

Government of India  
Ministry of Mines  
INDIAN BUREAU OF MINES

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**A Comparative Study of  
MINING LAWS OF INDIA AND FIVE SELECTED  
COUNTRIES—BRAZIL, CANADA, INDONESIA,  
NAMIBIA & SOUTH AFRICA**

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*Issued by*  
**Controller General  
Indian Bureau of Mines  
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# INDIAN BUREAU OF MINES

Nagpur

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## **/ PREFACE /**

Indian Bureau of Mines is a multi-disciplinary organisation under the Ministry of Mines, Government of India. Among its many designated functions, Indian Bureau of Mines, advises the Central and State Governments on matters related to the mineral industry, particularly, on systematic exploitation and utilisation of the country's mineral resources and its conservation. The Bureau, inter alia, submits suggestions and advises the Central Government on legislative matters concerning mines and minerals. Information on mining legislation applicable in the major mineral producing countries of the world is gathered periodically by the Bureau to ascertain and assimilate the experiences of these countries. The relevance of this exercise has become all the more pronounced – especially in the backdrop of the liberalisation of Indian economy – in matters of mineral policy to juxtapose their relevance in tandem with the globalisation of economies worldwide. The knowledge thus accrued forms a basis for a hopeful prognosis of framing useful mining laws to suit the Indian context.

The present edition, though is in continuation of IBM's earlier publications on mineral legislation, has its coverage restricted to five countries, namely, Brazil, Canada, Indonesia, Namibia and South Africa besides India, as these countries are amongst the major mineral producing nations of the world. Analogically, these countries just as India have liberalised their mining policies to encourage foreign participation in the mining sector. The study delves broadly into the status of mining laws of the aforementioned countries and draws comparison between the following important legislative aspects, such as, purpose; definitions; ownership rights & administration/control; concessions for reconnaissance, prospecting, exploitation; royalty/dead rent and other taxes; provisions regarding environment; legal liabilities—penalty, revocation, dispute settlement; provincial enactment; and provision regarding closure. Additionally, salient features of the mineral legislation of these selected countries are presented in a tabular form at the end of each chapter.

The dossier for this study was largely compiled from the information obtained through correspondence with the respective Embassies, as well as downloads from the websites provided by them. Even though, access available to the latest official texts on mining laws of these countries was limited, concerted efforts to prepare a comprehensive publication were nonetheless undertaken. It is hoped and believed that the publication will be of use to planners, the industry and all those who are engaged in the study of world mining laws alike, enabling them to construe a broad elucidation of the mining legislation in the aforementioned countries.

Nagpur  
Dated: 24 November, 2006

  
(C.P. Ambesh)  
Controller General  
Indian Bureau of Mines

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## / INTRODUCTION /

The publication, entitled, "*A Comparative Study of Mining Laws of India and Five Selected Countries—Brazil, Canada, Indonesia, Namibia and South Africa*", attempts to compare the present mineral legislation of these countries. The five countries, namely, Brazil, Canada, Indonesia, Namibia and South Africa taken up for comparison were chosen in view of the fact that these countries are famed for their rich mineral wealth. Moreover, the ongoing process of liberalisation in India has prompted a fresh look at the mining laws of these countries in the liberalised scenario. These countries have also opened up their mining sector for private participation both domestic and foreign.

As mentioned above the highlights of the discussion of the five countries covered in this publication are broadly indicated below:

**Brazil :** The systems for exploration and exploitation of mineral resources in Brazil are defined and regulated in the 1967 (Mining Code of 1967), its regulations and corresponding legislation, which still prevail with the amendments and innovations introduced by laws subsequent to the current constitution's enactment and its amendments. The Mining Code defines and classifies deposits and mines, sets requirements and conditions for obtaining authorisation, concession, license and permit, explains the rights and duties of the holders of mining rights, regulate cases for cancellation, forfeiture and repeal of mineral rights and regulates other aspects of the mining industry. It also decides upon the competence of the specific government agency of the Ministry of Mines and Energy. The National Department of Mineral Production (DNPM), is responsible for the management of mineral resources and supervision of the mining activity of Brazil. Mineral resources of Brazil are mainly bauxite, gold, iron ore, manganese ore, nickel, phosphate, platinum, tin, uranium and petroleum.

**Canada :** The Minerals and Metals Sector (MMS) of Natural Resources of Canada is the Federal Government's primary source of scientific and technological knowledge and policy advice on Canada's mineral and metal resource. Natural Resources of Canada (NRC) works to ensure the responsible development of Canada's natural resources, including energy, forests, minerals and metals. Under Canada's constitution, the power to regulate mineral exploration, development, conservation and management is generally one of the exclusive provincial jurisdiction. The federal government also has the power to declare a local work, such as, mine, to be for the general advantage of Canada and thereby assume regulatory authority over such work. Mineral resources of Canada are mainly iron ore, nickel, zinc, copper, gold, lead, molybdenum, potash, diamond, silver, coal, petroleum and natural gas.

**Indonesia :** The principal mineral resources are coal, copper, gold, nickel, oil and tin. Although labour intensive agriculture continued to have a dominant role in the country's economy, substantive significance of the mining & mineral sectors cannot be discounted. The legislation relating to mineral mining and mineral concessions in Indonesia is governed by 'The Basic Provisions of Mining' (Law No. 11 of 1967) and regulations thereunder mainly the Government Regulation No. 32 of 1969 on the said Basic Provision of Mining.

**Namibia :** The basic mining law of Namibia is the Mineral (Prospecting and Mining) Act No. 33 of 1992, which took effect on April 1, 1994. The Ministry of Mines and Energy is responsible for making and enforcing policies related to minerals and energy. Diamond is the most important mining industry followed by uranium. Other important mineral products include copper, dimension stone (granite & marble), fluorite, gold, lead, & silver.

**South Africa :** The Republic of South Africa is one of the world's major mining and mineral processing nations. Its rich natural resource endowment seems as the base for one of the strongest economies in the African continent. The most important mineral commodities produced are gold, PGM, coal, ferro-alloys, diamond and aluminium, besides, antimony, chromite, cobalt, copper, iron ore, lead, manganese, nickel, silver, steel, titanium, uranium, vanadium, zinc and zirconium. Significant industrial minerals include andalusite, asbestos, dimension stone, fluorspar, limestone, phosphate rock, sulphur & vermiculite. The Ministry of Mines and Energy's Department of Mineral and Energy (DME) is the primary government entity responsible for the establishment and implementation of minerals and energy policy and for oversight of the country's mineral industry.

The present study covering India, Brazil, Canada, Indonesia, Namibia and South Africa was necessitated in view of the changed liberalised economic scenario in India and most of the above countries. The present study compares the legislative framework of these countries with respect to basic and important parameters such as ownership rights/control; concessions for reconnaissance, prospecting & exploitation; royalty & dead rent; environment; legal liabilities; provincial enactment; etc. It is hoped that the publication will throw ample light on the mining laws of these countries facilitating the reader to appreciate better the comparison attempted.

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**SALIENT GENERAL FEATURES**

|                          |   |   |
|--------------------------|---|---|
| <i>Capital</i>           | : | <i>New Delhi</i>  |
| <i>Population Census</i> | : | <i>1,080,264,388</i>  |
| <i>Area</i>              | : | <i>3,287,263 sq. km</i>   |
| <i>GDP (per capita)</i>  | : | <i>US \$ 3,400</i>  |
| <i>Language</i>          | : | <i>The languages listed in the Constitution are recognised as official languages and these have statewise prevalence. English, however, enjoys an associated status and partakes the role as demi-official language</i> |

**I**ndia as a coterminous country shares its borders with many of its neighbours— in the north-west with Pakistan, in the north with China, Tibet, Nepal & Bhutan and in the east with Myanmar. The peninsular region has the Bay of Bengal in the south-east, the Indian Ocean in the south and Arabian sea in the west. The north-eastern states of the country are almost separated from the rest by Bangladesh.

India is a Parliamentary Democracy. The President is the Executive Head of the Country and is aided and advised by the Prime Minister and the Council of Ministers. The Prime Minister and the Council of Ministers are answerable to the two Houses of the Parliament.

Ministry of Mines is responsible for survey and exploration of all minerals, other than natural gas, petroleum and atomic minerals; for mining and metallurgy of non-ferrous metals like aluminium, copper, zinc, lead, gold, nickel, etc. and for administration of the Mines and Minerals ( Regulation and Development) Act, 1957 in respect of all mines and minerals other than coal, petroleum and natural gas.

India is rich in varied mineral resources. The important minerals produced are bauxite, barytes, coal, iron ore, limestone, dolomite, manganese ore, chromite, copper, lead & zinc, diamond, gold, soapstone, granite, marble, etc. The value of mineral production constitutes around 2% of the G.D.P. India exports many minerals and the export turnover from minerals and mineral-based products accounts for about 21% of the export value of all merchandise. The mining sector provides daily employment for about one million persons.

**MINING LEGISLATIVE FRAMEWORK**

Mines and Minerals (Development and Regulation) Act, 1957 (Amended up to 14<sup>th</sup> October, 2004);  
 Mineral Concession Rules (MCR), 1960 (Amended up to 5<sup>th</sup> May, 2005);  
 Mineral Conservation and Development Rules (MCDR), 1988 (Amended up to 24<sup>th</sup> December, 2003),  
 Granite Conservation and Development Rules (GCDR), 1999 (Amended up to 17<sup>th</sup> October, 2002),  
 Marble Development and Conservation Rules (MDCR), 2002 (as on 15<sup>th</sup> May 2002) and various Minor Mineral Concession Rules framed by the State Governments under Sec. 15 of MMDR Act, 1957 constitute the legislative framework of the Mining Sector.

## 1. Purpose

This MMDR Act 1957 governs the development and regulation of mines and minerals (except mineral oils, natural gas & petroleum) which are under the control of Govt. of India.

## 2. Definition

In this Act, unless the context otherwise requires

- a) "minerals" include all minerals except mineral oils;
- b) "mineral oils" include natural gas and petroleum;
- c) "mining lease" means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;
- d) "mining operations" mean any operation undertaken for the purpose of winning any mineral;
- e) "minor minerals" mean building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other mineral which the Central Government may, by notification in the Official Gazette declare to be a minor mineral;
- f) "prescribed" means prescribed by rules made under this Act;
- g) "prospecting licence" means a licence granted for the purpose of undertaking prospecting operations;
- h) "prospecting operations" mean any operation undertaken for the purpose of exploring, locating or proving mineral deposit;
- i) "reconnaissance operations" mean any operation undertaken for preliminary prospecting of a mineral through regional, aerial, geophysical or geo-chemical surveys and geological mapping, but does not include pitting of bore holes on a grid (specified from time to time by the Central Government) or sub-surface excavation;
- j) "reconnaissance permit" means a permit granted for the purpose of undertaking reconnaissance operations; and
- k) the expressions "mine" and "owner" have the meanings assigned to them in the Mines Act, 1952.

## 3. Ownership Right and Administration/Control

The mineral rights on land vest with the respective State Governments whereas the mineral rights in offshore areas vest with the Central Government. No person shall undertake any reconnaissance, prospecting or mining operations in any area except under and in accordance with the terms and conditions of a Reconnaissance Permit or a Prospecting Licence or a Mining Lease granted under the Act or the rules made thereunder. No Reconnaissance Permit, Prospecting License or Mining Lease shall be granted unless otherwise permitted in accordance with provisions of the Act and the rules made thereunder. For grant of concessions for minerals covered under First Schedule of the Act, prior approval of the Central Government is necessary.

## 4. Concessions for

### (A) Reconnaissance

**Eligibility :** The applicant for a Reconnaissance Permit (RP) should be a citizen of India or a company registered in India under the Companies Act, 1956.



**Application :** An application for Reconnaissance Permit shall be made to the State Government in Form 'A' through such officer or authority as the State Government may specify in this behalf along with all the documents as per provisions under Rule 4 of MCR, 1960. After consideration of application, the State Government may grant or refuse the Reconnaissance Permit. The Reconnaissance Permit should be executed within 3 months from the date of grant of the permit. The date of the commencement of the period for which a Reconnaissance Permit is granted, shall be the date on which the deed is executed after all necessary clearances have been obtained.

**Duration :** A Reconnaissance Permit is granted for a period of 3 years.

**Renewal :** There is no provision for renewal under the Act/Rules.

**Area :** Maximum area permissible for a single permit is 5,000 sq. km and maximum area permissible for a party is 10,000 sq. km in a state.

**Rights :** Reconnaissance Permit gives right to enter upon or fly over the lands and undertake reconnaissance operations for preliminary prospecting of specified mineral through regional, aerial, geophysical or geochemical surveys, geological mapping; to use water; clear undergrowth and brushwoods etc.; and to bring upon machinery, etc.

**Obligations :** (i) The holder of the Reconnaissance Permit shall strictly adhere to the minimum expenditure commitment and specific physical targets specified in the order of grant of the permit, failing which Reconnaissance Permit may be cancelled.

(ii) The holder of Reconnaissance Permit shall make available all data collected by him during the reconnaissance operations to the Geological Survey of India, Indian Bureau of Mines and the State Government which in turn may be made available to any prospecting investor after a minimum period of two years of the completion of the period of Reconnaissance Permit.

(iii) The holder of Reconnaissance Permit shall not enter any forest land or any private land without obtaining permission of the Forest Department or the owner of the private land, as the case may be.

(iv) The holder of Reconnaissance Permit shall maintain accurate and faithful account of all the expenses incurred by him on the reconnaissance operations.

(v) The holder of Reconnaissance Permit shall submit to the State Government a six monthly report of the work done by him and the valuable data collected by him during the period. The report shall be submitted within 3 months of the close of the period to which it relates.

(vi) The permit holder shall also submit to the State Government within three months of the expiry of the permit, or abandonment of the operations or termination of the permit whichever is earlier, a full report of the work done by him and all information relevant to mineral resources acquired by him in the course of reconnaissance operations in the area covered by the permit.

(vii) While submitting reports under subclause (v) or (vi), the permit holder may specify that the whole or any part of the report or data submitted by him shall be kept confidential and the State Government shall thereupon keep the specified portions as confidential for a period of two years from the expiry of the permit, or abandonment of operations or termination of the permit, whichever is earlier.

(viii) The permit holder shall allow every officer authorised by the Central Government or the State Government in this behalf at any time to examine the accounts maintained and furnish the Central Government or the State Government or any other officer authorised by it in that behalf such information and returns.

(ix) The permit holder shall allow any officer authorised by the Central Government or the State Government in this behalf to inspect any reconnaissance operations carried on by him.

(x) The permit holder shall pay the requisite permit fee as may be fixed by the State Government, being not less than five rupees per square kilometres and not more than twenty rupees per square kilometres of land held by the permit holder for each year or part thereof.

**Transfer :** There is no provision under the rules for transfer of a Reconnaissance Permit.

**Surrender/Relinquishment :** The holder of Reconnaissance Permit shall progressively relinquish the area granted under the permit as follows:

- (i) After completion of two years, the area shall be reduced to one thousand square kilometres or fifty percent of the area granted, whichever is less; and
- (ii) The area would be further relinquished so that the permit holder is left with an area not more than twenty-five square kilometres at the end of third year.

### **(B) Prospecting**

**Eligibility :** An applicant for a Prospecting Licence(PL) should be an Indian National or a Company registered in India under the Companies Act, 1956.

**Application :** An application for Prospecting Licence and its renewal in respect of land in which the minerals vest shall be made to the State Government in the prescribed forms through the authorised officer as the State Govt. may specify along with necessary documents as per the provisions of Rule 9 of MCR, 1960. An application for the grant of a PL should be disposed of within nine months from the date of its receipt provided the application is complete in all respect. After the grant order is issued, the licence should be executed within 3 months. After consideration of application, the State Government may grant or refuse the Prospecting Licence. The date of commencement of the period for which a Prospecting Licence is granted shall be the date on which the deed is executed.

**Duration :** The Prospecting Licence is granted initially for a period of 3 years.

**Renewal :** The PL can be renewed for a period not exceeding 2 years.

**Area :** The maximum area that can be granted for one or more Prospecting Licenses in respect of any mineral shall not exceed 25 sq. km in a State, for a party.

**Rights :** The Prospecting Licence gives right to enter upon the land and to search for minerals specified by quarrying, boring and digging or otherwise. It also gives right to bring upon and erect machinery, etc. for carrying out various prospecting operations. The licensee may win and carry away for purposes other than commercial purposes —

- (i) any quantity of such minerals within the limits specified under column 3 of Schedule III MCR, 1960 without any payment;
- (ii) any quantity of such minerals not exceeding the limits specified under column 4 of Schedule III, on payment of royalty for the time being specified in the Second Schedule to the Act in respect to those minerals.
- (iii) any quantity of limestone not exceeding 500 tonnes on payment of royalty specified as per Second Schedule to the Act for testing its use in any industry.
- (iv) any quantity of minerals with written approval of State Government, in excess of twice the limit specified in Schedule III on payment as per Second Schedule to the Act for chemical, metallurgical ore dressing and other test purposes.

**Obligations :** The licensee shall pay such prospecting fee as may be fixed by the State Government. The licensee shall report to the State Government the discovery of any mineral not specified in the licence within a period of sixty days from the date of such discovery. The licensee would carry out prospecting operations in a fair orderly skilful and workmanlike manner. He shall maintain a correct and faithful account of all expenses incurred by him on such prospecting operations and also the quantity and other particulars of all minerals obtained during such operations and their dispatch. The licensee is bound by rules made under Sec. 18 of the MMDR Act regarding conservation and development of minerals and related rules. The licensee should submit to the State Government a six monthly report of work done by him stating the no. of persons engaged and disclosing in full the geological, geophysical or other valuable data collected by him during the period. He is also expected to furnish a full report of the work done within 3 months of the expiry of the licence, or abandonment of prospecting operation or termination of the licence whichever is earlier, providing all information relevant to mineral resources acquired by him in course of prospecting operations in the area covered by the licence.

**Transfer :** The licensee shall not, except with the previous sanction of the State Government, transfer his licence.

### (C) *Exploitation*

**Eligibility :** An applicant for Mining Lease (ML) should be an Indian National or a company registered in India under Companies Act, 1956.

**Application :** An application for the grant of a mining lease in respect of land in which the minerals vest shall be made to the State Government in Form I through such officer or authority as the State Government may specify in this behalf, along with documents specified under Rule 22 of MCR, 1960. Once the applicant is informed of grant of area for M.L, he should submit the mining plan within six months, duly approved by the Central Govt. or an officer duly authorised by the Central Govt., to the State Govt. before execution of mining lease. However, the State Govt. is competent to approve Mining Plan of opencast mines in respect of 29 industrial minerals as per the provision of Rule 22(4A) of MCR, 1960. The Central Government or the State Government shall dispose of the application for approval of the Mining Plan within a period of ninety days from the date of receipt of such application. An application for grant of Mining Lease shall be disposed of within 12 months from the date of receipt of the application provided it is complete in all respect. For minerals covered under the First Schedule to the Act, previous approval of the Central Govt. is required. A Mining Lease should be executed within six months of the grant order.

**Duration :** The maximum period for which a mining lease can be granted is 30 years and the minimum period is 20 years.

**Area :** Maximum area to be granted for one or more mining leases shall not exceed 10 sq. km in favour of a person in a State. Minimum area to be granted for a lease shall not be less than:

- (i) one hectare in respect of small deposits not exceeding 200 metres in strike length;
- (ii) two hectares in respect of beach sands or placer deposits; and
- (iii) four hectares in respect of all other minerals.

**Renewal :** Mining Leases can be renewed for a period of 20 years. Further renewals can be granted by the State Government, in the interest of mineral development, for periods not exceeding twenty years. In respect of minerals covered under parts A & B of the First Schedule, previous approval of the Central Government is necessary.

**Rights :** The rights of the lessee include —

- (i) to enter the leased land and to search for mines, bore, dig, drill for win, work, dress, process, convert, carryaway and dispose of minerals specified in the lease land.
- (ii) to sinkdrive, pits and shafts inclines, etc. and construct buildings and roads, store houses, etc.
- (iii) to erect plant and machinery, beneficiation plants, etc.
- (iv) to quarry and obtain building and road materials and make bricks.
- (v) to use water and take timber.
- (vi) to use land for stacking purposes, etc.

**Obligations :** Every mine owner has to start mining operation within 2 years from the date of execution of the lease and conduct mining operation in proper, skilful and workmanlike manner; pay royalty, dead rent and other taxes as specified in the lease deed; report discovery of new minerals; keep accurate accounts showing the quantities and other particulars of all minerals obtained and dispatched from mines and submission of returns to the State and Central Governments, etc.

The mine owner has to observe the provisions of the Mines Act, 1952 and pay wages as per the Minimum Wages Act, 1948.

The mine owner has to comply with the Mineral Conservation and Development Rules framed under section 18 of the MMDR Act, 1957.

**Transfer :** The lessee can transfer the lease only with the previous written consent of the State Govt. and Central Govt. in respect of minerals covered in parts A and B of the First Schedule to the Act.

**Surrender/Determination/Cancellations :** State Governments can determine the lease on breach of condition of the mining lease. Provision also provides for surrender of any mineral covered in the lease by the lessee on application at least 6 months before the intended date of surrender.

The lessee can seek determination of the lease or part of it upon 12 months notice in writing to the State Government on the ground that such area is barren or the deposit of mineral is exhausted or depleted and mining is no longer profitable. The lessee shall not determine the lease or part thereof unless a final mine closure plan, duly approved by the Regional Controller of Mines or the officer authorised by the State Govt. in this behalf, is implemented as per the approval.

## **5. Royalties / Dead Rent and Other Taxes**

Royalty in law means payment made to the owner of certain types of rights by those who are permitted by the owners to exercise such rights. Under the Constitution of India, the States are owners of the minerals and are entitled to royalty on the minerals mined as per the prevailing rates given in Second Schedule of the MMDR Act, 1957. The royalty rates for non-minor minerals are fixed by the Government of India and levied as per Section 9 of the MMDR Act, 1957 on the mineral removed from the leased area. It also provides for levy of 'dead rent' for the area included in the mining lease, if minerals are not extracted. Thus, the lessee has to pay either the royalty or dead rent whichever is higher, and not both. The enhancement or reduction of rate of royalty is permitted but the Central Govt. can enhance the rate of royalty in respect of any mineral only once during a period of three years.

Today the royalty structure has been greatly rationalised to make it more market oriented. Now only 20 minerals are charged royalty on unit of production basis. These minerals are asbestos, ball clay, dolomite, graphite, iron ore, kaolin, lime kankar, lime shell, limestone, monazite, moulding sand, ochre, quartz, quartzite, silica sand, slate, tungsten ore, uranium ore, white clay and white shale. Royalty on all the remaining minerals, as many as 39 minerals has been placed under ad valorem rates.

## 6. Provisions Regarding Environment

As per provisions of MCDR, every holder of a Prospecting Licence or a Mining Lease shall take all possible precautions for the protection of environment and control of pollution while carrying out prospecting, mining beneficiation or metallurgical operations in the area. These rules provide for removal and utilisation of top soil, storage of overburden, waste rock, control of surface subsidence, restoration of flora, etc.

## 7. Legal Liabilities—Penalties, Dispute Settlement

- a) Whoever contravenes the provisions of Subsection (1) or Subsection (1A) of Section 4 of MMDR Act, shall be punished with imprisonment for a term which may extend up to two years, or with fine which may extend up to twenty-five thousand rupees, or with both.
- b) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment, for a term which may extend upto one year or with fine which may extend upto five thousand rupees, or with both, and in the case of continuing contravention, an additional fine which may extend upto five hundred rupees for every day during which such contravention had continued after conviction for the first such contravention may be liable.
- c) The Act also provides for penal action against trespassers, illegal mining, transportation and storage of minerals. Besides, the Act also provides measures for filing of criminal cases against offenders and also for settlement of dispute through compounding of offences.

## 8. Provincial Enactments

Section 15 of MMDR Act empowers the State Governments to formulate Rules for regulating the grant of Reconnaissance Permits, Prospecting Licenses and Mining Leases in respect of minor minerals and for purposes connected therewith. Most of the State Govts. have framed their own minor mineral concession rules.

## 9. Provision Regarding Closure

The MCDR, 1988 provides for submission of final mine closure plans duly approved by the Regional Controller of Mines or the Officer authorised by the State Government in this behalf, as the case may be, before abandoning a mine or part thereof. Every mine shall have mine closure plan, which shall be of two types—

- a) A progressive mine closure plan
- b) A final mine closure plan

### a) *Progressive Mine Closure Plan*

The owner, agent, manager or mining engineer shall, in case of fresh grant or renewal of mining lease, submit a progressive mine closure plan as a component of mining plan to the Regional Controller of Mines or the Officer authorised by the State Government in this behalf as the case may be.

### b) *Final Mine Closure Plan*

The owner, agent, manager or mining engineer shall submit a final mine closure plan to the Regional Controller of Mines or the Officer authorised by the State Government in this behalf, as the case may be, for approval one year prior to the proposed closure of the mine. The rules also provide for financial assurance so as to indemnify the authorities against the reclamation and rehabilitation cost.

