cattle dip, tank, dam or any private water as defined in the Water Act; or

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(iv) upon any land forming part of an aerodrome, other than an aerodrome referred to in sub paragraph (iv) of paragraph (a):

Provided that where any consent required under this subsection is unreasonably withheld, the Director may arrange for arbitration of the matter in accordance with section *sixty*;

(c) upon land occupied as a village, without the written consent of the chief and the local authority for the district in which the village is situated;

(d) without the written consent of the railway administration, upon any land reserved for the purposes of any railway track or within one hundred metres of any railway track;

(e) without the written consent of the appropriate authority or the local authority concerned, upon any land within, or within sixty metres of the boundaries of, any city, municipality or township for which a council is established under the provisions of the Local Government Act;

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(f) without-

(i) the written consent of the appropriate authority, upon any land used as a forest nursery or plantation or as a timber depot, sawmill or other installation for working a forest; and

(ii) due compliance with the relevant provisions of the Forests Act, upon any land declared to be a national forest or local forest, as defined in that Act;

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(g) upon any street, road or highway, without the written consent of the appropriate authority or the public body which has the control thereof;

(h) upon any land comprised in a National Park without complying with the National Parks and Wildlife Act;

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(i) upon any land that, under the Town and Country Planning Act, cannot be developed without permission, unless the requisite permission is first obtained.

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(2) Any consent given for the purposes of this section by the Director or the appropriate authority may be given unconditionally or subject to such conditions as are specified in the terms of the written consent.

(3) In this section, "the appropriate authority", in relation to any matter, means the Minister for the time being having responsibility for that

matter or such public officer as he may authorise to give the requisite consent on his behalf.

57. Subject to the terms of any access agreement, the rights conferred by a licence or permit shall be exercised reasonably and, except to the minimum extent necessary for the reasonable and proper conduct of the operations concerned, shall not be exercised so as to affect injuriously the interest of any owner or occupier of the land over which those rights extend.

Rights under licence or permit to be exercised reasonably

58. Subject to the terms of any access agreement, the owner or occupier of any land within the area of a licence or permit shall retain the right to graze stock upon or to cultivate the surface of the land in so far as such grazing or cultivation does not interfere with the proper working in the area for mining, prospecting or other operations to be carried on under the licence or permit, but shall not erect any building or structure thereon without the consent of the holder of the licence or permit:

Right to graze stock

Provided that where such consent is unreasonably withheld, the Director may grant it.

59. The holder of any licence or permit who requires the exclusive or other use of the whole or any portion of the prospecting or mining area for the purpose of his licence or permit may, in accordance with the laws relating to such acquisition, acquire a lease thereof or other right to use the same upon such terms as may be agreed between such holder and the owner or occupier of the land:

Acquisition of by holder of licence or permit or rights over land

Provided that the holder of a licence or permit shall not purchase or obtain a lease of or other rights over any land specified in paragraph (a), or in any of paragraphs (c) to (h), of subsection (1) of section *fifty-six*, except with the consents of the appropriate authorities mentioned in that section.

60. Where there is any dispute as to-

Arbitration of disputes

(a) whether or not paragraph (b) of subsection (1) of section *fifty-six* applies in respect of any land, or the withholding of any consent under that subsection;

(b) the withholding of any consent under section *fifty-six*; or

(c) any other matter arising under this Part that is prescribed by the Minister by statutory instrument;

any part to the dispute may apply to the Director, who may require the parties to enter into a submission within the meaning of the Arbitration Act or, by consent of both parties, determine the dispute himself:

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Provided that this subsection shall have effect subject to the terms of any access agreement.

61. Whenever in the course of prospecting or mining operations any disturbance of the rights of the owner or occupier of land or damage to any crops, trees, buildings, stock or works thereon is caused, the owner of the mining right by virtue of which such operations are or were carried out shall be liable to pay to such owner or occupier fair and reasonable compensation for such disturbance or damage according to their respective rights or interests, if any, in the property concerned:

Compensation for disturbance of rights, etc.

Provided that-

(a) compensation shall not be payable under this section in respect of any indigenous wood or timber taken-

(i) upon land that has been declared a local forest or a national forest under the provisions of the Forests Act, upon payment of the fees prescribed under that Act; or

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(ii) upon other land that has not been alienated by the President in accordance with the Lands Act; and

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(b) where the value of any land has been enhanced by the fact that prospecting or mining operations are taking place or have taken place on the land or nearby, the amount of any compensation payable under this section in relation to that land shall not exceed the amount that would have been payable if such value had not been so enhanced.

PART VII

ARTISANAL MINING

62. An artisan's mining right shall confer on the person to whom it is granted, or in the case of a right granted in accordance with subsection (2) of section *sixty-four*, on the community concerned, exclusive rights to mine according to its terms in respect of the mineral specified in the permit within the area for which it is granted.

Rights conferred by artisan's mining right

63. (1) Any citizen of Zambia who has identified a mineral deposit may apply to the authorised officer at the local office for an artisan's mining right.

Application for artisan's mining right

(2) An application for an artisan's mining right shall be in the prescribed form and shall be accompanied by the prescribed fee.

64. (1) Subject to this section, the authorised officer at the local office shall, within thirty days of receipt of an application duly made, grant an artisan's mining right to the applicant, to explore and mine the deposit referred to in the application.

Grant of artisan's
mining right

(2) Where the authorised officer is satisfied that, in the particular area concerned, mining operations are being carried on a community basis in accordance with customary practices, he shall authorise such operations by the grant of an artisan's mining right to a chief or such other person as the Minister may, by statutory instrument, prescribe.

(3) The authorised officer shall not grant an artisan's mining right, and may suspend or cancel a right granted, to any person disqualified by section *seven* or who he is satisfied has been convicted of an offence against this Act, the regulations or any written law repealed by this Act.

(4) An artisan's mining right shall remain in force for a period of two years, and shall not be renewed:

Provided that nothing in this subsection shall prevent the grant of a further right on the expiry of any current right.

(5) An artisan's mining right shall identify the minerals in respect of which it is granted and shall be granted over an area not exceeding five hectares, not being an area that is already subject to a mining right, which shall be delineated on a plan attached to the right.

65. (1) Except as otherwise provided by statutory instrument made under this Act, nothing in this Act shall operate to prevent-

Rights to building
materials

(a) the taking, by the owner or occupier of any land that is not subject to a mining right, of limestone or other building materials ordinarily used for building, road making or agricultural purposes, from the land, where-

(i) the materials so taken are for use on the land concerned; and

(ii) such owner or occupier is the holder of a permit from the Director authorising such taking;

(b) the taking, by the holder of a mining right in respect of any land, of such materials from the land for use on the land;

(c) the taking, by the owner or occupier of any land that is subject to a mining right, of such materials from the land with the consent of the holder of the mining right and for use on the land; or

(d) the taking by the Republic, any local authority, a highway authority, or any person duly authorised by any such authority and

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acting under the Roads and Road Traffic Act, of such materials for public purposes.

(2) The provisions of this section shall not affect any requirement of this or any other Act to obtain any requisite consent from any owner or occupier of land or any public authority or other person.

PART VIII

ROYALTIES AND CHARGES

Royalties

66. (1) The holder of a mining licence shall, in accordance with the licence, this Act and the terms of any relevant development agreement, pay to the Republic a royalty on gross value of minerals produced under the licence at the rate of two per centum except that in the case of a company holding a large scale mining licence issued under section *twenty-three* and carrying on the mining of base metals, the rate shall be zero point six per centum.

Royalties on
production of minerals

(2) Subject to section *sixty-seven*, the mineral royalty payable under this section is due and payable within fourteen days after the end of the month in which the sale of minerals is done; and

(3) The holder of a gemstone licence or a small-scale mining licence or an artisan's mining right to mine gemstones, base metals or precious metals shall, in accordance with the licence or mining right, this Act and the terms of any relevant development agreement, pay to the Republic a royalty on gross value of minerals or metals produced under the licence or mining right at the rate of five per centum.

