





**MINES AND MINERALS BILL, 2025**

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MEMORANDUM

This Bill will replace the Mines and Minerals Act [*Chapter 21:05*] in order to achieve the following main objects:

- (a) to change the composition of the Mining Affairs Board and to clarify and extend its functions;
- (b) to formalise the switch in title from “mining commissioner” to “Provincial Mining Director” (PMD): this is the official primarily responsible for administering the Mines and Minerals Act at the local level;
- (c) to establish the Mining Cadastre Register and Registry, and to reduce the classes of Mining Titles to three only;
- (d) consistently with the introduction of the Mining Cadastre Register, which will ensure uniformity and simplicity of mining titles, the pegging of secondary reefs and the holding of extra-lateral rights are more carefully regulated or abolished;
- (e) regulate the activities of prospectors more closely, and to confine their activities to specific areas defined by grids;
- (f) to remove the distinction between precious metal and base metal claims;
- (g) to provide for mining title to be granted in the form of an ordinary or special mining lease, where the title extends over four or more contiguous blocks;
- (h) to require holders of mining rights to work their claims rather than allowing them to preserve their title by paying annual fees;
- (i) to require miners to participate in funds and to make other provision to meet the cost of restoring the environment when their mining operations come to an end;
- (j) to convert certain special grants into mining leases;
- (k) to remove much of the excessive particularity from the Act (for example, the detailed provisions setting out the way in which claims must be pegged) and leaving such matters to be prescribed in regulations;
- (l) to make provision for the indigenisation and localisation of the mining industry at the primary level of mining;
- (m) the introduction of the concept of the concept of “strategic minerals” to which special conditions by mutual agreement between the Minister and the State will attach;
- (n) generally, to make the procedures under the Act more transparent and to allow aggrieved persons a right of appeal to the Administrative Court against decisions which affect their rights.

The individual clauses of the Bill are hereunder outlined.

PART I

PRELIMINARY

**Clause 1** provides for the title of the Bill and its commencement. The Bill, if enacted, will commence on the ninetieth day after its promulgation, unless the President extends that date by a period of not more than sixty days. However the provision about the exclusive authenticity of entries in the Mining Cadastre Register will be deferred until the Registry (by Presidential declaration) has achieved the requisite operational capacity. (Until such time as the Mining Cadastre Register is declared to be fully

operational, references in this Bill and the previous Act to anything registered or required to be registered in the Mining Cadastre Register shall be construed as references to anything registered or required to be registered with the PMD or with the Mining Affairs Board or with the Secretary, as the case may be: see Clause 313 (“Repeal of Cap. 21:05; savings and transitional provisions”)(7))

**Clause 2** [*Rights to minerals vested in President*] acknowledges the historic legal dominium of the Head of State over the subsoil resources of the State. The limitation of other rights attendant upon that dominium is an aspect of the overriding general public interest mentioned in the Constitution (section 86(2)(b)).

**Clause 3** [*Acquisition, nature and exercise of prospecting, exploration and mining rights and title thereto*] acknowledges the role of Parliament in defining by law the scope of the President’s dominium over subsoil resources with respect to the prospecting for or exploitation of minerals, mineral oils, natural gases, precious metals and precious stones. Prospecting, exploration and mining rights granted by this Act are specified to be limited rights the exercise of and title to which are subject to this Act.

**Clause 4** [*Interpretation*] contains important terms, definitions of terms used throughout the Bill. Significant among these are the following:

- The definitions of “99-year lease”, “alienated or partially alienated land”, “Gazetted land”, “holding”(of land), “land resettlement permit”, “landholder” and “offer letter” brings the mining law up to date with the new land tenure landscape since the enactment of the Land Reform; the effect of definitions is to facilitate the extension of the same protections that were previously afforded to owners of private property to holders of the 99-year leases and land permits recently issued to new farmers;
- The distinction between “base minerals”, “precious metals” and ‘precious stones’ is maintained in this Bill, albeit that to the practical distinction between precious metal and base metal claims will be abolished except for certain limited purposes, such as the payment of royalties;
- A “claim” is defined as a pegged area of land not exceeding one hectare in extent, while a “block” is defined as a claim or group of such claims registrable under one certificate of title that does not exceed 10 hectares (but for most purposes the distinction between claims and blocks is unimportant and only arises where, for instance, one or more adjoining claims are sold);
- The definition of “civil penalty” defines a new kind of non-criminal penalty administered by the PMDs; the details of the civil penalty regime are set forth in the First Schedule to the Bill;
- “exclusive exploration reservation” and “exclusive exploration licence” are new kinds of mining right that will replace the “exclusive prospecting reservation” and “exclusive prospecting order”;
- The definitions of “defunct register”, “final register” and “provisional register” define the 3 kinds of registers of mining rights and titles maintained by the PMD that feed into the “Mining Cadastre Register” administered by the “Mining Cadastre Registrar”
- “global positioning” is a definition that acknowledges the application of information technology to the establishment and exercise of mining rights;
- “mineral” remains defined as it is in the existing Act;
- “mining lease”: the distinction between “mining lease” and “special mining lease” will be abolished, albeit that there remains a distinction in

the application phase for a mining lease between ordinary lease applicants (mostly local miners graduating from small-scale miner status) and special lease applicants (mostly large-scale miners and foreign investors);

- “mining location” defines the area of ground subject to mining rights by reference to the 3 types of mining title: claims (or blocks of claims), mining leases and special grants;
- “rare earth mineral” is a defined special class of base mineral which will be treated as a “strategic mineral” for the purposes of this Act;
- “special grant”: the distinction between “special grant” and “special grant for coal, mineral oils and natural gases” is abolished; in addition to coal, mineral oils and natural gases, special grants will also now be obtainable for “strategic minerals” and nuclear energy source materials;
- “strategic mineral” means a mineral declared by the Minister to be such in terms of section 6(2) of the Bill, that is to say, a mineral that is deemed strategic by virtue of its importance to the economic, social, industrial or security interests of Zimbabwe (certain minerals mentioned in the Second Schedule are deemed in advance to be strategic);
- “mining provinces”, administered by “Provincial Mining Directors” (PMDs), will substitute for the division of the country in ‘mining districts’ administered by “mining commissioners” (though the Minister will still have power to declare mining districts within the jurisdiction of mining provinces, if it is convenient to do so for any purpose under the Act: see clause 264 of the Bill);
- “restricted public water” and “public water”: although strictly and legally speaking there is no longer such a thing as “private water” (all aboveground and underground water having been vested in the President by the Water Act, 1998), it is expedient for the purposes of this Act to describe as water which occurs on a landholder’s land and is used for his or her primary purposes as “restricted public water” (as distinct from “public water”): miners must negotiate with landholders for the use of “restricted public water” or, failing agreement, refer the dispute to the PMD for adjudication;
- “Register of Staking Agents” and “Staking Agents” are new terms that substitute for the existing “Register of Approved Prospectors” and “Approved Prospectors” respectively; this will make the distinction between a “prospector” (who holds an exclusive prospecting licence) and someone who helps to establish and demarcate mining locations (“staking agent”) clearer (however nothing stops a prospector from also being qualified and registered as a staking agent);
- “title” defines the scope of various types of property and mining title for the purposes of the Bill (fundamentally, a title to is a title to a real right in the nature of property).

**Clause 5** [*Manner of giving notices and serving documents under this Act*]: throughout the Bill the Minister, the Secretary, the Mining Affairs Board, the PMDs, other officials, miners and other persons are required to give statutory notifications of various acts and decisions and to serve various documents. Such notices are crucial for establishing the scope and existence of mining and other rights and duties, the time within which to lodge appeals, and the doing of other things necessary to authenticate, pursue and protect rights, exercise powers and perform duties. This clause comprehensively sets forth the manner of giving such notices and serving such

documents, and requires in every case that proof of service of notices and documents be filed for record in anticipation of disputes or litigation.

Under **clause 6** [*Strategic minerals*] it is proposed that the Minister should have power, after consultation with the Mining Affairs Board, to declare any mineral to be a “strategic mineral”. The declaration means that any proposed miner of the strategic mineral must enter into a prior agreement with the State which, among other things, may require any or all of the following: a commitment to invest at least US\$1 000 000; the formation of a company or other special investment vehicle in which the State has an interest; and other undertakings relating to environmental protection and corporate social responsibility. The form of title under which a strategic mineral may be exploited shall be a mining lease or special grant.

Where the Minister makes an order specifying that the designation of a mineral as a strategic mineral applies only to a defined area of Zimbabwe, the Minister may in addition do the following: (1) at the same time or at any time after the designation of the strategic mineral, cause the defined area to which the order relates to be reserved against prospecting and pegging in terms of **clause 40** (“Reservations against prospecting and pegging”); and (2) invite bids (in accordance with the provisions of the Zimbabwe Investment and Development Agency Act, 2019 relating to public private partnerships) from potential investors interested in mining the strategic mineral.

However, notwithstanding the minimum investment figure for exploiting a strategic mineral specified under sub clause (4)(a)(ii), if in any area or part of any area designated by a notice under subclause (2) for the exploitation of a strategic mineral, the Minister is satisfied—

- (a) upon a report by the Director-Geological Survey that there are in that area deposits of a strategic mineral small enough to be exploited by any small-scale miner; and
- (b) the exploitation of any such deposit by any small-scale miner will not impinge upon the exploitation of the strategic mineral concerned by any investor referred to in subclause (4)(a)(ii);

then the Minister shall permit any such small-scale miner or group of such miners (on the basis of a claim or block of claims) to exploit those deposits, subject to the miner or miners in question entering into an individual or collective agreement with the state referred to in subclause 4(b), as a condition for the grant or continuance of any claim or block of claims in respect of that strategic mineral.

## PART II

### ESTABLISHMENT AND FUNCTIONS OF MINING AFFAIRS BOARD

**Clauses 7 and 8** [*Establishment and functions of Mining Affairs Board*] provides for the establishment of the Mining Affairs Board having a similar mandate to the Mining Affairs Board established under the repealed Act, but will alter the composition of the Board. At present the Board consists of the Permanent Secretary for Mines and four other officials in the Ministry, together with six members appointed by the Minister to represent miners and farmers. Under the new provision (**clause 9** [*Constitution of Board*]), the Board will consist of the Secretary and six other Ministry officials of at least Director-level seniority, plus six further members appointed by the Minister to represent the Chamber of Mines, small-scale miners, large-scale farmers, small-scale farmers, the Institute of Chartered Accountants of Zimbabwe, and one other member appointed for his or her experience or qualifications in any profession or calling considered by the Minister to be useful to the Board.. The composition of the Board must be gender and regionally balanced. The Board will be empowered to establish specialist committees composed of non-members to assist it as required.

**Clause 10** [*Filling of vacancies*] provides for the filling of vacancies on the Mining Affairs Board.

**Clause 11** [*Remuneration of members of Board*] provides for the remuneration of the members of the Mining Affairs Board.

**Clause 12** [*Procedure of Board*] provides for the procedure of the Mining Affairs Board. Among other things it regulates the frequency of meetings of the Board by requiring that the Board to meet at least once every two months. It will fix its quorum at seven out of its 13 members.

**Clause 13** [*Powers of Board in relation to applications*] provides for the general powers the Mining Affairs Board may exercise in relation to applications that are made to it under the Bill. The clause gives the Mining Affairs Board the power to examine on oath persons appearing before it. In addition to general investigative powers, the Mining Affairs Board is empowered to extend periods within which applications are to be made or documents are to be submitted to the Board. The Board will also be able to refer questions of law to the Supreme Court for decision.

**Clause 14** [*Penalties for perjury, contempt and obstruction*] makes persons giving evidence before the Board liable to prosecution for perjury if they make false statements on oath. The clause also imposes a criminal penalty upon any person convicted of obstructing any agent authorised by the Board to examine a mining location or other area of ground subject to investigation by the Board. The Board also has power to summon persons to appear before it and to compel them to bring relevant documents, on pain of prosecution for failure to do so.

**Clause 15** [*Board may hold virtual meetings and hearings*] empowers the Board to hold virtual meetings and hearings under specified conditions.

Subject to certain requirements to guard against abuse, the Minister will be empowered by **Clause 16** [*Minister may give policy directions to Board*] to issue general policy directions to the Mining Affairs Board.

### PART III

#### MINING CADASTRE REGISTRY

The office of the Mining Cadastre Registry and the Mining Cadastre Register for recording all current mining rights and titles will be established under Part III of the Bill. The Permanent Secretary in the Ministry will be the Mining Cadastre Registrar, but a Deputy Mining Cadastre Registrar (preferably having IT qualifications) will do the administrative work of the Mining Cadastre Registry on behalf of the Secretary/Registrar (**clauses 17 and 18**).

**Clause 19** [*Access to Mining Cadastre Register*] provides for open access to the Mining Cadastre Register. Holders of mining title may obtain authenticated copies of the same by application submitted together with the prescribed fee to the Mining Cadastre Registrar. Holders of title may also authorise other interested persons to obtain from the Registrar authenticated copies of any mining title of the holder. In addition, persons who are not the title holders but who can demonstrate to the Registrar that they have any legal interest in a mining title may, without the authority of the title holder, obtain from the Registrar authenticated copies of any mining title of the holder.

All certificates of registration and other mining rights (such as, for instance, the registration of claims, mining leases and special grants, and the mining locations relating thereto) will be given provisionally by the Provincial Mining Directors in the Mining Provinces where those mining rights will be exercised, but subject to confirmation by the Mining Cadastre Registrar before being finally and speedily entered in the Mining Cadastre Register. The Mining Cadastre Register is the final and definitive record of the existence, scope and extent of all mining rights and titles, and no provincial

register can be in conflict with it (**clauses 20 and 21**). To strengthen the reliability and transparency of the Register, entries in it must reflect the beneficial ownership of every mining right or title, for which purpose **clause 20** [*Entries in Mining Cadastre Register to be conclusive proof of mining right or title; rectification of Mining Cadastre Register*] bestows powers on the Registrar to ensure that the names of beneficial owners are disclosed and recorded in the Register. That clause also allows the Mining Cadastre Registrar or any interested person to rectify any entry in the Mining Cadastre Register in accordance with the transparent procedure set forth in the **Third Schedule**.

#### PART IV

##### STAKING AGENTS

**Part IV** of the Bill requires the Secretary for Mines to keep a register of staking agents. These are persons who under the existing Mines and Minerals Act are called “approved prospectors”. Registration as an approved prospector does not by itself give rights to the approved prospector to obtain mining rights in the form claims, mining leases or special grants. Registration simply qualifies the person so registered to do certain things connected with demarcating or pegging the location and extent of mining claims, mining leases or special grants. So as to avoid any confusion or misuse over or of the term “prospector”, it is provided by this Bill that the distinct activities of claim demarcation and obtaining title to a mining right be assigned respectively to a “staking agent” and to a “prospector” (in most cases the latter is the holder of an exclusive prospecting licence or of an authority to prospect by virtue of a special grant).

**Clause 23** [*Register of staking agents*] establishes the Register of Staking Agents, which is to be maintained by the Secretary.

**Clause 24** [*Work of staking agents*] defines the activity for which a person must be registered as a staking agent in order to engage in that activity lawfully (namely, virtual or physical pegging or demarcation of a mining location in accordance with this Bill); persons doing the work of a staking agent without being registered as such are liable to be served with a civil penalty order by the PMD responsible for the area where the illegal work taking place. Staking agents who make false returns or declarations to the PMD are similarly liable for civil default proceedings.

**Clause 25** [*Application for registration as staking agent*] provides for the qualifications for registration as a staking agent and the procedure for applying for registration as such (applicants must be Zimbabwean citizens or permanent residents over the age of 18). Furthermore they must have the prescribed experience or qualifications as a staking agent or must have been previously registered as approved prospectors. Applications are processed in the first instance by the PMD of the mining province in which the staking agent proposes to operate. The PMD transmits applications upwards to the Secretary for final approval. Rejected applicants can appeal to the Secretary and ultimately to the Administrative Court.

**Clause 26** [*Expiry and renewal of registration*] provides for the expiry and renewal of registration as a staking agent. Registration as a staking agent is valid for 5 years.

**Clause 27** [*Cancellation or suspension of registration*] provides for the cancellation or suspension of a person’s registration as a staking agent in specified circumstances (conviction of criminal offence or other conduct on the part of the staking agent that renders him or her unfit to remain registered as such). Notice of the proposed cancellation or suspension of registration as a staking agent will be given to the affected person to enable him or her to be heard on the matter. Persons lawfully working as approved prospectors at the commencement of this Bill must, within 6 months of the date of the enactment of regulations prescribing any re-orientation course or test of competence as a staking agent, comply with such requirements or risk de-registration as a staking agent.



**Clause 28** [*Effect of expiry, cancellation or suspension of registration*] provides for the consequences of the expiry, cancellation or suspension of registration as a staking agent: any persons aggrieved by the cancellation or suspension of registration may seek a review of such action from the Administrative Court.

**Clause 29** [*Duplicate certificate of registration as staking agent*] enables a staking agent to obtain a duplicate copy of his or her certificate of registration in certain circumstances.

## PART V

### ACQUISITION AND REGISTRATION OF MINING RIGHTS

**Part V** of the Bill is concerned with the acquisition and registration of mining rights, the point of departure for which is the obtaining of an exclusive prospecting licence.

By way of background information, presently under the existing Act, prospecting licences entitle the licensees, acting through approved prospectors, to prospect for minerals anywhere in Zimbabwe on land that is open to prospecting. **Part V** of the Bill will introduce a new system under which the licences will be called “exclusive prospecting licences” and will restrict each licensee to prospecting within a single defined area, within which the licensee must eventually identify a smaller area not exceeding 40 contiguous hectares of claims or blocks of claims. Each licensee will have exclusive prospecting rights within the area defined by the licence.

**Clause 30** [*Interpretation in Part V*] provides for the interpretation of key words and phrases used in this Part of the Bill; of particular note is the definition of “area under cultivation”, of which we will have more to say in connection with **clauses 39 and 40**.

**Clause 31** [*Issue of exclusive prospecting licences*] describes the procedure for obtaining an exclusive prospecting licence (EPL) from a PMD. Each EPL is valid only for 12 months, within which time the holder must have staked not more than 40 contiguous hectares of claims or blocks of claims within the area for which the licence was issued, namely the mining province. After the staking of the claims or blocks the EPL holder exercises his or her rights within the staked area to the exclusion of other prospectors. Further claims can only be staked under a new EPL. Only citizens or permanent residents of Zimbabwe aged over 18 years (or companies, partnerships, syndicates or joint ventures controlled by such citizens or permanent residents) qualify to obtain EPLs, unless the applicant, being a foreigner, exhibits proof satisfactory to the PMD that he, she or it intends to operate on a larger scale than a small scale miner (that is to say, the applicant intends to register an ordinary mining lease over his or her discovery). Applications for EPLs are processed purely at the PMD level in the mining province where the prospector intends to operate. Rejected applicants can appeal to the Secretary and ultimately to the Administrative Court.

**Clause 32** [*Cancellation or suspension of exclusive prospecting licences*] empowers the PMD to cancel or suspend an EPL for breaches of the EPL or for conduct rendering the holder unfit to retain it. The holder is first given an opportunity to respond to the PMD’s allegations. If the cancellation or suspension proceeds and the holder is aggrieved, the latter may appeal to the Secretary, and ultimately to the Administrative Court.

**Clause 33** [*Prohibition against sale or transfer of exclusive prospecting licences*] prohibits (under threat of criminal punishment for noncompliance) the sale or transfer of an EPL to another person.

#### *Sub-Part B: Prospecting: Rights and Restrictions*

**Clause 34** [*Land open to prospecting*] opens up nearly the whole country to prospecting, subject to the limitations contained in **clause 35**.

**Clause 35** [*Rights of prospecting and pegging conferred by exclusive prospecting licences*] particularises the rights of prospecting and pegging bestowed upon the holder of an EPL. The rights are exercised in stages, the first being the right to prospect and search for minerals on all land open to prospecting within the mining province to which the EPL relates, and the second being the right to identify a single area not exceeding 40 hectares within which the prospector may prospect exclusively and peg up to 40 claims or four blocks of claims. The actual pegging and other acts of demarcation on the ground and on a map can only be done by a staking agent on behalf of the prospector, unless the latter is also registered as a staking agent. A licensee will not be allowed to remove minerals from the land on which they are found, except for the purposes of assay.

**Clause 36** [*Surface rights of holder of exclusive prospecting licences*] sets forth the surface rights of holders of EPLs. Such holders (“prospectors”) will have the following rights when engaged in prospecting: (1) the right of taking water on private or public land from land not closed to prospecting (without interference with the domestic use of restricted public water by the occupier of the affected land, and subject to payment of an agreed rate for the taking); (2) the right, after posting a prospecting notice, to take and use dead wood or timber for firewood in connection with prospecting operations within the limits of the mining location; and (3) the right to erect temporary accommodation for himself or herself and his or her employees, and to put up temporary buildings and install machinery for the purposes of his or her work within the limits of the mining location. The precise exercise of these rights are negotiable with the occupier of the affected land, but if the negotiations are fruitless, the prospector may refer the dispute to the PMD. The PMD thereupon convenes a meeting of the disputants and decides the dispute after hearing them. An aggrieved disputant may appeal to the Secretary, and ultimately to the Administrative Court.

This clause is the first of many adverting to the manner of resolving disputes between prospectors and miners, on the one hand, and farmers and other landholders on the other hand, and it sets the pattern for other clauses addressing farmer/miner disputes. The pattern is as follows: whenever a dispute arises (usually after negotiations between the disputants to resolve the dispute informally have failed), one of the disputants (usually the one asserting the mining right) approaches the PMD, who thereupon establishes the issues in dispute by obtaining affidavits from the disputants. The PMD then convenes a meeting (at his or her office or elsewhere), to which other interested parties are also invited. At the meeting the disputed issues are canvassed in an informal yet structured way. The PMD conducts the meeting in accordance with certain rules specified in the **Fourth Schedule**, to ensure the proper adjudication of the issues. After the meeting the PMD notifies his or her decision to the disputants and compiles a report for the Secretary on how the dispute was resolved. If either of the disputants is aggrieved, he or she may appeal against the PMD’s decision to the Secretary, who will either uphold the PMD’s decision or, in most cases, refer the decision back to the PMD for reconsideration on certain grounds (in a few cases the Secretary may substitute his or her own decision for that of the PMD). A further appeal lies to the Administrative Court, which can likewise uphold the Secretary’s decision or refer it back to the Secretary for reconsideration. (Most appeals for which provision is made in this Bill are in the nature of applications for the review of administrative action, not appeals on the merits of the case decided by the respondent official). In this way due observance of administrative justice is secured as mandated by **section 68** (“Right to administrative justice”) of the Constitution.

**Clause 37** [*Ground not open to prospecting*] sets forth what ground is not open to prospecting for minerals, namely the following: (1) within 450 metres of the site of an actual or projected principal homestead on any alienated or partially alienated land or occupied land within Communal Lands, except with the consent in writing of the holder or occupier of such land; (2) within 90 meters of permanent housing for farm

employees or of other buildings or farm improvements of a specified value, or of any permanent cattle dip or spray race; (2) within 15 meters of any land under cultivation; (3) within 9 meters of any other permanent farm building except upon payment of agreed compensation; (4) upon any other mining location; (5) within the surveyed limits of any city, town, township or village, or upon a belt 50 meters wide outside such limits; (6) upon any licensed aerodrome or emergency landing ground or aerodrome of the State; (7) upon any rifle range of the State, or any railway reserve or any cemetery; (8) within any holding of land or Communal land not exceeding 100 hectares, except with the consent of the owner, holder or occupier thereof; and (9) upon any Communal Land occupied as a village without the written consent of the RDC having jurisdiction over it. In the case of item (8), if consent is unreasonably withheld, the prospector may refer the matter to the PMD for adjudication, and ultimately to the Mining Affairs Board and Administrative Court. Subclause (4) seeks to prevent “self-dealing” on the part of landholders; that is to say, if a landholder refuses to allow a miner or prospector to exercise any of his or her rights over any ground forming part of the landholder’s land, the landholder is forbidden to obtain any mining right or title in his or her name over that ground for a period of 10 years, unless he or she earlier obtains the written leave of the earlier mentioned miner or prospector to do so.

**Clause 38** [*Disputes as to whether land is open to prospecting*] provides for the resolution of disputes as to whether or not land is open to prospecting. The pattern of dispute resolution at the level of the PMD broadly follows the pattern described in relation to **clause 34** above. A further appeal lies to the Administrative Court which can uphold the PMD’s decision on the matter or substitute its own decision; alternatively, if the Court cannot resolve the dispute on the papers before it, it can refer the matter back to the PMD for a report (on the basis of which the Court may make a final decision), or, where the Court finds that malice, bias or corruption tainted the PMD’s decision, it may refer the matter to the Secretary for a report (on the basis of which the Court may make a final decision).

**Clauses 39** [*Registration of arable and pastoral land against prospecting and pegging*] and **40** [*Disputes about registering or extending the duration of schemes reserving arable and pastoral land against prospecting and pegging*] enable individual farmers and Rural District Councils on behalf of groups of small farmers and pastoralists by application to the PMD to register (on land otherwise open to prospecting and mining) not more than 100 hectares or up half their land (whichever is the smaller hectareage) which is not yet under cultivation for the purpose of cultivating it in the near future (within 2 years, renewable for another 2 years) or, the case of an application made by an RDC, for the purpose of temporarily reserving it for the grazing of livestock. This clause is a continuation and extension of section 33 of the existing Act (“Registration of arable land”) in the interests of enabling beneficiaries of the Land Reform to fully utilise their land, without, at the same time, prejudicing mining development for the national good. Applications for registering land for cultivation or pasturage which are initially accepted by the PMD and notified on his or her notice board may be objected to by miners and prospectors, whereupon the PMD must hold a meeting of interested parties, at the conclusion of which the PMD notifies to the parties whether or not to recommend the final registration of the scheme. The recommendation of the PMD becomes final and binding if no party takes any objection to it within 7 days, but if within that period any party objects to the recommendation, the PMD shall refer the recommendation, together with the objection, to the Mining Affairs Board through the Secretary. The MAB then decides whether to accept or reject the recommendation. A person aggrieved by the MAB’s still has the option to seek a review of the MAB’s decision from the Administrative Court.

**Clause 41** [*Roads and railways may be included in location under certain conditions*] allows roads and railways to be included within the limits of a mining location under certain specified conditions, but otherwise prohibits the encroachment

of mining operations or the erection of pegs or beacons upon any road, nor within 15 metres of the middle of any road, upon any railway track, nor within 45 metres of any railway track, or the impediment of the use of a road, railway track, pipeline, aqueduct, borehole, dam, reservoir or occupied building without the owner thereof. There are further prohibitions against carrying on prospecting or other mining or development operations within specified limits of electric power lines, transformers, electricity substations, electrical equipment or buildings used for the transmission or distribution of electricity. Land reserved for the taking of road-making materials, and soil erosion works are likewise protected and are likewise protected from encroachment by mining or prospecting. Under the existing Act these prohibited activities are a criminal offence punished by a fine under section 392(d). However it is proposed that the more prompt and effective way of dealing with infringements of this sort is to empower the responsible PMDs to serve civil penalty orders upon the offending party. The issue of this kind of unlawful encroachment and interference is fully dealt with under **clauses 42** [*Encroachment on or interference with roads and railways by mining activities prohibited*] and **43** [*Encroachment on or interference with certain works and installations by mining activities prohibited*].

It is convenient at this point to explain the **civil penalty regime** in more detail, for it will apply to the majority of infringements in this Bill committed by miners. Where default is made in complying with any provision of the Bill or of regulations made under this Act for which a civil penalty is specified to be leviable, the Provincial Mining Director will have power (in addition to, and without derogating from, any criminal or non-criminal penalty that may be imposed by the Bill, or any other law for the conduct constituting the default) serve upon the defaulter a civil penalty order of the appropriate category or any combination of such orders as the provision in question may allow. What is a civil penalty? In the context of this Bill it is a civil monetary penalty levied by the State or an official of the State against a person for the breach of or failure to comply with a statutory obligation (such a breach may be referred to as an infringement or default to distinguish it from a criminal violation). It does not require prior conviction for an offence, as in the case of a criminal penalty. If the penalised person does not pay the penalty within a specified time, the State or an official of the State must have recourse to a civil court to recover the penalty in the same way it would recover a debt. As a general rule, the amount of the civil penalty must be so prescribed as to be cost effective (that is, the cost of recovering the civil penalty through the courts should not exceed the monetary amount of the penalty). Most infringements for which civil penalties of this kind may be incurred are of three types: (1) completed and irremediable infringements; (2) completed and remediable infringements and (3) continuing infringements. Continued defiance of a civil penalty order beyond a specified time period becomes a criminal offence, but in the meantime the State can revive the monetary penalty through civil proceedings in a civil court of competent jurisdiction. Civil penalties are generally adopted in cases where the infringers or potential infringers are subject to administrative oversight by some regulator (in this case the PMD), where there is little dispute about the facts of the infringement, in cases where criminal stigma is not the most appropriate way of encouraging compliance with the law. They also have the merit of avoiding the expense, time and difficulty of [prosecuting criminal cases, and of basing themselves on allegations established on a balance of probabilities

**Clause 44** [*Reservations against prospecting and pegging*] empowers the PMD on his or her own initiative or on the instruction of the Secretary prompted by the Minister, to reserve any area open to prospecting within his or her area of jurisdiction against prospecting and pegging. The reservation may be for a specified period and may be withdrawn in part or in whole earlier than specified (by the PMD if originally made at his or her initiative or by the PS at the Minister's behest). Reservations against prospecting on the PMD's initiative must be notified to the Minister through the PS, and the Minister may reverse or confirm the PMD's decision. All reservations against prospecting and withdrawals thereof must be gazetted.