**INDIA—SALIENT FEATURES AT A GLANCE**

| <b>Types of concession</b>  | <b>Salient features</b>   |
|---|---|
| <p><b>A) Reconnaissance</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol>      | <p>Maximum area is 5,000 sq. km for a single permit and 10,000 sq.km permissible for a party in a state.</p> <p>3 years.</p> <p>No provision exists under the Rules.</p> <p>State Governments are the granting authorities for Reconnaissance Permit. Application shall be made to State Govt in Form 'A' as per provisions under Rule 4 of MCR, 1960. Application should be disposed of within six months from the date of receipt of application. The Reconnaissance Permit should be executed within 3 months from the date of grant.</p>  |
| <p><b>B) Prospecting Licence</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol> | <p>The maximum area granted for one or more PLs shall not exceed 25 sq.km in a state for a party.</p> <p>Initially for a period of 3 years.</p> <p>Renewal for a period not exceeding 2 years.</p> <p>An application for the grant of Prospecting Licence and its renewal in respect of land in which the minerals vest shall be made to the State Government in the prescribed form through the authorised officer as the State Government may specify along with necessary documents as per the provisions of Rule 9 of MCR, 1960.</p>  |
| <p><b>C) Exploitation (Mining Leases)</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> </ol>                      | <p>Maximum area to be granted for one or more Mining Leases shall not exceed 10 sq. km in favour of a person in a state. Minimum area to be granted for a lease shall not be less than one hectare in respect of small deposits not exceeding 200 metres in strike length; two hectares in respect of beach sands or placer deposits; and four hectares in respect of all other minerals</p> <p>The maximum period for which a Mining Lease is granted is 30 years and minimum period is 20 years.</p> <p>Mining Leases can be renewed for a period of 20 years. Further renewals can be granted by the State Govt. for periods not exceeding twenty years.</p> |

contd...

|   |  |
|---|--|
| <p>4. Modality of Grant</p> <p>5. Royalty/Dead Rent</p>   | <p>Application for grant of ML in respect of land in which the minerals vest shall be made to the State Government in Form I, along with documents specified under Rule 22 of MCR, 1960.</p> <p>The States are owners of the minerals and are entitled to royalty on the minerals mined as per the prevailing rates given in the Second Schedule of MMDR Act, 1957. The royalty rates for non-minor minerals are fixed by Government of India and levied as per Section 9 of MMDR Act, 1957 on the mineral removed from the leased area. It also provides for levy of 'Dead rent' for the area included in the Mining Lease, if minerals are not extracted. Thus, the lessee has to pay either the royalty or dead rent which ever is higher and not both. The enhancement or reduction of rate of royalty is permitted but Central Government can enhance the rate of royalty in respect of any mineral only once during a period of three years. The royalty structure has been greatly rationalised to make it market oriented. The minerals are charged royalty on unit of production basis as well as ad valorem rates.</p> |
| <p><b>D) Mine Closure</b></p> <p>1. Progressive Mine Closure Plan</p> <p>2. Final Mine Closure Plan</p> | <p>The MCDR, 1988 provides for submission of final mine closure plan approved by the Regional Controller of Mines or officer authorised by State Government.</p> <p>The mine owner shall, in case of fresh grant of ML or renewal of ML, submit a progressive mine closure plan as a component of mining plan to the RCOM or officer authorised by the State Government.</p> <p>The mine owner shall submit a final mine closure plan to the RCOM or officer authorised by the State Government for approval one year prior to the proposed closure of the mine.</p>   |

\* \* \*

**SALIENT GENERAL FEATURES**

|                             |   |  |
|-----------------------------|---|--|
| <i>Capital</i>              | : | <i>Brasilia (Federal District)</i>                     |
| <i>Population Estimated</i> | : | <i>186,112,794</i>                                     |
| <i>Area</i>                 | : | <i>8,511,965 sq.km</i>                                 |
| <i>GDP (per capita)</i>     | : | <i>\$ 8,500</i>  |
| <i>Language</i>             | : | <i>Portuguese (official), Spanish, English, French</i> |

**B**razil is bounded in the East by Atlantic Ocean and on its Northern, Western and Southern borders by all Latin American countries except Chile and Ecuador.

Brazil, South America's largest country, was colonised by the Portuguese in the 16<sup>th</sup> century and remained under Portuguese rule until independence in 1822.

The important minerals of Brazil are bauxite, gold, iron ore, manganese ore, nickel, phosphates, platinum, tin and uranium. Brazil is the only source of high grade quartz crystal in commercial quantities in the world. Chrome ore, mica, zirconium, beryllium, graphite magnesite, monozite, sand containing thorium, salt tungsten ore, lead ore, asbestos and hard coal are the other minerals produced in Brazil.

### **MINING LEGISLATIVE FRAMEWORK**

Decree – Law dated 28<sup>th</sup> February 1967 constitutes the Mining Code.

#### **1. Purpose**

The Mining Code provides for the ways and means to administer mineral resources & the industry of mineral production and the distribution; trade & utilisation of mineral products is under the overall supervision of the Union Government of Brazil. The Code regulates the rights on the individualised masses of mineral substances or fossils, found on the surface or in the interior of the earth forming the minerals resources of the country; the norms of their utilisation and the fiscalisation, by the Federal Government of the exploration, mining and other aspects of the mineral industry.

#### **2. Definition**

##### ***Manifested Mine***

The mine under exploitation, even if transitorily suspended on 16<sup>th</sup> July 1934 and which has been manifested in accordance with Article 10 of Decree No. 24642 dated 10<sup>th</sup> July 1934 and Law No. 94 dated 10<sup>th</sup> Sept. 1935.



### ***Granted Mine***

The mine whose right of exploitation has been granted by the Minister of State for Mines and Energy. The following are considered as integral part of mine :

- a) Buildings, constructions, machines, equipment and instruments meant for mining and refinement of the product of mining, provided the latter work is carried out in the area of the granted mine;
- b) Pathways indispensable for the execution of the work of mining;
- c) Animals and vehicles employed in the service;
- d) Materials necessary for the works of exploitations, when they are within the area granted; and
- e) Provisions necessary for the works of exploitation, for a period of 120 (one hundred twenty) days.

### ***Mineral Exploitation***

Mineral exploitation or mining is understood as the totality of coordinated operations with the objective of industrial exploration of the deposits, starting from the extraction of useful mineral substance contained in the deposit, till the refinement of the same.

### ***Exploration***

Mineral Exploration is understood as the works that is carried out for the definition of a deposit, its evaluation and the determination of feasibility for its economic exploitation.

## **3. Ownership Rights & Administration/Control**

Mineral resources, including those in the subsoil, are the property of the Federal Government. The mineral resources may only be explored and mined under the authorisation on concession of the Federal Government. The exploitation of the deposits will depend on the letter of authorisation of exploration issued by Director General of the National Department of Mineral Production (DNPM) and the mining license granted by the Minister of State for Mining and Energy. The exploitation will also depend on the license issued by the Federal Govt. which, meanwhile, is subjected to the conditions established by the Code of mining, taxation and supervision of the granted mines. The State Federal District and Municipalities, as well as the Federal Government are assured a share in the result of mineral exploitation and other mineral resources in their respective territory, continental shelf, territorial waters, on exclusive economic zone and on financial compensation for this exploitation. The owner of the land is ensured a share in the mining result.

## **4. Concessions for**

### **(A) Reconnaissance**

**Eligibility :** Permission for geological reconnaissance is granted to a mining company legally constituted in Brazil for aerial survey to obtain useful regional preliminary information for formulating an exploration request application.

**Application :** Application should be submitted to the Director General of National Department of Mineral Production.

**Duration :** The permission is valid for a maximum unextendable period of 90 days from the date when the authorising act is published in the Federal Gazette.

**Area :** The area is restricted to a maximum boundary of 12,000 sq. km.

**Right :** The mining company has the right of priority to apply for exploration in the permitted area.

**Conditions :** The area in question must be free for exploration and restricted to the maximum boundary stipulated for the mineral substance and region under study; the report of the geological reconnaissance results should be delivered to the Director General of the National Department of Mineral Production.

## **(B) Prospecting**

### **Exploration Authorisation**

**Eligibility :** The authorisation of exploration will be granted to Brazilian natural persons, individual firm or legally constituted companies incorporated under the Brazilian law which has its head office and administration in Brazil.

**Application :** The authorisation of exploration will be granted by Director General, National Department of Mineral Production (DNPM) in an application addressed to him. The application should be in duplicate and it should contain the following.

- a) Name, indication of nationality, marital status, profession, residential address and registration number of the applicant in the Register of Physical Persons of the Ministry of Finance, in the case of a natural person. In the case of judicial person or firm, the registration number of their constitutive acts in the competent Organ of Registration of Commerce, address and registration number in the General Register of Contributors of the Ministry of Finance.
- b) Proof of collection of the respective emoluments;
- c) Designation of the substances to be explored;
- d) Indication of the surface area of the place in question, in hectares, and the Municipality and the State in which it is situated;
- e) A descriptive report of the area in question in the terms defined in the decree of the Director General of the National Department of Mineral Production.
- f) Situation plan, whose configuration and elements of information will be established in the decree of the Director General of the National Department of Mineral Production;
- g) Work plan of the exploration, accompanied by financial allocation and the time-frame foreseen for its execution. An application not accompanied by any of the particulars mentioned in clauses I to VII of the preceding Article will be summarily rejected by the Director General of the National Department of Mineral Production.

**Restrictions/Prohibitions :** The area which is the object of the application for authorisation of exploration or registration of license will be considered as free, so long as it does not fall within any of the following categories:

- a) The area is linked to any authorisation of exploration, registration of license, mining lease, manifesto of mine, or permission to carry out geological prospecting;
- b) The area is the object of an earlier application for authorisation of exploration, except in the case in which the said application has been rejected.
- c) The area is the object of an earlier application for registration of license or is linked to any license whose registration may be requested for within a period of 30(thirty) days from its issuance;

- d) The area is linked to an application for renewal of exploration authorisation, promptly submitted and pending decision.
- e) The area is linked to the exploration authorisation, with report of the respective works promptly submitted and pending decision;
- f) The area is linked to the exploration authorisation, with report of the respective works approved, and having lapsed the right of applying for mining lease, grantable in terms of Article 31 of this Code.

**Duration :** The maximum period of exploration authorisation or exploration permit is 3 (three) years. Minimum is one year.

**Renewal :** Generally extension is for a period of 3 years. Extension of authorisation is possible taking into account the evaluation of the development of the working in accordance with the criteria established in the decree of the Director General of the National Department of Mineral Production. The extension is independent of issuance of the new order and its respective validity period will start from the date of publication of the favourable order in the official Gazette. In an area of 50 ha, the valid period is 2 (two) years with the limited extension of another year over a three year period.

**Condition :** a) The holder of the exploration title will be exclusively held responsible for the damages caused to third parties whether directly or indirectly due to the exploration works.

b) The holder of the title of authorisation is obliged to carry out the respective works of exploration and should submit within the validity period of the authorisation or its renewal, for the approval of the National Department of Mineral Production, a detailed report of the works, containing the geological and technological studies quantifying the deposit and demonstrating the techno-economic feasibility of mining, drawn up under the technical responsibility of a legally qualified professional.

c) The title holder of exploration authorisation should pay to the respective owners or possessors a rent for the occupation of the lands and indemnification for any losses or damages which may be caused due to the exploration works.

**Transfer/Assignment :** An exploration and mining concession rights may not be assigned or transferred, wholly or partially, without prior consent by the Federal Government.

**Rights :** The holder of exploration authorisation, once the Report has been approved, will have 1(one) year for applying for mining lease and, within this period he can negotiate his rights with regard to the lease, in terms of this Code.

### **(C) Exploitation**

**Eligibility :** Exploitation of minerals under a concession of Federal Govt. is allowed only by a Brazilian natural person, individual firm or legally constituted companies incorporated under the Brazilian law which has its head office and administration in Brazil.

**Application :** The application for a mining licence should be addressed to the Minister of State of Mines and Energy by the holder of the exploration authorisation on his successor and it should be accompanied by the following elements or information.

- a) Proof of registration, in the National Department of Registration of Commerce, of the constituted entity.
- b) Designation of the mineral substance to be mined, with indication of the exploration authorisation order issued and approval of the respective Report.

- c) Denomination and description of the location of the field meant for mining, relating with precision and clarity the valleys of the rivers or ravines, supported by maps or plans of known authenticity and precision, and railway tracks and roadways, and also the natural or accidental topographic features of unmistakable identification; its relationship with the neighbouring exploration authorisation and mining leases, if any, and indication of the locality, municipality, district and state; and name and address of the owners or possessors of the land;
- d) Graphic definition of the area concerned, delimited by geometric figure compulsorily formed by segments of straight line with true north-south and east-west orientation, with 2(two) of its vertices, or exceptionally one, moored to an unmistakable fixed point of the terrain, the vectors of mooring being defined by their lengths and directions, and configured also, details of territorial properties contiguous with it, along with names of respective owners of the surfaces, as well as a situation plan.
- e) The pathways the mine should require;
- f) Plan of economic utilisation of the deposit, with a description of the refining installations;
- g) Proof of availability of funds or of the existence of commitments of financing necessary for the execution of the plan of economic exploration and operation of the mine.

**Assignment/Transfer :** The holder of mining concession can assign or transfer all or part of the deed with prior consent by the Federal Government, National Department of Mineral Production (DNPM).

**Rights :** a) To mine the deposit until it is completely exhausted according to the mining plan approved by DNPM and the environmental licensing granted by the competent agency, disposing without any special onus (responsibility), unless general taxation of the mined product, without any special onus.

b) To have protection from public authorities against any act which results in stopping the mining work, unless against the law, or that any subsequent public interest exceeds that of the utility of mineral exploitation. In the latter case, the mining concession holder must be compensated by the Federal Government according to the legal parameters.

c) To waive the mining deed, once the requirements established in the Mining Code are fulfilled.

**Obligations :** The holder of mining lease will be obliged, besides the general conditions mentioned in this Code, to observe the following:

- a) Initiate the works foreseen in the mining plan, within a period of 6(six) months, counting from the date of publication of the Lease Order in the Official Gazette of the Union, except due to reasons beyond human control, in the opinion of the National Department of Mineral Production;
- b) Carry out mining of the deposit in accordance with the Mining Plan approved by the National Department of Mineral Production, whose second copy, duly authenticated, should be kept at the location of mining;
- c) Extract only the mineral substance indicated in the Lease Order;
- d) Immediately communicate to the National Department of Mineral Production the discovery of any other mineral substance not included in the Lease Order.
- e) Carry out mining works in observance of the regulatory norms.
- f) Entrust, compulsorily, the leadership of the mining works to a technical hand legally qualified for the exercise of the profession;

- g) Should do nothing to make the further exploration of the deposit difficult or impossible;
- h) Would be responsible for the losses and damages caused to third parties as a direct or indirect result of the mining activities;
- i) Promote the safety, and salubrity of the inhabitations existing in the locality;
- j) Avoid deviating the waterways and also should drain away the waters which may cause harm or damages to the neighbouring people;
- k) Avoid polluting the air or water as a result of the mining works;
- l) Protect and conserve the springs, as well as utilise water in accordance with the technical precepts when it is a question of mining the deposit of Class VIII;
- m) Take the precautionary measures indicated by the Administration of Federal Bodies;
- n) Should not suspend mining works without prior communication to the National Department of Mineral Production;
- o) Maintain the mine in good condition in the case of temporary suspension of mining works, so as to permit the resumption of operations without difficulty;
- p) Submit to the National Department of Mineral Production by 15<sup>th</sup> March of every year a report on the activities carried out in the previous year.

## 5. Royalty/Dead Rent and Other Taxes

The Brazilian mining industry, like any other industrial activity in Brazil, is subject to taxation charges, levies and such the like, at Federal, State and Municipal levels. However, as established in the 1988 Constitution a special levy for mining company called Financial Compensation for Exploiting Mineral Resource (CFEM). Federal Royalty (CFEM) is owed to the State, Federal District, Municipalities and the Federal Government as counter-loan for the economic use of mineral resources, as these are property of the Federal Government.

CFEM is not more than 3% and its calculation base is the net revenue from the sale of the mineral product. The rate varies according to the mineral product as given below :

| Mineral Product  | Rate   |
|--|--------|
| Bauxite, manganese ore, rock salt and potassium                  | 3%     |
| Iron ore, fertilizers, mineral coal and other mineral substances | 2%     |
| Gold   | 1% (*) |
| Precious carbon, coloured, cuttable stones and precious metals   | 0.2%   |

(\*) Gold product in prospecting is exempt.

There are also provisions for compensation of the value of land for passage required and for the damages caused as a result of the occupation of other land.

## 6. Provisions Regarding Environment

Whoever exploits mineral resources is obliged to recuperate and rehabilitate the degraded environment using technical solution legally required by the competent public agency. As a result of constitutional binding, the exercise of the mining activity in Brazil is conditioned to three specific control instruments of the public authorities covering the potential risk of damage to the environment as a result of mining, such as, Environmental Impact Assessment, Environmental Licensing and Plan for Recovery of Degraded Area.

## 7. Penalty and Revocation

- a) The mining not carried out in accordance with the plan approved by the National Department of Mineral Production will make the leaseholder susceptible to sanctions which may in accordance with the gravity of the act, lead up to the cancellation of the lease.
- b) Besides, the mining concession is revoked when economically valuable nuclear mineral reserves are found with an economic value, at the Federal Government's criterion, discretion, of worth more than the economic value of the mineral substance in the mining deed. The concessionaire company is entitled for ensured fair compensation of their investment.
- c) The non-fulfillment of the obligations arising from the authorisation of exploration, permissions of diamond mining, mining leases and license will imply, depending upon the gravity of the infraction, the following sanctions:
  - (i) Warning;
  - (ii) Fine, and
  - (iii) Cancellation of the title.
  - (iv) The initial fine will vary from 100(one hundred) to 1000 (one thousand) UFIR, according to the gravity of the infractions.
  - (v) The cancellation of the exploration authorisation or of the mining lease may be declared in the cases in which the following infractions have been made:
    - formal declaration of abandonment of the deposit or mine;
    - non-fulfilment of the time-limits for starting or restarting of works of exploration or mining, inspite of warning and fine;
    - carrying out works of exploration in disagreement with the conditions stated in the title of authorisation, disregarding warning or fine;
    - carrying out ambitious mining or extraction of substances not included in the Mining Order, in spite of warning and fine;
    - disregarding the repeated observations of the inspections characterised by the third reincidence in an interval of one year of infractions with fine.

The companies, which apply for authorisation for exploration or mining, or which may be holders of mining rights for exploration or exploitation, are obliged to keep in the archives of the National Department of Mineral Production, by following the proper procedure, the statutes or company contracts and agreements of share holders in force, as well as the modifications in the contracts or statutes; for this purposes the companies will have at its disposal a maximum of thirty days after registration in the National Department of Registration of Commerce.

The non-fulfilment of the time-limit established in this Article will have the following sanctions:

- (i) warning;
- (ii) fine, which will be doubled in case the requirements laid down in this Article are not fulfilled within a period of thirty days from the imposition of the initial fine and like this successively every subsequent thirty days.

## 8. Provincial Enactments

There is no provision in the decree 1967 regarding provincial enactment in Brazil.

## **9. Provision Regarding Closure**

Provisions regarding cancellation of lease or abandonment of the deposit or mine is given under Legal Liabilities.

## **10. Salient Features at a Glance**

Article 90 provides instruction about associated mineral if it is a radioactive mineral obtained in the said mine. The provision is as follows:

When it is found that in the deposit under exploitation there are also radioactive minerals or materials appropriate for utilisation in the process of production of nuclear energy, the lease will hold good only if the economic value of the mineral substance, object of the mining lease, is higher than the value of the nuclear materials contained in the deposit.

## **ENVIRONMENTAL IMPACT ASSESSMENT STUDY FOR MINING ACTIVITIES**

Infra-Constitutional legislation governing the environmental issue relating to mining activity is basically consolidated in various Federal Laws and Federal Decrees.

The Environmental Impact Assessment Study (EIA), which is required for environmental licensing of any activity exploiting mineral resources and is separate from it, has its definition, regulations & basic criteria and implantation guidelines stipulated by National Council for Environment (CONAMA) Resolutions.

The EIA requirement applies to mining projects of every and any mineral substance. However, in the case of mineral substances for immediate use in civil construction, due to the characteristics of the project, presentation of the EIA may be waived. In this event, the mining company shall submit the Environmental Control Report (RCA), in accordance with the guidelines of the competent state environmental agency.

## **REHABILITATION OF AREAS DEGRADED BY MINING ACTIVITIES**

Mining projects, when presenting the Environmental Impact Assessment (EIA) and Environmental Impact Report (RIMA), are obliged to submit the Plan for Recovery of Degraded Areas (PRAD) for approval by the competent state environmental agency.

This plan considers the suitable technical solution visualised by the mining company, to rehabilitate the soil, eventually degraded by the mining activity, for future use.

**BRAZIL— SOME SALIENT FEATURES AT A GLANCE**

| <b>Type of concessions</b>  | <b>Salient features</b>  |
|---|--|
| <p><b>A) Reconnaissance</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol>                          | <p>Area is restricted to a maximum boundary of 12,000 sq. km.</p> <p>Ninety (90) days from the date of publication of authorisation in the Federal Gazette.</p> <p>There is no mention of the provision regarding renewal.</p> <p>Granted by Director General of National Department of Mineral Production to a mining company legally constituted in Brazil.</p>  |
| <p><b>B) Prospecting (Exploration Authorisation)</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol> | <p>The area is governed by the terms defined in the decree of the Director General of the National Department of Mineral Production. Area will be considered as free. So long as it does not fall within restricted/ prohibition categories.</p> <p>Maximum period is three years and minimum is one year.</p> <p>The exploration authorisation or exploration permit can be extended or renewed for a period of three years. In an area of 50 ha, the valid period is two years with the limited extension of another year over a three year period.</p> <p>Granted by Director General, National Department of Mineral Production (DNPM) to Brazilian natural persons, individual firm or legally constituted companies incorporated under the Brazilian land after formally sought through an application addressed to him.</p> |
| <p><b>C) Exploitation (Mining)</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> </ol>   | <p>There is no mention of the provision regarding area.</p> <p>Lessee can mine the deposit until it is completely exhausted according to the mining plan approved by DNPM and the environmental licensing granted by the competent agency</p>  |
| <p><b>D) Taxes</b></p> <ol style="list-style-type: none"> <li>1. Royalty</li> <li>2. Dead-Rent</li> <li>3. Surface-Rent</li> </ol>  | <p>A special levy for a mining company called as Financial Compensation for Exploiting Mineral resource (CFEM) has been constituted in which Federal Royalty is owned to the state. CFEM is not more than 3% and its calculation base is the net revenue from the sale of mineral product.</p> <p>There is no mention regarding provision of Dead-Rent in the Act.</p> <p>- do -</p>   |



**SALIENT GENERAL FEATURES**

|                         |   |                                 |
|-------------------------|---|---------------------------------|
| <i>Capital</i>          | : | <i>Ottawa</i>                   |
| <i>Population</i>       | : | <i>32,805,041</i>               |
| <i>Area</i>             | : | <i>9,976,139 sq. km</i>         |
| <i>Currency Dollar</i>  | : | <i>(US \$=Canadian) \$ 1.22</i> |
| <i>GDP (per capita)</i> | : | <i>\$ 30,660</i>                |
| <i>Language</i>         | : | <i>English and French</i>       |

Canada, the second largest country in the world, occupies all of northern most part of North America, except Alaska in the West and the small French island of St. Pierre & Miquelon. Canada is bounded by Beaufort sea in the north-west, by Arctic ocean in the north, by Baffin Bay in the north-east and by Davis Strait, Labrador Sea and Atlantic ocean in the east.

**MINING LEGISLATIVE FRAMEWORK**

The legislation relating to the administration and disposition of Minerals belonging to Her Majesty in right of Canada under all lands forming part of the North-west Territories is governed by Canada Mining Regulations.

**1. PURPOSE**

Under Canada's Constitution, mineral exploration, development, conservation, and management are regulated as per the statutes in a particular provincial jurisdiction. Each province has adopted a statute or ordinance that governs exploration acquisition and exploitation of state-owned minerals within their respective jurisdictions. There is also general provincial legislation for environmental, workplace safety and labour purposes which is binding on mining activities.

These regulations apply to lands in the territories that are vested in Her Majesty in right of Canada of which the Government of Canada has power to dispose. These regulations are subject to any Act governing the production, conservation and control of ores containing radioactive elements.