(4) In this Section-

“gross value” means the realized price for a sale free-on-board, at the point of export from Zambia or point of delivery within Zambia :

Provided that if the Minister considers that the realized price does not correspond to the price that would have been paid for the minerals if they had been sold on similar terms in a transaction, at arms length, between a willing seller and a willing buyer, a notice may be given to that effect to the licensee; and the amount of the gross value shall be determined in accordance with mechanism contained in section

ninety-seven A to ninety-seven D of the Income Tax Act.

(As amended by Act No. 8 1998, No.5 of 1999, Act No. 2 of 2000 Repealed and Replaced by Act No. 5 of 2003, Amended by Act No. 4 of 2006)

66A. Every person required to pay mineral royalty under section *sixty-six* shall submit monthly mineral royalty returns in the prescribed form containing such particulars as may be required by the Commissioner-General within fourteen days after the end of the month in which the sale of the mineral is done.

Commissioner-General
to be responsible for
royalties
Cap. 321

(As amended by Act No. 8 of 1997, No. 4 of 2006)

66B. Sections *forty-five, forty-seven to forty-nine, fifty-five to fifty-eight, sixty-three to seventy, seventy-eight, seventy-nine, eighty-seven, ninety-one, ninety-five and ninety-eight to one hundred and fifteen* of the Income Tax Act shall, with the necessary modification, apply to the collection, assessment, penalisation, enforcement of, and right of appeal with respect to any royalty imposed under section *sixty-six* of this Act.

Returns and
assessments
Cap. 323

(As amended by Act No. 8 of 1997)

67. (1) The Minister responsible for finance may after consultation with the Minister, remit in whole or part any royalty payable on any mineral, or on any mineral obtained from a particular deposit, for such period as he may determine, if he considers it expedient in the interests of the production of the mineral to do so.

Remission and
deferment of
royalties

(2) The Minister may exempt from liability to royalty samples of minerals acquired for purposes of assay, analysis or other examination.

(3) The Commissioner-General may, on application by the holder of a large-scale mining licence, defer payment of royalty due from such holder if, during any period for which a payment of royalty is due as prescribed under this Act (in this section referred to as "the royalty payment period"), the cash operating margin of the holder in respect of mining operations in the mining area falls below zero; and in any such case, the amount payable on account of royalty in respect of that period shall be reduced to such an extent as is necessary to increase the cash operating margin to zero, and payment of the difference between the royalty due in respect of that period and the reduced amount shall be

deferred.

(4) Where the payment of any royalty is deferred-

(a) it shall be accumulated with any other deferred payment of royalty which is outstanding;

(b) the amount outstanding shall become payable when royalty is due in respect of the next following royalty payment period or periods in which, after the deduction of the royalty then due, the cash operating margin is positive; and

(c) the sum payable on any particular occasion under paragraph (b) shall not exceed that which would reduce the cash operating margin for the relevant royalty payment period below zero.

(5) In this section-

"cash operating margin" means the amount derived by deducting operating costs from revenue;

"operating costs" means cash expenditures incurred in mining operations after the commencement of production from the mining area, other than-

(i) capital expenditure or any expenditure of a capital nature;

(ii) provision for depreciation;

(iii) financing charges, including interest on loans and fees and related charges in respect thereof; or

(iv) agency fees or any other fees or charges not directly or necessarily related to the production and disposal of minerals from the mining area;

"revenue" means the gross value of all sales or other disposal of minerals.

(As amended by Act No. 8 of 1997)

68. (1) Where, for any reason, it is impractical to assess the amount of any royalty due, the Commissioner-General may assess, and the holder of the licence shall be liable to pay, a provisional royalty.

Provisional
assessment of
royalty

(2) Where provisional royalty is assessed under this section, and the amount of the royalty is ascertained at the end of any period of adjustment prescribed under this Act, the holder of the licence shall be liable for any balance or, as the case may require, shall be repaid any excess sum paid by him on such provisional assessment.

(As amended by Act No. 8 of 1997)

69. (1) If the holder of a large-scale mining licence fails to pay any royalty or provisional royalty payable by him on or before the due date of any extension thereof allowed by the Commissioner-General, the Commissioner-General may, by order served on the holder, prohibit the disposal of any mining from the mining area concerned, or from any other mining area held by that holder, until an arrangement has been made that is acceptable to the Commissioner-General for the payment of the royalties.

Prohibition on disposal of minerals

(2) Any holder of a large-scale mining licence who contravenes or fails to comply with an order given under subsection (1), and any person who, knowing of such order and contrary thereto, receives any mineral from the area concerned, shall be guilty of an offence and shall be liable on conviction-

(a) in the case of an individual, to a fine not exceeding twenty thousand penalty units or imprisonment for a term not exceeding two years, or to both; or

(b) in the case of a body corporate, to a fine not exceeding fifty thousand penalty units.

(3) For the purposes of this section and sections *sixty-six A to sixty-eight*, the "Commissioner-General" means the Commissioner-General of the Zambia Revenue Authority.

(As amended by Act No. 8 of 1997)

Other Charges

70. (1) There shall be payable to the Republic by the holder of every

Annual charge in

prospecting licence, retention licence or large-scale mining licence an annual fee of such amount as may be prescribed, or as may be calculated in the manner prescribed, by the Minister by statutory instrument.

respect of licences under Part III

(2) The annual charge shall be payable on the grant of the licence and thereafter annually on the anniversary thereof until the termination of the licence.

71. There shall be payable to the Republic by the holder of prospecting permit a charge, at such rate per hectare of the prospecting area as may be prescribed by the Minister by statutory instrument.

Charge for prospecting permit

72. The amount of the annual rent for a small-scale mining licence shall be as follows:

Rent for small-scale mining licences

(a) where the holder is mining building materials, rent calculated by reference to tonnages mined shall be paid as prescribed, or in the manner prescribed, by the Minister by statutory instrument;

(b) in any other case, rent shall be paid annually in an amount equal to five per centum of the realised proceeds of the minerals mined in the mining area and sold or otherwise disposed of by the holder:

Provided that if the Director has reasonable grounds to believe that the proceeds alleged to be realised by the holder do not represent the true market value of the minerals sold or otherwise disposed of he may, for the purpose of ascertaining the amount of rent due, require, by order under his hand, that the minerals be valued by such reasonable method as he may specify in that order.

73. (1) The amount of the annual rent and the deemed turnover for a gemstone licence shall be as set forth in the Second Schedule.

Rent and deemed turnover in respect of gemstone licence

(2) The Minister may, by statutory instrument, from time to time amend or replace the Second Schedule.

74. There shall be payable to the Republic by the holder of an artisan's mining right such charge as may be prescribed, or as may be calculated

Charge for artisan's mining

in the manner prescribed, by the Minister by statutory instrument, and such charge shall be payable on the grant of the right.

PART IX

ENVIRONMENTAL PROTECTION

75. In deciding whether or not to grant any mining right, the Minister shall take into account the need to conserve and protect-

(a) the air, water and soil, flora, fauna, fish, fisheries and scenic attractions; and

(b) the features of cultural, architectural, archaeological, historical or geological interests;

in or on the land over which the right is sought, and the Minister may cause such environmental impact studies and other studies to be carried out as the Minister considers necessary to enable such a decision to be made.