**Clause 45** [*Reservation of timber on application by landholders and RDCs*] extends to RDCs the power of an individual landholder under section 36 of the existing Act to reserve against cutting or taking indigenous wood or timber on his or her land, to the extent of half such indigenous wood or timber. Under **clause 46** [*Disputes over reservation of timber under section 43*] disputes about the equal division of indigenous wood and timber pursuant to a reservation under **clause 45** may be referred to the PMD, whose decision may, at the instance of an aggrieved party, further be reviewed by the Administrative Court.

**Clause 47** [*Reservation of timber on instruction of Minister*] empowers the Minister to direct a PMD to reserve all indigenous wood and timber in any area, whereupon the rights of any miner or prospector in that area to take or cut such wood or timber are terminated for the duration of the reservation (but prospecting and mining may continue in the reserved area, and only such wood or timber as interferes with such prospecting or mining may be cut).

**Clause 48** [*Notice of intention to prospect*] imposes a duty on every prospector to give notice of his or her intention to exercise prospecting rights to certain persons affected thereby (to the local authority in the case of town lands, to the occupier or holder of alienated or partially alienated land, to the Forestry Commission in the case of demarcated forests, to the holder of land declared to be a protected private forest, and to the RDC of a communal land, whichever is affected by the proposed prospecting). The notice must be re-issued by the prospector after 120 days if, not having pegged or registered any mining title within that period, the prospector still wishes to do so. (In the case of a notice given by the holder of an exclusive exploration licence or special grant, the notice shall be valid as long as the licence or grant is valid). The PMD may, where he or she becomes aware of a prospector's neglect of this duty, enforce this duty by means of a civil penalty order. Also, if the prospector neglects this duty and is discovered to have done so by any complainant the prospector should have notified, the pegging of any location and the registration of it is rendered void if the complainant lodges an objection with the PMD within 120 days of the date of pegging of the location (otherwise the pegging and registration becomes valid after the lapse of that interval despite the prospector's neglect of the duty to give notice under this clause). This clause is an improvement on section 38 of the existing Act, in terms of which the pegging of a mining location "shall not be deemed to be invalid by virtue only of a failure to give notice" to affected persons; instead a criminal sanction is applied, which is difficult and time-consuming to prosecute, and whose non-compliance may seriously infringe the rights of landholders.

**Clause 49** [*Hours of pegging and posting notices; manner in which notices to be posted*] specifies the hours of pegging and posting notices and the manner in which they must be posted. Persons who contravene any of the provisions of this clause are liable to be served by the PMD with the appropriate civil penalty.

Under **clause 50** [*Prospecting notices*] if a prospector wishes to drill and excavate on any particular ground open to prospecting, he or she is entitled to post a "prospecting notice" in the prescribed form and manner. The prospector must then notify the landholder or other person entitled to be notified of the fact and particulars of the posting of the prospecting notice. The posting of the prospecting notice entitles the prospector for a period of not more than 90 days to prospect, drill and excavate on all ground open to prospecting falling within a radius of 300 metres from the point where the prospecting notice is posted. Only one prospecting notice may be posted at a time, and any previous prospecting notice must be abandoned, either through the lapse of the 90-day period or in the prescribed manner.

#### *Sub-Part C: Discovery and pegging*

**Clause 51** [*Discovery of minerals or precious stones*] describes what a prospector must do upon the making of a discovery of a deposit of precious metals or stones or



base minerals. A peg marked “DP” must be erected on the spot and, in the case of a base mineral discovery, the DP notice bestows on the prospector the right to drill and excavate upon ground open to prospecting any area within a radius of 900 metres of the prospecting notice. Any default by the prospector in complying with this clause renders him or her liable to a civil penalty.

**Clause 52** [*Pegging of precious metal, precious stones or base mineral claims*] requires that the outer limit of a claim or group of claims, whether of precious metals claims, precious stones claims or base minerals, claims, be pegged in a regular polygon shape (square, rhombus, lozenge, etc). It is not necessary to peg the inner limits of a group of two or more contiguous claims unless any of its constituent claims are sold or ceded to another person, in which event the sold or ceded claim must be demarcated. However, no fraction of a claim (claims must be 1 hectare in extent, though a single registered claim may be less) may be sold or ceded. This clause prescribes in detail how the claims or groups of claims are to be pegged.

**Clause 53** [*Registration notices*] requires that within 90 days from the posting of a prospecting notice, a prospector who has made a discovery of minerals must peg a claim or block and post adjacent to the discovery notice a registration notice (the failure to do which shall be taken to signify the abandonment of all rights acquired by the posting of the prospecting notice).

*Sub-Part D: Registration of claims and sites*

**Clause 54** [*Registration of claims or group of contiguous claims*] provides that within 31 days of the date of posting a registration notice marking a mining location and on payment of the prescribed fee, the holder of the mining location must obtain a certificate of provisional registration of the location by complying with certain formalities and submitting specified documents to the PMD. Failure to do so will be taken to mean that the holder has abandoned his or her claims. Final registration of the location is secured when the documentation for the provisional registration of the location is transmitted to the Mining cadastre Registrar and the Mining cadastre Registrar confirms that the particulars of the location have been entered in the Mining cadastre Register. The holder of a mining location whose final registration is refused by the Mining cadastre Registrar has recourse to the Administrative Court. A further review lies to the High Court at the instance of the party aggrieved by the Administrative Court’s decision.

**Clause 55** [*Registration of mining location by special mining lease applicants*] provides for the case of a prospector who is a foreigner and who obtained an exclusive prospecting licence on the basis that he or she would apply for a mining lease instead of registering a claim or block of claims. In such a case, instead of applying for provisional and final registration of a mining location the foreign prospector who has made a discovery and posted the requisite notices must apply to the Mining Affairs Board for a special mining lease.

**Clause 56** [*Evidence and priority of mining rights; principle of ‘first come first served’; impeachment of title*] provides for the settlement of disputes between miners concerning the existence, scope, extent, duration and content of all mining rights (“holder or claimant in contestation”). Subclause (5) enables the Mining Cadastre Registrar or any holder or claimant in contestation to rectify any entry in the Mining Cadastre Register in accordance with the transparent procedure set forth in the **Third Schedule**.

**Clause 57** [*Registration of dependent mine service sites*] provides for the registration of “dependent mine service sites”, that is to say, sites attached to mining locations for the purposes of building lodgings for miners and their workers and for the erection of mills or other mining machinery. Such sites must not exceed hectares (under the existing Act the ceiling for such sites is 40 hectares, which is now felt to

sterilise too much ground against mining proper). However, a miner may on special application to the PMD peg a site in excess of 20 hectares (but not exceeding 40 hectares) if he or she can show compelling good cause to the PMD for doing so. The miner may also on special application to the PMD peg a site that is not adjacent to his or her mining location for good cause shown to the PMD. The PMD will usually grant (on a provisional basis) the application of the miner to peg a site if the miner produces proof to the PMD in the form of an affidavit by the occupier of the affected land to the effect that the occupier has no objection to the registration of the site. Even then the PMD may have reasons for not granting provisional registration, or for granting it subject to conditions (provisional registration is not always automatic because ground registered as a site may needlessly be sterilised against mining and prospecting by other interested parties). In any event, even where the occupier of the affected consents, the registration of every site is provisional until it is confirmed by the Mining Cadastre Registrar.

If the occupier of the affected land refuses consent to the miner to register a site, the miner must swear by affidavit that the occupier was duly notified of the proposal to register a site, and must lodge with the PMD, together with that affidavit, a memorandum justifying the registration of the site. The PMD then serves copies of these documents on the occupier of the land under cover of an invitation to the miner and occupier to attend a meeting at a specified time and venue where the PMD will try to resolve the issue (other interested parties, such as other prospectors and miners operating in or around the area of the proposed site, are also invited to attend by a notice posted on the notice-board of the PMD's office). After the meeting the PMD may provisionally approve or reject the registration of the site. The PMD will write a report to that effect to the Mining Cadastre Registrar seeking final approval for the PMD's decision. Where no meeting is held because the occupier of the affected land supports the miner's request for the registration of a site on his or her land, the PMD must still transmit the particulars of the provisional registration of the site to the Mining Cadastre Registrar for final registration. Rejected applicants or interested persons aggrieved by the decision of the Mining Cadastre Registrar may seek a review of such decision from the Administrative Court.

**Clause 58** [*Registration of independent mine service sites*] provides for the registration of "independent mine service sites", that is to say, sites **not** attached to mining locations, but which are set up to serve mining locations by offering the following facilities for their benefit: (a) a custom milling plant; or (b) a plant for the milling, leaching, sampling, concentrating, reducing, assaying, transporting or dealing in ores, metals or minerals on a scale deemed by the PMD to be significant; or (c) a plant for the beneficiation of minerals from multiple mining locations; or (d) a location whereon heavy plant, machinery and equipment primarily or exclusively for use in mining may be operated for the benefit of mining locations in the vicinity or more remote mining locations. An applicant for an independent mine service site must apply for registration of the site to the appropriate PMD, and the site in question must one (i) in respect of which a miner who has the right to register a site on it in terms of section 52 has ceded that right in writing to the applicant; or (ii) over which a land holder (including the State) has granted a lease or a servitude to the applicant, or given written authority to the applicant to register primary mine service site; or (iii) that is open to prospecting and of which the applicant is the owner, in the case of private land.

**Clause 59** [*Dependent mine service sites to be attached to location; changes in status of landholding where independent mine service site located*] is self-explanatory.

**Clause 60** [*Cancellation of certificate of registration of claims or sites*] empowers a PMD to cancel the registration of sites or blocks of claims, giving an opportunity for the holder to object. If an objection is lodged with the PMD, the PMD will hold a hearing on the objection of the kind described in the second paragraph of the commentary on

**clause 36** above. A further appeal is allowed to an aggrieved holder to the Minister and ultimately the Administrative Court.

**Clause 61** [*Excess areas pegged*] is self-explanatory.

**Clause 62** [*Lost certificates of registration*] enables a the holder of the certificate of registration or of special registration to obtain a duplicate copy of his or her certificate of registration in certain circumstances.

**Clause 63** [*Address to be given to PMD*] is self-explanatory.

**Clause 64** [*Obligations of joint holders of mining locations*] restricts the joint holding of a mining location to no more than 6 (corporate or individual) holders. Joint holding of locations is the source of frequent disputes among the joint holders with respect to their respective rights and obligations. To minimise these, this clause provides that on registration of a jointly held mining location or the variation of the holding thereof, the joint holders must submit to the PMD a document specifying clearly and unambiguously the method by which any joint member and the accredited agent shall be removed or substituted to the satisfaction of the PMD, (in the case where the application or interpretation of such document comes into question the PMD shall in the case of the removal or substitution of a joint member, be entitled to require a court order to be produced bearing on the question of such removal or substitution).

Additionally, every partnership or corporate person which is the holder of a mining location whether alone or jointly with others, must at the time of registration register at the office of the PMD the name of an accredited agent residing in Zimbabwe, and such agent shall, when registered, be personally responsible under this Bill for all matters, acts and omissions in connection with such location in the same manner as if such location were registered in his name as his own property.

**Clause 65** [*Cancellation of certificate of registration without abandonment*] is self-explanatory.

## PART VI

### PROSPECTING AND PEGGING ON GROUND RESERVED AGAINST PROSPECTING AND PEGGING

This Part permits applications to be made by miners deemed capable of paying the compensation required (for acquisition or damages) to the Mining Affairs Board for prospecting and pegging claims in areas previously reserved against such activities (namely, land within 450 metres of a farm homestead, land under cultivation and occupied blocks held under individual title not exceeding specified hectareage): if the application is granted, mining activity is permissible up to a perimeter of 225 metres from the homestead.

## PART VII

### EXCLUSIVE EXPLORATION LICENCE

Part VI of the present Mines and Minerals Act deals with exclusive prospecting orders, which authorise persons to prospect for minerals over wide areas of Zimbabwe. This Part will replace Part VI with a new one which will alter the term “exclusive prospecting area” to “exclusive exploration licence”. By and large the new Part will follow the provisions of the existing one, omitting the detailed provisions (which will be dealt with in regulations), but will make the following changes:

- Applicants for an exclusive exploration licence will have to be told of any objections lodged against the applications, so that they can answer them (see the new **clause 87** (“Application for exclusive exploration licence”)(4)).
- The Mining Affairs Board will be able to recommend the issue of a licence without having to hold a hearing if no objections have been lodged (**clause 88** (“Hearing of application by Board”) (proviso)).



- Before a licence is issued, the applicant will have to give the Board a copy of the environmental impact assessment report which is required in terms of the Environmental Management Act.
- The Minister, not the President, will issue licences. The Minister will be obliged to follow the Board's recommendations regarding the issue of a licence unless he or she considers it is not in the national interest to do so.
- An applicant will have a right of appeal to the Administrative Court against the Board's refusal to recommend the issue of a licence (**clause 108**); no such appeal is allowed at present (section 89(3) of the existing Act). Similarly, if the Minister declines to follow the Board's recommendation to issue a licence the aggrieved applicant will have a right of appeal (**clause 108**)).
- The Board, rather than the Minister, will have power to decide whether or not to revoke an exclusive exploration licence, and persons aggrieved by the revocation of a licence will have a right of appeal to the Minister and ultimately the Administrative Court (**clause 108**).

Under the **clause 87**, an application for an exclusive exploration licence will have to be accompanied by a prospectus and report required for the purposes of the Environmental Management Act [*Chapter 20:27*], and anyone aggrieved by a refusal of a licence will have a right of appeal first to the Minister and then to the Administrative Court. Under the new section 102 the Minister will have power to cancel a licence and, once again, an aggrieved licensee will be entitled to appeal to the Administrative Court.

The rights conferred by an exclusive exploration licence are set out in **clauses 94** ("Rights of licensee regarding exploration and pegging"), **95** ("Right of licensee to take water"), **96** ("Right of licensee to erect and remove temporary buildings and structures") and **97** ("Right of licensee to take wood and timber"). A licensee will have an exclusive right to prospect for all minerals within his or her grid and to peg up to 100 claims, but these rights will be exercisable only by approved staking agents. .

## PART VIII

### PEGGING OF UNDERGROUND EXTENSIONS

This Part enables a miner to apply to the Mining Affairs Board for an order authorising him or her to peg an underground extension block under reserved ground, such as cultivated land. The miner is required to prove that a reef that he or she is working for any base mineral extends underground beneath the reserved ground beyond the boundaries of his or her mining location, or that a reef which he or she is working for any mineral other than a base mineral extends underground or strike beyond the boundaries of his or her location beneath the reserved ground. The objective of this Part is to minimise interference with the surface rights of landholders by specifying stringent conditions governing safety and depth. The landholder has a right to objection and compensation.

## PART IX

### MINING LEASES

Under this Part a miner of four or more contiguous blocks (called a "ordinary lease applicant") must apply to the Mining Affairs Board to consolidate the titles of his or her various mining locations into one mining lease. A foreigner of large-scale domestic miner (called a "special lease applicant") who has not previously registered any bloc of claims or who wishes to claim mining rights by virtue of an exclusive exploration licence may apply to the Mining Affairs Board where he or she can prove that his or her financial status is adequate, and that mining operations on a substantial scale will be carried out in the long term. The advantages of a mining lease are that

title is indefeasible: only the perimeter beacons have to be maintained and they are surveyed by a land surveyor. Land surveyors' diagrams need not be lodged in support of the application, but only a provisional plan may accompany the application, and the survey plan will be required following provisional approval of the application. This reduces the likelihood of heavy costs being incurred for abortive land surveys.

**Clause 122** [*Interpretation in Part IX*] provides for the interpretation of words and phrases used in connection with mining leases under this Part.

**Clause 123** [*Application for mining lease: preliminary requirements*] sets forth the preliminary requirements to initiate an application procedure for an ordinary or a special mining lease.

**Clause 124** [*Form and contents of mining leases, duration of leases, mining rights of lessees, etc*] provides, among other things, for the exclusive mining rights of a lessee within the vertical limits of the mining lease.

**Clause 125** [*Processing of ordinary mining lease applications*] provides for the processing of "ordinary mining lease applications" for mining leases (as defined above) and for the terms and conditions of such leases if granted.

**Clause 126** [*Reservation of ground against prospecting and pegging in respect of special mining application, and termination of reservation*] provides for the reservation of the ground subject to an application for a special mining lease against mining or prospecting until the application is determined.

**Clause 127** [*Processing of special mining applications*] and **clause 128** [*Issuance of special mining lease and standard terms and conditions; registration of same; reviews, etc*] provide for the processing of "special mining applications" for mining leases (as defined above) and for the terms and conditions of such leases if granted.

**Clause 129** [*Recording of mining leases in Mining Cadastre Register and appropriate provincial registers*] is self-explanatory.

**Clause 130** [*Limitation on second or subsequent applications following refusal or withdrawal of application*] is self-explanatory.

**Clause 131** [*Beaconing of mining lease area*] provides for the beaconing of a mining lease area within a specified period.

**Clause 132** [*Cancellation of certificates of registration*] provides that upon the issue of a mining lease the certificates of registration in respect of all mining locations situated within the area covered by the lease shall be deemed to have been cancelled.

**Clause 133** [*No impeachment of title to mining leases*] provides that when a mining lease has been issued it will not be competent for any person to dispute the title of the lease holder to any of the ground covered by the lease on certain specific grounds.

**Clause 134** [*Programmes to be submitted by lessees*] provides that every lessee must submit to the PMD a written programme showing, with such particulars and annual fee as may be prescribed, the development which the lessee intends to undertake in regard to the mining lease during the next twelve-month period.

**Clause 135** [*Amendment of mining leases; increase of area of mining lease*] provides that a lessee may lodge an application to the Mining Affairs Board for the inclusion of an additional contiguous area of ground which is open to pegging in his or her mining lease.

**Clause 136** [*Abandonment of whole or portion of mining lease and transfer of mining lease*] provides that a lessee may lodge with the PMD an application for the abandonment of the whole or of a portion of his or her mining lease.

**Clause 137** [*Failure to comply with terms and conditions of mining lease*] provides for the procedure to be followed after investigation where the Mining Affairs Board

is satisfied that a lessee has failed to comply with any material terms or conditions of his or her mining lease.

**Clause 138** [*Approval of transfer of mining lease*] prohibits the transfer of a mining lease to another holder except under certain conditions. The proposed transferee of the lease must be approved in advance by the Mining Affairs Board otherwise the special lease may be cancelled if the original lessee is unwilling to continue to exercise his or her rights under the mining lease.

## PART X

### RIGHTS OF CLAIM HOLDERS AND LANDHOLDERS

This Part, among other provisions, provides that a farmer may cultivate the surface of mining locations for annual crops on his or her land, and gives the farmer security of enjoyment of those rights uninterruptedly where there is agreement between the farmer and a miner regarding such cultivation, it must be reduced to writing and registered with the Mining Affairs Board, and thereupon becomes enforceable against both parties. Where a farmer and a miner cannot come to an agreement the farmer may lodge a written scheme for the cultivation of mining location with the Mining Affairs Board which, if satisfied that the period of the scheme is clearly stated, that the registered mining location concerned is being held for *bona fide* mining purposes, that the basis of compensation is clearly specified if the scheme is prematurely terminated, and that the scheme is satisfactory in all aspects and not likely to hinder nor prevent the future exploitation of the mineral resources, the Board may approve, whereupon the scheme so approved becomes binding on both parties and on any successor in title to the mining location.

**Clause 139** [*Mining rights*] sets forth the mining rights of every holder of a registered block of claims.

**Clause 140** [*Surface rights of miners*] sets forth the surface rights that every holder of a registered block of claims may exercise in connection with and in support of his or her mining rights.

**Clause 141** [*Conversion as between primary and secondary minerals and as between sites and mining locations*] and **Clause 142** [*Processing of applications under section 139*], provide for the conditions under which holders of mining locations may switch the nature of their mining title between primary and secondary minerals and as between sites and mining locations.

**Clause 143** [*Right of landholder to graze stock upon or cultivate the surface of mining location*] and **Clause 144** [*Exercise of rights under scheme upon approval*] set forth the scope of a landholder's right to graze stock upon or cultivate the surface of mining location. Such rights are exercisable in regard to the cultivation of or pasturing upon the whole or any part of the surface of any registered mining location under a scheme approved by the PMD to benefit occupiers of any land on which a registered mining location is situated, or a rural district council or containing a registered mining location.

**Clause 145** [*Termination of scheme by miner*], **clause 146** [*Termination of scheme by consent*], **clause 147** [*PMD may cancel scheme*] and **clause 149** [*Termination of scheme on forfeiture or abandonment of location*] set forth the circumstances under which a miner, landholder or PMD may terminate a scheme approved under **clauses 143** and **144**, or under which the scheme may be terminated upon the forfeiture or abandonment of a mining location.

**Clause 150** [*Scheme to bind successors in title*] provides that an approved cultivation scheme shall be binding of successors in title to the mining location, and on any person to whom land, other than Communal Land, covered by the scheme is transferred and on any occupier thereof, and on any person becoming entitled in terms

of the Communal Land Act to cultivate any Communal Land covered by the scheme.

Under **clause 151** [*Inspection certificates and payments to landholders during period of agreement*] a miner is not disqualified from obtaining an inspection certificate to maintain his or her mining title simply by virtue of not exercising his or her mining rights on an area covered by a cultivation scheme approved under this Part. Conversely, a landholder benefiting from a cultivation scheme cannot claim payments from the MIEPF in compensation for the loss or inability to cultivate any part of his or her land.

**Clause 152** [*Payments from Mining Industry Environmental Protection Fund to landholders affected by mining*] provides that payment to landholders affected by mining will be made in accordance with this clause from the amount remitted to a RDC by the Trustee of MIEP Fund in terms of **clause 188**.

## PART XI

### PRESERVATION OF MINING RIGHTS

The existing Act [*Chapter 21:05*] provided for the preservation of mining title in the following circumstances: through adequately working or developing the mining claim; on declaration of capital expenditure of at a specified amount per annum per block of claims; by producing minerals from the blocks in question to an extent prescribed by regulations (previously this method of preserving title only applied to chrome and limestone); or, finally, by paying an annual fee on unworked claims of a specified amount per block. These expedients have been found to be inadequate to uphold the “use it or lose it principle”; they also sterilised much available ground to prospecting and mining by other more capable and willing miners. In addition, other considerations have lately become equally pertinent when deciding whether to extend and preserve a miner’s title; namely, the social responsibility obligations of the miner towards the surrounding community, and the need to protect our natural environment against undue damage from mining operations.

**Clause 153** [*Interpretation in Part XI*] contains definitions of words and phrases in connection with this Part.

**Clause 154** [*Pre-inspection requirements and first and subsequent inspection certificates*] regulates the first entry into mining operations and their subsequent continuance. No later than 30 days after the final registration of a mining block, mining lease or special grant, the holder thereof must submit (in addition to the prescribed fee and address for service) to the PMD the following (the failure to submit any of which shall be taken by the PMD to constitute abandonment of the block or lease): a work plan for the next 12 months; a copy of the statutory environmental impact assessment report (EIA); in the case of a large-scale miner (a mining lessee or special grantee) a social responsibility certificate from a registered PVO recognised by the Ministry as being qualified to issue such certificates. The latter certificate is a new feature designed to ensure minimum friction and harmonious relations between the large-scale miner concerned (a mining lessee or special grantee) and the community in or near which the miner will operate. The social responsibility certification by a PVO having credentials in any relevant social science (sociology, political science, social work and welfare, community relations etc) will grade the miner’s intentions and practices by reference to the miner’s social sensitivity on such issues as: (a) the depth of engagement with the community(s) in the immediate vicinity of the mining location (including regular consultation with the community on issues of concern to them in relation to the impact of the mining operations of the miner); (b) sensitivity to cultural heritage, including respect for culturally significant sites in the immediate vicinity of the mining location; (c) sensitivity generally to the cultural values and norms of the community in the vicinity of the mining location; (d) the extent to which the mining operations economically and socially benefit the community in the immediate vicinity of the mining location; and (e) the implementation of fair and safe labour practices. The work plan shall be judged

by the PMD entirely on its own merits (with the assistance of a mine surveyor, mining engineer and geologist) without recourse to the elaborate (and often inappropriate) statutory specifications contained in the existing Act. Twelve months after passing the pre-inspection requirements the miner must obtain a first inspection certificate based on the work he or she has done in the interval and on his or her compliance with the EIA and social responsibility obligations. Lack of full compliance with respect to the miner's social responsibility obligations does not automatically disqualify the miner from a first inspection certificate so long as the miner undertakes to rectify matters by the time he or she applies for a second inspection certificate in the following year. A first inspection certificate will protect the block or the mining lease from forfeiture for a period of 12 months from the date of registration of the block or the date of issue of the mining lease. Subsequent inspection certificates shall have the same effect if the miner concerned qualifies to obtain them.

**Clause 155** [*Complaints by RDC or EMA of alleged breaches by miners of social responsibility and environmental obligations; Minister's power to intervene in environmental emergencies*] provides that, in the absence of any requirement for social responsibility certification of a small-scale miner, such a miner may be held to certain environmental and social responsibility obligations on the basis of any formal complaint to the PMD against him or her by the EMA or any member of the RDC in which such miner conducts his or her mining operations (complaints to the PMD of environmental irresponsibility on the part of mining lessees and special grantees may also be made by the EMA and RDC). The miner against whom a complaint is made under this clause has an opportunity to respond to the same to the PMD. Additionally, in an environmental emergency, the Minister may, on his or her own motion, stop any mining operations upon due notice being given to the miner.

**Clause 156** [*Unutilised dumps*] speaks to the question of unutilised dumps on registered mining locations. It is not in the national economic interest for there to be dumps situated on registered mining locations which are not being worked by the holder of the registered mining location, who in some instances are unwilling to allow the dump to be worked under tribute. It is considered that were such a dump is economically viable, it is in the national interest that such a dump be worked either by the holder of the registered mining location, or by some other person under tribute. To this end, this clause empowers the Minister, after investigation by the Mining Affairs Board as to the economic viability of the dump, and if the Minister considers it to be in the public interest to do so, to direct the holder of a registered mining location concerned to work the dump himself or herself or to tribute it so that it can be worked by someone else within such reasonable period as the Minister may specify.

**Clause 157** [*Retention licences*] permits in exceptional circumstances a miner to keep his or her mining title in circumstances where he or she has failed to develop or work, or adequately to develop or work, the block or mining lease or special grant concerned by the time that an inspection certificate falls due. The matter of the exceptional circumstances preventing the utilisation of the mining title will be investigated by the Mining Affairs Board, which may recommend the issuance by the Minister of a retention licence to the miner concerned.

**Clause 158** [*Appeals under Part XI*] entitles any person aggrieved by any decision of the PMD, Board or Minister under this Part to appeal, successively, to the Board, Minister and ultimately the Administrative Court.

## PART XII

### CONTROL OF SITING OF WORKS ON MINING LOCATIONS

This Part provides for the control of the siting of mining surface works, including buildings, employee housing, plant and machinery and residue dumps. Such works are not just a question as between the miner and the land owner, but may also affect adjacent land owner and occupiers.



**Clause 159** [*Interpretation in Part XII*] interprets what is meant by an “owner or occupier of land”; the phrase includes a rural district council, where a Communal Land is involved, and the Minister responsible for the administration of any State Land.

Under **clause 160** [*Approved plan required prior to erection of certain works*] a miner is compelled to submit to the PMD plans of the surface works that are proposed. The land owner or occupier on which the works are to be sited must also be notified.

Under **clause 161** [*Procedure on receipt of plan and approval of plan*] the land owner or occupier and any other interested parties may object to the plan, in which event the PMD must hold a hearing on the matter. An appeal to the Secretary may be made against the PMD’s decision, and an appeal to the Administrative Court may be made against the Secretary’s decision.

**Clause 162** [*Amendment of plan*] provides that any amendment of a plan must be dealt with in the same way as the lodging of an original plan (of course, any objection must be limited to the amendment alone).

**Clause 163** [*When works may be erected or constructed without approved plan*] permits a miner, at any time before a plan has been approved under clause 160, erect or construct upon such location or property certain temporary works such as housing for not more than 32 employees, or temporary roads not more than 4 metres in width without an artificial surface (but such works are liable to removal if ultimately the plan submitted for the permanent works is rejected).

**Clause 164** [*PMD may order removal of unauthorised works*] this clause imposes civil and criminal penalties upon miners who erect or construct any works on a registered mining location in contravention of this Part or of any condition attached to an approved siting plan. It further empowers the PMD to authorise any person affected by such contravention to remove the offending works and recover the cost of such removal from the offending miner. A miner may also be ordered to discontinue a temporary road constructed by him or her or to alter the course thereof at the direction of the PMD prompted by a request of an affected owner or occupier of land to that effect.

## PART XIII

### ROYALTY

Provisions for charging, calculation and remission of royalty are largely carried over from the existing Act with some important changes noted in the clause -by-clause analysis below.