**2. DEFINITION**

In these Regulations,

*"Act"* means the *Territorial Lands Act*;

*"adjacent claims"* mean claims that are contiguous or are intended by the locator to be contiguous;

*"assay"* [Repealed,]

*"authorised officer"* means any person authorised by the Minister to perform any function related to the administration and enforcement of these Regulations;

"*Chief*" means the Director, Mineral Resources, of the Natural Resources and Environment Branch of the Department of Indian Affairs and Northern Development;

"*claim*" means a plot of land located or acquired in the manner prescribed by these Regulations;

"*claim inspector*" means a person designated as a claim inspector;

"*co-holder*" means a person in whose name a claim is recorded under these Regulations either jointly or in common with another person;

"*Department*" means the Department of Indian Affairs and Northern Development;

"*depreciable assets*", in respect of a mine, mean buildings, plant, machinery and equipment that form part of the mine;

"*Deputy Mining Recorder*" means a person designated as a Deputy Mining Recorder pursuant to Section 4;

"*Engineer of Mines*" means a person designated as an engineer of mines pursuant to Section 4;

"*exploration cost*" means an expense incurred for the purpose of determining the existence, location, extent, quality or economic potential of a mineral deposit in the Territories, but does not include an expense incurred for the purpose of bringing a mine into production;

"*exploratory work*" means any work done for the purpose of determining the economic potential of a permit area;

"*fiscal year*", in respect of a mine, means the fiscal period of the mine's operator as defined in Section 249.1 of the *Income Tax Act*;

"*identification tag*" means a tag used to mark a corner of a claim and made of a substance and of a size approved by the Minister and issued as one of a set of four by the Mining Recorder;

"*lease*" means a lease of a recorded claim granted to the holder of the claim;

"*legal post*" means a post, tree, mound of earth or stone used for making a claim;

"*lessee*" means a person in whose name a lease of a claim is granted under these Regulations;

"*licence*" means a licence to prospect;

"*licensee*" means a person who holds a licence;

"*locate*" means to mark out a claim in accordance with these Regulations;

"*locator*" means a licensee who locates a claim or for whom a claim is located;

"*mine*" means any work or undertaking in which minerals or ore containing minerals are removed from the earth or from talus by any method, and includes works, mills, concentrators, machinery, plant and buildings below or above ground belonging to or used in connection with the mine;

"*mineral*" means precious and base metals and other naturally occurring substances that can be mined, but does not include

- a) coal, petroleum and related hydrocarbons, native sulphur, construction stone, carving stone, limestone, soapstone, marble, gypsum, shale, clay, sand, gravel, volcanic ash, earth, ochre, marl or peat, or
- b) any other substances regulated under the *Territorial Coal Regulations*, the *Territorial Dredging Regulations* or the *Territorial Quarrying Regulations*;

*“mineral claim staking sheet”* means

- a) a map of an area bounded on the north and south by 15-minute intervals of latitude and on the east and west by 30-minute intervals of longitude south of 68 degrees north latitude, or
- b) a map of an area bounded on the north and south by 15-minute intervals of latitude and on the east and west by one degree intervals of longitude north of 68 degrees north latitude;

*“mining district”* means an area established as a mining district pursuant to paragraph 23(g) of the Act;

*“mining property”* means

- a) a recorded claim or lease within the boundaries of which a mine is situated, or
- b) a group of contiguous recorded claims or leases, or both, within the boundaries of which a mine is situated,
  - (i) that are held by the same owner, or
  - (ii) where the mine is operated as a joint venture, that are held exclusively by the members of the joint venture or parties related thereto, regardless of the degree of ownership of each claim or lease;

*“Mining Recorder”* means a person designated as a mining recorder pursuant to Section 4;

*“Mining Royalty Valuer”* means a person designated by the Minister as a mining royalty valuer;

*“Minister”* means the Minister of Indian Affairs and Northern Development;

*“owner”*, in respect of a claim, lease, mine, mining property or abandoned mining work, means any person with a legal or beneficial interest therein;

*“permit”* means a permit to prospect issued under Section 29;

*“permittee”* means a person who holds a permit;

*“processing”* means

- a) crushing, grinding, floatation, beneficiation, concentrating, milling, roasting, smelting, leaching, recrystallisation or refining performed to recover minerals from ore or from a mineral-bearing substance, or
- b) where the output of a mine is precious or semi-precious stones, cleaning and sorting that output;

*“processing assets”* mean tailings disposal facilities and depreciable assets located in the Territories that are used directly and exclusively in processing;

*“qualifying environmental trust”* means a qualifying environmental trust, as defined in Subsection 248(1) of the *Income Tax Act*, that is created by a trust indenture approved by the Minister;

*“recorded claim”* means a claim recorded with the Mining Recorder in the manner prescribed by these Regulations;

*“reduced area tag”* means a tag used to mark a corner of a claim, the area of which has been reduced in accordance with Section 43, and made of a substance and of a size approved by the Minister and issued as one of a set of four by the Mining Recorder;

*“related”*, in respect of two or more persons, means that the persons are

- a) related persons within the meaning of Section 251 of the *Income Tax Act*, read without reference to paragraph 251(5)(b),
- b) associated corporations within the meaning of Section 256 of that Act, read without reference to Subsection 256(1.4),
- c) affiliated persons within the meaning of Section 251.1 of that Act, or

- d) other than for the purpose of paragraph 67.1(1)(b), owners or operators of the same mine;
- “representation work”* means work of a kind described in Subsection 38(1);
- “Supervising Mining Recorder”* means the person designated as Supervising Mining Recorder pursuant to Section 4;
- “surface holder”* means the lessee or registered holder of the surface rights to the land on which a mineral claim is or is proposed to be recorded;
- “Surveyor”* has the same meaning as “Canada Lands Surveyor” in the *Canada Lands Surveys Act*;
- “Surveyor General”* has the same meaning as in the *Canada Lands Surveys Act*;
- “territories”* mean the Northwest Territories and Nunavut; (*territories*)
- “undeducted balance”* means
- a) in respect of a depreciation allowance, the original cost of the depreciable assets in respect of which the depreciation allowance is claimed, less any depreciation allowances previously claimed in respect of those assets,
  - b) in respect of a development allowance, the unamortised balance of costs eligible for a development allowance under paragraph 65.1(1)(h), and
  - c) in respect of a qualifying environmental trust contribution allowance, the total of all contributions made to the qualifying environmental trust, less any deductions previously claimed;
- “year”*, for the purpose of representation work, means the period between the date of the recording of a claim and the anniversary date next following, and then from year to year.

For the purposes of these Regulations, a person who is related to another person is considered to be also related to any person to whom the other person is related.

### **3. OWNERSHIP RIGHTS & ADMINISTRATION/CONTROL**

- a) The federal government enjoys the same powers in respect of minerals on federal public lands. Moreover, the federal legislative powers over minerals are exclusive in the three federal territories and in the offshore. The Constitution also provides the federal government with certain powers that apply concurrently with provincial legislation over specific aspects of mineral activities, such as, inter-provincial and international trade. The federal government also has the power to declare a local work, such as, a mine, to be for the general advantage of Canada and thereby assume regulatory authority over such work.
- b) The Atomic Energy Control Act declares that all works and undertakings for the production, refinement or treatment of such substances are subject to the regulatory authority of the federal Canadian Nuclear Safety Commission. Approval from the Commission is necessary for the development, operation or commissioning of any uranium mining facility, but prospecting and exploration for uranium are not specifically controlled.
- c) The Chief shall designate a person to be Supervising Mining Recorder and may designate persons to be engineers of mines or claim inspectors. For each mining district, the Chief shall designate a person to be Mining Recorder and may designate a person to be Deputy Mining Recorder. All records of recorded claims and all documents filed in the office of a Mining Recorder relating to such claims shall, during office hours, be open to public inspection free of charge, and the Mining Recorder shall, on payment of the applicable fee as set out in Schedule I, issue copies of such records and documents to any person applying therefor.

- (i) no report on geological, geochemical, geophysical, diamond drilling or other investigation of a recorded mineral claim, and
  - (ii) no other report or document certified by the holder of a recorded mineral claim to be confidential, that is filed with a Mining Recorder as evidence of representation work on a mineral claim shall be open to public inspection for a period of three years from the date on which such report or document was filed or until the mineral claim to which it relates lapses, whichever is earlier.
- d) No copy of a report or document referred to in Subsection (2) shall, for the earlier period referred to in that Subsection, be issued to anyone except the holder of the mineral claim to which the report or document relates, except for the purposes of the administration or enforcement of these Regulations or legal proceedings related to such administration or enforcement.
- e) Every copy of, or extract from, an entry in any record kept by a Mining Recorder or any document filed in his office relating to a recorded claim certified by a Mining Recorder or Deputy Mining Recorder to be a true copy or extract thereof, shall be received in evidence in all proceedings relating to that claim without proof of the signature or of the official character of the person appearing to have signed the certificate and without proof of his official position.

Where a claim has been recorded under a claim name, a Mining Recorder may, on receipt of an application therefor in writing from the holder of the claim and upon payment of the applicable fee, change the name of the claim in his records.

#### **4. Concession for**

##### ***Prospecting***

***Eligibility*** : Any individual who is 18 years of age or older and any company that is registered with the Registrar of companies pursuant to the *Companies Ordinance* of the Territories, other than an individual or company who held a licence that was revoked within the previous 30 days, may apply for a licence.

***Application*** : An application for a licence or the renewal of a licence shall be made to the Mining Recorder and shall be accompanied by the fee that is appropriate to the licence.

- a) On receipt of an application for a licence and the applicable fee, the Mining Recorder shall issue to the applicant a receipt in respect of the fee paid shall complete a Prospector's Licence Record in Form 1 and issue to the applicant a licence in Form 2.
- b) On receipt of an application for the renewal of a licence and the applicable fee, the Mining Recorder shall issue to the licensee a receipt in respect of the fee paid; and enter the receipt number and the date of issue of the receipt in the licensee's Prospector Licence Record.
- c) A licence shall be valid from the date of its issue until March 31 following the date of its issue.
- d) Where a licence is renewed before its expiration date, it shall be valid for a period of one year from March 31 following the date of its renewal.

***Rights*** : No person, other than a licensee, shall prospect for minerals on territorial lands; make an application to record a claim; acquire any recorded claim or any interest in a recorded claim by transfer; submit an application for a certificate of work or a certificate of extension; or acquire a lease of a recorded claim. A licensee may enter, prospect for minerals and locate claims on lands other than lands to which the *National Parks Act* applies; used as a cemetery or burial ground; in respect of which a claim has been recorded and has not lapsed; with minerals which have been granted or leased by Her

Majesty; set apart and appropriated by the Governor in Council for a purpose set out in Section 23 of the Act; in which prospecting for minerals and locating a claim thereon is prohibited by order of the Governor in Council, subject to the terms and conditions contained in the order; under the administration and control of the Minister of National Defence, the Minister of Energy, Mines and Resources or the Minister of Transport, unless the consent of that Minister has been obtained in writing; or which has been granted or leased by Her Majesty, unless the grantee or lessee consents thereto or an order authorising entry thereon has been made; where a roadway, railway or other right-of-way is included in a recorded claim, the holder of the claim shall not have the right to enter on the right-of-way for the purpose of prospecting or development without the permission of the Mining Recorder for the district in which the claim is situated, and permission shall not be refused unless the holder has first been given the opportunity of being heard.

**Obligations :** No person shall locate a claim unless the person is 18 years of age or older.

- a) No licence is transferable.
- b) Every licence shall be numbered and stamped to indicate the office from which it was issued.
- c) If a licence is accidentally destroyed or lost, the licensee may, upon payment of the fee prescribed therefor in Schedule I, obtain a duplicate licence from the office from which the original licence was issued.
- d) Every duplicate licence issued shall be marked "duplicate licence".
- e) No person shall hold more than one licence at any time.
- f) Where a company changes its name or is amalgamated or reorganised under a new name, any licence issued to the company may be transferred to the company under its new name or to the amalgamated or reorganised company.
- g) Where a licensee is required to perform representation work or exploratory work, that work may be performed by any person authorised by the licensee.
- h) Any person may locate claims on behalf of a licensee.

**Revocation :** Where a licensee or any person acting on behalf of that licensee has wilfully contravened these Regulations, the Chief may, after giving the licensee an opportunity to be heard, revoke the licence of that licensee.

## **5. Size and Area of Mineral Claim**

Subject to these Regulations, a licensee or a person authorised by a licensee may, in accordance with Section 13, locate mineral claims, but no such claim shall exceed 2,582.5 acres.

A claim shall, as nearly as possible, be rectangular, except where a boundary of any lands is adopted as a common boundary. The length and width of a claim shall each, as nearly as possible, be 1,500 feet or a multiple thereof, but the length of a claim shall not exceed five times its width. Any land situated between two previously located claims that contains not more than 2,582.5 acres, may be located as a claim. A claim shall be measured horizontally and its boundaries shall extend vertically downward on all sides and shall, as nearly as possible, run north, south, east and west directions. Each corner of a claim shall be marked on the ground

## **6. Identification Tags**

- a) On payment of the applicable fee set out in Schedule I, a Mining Recorder shall issue to a licensee applying therefor identification tags for use in marking claims in any mining district.

- b) The Mining Recorder shall cancel in his records the serial numbers of the tags that have been lost and the lost tags shall not thereafter be used.

### **7. Removal or Alteration of Legal Posts**

No person shall move or destroy any legal post and no person shall remove, deface or alter any identification tag or other inscription placed on or in a legal post.

### **8. Recording/Application**

- a) Subject to these Regulations, every locator of a claim or a person acting on his behalf shall make application to record the claim with the Mining Recorder of the mining district within which the claim is situated within 60 days from the date of locating of the claim.
- b) An application to record a claim shall be submitted, in duplicate, in Form 3 which is to be accompanied by
- (i) a plan showing:
    - the position of the claim in relation to permanent topographical features in the vicinity of the claim,
    - any adjoining claims,
    - the position of the legal posts by which the claim is marked, and
    - where witness posts are used, the reasons for using such posts where the reasons are not obvious from the plan; and
  - (ii) the applicable fee.
- c) Where a Mining Recorder is satisfied that all the requirements of these Regulations have been complied with, he shall record the claim.
- d) The date on which the application and the fee are received in the office of the Mining Recorder shall be the date of recording of the claim.
- e) On recording a claim, the Mining Recorder shall endorse on the application the word "Recorded" and return one copy of the application to the person in whose name the claim is recorded at the address specified in the application.
- f) Where a claim has been located but has not been recorded the area within the claim or any part thereof may be located by or on behalf of another locator.

### **9. Permit to Prospect**

- a) The Territories shall be divided into prospecting permit areas, except for the area in the vicinity of the city of Yellowknife described as follows:
- commencing at a point of intersection of Latitude 60°00' and Longitude 107°00', thence, northerly to Latitude 65°00' and Longitude 107°00', thence, westerly to Latitude 65°00' and Longitude 120°00', thence, southerly to Latitude 60°00' and Longitude 120°00', thence, easterly to the point of commencement.
- b) A prospecting permit area shall be based on the National Topographic System as used by the Surveys and Mapping Branch, Department of Energy, Mines and Resources, and shall contain one-quarter the area of a mineral claim staking sheet and shall be designated as the N.E., S.E., N.W. or S.W. quarter.

## 10. Condition for Grant of Permit

- a) Every application for a permit shall be in Form 5 and shall be accompanied by the applicable fee, along with full particulars of the exploratory work proposed to be carried out; and a deposit for an amount equal to the amount the applicant is required to undertake to spend on work in the area during the first period.
- b) An application for a permit shall be made between December 1st and December 31st in any year.
- c) An application for a permit may be sent by mail or delivered by hand to the Chief.
- d) On receipt of applications for permits, the Chief shall assign numbers to the applications according to their order of receipt and, where he receives two or more applications at the same time, he shall assign numbers to the applications according to the order in which he opens them.

## 11. Application Fee

- a) A deposit shall be in the form of (i) cash; (ii) negotiable bonds of equal value at the date of submission guaranteed by the Government of Canada or a province; or (iii) a guaranteed promissory note of equal value that is payable on demand and that a chartered bank has agreed, in terms acceptable to the chief, to honour on presentation for payment.
- b) Where an application for a permit is not accepted, the fee and deposit shall be refunded to the applicant.
- c) Where an application for a permit is withdrawn by the applicant before the permit is issued, the deposit but not the fee shall be refunded to the applicant.

## 12. Rights and Obligations

- a) Where exploratory work of value will be undertaken in a prospecting permit area and the granting of a permit will not hinder other mining interests, the Chief may issue a permit, in Form 6 to an applicant for the exclusive right to prospect for minerals within that area.
- b) The granting of a permit in respect of any prospecting permit area is subject to any rights previously acquired or applied for by any person in the area to which the permit applies.
- c) Every permittee shall, before the commencement of the second or any subsequent work period, make a deposit with the Chief equal to the amount that he undertakes to spend during that period.
- d) Where a permittee does not make a deposit as required his permit shall be cancelled.
- e) Every permittee shall undertake to spend the following amounts on exploratory work of a type approved by the Chief in a prospecting permit area.
- f) North of the 68th parallel of north latitude.
  - (i) during the first two-year work period, an amount determined by multiplying the number of acres in the permit area by \$0.10; during the second two-year work period, an amount determined by multiplying the number of acres in the permit area by \$0.20; and during the third one-year work period, an amount determined by multiplying the number of acres in the permit area by \$0.40.
- g) South of the 68th parallel of north latitude
  - (i) during the first one-year work period, an amount determined by multiplying the number of acres in the permit area by \$0.10; during the second one-year work period, an amount determined by multiplying the number of acres in the permit area by \$0.20 and during the third one-year work period, an amount determined by multiplying the number of acres in the permit area by \$0.40.



- h) Every permittee shall, within 60 days after the termination of each work period, submit to the Chief
  - (i) a detailed statement of all expenditures; and
  - (ii) a report of the exploratory work performed under the permit setting out the information required for the type of work done.
- i) A permittee may apply in writing to the Chief to group not more than four prospecting permit areas that are within a circle having a radius of 20 miles. An application shall state the prospecting permit areas that are to be included in a group; and be accompanied by the applicable fee.

A prospecting permit area may be included in only one group between one anniversary date of the permit and the next following anniversary date.

### **13. Grouping**

- a) The holder or holders of adjacent recorded claims, the area of which in the aggregate does not exceed 5,165 acres, may apply in Form 7, to the Mining Recorder of the district in which the claims are located to group those claims for the purpose of applying representation work.
- b) On receipt of an application together with the applicable fee, a Mining Recorder shall, on satisfying himself that the requirements of this Section have been met, issue a grouping certificate to the holder or holders of the claims in Form 7.
- c) The representation work that has been done on a recorded claim and any exploratory work that has been performed under a permit in excess of the amount required and that has been applied on a recorded claim shall, at the request of the holder, be applied to any or all the claims with which the recorded claim has been grouped under a grouping certificate.

### **14. Representation Work**

For the purpose of these Regulations, the following undertakings in respect of a recorded claim denotes representation work:

- a) work done in stripping, drilling, trenching, sinking shafts and driving adits or drifts;
- b) geological, geochemical and geophysical investigations of a claim made on the ground or from an aircraft;
- c) exploratory work other than that described in paragraph (a) or (b), of a kind and to the extent approved by an engineer of mines;
- d) a survey of the claim approved by the Surveyor General; and
- e) work done in constructing roads or airstrips to provide access to the claim.

### **15. Period of Claim**

The holder of a recorded claim is entitled to hold it for a period of 10 years from the date the claim is recorded, if

- a) during the two-year period immediately following the date the claim is recorded, he does or undertake to do the representation work to the value of at least \$4 per acre or part thereof contained in the claim; and
- b) during each subsequent one-year period, he does or undertakes to do the representation work to the value of at least \$2 per acre or part thereof contained in the claim.

## 16. Reduced Area Claim/Surrender/Relinquishment

The holder of a recorded claim may, before the anniversary date of the recording of the claim, make application to the Mining Recorder to have the area of his claim reduced if

- a) he is a licensee; and
- b) a certificate of work has been issued for the claim.

## 17. Extension of Time to Perform Representation Work

Where, because of illness, the holder of a recorded claim is unable to do representation work on the claim as required by these Regulations, he may make application to the Mining Recorder for an extension of time to perform the representation work.

## 18. Inspection

- a) An engineer of mines or an authorised officer may, at any reasonable time,
  - (i) enter on any claim or mine site and inspect the claim or mine site or records or books of account kept therein and may take samples or specimens of minerals or ores;
  - (ii) require the operator of a mine to produce for inspection or for the purpose of obtaining copies thereof or extracts therefrom any records or books of account relating to the operation of the mine; and
  - (iii) require the holder of a recorded claim to provide him with copies of any plans, drill logs or reports of geological, geochemical, geophysical, engineering or other surveys relating to exploration, development or operation of the claim or any mine thereon.
- b) Information relating to exploration results not filed as representation work shall be kept confidential until such time as it has been released to the public by the holder of the recorded claim or until the claim or lease lapses or is cancelled, whichever is earlier.
- c) Every authorised officer shall be furnished with a certificate of authorisation and on entering any claim or mine site, or any premises or place shall, if so required, produce the certificate to the owner or persons in charge thereof.

## 19. Lapsing of Claims

- a) Where a recorded claim lapses or is cancelled, the holder of the claim at the time it lapses or is cancelled shall not
  - (i) relocate or have any interest in the claim or any part thereof, or
  - (ii) have the claim or any part thereof recorded in his name or in the name of any corporation controlled by him for a period of one year from the date that the claim lapsed or was cancelled.
- b) Except as otherwise provided in these Regulations, where a recorded claim lapses or is cancelled, the claim or any part thereof shall be open for relocation under these Regulations after 12 o'clock noon on the day following the first business day following the day that the claim lapsed or was cancelled.
  - (i) Where a recorded claim lapses or is cancelled, the holder of the claim may, if he is not under an obligation to pay any moneys to Her Majesty in respect of the claim, remove from the claim all his personal property, including any minerals or ore extracted from the claim, at any time within
    - 180 days from the date that the claim lapsed or was cancelled; or
    - such additional period, not exceeding one year, as the Mining Recorder may fix.

- c) Any property that is not removed from a recorded claim within the time referred to in that Subsection shall be deemed to be the property of Her Majesty.

## **20. Surrender of Claim**

- a) The holder of a recorded claim may, at any time, with the approval of the Supervising Mining Recorder surrender the claim for the purpose of relocating it by
- (i) filing with the Mining Recorder a notice of surrender in Form 12 of Schedule III; and
  - (ii) paying the applicable fee set out in Schedule I.
- b) Where a recorded claim is surrendered the date of surrender shall be the day following the day the notice of surrender is recorded by the Mining Recorder, unless a later day is specified in the notice. The claim may not be located by or on behalf of any person other than the person surrendering the claim for a period of seven days from the date of surrender. Where a recorded claim that is surrendered is relocated by the person surrendering the claim within the time the claim shall, for the purposes of these Regulations, be deemed to be the same as the claim surrendered except for the location of the boundaries thereof.

## **21. Disputes**

- a) In the case of a dispute as to entitlement to a claim, the person entitled to the claim shall be,
- (i) in the case of a claim recorded in accordance with the Act the person who first located the claim in accordance with the *Yukon Quartz Mining Act*, as that Act read before April 1, 2003, or under equivalent Yukon law regulating the disposition of quartz mining interests; and
  - (ii) in the case of any other claim, the person who first located the claim in accordance with these Regulations.
- b) In the case of a dispute as to entitlement to a claim, any irregularity that occurred before the date of the last certificate of work in respect of the claim shall not affect the title to the claim and unless fraud is proven the title shall be deemed to be valid up to the date of the last certificate of work.

## **22. Royalty/Dead Rent and Other Taxes**

There is no information in this regard.

## **23. Provisions Regarding Environment**

There is no information in this regard.

## **24. Legal Liabilities (Penalties)**

There is no information in this regard.

## **25. Provincial Enactment**

Provincial Enactment are dealt with separately.

## **26. Provisions Regarding Closure**

There is no information in this regard.

**CANADA (FEDERAL)—SOME SALIENT FEATURES AT A GLANCE**

| <b>Types of concession</b>  | <b>Salient features</b>   |
|---|---|
| <p><b>A) Prospecting Licence</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol> | <p>There is no mention of the provision regarding area.<br/>A licence shall be valid from the date of its issue until March 31 following the date of issue.</p> <p>PL can be renewed for a further period of one year.</p> <p>An application for licence or the renewal of a licence shall be made to the mining recorder and shall be accompanied by the fee that is appropriate to the licence.</p>   |
| <p><b>B) Mineral Claim</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol>       | <p>2582.5 acres.</p> <p>The holder of a recorded claim is entitled to hold it for a period of 10 years.</p> <p>There is no mention of the provision regarding area of mineral claim.</p> <p>Every locator of a claim or a person acting on his behalf shall make application to record the claim with the Mining Recorder of the mining district within which the claim is situated within 60 days from the date of the locating of the claim.</p>  |
| <p><b>C) Permit to Prospect</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol>  | <p>A prospecting permit area shall be based on the National Topographic System as used by the Surveys and Mapping Branch, Department of Energy, Mines and Resources and shall contain one quarter of the area of a mineral claim staking sheet and shall be designated as the NE., SE., NW or SW quarter</p> <p>There is no mention of the provision regarding the period.<br/>There is no mention of the provision regarding the period.</p> <p>Application for permit shall be in Form 5 accompanied by the applicable fee with full particulars of the exploratory work prepared to be carried out and a deposit for an amount equal to the amount the applicant is required to undertake to spend on work in the area during the first period and made between December 1<sup>st</sup> and December 31<sup>st</sup> in any year and sent by mail or delivered by hand to the Chief.</p> |

**SALIENT GENERAL FEATURES**

|                        |   |   |
|------------------------|---|---|
| <i>Capital</i>         | : | <i>Jakarta</i>  |
| <i>Population</i>      | : | <i>245 million (2006 est.)</i>  |
| <i>Area</i>            | : | <i>1,919,440 sq. km</i>   |
| <i>Currency</i>        | : | <i>Rupiah (\$1 = 9,782)</i>   |
| <i>GDP(per capita)</i> | : | <i>\$ 3,600</i>   |
| <i>Language</i>        | : | <i>Bahasa Indonesia is the official language. Dutch, English, Javanese and other Austronesian languages are also spoken in Indonesia.</i> |

The Republic of Indonesia consisting of about 13,500 islands extends some 5,150 km along the equator in the Indian and Pacific Oceans. Indonesia is endowed with substantial resources of copper, gold, nickel, tin, iron ore, bauxite, coal, etc. Mining industry contributes substantially to the overall growth of Indonesian economy. The mineral production mainly includes, tin, copper, nickel, gold, silver, bauxite, iron ore, coal and oil & natural gas.

Indonesia is one of the countries in Asia which has opened up its mining sector to private initiative, both domestic and foreign. As a result of this, most of the mineral resources are under exploitation by a number of multinational companies.

**MINING LEGISLATIVE FRAMEWORK**

The legislations relating to mineral mining and mineral concessions in Indonesia are governed by *'The Basic Provisions of Mining' (Law No.11 of 1967)* and regulations thereunder, mainly the Govt. Regulation No. 32 of 1969 on the said Basic Provisions of Mining.

**1. Purpose**

- a) The declared purpose of the Law No.11 of 1967 (hereinafter called the Law) under consideration here is to revoke the earlier Law No. 37 of 1960 on Mining and to replace it with a new Basic Mining Law which is more consistent with the prevailing circumstances within the framework of developing mining operations in Indonesia now and in the future. The Basic Mining Law aims at speeding up the realisation of national economic development which may in turn lead to a just and prosperous society physically and spiritually based on the Pantjasila and to infuse necessary impetus to mobilise funds and forces to process and develop the entire economic potential into real economic potency.
  - b) The purpose of the Govt. Regulation No. 32 of 1969 (hereinafter called the 'Reg.')
- is to provide a basis for the exploitation of mineral resources within the mining jurisdictional territory of Indonesia. It seeks to adjust statutory regulations on mining operations which are still effective (viz. Mining Ordinance, State Gazette 1930 No., 38), to the spirit and objectives of the Constitution and the Basic Mining Law. It also seeks to lay down Regulation on the implementation of the Basic Mining Law in conformity with the basic policy of the State concerning the Economy, Finance and Development as also the current technical progress.

## 2. Definition

The related definitions of the Basic Mining Law are as follows:

- a) *minerals*: chemical elements, minerals, ores and all kinds of rocks, including precious stones which constitute natural deposits.
- b) *surface right*: title to a piece of land according to Indonesian law.
- c) *general survey*: a general geological or geophysical survey on land, in water, and from the air, entirely for the purpose of drawing a general geological map, or with the purpose of assessing the indication of the presence of minerals in general.
- d) *exploration*: all geological and mining investigations in order to assess more accurately the occurrence and nature of minerals.
- e) *exploitation*: mining operation with the purpose of producing and utilising minerals.
- f) *processing*: the work of improving the quality of minerals and refining as well as utilising and obtaining the elements in minerals.
- g) *transportation*: all activities to move minerals and the products of the processed and refined minerals from the areas of exploration, or from the places of processing and refining.
- h) *sales*: all activities enabling marketing of minerals and the products of the processed and refined minerals.
- i) *mining authorisation*: authority granted to an agency or individual to conduct mining operations.
- j) *Minister*: the minister whose tasks cover mining affairs.
- k) *Indonesian Mining*: the entire Indonesian archipelago, the land below jurisdiction the Indonesian waters and the continental shelf of the Indonesian archipelago.
- l) *State Enterprise*:
  - (i) the State Enterprise as referred to in the current Law on State Enterprises.
  - (ii) a corporate body whose capital originates from the State.
- m) *Regional Enterprise*: Enterprise as referred to in the current Law on Regional Enterprises.
- n) *people's mining*: activities to mine minerals of all groups other than strategic & vital minerals conducted by the local people in a small scale or in mutual cooperation using simple equipment, for their own living.