Environment to be considered when granting mining rights

76. (1) The conditions subject to which the right is granted or renewed shall include such conditions as may be prescribed by the Minister, by statutory instrument, or as the Minister may, in a particular case, otherwise determine, in relation to-

(a) the conservation and protection of-

(i) the air, water and soil, flora, fauna, fish, fisheries and scenic attractions; and

(ii) the features of cultural, architectural, archaeological, historical or geological interest;

in or on the land subject to the right;

(b) the rehabilitation, levelling, re-grassing, re-forestation or contouring of such part of the land over which the right has effect as may have been damaged or adversely affected by prospecting operations or mining operations; and

(c) the filling in, sealing or fencing off of excavations, shafts and tunnels.

Conditions for the protection of the environment

(2) Any conditions of the kind referred to in subsection (1)-

(a) shall conform to specifications and practices established by national standards for the management of the environment as it is affected by mining operations; and

(b) may include requirements for the lodgment, by an applicant for the grant or renewal of a licence or permit, of one or more cash deposits for securing the performance by such applicant of all or any such conditions.

77. (1) The Director of Mine Safety may cause to be served on a person who is or has been the holder of a mining right a written notice directing the person to take specified steps, within a specified time, to give effect to any conditions included in an environmental plan, a development agreement or otherwise attaching to the right, for the protection of the environment.

Direction to comply with conditions of mining right

(2) A person on whom such a direction has been served who fails to comply with the direction shall be guilty of an offence and shall be liable, upon conviction, to a penalty not exceeding fifty thousand penalty units.

78. (1) If a person to whom a direction is given under section *seventy-seven* fails to comply with the direction, the Director of Mine Safety may himself cause the necessary steps to be taken to execute it, and the costs thereof and incidental thereto shall be a debt due to the Republic from the person to whom the direction was given and shall be recoverable in any court of competent jurisdiction on behalf of the Republic;

Rehabilitation by Director of Mine Safety at holder's expense

(2) Recovery of a debt due to the Republic under this section, a certificate signed by the Director of Mine Safety and stating that a specified amount is the amount of the debt so due shall be admissible in evidence in all courts.

(3) A debt due to the Republic under this section is recoverable whether or not the person by whom it is due is prosecuted or convicted of an offence under this Part.

79. (1) The holder of a mining right over land that ceases to be subject to the mining right- Clearing away
of mining plant

(a) may, within the prescribed period; and

(b) shall, if directed to do so by the Director of Mine Safety by notice in writing, within the period specified in the notice;

cause to be removed from the land any mining plant brought on to, or erected upon, that land in the course of mining operations carried out under the mining right.

(2) The Director of Mine Safety may give a direction under this section even though the prescribed period has not expired.

(3) In this section, "prescribed period" means the period of six months from the date on which the land ceased to be subject to the mining right or such longer period as the Director of Mine Safety, with the consent of the Minister, may, in any particular case, allow.

80. (1) If mining plant is not duly removed under section *seventy-nine*, the Director of Mine Safety may direct that the mining plant be sold by private auction. Sale of mining
plant

(2) Any mining plant remaining unsold after the public auction has been held may be sold by private treaty.

(3) The following amounts shall be deducted from the proceeds of any such sale:

(a) the costs of the sale and of any matter incidental to or connected with the sale;

(b) the costs of removing from the land concerned any mining plant remaining unsold after the public auction;

(c) any amount owing in respect of compensation payable under section *sixty-one*;

(d) any other amount that the Director of Mine Safety certifies to be a deductible amount.

(4) Any balance remaining shall be paid to the Minister responsible for finance, who shall credit the same to a trust account, and who may, on application, pay it to any person appearing to him to be lawfully entitled to it; but if no person applies within a period of ninety days, it shall be paid to the revenues of the Republic.

(5) If the proceeds of sale are less than the amounts to be deducted-

(a) the shortfall shall be a debt due to the Republic from the person to whom the relevant direction was given and shall be recoverable in any court of competent jurisdiction; and

(b) the proceeds of sale shall be applied in meeting those amounts in such manner as the Minister may direct.

(6) A debt due to the Republic under this section is recoverable whether or not the person by whom it is due is prosecuted or convicted of an offence under this Part.

81. (1) Where the Director of Mine Safety considers that a holder of a mining right is using wasteful mining practices, he may give notice to the holder accordingly (giving in the notice particulars of the practices) and require the holder to reply in writing showing cause, within a time limited by the notice, why he should not cease to use those practices. Wasteful practices

(2) Where the holder fails, within the time allowed, to satisfy the Director of Mine Safety that he is not using the wasteful practices concerned, or that the use of those practices is justified, the Director of Mine Safety may give notice to the holder directing him to cease using all of those practices, or the practices specified in the notice, by such date as is specified in the notice, and the holder shall do as so directed.

(3) A person who contravenes subsection (2) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand penalty units.

82. (1) There shall be an Environmental Protection Fund, which shall be managed in such manner as the Minister may be Instrument, prescribe.

Environmental
Protection Fund

(2) There shall be paid into the Fund the amount of any cash deposit referred to in section *seventy-six*.

(3) Moneys from the fund may be applied-

(a) at the expiry or termination of a licence or permit by way of refund to the holder thereof of the amount of any cash deposits referred to in section *seventy-six* that were paid by him, to the extent that such moneys are not appropriated under paragraph (b); or

(b) to the payment of any debt due or under subsection (1) of section *seventy-eight* or under subsection (5) of section *eighty*, to the extent that the debt concerned is not paid by or recovered from the person from whom it is due, and regardless of whether proceedings have been taken against that person for an offence under this Part or for recovery of any such debt:

Provided that, in the case of any particular debtor, the amount of any moneys expended under this paragraph for or toward the satisfaction of his debts shall not exceed the amount of any cash deposits referred to in section *seventy-six* that were lodged by him.

(4) Moneys standing to the credit of the Fund that are not immediately required for the purposes of the Fund may be invested in such manner as the Minister, with the concurrence of the Minister responsible for finance, may determine.

(As amended by Act No. 8 of 1997)

PART X

ADMINISTRATION

83. (1) There shall be a Director of Mines, who shall be a public officer and who shall have and may exercise and perform the powers and functions conferred or imposed upon the Director by or under this Act or any other written law, and who shall generally supervise and regulate the proper and effectual carrying out of the provisions of this Act.

Appointment of
Director and
other officers

(2) There shall be a Director of Mine Safety, who shall be a public officer and who shall have and may exercise and perform the powers and functions conferred or imposed upon him by or under this Act or any other written law, and who shall have general responsibility for matters concerning the safety of prospecting, exploration and mining operations.

(3) There shall be a Director of Geological Survey, who shall be a public officer and who shall have and may exercise and perform the powers and functions conferred or imposed upon him by or under this Act or any other written law.

(4) Such other public officers as may be necessary for the due administration of this Act shall be appointed.

(5) The Director may, by statutory notice, designate any public officer to an authorised officer for the purpose of the exercise and performance of all or any of the functions conferred on an authorised officer by any of the provisions of this Act or any statutory instrument made under this Act.

(6) Every authorised officer who, by virtue of his designation as such, has power to enter any land or demand production of any records or documents shall be provided with a certificate of appointment, which shall be *prima facie* evidence of his designation; and the officer shall, on demand by a person affected by the exercise of any such power, produce for inspection his certificate of appointment.

84. (1) Whilst any officer referred to in subsection (1), (2) or (3) of section *eighty-three* is vacant or the holder of any such office is, owing to absence or inability to act from illness or other cause, unable to exercise and perform the powers and functions of the office concerned, a person shall be appointed to exercise and perform his powers and

Execution and
delegation of
powers and
functions of
Director and

functions.

other officers

(2) The holder of any officer referred to in subsection (1) may, by statutory notice, and subject to such conditions, qualifications or exemptions as may be prescribed therein, delegate to any public officer the exercise or performance of any of the powers and functions conferred or imposed on him by this Act:

Provided that any such office-holder may exercise or perform a power or function notwithstanding that he has delegated the exercise or performance thereof to some other person.