By the terms of **clause 165** [*Royalty*] an owner of a mining location must pay royalty on all minerals and mineral-bearing products won from such location and disposed of during any month at such rate to be fixed under **clause 166**. To encourage local value addition, a full rebate of royalty is granted for minerals and mineral-bearing products used wholly within Zimbabwe. A further encouragement to local value addition is stipulated in that minerals or mineral-bearing products disposed of to or received for treatment by an approved beneficiation plant will also qualify for rebate of duty to a prescribed extent. Approved beneficiation plants must undertake the degree of beneficiation for which they were approved, otherwise they must pay for any deficit in beneficiation by way of a refund of rebated royalty.

**Clause 166** [*Fixing of royalty*] specifies that royalties are fixed annually in each fiscal year by the Finance Act, taking into account the recommendations of the Minister responsible for Mines and other relevant considerations.

**Clause 167** [*Meaning of “property”*] makes exceptions to the general rule that each mining location is a unit for royalty purposes. Thus the owner of two or more blocks of claims, whether contiguous or not, is treated as being the owner of a single “property” for royalty purposes if the output from the blocks of claims is treated at the

same milling or reduction plant. Chrome claims worked by the same person in the same mining province are also treated as one “property” for the same purposes.

**Clause 168** [*Beneficiation plant*] makes further provision for encouraging value addition of minerals and mineral-bearing products by enabling local bank assay departments, factories, refineries, smelters or treatment plants to be declared (with the approval of the Minister) approved beneficiation plants for specified minerals. Approved beneficiation plants must achieve a specified degree of beneficiation of the minerals, for which they will be entitled to the corresponding level of rebate of royalty. Approved status may be withdrawn from beneficiation plants which fail to operate for any period of more than 3 months within a calendar year, or whose beneficiation operations are not carried out to the expected level. Owners of approved beneficiation plants must make monthly returns of all minerals and mineral-bearing products disposed of to or received for treatment by the plant. Under sub-clause (3) provides for cases where mining dumps within a block of claims may be treated as “properties” separate from such blocks for royalty purposes.

**Clause 169** [*Exemption of royalty in certain circumstances*] provides for exemption from royalty in certain circumstances (specific exemptions are provided for the extraction and treatment of ore for experimental purposes, and for the value addition of diamonds and training of personnel in diamond cutting, polishing, grading, etc).

Under **clause 170** [*Acquisition or removal of ore, etc., to be declared*] no person may acquire or remove from the mining location from which it was derived any ore, tailings, slimes, concentrates, residues or other mineral-bearing product, without first promptly declaring such acquisition or removal to the PMD and making the required statutory return in relation thereto. The clause imposes civil and criminal penalties upon offenders and defaulters against this provision.

**Clause 171** [*Monthly returns and payment of royalty*] obliges a miner to submit to the Commissioner of ZIMRA together with his or her royalty payment a monthly return of the output and disposal of minerals (other than precious stones) from his or her mine and a separate monthly return (if applicable) concerning the quantity and disposal of precious stones in the previous month. The clause imposes civil and criminal penalties upon offenders and defaulters against this provision.

**Clause 172** [*Inspection of books and records, etc.*] empowers the Commissioner of ZIMRA to inspect all books and records, reports and other documents relating to the acquisition, disposal or removal of any mineral or mineral-bearing product as may be needed for the purpose authenticating any return, details, solemn declaration, certificate or document rendered in connection with the payment of royalties.

**Clause 173** [*Prohibition of disposal of minerals when royalty or returns, etc., have not been lodged*] empowers the Commissioner of ZIMRA to prohibit the disposal of any minerals or mineral-bearing products from any mining location for which the miner has failed to pay the royalty due to ZIMRA. The Commissioner of ZIMRA may also prohibit such disposal from any other mining location which is being worked by the miner, whether or not the miner has failed to pay any royalty due in respect of the other location, until all outstanding royalty has been paid or until an arrangement has been made which is acceptable to the Commissioner or officer delegated by the Commissioner for the payment of such royalty. The Commissioner of ZIMRA may likewise prohibit the disposal of any minerals or mineral-bearing products from any mining location for which the Commissioner has not received the return, details, solemn declarations, certificates and documents referred to in clause 174, until any royalty due from such disposal is paid or acceptable arrangements for its payment are made. The clause imposes civil and criminal penalties upon offenders and defaulters against this provision.

**Clause 174** [*Remission of royalty*] empowers the President to remit in whole or in part royalty payments for a specified period as an inducement to the commencement or continuation of mining operations, or the processing or refining within Zimbabwe of minerals or mineral-bearing products, or the development of any export market. Such remission may be backdated by up to 4 years.

**Clause 175** [*Orders prohibiting stockpiling of minerals affected by section 4(4) declaration*] is a measure to counter the speculative stockpiling by miners of minerals won from the earth, a practice which is detrimental to the national interest in unlocking the potential of the nation's mineral endowment.

## PART XIV

### PAYMENTS TO LOCAL AUTHORITIES

This Part enables local authorities to benefit from mines in their localities by levying sums on miners in the nature royalties (called "subventions") payable to the local authority concerned. Provision is also made for the standardisation of local government rates, taxes, fees, levies and other charges chargeable upon miners of registered mining locations by any local authority within whose area the registered mining locations are situated.

**Clause 176** [*Interpretation and application of Part XIV*] clarifies that, generally, local authorities which receive a share of the royalties generated in their areas by virtue of adopting the standard tariff cannot also benefit from subventions. However, if the Minister is of the opinion, based upon a report of the PMD concerned, that the environmental, social or other impacts of the mining operations conducted by miners in the local authority concerned, or the value of the output of the resulting from such operations, is of such a scale or magnitude as to justify the payment of subventions also, then the Minister may authorise the payment of subventions to the local authority concerned.

**Clause 177** [*Miners to make certain payments to local authorities*] empowers the Minister acting with the approval of the Minister of Finance, and after consultation with the Minister for local government, to publish notices in *The Gazette* requiring miners to make payments akin to royalty payments ("subventions") to local authorities within whose areas the mining locations are situated. In fixing a subvention in favour of a local authority, the Minister may make entitlement to the subvention conditional upon the local authority mitigating or eliminating any specified local government rates, taxes, fees, levies and other charges chargeable upon miners of registered mining locations within its area (or upon the local authority adopting the standard tariff, if such a tariff has been prescribed).

Under **clause 178** [*Remission or exemption from liability to make subventions*] the Minister of Mines will be entitled to order the remission of payments in certain circumstances and the Secretary of Mines will have power to exempt miners from a liability to make the payments in respect of ores extracted for experimental and similar purposes.

**Clause 179** [*Local authorities' standard tariff of rates, taxes, fees, levies and other charges liable to be paid by miners*] provides for the standardisation of local government rates, taxes, fees, levies and other charges chargeable upon miners of registered mining locations by any local authority within whose area the registered mining locations are situated. This is sought to be done by means of a standard tariff negotiated between the Minister, the Minister responsible for finance, the Minister responsible for local government and any organisations which the Minister considers represents mining interests and the interests of local authorities. No local authority can be compelled to adopt the standard tariff (since local authorities have certain taxing powers reserved by the Constitution and their enabling Acts), but as an inducement for those which



do, they will be entitled to a prescribed share of the royalties payable and collected in respect of any minerals mined within the area of the local authority concerned.

## PART XV

### MINING INDUSTRY ENVIRONMENT PROTECTION FUND AND RELATED MATTERS

This Part sets forth the obligations of miners around the issues of environmental protection and occupational safety to the extent that these are impacted by their mining operations. It also establishes the Mining Industry Environment Protection Fund and the scope of its objects.

**Clause 180** [*Interpretation in Part XV*] provides for the meanings of key words and phrases used in this Part, while **181** [General objective of Part XV] sets forth the general objective of this Part, which is to encourage and obligate miners to be environmentally responsible and conscious of their workers' safety and health.

**Clause 182** [*Suspension of mining rights in response to threats to environment, public safety, public health, etc*] is self-explanatory.

**Clause 183** [*Conservation of minerals and protection of environment*] gives the Minister a special regulatory power to enact "such steps as may be necessary for the conservation and systematic development of minerals in Zimbabwe and for the protection of environment".

**Clause 184** [*Requirement for insurance or guarantee against statutory liability to repair environmental damage, etc*] requires miners to take out an insurance or financial guarantee or other security acceptable to the Minister to enable them to meet their statutory liabilities to repair the damage caused by their operations. If they fail for any reason to obtain the requisite insurance, guarantee or security, each miner so failing must pay into the Mining Industry Environmental Protection Fund a levy equivalent to 0,1 *per centum* of the gross value of its mineral production as reflected in the last monthly returns rendered for the purposes of payment of royalty in terms of **clause 171**.

**Clause 185** [*Mining Industry Environmental Protection Fund: establishment, objects and constitution*] establishes the Mining Industry Environmental Protection Fund, and sets forth its objects and the sources of its monies.

**Clause 186** [*Governance of Fund*] provides that the Fund will be managed and administered by the Mining Industry Environmental Protection Fund Committee chaired by the Secretary and appointed in accordance with this clause.

**Clause 187** [*Appointment of Fund Manager and other staff*] provides for the appointment of a manager of the Fund and supporting staff.

**Clause 188** [*Accounts of Fund*] is self-explanatory.

**Clause 189** [*Manner of making disbursements from Fund*] is self-explanatory.

**Clause 190** [*Accounts of Fund*] is self-explanatory.

**Clause 191** [*Fund to be kept in dedicated bank account*] is self-explanatory.

**Clause 192** [*Suspension of disbursements Fund*] provides for the temporary suspension of disbursements from the Fund at the instance of the Trustee if, for circumstances beyond the control of the Trustee, the Fund is unable to make in full any payments it is required to make under this Part.

**Clause 193** [*Investment of surplus monies of Fund*] is self-explanatory.

## PART XVI

## ABANDONMENT AND FORFEITURE

**Clause 194** [*Abandonment of unregistered locations*] deals with the abandonment of mining locations not yet registered. The holder of such a location may abandon it at any time, subject to him or her posting a notice of abandonment on the location. The abandoned location cannot be relocated (i.e. registered in the name of another person) until the lapse of seven clear days from the date of abandonment.

**Clause 195** [*Abandonment of registered blocks or sites*] provides that the holder of a registered mining location can only abandon it after applying for and obtaining from the PMD a certificate of abandonment. Partial abandonment of a location is possible if the remainder not abandoned is re-beaconed in the prescribed manner. Registered mining locations that are subject to a hypothecation or option registered in terms of Part XVII (“Registration of Transfers, Hypothecations, Options, Tribute Agreements and Conditions Governing Mining on Reserved Ground”) cannot be abandoned except with the consent of the holder of the hypothecation or option.

**Clause 196** [*Forfeiture of registered blocks and sites*] provides for the PMD to declare the forfeiture of registered blocks in respect of which the holder has failed to obtain an inspection certificate under clause 153 or a retention licence under clause 156. Provision is also made for the PMD to declare the forfeiture of registered sites attached to mining locations, if no site rent has been paid for the site for three consecutive months. The clause makes reference to other clauses of this Bill where the PMD is under a statutory duty to declare the forfeiture of mining locations in certain other contexts.

**Clause 197** [*Forfeiture of mining lease*] provides that a mining lessee who fails to timeously submit a development programme to the Mining Affairs Board under clause 132 (“Programmes to be submitted by lessees”) is liable to have his or her mining lease forfeited. The mining lease is also liable to forfeiture if it is not being worked according to its development plan or if the lessee fails to obtain an inspection certificate under Part XI (“Preservation of Mining Rights”). The special procedure of forfeiture under this clause specifies that the Mining Affairs Board must serve upon the lessee notice of the proposed forfeiture to enable him or her to take the required remedial action, on failure to do which the Board will direct the PMD to declare the mining lease to be forfeited.

**Clause 198** [*Forfeiture of mining locations*] provides for the forfeiture of a registered mining location if the holder thereof fails to comply with a directive by the Minister under **clause 156** (“Unutilised dumps”) to exploit or tribute unutilised mining dumps on the location.

**Clause 199** [*Locations belonging to estate of deceased persons: special conditions as to forfeiture*] allows any person interested in a mining location belonging to the estate of any deceased person, minor, mentally incompetent person or insolvent to notify the PMD of that fact, whereupon the PMD may not initiate forfeiture proceedings against the location for failure to obtain an inspection certificate or to pay any charges due in respect of that location under this Bill, for a period of 30 days from the time when the estate of the deceased person, minor, mentally incompetent person or insolvent was officially registered. An absolute minimum period of six months is allowed for a mining location belonging to such an estate to come into compliance with this Bill without being forfeited.

**Clause 200** [*Removal of buildings and machinery, and beacons, from abandoned, forfeited or cancelled location*] allows a former holder of a mining location which has been abandoned, forfeited or cancelled a period of three months within which to remove from the location any machinery or buildings belonging to him or her. Likewise, the former owner is obliged to remove all pegs and beacons appertaining to an abandoned, forfeited or cancelled location. If the PMD or his or her agent undertakes the removal,

destruction or other disposal of buildings, machinery, beacons or pegs, the cost of such work may be recovered from a former holder if the latter fails to do the work, having been given an opportunity to do so at his or her own expense.

**Clause 201** [*Open workings to be protected on abandonment, forfeiture or cancellation of location*] provides that on or before the abandonment, forfeiture or cancellation of a registered mining location, or no later than 30 days after the PMD has posted on his or her public notice board a notice of forfeiture, abandonment or cancellation of a registered mining location, the holder of the location must fill in all shafts, open surface workings and excavations or otherwise so deal with them as permanently to ensure the safety of persons and stock. The holder of the mining location is then required to lodge with the PMD a prescribed certificate certifying that all dangerous workings have been properly protected and the method used for such necessary protection. In the absence of dangerous workings requiring protection, a prescribed certificate to this effect must be suitably furnished. Notification of receipt of the prescribed form of certificate is served on any affected owners or occupiers of land in or about the location by the PMD to afford the owners or occupiers an opportunity of submitting objections to the issue of quittance in favour of such holder. The effect of issuing a quittance certificate to the holder is that the holder is thereby relieved from any further responsibility for the abandoned, forfeited or cancelled mining location.

**Clause 202** [*Removal of or interference with protective works prohibited*] forbids anyone (except in the exercise of valid mining rights, or with the permission of the PMD) remove or interfere with any fencing or other protective works erected or constructed under **clause 205**. The clause imposes civil and criminal penalties upon offenders and defaulters against this provision.

**Clause 203** [*Recording of abandonments and forfeitures and Appeals under Part XVI*] provides for any abandonment or forfeiture of a mining location to be recorded in the Mining Cadastre Register. It also entitles any person aggrieved by any decision of the PMD, Board or Minister under this Part to appeal to the Minister and ultimately the Administrative Court.

**Clause 204** [*Relocation of abandoned, forfeited or cancelled locations and reinstatement of forfeited locations*] provides for the advertisement by the PMD of lists of mining locations, to enable them to be relocated (that is to say, have the mining locations and the mining rights attached to them re-assigned to some other person who meets the requirements for exercising them under the Act).

Under **clause 205** [*Mine plans to be lodged on abandonment or closing down*] the miner of every mine which is closed down and on which development work has been done at a depth of more than 15 metres must give 60 days' notice of that fact to the PMD, giving reasons therefor. Within 31 days of the actual closing the miner must also lodge certain plans of the defunct mine with the PMD, or seek the PMD's help, through the offices of the Chief Government Mining Engineer, to draw up the required plans. The clause imposes civil and criminal penalties upon offenders and defaulters against this provision.

## PART XVII

### REGISTRATION OF TRANSFERS, HYPOTHECATIONS, OPTIONS, TRIBUTE AGREEMENTS AND CONDITIONS GOVERNING MINING ON RESERVED GROUND

This Part provides for the registration of hypothecations, options, tribute agreements and conditions governing mining on reserved ground.

**Clause 206** [*Interpretation in Part XVII*] defines a mining location is for the purposes of this Part as a mining claim, registered block of mining claims, and a mining lease, but does not include the area covered by an exclusive exploration reservation or a special grant.

**Clause 207** [*Registration of transfer of mining locations and transfer duty payable*] provides that no transfer of a mining location to another person is valid unless the transfer registered with the PMD and recorded in the Mining Cadastre Register. When any mining location is sold or otherwise disposed of, notification of the transaction by which the transfer was made must be lodged with the PMD within 60 days. Thereafter any person entitled to be registered as the holder of a registered mining location, or any interest therein, shall make application to the PMD for the transfer of such location or interest, and every such application shall be in writing and signed by or on behalf of the applicant, and shall be accompanied by specified particulars. If the mining location was hypothecated or subjected to an option contract, it cannot be transferred except with the consent of the holder of the hypothecation or option, or otherwise by the order of a court or by the operation of the law relating to insolvency or deceased estates.

In line with the practice in the office of the Registrar of Deeds, no transfer of a mining location is permitted unless there is lodged, together with the transfer papers at the office of the PMD, a clearance certificate issued by the rural council showing that all charges payable to that council in respect of such mining location have been paid.

**Clause 208** [*Registration of hypothecation of mining location*] provides that any holder of a registered mining location may make application to the PMD for the hypothecation of the whole or of any portion of his or her interest in such location. Such hypothecations may also be registered in virtue of a court order, or by a trustee or executor of a deceased or insolvent estate, or by the liquidator of a company.

**Clause 209** [*Hypothecation in respect of loans granted by State*] provides that the Minister may instruct the Secretary to register a hypothecation of all or any of the mining locations registered in the name of any holder in favour of the State, if the State has advanced a loan or other assistance having a monetary value to such holder.

**Clause 210** [*Registration of options on mining locations*] provides that any holder of a registered mining location may make application to the PMD for the registration of an option contract (whereby any holder of a registered mining location has agreed in writing to grant to any other person (the “option holder”), the option of exercising the right to purchase, or in any other manner to deal with, such location or locations at a certain future date). Such option contracts may also be registered in virtue of a court order, or by a trustee or executor of a deceased or insolvent estate, or by the liquidator of a company.

**Clause 211** [*Registration of conditions governing mining rights on reserved ground*] allows any owner or occupier of land who allows mining to take place on land not open to prospecting (“reserved land”) that is owned or occupied by him or her, to embody the terms and conditions of the consent given to the miner in writing. The owner or occupier concerned may register written consent with the PMD, whereupon any breach of the terms of the consent by the miner will render the latter liable to civil and criminal penalties, and ultimately to the forfeiture of his or her mining location if he is convicted of an offence under this clause.

**Clause 212** [*No sale or alienation of precious stones or strategic minerals location without approval of Minister*] prohibits the cession, assignment, sale or other alienation in any manner whatsoever of mining locations registered for, or on which the principal mineral being mined, is any precious stones or strategic mineral, unless the applicant for approval of the transfer of the mining location concerned obtains from the Minister, and produces to the PMD when making the application, a certificate granting permission for the location to be tribute.

**Clause 213** [*Appeals under Part XVII*] provides for appeals by persons aggrieved by any decision of the PMD, the Mining Cadastre Registrar or the Mining Affairs Board under this Part.

## PART XVIII

## APPROVAL OF TRIBUTE AGREEMENTS

This Part provides for what are called tribute agreements, that is to say an agreement whereunder the registered holder of a mining location gives a tribute, licence, concession, authority or other right to mine a mining location to another person called tributor. Such tribute agreements are often instrumental in ensuring the continuity of mining operations on a mine that may have been interrupted by the holder of the mining location for any valid reason.

**Clause 214** [*Interpretation in Part XVIII*] contains definitions of words and phrases in connection with the tributing of mining rights under this Part.

**Clause 215** [*No tribute of precious stones or strategic minerals location without approval of Minister*] prohibits the tributing of mining locations registered for, or on which the principal mineral being mined, is any precious stones or strategic mineral, unless the applicant for approval of the tribute agreement obtains from the Minister, and produces to the PMD when making the application, a certificate granting permission for the location to be tribute.

**Clause 216** [*Submission of tribute agreements for approval by PMD or Board*] All tribute agreements must be submitted to the relevant PMD for transmission to the Mining Affairs Board for approval, unless the tribute agreement is in a standard form approved by the Board, in which case the PMD may approve it. If the PMD refuses to approve a standard tribute agreement for any reason, the parties to it may appeal to the Board against such decisions (and a further appeal lies to the Administrative Court if a party is unhappy with the decision of the Board on appeal),

**Clause 217** [*Consideration of non-standard tribute agreements by Board*] All tribute agreements that are non-standard must be submitted through the relevant PMD for transmission to the Mining Affairs Board, which must examine the tribute agreement in the light of specific considerations (such as the onus on the tributor to carry out sufficient development work to ensure the continuity of mining operations on the mine). If the Board refuses to approve a tribute agreement for any reason, the parties to it may appeal to the Minister against such decisions (and a further appeal lies to the Administrative Court if a party is unhappy with the decision of the Minister on appeal).

**Clause 218** [*Records of agreements and amendments thereof*] provides for the recording of all approved tribute agreements in the Mining Cadastre Register and for the manner of their amendment after initial approval.

**Clause 219** [*Penalty for contracting out mining otherwise than by virtue of tribute agreement*] prohibits, under threat of visiting civil and criminal penalties upon the defaulter, any person who avoids the tributing of mining rights altogether by “contracting” out his or her mining rights to others, thereby avoiding the scrutiny of such agreements by the Ministry.

**Clause 220** [*Penalty for acting under unapproved agreement*] prohibits, under threat of visiting civil and criminal penalties upon the defaulter, any person from exercising purported rights under an unapproved tribute agreement.

**Clause 221** [*Prohibition of disposal of minerals*] empowers the appropriate PMD to prohibit the disposal of minerals from a mining location purportedly worked under tribute, if the tribute agreement in question is unapproved or is being applied in conflict with the terms of an approved agreement. Any person who defies the PMD’s order to that effect is liable to be visited with civil and criminal penalties.



## PART XIX

## SPECIAL GRANTS

Part XIX of the Mines and Minerals Act empowers the Secretary for Mines to issue special grants allowing prospecting or mining operations to be conducted on land that has been reserved against prospecting and pegging, while Part XX of the Act empowers the President to issue special grants for the mining of coal, mineral oils, natural gases or nuclear energy source material. The effect of these clauses is to abolish the first sort of special grants (they will be dealt with as mining leases) and to expand Part XX of the Act to include some of the provisions at present in Part XIX.

**Clause 222** [*Interpretation in Part XIX*] contains definitions of words and phrases used in this Part. Of special note is the definition of “divided special grant”. This is a kind of special grant that will permit the holder (under specified conditions) to mine coal, mineral oil, natural gas, nuclear energy source material or strategic mineral concurrently with the mining by another holder of a mining right or title of the same or different minerals, precious stones or metals, in relation to the whole or a part of the same piece of ground.

**Clause 223** [*Special grant for mining coal, mineral oils, nuclear energy source materials, natural gases or strategic minerals*] provides that rights over certain minerals (coal, mineral oils, nuclear energy source materials, natural gases or strategic minerals) may only be acquired by means of a special grant. The right to exploit strategic minerals (which may be any mineral whosoever that is declared to be a strategic mineral under **Clause 5**) may be acquired by means of a special grant or a mining lease, depending on the agreement between the miner and the State under **Clause 5**. This clause also contemplates the possibility that coal, mineral oils, nuclear energy source materials, natural gases or strategic minerals may also be designated as strategic minerals, in which event this Part will apply to such minerals in the same way as they apply to strategic minerals.

Under **clause 224** [*Application for special grant and provisional approval thereof*] applicants for a special grant to mine coal, mineral oils, nuclear energy source materials or natural gases must apply to the Mining Affairs Board, while applicants for a special grant to mine any strategic mineral must apply to the Minister. In either case provisional approval to apparently qualifying applicants must be given (by the Chairperson of the MAB or by the Minister, as the case may be) for the application to go any further. The most important effect of provisional approval is that the PMD must reserve the area embraced by the application against prospecting and pegging in terms of section 42 (“Reservations against prospecting and pegging”), Multiple applications may be made and provisionally approved in respect of the same area sought to be covered by the special grant.

**Clause 225** sets up a special committee to evaluate applications for special grants in respect of non-energy minerals.

**Clause 226** [*Pre-consideration procedures by PMD*] provides that, on the basis of a provisional approval for a special grant, the PMD of the area to be covered by the special grant must convene a meeting of stakeholders (including the applicant, occupiers of land and other miners) to enable them interrogate the application for the special grant. After the meeting the PMD must compile a report to Mining Cadastre Registrar alerting him or her of any potential pitfalls concerning the application.

**Clause 227** [*Consideration of application for special grant for strategic minerals*] lays down that the Minister must (as soon as possible after receiving the report of the PMD under **clause 226**, if any) consider the application for a special grant to mine any strategic mineral in the light of specified considerations. If the PMD raised any objection to the application, the applicant must be afforded an opportunity to rectify his or her application accordingly or to make a response to the PMD’s report. After

consideration of the application the Minister may recommend that the President grant or refuse the application (however any such recommendation must not be inconsistent with any agreement entered between the applicant and the Minister pursuant to section 6(3)(b)).

**Clause 228** [*Consideration of application for special grant for coal, mineral oils, natural gases, or nuclear source energy materials*] lays down that the Board must (as soon as possible after receiving the report of the PMD under **clause 226**, if any) consider the application for a special grant to mine any coal, mineral oils, natural gases, or nuclear source energy materials in the light of specified considerations. If the PMD raised any objection to the application, the applicant must be afforded an opportunity to rectify his or her application accordingly or to make a response to the PMD's report. After consideration of the application the Board may recommend through the Minister that the President grant or refuse the application.

After the Minister has communicated to the President his or her own recommendations on an application for a special grant to mine any strategic mineral (or communicated the Board's recommendations on an application for a special grant to mine coal, etc), the President may under **clause 229** [President may grant or refuse application for special grant] refuse the application or authorise the Minister to issue a special grant on such terms and conditions as the President may fix.

**Clause 230** [*Transfer, cession or assignment of special grant*] prohibits the transfer of a special grant to another holder except under certain conditions. The proposed transferee of the grant must be approved in advance by the Minister (in the case of a special grant to mine any strategic mineral) or the Board (in the case of a special grant to mine coal, etc) otherwise the special grant may be cancelled if the original grantee is unwilling to continue to exercise his or her rights under the special grant. Special grants are personal to the grantee and may only be ceded with the consent of the grantor. There is no right of transfer and such grants can only be ceded or assigned with the permission of the President.

**Clause 231** [*Rate of royalty and annual fee*] provides that a special grant may make provision that is different from that made under Part XIII ("Royalty") for the payment of a special royalty on minerals won by the grantee. In addition, it empowers the President to fix a fee for the issuance of the special grant.

**Clause 232** [*Amendment of area covered by special grant and other amendments*] empowers the President, on application of the grantee, to extend or reduce the area covered by his or her special grant. However any extension of the area so covered must be dealt with as if the application for the extension was an application for a new special grant under **clause 233** or **235**.

**Clause 233** [*Cancellation of special grant*] provides that the President must give not less than 12 months' notice of the cancellation of any special grant on the grounds that the grantee has contravened the terms and conditions attached to his or her special grant.

**Clauses 234** and **235**, provide for the recording of special grants in the Mining Cadastre Register and the extent of the application of the other provisions of this Bill to special grants.

**Clause 236** [*Conversion of special grant for any strategic or non-energy mineral to special or ordinary in certain circumstances*] provides for the automatic conversion of a special grant into an ordinary or special mining lease, if the special grant was originally issued in relation to any strategic mineral, but that mineral later ceases to be designated as such during the subsistence of the special grant. Special grant title bestows on the holder benefits not availed to other classes of mining title holders, hence the need to "level the playing field" when such an event occurs.

**Clause 237** [*Additional application requirements where divided special grants are sought; conversion to divided special grants from undivided special grants*] provides for cases where the applicant for a special grant may wish to exploit minerals below or above areas of the surface or subsurface where another mining title holder is exercising mining rights, whether in respect of the same mineral or not. Provision is also made for an existing special grantee to convert its undivided special grant into a divided one.

## PART XX

### MINING ON TOWN LANDS

**Clause 238** [*Application of this Act to town lands*] provides for the application of the Bill to “prospecting for minerals and winning minerals on or under Town Lands” (as that phrase is defined in clause 4 (“Interpretation”)).

**Clause 239** [*Local authorities may make by-laws on certain matters*] reserves to every local authority the responsibility for making by-laws (with the approval of the Minister responsible for mines) on any matter affecting mining on or under Town Lands within the jurisdiction of that local authority.

**Clause 240** [*Consent required for pegging of sites on town lands*] requires the prior consent of a local authority responsible for Town Lands before any sites may be registered on such lands under **clause 57** (“Registration of dependent mine service sites”) or **58** (“Registration of independent mine service sites”) (but failing such consent the President may give consent on its behalf).

**Clause 241** [*Limitation of timber rights*] restricts the exercise of the timber rights of the holder of a prospecting licence or mining location on town lands to cases where such wood or timber interferes with prospecting or mining operations or with the erection of buildings required for such operations. Even in these cases the prior consent of the PMD is required for the exercise of those rights.

**Clause 242** [*Disposal of subterranean water*] obliges every holder of any mining location situated on town lands to lead into the nearest natural water channel any water coming to the surface of the ground from the subterranean working of such location and not being used by such holder. The holder is further obliged to not pollute any natural water channel when leading water into it from subterranean mining operations. Severe criminal and civil penalties are brought to bear upon offenders against this clause.