## 3. Ownership Rights & Administrative Control

### a) Ownership & Control

- (i) All minerals found within the Indonesian mining jurisdiction in the form of natural deposits as blessings of God Almighty are national wealth of the Indonesian people and shall, therefore, be controlled & utilised by the state for the maximum welfare of the people.
- (ii) The administration, supervision of the mining activities and the supervision of the mining products are centralised with the Minister and further regulated by Government Regulation. The supervision referred above mainly involves labour safety, the supervision of the production and other activities in mining related with the public interest.

### b) Concession System

Various types of mineral concessions are granted depending upon (i) mineral grouping, i.e., classification of the mineral concerned; (ii) the ownership in the mining enterprise, and (iii) the type of mining activity.

### **c) Minerals Classification**

The minerals are classified into three groups—Strategic minerals, vital minerals, and other minerals not included in the first two groups.

The mining for minerals may include:

- (i) General survey
- (ii) Exploration
- (iii) Exploitation
- (iv) Processing & refining
- (v) Transportation, and
- (vi) Sales

### **d) Mining Enterprises**

The mining enterprises are classified into the following:

Mining can be conducted by :

- (i) Government Agency appointed by the Minister.
- (ii) a State Enterprise.
- (iii) a Regional Enterprise.
- (iv) an Enterprise with joint capital between the State and the Region.
- (v) a Cooperative body.
- (vi) a private corporate body established in accordance with Indonesian Regulations and having domicile in Indonesia with members of its Board being Indonesian citizenship residing in Indonesia.
- (vii) individuals having Indonesian citizenship and residing in Indonesia.
- (viii) an Enterprise with joint capital between the State and/or the Region and a cooperative and/or private corporate body established in accordance with Indonesian regulations and having domicile in Indonesia body /individuals, having Indonesian citizenship and residing in Indonesia.
- (ix) by way of People's Mining.

### **e) Mineral Authorisation**

Besides People's Mining Permits which are small in scale and have a limited area, Mineral Concessions (called *Mining Authorisation*) are granted separately for the above mentioned activities.

Mining Authorisation may be :

- A Mining Authorisation for General Survey;
- A Mining Authorisation for Exploration;
- A Mining Authorisation for Exploitation;
- A Mining Authorisation for Processing & Refining;
- A Mining Authorisation for Transportation;
- A Mining Authorisation for Sales.

A Mining Authorisation granted to a Govt. Agency to conduct mining is called *Mining Assignment*.

### f) Mining Operations

The State control and regulation of mining operations in respect of strategic and vital minerals is exercised by the Minister, and in case of other minerals, by the Regional Govt. (called the Govt. of the Region of the First Level) in whose territory the minerals occur.

- (i) However, the Minister may delegate powers or regulation of mining operations of certain vital minerals to the Regional Govt. in the interest of development of Regions in particular & State in general.
- (ii) Mining operations for strategic minerals are conducted by a Govt. Agency appointed by the Minister or a State Enterprise. However, a private body may be authorised to carry out mining in the interest of overall development & profitability. Strategic small deposits can be mined by way of People's Mining.
- (iii) Mining operations in respect of vital minerals may be carried out by the State Agencies, private bodies or qualified individual.
  - The Minister may, if necessary, appoint any other party as contractor to carry out activities which have not yet been or cannot be carried out by a Government agency or State enterprise.
  - In concluding an agreement with the contractor as referred above, the Government agency or the State enterprise shall follow the guidance, instructions and conditions set by the Minister.
  - The said agreement referred above shall be effective after being approved by the Government following its consultation with the People's House of Representatives if it concerns the exploitation of minerals of a group or minerals to be exclusively mined by the State, as well as the way in which the operations thereof shall be conducted and/or if such agreement concerns foreign capital investment.
  - Mining Authorisation for carrying out the mining of vital minerals can be granted to a cooperative or a private corporate body.
- (iv) Transfer : A Mining Authorisation may be transferred to any other enterprise or individual, with the consent of the Minister.

## 4. Concessions for Reconnaissance, Prospecting and Exploitation

- a) As per the Basic Mining Law, mining also comprises the stages of processing & refining, transportation and sales in addition to the usual stages of reconnaissance (here called *general survey*), prospecting (called *exploration*) and exploitation.
- b) Concessions (called 'Mining Authorisation') are separate for each of the six stages of mining. In addition, concessions called Mining Assignment and People's Mining also exist

Mining operations can be carried out only on grant of a Mining Authorisation. The holder of Mining Authorisation has authority to conduct mining for one or more minerals mentioned in the relevant Mining Authorisation.

### Procedure

- a) A Mining Authorisation is granted by decision of the Minister who may stipulate special provisions in addition to stipulations contained in the Regulations.
- b) Applications for Mining Authorisation shall be in the form laid down by the Minister with conditions, such as, (i) application shall be separate for each area (ii) separated field will not be



considered as one Mining Authorisation Area. (iii) A map showing the explicit boundaries shall accompany application for Mining Authorisation for General Survey, (iv) Mining Authorisation for Exploration and Exploitation shall also state the type of mineral to be exploited.

- c) To assure the implementation of relevant mining activities, the Minister is authorised to request, and assess the evidence of the ability and compatibility of the relevant application for Mining Authorisation. In case of several applications for exploration/exploitation for an identical area, earlier applications will be considered first. However, a cooperative body will have priority.

### ***Mining Authorisation for General Survey***

A Mining Authorisation to conduct a General Survey (reconnaissance) is called a General Survey Mining Authorisation.

- a) ***Period and Renewal*** : A Mining Authorisation for General Survey is granted by the Minister for maximum period of 1 (one) year at the request of the relevant party. The Minister may extend the period referred above for an additional period of 1 (one) year at the request of the relevant party, provided that such request is presented prior to the expiration of the current period.

The holder of a Mining Authorisation for General Survey who has submitted an application for a Mining Authorisation for Exploration prior to the expiration of his Mining Authorisation for General Survey, but has not received a decision thereto, is permitted, pending the issuance of the said decision, to continue the general survey in the area for which an application for a Mining Authorisation for Exploration has been submitted, for a maximum period of 1 (one) more year, within which the Minister shall have issued a decision of acceptance or rejection of the said application.

- b) ***Area*** : The size of the area granted under one Mining Authorisation for General Survey shall not exceed 5,000 hectares. The total acreage of several Mining Authorisation for General Surveys granted to a body or an individual shall not exceed 25,000 hectares of the mining jurisdiction of Indonesia. To acquire area in excess of the above limits, the applicant has to first acquire permission from the Minister.

- c) ***Rights and Obligations*** : (i) The holder of a Mining Authorisation for General Survey discovering minerals in his Mining Authorisation area shall have first priority to acquire Mining Authorisation for Exploration for the same minerals.

(ii) For acquiring priority/exclusive rights, the holder of a Mining Authorisation for General Survey should have submitted his application for a Mining Authorisation for Exploration prior to the expiration of the term of his Mining Authorisation for General Survey.

(iii) In case of total or partial stoppage of work in the area of General Survey due to unforeseen emergency, the Minister on therequest of the holder of Mining Authorisation, shall determine the moratorium to be taken into account in establishing the term of the Mining Authorisation. During moratorium, the rights and obligation shall be suspended. Decision on the moratorium and resumption of Mining Authorisation, shall be taken by the Minister in consultation with the Governor/Regional Chief of the Province concerning the emergency. The Minister shall issue a decision on his acceptance or rejection of the request for moratorium within 6 months.

(iv) The holder of a Mining Authorisation for General Survey shall send reports on the result of his survey once in every 3 months as well as on the result of his entire general survey to the Minister within 3 months from the expiration of the term of the survey.

(v) Activities based on Mining Authorisation shall not disturb existing Peoples' Mining unless the Minister decides otherwise .

(vi) In the matter of construction of infrastructure, provisions in this case are identical with those for Mining Authorisation for Exploitation.

(vii & viii) Provisions on Rights & Obligation relating to surface rights and first priority in acquiring Mining Authorisation on discovery of a mineral are similar to those for compensation for surface Rights and are discussed under the head 'miscellaneous'.

**d) Surrender & Termination :** (i) The Mining Authorisation terminates in the event of it being returned/or by cancellation, or due to expiry of its term.

(ii) The return of Mining Authorisation shall be deemed valid if not approved within 6 (six) months by the Minister.

(iii) Minister may cancel the Mining Authorisation for non-fulfilment of Govt. Regulations or in the interest of the State.

(iv) If the term stipulated for a Mining Authorisation elapses without being extended, it expires IPSO Jure.

(v) When the Mining Authorisation terminates for the above reasons, the area, the mining installations, etc. become State's property.

(vi) Notwithstanding the above stipulations, in case of cancellation of Mining Authorisation in the interest of State, the holder is entitled to appropriate compensation.

(vii) If, within the period determined at the issuance of a Mining Authorisation, no application is submitted for other Mining Authorisations or for extensions as referred to in Government Regulation, then, the relevant Mining Authorisation expires by the lapse of its term and all mining operations shall be terminated.

(viii) The holder of a Mining Authorisation is obligated to return portions of the area of his Mining Authorisation if they are no longer needed, and the procedure for the return shall be stipulated in the relevant Mining Authorisation.

(ix) The Minister shall decide the period within which the holder of the respective Mining Authorisation shall be given final opportunity to remove their property with the exception of the objects and premises used in the public interest during the term of Mining Authorisation. All that has not been removed after the lapse of the said period shall become the property of the State.

(x) In case the Minister does not determine the period mentioned above, then all that has not been removed within 6 months, following the expiration of Mining Authorisation for General Survey, becomes the property of the State.

(xi) In case assets referred above cannot be used for public interest and cannot be removed, the Minister may grant special permission for the transfer of the ownership of the assets to another party.

(xii) Before leaving his former area of Mining Authorisation, the holder shall take measure to safeguard objects and structure and grounds against deterioration so that they do not jeopardise public safety.

(xiii) The Minister may lay down arrangements for the above prior to abandoning the former area of Mining Authorisation.

- e) **Transfer** : (i) A Mining Authorisation may be transferred to another body/person with the permission of the Minister.
- (ii) The permission of the Minister may be granted only if the receiving party of the relevant Mining Authorisation complies with the requirements stipulated in this Basic Mining Law and its implementing regulation.
- (iii) If the individual holder of a Mining Authorisation dies, his heirs cannot comply with the requirements referred above. In such cases, with the permission of the Minister, the relevant Mining Authorisation may be transferred to another body or person who fulfils the requirements.
- (iv) In transferring a Mining Authorisation, an assessment of the capital, the business outfit and operational services already invested or expended for the realisation of the Mining Authorisation in question, may be calculated for the establishment of the transfer value.

### **Mining Authorisation for Exploration**

A Mining Authorisation to conduct exploration is called a Mining Authorisation for Exploration.

- a) **Period and Renewal** : A Mining Authorisation for Exploration is granted by the Minister for a maximum period of 3 years, at the request of the relevant party, which may further be extended twice, each time for a period of 1 year. In case the holder of a Mining Authorisation for Exploration has declared that he will proceed with exploitation, the Minister may at the request of the relevant party grant an extension of the term of the Mining Authorisation for Exploration for a maximum period of 3 more years for construction of exploitation facilities.
- b) **Area** : The size of the area granted under one Mining Authorisation for exploration shall not exceed 2,000 hectares. The total acreage for several Mining Authorisations for Exploration granted to a body or an individual shall not exceed 10,000 hectares of the mining jurisdiction of Indonesia.

To acquire area in excess of the above limits, the applicant has to obtain prior special permission of the Minister.

- c) **Rights and Obligations** : (i) The holder of a Mining Authorisation for Exploration having shown good results from his exploration for minerals covered by his Mining Authorisation shall have the sole right for the acquisition of Mining Authorisation to exploit the minerals in question.

If the holder of a Mining Authorisation for Exploration discovers minerals other than those stated in his Mining Authorisation, he is given the first priority to acquire a Mining Authorisation for Exploration and/or Exploitation of the relevant minerals.

(ii) For acquiring priority/exclusive rights for exploitation, the holder of a Mining Authorisation for Exploration should have submitted his application for a Mining Authorisation for Exploitation prior to the expiration of the term of his Mining Authorisation for Exploration.

(iii) The holder of a Mining Authorisation for Exploration has the right to carry out all operations to ascertain the grade, nature and value of the minerals by utilising the best mining equipment and techniques.

(iv) The holder of a Mining Authorisation for Exploration has the right of ownership over minerals mined in conformity with his Mining Authorisation for Exploration, having fulfilled the provisions on land rent and royalties.

(v) The transportation and the sales of exploration products may not be effectuated only until a Mining Authorisation for Transportation and for Sales or a special permit from the Minister is obtained.

(vi) In case of total or partial stoppage of Mining Authorisation for Exploration due to unforeseen emergency, the Minister, at the request of the holder determines the moratorium, in establishing the term of the Mining Authorisation. Rights & obligations of the holder shall remain suspended during moratorium. The Minister shall issue his decision on the moratorium within a period of 6 months.

(vii) The holder of Mining Authorisation for Exploration shall send periodical report on the result of Exploration once every 3 months, to the Minister. The holder is also obliged to forward a report on the result of his entire exploration, latest by 6 months after the expiration of Mining Authorisation to the Minister.

(viii) The holder of Mining Authorisation for Exploration shall indicate the boundaries of the area covered by his Mining Authorisation within 6 months after the acquisition of a Mining Authorisation.

(ix) Activities under Mining Authorisation may not disturb the existing Peoples' Mining, unless the Minister decides otherwise in the interest of the State.

(x) In the matter of construction of infrastructure provisions in this case are identical with those for Mining Authorisation for Exploitation.

(xi & xii) Provisions on Rights & obligation relating to surface rights and First Priority in acquiring Mining Authorisation on discovery of a mineral are similar to those for compensation for surface Rights and are discussed under the head 'Miscellaneous'.

- d) **Surrender & Termination** : (i) Provisions relating to termination of Mining Authorisation for General Survey are applicable in case of surrender/termination of Mining Authorisation for Exploration also.
- (ii) A Mining Authorisation for Exploration may be cancelled by the Minister, if
- there is failure to commence work within 6 months from the issuance of Mining Authorisation or
  - at the request of the Land owner or a third party, if commencement of work began before payment of compensation or assurances thereof.
- (iii) Portions of the Mining Authorisation area not necessary shall be returned by the holder as per stipulation in the relevant Mining Authorisation.
- e) **Return of Mining Authorisation** : The return of Mining Authorisation for Exploration, Exploitation and Processing, Refining and Transportation shall be accompanied with Completion Report as stipulated.
- f) **Transfer** : Provisions relating to transfer are similar to those discussed under Mining Authorisation.

### ***Mining Authorisation for Exploitation***

A Mining Authorisation to conduct exploitation is called Mining Authorisation for Exploitation.

- a) **Period and Renewal** : A Mining Authorisation for Exploitation is granted by the Minister for a maximum period of 30 years at the request of the relevant party. The Minister may extend the period by as many as 2 times, each time for a period of 10 years at the request of the relevant party. Such request is to be presented prior to the expiration of the current period. Extension of Mining Authorisation for Exploration for a maximum period of 2 years may be granted at the discretion of the Minister, if the application for extension has been made prior to the expiration of Mining Authorisation for Exploration.

b) **Area** : The size of the area granted under one Mining Authorisation for Exploitation shall not exceed 1,000 hectares. The total acreage for several Mining Authorisation for Exploitation granted to a body or an individual shall not exceed 5,000 hectares of the mining jurisdiction of Indonesia.

Area in excess of the above limit may be granted with prior approval of the Minister.

c) **Rights & Obligations** : (i) If the holder of a Mining Authorisation for Exploitation discovers minerals other than those stated in his Mining Authorisation, he is given the first priority to acquire a Mining Authorisation for Exploration and/or Exploitation of the relevant minerals.

(ii) For acquiring the said priority/exclusive right, the holder of a Mining Authorisation for Exploitation should have submitted his application for a Mining Authorisation for Exploitation of the other minerals in question prior to the expiration of the term of his Mining Authority for Exploitation.

(iii) Holder of a Mining Authorisation for Exploitation shall submit mining operational plan & target of production to the Minister. He has the right in conformity with the relevant provisions to operate a mine to produce minerals. The right does not concurrently include Mining Authorisation for Processing, Refining, Transportation and Sales. For this an application for the respective fields of operation would have to be made.

(iv) On discovery of other minerals in the relevant deposits the holder shall be granted priority to acquire Mining Authorisation for these minerals, with due regard to Basic Mining Laws and its implementing regulations notwithstanding the obligations to acquire permits. According to other prevailing regulations, the holder of Mining Authorisation may be given priority by the Minister to obtain Mining Authorisation for processing, refining, transportation and sale of minerals and other products.

(v) In case of partial or total stoppage of work due to emergency, the Minister at the request of the holder may grant moratorium within a period of 6 months at the latest after the presentation of the said request. During moratorium rights & obligations of the holder shall be suspended.

(vi) The holder of Mining Authorisation for Exploration shall send progress report once every 3 months and annual reports periodically to the Minister. Mining should not disturb the existing People's Mining unless the Minister decides otherwise in the State's Interest. In the last 3 years of the term of Mining Authorisation, the Minister will exercise Special Control. During this period the holder is obliged to follow special directives. The holder of Mining Authorisation will have priority in construction of infrastructure for conduct of Mining operations, which will be in accordance with the requirements of the Govt. agency. When various types of Mining Authorisations have a common interest in construction of infrastructure they must do so in mutual consultation. In case of disagreement, the Minister will decide the matter.

(vii) Provisions relating to Rights & Obligations on surface rights and first priority in acquiring Mining Authorisation on discovery of minerals are similar to those for "compensation for surface rights" and are discussed under the head 'Miscellaneous'.

d) **Surrender & Termination** : (i) Provisions relating to termination of Mining Authorisation for General Survey are applicable in case of surrender/termination of Mining Authorisation for exploitation also.

(ii) The Minister may cancel a Mining Authorisation for exploitation by giving 6 month prior notice if:

- no preparatory work has been started within 6 months from the issuance of Mining Authorisation.
- exploitation has not commenced within 1 year after issuance of the Mining Authorisation.
- at the request of the land owner or third party, there is commencement of work before the payment of compensation or assurance thereof as per the Basic Mining Law.
- the holder has abandoned the operation for more than 6 months without notifying the Minister.

(iii) Cancellation of Mining Authorisation for exploitation shall be effected only after giving the holder an opportunity to defend himself. The holder shall present the difference of interest within 3 months from the notice by the Minister his intention to cancel the authorisation in question.

(iv) The holder of a Mining Authorisation shall return portions of the area no longer needed by him as per the procedure stipulated in the relevant Mining Authorisation.

(v) Within a period of 1 year, the Minister shall determine the period within which the holder shall remove the property left behind by him. All that has not been removed becomes the property of the State. In case the Minister does not determine the period, then 2 years following the expiry of Mining Authorisation for exploitation, all that has been left behind becomes the property of the State. In case the assets left behind cannot be used in the public interest, the Minister may grant special permission for transfer of the ownership to another party. The holder of the Mining Authorisation shall take measures to safeguard the objects & structures and conditions of neighbouring grounds against deterioration which might jeopardize public safety before leaving the area. The Minister may lay down arrangements for the above purposes.

- e) **Transfer** : Provisions relating to transfer in case of Mining Authorisation for Exploration are applicable in case of transfer of Mining Authorisation for Exploitation also.

### ***Mining Authorisation for Processing and Refining***

A Mining Authorisation to conduct processing and refining is called a Mining Authorisation for Processing and Refining. Anybody/person obtaining minerals from a holder of a Mining Authorisation for exploration/exploitation, may also be granted Mining Authorisation for processing and refining.

- a) **Period & Renewal** : A Mining Authorisation for Processing and Refining is granted by the Minister for a maximum period of 30 years, at the request of the party, which may be extended each time for a period of 10 years at the request of the party, prior to the expiration of the current period.

If the holder has not received a decision on his request for extension, he may continue processing & refining for a maximum period of 2 years, within which Minister shall have issued his decision.

- b) **Rights & Obligations** : The holders of Mining Authorisation for Processing and Refining are obliged to forward reports on the progress of their activities to the Minister periodically once every 3 months, besides annual reports on the progress of their activities, to the Minister.
- c) **Surrender & Termination** : (i) Provisions relating to termination of Mining Authorisation for General Survey are applicable in case of surrender/termination of Mining Authorisation for Processing & Refining.

(ii) Mining Authorisation for Processing and Refining, for Transportation, and for Sales shall be cancelled by the Minister in cases stated hereunder:

- If the Mining Authorisation fails to fulfil the requirements stipulated in the decision while grant of the relevant Mining Authorisation, or
- Failure to observe the directives given by the Minister which do not meet his obligations toward the State.

(iii) The return of Mining Authorisation for Processing and Refining/for Transportation and for Sales shall be accompanied with periodical reports on the progress of the activities once every 3 months, as well as annual reports to the Minister.

d) **Transfer** : Provisions relating to transfer of Mining Authorisation for General Survey are applicable in case of transfer of Mining Authorisation for Processing and Refining also.

### ***Mining Authorisation for Transportation and Mining Authorisation for Sales***

A Mining Authorisation to conduct transportation is called a Mining Authorisation for Transportation.

A Mining Authorisation to conduct sales is called a Mining Authorisation for Sales.

a) **Period and Renewal** : The transportation and the sales of exploration products may not be effectuated until a Mining Authorisation for Transportation and for Sales or a special permit from the Minister is obtained.

(i) A Mining Authorisation for Transportation and a Mining Authorisation for Sales are granted by the Minister for a maximum period of 10 years, which may be extended each time by 5 years, at the request of the party by the Minister.

(ii) The holder of the Mining Authorisation who has applied for extension of his Authorisation for Transportation & Sales prior to the expiration of his Mining Authorisation, but has not received the Minister's decision, is permitted, pending the decision, to continue transportation and sales for a maximum period of 1 more year.

b) **Rights & Obligations** : The holder of Mining Authorisation for Transportation and for Sales are obliged to forward progress reports on their activities periodically once every 3 months, besides annual reports to the Minister.

c) **Surrender & Termination** : (i) Provisions relating to termination of Mining Authorisation for General Survey are applicable in case of surrender/termination of Mining Authorisation for Transportation & Mining Authorisation for Sales.

(ii) The return of Mining Authorisation for Processing and Refining/for Transportation and for Sales shall be accompanied with periodical reports on the progress of the activities once every 3 months, as well as annual reports to the Minister.

d) **Transfer** : Provisions relating to transfer of Mining Authorisation for General Survey are applicable in case of transfer of Mining Authorisation for Transportation and Mining Authorisation for Sales also.

### ***Mining Assignment***

a) The decision for Mining Assignment is a Mining Authorisation granted by the Minister to a Government agency to conduct mining.

b) The decision for Mining Assignment which constitutes an assignment to a Government agency to conduct mining shall incorporate implementing provisions on the assignment. If it is deemed necessary,

in the assignment referred above, dispensations may be granted for obligation stipulated in the Basic Mining Law and its implementing regulations.

- c) If in the assignment referred above no provisions are made on the said dispensations, then the provisions on Mining Authorisation in the Government Regulation shall be effective in full.
- d) The assignment may be cancelled if
  - (i) the relevant operations are, by declaration of the Minister, converted into a mining enterprise for which a decision for granting of a Mining Authorisation is required.
  - (ii) the relevant operations are discontinued.

### ***People's Mining***

- a) The objective of People's Mining is to give local population opportunity to exploit minerals in their efforts to participate in the development of the State in the field of mining under the guidance of the Government.
- b) People's Mining can only be carried out by the local people. The decision of People's Mining Permit is a Mining Authorisation granted by the Minister to the local people to conduct mining on a small scale in a very limited area.
- c) Provisions on People's Mining and the methods and conditions of obtaining a Mining Authorisation (permit) for People's Mining are regulated by Government Regulation.
- d) The Application for a People's Mining Permit to conduct mining operations referred above shall be submitted to the Minister by stating :
  - (i) The intended area of operation;
  - (ii) The type of mineral to be exploited.
- e) The Minister may delegate the issuance of People's Mining Permit to the relevant Governor, Head of the Province thereby stipulating the requirements and directives required to be observed while issuing the permit.

In such cases referred above, the application for a People's Mining Permit shall be submitted to the relevant Governor, Head of the Province.

**Period :** The People's Mining Permit shall be granted for a maximum period of 5 years and may, if necessary, be extended for an identical period.

**Area :** The size of the area that may be granted for People's Mining Permit shall not exceed 5 hectares.

In carrying out mining activities based on a Mining Authorisation, the existing People's Mining may not be disturbed, unless the Minister decides otherwise in the interest of the State.

### ***Regional Mining Licence***

- a) The implementation of the arrangements of mining for minerals which do not fall under the category of the vital or the strategic minerals and which fall within the competence of the Provincial Government where those minerals as referred to in the Basic Mining Law occur, shall be guided by the provisions laid down by the Minister on the procedure for the issuance of Mining Authorisation.
- b) A Mining Authorisation issued by the Provincial Government to conduct mining operations referred above are designated as Provincial Mining Licence.
  - (i) In case an area which is considered for a Provincial licence is situated partially or wholly in the area of a Mining Authorisation granted by the Minister, prior to issuance of the Provincial Mining



Licence, the relevant Provincial Government shall first hear the opinion of the holder of the relevant Mining Authorisation which shall constitute a special condition to be included in the Provincial Mining Licence and observed by the holder of the relevant Mining Authorisation.

- (ii) After granting the Provincial Mining Licence the relevant Provincial Government is obliged to submit a written report to the Minister.
- (iii) In addition, once in every 6 months, the relevant Provincial Government is obliged to submit a written report to the Minister on the progress of the operations, and the production under all Provincial Mining Licenses in the relevant Province.