85. The Attorney-General may demand, sue for, recover and receive all royalties, fees, dues, rents or payments which may become due in respect of any mining right or otherwise under the provisions of this Act.

Recovery of fees

86. The Director of Geological Survey shall-

Geological services

(a) advise the Minister on geological matters;

(b) undertake the geological mapping of Zambia;

(c) undertake prospecting and exploration operations on behalf of the Republic;

(d) provide data concerning the geology and mineral resources of Zambia, and generally assist members of the public seeking information concerning geological matters; and

(e) maintain such laboratory, library and record facilities as may be necessary for the performance of his functions.

87. (1) The Director of Geological Survey or an authorised officer may, for the purpose of carrying out the geological mapping of Zambia or any part thereof-

Geological survey, mapping and respecting on behalf of the Republic

(a) enter at all reasonable hours upon any land with such persons, animals, vehicles, appliances, instruments and materials as are necessary for such survey;

- (b) break up the surface of any part of such land for the purpose of ascertaining the rocks or minerals within or under the same;
- (c) take and carry away samples and specimens of the soil, rocks or minerals found therein;
- (d) fix any post, stone, mark or object to be used in the survey of any such land;
- (e) dig up any ground for the purpose of fixing any such post, stone, mark or object; and
- (f) enter into or upon any land through which it may be necessary to pass for the purpose of such survey;

Provided that:

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- (i) it shall not be lawful to fix any object, post, stone or mark with any walled or fenced garden or orchard without the consent of the owner or occupier thereof;
- (ii) notice in writing of the intention to exercise any of the powers conferred by this subsection shall be given in the *Gazette*, and in a newspaper of general circulation in the area where the land is situated, at least fourteen days before the exercise of the powers, unless the land concerned is State land that has been alienated by the President in accordance with the Lands Act;
- (iii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this subsection; and
- (iv) before abandoning any land, all excavations opened shall be backfilled.

(2) For the purpose of carrying on prospecting operations on behalf of the Republic, the Director or an authorised officer may enter upon any land with such number of persons as he may deem necessary, and exercise the rights of a holder of a prospecting licence:

Provided that nothing in this subsection shall authorise any person to enter upon any land referred to in subsection (1) of section *fifty-six* without obtaining any consent required to be obtained under that section.

88. (1) There shall be a Mining Advisory Committee, which shall advise the Minister and the Director in relation to the matters prescribed by or under this Act and such other matters in connection with the administration of this Act as may be referred to it by the Minister.

Mining
Advisory
Committee

(2) The provisions of the Second Schedule shall apply to the composition, and the powers and functions, of the Committee.

(3) Before exercising any power under this Act-

(a) to enter into a development agreement;

(b) to refuse to grant or renew a licence;

(c) to terminate, suspend or cancel a licence;

(d) to amend the terms or conditions of any licence; or

(e) to determine any appeal that lies to him;

it shall be the duty of the Minister or the Director, as the case may be, in whom the power is vested, to refer the matter to the Mining Advisory Committee for its advice.

(4) Where any matter is referred to the mining Advisory Committee for its advice and the Minister or the Director proposes to dispose of that matter otherwise than in accordance with the advice of the Committee, the Minister or the Director shall, before disposing of the application, furnish the Committee with a statement in writing of his reasons for so doing.

(5) Where a matter referred to in subsection (4) is an application for the grant or renewal of a licence, a copy of any statement of the Minister or the Director under that subsection shall be furnished to the applicant.

89. (1) No information furnished, or information in a report submitted, to the Minister, the Director, or any officer under or for the purposes of this Act by the holder of a mining right shall, for so long as the mining

Disclosure of
information

right has effect over the land to which the information relates, be disclosed, except with the consent of the holder of the mining right.

(2) Nothing in subsection (1) shall operate to prevent the disclosure of information where the disclosure is made-

(a) for or in connection with the administration of this Act;

(b) for the purpose of any legal proceedings;

(c) for the purpose of any investigation or inquiry conducted under this Act;

(d) to any person being a consultant to the government or public officer who is authorised by the Minister to receive such information; or

(e) for, or in connection with, the preparation by or on behalf of the government of statistics in respect of prospecting or mining:

Provided that a disclosure authorised by this paragraph shall be no more specific in detail than is necessary for the purpose of the statistics concerned.

(3) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

90. No officer of the Ministry or other public officer shall be liable for anything done or omitted to be done in good faith in the exercise or performance, of purported exercise or performance, of any power or function vested in him by, or in accordance with an appointment made under, this Act. Indemnity

PART XI

APPEALS

91. (1) Any person aggrieved by the decision of an authorised officer at a local office- Appeals against decisions of the local office

(a) to refuse the grant of an artisan's mining right for which he has applied, or as to the conditions to be imposed on an artisan's mining right held by him; or

(b) as to any matter prescribed by the Minister by statutory instrument;

may appeal to the Director, who shall determine the appeal, having regard to the provisions of this Act and the circumstances of the case.

(2) A determination of the Director, under this section may include such directions to the authorised officer concerned as the Director thinks fit for the disposal of the matter, and the officer shall give effect to any such directions.

92. (1) Any person aggrieved by the decision of the Director- Appeals against decisions of the Director

(a) to refuse the grant or renewal of a licence or permit granted under Part IV;

(b) as to the conditions to be imposed on any such licence or permit held by him;

(c) to cancel or suspend any such licence or permit held by him;

(d) to refuse to consent to the transfer of any such licence or permit held by him; or

(e) to refuse to grant or renew a gemstone sales certificate;

may appeal to the Minister, who shall determine the appeal, having regard to the provisions of this Act and the circumstances of the case.

(2) A determination of the Minister under this section may include such directions to the Director as the Minister thinks fit for the disposal of the

matter, and the Director shall give effect to any such directions.

93. (1) Any person aggrieved by the decision of the Minister-

Appeals in
relation to
licences under
Part III

(a) to refuse the grant or renewal of a licence granted under Part III;

(b) as to the conditions to be imposed on any such licence held by him;

(c) to cancel or suspend any such licence held by him; or

(d) to refuse to consent to the transfer of any such licence held by him, or to the registration of shares or the entry into any agreement affecting control of a company;

may appeal to the High Court, which shall determine the appeal, having regard to the provisions of this Act and the circumstances of the case.

(2) A determination of the Court under this section may include such directions to the Minister as the Court thinks fit for the disposal of the matter, and it shall be the duty of the Minister to give effect to any such directions.

94. (1) The holder of any mining right who is aggrieved by any obligation imposed by a direction of the Director under section *one hundred and one* may appeal to the Minister, who shall determine the appeal, having regard to the provisions of this Act and the circumstances of the case.

Appeals in
relation to
insurance

(2) A determination of the Minister under this section may include such directions to the Director as the Minister thinks fit for the disposal of the matter, and that officer shall give effect to any such directions.

95. Whenever the Minister, the Director or any authorised officer makes a decision against which an appeal lies by virtue of a provision of this Part, the licensee or applicant affected by the decision shall be informed by notice in writing of the decision and of the reasons therefor

Notification of
decisions

and any such notice shall inform the person so notified of his rights of appeal.

PART XII

INVESTMENT INCENTIVES

96. Any investment in mining, including prospecting, by the holder of a mining right shall attract the deductions from income tax set forth in the Fourth Schedule. Relief from income tax

97. (1) The holder of a mining right shall be entitled to exemption from customs and excise duties, and from any other duty or impost levied under the Customs and Excise Act, in respect of all machinery and equipment (including specialised motor vehicles) required for any of the activities carried on or to be carried on in pursuance of the right or otherwise for the purposes of his investment in mining or prospecting. Relief from customs and excise duties
Cap. 322

(2) The exemption to which an investor is entitled under this section shall be granted on application made in such manner, and accompanied by such evidence, as may be prescribed by a statutory instrument made under the Customs and Excise Act by the Minister responsible for finance. Cap. 322

98. *(Repealed by Act No. 5 of 2003)*

PART XIII

MISCELLANEOUS

99. (1) No person shall carry on a business of trading in gemstones unless he holds a gemstone sales certificate. Gemstone sales certificate

(2) A gemstone sales certificate shall be granted by the Director to any applicant who is a citizen and makes an application in the prescribed

form and tenders the prescribed fee.