## PART XXI

### ACQUISITION OF LAND BY HOLDERS OF MINING LEASES OR BY STATE

**Clause 243** [*Part XXI Interpretation in and application of Part XXI*] defines what is meant by “private land” for the purpose of this Part. It also applies the provisions of the Land Acquisition Act to any land to be acquired by the State for the purpose of this Part. The extent of the application or non-application of this Part to holders of partially alienated land, and to certain private holders of land, is clarified in sub-clause (3).

**Clause 244** [*Compulsory purchase or sale of private land covered by mining lease*] empowers any mining lessee whose land includes private land to seek an order from the Administrative Court to enable it to compulsorily buy either the part of such land falling within the limits of the mining lease area or the whole of such private land within and outside such limits. The latter option must be chosen by the mining lessee if, in the opinion of the owner of the land or of the mining lessee, the use of the private land for agricultural purposes will or has become untenable by reason of the mining lease operations.

**Clause 245** [*Compulsory purchase of land not covered by mining lease*] empowers an owner of private property to make an application to the Mining Affairs Board to compel a miner other than a mining lessee to buy out his or her property, where the



miner's operations are on such a scale as to substantially affect the owner's use and enjoyment of his or her property.

Under **clause 246** [*Compulsory purchase of land covered by mining locations*] the owner of private land may apply through the Minister for the compulsory purchase of the land if he or she considers that the presence of any one or more mining locations on the land renders it unsuitable for agriculture or other purposes for which it was intended to be used (the owner must not, however, have an interest in any of the mining locations concerned, nor may an application under this section be made less than two years after the registration of any mining location).

**Clause 247** [*Cost of survey to be borne by holder of mining location*] provides that the cost of any survey of land purchased by the holder of a mining location shall be borne by the holder.

## PART XXII

### EXPROPRIATION OF MINING LOCATIONS NOT BEING WORKED OR DEVELOPED

Consistently with the "use it or lose it" principle, this Part provides for the expropriation after due process of any registered mining location not being worked or developed at all or to any significant degree.

**Clause 248** [*Interpretation in Part XXII*] contains definitions of words and phrases used in this Part.

**Clause 249** [*Report that mining location not being adequately worked*] encourages any person (who may for this purpose be called a "whistleblower") to report to the PMD his or her belief that a registered mining location is not being worked or developed at all or being worked or developed very inadequately. In token of good faith, the whistleblower must submit together with his or her report a deposit equivalent to the maximum amount fixed for **level 6**. On receipt of such a report and deposit, the PMD must engage the Government mining engineer to make a report on the matter. The PMD may also, on his or her own initiative may engage the Chief Government mining engineer to make a report if the PMD believes that the mining location is being underworked. On the basis of that report, the PMD may refer the matter to the Mining Affairs Board for further action.

**Clause 250** [*Procedure of Board shall on receipt of Government mining engineer's report*] provides that after the Board receives a report on the matter from the PMD it shall make its own investigation into the mining activities on the mining location which is alleged to be underworked. On the basis of such investigation it may then call upon the registered holder of such location to show cause why such location should not be expropriated.

**Clause 251** [*Recommendation for order of expropriation*] requires the Board to satisfy itself as to certain points before arriving at the conclusion that a particular location should be expropriated, such as that the failure to develop or work or adequately to develop or work such location is due to causes beyond the control of the holder, which he or she has made every effort to overcome.

**Clause 252** [*Order of expropriation*] If the Board is finally resolved that a registered mining location should be expropriated for underuse, it may recommend that the President should expropriate it. The President, on receipt of the Board's report and recommendation, has the discretion to require the Board to make a further investigation into the matter and to afford the registered holder a further opportunity of making representations to the President through the Board. If, in any event, the President is of the opinion that the mining location concerned is unworked or underworked, the President may make a provisional order of expropriation followed by (if there is no appeal against the provisional order) the final order of expropriation and cause it to be published in the *Gazette*.

**Clause 253** [*Transfer of expropriated location; Part XI not to apply in certain respects*] provides to the formal transfer to the Minister of an expropriated location, in respect of which the Minister is not obliged to apply for obtain any inspection certificate as required by Part XI. No compensation is payable for the expropriated location except that payable under the following clause.

**Clause 254** [*Sale or disposal of expropriated location*] provides for the disposal of the expropriated location by sale conducted through the Board (but the Minister may transfer it to a specific person by private treaty on the recommendation of the Board). The purchase price of any expropriated location will be paid by the Board to the holder from whom such location was expropriated less any costs incurred by the Board in connection with such location and its sale.

**Clause 255** [*Forfeiture of expropriated location*] provides that if an expropriated location has not been sold or transferred within 12 months of the date when it was transferred to the Minister (or within a shorter period if the Board is of the opinion that the location contains no economic deposit of any mineral), the PMD must declare the location to be forfeited even where it is protected by a current inspection or protection certificate.

**Clause 256** [*Applicability of Part XXII*] reiterates that mining locations may be expropriated under this Part even if there is in force in relation to that location an inspection certificate protecting it from forfeiture.

## PART XXIII

### AUCTIONING OF MINING RIGHTS AND TITLES

This Part provides a framework enabling the certain mining rights and titles, in certain circumstances, to be auctioned. Auctions on the Platform will be by open or restricted bidding depending on the circumstances as set forth in this Part.

**Clause 258** [*Establishment of Mining Auction Platform*] provides for the establishment of the Mining Auction Platform as a Department of the Ministry responsible for mines, headed by a Director, whose office is a public office and forms part of the Public Service.

**Clause 259** [*Open bidding for abandoned or vacated mining locations and independent mining sites, and certain EPLs*] provides for sale of the rights attaching to abandoned or vacated mining locations and independent mining sites, and certain EPLs.

**Clause 260** [*Restricted bidding for contested ground*] provides that where, in applications brought before the MAB, two or more applicants have sought to obtain an EEL, special mining lease or special grant for the exploration or mining of the same mineral, and the MAB finds them to be equally eligible, the applicants be required to resort to restricted bidding on the Mining Auction Platform for those mining rights or titles.

**Clause 261** [*Bidding for areas certified to be suitable for exploration or working under EELs, special mining leases or special grants*] provides for the auction of certain mining rights or titles over land found to be suitable for exploitation by the Department of Geological Survey.

**Clause 262** [*Bidding for special mining leases or special grants to exploit strategic minerals in designated areas*] provides for the auction of certain mining rights or titles to exploit strategic minerals in designated areas.

**Clause 263** [*No fees or charges leviable for mining rights or titles won by auction; cost of administering auctions*] provides that no fee or charge prescribed by or under this Act for the issuance of a mining right or title shall be levied on a person who purchases such mining right or title by auction in terms of this Part. In general, the cost of administering auctions is recoverable from bidders' security deposits.

**Clause 264** [*Powers of Minister under Part XXIII*] provides that with the leave of the National Assembly, specified provisions of this Bill may be temporarily amended by Statutory Instrument to accommodate the auctioning of mining rights and titles.

## PART XXIII

### ADMINISTRATION

#### *Sub-Part A: Administration of Ministry and Act*

**Clause 265** [*Administration of Ministry*] bestows general authority upon the Permanent Secretary of the Ministry of Mines to supervise and regulate the effectual implementation of the Act by the PMDs and other officers of the Public Service appointed for the purpose of this Act. In that capacity the Permanent Secretary may at his or her discretion assume the functions of any PMD to correct any error of the administration or in the implementation generally of this Act. Under this clause the Minister may also delegate any of his or her powers vested in him or her by the Act to the Permanent Secretary.

**Clause 266** [*Powers of Minister with respect to Mining Provinces etc*] provides that there shall be 8 mining provinces in Zimbabwe which will follow the boundaries of the 8 non-metropolitan provinces listed in section 267 of the Constitution. Within such mining provinces the Minister may by Statutory Instrument declare any mining district which may encompass one or more administrative districts within the province. This clause also contains provisions for determining under which jurisdiction of a PMD a holder of mining title shall fall if his or her mining title straddles two or more mining province.

**Clause 267** [*Appointment of officers*] provides for the appointment of specific office-holders for the purposes of the Act, whose offices are public offices and form part of the Public Service.

Under **clause 268** [*Delegation of PMD's powers etc*] any PMD, acting PMD or assistant PMD may, with the Secretary's consent, delegate to any other officer his or her powers and duties, and may administer oaths for any purpose for which an oath may be required under this Act.

**Clause 269** provides for the avoidance of conflicts of interest involving officials employed by the Mines Ministry

Under **clause 270** [*Prohibition of use of patented metallurgical process, etc*] no official of the Ministry of Mines may use (within 10 years of his or her leaving the service of the Ministry), for his or her personal reward or gain or for that of any other person, patented metallurgical processes, prototype plants, machines or other inventions produced with public funds for the service of the State. Severe criminal sanctions are brought to bear upon offenders against this clause.

Under **clause 271** [*Indemnity of officials; protection against false imputation of dishonesty, bad faith, etc on the part of officials*] PMDs and other officials of the Ministry of Mines are indemnified for acts done in good faith by them in the exercise of their statutory functions. PMDs and other officials who, in the course of doing their duties, suffer false allegations of corruption, bias, malice, conflict of interest or bad faith, are given a special personal action for damages against the false accusers. The Ministry may institute action on their behalfs in such cases.

#### *Sub-Part B: Quasi-judicial and other powers of PMDs*

Under **clause 272** [*PMD's powers when encroachment alleged*] a PMD has the discretion, on the application of any person interested in a mining location, to authorise a surveyor or other officer to enter upon any adjacent mining location to discover whether there has been any encroachment by the latter upon the mining location in which the applicant is interested.

Under **clause 273** [*PMD's may grant interdicts*] a PMD has power at his or her discretion to grant interdicts (binding injunctions or prohibitions) at the instance of any

aggrieved person legally interested in any mining location against any other person who disturbs the first-mentioned person's enjoyment of his or her mining rights.

**Clause 274** [*When PMD may permit working of locations under interdict*] allows mining locations interdicted by the PMD to be worked where the holder can show that such working is needed to prevent damage or serious material loss to the location.

**Clause 275** [*PMD may authorise certain works*] entitles the holder of any mining location to apply to the PMD for an order to do certain works (such as sinking boreholes, building roads and erecting electric power lines and fencing) on land adjacent to the location or on another mining location that are needed for the more advantageous working of the location. The holder of the adjacent land or a local authority may likewise apply to the PMD to do similar works on the mining location. The PMD must afford all affected parties a hearing before he grants or refuses the application. The applied for order will not be granted unless the PMD is satisfied that the use and working of any land or mining location belonging to any person other than the applicant will not be materially impeded, interfered with or obstructed by any act or thing done pursuant to such order.

**Clause 276** [*Claim holders must point out boundaries of their locations*] pits holders of mining locations under a general obligation to the PMD point out all notices, beacons, pegs or other landmarks defining or purporting to define in terms of this Act the boundaries of any mining location registered in his or her name or belonging to him or her.

In order to secure the recovery all amounts due and payable in respect of civil penalties, licences, royalties, fines, transfer duties or any other fees payable on or in connection with any mining location, **clause 277** [*PMD may sue for and have hypothec for amounts due*] creates in favour of the PMD a statutory hypothec over a mining location and all buildings, machinery or plant thereon which are the property of the holder of the location. This means that the property in question can be attached and sold to recover the moneys due.

**Clause 278** [*Appeals against decisions under sections 273 and 275*] provides for appeals by way of review to the Administrative Court for decisions made by the PMD under **clauses 273** and **275**.

#### *Sub-Part C: Specialised Departments of the Ministry responsible for Mines*

This Sub-Part establishes on a statutory footing and with limited autonomy three specialised Departments presently operating under the Ministry of Mines: the Department of Geological Survey, the Department of Mining Engineering and the Department of Metallurgy.

**Clause 281** [*Functions, mandates and powers of Departments*] sets forth the functions, mandates and powers of the three statutised Departments.

**Clause 282** [*Directors and staff of Departments*] provides for the appointment of each of the Directors of the Department of Geological Survey, the Department of Mining Engineering and the Department of Metallurgy, together with their staff, all of whose offices are public offices and form part of the Public Service.

**Clause 283** [*Charges, levies and fees*] empowers each Director, subject to any directions of the Minister given after consultation with the Minister, to charge and levy prescribed fees for the services rendered by their Departments.

In **clause 284** [*Minister may give policy directions to Directors of Departments*] the Minister may, through the Permanent Secretary, give policy directions to the Directors of the Departments.

**Clause 285** [*Intellectual property rights of Departments*] reserves to each Department any intellectual property rights over any data, etc., generated by the Department concerned in the fulfilment of its functions.

Under **clause 286** [*Regulatory powers of the Minister*] the Minister may, in consultation with the Director concerned, make regulations for each Department in order to give better effect to the objects and purposes of this Sub-Part.

## PART XXIV

### OFFENCES AND PENALTIES

**Clause 287** [*Prospecting prohibited save in certain circumstances*] prohibits the prospecting or searching for of any mineral, etc., except in the exercise of rights granted under a prospecting licence, exclusive exploration licence or special grant, or unless he or she is the duly authorised representative of the holder of such prospecting licence, exclusive exploration licence or special grant, or is a staking agent or prospector as defined in this Bill.

**Clause 288** [*Production of authority to prospect*] obliges persons prospecting or searching for any mineral, etc, if so requested by any official duly authorised thereto by the PMD or at the request of any police officer or of the owner or the occupier of the land on which he or she is so prospecting or searching, to produce his or her certificate of registration as a staking agent, his or her exclusive prospecting licence, or evidence of any other authority under which he or she is prospecting. It is an offence not to do so.

**Clause 289** [*Protection of open workings by prospectors*] obliges prospectors and holders of exclusive prospecting licences, exclusive exploration licences and special grants to protect any dangerous open workings to a standard prescribed in the mining regulations. Exemplary criminal and civil penalties are brought to bear upon offenders against this clause.

Under **clause 290** [*Duties of absentee staking agent or prospector*] staking agents and prospectors who absent themselves for more than 24 hours from any area covered by their exclusive prospecting licences, exclusive exploration licences and special grants for prospecting must appoint someone suitable to be in charge of the area and any employees thereon, and give such a person proof of such appointment which can be exhibited to the holder of the land covered by the mining right. Suitable criminal and civil sanctions are provided for the breach of this duty.

**Clause 291** [*Illegal pegging*] prohibits certain acts of illegal pegging. Exemplary criminal and civil penalties are brought to bear upon offenders against this clause.

**Clause 292** [*Illegal cutting of wood*] prohibits the cutting, felling, removal or use of any indigenous wood or timber for any other purpose than those authorised by specific provisions of this Bill. Exemplary criminal and civil penalties are brought to bear upon offenders against this clause.

**Clause 293** [*Interference with fences*] prohibits interference with fences on the part of holders of exclusive prospecting licences, exclusive exploration licences and special grants, and also on the part of holders or occupiers of land adjacent to mining locations. Exemplary criminal and civil penalties are brought to bear upon offenders against this clause.

**Clause 294** [*Beacons and pegs to be maintained in good order*] obliges the holder of a mining location (including the holder of a defunct or forfeited mining location for which the holder has not yet received a quitance certificate), to erect or to keep in proper order and in their proper positions his or her notices, pegs, beacons or trenches of such location. Exemplary criminal and civil penalties are brought to bear upon offenders against this clause.

**Clause 295** [*Position of beacons and pegs may not be altered*] forbids (on threat of prosecution) any person from in any way altering, destroying or falsifying any peg, notice, beacon or landmark designating or intended to designate the position, boundary, name or other particular of any mining location, reef or deposit or designating the name of the discoverer or holder thereof.

**Clause 296** [*Mining permitted under certain objects on certain conditions*] prohibits, except with the special permission of the Chief Government Mining Engineer, the exercise of mining rights beneath certain spots or locations.



**Clauses 297** [*Salting*], **298** [*Theft of ore*] and **299** [*Fraudulent acts*] punish certain fraudulent acts and property crimes. The fraudulent practice of “salting” (297) is the process of adding a valuable mineral or metal, especially gold or silver, to a site or a sample to change the value of the site or the sample with intent to deceive potential buyers of a mine. It is equated with the crime of fraud under the Criminal Law Code, as is falsifying weights or scales and other acts that facilitate the theft of ores, metals and minerals (299). Theft of ore (298) is equated with the crime of theft under the criminal law Code.

**Clause 300** [*Eviction of illegal occupiers*] replaces a corresponding section in the existing Act that deals with the problem of illegal occupiers of mining locations by the use of purely administrative means (notice of eviction by the mining commissioner with the opportunity to appeal against the same to the Minister). The new Constitution stipulates in section 74 that “No person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances”. This section on eviction of illegal occupiers is aligned to the Constitution. However, mere trespassers not dwelling on the location may be summarily evicted by the police.

**Clause 301** [*Returns to be furnished*] requires miners to furnish PMD with monthly returns of the miner’s operations, while **clause 302** [*False declarations and certificates*] makes it an offence against section 180 (“*Deliberately supplying false information to public authority*”) of the Criminal Law Code to make any false declaration, supply any false certificate or render any false return for any purpose under the Bill.

**Clause 303** [*Dams or reservoirs to be left intact*] puts the holder of a mining location to which a dam or reservoir is attached under a statutory obligation leave such dam or reservoir intact, together with the water it contains.

**Clause 304** [*Plans and returns of mines to be confidential*] prohibits the unauthorised disclosure of plans of mine workings, and miner’s returns and reports required to be rendered under this Bill.

**Clause 305** [*PMD’s powers of entry upon locations*] prescribes the PMD’s powers of entry upon any mining location for the purpose of inspecting it to ensure compliance with this Bill.

**Clause 306** [*Geological survey*] specifies the powers of the Director of Geological Survey to enter upon any land for the purpose of carrying out prospecting or exploration work on behalf of the State or a geological survey of Zimbabwe

**Clause 307** [*Obstruction of officials*] prohibits and penalises certain acts of obstruction of officials carrying out their duties under this Bill.

**Clause 308** [*Discovery of precious stones to be notified*] puts everyone under the obligation of notifying the PMD of the discovery of precious stones and of the location of the discovery within 10 days of the discovery.

**Clause 309** [*Other specified offences and penalties; spot-fineable offences*] and **310** [*Manner of imposing criminal penalties upon corporate offenders or joint holders of mining title*] specifies certain other offences against this Bill, and makes provision, where appropriate, for certain less serious offences to be spot-fineable. Guidance is also given to prosecutors and the criminal courts on how to punish corporate offenders and joint holders of mining title who are convicted offences against this Bill.

## PART XXV

### PROPRIETARY COMPENSATION CLAIMS AND COMPULSORY ACQUISITION, CANCELLATION, FORFEITURE OR COMPULSORY TRANSFER OF MINING RIGHTS AND LOCATIONS

**Clause 311** [*Application of Chapter 20:10*] provides that, where claims for compensation arising under this Act are submitted to the Administrative Court in terms of the Land Acquisition Act, the claims are to be framed in accordance with the procedures applicable to that court, specifically in regard to the nature of the loss or deprivation of rights, the compensation sought and details of expenses incurred.

**Clause 312** [*Acquisition by President of location for public purposes*] provides that the President may at any time, for the utilisation of any mining location for a purpose beneficial to the public generally, or to any section thereof, acquire either the whole or any portion of such mining location, or limit the rights enjoyed by the owner thereof under this Act. For that purpose the Minister may appoint an investigator with powers of access to the location concerned to ascertain the amount of compensation that may be payable.

In **clause 313** [*Cancellation of mining rights for using wasteful mining methods, etc*] if a PMD has grounds to believe that a miner is using wasteful mining methods or metallurgical processes, the PMD is empowered by this clause to inspect the mining location and report his or her findings to the Mining Affairs Board (MAB). On the basis of these findings the MAB may then institute its own inquiry, affording the miner the opportunity to make representations as to why his or her mining rights ought not to be cancelled. If the inquiry concludes that the miner is responsible as alleged, the MAB will request the miner to remedy the situation within a specified time or allow the miner to show cause why his or her certificate of registered mining location should not be cancelled. If the miner in either case fails to satisfy the MAB, the MAB will provisionally cancel the miner's certificate of registered mining location and notify the miner accordingly.

**Clause 314** [*Cancellation of mining rights for breach of this Act or other laws*] empowers the Minister to cancel mining rights if, after due investigations, the Minister is satisfied that the miner has failed to declare an output within a reasonable time after commencing mining operations, or that the miner has falsified a return regarding various provisions of Gold Trade Act, the Precious Stones Trade Act, or the Minerals Marketing Corporation of Zimbabwe Act. Cancellation of a miner's rights under the new section will result in the forfeiture of the mining location concerned, where it is registered in the miners' name, or in termination of any tribute agreement between the miner and the registered holder of the mining location.

**Clause 315** [*Minister may order holder of mining location to transfer it*] affords any holder of a registered mining location ("the applicant") the opportunity to apply to the Mining Affairs Board (MAB) for the compulsory purchase by and transfer to the applicant of a registered mining location held by another person, on the grounds that the applicant needs it for the better working of the applicant's own mining location. The applicant must first have tried to buy out the other holder and been refused. On receipt of the application the MAB notifies all interested parties of a hearing on the matter, and if it is satisfied (among other things) that the application is in the national interest, it may recommend to the Minister that the other holder must sell his or her location to the applicant for a sum of compensation agreed between them or fixed by arbitration in default of agreement. The Minister refers the recommendation to the President, who may thereupon approve or reject the making by the Minister of an order authorising the PMD to provisionally effect the necessary transfer until it is confirmed by the Mining Cadastre Registrar. The order cannot, however, be executed until the agreed or arbitrated compensation has been paid by the applicant or the applicant has given adequate security for such payment.

**Clause 316** [*Appeals against decisions under sections 251, 302, 303 and 304*] provides for appeals by way of review to the Administrative Court for decisions made by the Minister or the Board (as the case may be) under clauses 254, 312, 313 and 314.

## PART XXVII

### REGULATION OF GEOLOGY PROFESSION

**Clauses 317 to 321** provide that a long-established geological society may be chartered by the President for the purpose of investing the society with powers to regulate the geologists' profession. Such regulation is needed to enable the mining industry to rely on the expert advice of suitably credentialed geologists.

## PART XXVI

## MISCELLANEOUS

**Clause 322** [*Minister's Appeal Committee*] provides that whenever under this Act it said that an appeal can be made to the Minister, such appeal must be referred by the Minister to an advisory committee for consideration before the Minister makes a final decision on the appeal.

**Clause 323** [*Submission of geological information*] requires every miner of a registered mining location to submit annually to the Director of Geological Survey specified geological information.

**Clause 324** [*Site rent*] provides for the payment annually in advance to the PMD of site rent at the prescribed rate.

**Clause 325** [*Land surveyors to be subject to Chapter 20:12*] provides that land surveyors carrying out surface surveys un the Act are subject to the same duties and liabilities as are provided under the Land Survey Act [*Chapter 20:12*].

**Clause 326** [*Training institutions*] allows the Minister of Mines to establish and maintain one or more institutions for technical education and the training of personnel leading to the award of diplomas, certificates and other qualifications relevant to the mining industry. The foundational document setting out the powers and activities of each such institution will be in the form of a charter granted by the President by proclamation in the *Gazette*, similar to the one already granted to the Zimbabwe School of Mines in 1994.

**Clause 328** [*Mining of limestone for agricultural operations*] provides that for the benefit of farmers needing limestone for their farming operations, the Minister may, on application by any such farmer, reserve any part of the land of such farmer against prospecting or mining. The mining of limestone in good faith for use in farming operations will not be treated as "mining" for the duration of such reservation.

**Clause 329** [*Provincial advisory boards*] empowers the Minister to establish advisory boards for each Mining Province on a standing or ad hoc basis to advise the Minister generally on mining affairs in the province or in connection with any particular matter affecting the mining industry in that province.

**Clause 330** [*How acts ordered by PMD to be performed*] clarifies how effect is to be given to a PMD's lawful orders where this is not elsewhere specified in Act. The Police Service is obligated to render the PMD and his authorised delegate all necessary assistance in executing the PMD's orders.

**Clause 331** [*Establishment of Mining Court as division of High Court*] empowers the Chief Justice create a specialised division of the High Court presided over by at least two judges of the High Court, to be called the "Mining Court", which shall have jurisdiction to hear and entertain most matters as under this Bill are heard and entertained by the Administrative Court.

**Clause 332** will allow the Minister to amend certain Schedules to this Bill by notice in a Statutory Instrument, with the leave of the National Assembly.

**Clause 333** [*Regulations*] empowers the Minister to make regulations with respect to anything which, under this Bill the Minister is empowered or permitted to prescribe by regulations. Especially noteworthy is the power to make regulations concerned with the health and safety of mining employees, for the enforcement of which the Minister may order a mine to be temporarily or permanently closed.

**Clause 334** [*Repeal of Cap. 21:05; savings and transitional provisions*] provides for savings and transitional provisions. Among other things: (a) it provides for the conversion into mining locations of those dependent mine service sites in respect of which, under section 176 of the repealed Act, mining rights were be exercised.



## MINES AND MINERAL BILL, 2025

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NINTH SCHEDULE: Operation of the Mining Auction Platform .

# BILL

TO regulate the prospecting for and mining of minerals, and the registration  
of mining titles and other rights connected with prospecting and mining;  
to repeal the Mines and Minerals Act [*Chapter 21:05*]; and to provide  
5 for matters incidental thereto or connected therewith.

ENACTED by the Parliament and the President of Zimbabwe.

## PART I

### PRELIMINARY

#### 1 Short title and commencement

10 (1) This Act may be cited as the Mines and Minerals Act [*Chapter 21:09*] and  
shall (subject to subsection (2)) commence on the ninetieth day after the date of its  
promulgation:

Provided that the President may by notice in the Gazette defer the commencement  
of this Act by a further single period not exceeding sixty (60) days.

15 (2) Part III (“Mining Cadastre Registry”) of this Act shall apply in every respect  
as if it were fully operational on and after date of commencement of this Act, except  
that the operation of section 20 (“Entries in Mining Cadastre Register to be conclusive  
proof of mining right or title; rectification of Mining Cadastre Register; ascertainment  
of beneficial ownership”)(1) and (2) shall be deferred until such date as the President  
20 by notice in the *Gazette* declares that the Mining Cadastre Registry has achieved an  
operational standard capable of enabling the entries in the Mining Cadastre Register

H.B. 1, 2025.]

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to be deemed to be the definitive and exclusive record of every mining right and title under this Act.

## **2 Rights to minerals vested in President**

The *dominium* in and the right of searching and mining for and disposing of all minerals, mineral oils, natural gases and nuclear energy source materials, notwithstanding the *dominium* or right which any person may possess in and to the soil on or under which such minerals, mineral oils, natural gases and nuclear energy source materials are found or situated, is vested in the President, subject to this Act. 5

## **3 Acquisition, nature and exercise of prospecting, exploration and mining rights and title thereto** 10

(1) Rights to minerals, mineral oils, natural gases and nuclear energy source materials can be acquired in the manner hereinafter in this Act set out, and in such manner only.

(2) A prospecting, exploration or mining right granted in terms of this Act is a limited right, the exercise of and title to which is subject to this Act. 15

(3) Notwithstanding any other law to the contrary, any requirement for an Environmental Impact Assessment (EIA) under this Act or any other Act shall not be a condition precedent for the issuance of any mining right or title, but such an EIA shall be required before the exercise of any right under any mining right or title.