## 5. Royalty, Dead Rent & Other Taxes

- a) The holder of a Mining Authorisation is due to pay to the State land rent, royalties for exploration and/or exploitation and/or other payments related to the Mining Authorisation concerned. The State levies referred above are further regulated by Government Regulations.
- b) The Government of the Regions of the First and the Second Rank are entitled to receive a portion of such State revenues, the provisions of which are regulated by Government Regulations.
- c) In the Government Regulation what is referred to as :
  - (i) "*Land rent*", means a levy owing to the State by way of a quid pro quo for allowing the opportunity to conduct general survey, exploration or exploitation in an area of Mining Authorisation.
  - (ii) "*Royalties for exploration*" means a production levy owed to the State if the holder of a Mining Authorisation for Exploration gains result in the form of minerals that is due by way of quid pro quo for the opportunity allowed to the holder for exploration.
  - (iii) "*Royalties for Exploitation*" means a production levy owed to the State for the production gained from the exploitation of one or more minerals.
- d) The holder of Mining Authorisation for General Survey is obliged to pay an annual land rent for each hectare of the area of Mining Authorisation.
- e) Payment of the land rent is to be made at the beginning of each year or at the beginning of a fixed period due for payment.
- f) The holder of a Mining Authorisation for exploration is obliged to pay an annual land rent for each hectare of his area of Mining Authorisation.
- g) Payment of the land rent is to be made at the beginning of each year or at the beginning of a fixed period due for payment.
- h) The holder of a Mining Authorisation for Exploitation shall pay an annual land rent for each hectare of his area of Mining Authorisation.
- i) Payment of land rent is to be made at the beginning of each year or at the beginning of a fixed period due for payment.
- j) The holder of a Mining Authorisation for Exploration is obliged to pay royalties for exploration from sales of his products mined during the exploration.
- k) The royalties for exploration referred to above shall be determined on the basis of fixed rates according to the production of the relevant mines.
- l) During the period of assessment and construction lasting from the end of the exploration period until the start of the exploitation period the holder of the relevant Mining Authorisation shall be subjected to levies applicable for the exploration period.

- m) The holder of a Mining Authorisation for Exploitation is obliged to pay royalties for exploitation, for the products gained from his area of Mining Authorisation.
- n) The royalties for exploitation is to be determined on the basis of fixed rates according to the production from the relevant mines.
- o) In case mining operations are performed under a working contract, then the payment referred in the relevant Government Regulation shall be made by the relevant contractor.
- p) All payment of levies referred above constitutes cost elements.
- q) The Minister, after hearing the opinion of the Minister of Finance, shall make regulation concerning the amounts of levies and the procedures for the collection of land rent, royalties for exploration and for exploitation as stated above.
- r) The Minister is obliged to report to the Government on the implementation of the regulation referred above.
- s) In conformity with the Basic Mining Law, the Provinces are given a portion of the revenues from the land rent, royalties for exploration and exploitation derived from the mining activities in the relevant province.
- t) The ratio of sharing of revenues derived from the above mentioned levies between the Central Government and the Provincial Government is 30 percent and 70 percent, respectively.
- u) The ratio of sharing between the Regional Government of the First Level (Province) and the Regional Government of the Second Level (Province) of that portion of the Province of the revenues derived from the above mentioned levies shall be subsequently determined by the Minister of Internal Affairs.
- v) The specification of use of the revenues derived from the above mentioned levies including procedures for deposit, withdrawal and safeguarding thereof shall be subsequently regulated jointly by the Minister along with the Minister of Finance and the Minister of Internal Affairs.

## **6. Provisions Regarding Environment**

After completion of the mining for minerals in a certain mine, the holder of the relevant Mining Authorisation is obliged to restore the land in such condition so as not to evoke any danger of disease or any other danger to the people living in the environment of the mine.

## **7. Legal Liabilities — Penalty & Dispute Settlement**

- a) Anyone carrying out mining activities, i.e., general survey, exploration, exploitation, processing and refining, transportation or sales, without holding a Mining Authorisation is liable to imprisonment not exceeding six years and/or a fine not exceeding five hundred thousand rupiahs.
- b) Anyone carrying out mining activities prior to the fulfilment of obligations against those entitled to the surface under this Law is liable to imprisonment not exceeding one year and/or a fine not exceeding fifty thousand rupiahs.
- c) Anyone not having a title to the surface but nevertheless thwarts or in anyway interferes with the conduct of mining activities allowed by law is liable to detention not exceeding one year and/or a fine not exceeding fifty thousand rupiahs.
- d) Anyone not having a title to the surface but nevertheless thwarts or in anyway interferes with mining operations allowed by law after the holder of the Mining Authorisation has duly met the requirements of compensation for surface rights under this Law is liable to detention not exceeding three months and/or a fine not exceeding ten thousand rupiahs.

- e) A detention not exceeding three months and/or a fine not exceeding ten thousand rupiahs, are imposed against:
- (i) the holder of a Mining Authorisation who fails to comply with the requirements prevailing under this Law and/or or two the Government Regulation and/or a decision of the Minister issued on the basis of this Law.
  - (ii) the holder of Mining Authorisation who fails to carry out the orders and/or guidelines of the competent authorities by virtue of this Law.

If the holder of a Mining Authorisation or his deputy is a Corporation then the penalties as referred above are imposed on the members of the Board of Executive Directors.

The punishable acts, namely, carrying out Mining activities without holding a Mining Authorisation are felonies whereas the other acts are violations.

Penalties are imposed on the holder of Mining Authorisation who fail to comply/implement the requirements prevailing under this law/or Government regulation, decision of the Minister issued under this law; or due to failures to carry out orders guidelines of the competent authority shall also be applicable to the breach of provisions relating to special directives of the Minister to the holder of Mining Authorisation for Exploration; or non-compliance with reference to return of the portion of the area of General Survey Exploration/Exploitation not needed by the holder; failing to comply with the measures to be taken by the holder of Mining Authorisation for General Survey/Exploration/Exploitation to safeguard the objects and the structures against deterioration which might jeopardise public safety prior to abandoning the former area of respective Mining Authorisation.

## **8. Provincial Enactments**

There is no separate provincial legislation as per information available. Regional Mining Licenses are issued by the concerned provincial governments in respect of minerals which are neither vital nor strategic. Information on Regional Mining Licences have been discussed under the head Regional Mining Licence.

## **9. Miscellaneous**

### ***Compensation for Surface Rights***

- a) The holder of a Mining Authorisation is obliged to pay for the damage inflicted upon anything that is found on the surface to the holder of the title to the land, both within and outside the relevant mining area of the land.
 

The losses caused by the operations of two or more holders of a Mining Authorisation may be recovered from them collectively.
- b) If a Mining Authorisation has been obtained for a certain area according to the prevailing laws, then, those entitled to the land are obliged to allow the holder of the Mining Authorisation to operate on the land concerned in mutual agreement, provided that :
  - (i) prior to the start of the operations those holding a title to the land shall be notified of the purpose and the location of the intended operations thereby showing them the Mining Authorisation or an authorised copy thereof.
  - (ii) the title holders of the land are compensated or secured of any indemnification in advance.
- c) If there already exists any right to a piece of land related to the relevant mining area, then those having a claim thereto are entitled to receive a compensation that shall be jointly fixed between the holder of the Mining Authorisation and the holder of the title to the land in mutual consultation and agreement.

- d) If those concerned are unable to reach an agreement on the compensation, the determination thereof shall be left to the Minister.
- e) If those concerned are not willing to accept the Minister's decision on compensation as referred to above, the determination shall be referred to the District Court having jurisdiction over the area/territory in which the relevant mining area is located.
- f) The compensation referred in above paragraphs inclusive of all expenses related to the settlement thereof shall be charged to the holder of the Mining Authorisation concerned.
- g) If a Mining Authorisation has been issued for a piece of land for which no land rights have been granted, then no land rights may be granted for such piece of land or part thereof, except with the approval of the Minister.
- h) If a Mining Authorisation is granted for a tract of land which is free from any surface rights and the holder of the relevant Mining Authorisation has paid land rent, then, he is granted relaxation for any impositions and expenses required for the use of the surface.
- i) The relaxation for payments due referred above shall be stipulated jointly by the Minister and such other Minister in charge of agrarian affairs, or any other Minister as the case may be.

#### ***Incentives for Mineral Discoveries***

- a) First priority to acquire a Mining Authorisation for General Survey or for Exploration shall be granted to an Indonesian citizen who discovers a mineral deposit.
- b) If the discoverer is not granted Mining Authorisation for General Survey and/or for Exploration as referred above, then a reward for the discovery of the mineral deposit may be granted to him by the Government or by the party who subsequently acquires the Mining Authorisation for General Survey or for Exploration.
- c) The discoverer of a mineral deposit is only entitled to have first priority or to receive a reward as referred to above, if he beforehand reports in detail in writing to the Minister of his discovery and the Minister shall acknowledge the truth of the said report in writing.
- d) Further provisions on the rewards for the discovery of mineral deposits shall be stipulated by the Minister.

#### ***Regulation of Mining Operations and Minerals***

- a) Further to the provisions stated under ownership/control the following provisions regarding Govt. control on mining operations are contained in the Regulations.
- b) The administration, the supervision and the regulation of labour safety and the regulation of the implementation of mining operations shall be centralised at the Ministry in charge of mining.

The procedure for exercising supervision, the regulation of labour safety and the regulation of the implementation of mining operations which are designed for security, labour safety and efficiency in the implementation of mining operations shall be regulated by Government Regulation.

- c) In the interest of the matter, the Minister may reserve part of the jurisdictional mining area of Indonesia where the mining of certain minerals may be exclusively conducted by the State.
- d) In the interest of the nation and notwithstanding the authority of other Ministers, the Minister may lay down export prohibition of certain mineral products.
- e) In the interest of the nation, the Minister may decide that certain mineral products be reserved by way of partial compensation against the levies due, which products shall be delivered to the Government by the relevant holder of a Mining Authorisation or if mining is conducted on a working contract basis, by the relevant contractor.

## INDONESIA—SALIENT FEATURES AT A GLANCE

| <b>Types of Concessions</b>   | <b>Salient features</b>  |
|---|--|
| <p><b>A) Mining Authorisation for General Survey</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol> | <p>The size of the area granted under one Mining Authorisation for General Survey shall not exceed 500 hectares. The total acreage of several Mining Authorisations for General Survey granted to a body or an individual shall not exceed 25,000 hectares of the mining jurisdiction of Indonesia.</p> <p>Mining Authorisation for General Survey is granted for a maximum period of 1 year.</p> <p>The minister may extend the period for an additional period of 1 year.</p> <p>Applications for Mining Authorisation shall be in the form laid down by the Minister. A Mining Authorisation is granted by decision of the minister who may stipulate special provisions in addition to stipulations contained in the regulation.</p> |
| <p><b>B) Mining Authorisation for Exploration</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol>    | <p>The size of the area granted under one Mining Authorisation for exploration shall not exceed 2,000 hectares. The total acreage for several Mining Authorisations for exploration granted to a body or an individual shall not exceed 10,000 hectares of the mining jurisdiction of Indonesia.</p> <p>Three 3 years.</p> <p>The period can be extended twice, each time for a period of 1 year.</p> <p>A Mining Authorisation for Exploration is granted by the Minister at the request of the party.</p>  |
| <p><b>C) Mining Authorisation for Exploitation</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol>   | <p>The size of the area granted under one Mining Authorisation for Exploitation shall not exceed 1,000 hectares. The total acreage for several Mining Authorisation for Exploitation granted to a body or an individual shall not exceed 5,000 hectares of the mining jurisdiction of Indonesia.</p> <p>30 years.</p> <p>Can be renewed twice, each time for a period of 10 years at the request of the relevant party.</p> <p>Mining Authorisation for exploitation is granted by the Minister at the request of the relevant party.</p>  |

|  |  |
|--|--|
| <b>D) Mining Authorisation for Processing &amp; Refining</b>   |  |
| <ol style="list-style-type: none"> <li>1. Period</li> <li>2. Renewal</li> <li>3. Modality of Grant</li> </ol>                  | <p>30 years.</p> <p>For a period of 10 ten years, each time.</p> <p>Mining Authorisation for processing and Refining is granted by the ministry at the request of the party</p>  |
| <b>E) Mining Authorisation (MA) for Transportation and M.A. for Sales</b>  |  |
| <ol style="list-style-type: none"> <li>1. Period</li> <li>2. Renewal</li> <li>3. Modality of Grant</li> </ol>                  | <p>10 years.</p> <p>5 years, each time.</p> <p>Mining Authorisation for Transportation and Mining Authorisation for sales are granted by the ministry.</p>   |
| <b>F) Mining Assignment</b>  | <p>Mining Assignment is a Mining Authorisation granted by the Minister to a Government Agency.</p>   |
| <b>G) People's Mining</b>  | <p>People's Mining is a Mining Authorisation granted by the Minister to the local people to conduct mining on a small scale in a very limited area. The objective of people's mining is to give local population opportunity to exploit minerals in their efforts to participate in the development of the state in the field of mining under the guidance of the Government.</p>  |
| <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol> | <p>5 hectares.</p> <p>5 years.</p> <p>There is no provision regarding Renewal of People's mining in the Act.</p> <p>The application for a people's mining permit to conduct mining operations referred above shall be submitted to the Ministry. The Minister may delegate the issuance of People's mining permit to the relevant Governor, Head of the Province thereby stipulating the requirements and directives required to be observed when issuing the permit.</p>  |
| <b>H) Regional Mining Licence</b>  | <p>The implementation of the arrangement of the mining for mineral which do not fall under the category of the vital or the strategic minerals and which fall within the competence of the Provincial Government where those minerals as referred to in the Basic Mining Law occur, shall be guided by the provisions laid down by the Minister on the procedure for the issuance of mining authorisation. A Mining Authorisation issued by the Provincial Government to conduct mining operations referred above are designated as Provincial Mining Licence.</p> |

|  |  |
|--|--|
| <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol> | <p>There is no provision regarding area in the Act.</p> <p>There is no provision regarding period in the Act.</p> <p>There is no provision regarding renewal in the Act.</p> <p>A Regional Mining Licence is issued by the Provincial Government.</p>  |
| <p><b>D) Taxes</b></p> <ol style="list-style-type: none"> <li>1. Land Rent</li> <li>2. Royalties</li> </ol>                    | <p>The Holder of a Mining Authorisation is due to pay to the State land rent, royalties for exploration and/or exploitation and/or other payments related to the Mining Authorisation concerned.</p> <ol style="list-style-type: none"> <li>a) The holder of a Mining Authorisation for General Survey has to pay an annual land rent for each hectare of the area of the Mining Authorisation.</li> <li>b) The holder of a Mining Authorisation for exploration is obliged to pay an annual land rent for each hectare of the area of Mining Authorisation.</li> <li>c) The holder of a Mining Authorisation for exploitation shall pay an annual land rent for each hectare of the area of his Mining Authorisation.</li> </ol> <ol style="list-style-type: none"> <li>a) The holder of a Mining Authorisation for exploration is obliged to pay royalties for exploration from sales of his products mined during the exploration. The royalties for exploration referred to above shall be determined on the basis of fixed rates according to the production of the relevant mines.</li> <li>b) The holder of a Mining Authorisation for exploitation is obliged to pay royalties for exploitation, for the products gained from the area of his Mining Authorisation. The royalties for exploitation is to be determined on the basis of fixed rates according to the production from the relevant mines.</li> </ol> |

\* \* \*

**SALIENT GENERAL FEATURES**

|                         |   |  |
|-------------------------|---|--|
| <i>Capital</i>          | : | <i>Windhoek</i>  |
| <i>Population</i>       | : | <i>2.03 million</i>  |
| <i>Area</i>             | : | <i>826, 700 sq. km</i>   |
| <i>Currency</i>         | : | <i>Dollar (\$1 = 6.46)</i>   |
| <i>GDP (per capita)</i> | : | <i>\$ 6,960</i>  |
| <i>Language</i>         | : | <i>English is the official language, Afrikaans and German are also spoken.</i> |

**N**amibia formerly known as South-West Africa, lies on the Atlantic coast of South Africa. After prolonged insurgency a peace accord was signed on 5<sup>th</sup> October, 1988 by Angola and South Africa after which South Africa agreed to end its administration in Namibia in accordance with UN peace plan. Namibia was declared independent nation under the UN mandate on 21 March, 1990. The first general election to the Constituent Assembly was held in November, 1989 and South-West Africa People's Organisation (SWAPO), which spearheaded the freedom struggle for 30 years, formed the government after a landslide victory.

The mining industry in Namibia is dominated by production of diamond followed by uranium, zinc, lead, fluorspar, gold and salt. It also produces other minerals, such as, copper, pyrite, arsenic, semiprecious stones and dimension stones like dolomite, marble and granite. Amongst minerals, diamond is an important item of export for foreign exchange earning.

### **MINING LEGISLATIVE FRAMEWORK**

Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992) is the main statute relating to Mines and Minerals.

#### **1. Purpose**

The purpose of this Act is to provide for the reconnaissance, prospecting and mining and disposal of, and the exercise of control over minerals in Namibia; and to provide for matters incidental thereto.

#### **2. Definition**

The Act contains a number of definitions notable among them are listed below.

"*accessory works*" means any building, plant or other structure required for purposes of reconnaissance operations, prospecting operations or mining operations or for the disposal of any mineral or group of minerals won or mined in the course of any such operations, or is connected with such operations, or disposal, including —

- a) any power plant, transmission line or substation;
- b) any water borehole, well, pipeline, drilling rig, pump station, tank or dam



- c) any airfield, helicopter landing-pad, road, gate, rail or railway siding;
- d) any workshop, hangar, store or office;
- e) any explosives magazine;
- f) any sampling plant, processing plant, smelter or refinery, whether erected on land or constructed on any vehicle or vessel;
- g) any waste disposal site; or
- h) any camp site or temporary or permanent residential area;

*"accredited agent"* means a person designated in accordance with the provisions of Section 121 as the accredited agent for the holder of a non-exclusive licence, mining claim or mineral licences, as the case may be;

*"base and rare metal group"* means, subject to the provisions of Subsection (4), a group of minerals containing the elements specified in Part I of Schedule 1;

*"board"* means the Minerals Board of Namibia established by Section 9;

*"claim"* means an area of land which has been pegged as a claim in accordance with the provisions of Part VI;

*"claim area"* means the area of land of a mining claim;

*"commission"* means the Minerals Ancillary Rights Commission established by Section 108;

*"Commissioner"* means the Mining Commissioner appointed under Section 4(1);

*"company"* means –

- a) a company as defined in Section 1 of the Companies Act, 1973 (Act 61 of 1973), including an external company is the one to which a certificate of registration has been issued in accordance with Section 322(2) of that Act; or
- b) a juristic person established by or under any law in force in Namibia;

*"controlled mineral"* means any mineral specified in the nuclear fuel minerals group, the precious metals group and the precious stones group, and any other mineral declared under Subsection (3)(a) to be a controlled mineral;

*"dimension stone group"* means, subject to the provisions of Subsection (4), a group of minerals containing rock material specified in Part 2 of Schedule 1;

*"excavation"* means any trench, pit, shaft or other open or underground working made in the course of prospecting operations or mining operations, as the case may be, excluding any superficial excavations made for purposes of geochemical soil and rock sampling;

*"exclusive prospecting licence"* means an exclusive prospecting licence issued under Section 70 and includes the renewal of any such licence;

*"good mining practices", "good prospecting practices" or "good reconnaissance practices"* mean practices which are generally accepted by persons involved in mining operations, prospecting operations or reconnaissance operations, as the case may be, as good, safe and necessary in relation to a mineral or a group of minerals;

*"group"*, in relation to minerals, means the precious metals group, the base and rare metals group, the precious stones group, the semiprecious stones group, the industrial minerals group, the dimension stones group, the non-nuclear fuel minerals group or the nuclear fuel minerals group;

*"high value mineral"* means an unwrought precious metal and a rough and uncut emerald, ruby or sapphire, and any other mineral declared under Subsection (3)(b) to be a high value mineral;

*"industrial minerals group"* means, subject to the provisions of Subsection (4), a group of minerals specified in Part 3 of Schedule 1;

*"land"* includes the sea and the sea bed within the territorial sea referred to in Section 2 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990), the exclusive economic zone referred to in Section 4 of that Act and the continental shelf referred to in Section 6 of that Act, and land beneath any other water, and the subsoil of land;

*"mine"* means —

- a) when used as a noun, any place where mining operations are or have been carried on, and includes any excavation or accessory works which is or are necessary for, or incidental to, such mining operations;
- b) when used as a verb, is any operation calculated to win any mineral or group of minerals from a mine or from any ore won from a mine, and includes any operations which are necessary for, or incidental to, such operations.

*"mineral"* means any substance, whether in solid, liquid or gaseous form, occurring naturally in, on or under any land and having been formed by, or subjected to, a geological process, excluding —

- a) water, or water taken from land or from the sea for the extraction therefrom of a mineral or a group of minerals;
- b) petroleum, as defined in Section 1 of the Petroleum (Exploration and Production Act), 1991 (Act 2 of 1991); or
- c) subject to the provisions of Subsection (2), soil, sand, clay, gravel or stone (other than rock material specified in Part 2 of Schedule 1) if they are bonafide for purposes of —
  - (i) agriculture, building works, fencing or road making;
  - (ii) the manufacture of bricks and tiles;
  - (iii) the construction of sportsfields, airfields, railways, bridges, dams, reservoirs, weirs, canals or other irrigation works; or
  - (iv) any other purpose defined by the Minister by notice in the Gazette.

*"mineral agreement"* means an agreement entered into in terms of Section 49;

*"mineral deposit retention licence"* means a mineral deposit retention licence issued under Section 81 and includes the renewal of such licence;

*"mineral licence"* means a reconnaissance licence, an exclusive prospecting licence, a mining licence or a mineral deposit retention licence and includes the renewal of any such licence;

*"mining area"* means the area of land to which a mining licence relates;

*"mining claim"* means a claim registered under Section 36 and includes the renewal of the registration of any such claim;

*"mining licence"* means a mining licence issued under Section 93 and includes the renewal of any such licence;

*"mining operation"* means any operation carried on in connection with mining;

*"Minister"* means the Minister of Mines and Energy;

*"non-exclusive prospecting licence"* means a non-exclusive prospecting licence issued under Section 21 and includes the renewal of any such licence;

*"non-nuclear fuel minerals group"* means, subject to the provisions of Subsection (4), a group of minerals specified in Part 4 of Schedule 1;

*"nuclear fuel minerals group"* means, subject to the provisions of Subsection (4), a group of minerals specified in Part 5 of Schedule 1;

*"officer"* means an officer or employee as defined in Section 1 of the Public Service Act, 1980 (Act 2 of 1980);

*"owner"* means —

- a) the person in whose name any private land is registered in the Deeds Registry, and also refers to,
  - (i) if the owner of such land is deceased, the executor of his or her estate;
  - (ii) if the estate of the owner of such land has been sequestrated, the trustee of his or her estate;
  - (iii) if the owner of such land is a company which has been wound up, the liquidator of such company;
  - (iv) if the owner of such land is under a legal disability, his or her legal representative;
  - (v) if such land has been attached in terms of an order of a court of law, the Sheriff or Deputy Sheriff; and
  - (vi) the person who has been authorised in writing by the owner to act on behalf of such owner for purposes of the provisions of this Act.
- b) a lessee of land owned by the State, but does not include the holder of any grazing rights in, on or in respect of any such land;

*"Permanent Secretary"* means the Permanent Secretary, Mines and Energy.

*"precious metals group"* means, subject to the provisions of Subsection (4), a group of minerals containing the elements specified in Part 6 of Schedule 1

*"precious stones group"* means, subject to the provisions of Subsection (4), a group of minerals specified in Part 7 of the Schedule 1.

*"private land"* means land other than State land, including land leased from the State if the lessee of such land has exercised his or her option to purchase such land.

*"prospecting"* means intentionally searching, whether by way of excavations or otherwise, for any mineral or group of minerals with a view to delineating or evaluating deposits or concentrations of any such mineral or group of minerals, but does not include "mining".

*"prospecting area"* means the area of land to which an exclusive prospecting licence relates.

*"prospecting operation"* means any operation carried on in connection with prospecting, including any accessing, extraction or incidental winning of any mineral or group of minerals for the purposes of mineralogical examination, assaying, testwork or marketability surveys;

*"reconnaissance area"* means an area of land to which a reconnaissance licence relates.

*"reconnaissance licence"* means a licence issued under Section 62 and includes the extension of such licence

*“reconnaissance operations”* means any operation carried on in a general search for any mineral or group of minerals by means of aerial sensing techniques, including geophysical surveys, photogeological mapping or imagery carried on from the air.

*“retention area”* means an area of land to which a mineral deposit retention licence relates.

*“semiprecious stones group”* means, subject to the provisions of Subsection 4, a group of minerals specified in Part 8 of Schedule 1.

*“unwrought precious metal”* means any unmanufactured metal consisting of gold, silver, platinum, palladium, osmium, rhodium, iridium and ruthenium in the form of bars, ingots, buttons, wire, plate, granules or in solution or in any other form whatsoever, or any article or substance containing such precious metal, or any article consisting of or containing such precious metal which although manufactured is not as such an article of commerce or a work of art or an article of archaeological interest.

*“waste”* means any waste rock, tailings, slimes or other residue derived from any prospecting operations, mining operations or processing of any mineral or group of minerals.

### **3. Ownership Rights and Administration/Control**

As per Section 2 of the Minerals (Prospecting and Mining) Act, 1992, any right in relation to the reconnaissance or prospecting for, and the mining and sale or disposal of and the exercise of control over any mineral or group of minerals vests notwithstanding any right of ownership of any person in relation to any land in, on or under which any such mineral or group of minerals is found vests in the State. Subject to the provision of the Act, no person shall —

- a) carry out any reconnaissance operations, prospecting operations or mining operations in, on or under any land in Namibia, except under and in accordance with a non-exclusive prospecting licence, a mining claim or a mineral licence as the case may be.
- b) transfer any mining claim, exclusive prospecting licence, mineral deposit, retention licence or mining licence or grant, cede or assign any interest in any such claim or licence to any other person, or be joined as a joint holder of such mining claim, licence or interest otherwise than in writing and with the approval in writing of the Minister.

### **4. Concessions for**

#### **(A) Reconnaissance Licence**

Provisions relating to reconnaissance licences are given in Part X of the Minerals (Prospecting & Mining) Act, 1992.

**Eligibility :** a) (i) A company or (ii) a Namibian citizen who is 18 years of age and a fit and proper person in the opinion of the Minister.