(3) A gemstone sales certificate shall be valid for one year but may be renewed on payment of the prescribed renewal fee.

(4) The holder of a gemstone sales certificate shall, in respect of any purchase of uncut and unpolished stones located in Zambia, keep such records as may be prescribed and shall make the same available at all times for inspection by an authorised officer.

(5) Any person in Zambia who is not the holder of a valid gemstone sales certificate shall be guilty of an offence if he is found in possession of uncut and unpolished gemstones, unless-

(a) he is the holder of a gemstone licence;

(b) he is the holder of a large-scale mining licence under which gemstones are produced; or

(c) he satisfies the court that he acquired possession of the gemstones lawfully and that he holds them otherwise than for the purposes of trade.

(6) A person convicted of an offence under subsection (5) shall be liable to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

100. (1) No person shall export any radioactive mineral except under and in accordance with the terms and conditions of a consent granted by the Minister. Radioactive minerals

(2) An application for a consent to export radioactive minerals shall be in the prescribed form and shall be accompanied by the prescribed fee; and the Minister shall decide whether or not to grant the application and the terms and conditions of any consent to export.

(3) Any person who exports or attempts to export any radioactive mineral otherwise than under and in accordance with a consent granted

under this section shall be guilty of an offence and shall be liable on conviction-

(a) in the case of an individual, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding ten years, or to both; and

(b) in the case of a body corporate, to a fine not exceeding one hundred thousand penalty units.

(4) In this section, "radioactive mineral" means a mineral which contains by weight at least one-twentieth of one per centum of uranium or thorium or any combination thereof, and includes, but is not limited to-

(a) monazite, sand and other ores containing thorium;

(b) carnotite, pitchblende and other ores containing uranium.

101. (1) The holder of a mining right granted under Part III shall-

Insurance and
indemnities

(a) obtain, and maintain at all times during the lifetime of the mining right and for the prescribed period thereafter; and

(b) cause its contractors to obtain and maintain at all such times; insurance coverage, in such amounts and against such risks as may be prescribed by the Minister by statutory instrument, and shall furnish to the Minister certificates evidencing that such coverage is in effect and provide copies of any policies requested.

(2) A statutory instrument made under subsection (1) shall include requirements for such insurance coverage as it is customary internationally to obtain in the mining industry in accordance with good mining industry practice.

(3) The holder of a mining right granted under Part IV shall, if so directed by the Director by a notice in writing, obtain and maintain in force in respect of the mining operations carried on by the holder, such insurance cover as the Director may consider reasonably necessary in

the public interest.

(4) The holder of a mining right shall indemnify, defend and hold the Republic harmless against all actions, claims, demands, injury, losses or damages of any nature whatsoever, including, without limitation, claims for loss or damage to property or injury or death to persons, resulting from any act or omission in the conduct of mining operations by or on behalf of the holder, provided that such indemnity shall not apply to the extent, if any, that any action, claim, demand, loss, damage or injury resulted from any direction given by, or wrongful act committed on behalf of the Republic.

102. Any person who, without reasonable excuse, obstructs or hinders the holder of a mining right from doing any act which that holder is authorised to do by this Act, the regulations or his mining right, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding two years, or to both. Obstruction of holder of mining right

103. (1) Where the Director has reason to believe that a person is capable of giving information or producing or making available books or documents relating to minerals obtained, or the value of minerals obtained, he may, by notice in writing served on that person, require that person- Production of information

(a) to furnish to him in writing, within the period and in the manner specified in the notice, any such information;

(b) to attend before him or a person specified in the instrument, at a time and place so specified, and there to answer questions relating to minerals obtained or the value of minerals obtained; or

(c) to make available to a person specified in the instrument, at a time and place so specified, books or documents in his custody or power relating to minerals obtained or the value of minerals obtained.

(2) Where books or documents are made available as required under this section, the person to whom the books or documents are made available may make copies of, or take extracts from, the books or documents.

(3) A person who refuses or fails to comply with a requirement under this section, to the extent to which he is capable of complying with it, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

104. (1) The holder of a mining right shall submit reports, keep records and furnish information as required in the Fifth Schedule.

Reports,
records and
information

(2) The holder of a mining right shall maintain an address in Zambia to which communications may be sent and shall give notice to the Director or, where the right is granted by the authorised officer at the local office, that officer, of that address and of any changes of that address.

(3) The Director may direct the holder of a mining right, at a reasonable time and place specified in the direction, to make available to, or to produce for inspection by, himself or an authorised officer at the local office any books, accounts, vouchers, documents or records of any kind concerning the mining right, and the holder of the mining right shall comply with the direction.

(4) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

105. (1) The Director or an authorised officer may at any time enter upon any prospecting area or mining area, or any premises or working thereon or thereunder (other than a dwelling-house) for the purpose of-

Power of entry
by Director

(a) generally inspecting any such area, premises or workings and examining prospecting or mining operations or the treatment of minerals being performed or carried out;

(b) ascertaining whether or not the provisions of this Act or the regulations, or the conditions of a mining right, are being complied with;

(c) ascertaining whether or not any nuisance exists upon any such

area, land or mine or in any such premises or workings;

(d) giving directions, and taking steps, to enforce any provision of this Act or the regulations, or to abate or remove any nuisance;

(e) taking soil samples or specimens of rocks, ore concentrates, railings or minerals situated upon any such area, premises or workings for the purpose of examination or assay;

(f) examining books, accounts, vouchers, documents, maps, drilling logs, or records of any kind; or

(g) obtaining any information which he may deem necessary for the administration of this Act.

(2) The Director or an authorised officer may, at all reasonable times, inspect and take copies of any books, accounts, vouchers, documents, maps, drilling logs or records of any kind, kept by the holder of a mining right, under or for the purposes of this Act, the regulations or the mining right.

(3) The holder of a mining right shall provide such reasonable assistance (including the provision of necessary means of transport) as is required to enable the Director or an authorised officer to exercise or perform any power or function under this section.

(4) Any person who, without reasonable excuse, hinders or obstructs the Director or an authorised officer in the exercise or performance of any power or function under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

106. (1) Any person who-

Miscellaneous
offences

(a) in any application under this Act;

(b) in any report, return or affidavit submitted for the purposes of this Act; or

(c) in purported compliance with a requirement under this Act to furnish any information, make any statement or answer any question;

furnishes information or makes any statement that he knows is false or misleading in a material particular, shall be guilty of an offence.

(2) Any person who, in pursuance of a requirement under this Act, produces or makes available a document, or any books, that he knows to be false or misleading in a material particular shall be guilty of an offence.

(3) Any person who, with intent to deceive-

(a) places or deposits, or is accessory to the placement or deposit of, any mineral or material in any place; or

(b) mingles or causes to be mingled with any sample of ore any substance which will enhance the value or in any way change the nature of the ore;

shall be guilty of an offence.

(4) A person convicted of an offence under this section shall be

(a) in the case of an individual, to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding two years, or to both; or

(b) in the case of a body corporate, to a fine not exceeding fifty thousand penalty units.

107. If a body corporate is convicted of an offence under this Act, every person who-

(a) a Director of, or is otherwise concerned in the management of, the body corporate; and

(b) knowingly authorised or permitted the act or omission

Offence
committed by a
body corporate

constituting the offence;

shall be deemed to have committed the same offence; and may be proceeded against and punished accordingly.