## **4 Interpretation** 20

(1) In this Act—

“A2 permit” means a non-securitised A2 permit, that is to say, a permit issued by the Minister responsible for land resettlement giving the holder temporary authority to occupy A2 agricultural land pending the issuance to him or her of a securitised A2 permit or land settlement lease; 25

“agricultural land” has the meaning given to it by section 72(1) of the Constitution;

“alienated or partially alienated land”, means—

- (a) private land; and
- (b) occupied Communal Land; and 30
- (c) land held by any person under any enactment or agreement whereby such person is entitled to obtain from the State title thereto on the fulfilment by him or her of the conditions prescribed by such enactment or agreement; and
- (d) land held by the holder of an offer letter, securitised A2 permit, land settlement lease or land settlement permit; 35

“alluvial deposit” means—

- (a) in relation to precious stones, any deposit, either non-coherent or consolidated, of any geological age, which has been formed by the agency of water or wind; 40
- (b) in relation to any other mineral, any accumulation of sand, gravel or clay deposited by surface-water containing valuable minerals;

“approved beneficiation plant” means a bank assay department, factory, refinery, smelter or treatment plant which has been declared to be an approved beneficiation plant in terms of section 168 (“Beneficiation plant”); 45

“approved cultivation scheme” means a scheme approved by the PMD under section 143 (“Right of landholder to graze stock upon or cultivate the surface of mining location”);

- “aqueduct” means any artificial work, appliance or structure, other than a pipeline, for the conveyance of water, wherever situated;
- “arbitration” means arbitration in terms of the Arbitration Act [*Chapter 7:15*] (No. 6 of 1996);
- 5 “base minerals” means all minerals and mineral substances, other than nuclear energy source material, precious metals, precious stones, mineral oils, natural gases and coal, and includes all such slimes, concentrates, slags, tailings and residues as are valuable and contain base minerals;
- 10 “beneficial owner” means a person who enjoys the benefits of ownership though the property’s title is in another name (“the nominee”);
- “block” means a claim or group of adjoining claims which may be registered in terms of this Act under one certificate of registration and which shall not in any case exceed ten hectares;
- 15 “Board” means the Mining Affairs Board established under Part II (“Establishment and Functions of Mining Affairs Board”);
- “Chamber of Mines of Zimbabwe” means the Chamber of Mines of Zimbabwe incorporated in terms of the Chamber of Mines of Zimbabwe Incorporation (Private) Act [*Chapter 21:02*];
- 20 “civil default” means any infringement of this Act for which a civil penalty is specified to be payable
- “civil penalty” means a penalty governed by the provisions of the First Schedule (“Civil Penalty Orders”);
- “claim” means a pegged area of land not exceeding one hectare in extent, within which a person has a right under this Act to carry out mining operations;
- 25 “claim inspector” means an inspector of mines or other employee of the Ministry responsible for mines, or a private contractor, appointed or authorised by the PMD for any purpose under Part XVI (“Abandonment and Forfeiture”);
- “coal” means anthracite, bituminous coal, brown coal, oil shale and lignite;
- 30 “course of a reef” means a line on the surface marking the intersection of the centre of a reef with such surface and, in cases where the whole or any portion of a reef is situated below the surface of the ground, the course of such reef shall be ascertained by projecting vertically to the surface the various points at which the centre of such reef approaches nearest to the surface, when the various points thus obtained shall be deemed to constitute the course of such reef;
- 35 “dam” means any works permitting of the artificial storage or accumulation of water, together with the water and all land submerged at high flood-level;
- 40 “defunct register” means the defunct register of the PMD referred to in section 21 (“Provincial mining registers”) (1)(c);
- “disposal”, in relation to any mineral or mineral-bearing product, means the sale, donation or other alienation of such mineral or mineral-bearing product:
- Provided that, where any mineral or mineral-bearing product is disposed of under an agreement in terms of which delivery of the mineral or mineral-bearing product is to be effected—
- 45 (a) at some future date; or
- (b) over a period of time;
- the mineral or mineral-bearing product, as the case may be, shall be deemed to have been disposed of on the dispatch thereof or on the dispatch of each consignment thereof, as the case may be;
- 50



- “document” includes a document in electronic form (provided that any person required to avail it must do so in an intelligible or unencrypted and machine readable form);
- “dump” means any aggregate of rock fragments or tailings which contain valuable minerals and have been accumulated by mining on a mining location; 5
- “eluvial deposit” means a residual concentration of minerals in the immediate vicinity of the outcrop of the vein or lode from which it is derived;
- “environmental impact assessment” or “EIA” has the meaning given to it by the Environmental Management Act [*Chapter 20:27*] (No. 13 of 2002); 10
- “Environment Management Agency” or “EMA” means the Environment Management Agency established by the Environmental Management Act [*Chapter 20:27*] (No. 13 of 2002) (or any other law that may be substituted for the same);
- “environmental officer”, in relation to any land, means any officer of the EMA having responsibility for the area in which the land is located; 15
- “environmental protection works” include works falling within the scope of the definition of “mining environmental and occupational safety works” in section 180 (“Interpretation in Part XV”);
- “exclusive exploration reservation” means the area in respect of which an exclusive exploration licence has been applied for and issued in terms of Part VII (“Exclusive Exploration Licence”); 20
- “exclusive prospecting licence” means an exclusive prospecting licence issued in terms of section 31 (“Issue of exclusive prospecting licences”);
- “extension officer”, in relation to any land, means any officer of the department responsible for agricultural extension services responsible for the area in which the land is located; 25
- “final register” means the final register of the PMD referred to in section 21 (“Provincial mining registers”)(1)(b);
- “Fund” or “MIEPF” has the meaning given to it by section 180; 30
- “Gazetted land” means State land which is defined as “Gazetted land” in section 2(1) of the Gazetted Land (Consequential Provisions) Act [*Chapter 20:28*] (No. 8 of 2006) (or any other law that may be substituted for the same);
- “global positioning system” means a satellite-based navigation system for ascertaining the location of a point on the ground; 35
- “holder”, in relation to a registered mining location, means the person in whose name such location is registered in the Mining Cadastre Register and, in the case of a deceased person or of a company in liquidation, or of any person under a legal disability, means the executor, administrator, liquidator, trustee, tutor, curator or other person who has the administration 40
- or control of the property of the person in whose name such location is registered;
- “holding”, in relation to alienated or partially alienated land, means the whole area of land which is held by the owner, occupier, lessee or holder, under one title or one agreement with the State; 45
- Provided that if the holder of a holding has leased any portion thereof to any other person under an agreement of lease which is registered in the Deeds Registry, such portion shall be deemed to be a separate holding;
- “inspector of mines” means an inspector of mines appointed in terms of section 267 (“Appointment of officers”); 50

- “land settlement lease”, “99-year lease” or “lease with a purchase option” has the meaning given to it by section 2 of the Land Commission Act [*Chapter 20:22*] (or any other law that may be substituted for the same), and includes any long lease over agricultural land;
- 5 “land settlement permit” (or “permit”) has the same meaning as “permit” given by section 2 of the Land Commission Act [*Chapter 20:22*] (or any other law that may be substituted for the same), and includes an A2 permit or a securitised A2 permit;
- 10 “landholder” or “holder” (in relation to land) means the owner or person or persons in whose name or names the title to any land is registered, granted or held, as the case may be, and, in the case of a deceased person or of a company in liquidation, or of any person under a legal disability, means the executor, administrator, liquidator, trustee, tutor, curator or other person who has the administration or control of the property of the person
- 15 in whose name such land is registered, granted or held;
- “land surveyor” means a land surveyor duly admitted to practise in Zimbabwe and, at the time of the performance by him or her of any acts under this Act in such capacity, entitled so to practise in Zimbabwe;
- 20 “legal owner”, in relation to a mining title, means the person registered as the owner of it in the Mining Cadastre Register who, subject to section 20 (“Entries in Mining Cadastre Register to be conclusive proof of mining right or title; rectification of Mining Cadastre Register; ascertainment of beneficial ownership”) (1)(b), may be a nominee for the beneficial owner;
- 25 “mentally incompetent person” means a person who is mentally disordered or intellectually handicapped, as defined in section 2 of the Mental Health Act [*Chapter 15:12*] or any other law that may be substituted for the same;
- “mine” includes any place, excavation or working whereon, wherein or whereby any mining operation is carried on;
- 30 “mine surveyor” means a person who possesses, at the time of the performance by him or her of any acts under this Act required or permitted to be performed by a mine surveyor, such qualifications as may from time to time be prescribed;
- 35 “miner” means the person actually carrying on the work of mining on any mining location, whether he or she is the holder or the lessee or assignee or tributor of the rights of such holder;
- “mineral” means—
- (a) any substance occurring naturally in or on the earth, which has been formed by or subjected to a geological process; or
- 40 (b) any substance declared to be a mineral in terms of subsection (3)(a), to the extent of such declaration;
- but does not include—
- (i) except for the purposes of Part XIX (“Special Grants”), mineral oils and natural gases; or
- 45 (ii) any substance declared not to be a mineral in terms of subsection (3)(b), to the extent of such declaration;
- “Mining Cadastre Register” means the Mining Cadastre Register established by section 18 (“Mining Cadastre Register”) (1);
- 50 “Mining Cadastre Registrar” means the head of the Mining Cadastre Registry referred to in section 17 (“Establishment Mining Cadastre Registry; Mining Cadastre Registrar and Deputy Mining Cadastre Registrar, assistants and examiners, or compliance officers”) (2);

- “Mining Cadastre Registry” means the office established by section 17(1);
- “mining lease” means an ordinary or special mining lease issued under Part IX (“Mining Leases”) or the area covered by such a mining lease, as the context may require;
- “mining location” means a defined area of ground over which there are mining rights, or rights in connection with mining, that have been acquired under this Act or under any previous law relating to mines and minerals, and includes the area covered by — 5
- (a) a claim or block of claims; and
  - (b) a mining lease; and 10
  - (c) a special grant;
- but does not include an exclusive exploration reservation;
- “mining operations” means (subject to the limitations of the mining right by virtue of which they are conducted), operations carried out for or in connection with the development of a mining location, including — 15
- (a) the sinking of shafts;
  - (b) the installation of machinery, equipment, implements, utensils and other articles required for the extraction, production, processing, milling, smelting, beneficiation, storing, handling, delivery, transportation, sale or disposal of minerals; 20
  - (c) the construction and erection of —
    - (i) facilities for the production, treatment, storage, gathering and conveyance of minerals;
    - (ii) offices, residential units, schools, hospitals, nursing homes or clinics for use by persons employed in or in connection with mining operations or by their families; 25
  - (d) the construction of roads in or to the mining location;
  - (e) environmental protection works and activities;
  - (f) any other activity incidental to mining operations;
- “mining province” means, subject to section 266 (“Powers of Minister with respect to mining provinces and mining districts”), a non-metropolitan province; 30
- “mining purposes” means the purpose of obtaining or extracting any mineral by any mode or method or any purpose directly or indirectly connected therewith or incidental thereto; 35
- “mining right” means a right evidenced by a mining title to prospect or explore for, obtain, extract or produce any mineral, or do any other thing that the mining title gives the holder thereof the right to do;
- “mining title” means a real right (however evidenced) in the form of a claim, block of claims, mining lease or special grant and (depending on the context) includes any document evidencing a mining right that is precedent to obtaining any of the foregoing titles, such as an exclusive prospecting licence or exclusive exploration licence; 40
- “Minister” means the Minister of Mines and Mining Development or any other Minister to whom the President may, from time to time, assign the administration of this Act; 45
- “Minister’s Appeal Committee” means the Committee constituted in terms of section 322;

- “notice”, “notify”, “notified” or “notification”, in connection with the giving of notice of anything under this Act, has meaning given to it in section 5 (“Manner of giving notices and serving documents under this Act”);
- 5 “nuclear energy source material” means uranium or thorium or any other substance containing one or both of such elements in such concentrations as may be prescribed;
- “occupied Communal Land”, means any portion of Communal Land occupied by virtue of a consent or permit referred to in paragraph (c) of the definition of “title”;
- 10 “occupier”, in relation to land, means the person lawfully and actually using or possessing any land under or by virtue of any title;
- “offer letter” means a letter or permit issued by the Minister responsible for land resettlement that offers to allocate land that will be subject to a securitised 2 permit or land settlement lease to the person to whom the letter is addressed (unless the context otherwise requires, “offer letter” shall be deemed to be synonymous with a “securitised A2 permit”);
- 15 “ordinary mining lease” means a mining lease referred to in section 123 (“Application for mining lease: preliminary requirements”)(1);
- “ore” means all forms of minerals or mineral aggregates which in the abstract are of economic value;
- 20 “output” means —
- (a) in respect of precious stones, precious stones which have been recovered from any mining location;
  - (b) in respect of any other mineral, ore which has been mined and reduced to a saleable form or which is in a saleable form on being mined;
- 25 “owner”, as applied to land, means the owner of private land, that is to say, the person registered as such in terms of the Deeds Registries Act [*Chapter 20:05*], and includes the duly authorised representative of any such owner;
- 30 “partially alienated land” means land referred to in paragraph (b), (c) or (d) of the definition of “alienated or partially alienated land”;
- “peg” —
- (a) when used as a verb means to demarcate, in accordance with this Act, a claim, block, location or other area;
  - 35 (b) when used as a noun, means a peg, beacon or mark which demarcates the boundaries of a claim, block, location or other area;
- “placer deposit” means any form of mineral deposit which does not fall within the definitions of “reef”, “dump”, “alluvial deposit”, “eluvial deposit” or “rubble deposit”;
- 40 “point of departure” means any point at which the course of a reef crosses a boundary of a mining location;
- “precious metals” means gold, silver, platinum and platinoid metals in an unmanufactured state, and includes all such slimes, concentrates, slags, tailings, residues and amalgams as are valuable and contain such precious metals;
- 45 “precious stones” means rough or uncut diamonds or emeralds or any substances which may, in terms of subsection (2), be declared to be precious stones for the purposes of this Act;
- 50 “primary purposes” means domestic purposes and the support of animal life and, in relation specifically to the use of water, has the meaning given

- to that phrase by section 2 of the Water Act [*Chapter 20:24*] (No. 31 of 1998) (or any other law that may be substituted for the same);
- “private land” means any land the ownership of which has by law, grant or title deed become vested in any person, and includes any land held by any person under any enactment or agreement whereby such person is entitled to obtain from the State title thereto on the fulfilment by him or her of the conditions prescribed by such enactment or agreement; 5
- “prospecting licence” means an exclusive prospecting licence, a certificate of registration of a staking agent or other lawful authority to prospect that is issued under this Act; 10
- “prospector” means the holder of an exclusive prospecting licence issued in terms of section 29 (“Issue of exclusive prospecting licences”), whether or not the prospector is also a staking agent;
- “Provincial Mining Director” or “PMD” means the Provincial Mining Director of the mining province within which the land or claims concerned, as the context may require, are situated; 15
- “provisional register” means the provisional register of the PMD referred to in section 21 (“Provincial mining registers”) (1)(a);
- “public water” means water from any water body or underground source located on State land or any portion thereof not occupied by a landholder; 20
- “quarry” means any place, excavation or working, other than a mining location, where any substance other than a mineral is obtained or extracted by means of quarrying operations;
- “reef” means any form of ore deposit contained within defined boundaries occurring in the earth’s crust that has been deposited in the enclosing country rocks, and includes a true fissure vein, contact vein, segregated vein, gash vein, bedded vein or metalliferous banket, and all such deposits as conform generically to the foregoing classification and any bed of any mineral, such as ironstone or limestone, but does not include alluvial deposits, eluvial deposits, placer deposits, rubble deposits or coal; 25 30
- “Register of Staking Agents” means the register established in terms of section 23 (“Register of staking agents”);
- “registered” means registered under any provision of this Act;
- “registered mining location” means —
- (a) a mining location which has been registered under this Act or which was registered under any previous law relating to mines and minerals immediately before the date of commencement of this Act; 35
  - (b) a mining lease;
  - (c) a special grant;
- but does not include an exclusive exploration reservation or a special grant to carry out prospecting operations; 40
- “representative”, in relation to a prospector, means an agent appointed by the prospector;
- “restricted public water” means water —
- (a) from any water body or underground source located on land held by a landholder; and 45
  - (b) which the landholder is entitled to use for his or her primary purposes under the Water Act [*Chapter 20:24*] (No. 31 of 1998) (or any other law that may be substituted for the same);



- “rubble deposit” means any natural deposit of rock fragments accumulated at or near the surface of the ground;
- “Secretary” means the Secretary of the Ministry for which the Minister is responsible;
- 5 “securitised A2 permit” means an A2 permit incorporating the security features prescribed by the Minister responsible for land resettlement, that is issued to a future lessee of a 99-year lease of agricultural land upon fulfilment of the conditions prescribed by or under the permit;
- 10 “small scale miner” means a Zimbabwean citizen or permanent resident who in any mining province—
- (a) is the holder of one registered mining location of not more than forty (40) hectares in extent, or of two or more registered mining locations which in aggregate do not exceed forty (40) hectares in extent; and
- 15 (b) does not, on his or her registered mining location or any of his or her registered mining locations, as the case may be—
- (i) employ at any time more than fifty (50) persons (including contractors) for periods (whether continuous or not) exceeding six months in any year; and
- 20 (ii) produces less than 1200 tonnes of ore a year;
- “special grant” means a special grant issued under Part XIX (“Special Grants”);
- “special mining lease” means a mining lease referred to in section 123 (“Application for mining lease”)(4);
- 25 “specified”, in relation to a mineral or mineral-bearing product, means specified in a notice made in terms of section 168 (“Beneficiation plant”);
- “staking agent” means a person registered as such under Part IV (“Staking Agents”);
- “State land” means land the ownership of which is vested in the President, excluding Communal Land:
- 30 Provided that, for the purposes of sections 34 (“Land open to prospecting”) and 37 (“Ground not open to prospecting”), State land shall not include any land which is alienated or partially alienated land;
- “stockpile”, in relation to a stockpile of minerals, means any stock or store of such minerals declared to be such under subsection (4)(a);
- 35 “strategic mineral” means a mineral as defined in section 6 (“Strategic minerals”) (1) that is declared by the Minister to be such in terms of section 6(2), or is deemed to be such in terms of section 6(8);
- “strike” means a horizontal line drawn at right angles to the dip of a reef;
- 40 “syndicate” means group of individuals or bodies corporate combined to promote a common interest;
- “title”, in relation to—
- (a) alienated land that is private land, means a title deed or deed of grant;
- 45 (b) partially alienated land, means an offer letter, a land settlement lease, a land resettlement permit or a lease of Gazetted land or other State land with or without a purchase option;
- (c) occupied Communal Land means—
- (i) the consent (verbal or written) to occupy for agricultural or residential purposes any portions of such land granted to

persons qualified in terms of section 8 of the Communal Lands Act [*Chapter 22:04*]; or

(ii) a permit to occupy any portion of Communal Land issued in terms of section 9 of the Communal Lands Act [*Chapter 22:04*];

(d) a mining right, means title that confers a real right (that is to say a property right) on the holder of such mining right; 5

“town lands” means any land falling within—

(a) the area in terms of the Urban Councils Act [*Chapter 29:15*] of any municipality or town or any local government area for which a local board has been established; or 10

(b) any other area declared by the President, by statutory instrument, to be town lands for the purposes of this Act;

“water body” means any natural or artificial body of water such as a lake, pond, dam, brook, stream, river, canal or water channel;

“well” means a shaft sunk for the express purpose of abstracting water and which is being used for the abstraction of water. 15

(2) The Minister may, by notice in a statutory instrument, declare any substance to be a precious stone for the purposes of this Act.

(3) The Minister may, by notice in a statutory instrument, declare that—

(a) any naturally-occurring substance, which is obtained or extracted by mining or quarrying or by similar methods, shall be a mineral for the purposes of all or any provisions of this Act; 20

(b) any substance referred to in paragraph (a) of the definition of “mineral” in subsection (1) shall not be a mineral for the purposes of all or any of this Act; 25

and may in like manner amend or revoke any such declaration.

(4) The Minister may, by notice in a statutory instrument, declare that—

(a) any storage for longer than a prescribed period in any one or more places or premises managed or controlled by the same person of a specified mineral of a prescribed amount that has been mined or extracted shall, regardless of whether or not it has been beneficiated to any extent, be deemed to be a stockpile of that mineral for the purposes of this Act; 30

(b) amend or revoke any declaration made under paragraph (a).

## 5 Manner of giving notices and serving documents under this Act

(1) In this section— 35

“document”, in relation to the service of a document other than a notice, means an affidavit, memorandum or other document required to be served for any purpose under this Act;

“messenger” means any person acting on behalf of a notifier in terms of subsection (2)(a) or (3)(a), or a courier referred to in subsection (2)(b) or (3)(b), or an employee or agent of the Mining Cadastre Registry or the PMD referred to in subsection (5)(a); 40

“private actor” means a prospector, miner, landholder or other individual or person not employed in or acting in an official capacity on behalf of the Ministry who exercises rights conferred by or performs duties imposed upon him or her by this Act, or who is otherwise affected by this Act; 45

“proof of service” means the affidavit, receipt or other written proof of delivery or service of the notices or documents referred to in subsection (2), (3) or (4).

(2) Unless any provision of this Act specifies the way in which notice of anything is to be given, references in this Act to the giving of notice to or notifying a person of anything, means giving notice or notifying in any one of the following ways—

- 5 (a) by hand delivery to the person being notified or to a responsible person at the residential address or place of business of the person being notified (such delivery must to be evidenced by an affidavit sworn and dated not later than 48 hours after such delivery, by the notifier or his or her messenger, to the effect that delivery was made by hand at the specified time and date, and at the specified address); or
- 10 (b) by delivery to the address of the person being notified through a commercial courier service (such delivery to be evidenced by a receipt or other proof of delivery by the courier service); or
- 15 (c) by delivery through electronic mail or other electronic means to the electronic address of the person being notified, which electronic address has been furnished to the PMD under section 154 (“Pre-inspection requirements and first and subsequent inspection certificates”)(2)(d), and which electronic notification shall be evidenced by—
- 20 (i) an acknowledgement (by the same means by which the notification was sent and on the same day or no later than midday on the following day) of receipt from the recipient; or
- (ii) confirmation (made or obtained on the same day or no later than midday on the following day) by the electronic mail server that the communication was sent and arrived at its destination; or
- 25 (iii) written acknowledgment by the recipient that he or she has received it;
- (otherwise the burden of proof that any electronic communication was sent and arrived at its destination shall rest with the sender of the communication);
- 30 (d) in the case where a notice is required to be served on anyone but his or her whereabouts cannot be ascertained after diligent inquiry or the service is rendered impossible by wilful conduct of the person to be notified, notice shall be deemed validly served if, no later than 48 hours before the expiry of the statutory period for the giving of the notice—
- 35 (i) the notifier (the Mining Cadastre Registrar, the PMD, or other official of the Ministry) or the messenger on behalf of the notifier deposes to that fact in an affidavit and such affidavit is filed for record at the office of the notifier; and
- (ii) where the notifier is—
- 40 A. the Mining Cadastre Registrar, the notice is posted on the electronic notice board of the website of the Mining Cadastre Registry; or
- B. the PMD, the notice is posted on the public notice board at the PMD’s office for a period of at least seven (7) days.

45 (3) Unless any provision of this Act specifies the way in which a document is to be served upon any person, references in this Act to the service of a document upon any person means serving it in any one of the following ways—

- 50 (a) by hand delivery to the person being served or to a responsible person at the residential address or place of business of the person being served (such delivery must to be evidenced by an affidavit sworn and dated not later than forty-eight (48) hours after such delivery, by the server or his or her messenger to the effect that delivery was made by hand at the specified time and date, and at the specified address); or

- (b) by delivery to the address of the person being served through a commercial courier service (such delivery to be evidenced by a receipt or other proof of delivery by the courier service); or
  - (c) by delivery through electronic mail or other electronic means to the electronic address of the person being served, which electronic address has been registered with the PMD under section 154 (“Pre-inspection requirements and first and subsequent inspection certificates”)(2)(d), and which electronic service shall be evidenced by—
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    - (i) an acknowledgement (by the same means by which the notification was sent and on the same day or no later than midday on the following day) of receipt from the recipient; or
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    - (ii) confirmation (made or obtained on the same day or no later than midday on the following day) by the electronic mail server that the communication was sent and arrived at its destination; or
    - (iii) written acknowledgment by the recipient that he or she has received it;
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(otherwise the burden of proof that any electronic communication was sent and arrived at its destination shall rest with the sender of the communication);
  - (d) in the case where a document is required to be served on anyone but his or her whereabouts cannot be ascertained after diligent inquiry or the service is rendered impossible by wilful conduct of the person to be notified, the document shall be deemed validly served if, no later than forty-eight (48) hours before the expiry of the statutory period for the giving of the document—
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    - (i) the server (the Mining Cadastre Registrar, the PMD, or other official of the Ministry) or the messenger on behalf of the server deposes to that fact in an affidavit and such affidavit is filed for record at the office of the server; and
    - (ii) where the server is—
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      - A. the Mining Cadastre Registrar, the document (or a notice of it like the one referred to in subparagraph B) is posted on electronic notice board of the website of the Mining Cadastre Registry; or
      - B. the PMD, the document is posted on the public notice board at the PMD’s office for a period of at least seven (7) days or, if that is not feasible due its size or any other reason, a notice is posted on the public notice board at the PMD’s office for a period of at least seven (7) days to the effect that the document may be inspected or uplifted at the office of the PMD during normal working hours.
30
- (4) If the notifier or server of any notices or documents under subsection (2) or (3) is the Mining Cadastre Registrar, the PMD, or other official of the Ministry, proof of service of the documents shall be filed without delay at the Mining Cadastre Registry, the PMD’s office or the registry of the Ministry, as the case may be, and retained for not less than three years. 45
- (5) Subsections (2) and (3) apply to private actors serving notices or delivering documents under this Act to each other, subject to the following modifications—
- (a) private actors may serve any notices or deliver any documents under this Act to each other using the Mining Cadastre Registrar or the PMD as the intermediary (whoever is appropriate in the context of the service or
50

- 5 delivery), in which event an employee or agent of the Mining Cadastre Registrar or the PMD will, for the prescribed fee, effect service or delivery by hand (which service or delivery must be evidenced by an affidavit sworn and dated not later than forty-eight (48) hours after such service or delivery, by the such agent or employee, that service or delivery was made by hand at the specified time, and at the specified address);
- 10 (b) in the case where a notice or document is required to be served on anyone but his or her whereabouts cannot be ascertained after diligent inquiry or the service is rendered impossible by wilful conduct of the person to be notified, the notice or document shall be deemed validly served if, no later than forty-eight (48) hours before the expiry of the statutory period for the giving of the notice or document, the notifying private actor, or his or her messenger—
- 15 (i) deposes to that fact in an affidavit and such affidavit is filed for record (for the prescribed fee, if any) at the office of the PMD or at the Mining Cadastre Registry, whichever is appropriate in the context of the notification; and
- (ii) causes the notice to be posted—
- 20 A. on electronic notice board of the website of the Mining Cadastre Registry; or
- B. on public notice board at the PMD's office for a period of at least seven (7) days;
- whichever is appropriate in the context of the notification.
- 25 (6) The failure to swear an affidavit as required by subsection (2)(a), (3)(a), or (5)(a), or to retain proof of service as required by subsection (4), shall not invalidate any notice or service of a document if a court is satisfied from other evidence that service of the notice or document in question was effected.

## 6 Strategic minerals

- (1) In this section—
- 30 “strategic mineral” means any nuclear energy source material or other mineral deemed strategic by virtue of its importance to the economic, social, industrial or security interests of Zimbabwe, and which is declared or deemed to be a strategic mineral by virtue of this section.
- (2) If the Minister, after consultation with the Board, deems that any mineral is a strategic mineral, he or she, with the approval of the President, shall, by order published in the *Gazette*, designate such mineral to be a strategic mineral and may, in like manner, amend or revoke such declaration.
- 35 (3) An order made under subsection (2) may apply to the whole of Zimbabwe or to any specified part thereof, and may be made for a definite or indefinite period of time.
- 40 (4) The effect of designating a mineral to be a strategic mineral is that—
- (a) any person wishing to mine such mineral—
- (i) may only obtain in relation to it a mining lease or special grant; and
- 45 (ii) must demonstrate to the satisfaction of the Minister the capacity and the intention to invest, during the subsistence of the mining lease or special grant or such shorter or other period as may be specified in the agreement referred to in paragraph (b), such minimum sum as the Minister may prescribe generally or in relation to a specific declaration of a strategic mineral;

and

(b) before obtaining such mining lease or special grant, the person concerned must enter into an agreement with the Minister concerning any or all of the following matters—

- (i) the formation of a company or other special investment vehicle in the name of which the mining lease or special grant shall be held, and in which the State has a defined interest or stake; and 5
- (ii) special conditions as may be agreed with respect to the exploration, exploitation, marketing or beneficiation of the strategic mineral and safeguards for the sake of environmental protection, and the stakeholdership, if any, to be given to the community of the area in which the strategic mineral is to be mined. 10

(5) The designation of a mineral as a strategic mineral shall not affect the holding or exercise of rights derived from any mining right or title in relation to that mineral before it was designated as strategic, but the Minister may, in such designation, make the renewal of any mining right or title to that mineral conditional on the person seeking such renewal complying with subsection (4) to the full extent or to such extent as specified in the designation. 15

(6) Where the Minister makes an order under subsection (2) specifying that the designation of a mineral as a strategic mineral applies only to a defined area of Zimbabwe, the Minister may— 20

- (a) at the same time or at any time after the designation of the strategic mineral, cause the defined area to which the order relates to be reserved against prospecting and pegging in terms of section 44 (“Reservations against prospecting and pegging”); and 25
- (b) invite in terms of section 262 (“Bidding for special mining leases or special grants to exploit strategic minerals in designated areas”) bids from potential investors interested in mining the strategic mineral.

(7) The designation of a mineral as a strategic mineral does not operate so as to prohibit the exploration for that mineral if such exploration is done independently of its exploitation (and if the exploration is done as a preliminary step to its exploitation, the person by or on behalf of whom any discovery is made must comply with subsection (4) before exploiting the discovery). 30

(8) The Second Schedule (“Deemed Strategic Minerals”) lists, in Part I, minerals that are deemed to have been declared strategic minerals under this section, and in Part II sets forth special conditions for the exploitation of any of the listed minerals (in addition to any other conditions that may be prescribed under this section or this Act or in terms of any agreement between the Minister and the miner of those minerals). 35

(9) Subject to subsection (10), the Minister may by notice in a statutory instrument substitute or amend the Second Schedule as and when he or she deems it necessary or desirable to do so in the national interest. 40

(10) When the Minister wishes to amend or substitute the Second Schedule the Minister shall lay the draft statutory instrument amending or substituting the Second Schedule before the National Assembly, and if the National Assembly makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is so laid before the House, the Minister shall cause it to be published in the *Gazette*. 45

(11) If in any area or part of any area designated by a notice under subsection (2) for the exploitation of a strategic mineral, the Minister is satisfied—



- (a) upon a report by the Director-Geological Survey that there are in that area deposits of a strategic mineral small enough to be exploited by any small-scale miner; and
- (b) the exploitation of any such deposit by any small-scale miner will not impinge upon the exploitation of the strategic mineral concerned by any investor referred to in subsection (4)(a)(ii);
- then (having first withdrawn any reservation referred to in subsection (6)(a), or withdrawn it to the extent contemplated by this subsection) the Minister shall permit any such small-scale miner or group of such miners (on the basis of a claim or block of claims) to exploit those deposits, subject to the miner or miners in question entering into an individual or collective agreement with the State referred to in subsection 4(b), as a condition for the grant or continuance of any claim or block of claims in respect of that strategic mineral.