- b) Such person is not contravening any provision of the Minerals (Prospecting and Mining) Act, 1992.
- c) The Minister is satisfied with the programme of reconnaissance to be carried on or the expenditure to be expended in respect of such operations and the person concerned has the technical ability and financial resources for these operations.
- d) Area of land should be free, i.e., areas should not be under exclusive right of any other holder of a reconnaissance licence.

**Application :** Minister is the granting authority. On satisfying the eligibility criteria, the Minister may grant an application for a reconnaissance licence.

On submission of application duly filled in, which contains details about area, mineral(s), persons, etc., the Minister may seek information required by him and cause investigation. At the request of the person, the Minister may agree to such terms and conditions of the licence, he deems fit. On satisfaction, the Minister may direct the Commissioner to issue the reconnaissance licence on such terms and conditions as agreed upon.

**Duration** : Maximum period for which reconnaissance licence is granted does not exceed 6 months.

**Renewal** : Reconnaissance licence is renewable by the Minister for one occasion for a period not exceeding 6 months, if he is satisfied on the reasonable ground.

**Rights** : a) It confers an exclusive right to carry on reconnaissance operations in the area of licence in relation to any mineral or group of minerals specified, excluding any mining claim or any area of land covering another mineral licence.

b) To carry on such other operations including the erection or construction of accessory works necessary for or in connection with any reconnaissance operations with the prior permission in writing of the Commissioner.

**Obligations** : a) To comply with terms and conditions as in case of mineral licence.

b) Holder has to carry on certain operations, prospecting operations or expenditure as per the work programme and furnish these data to the Commissioner.

**Transfer** : Reconnaissance licence or its interest is not transferable to any other person.

#### **(B : 1) Non-exclusive Prospecting Licence**

**Eligibility** : Any person may apply for this licence provided in case of a natural person, such person has reached the age of 18 years. The Commissioner may issue a non-exclusive prospecting licence in such form and on such terms and conditions as may be determined by him.

**Duration** : The non-exclusive prospecting licence shall be valid for a period of 12 months.

**Renewal** : There is no provision for renewal.

**Rights** : The licence confers on holder the right to carry on prospecting operations for any mineral or group of minerals, to remove any mineral or group of minerals other than a controlled mineral and with the prior permission of the Commissioner to remove any mineral or group of minerals for sale and disposal and as of a controlled mineral for any purpose other than sale or disposal.

**Obligations** : The holder of a non-exclusive prospecting licence has to keep record of the following:

- a) the nature and mass or volume of any mineral or group of minerals found or incidentally won in the course of prospecting operations, and
- b) the nature, mass or volume and value of any mineral or group of minerals sold or otherwise disposed of along with details of persons to whom it was sold. Such record is to be maintained for 3 years after expiry of the licence.
- c) to submit statement of income and expenditure derived or incurred.
- d) to submit the record for inspection on request of the Commissioner.

**Transfer** : There is no provision under the Act for transfer of non-exclusive prospecting licence.

#### **(B : 2) Pegging of Claim**

Provisions relating to pegging claim are given in Part VI of the Act.

**Eligibility :** A person who is a holder of a non-exclusive prospecting licence or holder of an exclusive prospecting licence with the permission of the Minister and such person, a Namibian citizen or a company as defined under Section 1 of the Act can peg any claim. Such person has to make an application accompanied by application fee, if any, to the Minister.

**Restrictions :** a) No person shall peg any claim in respect of source material specified in Part V of Schedule 1 (Nuclear fuel minerals).

b) A maximum of 10 claims is allowed; for more than 10 claims, prior permission of the Minister in writing is required.

c) Claim should not be pegged between sunset and sunrise or on a Sunday or on any public holiday.

### **(B : 3) Mining Claims**

Provisions related to mining claims are given under Part VII of the Act.

**Eligibility :** A person who has pegged a claim in accordance with the provisions of Part VI may apply for registration of such claim.

**Application :** An application for the registration of a claim is to be made to the Commissioner in such form as may be determined in writing by the Commissioner within 21 days from the date of pegging claim and shall be accompanied by the application fee and claim fee in respect of the first registration period of such mining claim as may be determined under Section 123.

The Commissioner shall register such claim subject to such terms and conditions as may be determined in writing by him. He shall issue registration certificate which contains details about the claim area, mineral or group of minerals, period, etc.

**Duration :** Registration is valid for 3 years or to the date on which a mineral deposit retention licence or mining licence is issued.

**Renewal :** It is renewable. In such cases it is valid for the period of 2 years at a time from the date on which such registration has from time to time been renewed in terms of Section 38. An application for renewal is to be made before 90 days of its expiry.

**Rights :** The holder of a mining claim is entitled to carry on mining operations, prospecting operations for the mineral or group of minerals registered, removal of mined minerals other than controlled minerals, and with permission in writing of the Commissioner removal of any mineral or group of minerals, controlled minerals, sell or disposal of any such mineral, carry on such other operations, including erection or construction of accessory works, etc.

**Obligations :** The holder of a mining claim is obliged to submit to the Commissioner within 15 days after the end of each month or such longer period within 60 days after 31<sup>st</sup> December in each year in such form as determined by the Commissioner a return or returns of such summary of the particulars and information contained in the records maintained regarding the nature, appraisal and results of mining operations, nature and mass or volume and value of any mineral or group of minerals mined, sold, or otherwise disposed of with details of buyer, nature and mass or volume of any waste removed from the claim area, persons employed with details, the expenses incurred, etc. and the statement of income and expenditure and financial statements in respect of each year of assessment. The holder is also obliged to carry out any direction relating to his mining claim which may be given by the Commissioner and also observe the terms and conditions of the claim.

The holder has to carry out certain mining operations, prospecting operations, other operations or expenditure as per the work programme and furnish these data to the Commissioner.

**Transfer** : Application for approval of the Minister for transfer of a mining claim is made to the Commissioner in the form as determined by him along with the application fee. Such transfer is subject to the approval of the Minister.

**Abandonment and Cancellation** : The holder of mining claim may abandon the mining claim by notice in writing to the Commissioner. The Commissioner may cancel the registration certificate of mining.

#### **(B : 4) Mineral Licence**

General provisions relating to mineral licenses are given under Chapter VIII.

**Eligibility** : Mineral licences are granted to (i) a Namibian citizen who has reached 18 years of age and a fit and proper person in the opinion of the Minister and (ii) a company.

**Application** : Application for a mineral licence or its renewal or its amendment is made to the Minister in such form determined by the Commissioner and accompanied by such application fee and such licence fee payable in respect of the licence period or first licence period. The Minister may grant an application on certain terms and conditions. After receipt of application, the Minister may seek information required by him and cause investigation. At the request of the person, the Minister may enter into mineral agreement not inconsistent with the provisions of the Act including terms and conditions on which such mineral licence would be issued.

**Duration** : No specific duration is mentioned.

**Renewal** : Mineral licence is renewable.

**Transfer** : On application for approval of the Minister for transfer, accompanied by the application fee, the Minister shall grant the application for the transfer of a mineral licence, if he is on reasonable grounds satisfied that such holder is not contravening or failing to comply with the terms and conditions of such licence. On receipt of application, the Minister may seek any further information or cause the required investigation for considering the application and issue final order.

**Abandonment and Cancellation of Mineral Licence** : The holder of a mineral licence is allowed to abandon the reconnaissance area, prospecting area, retention area or mining area by notice in writing to the Commissioner.

The Minister has power to cancel the mineral licence by giving notice on the following grounds:

- a) On application in writing by the holder of a mineral licence and on payment of fees as may be determined under Section 123 of the Act.
- b) Any such holder fails to comply with the terms and conditions of such mineral licence or of the provisions of the Act, in case the company wound up or state of the holder is sequestrated.

#### **(B : 5) Exclusive Prospecting Licence**

Provisions of exclusive prospecting licence are contained in Part X of the Minerals (Prospecting & Mining) Act, 1992.

**Eligibility** : a) (i) A company or (ii) a Namibian citizen who is 18 years of age & above and a fit and proper person in the opinion of the Minister.

- b) Such person is not contravening any provision of the Minerals (Prospecting & Mining) Act, 1992.
- c) The Minister is satisfied with the programme of reconnaissance to be carried out or the expenditure to be expended in respect of such operations and the person concerned has the technical ability and financial resources for these operations.
- d) Area of land should be free, i.e., areas should not be under exclusive right of any other holder of a reconnaissance licence.

**Application :** The Minister is the granting authority. On satisfying the eligibility criteria, the Minister may grant an application for exclusive prospecting licence to any person and to the person holding reconnaissance licence for the area under the licence in respect of specified minerals. On submission of an application duly filled in, the Minister may seek information required by him to process the case and also cause investigation for the same. At the request of the applicant, the Minister may agree to such terms and conditions of the licence, as he deems fit. On satisfaction, the Minister may direct the Commissioner to issue the exclusive prospecting licence on such terms and conditions as agreed upon.

**Duration :** The maximum period for which an exclusive prospecting licence is granted is 3 years.

**Renewal :** It is renewable for further periods or the period not exceeding 2 years at a time. Renewal is granted for two occasions and if the Minister desires in the interest of mineral development, it may be renewed on a third or subsequent occasion. Application for renewal of licence is to be made 90 days before the date of expiry of the licence for the 1<sup>st</sup> renewal for 75% and 2<sup>nd</sup> for 50% of the prospecting area.

**Rights :** It entitles the holder:

- a) to carry out prospecting operations in the area of licence for the specified minerals in the licence.
- b) to remove any mineral(s) other than a controlled mineral for any purpose other than sale or disposal won in the course of prospecting operations.
- c) with the permission of the Commissioner in writing, holder can remove the (i) minerals obtained to any place outside Namibia, (ii) the controlled mineral can be removed to any place within or outside Namibia, and (iii) to remove and sale or disposal of any such mineral won or obtained in the course of prospecting operations. and
- d) to carry out such other operations, including erection or construction of accessory works necessary for prospecting and other purposes.

**Obligation :** The holder of an exclusive prospecting licence shall not erect or construct any accessory works without the prior permission in writing of the Commissioner.

#### **(B : 6) Mineral Deposit Retention Licence**

Provisions related to mineral deposit retention licence are contained in Part XI of the Minerals (Prospecting & Mining) Act, 1992.

**Eligibility :** Only the holder of an exclusive prospecting licence or a mining claim can apply for this licence in respect of the area of land and the mineral(s) to which it relates.

**Application :** The Minister is the granting authority. Application for mineral deposit retention licence contains details of the person, natural or company or accredited agent, period and accompanied by a detailed plan of the area indicating location, extent, etc. It may also include a detailed geological description of the area relating to minerals, details of the licence held with information on the work carried out and other details as the Minister may require that are relevant to the application.

At the request of the applicant, the Minister may agree to such terms and conditions of the licence, as he deems fit. On satisfaction, the Minister may direct the Commissioner to issue the mineral deposit retention licence on such terms and conditions as agreed upon.

**Duration :** The maximum period for which a mineral deposit retention licence can be granted is 5 years.

**Renewal :** It is renewable for further periods not exceeding 2 years from time to time as determined in the original licence.



Provisions for grant of the mineral deposit retention licence are applicable for its renewal. Application for its renewal is to be made within 90 days before the date of expiry of the licence.

**Rights** : It entitles the holder:

- a) to retain the area for future mining operations.
- b) to carry on prospecting operations for determining the prospects of mining any mineral(s) on a profitable basis.
- c) to remove any mineral(s) other than a controlled mineral obtained during the operations for any purpose other than sale or disposal within Namibia.
- d) with the permission of the Commissioner in writing, to remove
  - (i) the minerals obtained to any place outside Namibia
  - (ii) the controlled minerals to any place within or outside Namibia
  - (iii) any such mineral obtained in the course of prospecting operations for the purpose of sale or disposal.

**Obligation** : The holder of a mineral deposit retention licence shall not erect or construct any accessory works without the prior permission in writing of the Commissioner.

### **(C) Mining Licence**

Provisions relating to mining licence are contained in Part XII of the Minerals (Prospecting & Mining) Act, 1992.

**Eligibility** : The Minister may grant an application for mining licence to a holder of a reconnaissance licence/an exclusive prospecting licence/a mineral deposit retention licence/mining claim in respect of area of land and mineral(s) to which such licence relates or to any other applicant.

**Application** : The Minister is the granting authority. An application for mining licence contains details about the person (i) natural or a juridical (company or an accredited agent), period and accompanied by a detailed plan of the area, indicating location, extent, etc. Also detailed geological description of the area relating to minerals, details of the licence held and work carried out along with a complete technical report on the proposed development, mining and ore treatment activities, etc. and other details as the Minister may require relevant to the application.

The Minister, upon granting an application for mining licence, at the request of the applicant, may agree to such terms and conditions of the licence, as he deems fit. He may, on satisfaction, direct the Commissioner to issue a mining licence on such terms and conditions as agreed upon.

**Duration** : Maximum period for which a mining licence could be granted is 25 years.

**Renewal** : It is renewable for further periods not exceeding 15 years at a time. Provisions for grant of licence are evenly applicable for its renewal as well. Application for renewal of mining licence is to be made 12 months before the date of expiry of the licence.

**Rights** : The holder of mining licence is entitled

- a) to carry on mining operations for such mineral(s) specified in the licence.
- b) to carry on any prospecting operations for minerals in the area of the licence.
- c) to remove any mineral other than controlled mineral for any purpose other than sale or disposal obtained during the course of prospecting operations within Namibia.

- d) with the prior permission in writing of the Commissioner, to remove (i) minerals obtained during mining/prospecting operations to any place outside Namibia, (ii) controlled minerals obtained during prospecting/mining operations to any place within or outside Namibia, (iii) for the purpose of sale or disposal of any such mineral mined or won in the course of mining operations.
- e) to carry on such other operations including the erection or construction of accessory works necessary for mining operations, removal, selling or disposal or prospecting operations.

**Obligations :** The holder of a mining licence is obliged to submit to the Commissioner within 15 days after the end of each month or such longer period within 60 days after 31<sup>st</sup> December in each year in such form as determined by the Commissioner a return or returns such summary of the particulars and information contained in the records maintained regarding the nature, appraisal and results of mining operations, nature and mass or volume and value of any mineral or group of minerals mined, sold, or otherwise disposed of with details of buyer, nature and mass or volume of any waste removed from the claim area, persons employed with details, the expenses incurred, etc. and the statement of income and expenditure and financial statements in respect of each year of assessment. The holder is also obliged to carry on any direction relating to his mining claim which may be given by the Commissioner and also observe the terms and conditions of the claim.

The holder has to carry on certain mining operations, prospecting operations, other operations or expenditure as per the work programme and furnish these data to the Commissioner.

**Surrender/Relinquishment :** The holder of a mining licence has to give notice of his intentions to the Minister on a date not later than 6 months in case of an intended permanent cessation of mining operations, 30 days in case of temporary cessation and 7 days in case of an intended reduction of such mining operations before such intended permanent, temporary or intended reduction.

## **5. Royalty/Dead Rent and Other Taxes**

Royalty is paid to the Commissioner when a mineral is mined and sold or disposed of during any prospecting or mining operations. Royalty percentage for different mineral groups are as follows:

- a) a rate of 10% of market value for any rough and uncut mineral of the precious stone group.
- b) a rate of 5% of market value after the end of each period of six months from issue of licence or registration of claim in case of any rough or unprocessed mineral of the dimension stone group.
- c) a rate not exceeding 5% of market value as may be determined by the Minister from time to time by notice in the Gazette for any other mineral or group of minerals.

## **6. Provisions Regarding Environment**

There are provisions regarding environment under Section 91(f)(i), (ii) & (iii) of the Act. An application by any person for a mining licence should be accompanied by details regarding environment such as:

- a) the condition of any existing damage to the environment in the area to which the application relates.
- b) an estimate of the effect which the proposed prospecting operations and mining operations may have on the environment and the proposed steps to be taken in order to minimise or prevent any such effects; and
- c) the manner in which it is intended to prevent pollution, to deal with any waste to safeguard the mineral resources, to reclaim and rehabilitate land disturbed by way of the prospecting operations and mining operations and to minimise the effect of such operations on land adjoining the mining area.

## **7. Legal Liabilities (Penalties)**

When any person fails to pay the amount fixed as royalty on or before the due date, such person is liable for a penalty of an additional amount calculated at the rate of one-third of one per cent per day which is payable on such amount or any part from the due date to the current date.

In case of failure by holders of licenses or mining claims to pay royalties, the Minister may by notice prohibit the removal of any mineral from the licensed area or also any dealing in connection with any mineral won from such area until such time till the royalties are paid.

Failure by any holder of licence to comply with the notice shall be guilty of an offence and on conviction shall be liable to a fine not exceeding R 20000 or imprisonment for a period not exceeding 2 years or both fine and imprisonment.

There is no provision for revocation and dispute settlement in Namibia.

### ***Provincial Enactment***

There is no information in this regard.

## **8. Provisions Regarding Closure**

There are detailed provisions under Sections 43 and 54 of the Act regarding abandonment of mining claims and reconnaissance area, prospecting areas, retention areas and mining areas. The holder of a mining claim may abandon such mining claim by notice in writing addressed to the Commissioner and shall together with such notice return the registration certificate. Once the claim is abandoned, he has to remove all beacons erected and demolish any accessory erected, etc. Further, the holder of a mining licence may abandon the reconnaissance area, prospecting area, retention area or mining area to which such licence relates by notice in writing addressed to the Commissioner and shall together with such notice return the mineral licence.

**NAMIBIA— SOME SALIENT FEATURES AT A GLANCE**

| <b>Type of concessions</b>   | <b>Salient features</b>   |
|--|---|
| <p><b>A) Reconnaissance Licence</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol>   | <p>There is no mention of any provision regarding area. Area of land should be free.</p> <p>Six months.</p> <p>Reconnaissance licence is renewable by the Minister for one occasion for a period not exceeding 6 months</p> <p>The Minister is the granting authority. On being satisfied with the eligibility criterion, he may grant an application for reconnaissance licence.</p> |
| <p><b>B) Prospecting Licence</b></p> <p><b>I. Non-executing Prospecting Licence</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol> | <p>There is no mention of any provision regarding area.</p> <p>The non-exclusive prospecting licence shall be valid for a period of 12 months.</p> <p>There is no provision in this regard.</p> <p>The Commissioner may issue a non-exclusive prospecting licence in such form and on such terms and conditions as may be determined by him.</p>                                      |
| <p><b>II. Pegging of Claim</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol>  | <p>There is no provision regarding area.</p> <p>– do –</p> <p>– do –</p> <p>A person, the holder of a non-exclusive prospecting licence or holder of an exclusive prospecting licence may make an application accompanied by application fee, if any, to the Minister.</p>  |
| <p><b>III. Mining Claim</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol>   | <p>There is no provision regarding area.</p> <p>3 years.</p> <p>For 2 years at a time</p> <p>An application for the registration of a claim is to be made to the Commissioner in such form as may be determined in writing by the Commissioner. The Commissioner shall register such claim subject to such terms and condition, as may be determined in writing by him.</p>           |

| <b>Type of concessions</b>   | <b>Salient features</b>   |
|--|---|
| <p><b>IV. Mineral Licence</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol>                   | <p>No specific area is mentioned.</p> <p>No specific duration is mentioned.</p> <p>Mineral Licence is renewable.</p> <p>Application in prescribed form accompanied by application fee and such licence fee payable in respect of the licence period to the Minister. The Minister may grant an application on certain terms and conditions. After receipt of application, the Minister may seek information required by him and cause investigation. At the request of the person, the Minister may enter into mineral agreement not inconsistent with the provisions of the Act, including terms and conditions on which such mineral licence would be issued.</p> |
| <p><b>V. Exclusive Prospecting Licence</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol>      | <p>No specific area is mentioned.</p> <p>Maximum period for which an exclusive prospecting licence is granted is 3 years.</p> <p>It is renewable for further period or the period not exceeding 2 years at a time.</p> <p>The Minister is the granting authority. On being satisfied with the eligibility criterion, the Minister may grant an application for exclusive prospecting licence to any person and to the person holding reconnaissance licence for the area under the licence in respect of specified minerals.</p>  |
| <p><b>VI. Mineral Deposit Retention Licence</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol> | <p>No specific area is mentioned</p> <p>Maximum period for which a mineral deposit retention licence can be granted is 5 years.</p> <p>It is renewable for further periods not exceeding 2 years from time to time as determined in the original licence.</p> <p>The Minister is the granting authority. At the request of the applicant, the Minister may agree to such terms and conditions of the licence, as he deems fit on satisfaction, the Minister may direct the commissioner to issue the mineral deposit retention licence on such terms and conditions as agreed upon.</p>   |

| <b>Type of concessions</b>  | <b>Salient features</b>  |
|---|--|
| <p><b>C) Exploitation (Mining Licence)</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol> | <p>No specific area is mentioned.</p> <p>Maximum period for which a mining licence could be granted is 25 years.</p> <p>It is renewable for further periods not exceeding 15 years at a time.</p> <p>The Minister is the granting authority. An application for mining licence with relevant details as per stipulations is to be submitted to the Minister. The Minister, upon granting an application for mining licence, at the request of the applicant, may agree to such terms and conditions of the licence, as he deems fit. He may on satisfaction direct the Commissioner to issue a mining licence on such terms and conditions as agreed upon.</p> |
| <p><b>Taxes</b></p> <ol style="list-style-type: none"> <li>1. Royalty/Dead Rent/Other Taxes</li> </ol>  | <p>Royalty is paid to the Commissioner when a mineral is mined and sold or disposed of during any prospecting or mining operations as follows:</p> <ol style="list-style-type: none"> <li>a) at a rate of 10% of market value for any rough and uncut mineral of the precious stone group.</li> <li>b) at a rate of 5% of market value for any rough or unprocessed mineral of the dimension stone group.</li> <li>c) a rate not exceeding 5% of market value for any other mineral or group of minerals.</li> </ol>   |

\* \* \*

**SALIENT GENERAL FEATURES**

|                           |  |
|---------------------------|--|
| <i>Capital</i>            | : <i>Pretoria (Administrative), Cape Town (Legislative)<br/>Bloemfontein (Judicial)</i>  |
| <i>Seat of Parliament</i> | : <i>Cape Town</i>   |
| <i>Seat of Government</i> | : <i>Cape Town Pretoria</i>  |
| <i>Population</i>         | : <i>44.3 million</i>  |
| <i>Area</i>               | : <i>1,223,201 sq.km</i>   |
| <i>Currency</i>           | : <i>Rand (\$1 = 6.64)</i>   |
| <i>GDP (per capita)</i>   | : <i>\$ 12,000</i>   |
| <i>Language</i>           | : <i>There are 11 official languages, these are IsiZulu, IsiXhosa, Afrikaans, Sepedi, English, Setswana, Sesotho, Xitsonga, Siswati, Tshivenda and IsiNdebele. The use of any of these is a constitutional right "wherever practicable". Each Province may adopt any of these as official language. English is the sole language of command &amp; instruction in the armed forces.</i> |

**T**he Republic of South Africa is bounded in the North by Namibia, Botswana and Zimbabwe; in the North-East by Mozambique and Swaziland; in the East by the Indian ocean; and in the South and West by the South Atlantic, with Lesotho forming an enclave. The country adopted a policy of apartheid, the separate development of racial groups. The year 1990 witnessed softening of the whites attitude towards the 26 million agitating blacks which brought an end to apartheid. The Government lifted the ban on African National Congress, the primary black group fighting to end white minority rule.

On 22 December 1993, Parliament approved (by 237 votes to 45) a Transitional Constitution paving way for a new multi-racial Parliament which was elected on 26-29 April 1994, and South Africa rejoined the Commonwealth. On 9 May 1994 Nelson Mandela was elected President. The new constitution was certified by the Constitutional Court on 4 December, 1996 and was signed by President Nelson Mandela on 10 December, 1996 which entered into effect on 3 February, 1997.

South Africa's mining industry is supported by an extensive and diversified resource base, and has since its inception been a cornerstone of its economy.

Mining industry is dominated by production of asbestos, chrome ore, coal, copper, diamond, gold, iron ore, limestone, manganese ore, silver, nickel and platinum group of metals. South Africa continues to be the largest producer of gold in the world and a leading producer of diamond.

## **MINING LEGISLATIVE FRAMEWORK**

### **Short Title and Commencement**

1. This Act is called the Mineral and Petroleum Resources Development Act, 2002, and comes into operation on a date fixed by the President by proclamation in the Gazette.
2. Different dates may so be fixed in respect of different provisions of this Act.

## 1. Preamble/Purpose

The purpose of Mineral and Petroleum Resources Development Act, 2002 is to make provision for equitable access for sustainable development of the nation's mineral and petroleum resources and to provide for matters connected therewith.

Recognising that minerals and petroleum are non-renewable natural resources;

Acknowledging that South Africa's mineral and petroleum resources belong to the nation and that the State is the custodian thereof;

Affirming the State's obligation to protect the environment for the benefit of present and future generations, to ensure ecologically sustainable development of mineral and petroleum resources and to promote economic and social development;

Recognising the need to promote local and rural development and social upliftment of communities affected by mining;

Reaffirming the State's commitment to reform to bring about equitable access to South Africa's mineral and petroleum resources;

Being committed to eradicating all forms of discriminatory practices in the mineral and petroleum industries;

Considering the State's obligation under the Constitution to take legislative and other measures to redress the results of past racial discrimination;

Reaffirming the State's commitment to guaranteeing security of tenure in respect of prospecting and mining operations; and

Emphasising the need to create an internationally competitive and efficient administrative and regulatory regime,

The Act, inter alia, seeks to

- a) recognise the internationally accepted right of the State to exercise sovereignty over all the mineral and petroleum resources within the Republic;
- b) give effect to the principle of the State's custodianship of the nation's mineral and petroleum resources;
- c) promote equitable access to the nation's mineral and petroleum resources to all the people of South Africa;
- d) substantially and meaningfully expand opportunities for historically disadvantaged persons, including women, to enter the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources;
- e) promote economic growth and develop the mineral and petroleum resources in the Republic;
- f) promote employment and advance the social and economic welfare of all South Africans;
- g) provide for security of tenure in respect of prospecting, exploration, mining and production operations;
- h) give effect to Section 24 of the Constitution by ensuring that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development; and
- i) ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.