108. (1) The Minister may, by statutory instrument, make regulations Regulations
for the better carrying into effect of this Act.

(2) In particular, and without prejudice to the generality of subsection (1), regulations may provide for-

(a) any matter which, in accordance with the foregoing provisions of this Act, is to be, or may be, provided for by statutory instrument or any matter which is to be, or may be, prescribed;

(b) the proper and efficient working of prospecting areas, mining areas and mines;

(c) the avoidance of wasteful mining practices or wasteful metallurgical practices, as described or specified in the regulations;

(d) the inspection of books and documents;

(e) the regulation of all work and machinery connected with prospecting or mining so far as safety and the protection of life are concerned;

(f) the regulation of all matters relating to sanitation and health, including the establishment of cemeteries, in regard to mining areas;

(g) the reporting of cases of accident and death occurring on any prospecting area or mining area in connection with prospecting or mining operations;

(h) the demarcation of prospecting and mining areas;

(i) the circumstances and procedures for referring any matter for determination by an expert;

(j) the manner of making and dealing with applications under this Act;

(k) fees to be paid by the holder of a gemstone sales certificate;

(l) fees and annual charges to be specified under this Act.

(3) The Minister responsible for finance may, after consultation with the Minister, by statutory instrument, make regulations for the better carrying into effect of sections *sixty-six* to *sixty-nine* of this Act.

(4) Any regulations made under this Act may prescribe for any breach thereof a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(As amended by Act No. 8 of 1997)

109. (1) The Mines and Minerals Act is hereby repealed.

Repeal of Cap.
329 of the 1971
Edition and
savings

(2) The savings and transitional provisions set out in the Sixth Schedule shall have effect as a consequence of the repeal effected by this section.

FIRST SCHEDULE

(Section 9)

Employment

Energy and Supply

Exchange Control

Taxation, royalty and taxes

Environmental protection and pollution control

Import Duties, Customs and Excise and Import or export regulations and procedures;

Regulation and management of companies;

Insolvency, bankruptcy, receivership, administration and winding-up of companies.

(As amended by Act No. 41 of 1996 and No. 2 of 2000)

SECOND SCHEDULE

(Section 73)

RENT AND DEEMED TURNOVER IN RESPECT OF GEMSTONE LICENCE

<i>Year of Duration of Right</i>	<i>Rent per Hectare (Fee Units)</i>	<i>Deemed Turnover per Hectare (Fee Units)</i>
Year 1	Nil	Nil
Years 2-4	1,00	20,00
Years 5-7	1,50	30,00
Year 8 and subsequent years	2,00	40,00

(As amended by Act No. 41 of 1996)

THIRD SCHEDULE

(Section 88)

Procedure

(As repealed by Act No. 5 of 1999)

FOURTH SCHEDULE

(Section 96)

INCOME TAX DEDUCTIONS FOR MINING INVESTMENTS

1. (1) For the purposes of this Schedule-

Interpretation
Cap. 321

"capital expenditure", in relation to mining or prospecting operations, means expenditure-

- (a) on buildings, works, railway lines or equipment;
- (b) on shaft sinking, including expenditure on sumps, pumps chambers, stations and ore bins accessory to a shaft;
- (c) on the purchase of or on the payment of a premium for the use of any patent, design, trademark, process or other expenditure of a similar nature;
- (d) incurred prior to the commencement of production or during any period of non-production on preliminary surveys, boreholes, development or management; or
- (e) by way of interest payable on any loan for mining or prospecting purposes;

"Commissioner-General" means the Commissioner-General appointed under the Zambia Revenue Authority Act;

"deemed loss" means a deduction allowable in accordance with paragraph *three*;

"equity", in relation to a company limited by shares, means-

- (a) issued ordinary share capital or stock, but only to the extent that such share capital or stock is paid up;
- (b) issued, deferred, preferred, preference or other priority share capital or stock, but only to the extent that such share capital or stock is paid up and provided that such share capital or stock carries no rights of early repayment on demand;

(c) capital reserves in so far as they are not capable of distribution except either by way of diminution of capital or by addition to issued capital; and Cap. 323

(d) revenue reserves to the extent only that they shall have remained constant throughout the previous twelve months;

but shall not include-

- (i) loan stock or debentures whether carrying conversion rights or not;
- (ii) loans at call and short notice; or
- (iii) bank overdrafts or other drawing facilities;

"estimate of life", in relation to a mine, means the number of years, not exceeding-

(a) in the case of a mine operated for the purpose of producing lead or zinc, ten years;
and

(b) in the case of any other mine, twenty years; during which mining operations at the mine may be expected to continue after the beginning of the charge year;

"expenditure" means net expenditure after taking into account any rebates, returns or recoveries from expenditure;

"pre-production expenditure" means capital expenditure incurred in charge years prior to the production charge year;

"production commencement date", in relation to a mine, means the latest of any of the following dates:

(a) the date on which the mine first commenced regular production;

(b) where the mine, having previously been in production, was closed down and then re-opened, the date on which it first recommenced regular production;

(c) where the mine has changed ownership and has been reorganised with substantially new development and new plant, the date on which it first commenced regular production after such reorganisation;

"production charge year" means the charge year in which a 1953, 1970 or 1975 new mine first commences or recommences regular production;

"prospecting expenditure" means expenditure incurred in relation to prospecting operations, including any capital expenditure incurred in connection with such operations, and such expenditure as the Commissioner-General determines to be ancillary to expenditure on prospecting operations;

"1953 new mine" means a mine whose production commencement date is later than 31st March, 1953 but not later than 31st March, 1970;

"1970 new mine" means a mine whose production commencement date is later than 31st March, 1970 but not later than 31st March, 1975;

"1975 new mine" means a mine whose production commencement date is later than 31st March, 1975.

(2) Words and expressions defined in the Income Tax Act shall, if used in this Schedule, have the same meaning as in that Act.

2. Where a deduction is allowed in respect of capital expenditure under this Schedule, any deduction that would, but for this paragraph, be allowable under the Income Tax Act in respect of the same capital expenditure is hereby disallowed.

Relief not to be duplicated
Cap. 323

3. (1) Subject to the other provisions of this paragraph, the amount of prospecting expenditure incurred by a person in a charge year in respect of an area in Zambia over which a mining right has been granted shall be allowed as a deduction to that person.

(2) A company that is entitled under this paragraph to a deduction in respect of expenditure may, by notice in writing given to the Commissioner-General within twelve

Deductions for prospecting expenditure

months after the end of the charge year in which the expenditure is incurred, irrevocably elect to forego the deduction in favour of its shareholders; whereupon the deduction shall be allowed, not to the company but to its shareholders instead, in proportion to the calls on shares paid by them during the relevant accounting period or in such other proportions as the Commissioner-General having regard to any special circumstances, may determine: Provided that this sub-paragraph shall not apply to a company carrying on mining operation in Zambia.

(3) Where-

(a) a company (in this sub-paragraph called "the parent company") is entitled under this paragraph to a deduction; and

(b) subsequent to the date the expenditure is incurred, a new company, of which the parent company is a shareholder, is incorporated for the purpose of-

(i) continuing the prospecting operations of the parent company; or

(ii) carrying on mining operations in the Republic; and

the parent company may, by notice in writing given to the Commissioner-General within twelve months after the incorporation of the new company, irrevocably elect to forego the deduction in favour of the new company; whereupon the deduction shall be allowed, not to the parent company but to the new company instead;

Provided that this sub-paragraph shall not apply-

(i) to a company carrying on mining operations in Zambia; or

(ii) in respect of expenditure incurred after the new company takes over the prospecting operations of the parent company or commences to carry on mining operations.