## PART II

### ESTABLISHMENT AND FUNCTIONS OF MINING AFFAIRS BOARD

#### 7 Establishment of Mining Affairs Board

(1) There is hereby established a Board to be known as the Mining Affairs Board which shall exercise and perform the powers, functions and duties conferred and imposed upon it by this Act and by any other enactment.

- (2) The Board shall, in addition, perform such other functions and duties as may from time to time be required of it by the Minister in terms of this Act.

#### 8 Functions of Mining Affairs Board

The functions of the Mining Affairs Board shall be—

- (a) to play an advisory role to the Minister on mining related matters;
- (b) the processing of exclusive exploration licences, mining leases and special grants for energy minerals and other strategic minerals;
- (c) the approval of non-standard tribute agreements;
- (d) the processing of orders for eluvial chrome fines mining;
- (e) the processing of expropriation of mining titles;
- (f) the issuance of orders for transfer of mining locations;
- (g) the processing of applications for underground extensions;
- (h) the consideration of applications where consent has been withheld in terms of section 37;
- (i) the cancellation of mining rights for using wasteful mining methods;
- (j) the resolution of disputes between farmers and miners as provided for in this Act;
- (k) to convene inter-ministerial forum bi-annually to discuss issues affecting the mining industry; or
- (l) to discharge any other functions provided for or under this Act.

#### 9 Constitution of Board

(1) The Board shall consist of twelve members chaired by the Secretary (or in his or her absence, the Acting Secretary) of the Ministry responsible for mines, of whom—

- (a) five shall be employees of the Ministry responsible for this Act (of whom one shall be the Director of Geological Survey, another Director

of Metallurgy, another Chief Government Mining Engineer, or their successors in title) whose seniority shall not be less than that of a director and who shall be appointed by the Minister on the recommendation of the Secretary;

- (b) six other members appointed by the Minister, of whom— 5
  - (i) one shall be appointed by the Minister from a panel of at least three names submitted by the Chamber of Mines of Zimbabwe; and
  - (ii) one shall be appointed by the Minister from a panel of at least three names submitted by an association which, in the Minister's opinion, represents the interests of small-scale miners in Zimbabwe; and 10
  - (iii) one shall be appointed by the Minister from a panel of at least three names submitted by an association which, in the Minister's opinion, represents a substantial number of large-scale farmers in Zimbabwe; and
  - (iv) one shall be appointed by the Minister from a panel of at least three names submitted by an association which, in the Minister's opinion, represents a substantial number of small-scale farmers in Zimbabwe; and 15
  - (v) one shall be appointed by the Minister from a panel of at least three names submitted by the Institute of Chartered Accountants of Zimbabwe, incorporated by the Chartered Accountants Act [*Chapter 27:02*], who is practising in Zimbabwe as a public auditor or public accountant; and 20
  - (vi) one shall be appointed for his or her experience or professional qualifications in any profession or calling considered by the Minister to be of assistance to the Board. 25

(2) In appointing the Board the Minister shall endeavour to secure equality of representation as between the sexes and the regions.

(3) A member appointed in terms of—

- (a) subsection (1)(a) shall hold office for a renewable term of four years unless he or she earlier ceases to be an employee of the Ministry or for any reason ceases to be a member of the Board (in which event the Minister shall appoint another qualifying employee of the Ministry to replace him or her); 30
- (b) subsection (1)(b) shall hold office for such a period not exceeding two years as may be fixed by the Minister on appointment, and shall be eligible for reappointment for one additional term. 35

(4) Each member—

- (a) appointed in terms of subsection (1)(a) may, with the approval of the Secretary, appoint another employee of the Ministry who is not a member of the Board and whose seniority shall not be less than that of a deputy director; 40
- (b) appointed in terms of subsection (1)(b) may, with the approval of the Minister, appoint another member of the body which nominated him or her; 45

to be his or her alternate member on the Board, and such alternate member shall be entitled to attend and vote at any meeting of the Board in the absence of the member who appointed him or her.

(5) If anybody which is entitled to submit a panel of names in terms of subsection (1)(b) for any cause whatsoever fails or neglects or refuses to submit such panel, the Minister may appoint to the Board a member of the body concerned. 50

(6) For the better exercise of its functions, the Board may establish one or more committees in which the Board may vest such of its functions that this Act does not implicitly or explicitly reserve to it alone:

5        Provided that the vesting of any function in a committee shall not divest the Board of that function, and the Board may amend or rescind any decision of the committee in the exercise of that function.

(7) On the establishment of a committee the Board—

- 10        (a) shall appoint at least one member of the Board as a member of the committee, and that member or one of those members, as the case may be, shall be chairperson of the committee; and
- (b) may appoint as members of the committee, on such terms and conditions as the Board, in consultation with the Minister, may fix, persons who are not members of the Board.

15        (8) Meetings of a committee may be convened at any time and at any place by the chairperson of the Board or the chairperson of the committee.

(9) The procedure to be followed at any meeting of a committee and the quorum at any such meeting shall be as fixed by the Board.

20        (10) The Secretary shall assign members of the Public Service employed in his or her Ministry to carry out clerical and administrative functions on behalf of the Board.

(11) The Board may delegate to members of the Public Service referred to in subsection (10) such of its functions as the Board considers appropriate:

25        Provided that the delegation of such function shall not divest the Board of that function, and the Board may amend or rescind any decision of the member of the Public Service concerned in the exercise of that function.

## 10 Filling of vacancies

(1) The office of a member of the Board, who is not a member of the Public Service, shall upon the declaration of the Minister be vacated—

- 30        (a) if his or her estate is sequestrated or assigned; or
- (b) if he or she (even if represented by an alternate) is absent from three consecutive meetings of the Board without the permission of the Board; or
- 35        (c) if he or she gives one month's notice in writing to the Minister of his or her intention to resign office and his or her resignation is accepted by the Minister; or
- (d) if he or she is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the functions of a member; or
- 40        (e) if he or she is convicted of an offence and sentenced to imprisonment therefor without the option of a fine, whether such sentence is suspended or not.

(2) When a member's office is declared vacant, the Minister shall appoint a person, chosen as such member was chosen, to fill the vacancy.

45        (3) If any member of the Board, other than the chairperson, is prevented by illness, absence from Zimbabwe or other specific cause from exercising his or her functions on the Board, and no alternate is available to act for him or her, the Minister may appoint any person to act for such member during his or her absence.

## 11 Remuneration of members of Board

The members of the Board shall be paid, out of moneys appropriated by Act of Parliament for the purpose, such remuneration or allowances or both as the Minister, after consultation with the Minister responsible for finance, may from time to time determine.

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## 12 Procedure of Board

(1) The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings and proceedings as it thinks fit:

Provided that the Board shall meet at least once every two months.

(2) Seven members of the Board shall form a quorum at any meeting thereof, of whom at least three must be members appointed in terms of subsection (1)(a) and three must be members appointed in terms of subsection (1)(b).

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(3) The chairperson of the Board may himself or herself at any time call a special meeting of the Board.

(4) The decision of the majority of the members of the Board present at any meeting shall constitute the decision of the Board:

15

Provided that in the event of an equality of votes at any such meeting the chairperson at the meeting shall have a casting vote in addition to his or her deliberative vote.

(5) At all meetings of the Board the chairperson or, in his or her absence, such member as the chairperson may designate from among the members referred to in section 8(1)(a).

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(6) No member of the Board shall vote upon or take part in a discussion if he or she has, directly or indirectly, any pecuniary interest in the matter before the Board.

## 13 Powers of Board in relation to applications

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(1) In the exercise of its functions and duties the Board shall have power—

(a) to require any area of ground or mining location which is the subject matter of an application or an investigation to or by the Board to be examined by such person or persons as the Board may appoint for the purpose;

(b) to summon any applicant, the holder of any mining location, any landholder or any person having an interest in or knowledge of any matter before the Board to appear before the Board to give any evidence or explanations which the Board may require;

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(c) to require the production of books, plans, accounts and other documents relating to any application or matter before the Board;

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(d) to extend the period within which any application is to be made or document or information is to be submitted to the Board, where the Board is satisfied that the extension will not unduly prejudice any other person;

(e) to examine persons appearing before it on oath, which oath the chairperson of the Board is hereby empowered to administer;

40

(f) to make applications to the Administrative Court referring questions of law for the decision of the Court.

(2) Any person appointed under subsection (1)(a) shall, if authorised by the Board, have power to take and remove samples of ore from the area of ground or mining location in question.

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(3) A question of law stated in accordance with subsection (1)(f) may be heard by and argued before the Administrative Court or any judge of that Court at any convenient time, and the Court or the judge may —

- 5           (a) call for further information to be supplied by the Board or any other party to the application;
- (b) give such answer to the question as the Court or the judge thinks appropriate;
- (c) make such order as to the costs of the proceedings as the Court or the judge thinks appropriate.

#### 10   **14 Penalties for perjury, contempt and obstruction**

(1) Any person who, after having been duly sworn, wilfully makes a false statement to the Board on any matter relevant to the inquiry knowing such statement to be false, or not knowing or believing it to be true, shall be guilty of an offence and liable to the same punishment as if he or she had been convicted of perjury.

15           (2) If any person summoned to give evidence or to produce books, plans, accounts and other documents fails to appear before the Board or fails to produce such books, plans, accounts and other documents to the Board, or refuses to be examined on oath or to answer any question, he or she shall be guilty of an offence and liable to a fine not exceeding level six or, in default of payment, to imprisonment for a period  
20 not exceeding twelve months.

(3) Any person who obstructs or hinders any person authorised by the Board in his or her examination of a mining location or other area of ground shall be guilty of an offence and liable to a fine not exceeding level six or, in default of payment, to imprisonment for a period not exceeding twelve months.

#### 25   **15 Board may hold virtual meetings and hearings**

(1) The chairperson of the Board, on giving adequate notice to the members, may —

- 30           (a) order any meeting of the Board to which the notice relates to be held virtually, that is to say, hold or continue a meeting by means of closed circuit television or similar electronic media by which all the members and parties at the meeting can hear and see and be heard and seen at the same time (hereinafter referred to as a “virtual meeting”);
- 35           (b) arrange for an applicant, appellant or witness, if the applicant, appellant or witness consents thereto, to make submission or give evidence by means of closed circuit television or similar electronic media by which all the members and parties at the hearing can hear and see and be heard and seen at the same time (hereinafter referred to as an “virtual hearing”).

(2) The chairperson may make an order or arrangement contemplated in subsection (1) only if facilities therefore are readily available or obtainable and if it  
40 appears to the chairperson that to do so would —

- (a) prevent unreasonable delay; and
- (b) save costs; and
- (c) be otherwise convenient.

45           (3) The chairperson may, in order to ensure a fair and just consideration or hearing of any matter, application or appeal, make the giving of evidence at a virtual meeting or virtual hearing subject to such conditions as he or she, on the advice of any member of the Attorney-General’s Office seconded to the Ministry, deems necessary:

50           Provided that every member of the Board or other party at the virtual meeting or virtual hearing has the right, by means of that procedure, to question a witness and to observe the reaction of that witness.

**16 Minister may give policy directions to Board**

(1) Subject to subsection (2), the Minister may give the Board such general directions relating to the policy the Board is to observe in the exercise of its functions as the Minister considers to be necessary in the national interest, which policy directions must— 5

- (a) not be inconsistent with any provision of this Act; and
- (b) be issued in good faith, apply prospectively and not retrospectively, and be of general applicability; in particular the policy directions—
  - (i) must not be issued in relation to any particular matter, application or appeal pending before the Board and must not apply so as to influence or direct the Board on the outcome of any particular application, appeal or other matter that is being considered by the Board immediately before the directions are issued, or 10
  - (ii) must not prejudice the application of the rules of natural justice by the Board in the exercise of its quasi-judicial functions; 15
- and
- (c) clearly delimit the scope of their application and must otherwise not be vague or ambiguous in their terms; and
- (d) clearly express the national interest at stake; and
- (e) be clear (whether expressly or by necessary implication) that they apply or are in force for a fixed or indefinite period, or that they expire on the happening of any event. 20

(2) Before giving the Board any policy direction, the Minister shall inform the Board, in writing, of the proposed direction and the Board shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal. 25

(3) The Board shall take all necessary steps to comply with any direction given to it in terms of subsection (1).

(4) When any direction has been given to the Board in terms of subsection (1), the Board shall ensure that the direction and any views the Board has expressed on it in terms of subsection (2) are set out in the Board's annual report. 30

**PART III****MINING CADASTRE REGISTRY****17 Establishment Mining Cadastre Registry; appointment of Mining Cadastre Registrar, Deputy Mining Cadastre Registrar, assistants and examiners or compliance officers** 35

(1) There shall be an office in the Ministry responsible for mines called the Mining Cadastre Registry at which every claim, block of claims, mining lease, special grant and other rights in connection with mining shall be recorded in the Mining Cadastre Register. 40

(2) The Mining Cadastre Registry shall be headed by the Mining Cadastre Registrar, who shall be the Secretary responsible for mines.

(3) There shall be a Deputy Mining Cadastre Registrar who shall be an employee of the Ministry who, subject to any directions of the Mining Cadastre Registrar, shall exercise all of the functions of the Mining Cadastre Registrar under this Act. 45

(4) The Deputy Mining Cadastre Registrar shall be assisted by such other employees in the Ministry specially designated by the Mining Cadastre Registrar as are



necessary to assist the Deputy Mining Cadastre Registrar in discharging the functions of his or her office.

5 (5) In particular, the Mining Cadastre Registrar may designate employees of the Ministry to be Mining Cadastre examiners or compliance officers (whether legally qualified or not) for the specific purpose of assisting the Mining Cadastre Registrar and Deputy Mining Cadastre Registrar to scrutinise the accuracy, correctness and conformity to this Act of every application for the final registration of a mining right which has been provisionally registered by a PMD and transmitted by that PMD to the Mining Cadastre Registry for final registration in accordance with this Act.

10 (6) The Deputy Mining Cadastre Registrar may delegate or assign all or any of his or her functions to any one or more of the employees referred to in subsection (4), and any reference in this Act to the “Mining Cadastre Registrar” shall be construed as including a reference to the Deputy Mining Cadastre Registrar and any such employee.

15 (7) The Mining Cadastre Registrar, having received from a PMD any application for the final registration of a provisional mining right, shall endeavour within a period of not more than six months to process the application to finality (that is, by finally registering the right or rejecting it); upon the expiry of which period an aggrieved applicant may (unless earlier notified by the Registrar of a request for particulars concerning the application which the applicant has not responded to, or responded to  
20 inadequately or untimely) by application granted in terms of the Administrative Justice Act [*Chapter 10:28*], compel the Registrar to furnish to the applicant written reasons for the delay (in default of compliance wherewith within a period specified by the court, the Registrar shall cause the provisional right to be finally registered).

## **18 Mining Cadastre Register**

25 (1) The Mining Cadastre Registrar shall establish and maintain at the head office of the Mining Cadastre Registry a register to be known as the Mining Cadastre Register.

(2) There shall be entered in the Mining Cadastre Register —

- 30 (a) the date of the registration of every mining right or title or other registrable right, title or interest in connection therewith; and
- (b) particulars of any renewal, transfer, cancellation, revocation, suspension, termination, surrender, forfeiture or abandonment of every mining right or title or other registrable right, title or interest in connection therewith; and
- 35 (c) such other particulars as may be prescribed or as the Mining Cadastre Registrar may deem necessary.

(3) Notwithstanding subsection (2), regulations in terms of section 333 (“Regulations”) may provide for different registers to be kept in respect of different mining rights or titles or other registrable rights, titles or interests in connection  
40 therewith, or for the Register to be divided into different parts for the registration of such different mining rights or titles or other registrable rights, titles or interests in connection therewith.

## **19 Access to Mining Cadastre Register**

(1) The Mining Cadastre Register shall be made available for free online access  
45 and inspection on an electronic platform authorised by the Mining Cadastre Registrar.

(2) Any person who is the holder of a mining right or title wishing to obtain an authenticated material copy thereof in replacement for one that has been lost, damaged or destroyed may, upon submitting to the Registrar an affidavit in which the person

deposes to the circumstances of the loss, damage or destruction of the original material copy of evidencing the right or title, and on payment of the prescribed fee, obtain such copy duly authenticated by the Mining Cadastre Registrar during normal working hours at the head office of the Mining Cadastre Registry.

(3) Any person, with the written consent of the holder of the mining right or title concerned, and on payment of the prescribed fee, may obtain an authenticated material copy of the mining right or title concerned, duly authenticated by the Mining Cadastre Registrar during normal working hours at the head office of the Mining Cadastre Registry. 5

(4) Any person, without the consent of the holder of the mining right or title concerned, and on payment of the prescribed fee, may, if he or she can demonstrate (by way of an affidavit or otherwise) to the Mining Cadastre Registrar that he or she is the holder of any legal right or interest in such mining right or title, obtain an authenticated material copy of the mining right or title concerned, duly authenticated by the Mining Cadastre Registrar during normal working hours at the head office of the Mining Cadastre Registry. 10 15

(5) The Mining Cadastre Registrar shall also create and maintain an electronic notice board for the posting of any statutory notices and other information in connection with the functions of the Mining Cadastre Registry.

## **20 Entries in Mining Cadastre Register to be conclusive proof of mining right or title; rectification of Mining Cadastre Register; ascertainment of beneficial ownership 20**

(1) Every entry in the Mining Cadastre Register of a mining right or title shall be deemed—

- (a) to be the definitive and exclusive record of such right or title; and 25
- (b) insofar as the name of the person holding or owning such mining right or title is concerned, to reflect that such person is the beneficial owner of such mining right or title (unless, on the face of such entry, the legal owner is recorded to be the nominee for the beneficial owner, whose name and relevant particulars must also be recorded in such entry); 30

and in the event of any inconsistency between such entry and any other record of such right or title kept in terms of this Act or otherwise, the entry in the Mining Cadastre Register shall prevail as proof of the mining right or title or any particular thereof.

(2) A document authenticated by the Mining Cadastre Registrar purporting to be— 35

- (a) a copy of mining right or title registered in the Mining Cadastre Register; or
- (b) a certificate issued by the Mining Cadastre Registrar of the contents of any entry in the Mining Cadastre Register; 40

shall be admissible in any legal proceedings on its production by any person as *prima facie* evidence of such right, title or contents.

(3) For the purpose of correcting or updating any entry in the Mining Cadastre Register—

- (a) the Mining Cadastre Registrar, on notice to any interested person; or 45
- (b) any interested person, on notice to the Mining Cadastre Registrar and any other interested person;

may seek a rectification of any entry in the Mining Cadastre Register, for which purpose the Third Schedule (“Procedure for Rectification of entries in Mining Cadastre Register”) applies to the procedure to be followed in doing so. 50

(4) For the purpose of ascertaining the beneficial ownership of any mining right or title—

- (a) the Mining Cadastre Registrar has the right (notwithstanding anything to the contrary in this Act or any other law) to demand as a condition for the registration or continued registration of the right or title concerned, that any person to be registered as the owner of the title in question must make a sworn declaration to the effect that such person is the beneficial owner of the right or title or, if not, to disclose the name or names and relevant particulars of the beneficial owner or owners concerned;
- (b) that is registered in the Mining Cadastre Register, the Mining Cadastre Registrar may, if he or she has reasonable grounds for believing that—
  - (i) ownership or control of any mining claim or any block of claims has been transferred to any person who is not a Zimbabwean citizen ordinarily resident in Zimbabwe or permanent resident; or
  - (ii) ownership or control of any exclusive exploration license, mining lease or special grant has been transferred in contravention of section 33, 98, 138 or 230, as the case may be;

require any person who is recorded in the Register as being the owner of the title in question to make a sworn declaration of beneficial ownership to the effect that such person is the beneficial owner of the title or, if not, to disclose the name or names and relevant particulars of the beneficial owner or owners

(5) If any person referred to in subsection (4)—

- (a) fails or refuses to make the sworn declaration within thirty days of its being required by the Mining Cadastre Registrar, or makes a false declaration, the Registrar shall cancel the mining right or title concerned on the expiry of that period;
- (b) makes a sworn declaration to the effect that he or she is not a beneficial owner of the mining right or title concerned, afford the beneficial owner or such person on behalf of the beneficial owner to take (within three months of the date when such declaration is received by the Registrar) the appropriate steps under this Act to obtain the mining right or title concerned in the name of the beneficial owner, as if he or she was applying for the right or title in question for the first time:

Provided that—

- (i) until such time as the application is finally determined, the mining right or title in question shall be deemed to be a valid mining right or title;
- (ii) if the beneficial owner or person concerned fails within three months to initiate the steps to obtain the mining right or title concerned in the name of the beneficial owner, the Registrar shall cancel the mining right or title concerned.

## 21 Provincial mining registers

(1) Each Provincial Mining Director must keep a provincial mining register, being a register of mining locations, sites, forfeitures, cancellations, abandonments, hypothecations, tribute agreements, options and any other right or interest required to be registered in terms of this Act by the PMD within his or her area of jurisdiction, which register shall be divided between the following three parts—

- (a) a provisional registration part (the “provisional register”) under which all relevant particulars of the provisional registration of any right, interest or

other thing required to be registered provisionally under this Act, shall be kept for a period of at least six years; and

- (b) a final registration part (the “final register”) under which all relevant particulars of the final registration of any right, interest or other thing required to be registered under this Act, shall be recorded and maintained for as long as the registration of the right, interest or other thing concerned is in force; 5
- (c) a defunct registration part (the “defunct register”) in which shall be recorded for a period of at least six years all the relevant particulars of any right, interest or other thing (previously recorded in the final registration part) which has been revoked, terminated, abandoned, surrendered, forfeited or whose registration has been cancelled or for any other reason is no longer in force. 10

(2) The production in any legal proceedings of any part of a register referred to in subsection (1) or of any entry therein, whether in the original or by means of a copy thereof authenticated as a true copy by the Provincial Mining Director having custody of the same, shall be *prima facie* evidence of any facts stated therein. 15

(3) Any inconsistency between a provincial mining register and the Mining Cadastre Register shall (without prejudice to the right of the Mining Cadastre Registrar to make any rectification of the Mining Cadastre Register to take into account any conflicting entry in a provincial mining register) be resolved in favour of the Mining Cadastre Register, and on the discovery of any such inconsistency the PMD shall without delay correct the corresponding entry in his or her provincial mining register. 20

## **22 Adherence to statutory timelines for issuance of mining title**

(1) The Mining Cadastre Registry, the Board and every Provincial Mining Director shall adhere to the timelines prescribed by or under this Act for the processing of every application for every mining right or title. 25

(2) Any person aggrieved that the statutory period for processing his or her application for a mining right or title has expired without being finalised may lodge a written request to the Minister’s Appeal Committee through the Minister, to obtain reasons for the delay and possible direction on how the application may be expedited. 30

## **PART IV**

### **STAKING AGENTS**

## **23 Register of staking agents**

(1) The Secretary shall establish and maintain at the head office of the Ministry of Mines a register to be known as the Register of Staking Agents, in which he or she shall record the names and prescribed particulars of staking agents. 35

(2) There shall be entered in the Register of Staking Agents—

- (a) the name of every staking agent registered as such in terms of section 25 (“Application for registration as staking agent”) (3)(a)(ii); and 40
- (b) the mining province for which the staking agent is registered in terms of section 25(3)(a)(ii):

Provided that the registration of a staking agent entitles him or her to work in any mining province during the currency of his or her registration as such; and 45

- (c) particulars of any renewal, cancellation or suspension of the registration of such staking agent; and
- (d) such other particulars as the Secretary may deem necessary.

## 24 Work of staking agents

(1) Subject to subsection (2), no pegging or demarcation of a mining location (whether physical or virtual) shall be made except by a staking agent and with strict regard for the rights and duties of prospectors and landholders and occupiers of land under this Act:

Provided that a miner or prospector may do anything in the way of exploration preparatory to the pegging or demarcation of a mining location that is not inconsistent with his or her mining rights obtained under this Act.

(2) A staking agent may be assisted by any person in the conduct of his or her work as such, but no physical or virtual pegging and demarcation of a mining location shall be done except by or in the presence or under the guidance of the staking agent, and no application for the registration of a mining location shall be presented unless the staking agent makes a declaration of compliance with this subsection in that application.

(3) If it comes to the notice of a PMD that any person is committing or has committed either of the following civil defaults—

- (a) purporting to be, or doing the work of, a staking agent without being registered as such under this Part; or
- (b) (in the case of a person employed or contracted by a staking agent), doing the work of a staking agent without the authority of the staking agent by whom he or she is employed or contracted, or without the staking agent's direct supervision or guidance;

the PMD for the mining province wherein a civil default as described in paragraph (a) or (b) has occurred shall serve upon the defaulter a civil penalty order which—

(c) directs the defaulter—

- (i) to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level four; and
- (ii) to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—

A. cease doing the work of a staking agent or commence the steps needed to be taken under this Part to secure registration as a staking agent; or

B. cease doing the work of a staking agent of which the defaulter is an employee or contractor, without the authority of his or her employer or without his or her direct supervision or guidance;

(d) subjects the defaulter to either or both of the following penalties, as may be appropriate—

- (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
- (ii) if he or she fails to comply with paragraph (a)(ii) A or B, to pay a default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(4) In addition to any penalty provided in the law for perjury, a staking agent who makes a false declaration under subsection (2)—

- (a) shall, on the first occasion upon which he or she is discovered to have done so, be liable to be served with a civil penalty order at the instance of the PMD through whom the application was made, which order—
  - (i) shall direct the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 4; and 5
  - (ii) shall subject the defaulter, if he or she fails to pay the default fine specified in paragraph (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 10
- (b) on any subsequent such occasion have his or her registration as a staking agent cancelled under section 27 (“Cancellation or suspension of registration”). 15

(5) No person shall sell or transfer to any other person a certificate of registration as a staking agent.

(6) Any sale or transfer referred to in subsection (5) shall be void and the parties to it shall be guilty of an offence and liable to fine not exceeding level six, or to imprisonment for a period not exceeding one year, or to both. 20

## 25 Application for registration as staking agent

- (1) A person is qualified to be registered as a staking agent if—
  - (a) he or she has attained the age of eighteen years; and
  - (b) he or she is a citizen of or a permanent resident of Zimbabwe; and
  - (c) he or she— 25
    - (i) has the prescribed experience in pegging procedures and of the rights and duties of prospectors and landholders and occupiers of land under this Act; or
    - (ii) has the prescribed qualifications to be a staking agent; or
    - (iii) has undergone, as a condition for qualification as a staking agent, a prescribed course of training or an examination or test by the PMD or such other person as may be prescribed; or 30
    - (iv) was, on the date of commencement of this Act, registered as an approved prospector under the Mines and Minerals Act [*Chapter 21:05*] and is otherwise qualified in terms of paragraph (a), (b) and (d): 35

Provided that if the requirements as mentioned in subparagraphs (i) to (iii) are prescribed during the currency of a person’s registration in terms of this subparagraph, such person must comply with those requirements within a period of six months from the date of commencement of the regulations prescribing those requirements, and obtain within that period any qualification in accordance with those requirements; 40

and

- (d) is otherwise a fit and proper person to be registered as a staking agent. 45
- (2) A person who wishes to be registered as a staking agent shall—
  - (a) make application in writing to a Provincial Mining Director in the prescribed form; and



- (b) submit therewith such photographs of himself or herself as may be prescribed; and
  - (c) pay at the time of making such application the prescribed fee; and
  - (d) provide such other information as the Provincial Mining Director may reasonably require.
- (3) On receipt of an application, the Provincial Mining Director may —
- (a) if he or she is satisfied as to the matters referred to in subsection (1), provisionally grant the application, in which case he or she shall —
    - (i) provisionally register the applicant as a candidate staking agent for a period of thirty days (or such lesser period within which confirmation of registration is granted or refused in terms of subparagraph (ii)A); and
    - (ii) without delay transmit relevant particulars of the candidate staking agent to the Secretary, whereupon the Secretary may —
      - A. if he or she is satisfied that no good cause to the contrary exists, grant the application, and the Secretary shall —
        - I. register the applicant as a staking agent; and
        - II. issue to him or her a numbered certificate of registration as a staking agent which shall be in the prescribed form;
      - or
      - B. remit the application to the PMD for further investigation, report and recommendation within a specified period (at the completion of which the Secretary shall make a decision on the application in accordance with subparagraph A or C); or
      - C. refuse the application, in which case the applicant shall be notified of the refusal and the reasons for it, and be informed of his or right of appeal under subsection (4);
  - or
  - (b) if he or she is not satisfied as mentioned in paragraph (a), refuse to grant the application, in which case the PMD shall —
    - (i) notify the applicant accordingly in writing, giving grounds for the refusal and informing the applicant of his or her right to appeal to the Secretary under subsection (4); and
    - (ii) if the applicant lodges an appeal, without delay transmit the appeal together with relevant particulars of the applicant to the Secretary.
- (4) A candidate staking agent who wishes to appeal against the refusal of the Secretary to register him or her as a staking agent under subsection (3)(a)(ii)C, or an applicant who wishes to appeal against the refusal of the PMD to grant provisional registration as a candidate staking agent under subsection (3)(b), must —
- (a) in either case lodge an appeal in writing with the Provincial Mining Director concerned, and copy it to the Secretary, no later than two working days after the applicant has received notice of such refusal; and
  - (b) incorporate in the appeal representations addressing the grounds of the PMD's or Secretary's refusal, or otherwise giving reasons why the registration of the applicant as a staking agent ought to be granted;
- and thereupon the Provincial Mining Director shall, without delay, transmit the appeal to the Secretary together with (in the case of an appeal against refusal of provisional registration) the grounds upon which the PMD refused to

provisionally register the applicant as a candidate staking agent under subsection (3)(b)(i).

