

GOVERNMENT OF ZAMBIA

ACT

No. 2 of 2000

Date of Assent: 17th March, 2000

An Act to Amend the Mines and Minerals Act

[22nd March, 2000]

ENACTED by the Parliament of Zambia.

Enactment

1. (1) This Act may be cited as the Mines and Minerals (Amendment) Act, 2000, and shall be read as one with the Mines and Minerals Act, in this Act referred to as the principal Act.

Short title
and
commence-
ment
Cap. 213

(2) Subject to subsection (3) this Act shall be deemed to have come into operation on the 1st February, 2000.

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

2. Section *two* of the principal Act is amended by the insertion in the appropriate place of the following new definition:

Amendment
of section 2

“ ZCCM ” means Zambia Consolidated Copper Mines Limited.

3. Section *nine* of the principal Act is amended in subsection (2) by—

Amendment
of section 9

(a) the insertion of the words “ which notwithstanding the provisions of any law or regulation shall be ” between the words “ provisions ” and “ binding ”;

(b) the repeal of paragraph (d) and the substitution therefor of the following new paragraph:

(d) the privatisation of ZCCM and any matters specified in the First Schedule in respect of which the Minister responsible for finance and

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, or any other matters affecting the enforcement or effect of the relevant Development Agreement as the Ministers may consider necessary; and

(c) the insertion of the following new paragraph after paragraph (d):

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

Insertion of
new sections
9A and 9B

4. The principal Act is amended by the insertion immediately after section *nine* of the following new sections—

Assumption
of liabilities

9A. (1) In this section—

“ environmental law ” means any law or 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;

“ 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 to 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 whensoever 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 of 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 to whom any such assets 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 by 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 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 notwithstanding 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 of 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 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.

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

(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.

5. Section *sixty-six* of the principal Act is amended in the proviso to subsection (2) by the deletion immediately after the words " and the amount of the " of the words " market value " and the substitution thereafter of the words " gross value ".

Amendment of section 66

6. The First Schedule to the principal Act is amended by the insertion of the following new items:

Amendment of First Schedule

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.