(4) A deduction allowable under this paragraph shall be deemed to be a loss and shall be allowed, in accordance with section *thirty* of the Income Tax Act as a loss incurred-

(a) in the case of sub-paragraphs (1) and (2), in the charge year in which the expenditure is incurred; and

(b) in the case of sub-paragraph (3), in the charge year in which the new company takes over the prospecting or exploration operations or commences to carry on mining operations:

Provided that where the deemed loss exceeds the income of person for the charge year in which it is incurred, the excess shall be deemed to be a loss incurred in the following charge year and so on from year to year until the deemed loss is extinguished.

(5) In computing a loss incurred by the operator of a 1975 new mine in any charge year, prospecting expenditure and capital expenditure incurred in relation to the mine and allowable as a deduction shall be deemed to be deducted last.

4. (1) Subject to the other provisions of this paragraph and the provisions of paragraph *five*, a deduction shall be allowed in ascertaining the gains or profits from the carrying on of mining operations by any person in a charge year in respect of the capital expenditure incurred by the person on a mine which is in regular production in the charge year.

Deductions
for mining
expenditure
Cap. 323

(2) The deduction to be allowed for the charge year in the case of 1975 new mine shall be-

(a) where the charge year is the production charge year, the sum of the pre-production expenditure, to the extent that such expenditure has not already been allowed as a deduction, and the capital expenditure incurred in the production charge year:

Provided that where, on the last day of any charge year prior to the production charge year, the total of the preproduction expenditure incurred in such charge year exceeds the amount remaining after deducting from the equity of the company on such day the prospecting expenditure incurred in such charge year and in all previous charge years on such day and allowable as a deemed loss, the excess shall not be so increased for such charge year; and

(b) where the charge year is a charge year subsequent to the production charge year, the capital expenditure incurred in such charge year.

(3) The deduction to be allowed for a charge year in the case of 1970 new mine shall be:

(a) where the charge year is the production charge year, the total capital expenditure incurred on the mine up to the end of the production charge year, to the extent that such expenditure has not already been allowed as a deduction; and

(b) where the charge year is a charge year subsequent to the production charge year, the capital expenditure incurred on the mine in such charge year.

(4) The deduction to be allowed for any charge year in the case of a 1953 new mine shall be the sum of-

(a) the fraction of any unredeemed capital expenditure on the mine at the commencement of the charge year ended 31st March, 1971, that would have been allowed in such charge year under the provisions of paragraph *twenty-three* of Part VI of the Fifth Schedule to the Income Tax Act, as in force on 31st March, 1970, had those provisions not been repealed;

(b) the capital expenditure incurred on the mine in such charge year.

(5) The deduction to be allowed for any charge year in the case of any other mine shall be the sum of-

(a) one-twentieth or, in the case of a mine operated for the purposes of producing lead or zinc, one-eighth of the balance of unredeemed capital expenditure on the mine, including any balance on which deductions were previously claimed under Parts I to V of the Fifth Schedule to the Income ITax Act, at the commencement of the charge year ended 31st March, 1971, until such balance is extinguished; and

(b) an amount obtained by taking the sum of-

(i) the balance of the capital expenditure on the mine incurred after 22nd September, 1973 and unredeemed at the commencement of such charge year; and

(ii) the capital expenditure on the mine incurred in such charge year;

and dividing the sum so obtained by the number of years in the approved estimate of the life of the mine:

Provided that where separate and distinct mining operations are carried on in mines

which are not contiguous, the deduction allowable shall be calculated separately according to the approved estimate of the life of each mine.

(6) For the purposes of sub-paragraph (5), the approved estimate of the life of the mine at the commencement of the charge year shall be based on the certified estimates of ore reserves of the mine and supported by calculations showing how the estimates have been arrived at as submitted in writing by the person carrying on the mining operations:

Provided that if the Commissioner-General does not approve the estimate of the life of the mine as submitted, the approved estimate of the life of the mine shall be as the Commissioner-General determines.

(7) The deductions for any interest on borrowings to be allowed in any charge year shall not exceed the interest on any borrowings in excess of a loan-to-equity ratio of 2:1

5. (1) Where a person is carrying on mining operations in a mine which is in regular production and is also the owner of, or has a right to work, a mine which is not contiguous with the producing mine and from which the person has a loss in the charge year, the amount of such loss may be deducted in ascertaining the gains or profits from his mining operations in that charge year: Deductions for mining expenditure on a non-producing and non-contiguous mine

Provided that the amount of tax which would otherwise be payable by such person in that charge year is not reduced by more than twenty per centum as a result of this deduction.

(2) An order made by the Minister under this paragraph may differentiate between person or classes of persons, may at any time by a like order be revoked and may be made or revoked retrospectively.

6. Where a mine ceases regular production due to the expiration of the life of the mine, or where the mining right has ended, or for any other reason acceptable to the Commissioner-General, and the person who was carrying on the mining operations irrevocably so elects, by notice in writing to the Commissioner-General, within twelve months after the end of the charge year in which the mine ceased regular production, the deduction allowable in ascertaining the gains or profits from the carrying on of the mining operations in respect of the capital expenditure on the mine for each of the last six charge years in which the mine was in regular production shall be an amount arrived at by taking the sum of-

Deductions on cessation of mining production

(a) the unredeemed capital expenditure on the mine at the commencement of the six charge years; and

(b) the capital expenditure on the mine incurred in the six charge years; and dividing the sum so obtained by six.

7. Subject to the provisions of paragraph *eight*, when a change in the ownership of a mine takes place, the consideration for the assets which qualify, for the purposes of this Schedule, as capital expenditure shall, for income tax purposes-

Change ownership mine

(a) be allowable as capital expenditure incurred by the new owner; and

(b) be deemed to be a capital recovery by the previous owner in the charge year in

which the change takes place.

8. (1) Whenever there is a change in the ownership of a mine, this paragraph shall have effect in relation to the sale of any property in respect of which any deductions have been allowed under this Schedule in any case where either- Controlled
and other
sales

(a) the buyer has control of the seller, or the seller has control of the buyer, or some other person has control of both; or

(b) the Commissioner-General determines, by reference to the consideration given for the property, that the same was not at arm's length.

(2) Where the property is sold at a price other than what it would have fetched if sold in the open market, then, subject to the provisions of sub-paragraph (3), the same consequences shall ensue as would have ensued if the property had been sold for the price which it would have fetched if sold in the open market.

(3) Where the sale is one to which clause (a) of sub-paragraph (1) applies and the parties to the sale irrevocably so elect, by notice in writing to the Commissioner-General, then sub-paragraph (2) shall not have effect but, instead, the same consequences shall ensue as would have ensued if the property had been sold for a sum equal to the residue of capital expenditure on the property still unredeemed immediately before the sale.

(As amended by Act No. 41 of 1996)

FIFTH SCHEDULE

(Section 104)

REPORTS, RECORDS AND INFORMATION

- 1.** (1) Subject to sub-paragraph (2), the holder of a prospecting licence-
- (a) shall keep, at the address referred to in section *one hundred and four*, to the satisfaction of the Minister, full and accurate records of his prospecting operations, which shall show-
- (i) boreholes drilled;
 - (ii) strata penetrated, with detailed logs of the strata;
 - (iii) minerals discovered;
 - (iv) the results of any seismic survey or geochemical or geophysical analysis;
 - (v) the results of any analysis or identification of minerals;
 - (vi) the geological interpretation of the records maintained under items (i) to (v) inclusive;
 - (vii) the number of persons employed;
 - (viii) other work done in connection with the prospecting licence;
 - (ix) costs incurred; and
 - (x) such other matters as may be prescribed by the Minister by statutory instrument.
- (2) The Minister may, on application made to him by the holder of a prospecting licence, dispense with or modify all or any of the requirements of sub-paragraph (1).