(5) On receipt of the particulars of the applicant transmitted in terms of subsection (3)(b) (ii), or of an appeal transmitted in terms of subsection (4), the Secretary shall—

- (a) if he or she is satisfied that no good cause to the contrary exists, confirm or approve the registration of the staking agent, in which case the Secretary shall promptly instruct the PMD to issue to the staking agent a numbered certificate of registration as a staking agent which shall be in the prescribed form; or
- (b) if he or she is not satisfied as mentioned in subparagraph (a), refuse to confirm or approve the registration of the staking agent, in which case the Secretary shall promptly instruct the PMD to notify the applicant accordingly in writing, giving grounds for the refusal and informing the applicant through the PMD of his or her right to seek review under subsection (6)(b).

(6) Any person who is aggrieved by a decision of the Secretary under subsection (5)(b), may seek a review by the Administrative Court of such decision within twenty-one days after the date of its notification to the candidate staking agent or applicant (as the case may be), whereupon the court may—

- (a) uphold the decision of the Secretary; or
- (b) refer the decision back to the Secretary for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the Secretary to investigate the matter further) on any one or more of the following grounds—
  - (i) allowing extraneous or irrelevant considerations to affect the decision, or
  - (ii) failure to take into account relevant considerations in arriving at the decision, or
  - (iii) any material mistake of fact or law that tainted the decision; or
  - (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

Provided that the Court shall not make a finding on this ground without affording the Secretary an opportunity to respond to such finding.

(7) An applicant whose appeal in terms of subsection (5)(b) has been dismissed by the Secretary or, having sought review by the Administrative Court, is denied relief, may not make a fresh application in terms of subsection (2) until after the expiry of a period of five years from the date on which his or her appeal was dismissed or application on review failed, or such lesser period as the Secretary or the Court may specify when dismissing the appeal or denying the relief, as the case may be.

## 26 Expiry and renewal of registration

(1) Subject to section 27, the registration of a person as a staking agent shall be valid for a period of five years from the date of registration and then it shall automatically expire unless, prior to the expiry of such period, the registration is renewed for a further period of five years.

(2) A staking agent who wishes to renew his or her registration as such shall, not later than two months before his or her registration is due to expire—

- (a) make written application to a PMD in the prescribed form; and

- (b) pay at the time of making such application the prescribed fee; and
- (c) submit therewith his or her certificate of registration as a staking agent.
- (3) On receipt of an application in terms of subsection (2) the PMD—
  - (a) shall issue the applicant with a temporary document which shall serve as his or her certificate of registration as a staking agent during the processing of the application for re-registration; and
  - (b) may, and if so instructed by the Secretary shall, satisfy himself or herself afresh as to the matters referred to in section 25(1), in which event section 23 (3), (4), (5), (6) and (7) shall apply to such application; and
  - (c) shall, if there is no impediment to the re-registration of the applicant, provisionally grant the application in terms of section 23(3)(a), and thereafter the application shall be processed in accordance with section 25.

## 27 Cancellation or suspension of registration

- (1) If a staking agent is convicted of a criminal offence, whether under this Act or otherwise; or has, in the exercise of any rights under this Act, conducted himself or herself in a manner which, in the opinion of the PMD or the Secretary, renders it necessary to suspend or cancel his or her registration as a staking agent, the PMD with the leave of the Secretary, or at the direction of the Secretary, shall—
  - (a) suspend his or her registration for a specified period which shall expire before the date on which that registration is in any event due to expire in terms of section 24(1); or
  - (b) cancel his or her registration; as the case may be.
- (2) Before acting in terms of subsection (1) the PMD shall notify the staking agent concerned that action in terms of that subsection is being considered, informing him or her of the grounds therefor, and giving him or her an opportunity to make written representations in connection therewith within twenty-one days of the date of such notification.
- (3) The cancellation or suspension of the registration of a person as a staking agent in terms of this section shall be in addition to any other penalty which may be imposed under this Act or any other law for any act or omission on the part of the staking agent that prompted the cancellation or suspension of his or her registration as such.
- (4) The PMD or the Secretary through the PMD shall give written notice to the staking agent concerned of the cancellation or suspension of his or her registration in terms of this section and the period of suspension.
- (5) The Secretary shall cancel the registration of a staking agent referred to in section 25(1)(c)(iv) if the staking agent, being registered in terms of the proviso to that provision, fails to comply with any prescribed requirements within a period of six months from the date of their being prescribed, or to obtain any qualification in accordance with those requirements.

## 28 Effect of expiry, cancellation or suspension of registration

- (1) A person whose registration as a staking agent has expired in terms of section 26 or has been cancelled or suspended in terms of section 27 shall forthwith surrender to a PMD his or her certificate of registration as a staking agent.

(2) Where a certificate of registration as a staking agent has been surrendered by reason of the suspension of the registration of the holder, such certificate shall be returned to the holder immediately on the expiry of the period of suspension.

(3) Until the period of suspension has expired a person whose registration as a staking agent has been suspended in terms of section 27 shall be deemed not to be registered as such, and be liable to be penalised in terms of section 24 (3) if he or she does the work of a staking agent during the period of his or her suspension. 5

(4) A person whose registration as a staking agent has been cancelled in terms of section 27 may not make a fresh application in terms of section 25 for registration as a staking agent until after the expiry of a period of five years from the date on which his or her registration was cancelled or such lesser period as the Secretary may specify when directing the cancellation. 10

(5) A person aggrieved by the cancellation or suspension of his or her registration as a staking agent may seek a review by the Administrative Court of such decision (which, for the purposes of this section, shall be the decision of the Secretary), and section 25(6) shall apply to such review. 15

## **29 Duplicate certificate of registration as staking agent**

(1) If a staking agent has lost his or her certificate of registration or the certificate has been defaced or destroyed, he or she may apply to a PMD for a duplicate copy thereof. 20

(2) On making an application referred to in subsection (1) the staking agent shall—

- (a) pay the prescribed fee; and
- (b) furnish a solemn declaration in a form to be approved by the PMD which shall state— 25
  - (i) the name of the holder of the certificate; and
  - (ii) the number of the certificate; and
  - (iii) that the certificate has been lost, defaced or destroyed;
- and
- (c) in the case of a defaced certificate, attach the certificate to the solemn declaration; and 30
- (d) submit such photographs as he or she would be required to submit if he or she were making an application in terms of section 25.

(3) On receipt of an application complying with this section the PMD shall forward the application and the solemn declaration to the Secretary who shall, if he or she is satisfied that no good cause to the contrary exists, promptly instruct the PMD to issue a duplicate copy of the certificate endorsed as such and forward it to the applicant. 35

(4) A duplicate copy of a certificate issued in terms of this section shall be available for all purposes for which the original would have been available.

(5) If a staking agent, having obtained a duplicate certificate on the basis that the original one was lost, subsequently finds the original certificate, he or she shall without delay, and in any case within seven days of finding it, return it to the PMD from whom he or she obtained the duplicate. 40

## PART V

## ACQUISITION AND REGISTRATION OF MINING RIGHTS

*Sub-Part A: Exclusive Prospecting Licences***30 Interpretation in Part V**

5 In this Part—

“appellant” means any prospector, miner, owner, occupier or other person appealing or seeking a review of a decision under this Part;

“land under cultivation”, for the purposes of section 37 (“Ground not open to prospecting”), means—

- 10 (a) land which has been *bona fide* cleared or ploughed or prepared for the growing of farm crops;
- (b) ploughed land on which farm crops are growing;
- (c) ploughed land from which farm crops have been reaped, for a period of three years from the date of completion of such reaping;
- 15 (d) land which has been *bona fide* prepared for the planting of such permanent crops as orchards or tree plantations, and land on which such crops have been planted and are being maintained;
- (e) ploughed land on which grass has been planted and maintained for harvesting, rotation of crops or stock feeding, for a period of six years from the date of planting:

20 Provided that if any land such as is described in paragraphs (a) and (d) is not utilised for the growing of farm crops or of such permanent crops as orchards or tree plantations within two years of its having been *bona fide* cleared or ploughed or prepared for such crops, such land shall forthwith become open to prospecting;

25 “order” means an order made under section 74 (“Applications and reviews”) (2);

“ordinarily resident”, in relation to a person, means one who has lawfully and voluntarily established his or her usual place of residence in Zimbabwe, otherwise than as a visitor, with the intention of remaining therein;

30 “owner”, in relation to any State Land, means the Minister responsible for the administration of the State Land in question;

“permanent improvements”, for the purposes of section 37 (“Ground not open to prospecting”) does not include fences of any description, aqueducts, pipelines, wells, boreholes, dams or reservoirs;

35 “prospector” means the holder of an exclusive prospecting licence, or of a special grant to carry out prospecting operations, or of an exclusive exploration licence, unless the provision concerned or its context refers to any one of the aforementioned holders;

40 “reserved land” means land upon which a prospector is prohibited in terms of section 37 (“Ground not open to prospecting”) or 44 (“Reservations against prospecting and pegging”) from exercising any of his or her rights under his or her exclusive prospecting licence without the consent in writing of the owner or holder of the land;

45 “site” means a dependent mine service site registered in terms of section 57 (“Registration of dependent mine service sites”) or an independent mine service site registered in terms of section 58 (“Registration of independent mine service sites”).

### 31 Issue of exclusive prospecting licences

(1) Subject to this section, a PMD may issue to an applicant, on payment of the prescribed fee, an exclusive prospecting licence authorising the holder or his or her representative to exercise the rights conferred by section 35 (“Rights of prospecting and pegging conferred by exclusive prospecting licences”) within any area open to prospecting within the mining province for which the PMD is responsible: 5

Provided that the exclusive prospecting licence is valid only for a single area identified by the applicant in terms of section 35(1)(b).

(2) Every exclusive prospecting licence —

- (a) shall be in the prescribed form and shall contain such particulars and be subject to such terms and conditions as may be prescribed; and 10
- (b) shall be valid for a period of twelve months from the date of its issue.

(3) An exclusive prospecting licence shall not be issued to —

- (a) an individual unless he or she is of or over the age of 18 years and is a citizen or permanent resident of Zimbabwe, ordinarily resident in Zimbabwe; or, 15
- (b) a company or other business entity unless it is incorporated or registered under the Companies and Other Business Entities Act [*Chapter 24:31*], the majority of whose members are citizens or permanent residents of Zimbabwe ordinarily resident in Zimbabwe; or 20
- (c) a partnership, syndicate or joint venture unless —
  - (i) it is made up of not more than twenty individuals, the majority of whom are citizens of Zimbabwe ordinarily resident in Zimbabwe; or
  - (ii) it is made up of two or more companies qualified under paragraph (b), not exceeding twenty such companies; or 25
  - (iii) it is made up of any combination of individuals qualified under paragraph (a) and companies qualified under paragraph (b) not exceeding altogether twenty such individuals and companies; 30
- (d) the following —
  - (i) an individual who is not a Zimbabwean citizen ordinarily resident in Zimbabwe or permanent resident of Zimbabwe; or
  - (ii) a foreign company as defined in the Companies and Other Business Entities Act [*Chapter 24:31*]; or 35
  - (iii) a company, private business corporation, partnership, syndicate, joint venture or other business entity the majority of whose members are not citizens of Zimbabwe;

unless the applicant, to the satisfaction of the PMD —

- A. in the case of a foreign company referred to in subparagraph (ii), has been issued with a certificate under that Act authorising it to establish a place of business in Zimbabwe and has formed a subsidiary company to hold the licence, the majority of whose members are citizens or permanent residents of Zimbabwe resident in Zimbabwe); or, in any other case 40
- B. intends and qualifies to apply for a special mining lease in terms in terms of section 123 (“Application for mining lease”) (2)(b). 45



(4) The PMD may refuse to issue an exclusive prospecting licence to an applicant if—

- 5 (a) the applicant or his or her representative has contravened any term or condition of an exclusive prospecting licence that was previously issued to the applicant; or
- (b) the applicant has been convicted of an offence under this Act; or
- (c) the applicant is not, in the PMD's opinion, a fit and proper person to hold an exclusive prospecting licence:

Provided that —

- 10 (i) the PMD shall inform the applicant, promptly and in writing, of the reasons for the refusal under paragraph (a), (b) or (c) and invite the applicant to submit, within such time, not being less than forty-eight hours or more than seven working days (as the PMD may fix) from the date of the notification of the refusal, any representations in  
15 person or in writing that the applicant wishes to make in the matter (on the basis of which representations the PMD may reverse his or her previous refusal and issue the exclusive prospecting licence); and
- (ii) if—
  - 20 A. no representations as mentioned in proviso (i) are made timeously, the applicant shall be deemed to have abandoned his or her application for the exclusive prospecting licence; or
  - B. the representations mentioned in proviso (i) are made timeously but the PMD notifies his or her rejection of them in writing  
25 to the applicant, the applicant may within forty-eight hours of receiving notification of the rejection lodge an appeal in accordance with subsection (5).

(5) An applicant who wishes to appeal against the PMD's refusal to issue an exclusive prospecting licence in terms of subsection (4) must—

- 30 (a) lodge an appeal to the Secretary in writing with the Provincial Mining Director concerned, and copy it to the Secretary, no later than two working days after the applicant has received notification of such refusal; and
- (b) incorporate in the appeal representations addressing the grounds of the PMD's refusal or otherwise giving reasons why the applicant should be  
35 issued with an exclusive prospecting licence;

and thereupon the Provincial Mining Director shall, without delay, transmit the appeal to the Secretary together with the grounds upon which the PMD refused to issue an exclusive prospecting licence under proviso (i) to subsection (4).

(6) Upon receiving an appeal in terms of subsection (5) the Secretary shall  
40 promptly (and in any event no later than seven working days of receiving it)—

- (a) dismiss the appeal by upholding the decision of the PMD; or
- (b) refer the decision back to the PMD for reconsideration within a specified period (whether with or without directions on how the decision is to be reconsidered, including a direction to the PMD to investigate the matter further and make a further report and recommendations) on any one or  
45 more of the following grounds—
  - (i) allowing extraneous or irrelevant considerations to affect the decision, or

- (ii) failure to take into account relevant considerations in arriving at the decision, or
  - (iii) any material mistake of fact or law that tainted the decision;  
(the Secretary shall, upon receiving the report or recommendations resulting from the PMD's reconsideration, uphold the appeal in accordance with such report or recommendation, or make a decision in accordance with paragraph (a), (c) or (d)) 5
  - or
  - (c) uphold the appeal and direct the PMD to issue the exclusive prospecting licence if the Secretary finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision, and that there is no other impediment to the applicant being issued with the exclusive prospecting licence: 10  
    - Provided that the Secretary shall not make a finding on this ground without affording the PMD an opportunity to respond to such finding; 15
  - or
  - (d) in an exceptional case, overturn the decision of the PMD and substitute the Secretary's own decision on the basis of the overriding national interest (in which case the Secretary shall direct the PMD to issue the exclusive prospecting licence to the applicant). 20
- (7) Any applicant who is aggrieved by a decision of the Secretary under subsection (6), may seek a review of such decision by the Administrative Court within twenty-one days after the date of its notification to the applicant, whereupon the court may do any of the things the Secretary is empowered to do under subsection (6) other than paragraph (d) of that subsection. 25
- (8) An applicant whose appeal in terms of subsection (6) has been dismissed by the Secretary and not upheld if taken on review to the Administrative Court, may not make a fresh application for an exclusive prospecting licence until after the expiry of a period of twelve months from the date on which his or her appeal was dismissed by the Secretary (or such lesser period as the Secretary may specify when dismissing the appeal), or from the date when the application on review failed, as the case may be. 30
- (9) The PMD shall—
- (a) without delay enter in his or her provisional register the particulars of every applicant for an exclusive prospecting licence who is not disqualified to receive one in terms of subsection (3) or (4), or who has lodged an appeal in terms of subsection (5); and 35
  - (b) not issue an exclusive prospecting licence until he or she, having transmitted—
    - (i) the particulars of the application to the Mining Cadastre Registrar, 40  
or
    - (ii) an appeal in terms of subsection (5), which resulted in the applicant winning the appeal;
- has received notification from the Registrar—
- A. that the particulars of the exclusive prospecting licence are in order and have been entered in the Mining Cadastre Register with effect from a specified date: 45  
    - Provided that if the Registrar indicates that any particulars are not in order by reason of some remediable

5 defect in them, and the PMD is unable, with or without the cooperation of the applicant (as the case may require) to rectify them, the PMD shall reject the application for the exclusive prospecting licence, giving the applicant the reasons therefor and informing him or her of the right of appeal under subsection (5); and

B. authorising the PMD to issue the exclusive prospecting licence, the effective date of which shall be the date of the entry of the particulars relating to it in the Mining Cadastre Register;

10 and

(c) record the fact and date of issuance of the exclusive prospecting licence in his or her final register (and, in the case of an exclusive prospecting licence issued to a person referred to in subsection (3)(d), endorse on the licence and against the appropriate entry in the register the words “Subject to section 55”).

(10) Subsections (5), (6), (7) and (8) apply to a person wishing to pursue an appeal after being informed by the PMD under subsection (9) A of his or her right to appeal.

### **32 Cancellation or suspension of exclusive prospecting licences**

20 (1) The PMD may cancel or suspend an exclusive prospecting licence if the prospector—

- (a) has contravened any term or condition of the licence; or
- (b) is convicted of an offence in terms of this Act, or has conducted himself or herself in a manner which, in the PMD’s opinion, renders him or her unfit to hold the licence.

(2) Before cancelling or suspending the exclusive prospecting licence the PMD shall give the prospector at least 30 days’ written notice of his or her intention to cancel or suspend it and of his or her grounds for doing so, and shall in such notice invite the prospector to submit, within the notice period, any representations in person or in writing that the prospector wishes to make in the matter (on the basis of which representations the PMD may withdraw his or her intention to cancel or suspend the exclusive prospecting licence or proceed to cancel or suspend it).

(3) During the notice period referred to in subsection (2), the exclusive prospecting licence shall be provisionally suspended pending the PMD’s decision on its formal suspension or cancellation.

(4) A prospector who is aggrieved by the cancellation or suspension of his or her exclusive prospecting licence in terms of this section may appeal to the Secretary against the cancellation or suspension within 30 days of being notified of such cancellation, whereupon the licence is deemed suspended until the appeal and any review under subsection (6) or (7) is determined.

(5) An applicant who wishes to appeal against the PMD’s decision to cancel or suspend his or her exclusive prospecting licence must—

- (a) lodge an appeal in writing with the Provincial Mining Director concerned, and copy it to the Secretary; and
- (b) incorporate in the appeal representations addressing the grounds of the PMD’s cancellation or suspension or otherwise giving reasons why the exclusive prospecting licence should not be cancelled or suspended;

and thereupon the Provincial Mining Director shall, without delay, transmit the appeal to the Secretary together with a report setting forth the grounds upon which the PMD cancelled or suspended the exclusive prospecting licence.

(6) On receiving an appeal under subsection (5) the Secretary shall promptly, and in any event not more than 30 days after receiving it, do any of the things the Secretary is empowered under to do under section 31 (“Issue of exclusive prospecting licences”) (6) as if the reference there to the issuance of an exclusive prospecting licence were a reference to the cancellation or suspension of an exclusive prospecting licence. 5

(7) Any applicant who is aggrieved by a decision of the Secretary under subsection (6), may seek a review of such decision by the Administrative Court within twenty-one days after the date of its notification to the applicant, whereupon the court may do any of the things the Secretary is empowered to do under subsection (6) other than the Secretary’s power to overturn the decision of the PMD to cancel the exclusive prospecting licence and reinstate it on the basis of the overriding national interest. 10

(8) The PMD shall — 15

(a) without delay enter in his or her provisional register the particulars of every cancellation or suspension of an exclusive prospecting licence, which entry shall be effective during the period allowed for appeal under subsection (4) or until the matter is finally determined on appeal or review, whichever is the later date; and 20

(b) without delay transmit the particulars of every cancellation or suspension of an exclusive prospecting licence to the Mining Cadastre Registrar, and  
(c) having received confirmation from the Mining Cadastre Registrar of the receipt of the particulars referred to in paragraph (b), record the fact and date of — 25

(i) the cancellation of the exclusive prospecting licence in his or her final register and transfer all the entries relating to the exclusive prospecting licence from the final register to the defunct register; or

(ii) the suspension of the exclusive prospecting licence in his or her final register; 30

as soon as possible after the lapse of the date referred to in paragraph (a).

### **33 Prohibition against sale or transfer of exclusive prospecting licences**

(1) No person shall sell or transfer an exclusive prospecting licence to any other person. 35

(2) Any sale or transfer of an exclusive prospecting licence shall be void and the parties to it shall be guilty of an offence and liable to fine not exceeding level six or to imprisonment for a period not exceeding six months, or both.

#### *Sub-Part B: Prospecting: Rights and Restrictions*

### **34 Land open to prospecting** 40

Subject to the provisions and limitations contained in section 37 (“Ground not open to prospecting”), the following land is open to prospecting —

(a) all State land and Communal Land;  
(b) all private land in the title to which there has been reserved to the Government of Zimbabwe the right to all minerals or the power to make grants of the right to prospect for minerals; 45

(c) all land held by any person under any enactment or agreement whereby such person is entitled to obtain from the State title thereto on the fulfilment by him or her of the conditions prescribed by such enactment or agreement. 50

### 35 Rights of prospecting and pegging conferred by exclusive prospecting licences

(1) An exclusive prospecting licence shall confer upon the prospector, subject to this Act, the following successive rights—

- 5 (a) in the first stage, the right to prospect and search for minerals, mineral oils and natural gases on all land open to prospecting within the mining province to which the exclusive prospecting licence relates:

10 Provided that at this stage the exclusive prospecting licence shall not entitle the prospector to remove or dispose of any mineral, mineral oil or natural gas discovered within land open to prospecting, except for the *bona fide* purpose of having it assayed or of determining its nature, unless the PMD has given written notice for it to be removed and disposed of; and

- 15 (b) in the final stage the right to identify a single defined area not exceeding forty (40) hectares within which the prospector may prospect exclusively and to peg up to forty (40) claims or register up to four blocks of such claims (whereafter the rights conferred by the exclusive prospecting licence shall be restricted only to that defined area).

20 (2) The rights set out in subsection (1) shall be exercised only by a staking agent, and where the prospector is not a staking agent they shall be exercised only through a staking agent whom the prospector has appointed in writing to be his or her representative.

25 (3) Any person who, not being registered as a staking agent, purports to exercise the rights set out in subsection (1), shall be guilty of an offence and liable to fine not exceeding level six, or to imprisonment for a period not exceeding one year, or both.

### 36 Surface rights of holder of exclusive prospecting licence

(1) In this section—

30 “location” means the area covered by the relevant prospecting notice and, where a discovery notice has also been posted, the area as extended by that discovery notice;

“referral” means a referral of a dispute in terms of subsection (4) to the PMD for resolution.

35 (2) The holder of an exclusive prospecting licence, hereinafter in this section called the prospector, shall, when *bona fide* employed in the pursuit of any of the rights conferred by section 35, the onus of proof whereof shall lie on him or her, be entitled to the following rights—

- 40 (a) subject to the Water Act [Chapter 20:24] (No. 31 of 1998), the right to take restricted public water or public water from land not closed to prospecting in terms of section 37 (“Ground not open to prospecting”) or 44 (“Reservation of land against prospecting”), subject to the following conditions—

- 45 (i) such right may only be exercised so far as the taking of the water does not interfere with the use of it for primary purposes by the owner, holder or occupier of the land; and
- (ii) in relation to the taking of restricted public water, on payment to the occupier (or, where there is no occupier, the owner or holder of the land in question), of such amount for the taking of the water at a rate agreed to by the prospector and the occupier, landholder or owner or (subject to subsection (4)(a)), in default of such agreement,
- 50 on payment of such tariff rate as may be prescribed;

- and



notice, any accommodation, buildings or machinery which may have been erected under paragraph (b)(iii).

(3) A prospector who, after the expiry of the period of seven days from the posting of his or her prospecting notice, accommodates employees on occupied alienated or partially alienated land situated within his or her location, shall forthwith give to the occupier of the land written notice of that fact describing the site of the accommodation and specifying the number of employees accommodated thereon.

(4) In the following cases, namely where—

- (a) no agreement is reached between the prospector and the owner, landholder or occupier of the land in the circumstances referred in subsection (2) (a)(ii) or (2)(b)(i) and where the tariff there referred to is not prescribed, the prospector may, no earlier than fourteen days after he or she initiated negotiations with the owner, holder or occupier of the land in question, refer the matter to the PMD to decide the rate of payment for any restricted public water or public water or any dead indigenous wood or timber proposed to be taken in terms of subsection (2) (a)(ii) or (2)(b)(i); or
  - (b) an occupier of alienated or partially alienated land to whom notice has been given in terms of subsection (3) objects to the site chosen for such accommodation by the prospector and agreement between the occupier and the prospector on any such objection is not reached, the occupier may, within seven days of receipt of the notice or such longer period as may be determined by the PMD, refer the matter to the PMD to decide where the employees of the prospector should be accommodated;
- whereupon subsections (5) to (11) shall apply to the referral.

(5) In the case referred to—

- (a) in subsection (4)(a), the prospector must furnish to the PMD proof in the form of an affidavit sworn by him or her that, at least fourteen days before the referral of the dispute to the PMD, the prospector had initiated negotiations with the owner, landholder or occupier of the land in the circumstances referred in subsection (2)(a)(ii) or (2)(b)(i) or (ii), and had failed to reach an agreement on the rate to be paid for the taking of any restricted public water or public water or the taking of any dead indigenous wood or timber proposed to be taken in terms of subsection (2)(a)(ii) or (2)(b)(i) or (ii) (the best rate offered by the prospector must be stated in the affidavit);
- (b) in subsection (4)(b), the occupier must furnish to the PMD an affidavit sworn by him or her stating that the occupier has within the last seven days received notice from the prospector that the prospector has accommodated his or her employees at a specified site within his or her location on alienated or partially alienated land occupied by the occupier (the reasons why the specified site for the accommodation of the employees is unacceptable to the occupier must be stated in the affidavit, and an alternative site must, if possible, be proposed):

Provided that if the prospector had failed in terms of subsection (4) to give any notice at all of the accommodation of the prospector's employees on land occupied by the occupier, the occupier shall depose to that fact in the affidavit.

(6) Within a reasonable period from the receipt of an affidavit referred to in subsection (5)(a) or (b) the PMD must serve one copy of the affidavit of the prospector on the owner, landholder or occupier, or one copy of the affidavit of the occupier on the prospector, as the case may be, together with an invitation to both the parties to attend a meeting to be presided over by the PMD (giving particulars of its time and venue) to enable the parties to make oral and written representations at that meeting on the question that prompted the prospector or occupier to refer the dispute to the PMD:

Provided that in such invitation or at the meeting the PMD may restrict the parties to submitting written representations only, before, or no later than forty-eight (48) hours after, the conclusion of the meeting.

(7) The following provisions apply to every referral—

- (a) if either party fails to attend at the meeting referred to in subsection (6), the PMD will generally decide the dispute in favour of the party who is present, unless doing so, given the specific facts and circumstances of the case, would be contrary to this Act or result in injustice; 5
- (b) the applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD at the referral; 10
- (c) in the case of a referral under subsection (4)(a) the occupier bears the burden of showing on a balance of probabilities the existence and extent of any interference with the use of water for primary purposes by the occupier that would be caused by any taking of water by the prospector; 15
- (d) in the case of a referral under subsection (4)(b) the burden of showing on a balance of probabilities that the employees in question can reasonably be accommodated at an alternative site rests with the occupier;
- (e) at the conclusion of the referral meeting PMD may, in the presence of the parties (if any) at the meeting announce his or her decision verbally and confirm it in writing within twenty-four hours: 20

Provided that the PMD may defer making a decision by no more than forty-eight (48) hours after the conclusion of the referral meeting and give notice of his or her decision, and the reasons for it, to the prospector and the owner, landholder or occupier, and post a copy of the decision and the reasons for it on the public notice board of the PMD’s office. 25

(8) A prospector, owner, landholder or occupier who is aggrieved by the PMD’s decision in terms of subsection (7)(e) may appeal to the Secretary, for which purpose the aggrieved person must—

- (a) lodge (together with the prescribed fee, if any) the appeal in writing with the Provincial Mining Director concerned, and copy it to the Secretary, no later than two working days after the prospector, owner, landholder or occupier has received notification of the PMD’s decision under the proviso to subsection (7)(e); and 30
- (b) incorporate in the appeal the grounds on which the PMD’s decision should be set aside and what decision ought to be substituted for it; 35

and thereupon the Provincial Mining Director shall, without delay, transmit the appeal to the Secretary together with the written decision of the PMD on the referral.