## Arrangement of Act

### Chapter-I

1. Definitions

### Chapter -II : Fundamental Principles

2. Interpretation of Act (Sec. 4)
3. Ownership Rights & Administrative Control (Sec. 3)
4. Concession for, nature of prospecting right, mining right, exploration right or production right, rights of holders thereof (Sec. 5)
5. Transfer (Sec. 11)
6. Assistance to historically disadvantaged persons (Sec. 12)
7. Concession for reconnaissance (Sec. 13)
8. Issuing and duration of reconnaissance permission (Sec. 14)
9. Rights and obligations of holder of reconnaissance permission (Sec. 15)
10. Procedure (Sec. 16)
11. Eligibility & Duration (Sec. 17)
12. Renewal of prospecting right (Sec. 18)
13. Rights and obligations of holder of prospecting right (Sec. 18)
14. Permission to remove and dispose of minerals (Sec. 20)
15. Information and data in respect of reconnaissance and prospecting (Sec. 21)
16. Application for mining right (Sec. 22)
17. Eligibility and duration of mining right (Sec. 23)
18. Application for renewal of mining right (Sec. 24)
19. Rights and obligations of holder of mining right (Sec. 25)
20. Mineral beneficiation (Sec. 26)
21. Application for mining permit (Sec. 27)
22. Tenure/Renewal (Sec. 27.8)
23. Information and data in respect of mining or processing of minerals (Sec. 28)
24. Retention permit (Sec. 31)
25. Duration of retention permit (Sec. 32)
26. Refusal of application for retention permit (Sec. 33)
27. Renewal of retention permit (Sec. 34)
28. Rights and obligations of holder of retention permit (Sec. 35)
29. Retention permit not transferable (Sec. 36)
30. Provisions regarding Environment (Sec. 37)
31. Provisions regarding closure (Sec. 43)
32. Minister's power to suspend or cancel rights, permits or permissions (Sec. 47)

33. Minister's power to prohibit or restrict prospecting or mining (Sec. 49)
34. Compensation payable under certain circumstances (Sec. 54)
35. Powers (Sec. 55)
36. Lapsing of right, permit, permission and licence (Sec. 56)
37. Petroleum exploration & exploitation (Sec. 69)
38. Power to enter prospecting area, mining area or retention area (Sec. 91)
39. Offences (Sec. 98)
40. Penalties (Sec. 99)
41. Preferent prospecting or mining right in respect of communities (Sec. 104)
42. Exemptions from certain provisions of Act (Sec. 42)
43. Royalty/ Dead Rent & other Taxes (Sec. 21)
44. Provincial Enactment
45. Proof of facts (Sec. 108)
46. Act binds State (Sec. 109)
47. Repeal and amendment of laws, and transitional provisions (Sec. 110)
48. Salient features (Sec. 100)

## **Schedule I: Repeal or Amendment of Laws (Section 110)**

### **1. Definitions**

In this Act, unless the context indicates otherwise —

*"block"* means any area of land or sea, including the sea bed, identified as a block by co-ordinates on a map prepared by the designated agency and situated wholly or partly in the Republic or its exclusive economic zone and includes any part of such block;

*"Board"* means the Minerals and Mining Development Board established by Section 57;

*"broad based economic empowerment"* means a social or economic strategy, plan, principle, approach or act which is aimed at —

- a) redressing the results of past or present discrimination based on race, gender or other disability of historically disadvantaged persons in the minerals and petroleum industry, related industries and in the value chain of such industries; and
- b) transforming such industries so as to assist in, provide for, initiate or facilitate
  - (i) the ownership, participation in or the benefiting from existing or future mining, prospecting, exploration or production operations;
  - (ii) the participation in or control of management of such operations;
  - (iii) the development of management, scientific, engineering or other skills of historically disadvantaged persons;
  - (iv) the involvement of or participation in the procurement chains of operations;
  - (v) the ownership of and participation in the beneficiation of the proceeds of the operations or other upstream or downstream value chains in such industries;

- (vi) the socio-economic development of communities immediately hosting, affected by supplying labour to the operations; and
- (vii) the socio-economic development of all historically disadvantaged South Africans from the proceeds or activities of such operations;

*"Chief Inspector"* means the Chief Inspector of Mines appointed in terms of Section 48(1) of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);

*"community"* means a coherent, social group of persons with interests or rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law;

*"contractual royalties"* mean any royalties or payment agreed to between parties in a mining or production operation;

*"day"* means a calendar day and when any particular number of days are prescribed for the performance of any act, those days must be reckoned by excluding the first and including the last day, unless the last day falls on a Saturday, a Sunday or any public holiday, in which case the number of days must be reckoned by excluding the first day and also any such Saturday, Sunday or public holiday;

*"Department"* means the Department of Minerals and Energy;

*"designated agency"* means the organ, agency or company designated in terms of Section 70;

*"development programme"* means the development programme approved under the terms and conditions of the production right;

*"Director-General"* means the Director-General of the Department;

*"employee"* means any person who works for the holder of a reconnaissance permission, prospecting right, mining right, mining permit, retention permit, technical corporation permit, reconnaissance permit, exploration right and production right, and who is entitled to receive any remuneration, and includes any employee working at or in a mine, including any person working for an independent contractor;

*"environment"* means the environment as defined in the National Environmental Management Act, 1998 (Act No. 107 of 1998);

*"environmental management plan"* means a plan to manage and rehabilitate the environmental impact as a result of prospecting, reconnaissance, exploration or mining operations conducted under the authority of a reconnaissance permission, prospecting right, reconnaissance permit, exploration right or mining permit, as the case may be;

*"environmental management programme"* means an approved environmental management programme contemplated in Section 39;

*"exclusionary act"* means any act or practice which impedes or prevents any person from entering the mineral and mining industry, or from entering any market connected with that industry, or from making progress within such industry or market;

*"exploration area"* means the area comprising the block or blocks depicted in an exploration or production right;

*"exploration operation"* means the re-processing of existing seismic data, acquisition and processing of new seismic data or any other related activity to define a trap to be tested by drilling, logging and testing, including extended well testing, of a well with the intention of locating a discovery;

*"exploration right"* means the right granted in terms of Section 80;

*“exploration work programme”* means the approved exploration work programme indicating the petroleum operations to be conducted on the exploration area during the validity of the exploration right, including the details regarding the exploration activities, phases, equipment to be used and estimated expenditures for the different exploration activities and phases;

*“financial provision”* means the insurance, bank guarantee, trust fund or cash that applicants for or holders of a right or permit must provide in terms of Sections 41 and 89 guaranteeing the availability of sufficient funds to undertake the agreed work programmes and to rehabilitate the prospecting, mining, reconnaissance, exploration or production areas, as the case may be;

*“historically disadvantaged person”* means —

- a) any person, category of persons or community, disadvantaged by unfair discrimination before the Constitution took effect;
- b) any association, a majority of whose members are persons contemplated in paragraph (a);
- c) any juristic person other than an association, in which persons contemplated in paragraph (a) own and control a majority of the issued capital or members' interest and are able to control a majority of the members' votes;

*“holder”* in relation to a prospecting right, mining right, mining permit, retention permit, exploration right, production right, reconnaissance permit or technical cooperation permit, means the person to whom such right or permit has been granted or such person's successor in title;

*“land”* includes the surface of the land and the sea, where appropriate;

*“mine”* when used as a verb, means any operation or activity for the purposes of winning any mineral on, in or under the earth, water or any residue deposit, whether by underground or open working or otherwise and includes any operation or activity incidental thereto;

*“mineral”* means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth or in or under water and which was formed by or subjected to a geological process, and includes sand, stone, rock, gravel, clay, soil and any mineral occurring in residue stockpiles or in residue deposits, but excludes

- a) water, other than water taken from land or sea for the extraction of any mineral from such water;
- b) petroleum; or
- c) peat;

*“mining area”* a) in relation to a mining right or a mining permit, means the area for which that right or permit is granted;

b) in relation to any environmental, health, social and labour matter and any latent or other impact thereto;

c) any adjacent or non-adjacent surface of land on which the extraction of any mineral and petroleum has not been authorised in terms of this Act but upon which related or incidental operations are being undertaken and, also includes —

- (i) any area connected to such an area by means of any road, railway line, power line, pipeline, cable way or conveyor belt; and

- (ii) any surface of land on which such road, railway line, power line, pipeline or cable way is located;

d) all buildings, structures, machinery, mine dumps or objects situated on or in that area which are used for the purpose of mining on the land in question;

*"mining operation"* means any operation relating to the act of mining and matters directly incidental thereto;

*"mining permit"* means a permit issued in terms of Section 27(6);

*"mining right"* means a right to mine granted in terms of Section 23(1);

*"Mining Titles Office"* means the Mining Titles Office contemplated in Section 2 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967);

*"mining work programme"* means the planned mining work programme to be followed in order to mine a mineral resource optimally;

*"minister"* means the Minister of Minerals and Energy;

*"officer"* means any officer of the Department appointed under the Public Service Act, 1994 (Proclamation No. 103 of 1994);

*"owner"* in relation to —

a) land —

(i) means the person in whose name the land is registered; or

(ii) if it is land owned by the State, means the State together with the occupant thereof; or

b) the sea, means the State;

*"petroleum"* means any liquid, solid hydrocarbon or combustible gas existing in a natural condition in the earth's crust and includes any such liquid or solid hydrocarbon or combustible gas, which gas has in any manner been returned to such natural condition, but does not include coal, bituminous shale or other stratified deposits from which oil can be obtained by destructive distillation or gas arising from a marsh or other surface deposit;

*"petroleum reservoir"* means a geological formation containing petroleum;

*"prescribed"* means prescribed by regulation;

*"processing"* in relation to any mineral, means the winning, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification thereof;

*"production area"* means any area which is subject to a production right;

*"production operation"* means any operation, activity or matter that relates to the exploration, appraisal, development and production of petroleum;

*"production right"* means a right granted in terms of Section 84;

*"prospecting"* means intentionally searching for any mineral by means of any method —

a) which disturbs the surface or subsurface of the earth, including any portion of the earth that is under the sea or under other water or

b) in or on any residue stockpile or residue deposit, in order to establish the existence of any mineral and to determine the extent and economic value thereof; or

c) in the sea or other water on land;

*"prospecting area"* means the area of land which is the subject of any prospecting right;

*"prospecting operations"* mean any activity carried on in connection with prospecting;

*"prospecting right"* means the right to prospect granted in terms of Section 17(1);

*"prospecting work programme"* means the planned prospecting work programme to be followed in order to establish the occurrence of any mineral resource in the prospecting area during the period applied for;

*"reconnaissance operation"* means any operation carried out for or in connection with the search for a mineral or petroleum by geological, geophysical and photogeological surveys and includes any remote sensing techniques, but does not include any prospecting or exploration operation;

*"reconnaissance permit"* means a permit issued in terms of Section 75(1);

*"record"* means recorded information regardless of form or medium;

*"regulation"* means any regulation made under Section 107;

*"Regional Manager"* means the officer designated by the Director-General in terms of Section 8 as Regional Manager for a specified region;

*"Regional Mining Development and Environmental Committee"* means a Regional Mining Development and Environmental Committee established in terms of Section 64(1);

*"residue deposit"* means any residue stockpile remaining at the termination, cancellation or expiry of a prospecting right, mining right, mining permit, exploration right or production right;

*"residue stockpile"* means any debris, discard, tailings, slimes, slurry, waste rock, foundry sand, beneficiation plant waste, ash or any other product derived from or incidental to a mining operation and which is stockpiled, stored or accumulated for potential re-use, or which is disposed of, by the holder of a mining right, mining permit or production right;

*"retention area"* means the area of land which comprises the subject of a retention permit;

*"retention permit"* means a permit issued in terms of Section 32;

*"State royalties"* mean any royalty payable to the State in terms of an Act of Parliament;

*"sustainable development"* means the integration of social, economic and environmental factors into planning, implementation and decision making so as to ensure that mineral and petroleum resources development serves the present and the future generations;

*"technical cooperation permit"* means the technical cooperation permit issued in terms of Section 77(1);

*"the sea"* means the water of the sea, as well as the bed of the sea and the subsoil thereof below the low-water mark as defined in the Seashore Act, 1935 (Act No.21 of 1935), and within —

- a) the territorial waters as contemplated in Section 4 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), of the Republic, including the water and the bed of any tidal river and of any tidal lagoon;
- b) the exclusive economic zone as contemplated in Section 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994); and
- c) the continental shelf as contemplated in Section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);

*"this Act"* includes the regulations and any term or condition to which any permit, permission, licence right, consent, exemption, approval, notice, closure certificate, environmental management plan, environmental management programme or directive issued, given, granted or approved in terms of this Act, is subject;

*"topsoil"* means the layer of soil covering the earth which —

- a) provides a suitable environment for germination of seeds;
- b) allows penetration of water;
- c) is a source of microorganisms, plant nutrients and in some cases seeds; and
- d) is not of a depth of more than 0.5 metres or such other depth as the Minister may prescribe for a specific prospecting or exploration area or a mining area.

## 2. Interpretation of Act

- a) When interpreting a provision of this Act, any reasonable interpretation which is consistent with the objects of this Act must be preferred over any other interpretation which is inconsistent with such objects.
- b) In so far as the common law is inconsistent with this Act, this Act prevails.

## 3. Ownership Rights & Administrative Control

- a) Mineral and petroleum resources are the common heritage of all the people of South Africa and the State is the custodian thereof for the benefit of all South Africans.
- b) As the custodian of the nation's mineral and petroleum resources, the State, acting through the Minister, may —
  - (i) grant, issue, refuse, control, administer and manage any reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical cooperation permit, reconnaissance permit, exploration right and production right; and
  - (ii) in consultation with the Minister of Finance, determine and levy, any fee or consideration payable in terms of any relevant Act of Parliament.
- c) The Minister must ensure the sustainable development of South Africa's mineral and petroleum resources within a framework of national environmental policy, norms and standards while promoting economic and social development.

## 4. Concession for

### *Prospecting Right, Mining Right, Exploration Right or Production Right, and Rights of Holders*

- Eligibility :** a) A prospecting right, mining right, exploration right or production right granted in terms of this Act is a limited real right in respect of the mineral or petroleum and the land to which such right relates.
- b) The holder of a prospecting right, mining right, exploration right or production right is entitled to the rights referred to in this Section and such other rights as may be granted to, acquired by or conferred upon such holder under this Act or any other law.
  - c) Subject to this Act, any holder of a prospecting right, a mining right, exploration right or production right may —
    - (i) enter the land to which such right relates together with his or her employees, and may bring onto that land any plant, machinery or equipment and build, construct or lay down any surface, underground or under sea infrastructure which may be required for the purposes of prospecting, mining, exploration or production, as the case may be;
    - (ii) prospect, mine, explore or produce, as the case may be, for his or her own account on or under that land for the mineral or petroleum for which such right has been granted;
    - (iii) remove and dispose of any such mineral found during the course of prospecting, mining, exploration or production, as the case may be;
    - (iv) subject to the National Water Act, 1998 (Act No. 36 of 1998), use water from any natural spring, lake, river or stream, situated on, or flowing through, such land or from any excavation previously made and used for prospecting, mining, exploration or production purposes, or sink a well or borehole required for use relating to prospecting, mining, exploration or production on such land; and
    - (v) carry out any other activity incidental to prospecting, mining, exploration or production operations, which activity does not contravene the provisions of this Act.

- d) No person may prospect for or remove, mine, conduct technical cooperation operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without —
- (i) an approved environmental management programme or approved environmental management plan, as the case may be;
  - (ii) a reconnaissance permission, prospecting right, permission to remove, mining right, retention permit, technical cooperation permit, reconnaissance permit, exploration right or production right, as the case may be; and
  - (iii) notifying and consulting with the land owner or lawful occupier of the land in question.
- e) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), any administrative process conducted or decision taken in terms of this Act must be conducted or taken, as the case may be, within a reasonable time and in accordance with the principles of lawfulness, reasonableness and procedural fairness.
- f) Any decision contemplated in Subsection (1) must be in writing and accompanied by written reasons for such decision.
- g) For the purposes of this Act, the Minister must by notice in the Gazette, divide the Republic, the sea as defined in Section 1 of the Sea-shore Act, 1935 (Act No.21 of 1935), and the exclusive economic zone and continental shelf referred to in Sections 7 and 8 respectively, of the Maritime Zones Act, 1994 (Act No. 15 of 1994), into regions.
- h) The Director-General must, subject to the laws governing the public service, designate an officer in the service of the Department as Regional Manager for each region contemplated who must perform the functions delegated or assigned to him or her in terms of this Act or any other law.
- i) If a Regional Manager receives more than one application for a prospecting right, a mining right or a mining permit, as the case may be, in respect of the same mineral and land, applications received on the same day must be regarded as having been received at the same time and must be dealt with in accordance with Subsection (2); and different dates must be dealt with in order of receipt. When the Minister considers applications received on the same date he or she must give preference to applications from historically disadvantaged persons.
- j) Within 14 days after accepting an application lodged in terms of Sections 16, 22 or 27, the Regional Manager must in the prescribed manner —
- (i) make known that an application for a prospecting right, mining right or mining permit has been received in respect of the land in question; and
  - (ii) call upon interested and affected persons to submit their comments regarding the application within 30 days from the date of the notice.
- k) If a person objects to the granting of a prospecting right, mining right or mining permit, the Regional Manager must refer the objection to the Regional Mining Development and Environmental Committee to consider the objections and to advise the Minister thereon.

## **5. Transfer**

- a) A prospecting right or mining right or an interest in any such right, or a controlling interest in a company or close corporation, may not be ceded, transferred, let, sublet, assigned, alienated or otherwise disposed of without the written consent of the Minister, except in the case of change of controlling interest in listed companies.



- b) Any transfer, cession, letting, subletting, alienation, encumbrance by mortgage or variation of a prospecting right or mining right, as the case may be, contemplated in this Section must be lodged for registration at the Mining Titles Office within 30 days of the relevant action.

#### **6. Assistance to Historically Disadvantaged Persons**

- a) The Minister may facilitate assistance to any historically disadvantaged person to conduct prospecting or mining operations.
- b) The assistance referred to in Subsection (1) may be provided subject to such terms and conditions as the Minister may determine.
- c) Before facilitating the assistance contemplated in Subsection (1), the Minister must take into account all relevant factors, including —
  - (i) the need to promote equitable access to the nation's mineral resources;
  - (ii) the financial position of the applicant;
  - (iii) the need to transform the ownership structure of the minerals and mining industry; and
  - (iv) the extent to which the proposed prospecting or mining project meets the objects referred to in Section 2(c), (d), (e), (f) and (i).
- d) When considering the assistance referred to in Subsection (1), the Minister may request any relevant organ of State to assist the applicant concerned in the development of his or her prospecting or mining project.

#### **7. Concessions for Reconnaissance**

- a) Any person who wishes to apply to the Minister for a reconnaissance permission must lodge the application —
  - (i) at the office of the Regional Manager in whose region the land is situated;
  - (ii) in the prescribed manner; and
  - (iii) together with the prescribed non-refundable fee.
- b) The Regional Manager must accept an application for a reconnaissance permission, if —
  - (i) the requirements contemplated in subsection (1) are met; and
  - (ii) no person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land.
- c) If the application does not comply with the requirements of this Section, the Regional Manager must notify the applicant in writing of that fact within 14 days of receipt of the application and return the application to the applicant.

#### **8. Issuing and Duration of Reconnaissance Permission**

- a) The Minister must issue the reconnaissance permission, if —
  - (i) the applicant has access to financial resources and has the technical ability to conduct the proposed reconnaissance operations in accordance with the reconnaissance work programme;
  - (ii) the estimated expenditure is compatible with the proposed reconnaissance operation and duration of the reconnaissance work programme; and
  - (iii) the applicant is not in contravention of any relevant provision of this Act.

- b) The Minister must refuse to issue a reconnaissance permission if the applicant does not meet all the requirements referred to in Subsection (1).
- c) If the Minister refuses to grant a reconnaissance permission, the Minister must, within 30 days of the decision, in writing notify the applicant of the decision.
- d) The reconnaissance permission is valid for two years and is not renewable.
- e) A reconnaissance permission may not be transferred, ceded, let, sublet, alienated, disposed of or encumbered by mortgage.

### **9. *Rights and Obligations of Holder of Reconnaissance Permission***

- a) A reconnaissance permission entitles the holder, on production of the reconnaissance permission and after consulting the land owner or lawful occupier thereof, to enter the land concerned for the purposes of conducting reconnaissance operations.
- b) A reconnaissance permission does not entitle the holder to —
  - (i) conduct any prospecting or mining operations for any mineral in the land in question; or
  - (ii) any exclusive right to apply for or be granted a prospecting right or mining right.

### **10. *Prospecting Right***

- a) Any person who wishes to apply to the Minister for a prospecting right must lodge the application —
  - (i) at the office of the Regional Manager in whose region the land is situated;
  - (ii) in the prescribed manner, and
  - (iii) together with the prescribed non-refundable application fee.
- b) The Regional Manager must accept an application for a prospecting right, if —
  - (i) the requirements contemplated in Subsection (1) are met; and
  - (ii) no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land.
- c) If the application does not comply with the requirements of this Section, the Regional Manager must notify the applicant in writing of that fact within 14 days of receipt of the application and return the application to the applicant.
- d) If the Regional Manager accepts the application, the Regional Manager must, within 14 days from the date of acceptance, notify the applicant in writing —
  - (i) to submit an environmental management plan; and
  - (ii) to notify in writing and consult with the land owner or lawful occupier and any other affected party and submit the result of the consultation within 30 days from the date of the notice.
- e) Upon receipt of the information, the Regional Manager must forward the application to the Minister for consideration.
- f) The Minister may by notice in the Gazette invite applications for prospecting rights in respect of any land, and may specify in such notice the period within which any application may be lodged and the terms and conditions subject to which such rights may be granted.

### **11. *Eligibility and Duration***

- a) The Minister must grant a prospecting right, if —

- (i) the applicant has access to financial resources and has the technical ability to conduct the proposed prospecting operation optimally in accordance with the prospecting work programme;
  - (ii) the estimated expenditure is compatible with the proposed prospecting operation and duration of the prospecting work programme;
  - (iii) the prospecting will not result in unacceptable pollution, ecological degradation or damage to the environment;
  - (iv) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act.
  - (v) the applicant is not in contravention of any relevant provision of this Act.
- b) The Minister must refuse to grant a prospecting right, if —
- (i) the application does not meet all the requirements referred to in Subsection (1);
- c) If the Minister refuses to grant a prospecting right the Minister must, within 30 days of the decision, in writing, notify the applicant of the decision with reasons.

### **12. Renewal of Prospecting Right**

- a) Any holder of a prospecting right who wishes to apply to the Minister for the renewal of a prospecting right must lodge the application
- (i) at the office of the Regional Manager in whose region the land is situated;
  - (ii) in the prescribed manner; and
  - (iii) together with the prescribed non-refundable application fee.
- b) The Minister must grant the renewal of a prospecting right if the application complies with
- (i) terms and conditions of the prospecting right and is not in contravention of any relevant provision of this Act;
  - (ii) prospecting work programme; and
  - (iii) requirements of the approved environmental management plan.
- c) A prospecting right may be renewed once for a period not exceeding three years.
- d) A prospecting right in respect of which an application for renewal has been lodged shall, despite its stated expiry date, remain in force until such time as such application has been granted or refused.

### **13. Rights and Obligations of Holder of Prospecting Right**

- a) In addition to the rights referred to in Section 5, the holder of a prospecting right has —
- (i) the exclusive right to apply for and be granted a renewal of the prospecting right in respect of the mineral and prospecting area in question;
  - (ii) the exclusive right to apply for and be granted a mining right in respect of the mineral and prospecting area in question; and
  - (iii) the exclusive right to remove and dispose of any mineral to which such right relates and which is found during the course of prospecting.
- b) The holder of a prospecting right must -
- (i) lodge such right for registration at the Mining Titles Office within 30 days of the date on which the right —
    - becomes effective or
    - is renewed.

- (ii) commence with prospecting activities within 120 days from the date on which the prospecting right becomes effective or such an extended period as the Minister may authorise;
- (iii) continuously and actively conduct prospecting operations in accordance with the prospecting work programme;
- (iv) comply with the terms and conditions of the prospecting right, relevant provisions of this Act and any other relevant law;
- (v) comply with the requirements of the approved environmental management programme;
- (vi) pay the prescribed prospecting fees to the State; and
- (vii) subject to Section 20, pay the State royalties in respect of any mineral removed and disposed of during the course of prospecting operations.

#### **14. Permission to Remove and Dispose of Minerals**

- a) The holder of a prospecting right may only remove and dispose for his or her own account any mineral found by such holder in the course of prospecting operations conducted pursuant to such prospecting right in such quantities as may be required to conduct tests on it or to identify or analyse it.
- b) The holder of a prospecting right must obtain the Minister's written permission to remove and dispose for such holder's own account of bulk samples of any minerals found by such holder in the course of prospecting operations conducted pursuant to such prospecting right.

#### **15. Information and Data in respect of Reconnaissance and Prospecting**

The holder of a prospecting right or reconnaissance permission must —

- (i) keep proper records, at its registered office or place of business, of prospecting operations and the results and expenditure connected therewith, as well as borehole core data and core-log data, where appropriate; and
- (ii) submit progress reports and data, in the prescribed manner and at the prescribed intervals, to the Regional Manager regarding the prospecting operations.
- (iii) No person may dispose of or destroy any record, borehole core data or core-log data contemplated in Subsection (1)(a) except in accordance with the written directions of the relevant Regional Manager.

#### **16. Application for Mining Right**

- a) Any person who wishes to apply to the Minister for a mining right must lodge the application —
  - (i) at the office of the Regional Manager in whose region the land is situated;
  - (ii) in the prescribed manner; and
  - (iii) together with the prescribed non-refundable application fee.
- b) The Regional Manager must accept an application for a mining right, if —
  - (i) the requirements contemplated are met; and
  - (ii) no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land.
- c) If the application does not comply with the requirements of this Section, the Regional Manager must notify the applicant in writing of that fact within 14 days of the receipt of the application and return the application to the applicant.

- d) If the Regional Manager accepts the application, the Regional Manager must, within 14 days from the date of acceptance, notify the applicant in writing —
  - (i) to conduct an environmental impact assessment and submit an environmental management programme for approval and
  - (ii) to notify and consult with interested and affected parties within 180 days from the date of the notice.
- e) The Minister may by notice in the Gazette invite applications for mining rights in respect of any land, and may specify in such notice the period within which any application may be lodged and the terms and conditions subject to which such rights may be granted.