Records to be kept by holder of prospecting licence

- 2.** The holder of a large-scale mining licence shall-
- (a) keep, at the address referred to in section *one hundred and four*, complete and accurate technical records of his operation in the mining area, in such form as the Minister may approve;
- (b) keep at that address copies of all maps, geological reports, including interpretations, mineral analyses, aerial photographs, ore logs, analyses and tests and all other data obtained and compiled by the holder in respect of the mining area;
- (c) keep at that address accurate and systematic financial records of his operations in the mining area and such other books of account and financial records as the Minister may require and, if the holder is engaged in any other activity not connected with his mining operations, maintain separate books of accounts in respect of his mining operations;
- (d) submit to the Minister such reports, records and other information as the Minister may, from time to time, require concerning the conduct of operations in the mining area; and
- (e) furnish the Minister with a copy of every annual financial report within three

Records to be kept by holder of large-scale mining licence

months of the end of each financial year showing the profit or loss for the year and the state of the financial affairs of the holder at the end of each financial year.

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| <p>3. The holder of a prospecting permit shall keep at the address referred to in section <i>one hundred and four</i> the records specified in paragraph 1 of this Schedule or such other records as may be endorsed on his permit.</p> | Records to be kept by holder of prospecting permit |
| <p>4. The holder of a small-scale mining licence, a gemstone licence or artisan's mining right shall keep at the address referred to in section <i>one hundred and four</i> such records, and furnish to the local office the reports specified in paragraph 2 of this Schedule or such other records and reports as may be endorsed on the licence or permit.</p> | Records to be kept by holder of small-scale mining licence, gemstone licence or artisan's mining right |
| <p>5. Every holder of a mining right shall keep and preserve, for such period as may be prescribed by the Minister by statutory instrument, the records so prescribed in relation to the protection of the environment.</p> | All holders to keep environmental records |
| <p>6. (1) Where-</p> <p>(a) a mining right terminates by abandonment, curtailment, suspension, cancellation or other action under this Act; or</p> <p>(b) the term of a licence granted under Part III expires;</p> <p>the person who was the holder of the mining right immediately before the termination or expiration shall deliver to the Minister-</p> <p>(i) all records which the former holder maintained under this Act with respect to the licence;</p> <p>(ii) all plans or maps of the area of land that was subject to the mining right and which were prepared by or on the instructions of the former holder; and</p> <p>(iii) such other documents as the Minister may, by notice given to the former holder require him to so deliver.</p> | Surrender of records on termination of mining right |
| <p>(2) Except as provided by sub-paragraph (1), where a mining right granted under Part IV or Part VII terminates or expires, the person who was the holder of the right shall deliver to the local office all records which he was required to keep under this Schedule and all plans or maps of the prospecting or mining operations on such area.</p> | |

(As amended by Act No. 41 of 1996)

SIXTH SCHEDULE

(Section 109)

SAVINGS AND TRANSITIONAL PROVISIONS

1. In this Schedule-

"appointed date" means the date on which this Act comes into force;

"interim period" means a period beginning with the appointed date and ending on the first anniversary of the appointed date;

"interim licence" means a licence that a person is deemed, by the operation of this Schedule, to hold, and "interim licensee" shall be construed accordingly;

"repealed Act" means the Mines and Minerals Act, repealed by this Act.

Interpretation
Cap. 329 of
the 1971
edition

2. Any person who, immediately before the appointed date, was the holder of a mining right or a mining permit under the repealed Act shall be deemed to have become on the appointed date the holder of an interim licence.

Rights and
permits
under the
repealed
Act
converted
to interim
licences

3. (1) During the interim period, the holder of an interim licence is authorised to carry on the operations which he was authorised to carry on immediately before the appointed date under the mining right or mining permit of which he was the holder; and in carrying on those operations the holder of the interim licence shall in respect of those operations enjoy the same rights and be subject to the same liabilities as if the repealed Act were still in force.

Authority
conferred
by interim
licences

(2) At any time during the interim period, the holder of an interim licence may apply for and, subject to this Schedule, shall be granted a mining right under this Act.

4. (1) The holder of an interim licence who, immediately before the appointed date, held a prospecting licence or an exploration licence under the repealed Act shall be entitled, at his election, to apply for and be granted under this Act, in respect of the area covered by his interim licence-

Holders of
prospecting
licences or
exploration
licences
under the
repealed
Act

(a) a prospecting licence;

(b) a prospecting permit;

(c) a gemstone licence;

(d) a small-scale mining licence; or

(e) a large-scale mining licence.

(2) A prospecting licence granted under this paragraph shall be deemed to have been granted on the date on which the licence under the repealed Act was granted, and shall remain in force, subject to this Act, for a period equal to the unexpired period of the licence held under that Act.

(3) A prospecting permit, gemstone licence or small-scale mining licence granted under this paragraph shall run from the date of its grant.

(4) On the renewal of a prospecting licence granted under this paragraph, the provisions of section *fifteen* of this Act relating to relinquishment shall have no application.

5. (1) The holder of an interim licence who, immediately before the appointed date, held a mining licence under the repealed Act (other than a mining licence for building or industrial minerals under Part VIII of that Act) shall be entitled at his election to apply for and be granted, in respect of the area covered by his interim licence-

(a) a large-scale mining licence;

(b) a small-scale mining licence; or

(c) a gemstone licence.

(2) A large-scale mining licence granted under this paragraph shall-

(a) remain in force, subject to this Act, for a period equal to the unexpired period of the mining licence held under the repealed Act which remained at the appointed date;

(b) require compliance with the programme of development and mining operations which was appended to the licence under the repealed Act;

(c) require compliance with an environmental plan drawn up by the holder of the interim licence which shall be approved by the Minister and form part of the conditions of the licence if it meets the requirements of this Act:

Provided that, if the Minister considers that the environmental plan does not meet those requirements, the matter or matters in dispute shall be referred to an independent expert chosen by agreement between the Minister and holder of the interim licence, whose decision shall be binding; and in the event that the Minister and the holder of the interim licence are unable to agree on the choice of the expert, the expert shall be chosen by the High Court.

(3) A small-scale mining licence granted under this paragraph shall-

(a) remain in force, subject to this Act, for such period, not exceeding ten years, as may be applied for by the holder of the interim licence; and

(b) require compliance with the programme of development and mining operations which was appended to the mining licence under the repealed Act.

(4) A gemstone licence granted under this paragraph shall-

Holders of mining licences (other than for building or industrial materials) under the repealed Act

- (a) be granted for such period, not exceeding ten years, as may be applied for by the holder of the interim licence, provided that for the purpose of calculating the rent payable under section *seventy-three* of this Act, the licence shall be treated as though the term of the licence had commenced one year before the date on which the licence was granted; and
- (b) require compliance with the programme of development and mining operations which was appended to the mining licence under the repealed Act.

(5) Where the holder of an interim licence who, immediately before the appointed date, held a mining licence under the repealed Act elects to apply for a small-scale mining licence or a gemstone licence under this Act, the Minister may, if the holder of the interim licence has before the appointed date been carrying on mining operations on a substantial scale, reject the application for a small-scale mining licence or a gemstone licence and require the holder of the interim licence to apply for a large-scale mining licence, and in any such case the provisions set out in this paragraph shall apply as though the holder of the interim licence had elected to apply for a large-scale mining licence.

6. (1) The holder of an interim licence who, immediately before the appointed date, held a mining licence or a mining permit for building or industrial minerals granted under Part VIII of the repealed Act may apply for, and shall be granted, in respect of the area covered by his interim licence, a small-scale mining licence under Part IV of this Act.

Holders of mining licences for building or industrial materials under the repealed Act

(2) A small-scale mining licence granted under this paragraph-

- (a) shall be granted for such period as may be applied for, but not exceeding the unexpired period of the mining licence which remained at the appointed date, or ten years, whichever is greater; and
- (b) shall require compliance with such conditions as may have been attached to the licence or permit granted under the repealed Act.

(As amended by Act No. 41 of 1996)