### **17. Eligibility and Duration of Mining Right**

- a) The Minister must grant a mining right, if—
  - (i) the mineral can be mined optimally in accordance with the mining work programme;
  - (ii) the applicant has access to financial resources and has the technical ability to conduct the proposed mining operation optimally;
  - (iii) the financing plan is compatible with the intended mining operation and the duration thereof;
  - (iv) the mining will not result in unacceptable pollution, ecological degradation or damage to the environment;
  - (v) the applicant has provided financially and otherwise for the prescribed social and labour plan;
  - (vi) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No, 29 of 1996);
  - (vii) the applicant is not in contravention of any provision of this Act; and
  - (viii) the granting of such right will further the objects and substantially and meaningfully expand opportunities for historically disadvantaged persons, promote employment and social & economic welfare of all South Africans.
- b) If the Minister refuses to grant a mining right, the Minister must, within 30 days of the decision, in writing, notify the applicant of the decision and the reasons.
- c) A mining right granted comes into effect on the date on which the environmental management programme is approved
- d) A mining right is subject to this Act, any relevant law, the terms and conditions stated in the right and the prescribed terms and conditions and is valid for the period specified in the right, which period may not exceed 30 years.

### **18. Application for Renewal of Mining Right**

- a) Any holder of a mining right who wishes to apply to the Minister for the renewal of a mining right must lodge the application —
  - (i) at the office of the Regional Manager in whose region the land is situated;
  - (ii) in the prescribed manner and
  - (iii) together with the prescribed non-refundable application fee.
- b) An application for renewal of a mining right must -
  - (i) state the reasons and the period for which the renewal is required;

- (ii) be accompanied by a report reflecting the extent of compliance with the requirements of the approved environmental management programme, the rehabilitation to be completed and the estimated cost thereof; and
  - (iii) include a detailed mining work programme for the renewal period.
- c) The Minister must grant the renewal of a mining right, if the application complies conditions stipulated above and the holder of the mining right has complied with the —
- (i) terms and conditions of the mining right and is not in contravention of any relevant provision of this Act or any other law;
  - (ii) mining work programme;
  - (iii) requirements of the prescribed social and labour plan; and
  - (iv) requirements of the approved environmental management programme.
- d) A mining right may be renewed for further periods, each of which may not exceed 30 years at a time.
- e) A mining right in respect of which an application for renewal has been lodged shall despite its expiry date remain in force until such time as such application has been granted or refused.

### ***19. Rights and Obligations of Holder of Mining Right***

In addition to the rights of holder of mining rights already referred to above, the holder of a mining right has the exclusive right to apply for and be granted a renewal of the mining right in respect of the mineral and mining area in question.

### ***20. Mineral Beneficiation***

- a) The Minister may initiate or prescribe incentives to promote the beneficiation of minerals in the Republic.
- b) If the Minister, acting on advice of the Board and after consultation with the Minister of Trade and Industry, finds that a particular mineral can be beneficiated economically in the Republic, the Minister may promote such beneficiation subject to such terms and conditions as the Minister may determine.
- c) Any person who intends to beneficiate any mineral mined in the Republic or outside the Republic may only do so after written notice and in consultation with the Minister.

### ***21. Application for Mining Permit/Exploitation***

- a) A mining permit may only be issued, if —
  - (i) the mineral in question can be mined optimally within a period of two years; and
  - (ii) the mining area in question does not exceed 1.5 hectares in extent.
- b) Any person who wishes to apply to the Minister for a mining permit must lodge the application —
  - (i) at the office of the Regional Manager in whose region the land is situated;
  - (ii) in the prescribed manner, and
  - (iii) together with the prescribed non-refundable application fee.
- c) The Regional Manager must accept an application for a mining permit, if —
  - (i) the requirements contemplated are met;
  - (ii) no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land.

- d) If the application does not comply with the requirements of this Section, the Regional Manager must notify the applicant in writing of that fact within 14 days of the receipt of the application and return the application to the applicant.
- e) If the Regional Manager accepts the application, the Regional Manager must, within 14 days from the date of acceptance, notify the applicant in writing —
  - (i) to submit an environmental management plan; and
  - (ii) to notify in writing and consult with the land owner and lawful occupier and any other affected parties and submit the result of the said consultation within 30 days from the date of the notice.
- f) The Minister must issue a mining permit, if —
  - (i) the requirements contemplated are satisfied; and
  - (ii) the applicant has submitted the environmental management plan.
- g) The holder of a mining permit —
  - (i) may enter the land to which such permit relates together with his or her employees, and may bring onto that land any plant, machinery or equipment and build, construct or lay down any surface or underground infrastructure which may be required for purposes of mining;
  - (ii) may use water from any natural spring, lake, river or stream situated on, or flowing through, such land or from any excavation previously made and used for prospecting or mining purposes, as the case may be, or sink a well or borehole required for use relating to prospecting or mining, as the case may be, on such land; and
  - (iii) must pay the State royalties;
  - (iv) may mine, for his or her own account on or under that mining area for the mineral for which such permit relates.

## **22. Tenure/Renewal**

- A mining permit —
- a) is valid for the period specified in the permit, which may not exceed a period of two years, and may be renewed for three periods each of which may not exceed one year;
  - b) may not be transferred, ceded, let, sublet, alienated or disposed of, in any way whatsoever, but may be encumbered or mortgaged only for the purpose of funding or financing of the mining project in question with the Minister's consent.

## **23. Information and Data in respect of Mining or Processing of Minerals**

The holder of a mining right or mining permit must, at its registered office or place of business, keep proper records of mining activities and proper financial records in connection with the mining activities.

## **24. Retention Permit**

- a) Any holder of a prospecting right who wishes to apply to the Minister for a retention permit must —
  - (i) lodge the application at the office of the Regional Manager in whose region the land is situated;
  - (ii) lodge the application in the prescribed manner,
  - (iii) lodge the application together with the prescribed non-refundable application fee;
  - (iv) in the application state the reasons and period for which the retention permit is requested, and
  - (v) submit a report reflecting the extent of compliance consistent with the provision

- b) The Regional Manager must accept an application for a retention permit, if —
- (i) the requirements contemplated are met; and
  - (ii) the applicant is the holder of the prospecting right in question.

### **25. Duration**

- a) The Minister may issue a retention permit, if the holder of the prospecting right has —
- (i) prospected on the land to which the application relates;
  - (ii) completed the prospecting activities and a feasibility study;
  - (iii) established the existence of a mineral reserve which has mining potential;
  - (iv) studied the market and found that the mining of the mineral in question would be uneconomical due to prevailing market conditions; and
  - (v) complied with the relevant provisions of this Act, any other relevant law and the terms and conditions stipulated in the prospecting right.
- b) A retention permit issued suspends the terms and conditions of the prospecting right held in respect of the land to which the retention permit relates and if the prospecting period has not expired, the duration of the prospecting right in question runs concurrently with that of the retention permit. However, the environmental management programme approved in respect of the prospecting right remains in force as if the prospecting right had not lapsed.
- c) A retention permit is valid for the period specified in the permit, which may not exceed three years.

### **26. Refusal for Retention Permit**

The Minister may refuse to issue a retention permit, if, after having regard to the information submitted, and research conducted by the Board at the request of the Minister, it is established that —

- (i) the mineral to which the application relates can be mined profitably;
- (ii) the applicant has not completed the prospecting operations and feasibility study in relation thereto; or
- (iii) the issuing of such permit will —
  - result in an exclusionary act;
  - prevent fair competition; or
  - result in the concentration of mineral in the hands of the applicant.

### **27. Renewal of Retention Permit**

- a) An application for the renewal of a retention permit must be lodged in the same manner as an application for a retention permit and must include —
- (i) an updated report of the circumstances which prevailed at the time of issuing of the retention permit; and
  - (ii) the period and reasons for the renewal being sought.
- b) A retention permit may only be renewed, if —
- (i) the holder has complied with the relevant provisions of this Act, any other relevant law and the terms and conditions of the retention permit; and
  - (ii) the market conditions contemplated still prevail.
- c) A retention permit may be renewed once for a period not exceeding two years.



### **28. Rights and Obligations of Holder of Retention Permit**

The holder of a retention permit has the exclusive right to be granted a mining right in respect of the retention area and mineral in question.

### **29. Retention Permit Not Transferable**

A retention permit may not be transferred, ceded, let, sublet, alienated, disposed of, mortgaged or encumbered in any way whatsoever.

### **30. Provisions Regarding Environment**

- a) The principles set out in Section 2 of the National Environmental Management Act, 1998 (Act No.107 of 1998)
  - (i) apply to all prospecting and mining operations, as the case may be, and any matter relating to such operation; and
  - (ii) serve as guidelines for the interpretation, administration and implementation of the environmental requirements of this Act.
- b) Any prospecting or mining operation must be conducted in accordance with generally accepted principles of sustainable development by integrating social, economic and environmental factors into the planning and implementation of prospecting and mining projects in order to ensure that exploitation of mineral resources serves present and future generations.

### **31. Provisions Regarding Closure**

- a) The holder of a prospecting right, mining right, retention permit or mining permit remains responsible for any environmental liability, pollution or ecological degradation, and the management thereof, until the Minister has issued a closure certificate to the holder concerned.
- b) On written application by the holder of a prospecting right, mining right or mining permit in the prescribed manner, the Minister may transfer such environmental liabilities and responsibilities as may be identified in the environmental management plan or the environmental management programme and any prescribed closure plan to a person with such qualifications as may be prescribed.
- c) The holder of a prospecting right, mining right, retention permit or mining permit or the person contemplated as the case may be, must apply for a closure certificate upon —
  - (i) lapsing, abandonment or cancellation of the right or permit in question;
  - (ii) cessation of the prospecting or mining operation;
  - (iii) the relinquishment of any portion of the prospecting of the land to which a right, permit or permission relates; or
  - (iv) completion of the prescribed closing plan to which a right, permit or permission relate.
- d) An application for a closure certificate must be made to the Regional Manager in whose region the land in question is situated within 180 days of the occurrence of the lapsing, abandonment, cancellation, cessation, relinquishment or completion contemplated in Subsection (3) and must be accompanied by the prescribed environmental risk report.
- e) No closure certificate may be issued unless the Chief Inspector and the Department of Water Affairs and Forestry have confirmed in writing that the provisions pertaining to health and safety and management of potential pollution to water resources have been addressed.

### **32. Minister's Power to Suspend or Cancel Rights, Permits or Permissions**

- a) The Minister may cancel or suspend any reconnaissance permission, prospecting right, mining right, mining permit or retention permit, if the holder thereof —
  - (i) is conducting any reconnaissance, prospecting or mining operation in contravention of this Act; or
  - (ii) breaches any material term or condition of such right, permit or permission; or
  - (iii) is contravening the approved environmental management programme; or
  - (iv) has submitted inaccurate, incorrect or misleading information in connection with any matter required to be submitted under this Act.
- b) Before acting, the Minister must —
  - (i) give written notice to the holder indicating the intention to suspend or cancel the right;
  - (ii) set out the reasons why he or she is considering suspending or cancelling the right;
  - (iii) afford the holder a reasonable opportunity to show why the right, permit or permission should not be suspended or cancelled; and
  - (iv) notify the mortgagor, if any, of the prospecting right, mining right or mining permit concerned of his or her intention to suspend or cancel the right.
- c) The Minister must direct the holder to take specified measures to remedy any contravention, breach or failure.

### **33. Minister's Power to Prohibit or Restrict Prospecting or Mining**

- a) The Minister may, after inviting representations from relevant stakeholders, from time to time by notice in the Gazette, having regard to the national interest and the need to promote the sustainable development of the nation's mineral resources, prohibit or restrict the granting of any reconnaissance permission, prospecting right, mining right or mining permit in respect of land identified by the Minister for such period and on such terms and conditions as the Minister may determine.
- b) A notice contemplated does not affect prospecting or mining in, on or under land which, on the date of the notice, is the subject of a reconnaissance permission, prospecting right, a mining right, a retention permit or a mining permit.
- c) The Minister may from time to time by notice in the Gazette —
  - (i) lift a prohibition or restriction if the circumstances which caused the Minister so to prohibit or restrict no longer exist; or
  - (ii) amend the period, term or condition applicable to any prohibition or restriction, if the circumstances which caused the Minister so to prohibit or restrict have changed.

### **34. Compensation Payable Under Certain Circumstances**

- a) The holder of a reconnaissance permission, prospecting right, mining right or mining permit must notify the relevant Regional Manager, if that holder is prevented from commencing or conducting any reconnaissance, prospecting or mining operations because the owner or the lawful occupier of the land in question —
  - (i) refuses to allow such holder to enter the land;
  - (ii) places unreasonable demands in return for access to the land; or
  - (iii) cannot be found in order to apply for access.

- b) The Regional Manager, within 14 days from the date of the notice, must —
- (i) call upon the owner or lawful occupier of the land to make representations regarding the issues raised by the holder of the reconnaissance permission, prospecting right, mining right or mining permit;
  - (ii) inform that owner or occupier of the rights of the holder of a right, permit or permission in terms of this Act;
  - (iii) set out the provisions of this Act which such owner or occupier is contravening; and
  - (iv) inform that owner or occupier of the steps which may be taken, should he or she persist in contravening the provisions.
- c) If the Regional Manager, after having considered the issues raised by the holder and any written representations by the owner or the lawful occupier of the land, concludes that the owner or occupier has suffered or is likely to suffer loss or damage as a result of the reconnaissance, prospecting or mining operations, he or she must request the parties concerned to endeavour to reach an agreement for the payment of compensation for such loss or damage.
- d) If the parties fail to reach an agreement, compensation must be determined by arbitration in accordance with the Arbitration Act, 1965 (Act No. 42 of 1965), or by a competent court.

### **35. Power to Expropriate Property**

The Constitution confers power to the Minister to expropriate any land or any right therein for purpose of prospecting or mining.

### **36. Lapsing of Right, Permit, Permission and Licence**

Any right, permit, permission or licence granted or issued in terms of this Act shall lapse, whenever —

- a) it expires;
- b) the holder thereof is deceased and there are no successors in title;
- c) a company or close corporation is deregistered in terms of the relevant Acts and no application has been made or was made to the Minister for the consent or such permission has been refused;
- d) say for cases where the rights are encumbered, the holder is liquidated or sequestrated;
- e) it is cancelled, or
- f) it is abandoned.

### **37. Petroleum Exploration and Exploitation**

Granting of exploration rights and exploitation rights, issuing of technical cooperation and reconnaissance permits, renewal of exploration rights, rights & obligations of exploration right holder, application for production rights, duration, renewal; rights and obligations of holder of production rights, etc., are governed by Sections 69 to 90 of this Act.

## **GENERAL AND MISCELLANEOUS PROVISIONS**

### **38. Power to Enter Prospecting Area, Mining Area or Retention Area**

The Minister may designate any member of the Board, the Regional Manager or any officer, as an authorised person in order to obtain evidence, enter any reconnaissance, prospecting, mining, exploration, production or retention area or any place where prospecting operations or mining operations are being conducted where he or she has reason to believe that any provision of this Act has been, is being or will be contravened;

### 39. Offences

Any person is guilty of an offence, if he or she —

- a) contravenes or fails to comply with —
  - (i) Sections 5(4), 20(2), 19 or 28;
  - (ii) Sections 92, 94 or 95;
  - (iii) Section 38(1)(c);
  - (iv) Section 42(1) or (2);
  - (v) Section 44;
  - (vi) any directive, notice, suspension, order, instruction or condition issued, given or determined in terms of this Act;
  - (vii) any direction contemplated in Section 29; or
  - (viii) any other provision of this Act;
- b) submits inaccurate, incorrect or misleading information in connection with any matter required to be submitted under this Act; or
- c) fails to provide a written notice or consult with the Minister in terms of Section 26(3).

### 40. Legal Liabilities (Penalties)

- a) Any person convicted of an offence in terms of this Act is liable —
  - (i) in the case of an offence referred to in Section 98(a)(i), to a fine not exceeding R.100,000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;
  - (ii) in the case of an offence referred to in Section 98(a)(ii), to a penalty that may be imposed for perjury;
  - (iii) in the case of an offence referred to in Section 98(a)(iii), to a fine not exceeding R.500,000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment;
  - (iv) in the case of an offence referred to in Section 98(a)(v), to a penalty that may be imposed in a Magistrate's court for a similar offence;
  - (v) in the case of an offence referred to in Section 98(a)(vi) and (vii), to a fine not exceeding R.10,000;
  - (vi) in the case of an offence referred to in Section 98(c), to a fine not exceeding R.500,000 for each day that such person persists in contravention of the said provisions;
  - (vii) in the case of any conviction of an offence in terms of this Act for which no penalty is expressly determined, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment; and
- b) Despite anything to the contrary in any other law, a Magistrate's court may impose any penalty provided for in this Act.

### 41. Preferent Prospecting or Mining Right in respect of Communities

- a) Any community who wishes to obtain the preferent right to prospect or mine in respect of any mineral and land which is registered or to be registered in the name of the community concerned, must lodge such application to the Minister.

- b) The Minister must grant such preferent right, if the community can prove that —
  - (i) the right shall be used to contribute towards the development and the social upliftment of the community concerned;
  - (ii) the community submits a development plan, indicating the manner in which such right is going to be exercised;
  - (iii) the envisaged benefits of the prospecting or mining project will accrue to the community in question; and
  - (iv) the community has access to technical and financial resources to exercise such right.
- c) The preferment right, granted in terms of this Section is valid for a period not exceeding five years and can be renewed for further periods not exceeding five years.

#### **42. Exemptions from Certain Provisions of Act**

- a) The Minister may by notice in the Gazette, exempt any organ of State from the provisions of Sections 16, 20, 22 and 27 in respect of any activity to remove any mineral for road construction, building of dams or other purpose which may be identified in such notice.
- b) Despite Subsection (1), the organ of State so exempted must submit an environmental management programme for approval.
- c) Any landowner or lawful occupier of land who lawfully, takes sand, stone, rock, gravel or clay for farming or for effecting improvements in connection with such land or community development purposes, is exempted from the provisions of Subsection (1) as long as the sand, stone, rock, gravel or clay is not sold or disposed of.

#### **43. Royalty/Dead Rent & Other Taxes**

Provision regarding royalty is dealt under Subsection g(iii) of Section 21 of this Act.

#### **44. Provincial Enactment**

There is no information in this regard.

#### **45. Proof of Facts**

In any legal proceedings in terms of this Act any statement, entry or information in or on any book, plan, record or other document is admissible as prima facie evidence of the facts in or on it by the person who made, entered, recorded or stored it.

#### **46. Act Binds State**

This Act binds the State save in so far as criminal liability is concerned.

#### **47. Repeal and Amendment of Laws, and Transitional Provisions**

Subject to Schedule 2, namely, transitional arrangements, the laws mentioned in Schedule 1 are hereby repealed or amended to the extent set out in the third column of Schedule 1.

#### **48. Salient Features**

- a) The Minister must, within five years from the date on which this Act took effect —
  - (i) and after consultation with the Minister for housing, develop a housing and living conditions standard for the mineral industry; and

- (ii) develop a code of good practice for the mineral industry in the Republic.
- b) To ensure the attainment of Government's objectives of redressing historical, social and economic inequalities as stated in the Constitution, the Minister must within six months from the date on which this Act takes effect develop a broad-based socio-economic empowerment Charter that will set the framework, targets and time-table for effecting the entry of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of mining and mineral resources.

### Schedule I – Repeal or Amendment of Laws

#### (Section 110)

| <i>No. and Year of Act</i> | <i>Short Title</i>                                   | <i>Extent of Repeal or Amendment</i>   |
|----------------------------|--|--|
| Act No.47 of 1937 Deeds    | Registries Act, 1937                                 | <ol style="list-style-type: none"> <li>1. The repeal of Sections 3(1)(m), (n), (o), 17(5)(b), 70 to 74, 84, 85 and 90(1)(a), (c) and (e).</li> <li>2. The amendment of Section 67 by the deletion of the words "or in a deed of cession of rights to minerals".</li> <li>3. The amendment of Section 90(a) by the deletion of the words "right to minerals".</li> <li>4. The amendment of Section 102 by — <ol style="list-style-type: none"> <li>a) the deletion of paragraph (a) in the definition of "immovable property"; and</li> <li>b) the deletion of the definition of "prospecting contract".</li> </ol> </li> </ol> |
| Act No. 50 of 1956         | General Laws Amendment Act, 1956                     | The repeal of Sections 3 and 4.  |
| Act No.96 of 1969          | Expropriation of Mineral Rights (Township) Act, 1969 | The whole  |
| Act No. 29 of 1996         | Mine Health and Safety Act, 1996                     | 1. Amendment of Section 102 by the substitution of the following definition for the definition of mining area — "mining area means a prospecting area, mining area, retention area, exploration area and production area as defined in Section 1 read with Section 65(2)(b) of the Petroleum and Mineral Resources Development Act, 2002 (Act No. 28 of 2002)."  |
| Act No.57 of 1976          | National Parks Act, 1976                             | The deletion of any reference to mineral right in Sections 2A,2C,2D,3 and 3A.  |
| Act No. 39 of 1979         | Bophuthatswana Land Control Act, 1979                | The deletion of Section 16(1).   |

contd...

| <i>No. and Year of Act</i> | <i>Short Title</i>                                | <i>Extent of Repeal or Amendment</i>   |
|----------------------------|---|--|
| Act No. 6 of 1986          | Venda Land Control Act, 1986                      | The deletion of Section 16(1)  |
| Act No.50 of 1991          | Minerals Act, 1991                                | The whole, except for the definitions of "precious metals" and "unwrought precious metal" in Section 1 and Chapter XVI of the Mining Rights Act, 1967 and except the definition of "Sunday" in and Section 9 of the Mines and Works Act, 1956  |
| Act No.47 of 1994          | Mineral and Energy Laws Rationalisation Act, 1994 | The whole  |
| Act No.3 of 1996           | Land Reform (Labour Tenant's) Act, 1996           | Deletion of reference to mineral rights in Section 2(3)  |
| Act No.94 of 1998          | Transformation of Certain Rural Areas Act, 1998   | Section 6.   |
| Act No. 107 of 1998        | National Environmental Management Act, 1998       | Amendment of Section 36 by the deletion of the proviso to Subsection (1).  |
| Act No. 8 of 1997          | Land Survey Act, 1997                             | <p>1. Amendment of Section 1 by —</p> <p>a) the deletion of paragraph (d) of the definition of "owner";</p> <p>b) the substitution for the definition of "share" with the following definition:</p> <p>1 'share', in relation to land, [and rights to minerals] means an undivided share;".</p> <p>2. Amendment of Section 29 by —</p> <p>a) the substitution in Subsection for paragraph (c) with the following paragraph:</p> <p>"(c) holders of real rights [other than a right to minerals] in the piece of land or in land contiguous thereto whose rights would be adversely affected by the position of the beacons or boundaries adopted";</p> <p>b) by the substitution in Subsection (2) for paragraph (ii) with the proviso to paragraph (d) of the following paragraph:</p> <p>"(ii) in respect of that piece of land, or any contiguous land, [or any rights to minerals in that piece of land] or any other real rights which are held by two or more owners or holders in</p> |

| <b>No. and Year of Act</b> | <b>Short Title</b> | <b>Extent of Repeal or Amendment</b>   |
|----------------------------|--------------------|--|
|                            |                    | <p>shares, it shall be sufficient if the agreement is signed by the owners or holders of not less than three-fourths of the shares in the piece of land or the rights, as the case may be;"</p> <p>c) by the deletion in Subsection (2) of paragraph (iii) of the proviso to paragraph (d).</p> <p>3. Amendment of Section 34 by the substitution in Subsection (2) for the proviso to paragraph (b) of the following proviso:</p> <p>"Provided that in respect of that contiguous land, [or any rights to minerals in respect of the land being surveyed] or any other real rights which are held by two or more owners or holders in shares, it shall be sufficient if the agreement is signed by the owners or holders of not less than 75% share in that piece of land or those rights, as the case may be."</p> |



**SOUTH AFRICA— SOME SALIENT FEATURES AT A GLANCE**

| <i>Type of concessions</i>  | <i>Salient features</i>  |
|---|--|
| <p><b>A) Reconnaissance</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol>              | <p>No provision regarding area exists<br/>2 years.<br/>No provision regarding renewal exists.<br/>By an application to the Minister at the office of the Regional Manager in the prescribed manner.</p>  |
| <p><b>B) Prospecting Right</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol>           | <p>No provision regarding area exists.<br/>No provision regarding period exists.<br/>May be renewed once for a period not exceeding three years.<br/>An application in the prescribed form together with the prescribed fee, addressed to the Minister must be lodged at the office of the Regional Manager in whose region the land is situated.</p>                                  |
| <p><b>C) Mining Right</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol>                | <p>No specific provision regarding area exists.<br/>Not exceeding 30 years<br/>Mining Right can be renewed for further periods, each of which may not exceed 30 years at a time.<br/>An application addressed to the Minister in the prescribed form, accompanied with prescribed fee, to be submitted at the office of the Regional Manager in whose region the land is situated.</p> |
| <p><b>D) Mining Permit/ Exploitation</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> <li>4. Modality of Grant</li> </ol> | <p>Mining area in question should not exceed 1.5 hectare in extent.<br/>2 years.<br/>May be renewed for three period each of which may not exceed one year.<br/>On an application to the Ministry in the prescribed form together with the prescribed application fee, lodged at the office of the Regional Manager, in whose region the land is situated.</p>                         |

contd...

| <i>Type of concessions</i>  | <i>Salient features</i>   |
|---|---|
| <p><b>E) Retention Permit</b></p> <ol style="list-style-type: none"> <li>1. Area</li> <li>2. Period</li> <li>3. Renewal</li> </ol>      | <p>No provision regarding area exists</p> <p>Duration of the prospecting right in question runs concurrently with that of the retention permit.</p> <p>Retention permit may be renewed once for a period not exceeding two years.</p> |
| <p><b>F) Taxes</b></p> <ol style="list-style-type: none"> <li>1. Royalty/Rent</li> <li>2. Dead Rent</li> <li>3. Surface Rent</li> </ol> | <p>The holder of a mining permit must pay State royalties.</p> <p>There is no provision regarding dead rent in the Act.</p> <p>There is no provision regarding surface rent in the Act.</p>   |

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