(9) The effect of lodging an appeal under subsection (8) shall be to suspend the decision appealed against until the appeal is determined by the Secretary. 40

(10) Upon receiving an appeal in terms of subsection (8) the Secretary shall promptly (and in any event no later than seven working days of receiving it)—

- (a) dismiss the appeal by upholding the decision of the PMD; or
- (b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the PMD to investigate the matter further and make a report and recommendations) on any one or more of the following grounds— 45
  - (i) allowing extraneous or irrelevant considerations to affect the decision, or 50

(ii) failure to take into account relevant considerations in arriving at the decision, or

(iii) any material mistake of fact or law that tainted the decision;

(the Secretary shall, upon receiving the report or recommendations resulting from the PMD's reconsideration, uphold the appeal in accordance with such report on recommendation, or make a decision in accordance with paragraph (a) or (c))

or

(c) uphold the appeal and substitute any other decision for that of the PMD, if the Secretary finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

Provided that the Secretary shall not make a finding on this ground without affording the PMD an opportunity to respond to the proposed finding.

(11) Any prospector, owner, landholder or occupier who is aggrieved by a decision of the Secretary under subsection (10), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the appellant, whereupon the court may do any of the things the Secretary is empowered to do under subsection (10):

Provided the taking of a decision on review under this subsection shall not suspend the decision sought to be reviewed until the review is determined by the Administrative Court.

### **37 Ground not open to prospecting**

(1) Save as provided in Parts VI and VIII, no person shall be entitled to exercise any of his or her rights under any exclusive prospecting licence, exclusive exploration licence or any special grant to carry out prospecting operations—

(a) upon any holding of alienated or partially alienated land except with the consent in writing of the owner or holder of such land or of some person duly authorised thereto by the owner or land holder or, in the case of a portion of Communal Land, by the occupier of such portion, or upon any State land except with the consent in writing of the President or of some person duly authorised thereto by the President—

(i) within 450 (four hundred and fifty) metres of the site of the principal homestead on such holding or on such State land, whether such homestead is already erected or actually in the course of erection;

(ii) within 450 (four hundred and fifty) metres of the site of any intended principal homestead, which site has been registered with the PMD by the owner or holder of such land:

Provided that if a principal homestead is not erected on such a site within three years after the date of such registration, such site shall thereupon become open to prospecting;

(iii) within 90 (ninety) metres of any area set aside on which housing constructed of brick or concrete has been erected for occupation by farm employees;

(iv) within 90 (ninety) metres of any other building or permanent improvement of a value of not less than the equivalent of five hundred United States dollars;

(v) within 90 (ninety) metres of any permanent cattle dip tank or spray race;

- (vi) upon any land under cultivation or within 15 (fifteen) metres thereof;
- (vii) within nine metres of any other permanent *bona fide* farm building, except on payment to the owner or holder of such land of such compensation as may be fixed by agreement or, failing agreement, by referral by both or either of the parties to the Magistrates Court having jurisdiction over the area in which the land concerned is located (in which event the Magistrates Court is deemed to have jurisdiction in the matter even if the amount of compensation claimed or awarded exceeds the amount of the court's civil monetary jurisdiction prescribed by or under section 11 of the Magistrates Court Act [*Chapter 7:10*]); 5 10
- (b) upon any mining location, other than one in respect of which he or she may have acquired the exclusive right of prospecting under such licence or special grant or exclusive exploration order;
- (c) within the surveyed limits of any city, town, township or village, or upon a belt 50 (fifty) metres in width outside such limits; 15
- (d) upon any site which is on town lands, but outside the surveyed limits of any city, town, township or village situated thereon, and has been surveyed and set aside for any specific purpose;
- (e) upon any licensed aerodrome or any emergency landing ground or aerodrome of the State; 20
- (f) upon any rifle range of the State, any railway reserve or any cemetery;
- (g) except with the consent in writing—
  - (i) of the owner or holder of such land or of some person duly authorised thereto by the owner or landholder, upon any holding of alienated or partially alienated land which does not exceed one hundred (100) hectares in extent and which is held by such owner or landholder under one separate title: 25
 

Provided that if such owner or landholder has one or more holdings which are contiguous and the total area of such contiguous holdings exceeds one hundred (100) hectares this paragraph shall not apply to such holdings; or 30
  - (ii) in the case of a portion of Communal Land which does not exceed one hundred (100) hectares in extent, of the occupier of such portion:
 

Provided that— 35

    - A. where any consent in terms of this paragraph is unreasonably withheld the prospector may refer the matter to the PMD to decide whether the consent is unreasonably withheld, whereupon subsection (6) shall apply to the referral;
    - B. consent is deemed to be unreasonably withheld for the purposes of this paragraph if the owner, land holder or occupier demands any payment for the exercise within his or her holding of the prospector's rights, other than payment for water and timber in accordance with section 36 ("Surface rights of holder of exclusive prospecting licences"); 40 45
- (h) upon any Communal Land occupied as a village without the written consent of the rural district council established for the area concerned.
- (2) The Fifth Schedule applies to the exercise of the respective rights of—
  - (a) any prospector and miner within any holding of land referred to in paragraph (b); and



present, unless doing so, given the specific facts and circumstances of the case, would be contrary to this Act or result in injustice; and

- (d) the applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD at the referral; and 5
- (e) the owner, landholder or occupier bears the burden of showing on a balance of probabilities why the prospector should not exercise his or her rights within the holding or in any part of the holding that is open to prospecting; in particular, where the owner, landholder or occupier—
  - (i) seeks to deny to the prospector all access in his or her holding, the landholder must in addition proffer weighty and compelling reasons for doing so (for which purpose it is to be presumed that the national interest is served by ascertaining through prospecting the extent of the mineral resources of Zimbabwe, and that this question is not directly pertinent to the speculated future conflict between the use of the land concerned for mining and agricultural purposes); 10 15
  - (ii) does not seek to deny to the prospector all access to his or her holding, but only to certain parts of it that are otherwise open to prospecting, then he or she must proffer weighty and compelling reasons for doing so (for which purpose the presumption referred to in subparagraph (i) also applies), and in addition the occupier must identify the parts of his or her holding where he or she does not object to access being given to the prospector; 20
- and
- (f) if that the owner, landholder or occupier fails to proffer the weighty and compelling reasons referred to in paragraph (e), then the PMD, in deciding the matter under paragraph (g), shall allow the prospector to exercise his or her rights in any part of the holding concerned not including any ground not open to prospecting in terms of subsection (1)(a) to (f); and 25
- (g) at the conclusion of the referral meeting PMD may, in the presence of the parties (if any) at the meeting announce his or her decision verbally and confirm it in writing within twenty-four hours: 30

Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the referral meeting and give notice of his or her decision, and the reasons for it, to the prospector and the owner, landholder or occupier in any of the ways contemplated by section 5, and post a copy of the decision and the reasons for it on the public notice board of the PMD’s office. 35

(7) A prospector, owner, landholder or occupier aggrieved by the PMD’s decision under subsection (5) may appeal to the Minister against it, and if so, must lodge (together with the prescribed fee, if any) an appeal in writing (giving reasons for setting aside the PMD’s decision) with the Provincial Mining Director concerned, and copy it to the Secretary, no later than two working days after the prospector, owner, landholder or occupier has received notification of the decision under the proviso to subsection (5)(g), and thereupon the Provincial Mining Director shall, without delay, transmit the appeal to the Secretary together with the written decision of the PMD on the referral; in this connection— 40 45

- (a) where the appellant is the owner, landholder or occupier who seeks to deny to the prospector all access in his or her holding, the appellant ought to give indications of where in the holding concerned the prospector may exercise his or her rights in the event that the appellant is found by the Minister not to have the proffered weighty and compelling reasons referred to in subsection (5)(e); 50



(b) the Minister shall consider but not be bound by the appellant's indications, and in the absence of such indications, if the Minister does not uphold the appeal, the Minister must affirm that the prospector may exercise his or her rights in any part of the holding concerned not including any ground not open to prospecting in terms of subsection (1)(a) to (f).

(8) The effect of lodging an appeal under subsection (6) shall be to suspend the decision appealed against until the appeal is determined by the Minister.

(9) Upon receiving an appeal in terms of subsection (6) the Secretary shall promptly (and in any event no later than fourteen days after receiving it) refer the appeal together with its supporting documentation to the Minister, who, after considering it, may—

(a) dismiss the appeal by upholding the decision of the PMD if the owner, landholder or occupier fails to discharge the burden of showing on a balance of probabilities why the prospector should not exercise his or her rights within the holding or in any part of the holding, bearing in mind the presumption referred to in subsection (5)(e)(i);

(b) where the issue for appeal concerns the manner or precise location of exercise of the prospector's rights—

(i) dismiss the appeal by upholding the decision of the PMD, or uphold the appeal by adopting (with or without changes) the appellant's indications referred to in subsection (6)(e)(ii) or (7); or

(ii) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the PMD to investigate the matter further and make a report and recommendations) on any one or more of the following grounds—

A. allowing extraneous or irrelevant considerations to affect the decision, or

B. failure to take into account relevant considerations in arriving at the decision, or

C. any material mistake of fact or law that tainted the decision; or

D. gross but unwilful irregularity in the proceedings or the decision;

(the Minister shall, upon receiving the report or recommendations resulting from the PMD's reconsideration, promptly consider the same and may uphold the appeal in accordance with such report or recommendation, or make a decision in accordance with subparagraph (i) or paragraph (c) or (d));

or

(c) uphold the appeal and substitute any other decision for that of the PMD, if the Minister finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

Provided that the Minister shall not make a finding on this ground without affording the PMD an opportunity to respond to the proposed finding;

or

(d) dismiss or uphold the appeal and, where necessary, substitute the Minister's own decision, on the basis of any policy directive previously

issued by the Minister setting forth the overriding national interest as it affects cases of a like nature to the one being considered by the Minister.

(10) Any prospector, owner, landholder or occupier who is aggrieved by a decision of the Minister under subsection (9)(a), (b), (c) or (d), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the appellant, whereupon the court may do any of the things the Minister is empowered to do under subsection (9)(a), (b), (c) or (d), except that with reference to a case decided in accordance with subsection (9)(d) the Court shall satisfy itself that the policy directive there referred to—

- (a) is not inconsistent with this Act; and
- (b) was issued in good faith before the case was referred to the PMD, and is of general applicability; and
- (c) clearly delimits the scope of its application and is otherwise not vague or ambiguous in its terms; and
- (d) clearly expresses the national interest at stake; and
- (e) can reasonably be applied to the case in question and has not been applied in a discriminatory or selective way.

(11) The taking of a decision on review under subsection (10) shall not suspend the decision sought to be reviewed until the review is determined by the Administrative Court.

### **38 Disputes as to whether land is open to prospecting**

(1) This section applies to disputes about access by prospectors to any land referred to in section 37(1), other than land referred to in paragraph (g) or (h) of that provision.

(2) If any dispute arises between a prospector and a landholder as to whether land is open to prospecting or not, the landholder or prospector may refer the matter to the PMD, whereupon—

- (a) the referring party must furnish to the PMD proof in the form of an affidavit sworn by him or her that, at least seven days before the referral of the dispute to the PMD, he or she had initiated negotiations with the landholder or prospector (as the case may be) to attempt to resolve the issue of whether or not the land in question is open to prospecting;
- (b) within a reasonable period from the receipt of an affidavit referred to in paragraph (a) the PMD must serve one copy of the affidavit of the referring party on the other party, together with an invitation to both the parties to attend a meeting to be presided over by the PMD (giving particulars of its time and venue) at which the parties can make oral and written representations on the question that prompted the referring party to refer the dispute to the PMD;

Provided that in such invitation or at the meeting the PMD may restrict the parties to submitting written representations only, before or no later than 48 hours after the conclusion of the meeting;

- (c) if either party fails to attend the meeting referred to in paragraph (b), the PMD will generally decide the dispute in favour of the party who is present, unless doing so, given the specific facts and circumstances of the case, would be contrary to this Act or result in injustice;
- (d) the applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD at the referral;

- (e) the owner, landholder or occupier bears the burden of showing on a balance of probabilities that any land is not open to prospecting;
- (f) at the conclusion of the referral meeting PMD may, in the presence of the parties (if any) at the meeting announce his or her decision verbally and confirm it in writing within twenty-four hours.

Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the referral meeting and give notice of his or her decision, and the reasons for it, to the prospector and the owner, landholder or occupier, and post a copy of the decision and the reasons for it on the public notice board of the PMD's office.

(3) A prospector, owner, landholder or occupier aggrieved by the PMD's decision under subsection (1)(f), may seek a review of such decision from Administrative Court, whereupon it may —

- (a) uphold the decision of the PMD or substitute the PMD's decision by its own finding on whether or not the ground in issue is open to prospecting; or
- (b) direct the PMD to investigate the matter further and make a report and recommendations to the Court on the basis that —
  - (i) in arriving at the original decision the PMD —
    - A. allowed extraneous or irrelevant considerations to affect the decision, or
    - B. failed to take into account relevant considerations, or
    - C. made any material mistake of fact or law that tainted the decision; or
  - (ii) there exists a substantive factual dispute that cannot be resolved by the Administrative Court;

(the Court shall, upon receiving the report or recommendations resulting from the PMD's investigation, make a decision in accordance with paragraph (a)); or
- (c) if it finds that there is a reasonable suspicion that PMD (or any person involved together with the PMD in making or contributing to the decision), was influenced by interest in the cause, bias, malice or corruption, direct the Secretary to investigate the matter further and make a report and recommendations to the Court addressing allegations, on the basis of which report the Administrative Court may make a decision in accordance with paragraph (a) or (b).

### **39 Registration of arable and pastoral land against prospecting and pegging**

(1) In this section and section 40 —

“applicant” means the applicant for the registration of arable or pastoral land under this section, and, in relation to a rural district council, means the Chief Executive Officer thereof or other person authorised by the RDC in writing to apply for a reservation of land under this section;

“holding”, for the purposes of subsection (2)(b), includes a group of holdings comprised within a proposed reservable area;

“land under cultivation” includes land reserved for pastoral purposes by a rural district council under subsection (2)(b), and references in this section to “arable land” include, where appropriate, references to pastoral land;

“objection” means an objection received by the PMD in terms of subsection (5)(b), (10)(b) or (11);

“reservable area” means the maximum area that may be reserved against prospecting and pegging by the registration of the whole or any part of it under this section as land deemed to be land under cultivation for the purposes of section 37 (“Ground not open to prospecting”); 5

“scheme” means a scheme registered under this section reserving arable or pastoral land against prospecting or pegging.

(2) Every —

(a) person who, at the at the date of applying for the registration of arable and pastoral land under this section— 10

(i) has acquired the right to obtain title to private land under an agreement of sale which has been notorially executed; or

(ii) has obtained title to any alienated or partially alienated land by way of an offer letter, A2 permit, a 99-year lease, or a land resettlement permit or a lease with a purchase option; 15

may apply to the PMD for the registration of the arable portion or portions of such land, not exceeding in all one hundred (100) hectares in extent or half the area of land held under one title for which the reservation under this section may be sought, whichever is the lesser hectareage; 20

(b) rural district council may, acting on behalf of and with the consent of the occupiers or holders of contiguous plots of land in Communal Land or in resettlement areas whose combined holdings do not exceed two hundred (200) hectares, apply to the PMD for the registration of one only of the following descriptions of reservable land— 25

(i) the arable portion or portions of such land; or

(ii) a portion or portions of land set aside for the grazing of livestock; or

(iii) the arable portion or portions of such land together with a portion or portions of land set aside for the grazing of livestock: 30

not exceeding in all one hundred (100) hectares in extent or half the area of land applied for, whichever is the lesser hectareage:

Provided that a rural district council may apply for multiple reservations of arable or pastoral land referred to in this paragraph in different parts of the area under jurisdiction of the RDC, so, however, that not more than half the total area of the RDC open to prospecting and pegging is reserved in that way. 35

(3) Any arable land which, at the date of the application mentioned in subsection (2), is not open to prospecting and pegging by virtue of section 37 (“Ground not open to prospecting”)(1)(a), shall be deducted from the area of reservable land which may be registered in terms of this section. 40

(4) Every applicant shall submit with his or her application made in terms of subsection (2), a plan of the holding (or group of holdings, if the applicant is a RDC) showing the area or areas which he or she wishes to be registered, together with a certificate from such person as may be approved by the PMD confirming the situation and extent of such area or areas and of any other arable land and land under cultivation within such private, alienated or partially alienated land. 45

(5) Subject to section 40 (“Disputes about registering or extending the duration of schemes reserving arable and pastoral land against prospecting and pegging”), upon receipt of the plan and the certificate referred to in subsection (4), the PMD shall, if he 50

or she is satisfied as to the title of the applicant and that the plan is satisfactory, post a notice for seven days on the notice board of the PMD's office notifying interested persons that—

- 5           (a) the documentation relating to the application may be inspected by them during normal business hours at the PMD's office; and
- 10           (b) if any prospector or miner wishes to make any objection thereto, he or she must, within the seven-day notice period, lodge an objection in the form of an affidavit with the PMD specifying his or her name and address, the nature of his or interest in the matter and the particulars of his or her objection to the land being registered for cultivation or pastoral purposes; and
- (c) if no valid objection is made within the seven-day notice period the land subject to the reservation shall be deemed to have been approved and registered with effect from the end of that notice period.

15           (6) Upon the registration (by virtue of subsection (5)(c) or section 40(3)(b)) of any land by the PMD under this section, the land so registered shall, during the period of registration, be deemed to be land under cultivation for the purposes of section 37("Ground not open to prospecting").

20           (7) The person in whose favour a scheme has been registered under this section or section 40 (or, in the case of a RDC, the person referred to in the definition of "applicant" in subsection (1)) shall beacon the area or areas so registered in such manner as the PMD may direct, and shall maintain the beacons in proper order and condition.

25           (8) If the person in whose favour registration has been granted under this section fails to beacon such area or areas or to maintain the beacons in proper order and condition, the PMD may on not less than forty-eight (48) hours' notice to the person, cancel the registration.

30           (9) Subject to subsection (10), the period of registration mentioned in subsection (7) shall terminate on the 31st August next succeeding the second anniversary of the date upon which the arable land in question was registered under this section:

             (10) The PMD may, subject to section 40, on application, extend the period of registration of a scheme for any period not exceeding three years, for which purposes the PMD shall post a notice for seven days on the notice board of the PMD's office notifying interested persons that—

- 35           (a) it is proposed to extend the period of registration of scheme registered under subsection (5) or section 40(3) (b); and
- 40           (b) if any prospector or miner wishes to make any objection thereto, he or she must, within the seven-day notice period, lodge an objection in the form of an affidavit with the PMD specifying his or her name and address, the nature of his or her interest in the matter and the particulars of his or her objection to the extension of the scheme; and
- (c) if no valid objection is made within the seven-day notice period the scheme shall be deemed to have been extended for the period specified in the notice with effect from the end of the notice period.

45           (11) The PMD may, on the basis that an application for the registration or extension of a scheme is not made in good faith or for any other compelling reason, refuse to notify the scheme for registration under subsection (5) or for extension under subsection (10), in which event the applicant may, within seven days of being notified by the PMD of his or her refusal in writing, lodge with the PMD an objection to the refusal in the form of an affidavit sworn by the applicant showing, in the case of—

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- (a) the refusal to register a scheme under subsection (5), why the scheme should be registered; or
  - (b) the refusal to grant any extension of time of a scheme reserving arable or pastoral land against prospecting or pegging, why the applicant has been unable, for reasons beyond his or her control, to adequately employ the land under registration for the cultivation of crops or the pasturage of livestock, and that accordingly an extension of the period of the reservation is required to enable him or her to do so; 5
- and until such time as the objection is determined the area sought to be covered by the scheme shall be deemed not to be open for prospecting or pegging. 10

#### **40 Disputes about registering or extending duration of schemes reserving arable and pastoral land against prospecting and pegging**

- (1) If any person who is aggrieved by—
  - (a) any proposed scheme notified by the PMD in terms of section 39(5); or 15
  - (b) the decision of the PMD to refuse to register a scheme in terms of section 39(5); or
  - (c) the decision of the PMD to grant or refuse to grant any extension of time of a scheme reserving arable or pastoral land against prospecting or pegging in terms of section 39(10); 20

the PMD, within a reasonable period from the receipt of any affidavit referred to in—

  - (i) section 39(5)(b) or 39(10)(b), must serve one copy of the affidavit on the applicant, together with an invitation to both the parties to attend at the meeting to be presided over by the PMD (giving particulars of its time and venue) to enable the parties to make oral and written representations at that meeting on the question that prompted the prospector or miner to object to the proposed scheme; or 25
  - (ii) section 39(11), post a copy of it on the notice board of his or her office together with an invitation to any interested persons to attend at the meeting to be presided over by the PMD (giving particulars of its time and venue) to enable the parties to make oral and written representations at that meeting on the question whether the proposed scheme ought to be registered or whether the existing scheme ought to be extended, as the case may be: 30 35

Provided that in such invitation or at the meeting the PMD may restrict the parties to submitting written representations only, before the meeting or no later than 48 hours after the conclusion of the meeting.

- (3) The following provisions apply to every meeting for the consideration of an objection— 40
  - (a) the object of the hearing is to enable the PMD to make a recommendation to the Board to register or not register a scheme, or to extend or not extend the registration of a scheme, and, in the case of a recommendation to register or extend the registration of a scheme, to register it or extend its registration subject to any specified amendments; 45
  - (b) if any objector fails to attend at the meeting he or she shall be deemed to have abandoned his or her objection, and if there is no other objector, the scheme shall—
    - (i) if the objection was made in terms of section 39(5)(b) or 39(10)(b), be deemed to have been registered or extended from the date of the 50



termination of the hearing without the need for the PMD to make any recommendations to the Board;

- (ii) if the objection was made in terms of section 39(11), not be registered or extended, as the case may be, without the need for the PMD to make recommendations to that effect to the Board;

- (c) the applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD at the hearing;

- (d) any objector bears the burden of showing on a balance of probabilities why a scheme should not be registered or extended;

- (e) at the conclusion of the meeting PMD may, in the presence of the parties (if any) at the meeting announce any of the following recommendations to the Board, namely that in response to any objection made in terms of section 39(5)(b), 39(10)(b) or section 39(11), the PMD recommends the Board to—

- (i) approve the registration or extension by the PMD of a scheme without amendments; or

- (ii) approve the registration or extension by the PMD of a scheme with specified amendments;

- (iii) not approve the registration or extension by the PMD of a scheme:

Provided that the PMD may defer making a recommendation by no more than 48 hours after the conclusion of the meeting and in any event must give notice of his or her recommendation, and the reasons for it, to every objector and interested party, and post a copy of the recommendation and the reasons for it on the public notice board of the PMD’s office.

(4) If within seven days of the posting notice of any recommendation in terms of the proviso to subsection (3)(e) any objector or other interested party who attended the meeting referred to in subsection (3) notifies the PMD in writing that he or she is opposed to the proposed recommendation for specified reasons, the PMD shall, without delay, transmit to the Secretary the recommendation, together with the reasons for it, and the reasons against it given by the objector or other interested party in terms of this subsection.

Provided that if no objector or other interested party timeously notifies the PMD of his or her opposition to the proposed recommendation, the scheme shall be registered or extended, or not registered or extended, in accordance with the recommendation of the PMD (without the need for the PMD to transmit the recommendations to the Board) with effect from the end of the seven-day notice period.

(5) Upon receiving a recommendation or any objections in terms of subsection (4) the Secretary shall promptly (and in any event no later than the next meeting of the Board after receiving it) refer the recommendation together with its supporting documentation to the Board, which, after considering it, may—

- (a) accept the recommendation of the PMD, without amendment; or
- (b) accept the recommendation of the PMD, with any amendment (giving reasons for the amendment); or
- (c) reject the recommendation of the PMD, giving reasons for the rejection; or

whereupon the PMD shall promptly, after being notified by the Secretary of the Board’s decision—

- (i) notify the applicant and any objector or interested party who attended the meeting referred to in subsection (3) of the Board's decision; and
  - (ii) take the necessary action in accordance with the Board's decision.
- (6) If any applicant, objector or interested party who attended the meeting referred to in subsection (3) is aggrieved by a decision of the Board under subsection (5), he or she may seek a review of the decision by the Administrative Court within seven days after the date of its notification to the applicant, objector or party, whereupon the court may —
  - (a) decide the issue in favour of the Board; or
  - (b) refer the decision back to the Board for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds —
    - (i) allowing extraneous or irrelevant considerations to affect the decision;
    - (ii) failure to take into account relevant considerations in arriving at the decision;
    - (iii) any material mistake of fact or law that tainted the decision;
    - (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
    - (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

Provided that the Court shall not make a finding on this ground without affording the Board or the PMD an opportunity to respond to such finding;
  - (c) where there is a substantive factual dispute that cannot be resolved by the Court on the evidence before it, refer the matter to the Board with a direction for it to investigate the matter further and make a report and recommendations to the Court (on the basis of which the Court shall decide the issue in accordance with such report or recommendation or make its decision under paragraph (a) or (b)).
- (7) An application for review under subsection (6) shall not suspend the decision sought to be reviewed until the review is determined by the Court.

#### **41 Roads and railways may be included in location under certain conditions**

- (1) In this section and section 42 —
 

“road” includes any area of land reserved for road purposes under Part III of the Roads Act [*Chapter 13:18*] (No. 6 of 2001) and any restricted road declared under Part IX of that Act.
- (2) Subject to this section and section 296 (“Mining permitted under certain objects on certain conditions”), a prospector or the holder of a mining lease or special grant may include in his or her location any road, railway track, electric power line, aqueduct, pipeline, occupied dwelling, well, borehole, dam, reservoir or works designed to prevent soil erosion or any land reserved for the taking of road-making materials under section 44 of the Roads Act [*Chapter 13:18*].

## 42 Encroachment on or interference with roads and railways by mining activities prohibited

(1) Any person who carries on prospecting or other mining or development operations upon any road, or within fifteen metres of the middle of any road, commits a criminal offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level eight or to imprisonment for a period not exceeding three years or to both.

(2) The PMD for the mining province wherein a civil default as described in subsection (1) occurs may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

(a) directs the defaulter—

- (i) to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level six; and
  - (ii) to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty order is served on him or her, cease prospecting or other mining or development operations upon any road, or within fifteen metres of the middle of any road;
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
- (i) if he or she fails to pay the default fine specified in paragraph (a)(i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
  - (ii) if he or she fails to comply with paragraph (a)(ii), to pay a default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(3) Any person who carries on prospecting or other mining or development operations or erects any building for the purposes of a mining location upon any railway track, or within forty-five metres of any railway track, commits an offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding three years or to both.

(4) The PMD for the mining province wherein a civil default as described in subsection (3) occurs may (additionally or alternatively to prosecution for the offence under subsection (3)) serve upon the defaulter a civil penalty order which—

(a) directs the defaulter—

- (i) to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 6; and
- (ii) to immediately—
  - A. cease the contravention (that is to say, within forty-eight hours after the civil penalty order is served on him or her); and
  - B. if any building has been erected pursuant to the contravention, remove the building (within forty-eight hours after the civil penalty order is served on him or her);

(b) subjects the defaulter to either of both of the following penalties, as may be appropriate—

- (i) if he or fails to pay the default fine specified in paragraph (a)(i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 6 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; and
- (ii) if he or she fails to comply with paragraph (a)(ii), to pay a default fine of the maximum amount fixed for level 6 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(5) Notwithstanding anything in this Act relating to the erection and maintenance of pegs and beacons, no person shall erect any pegs or beacons of a mining location on any road or railway track, nor within fifteen metres of the middle of any road, nor within forty-five metres of any railway track (and any person who does so is deemed to contravene subsection (1) or (3), as the case may be), but in lieu thereof there shall be fixed such means of indicating the position of the location as shall be prescribed (but the absence of any prescription of how the position of a location in these circumstances is to be indicated is not a defence to a charge or allegation of contravening subsection (1) or (3)).

(6) Any person who hinders or impedes the use of any road or railway track by mining operations commits a criminal offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year or to both.

(7) The PMD for the mining province wherein a civil default as described in subsection (6) occurs may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty order is served on him or her);
- (b) subjects the defaulter (if he or she fails to comply with paragraph (a)) to pay a default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(8) Any person who carries on prospecting or other mining or development operations upon any land reserved for the taking of road-making materials under section 44 of the Roads Act [*Chapter 13:18*] commits a criminal offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both.

(9) The PMD for the mining province wherein a civil default as described in subsection (8) occurs may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her);
- (b) subjects the defaulter (if he or she fails to comply with paragraph (a)) to pay a default fine of the maximum amount fixed for level three for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(10) Nothing in this section shall be deemed in any way to prejudice the right of any person to recover from a prospector or the holder of a mining location damages for any injury which he or she may prove to have been sustained by him or her in consequence of any act or thing done by such prospector or holder even though such prospector or holder has complied with this section.

### 43 Encroachment on or interference with certain works and installations by mining activities prohibited

(1) Any person who —

(a) carries on prospecting or other mining or development operations within —

5 (i) twenty-five metres of any pipeline constructed of asbestos pipes exceeding thirty centimetres in diameter, or within five metres of any other pipeline, or

10 (ii) within ten metres of any occupied dwelling, or within thirty metres of any aqueduct, well or borehole, or within ninety metres of any dam or reservoir, without the consent of the owner of such work;

or

(b) impairs or interferes with any occupied dwelling, aqueduct, well or borehole, dam or reservoir, without the consent of the owner of such work;

15 commits an offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 7 or to imprisonment for a period not exceeding two years or to both.

(2) The PMD for the mining province wherein a civil default as described in subsection (1) occurs may (additionally or alternatively to prosecution for the offence  
20 under that subsection) serve upon the defaulter a civil penalty order which —

(a) directs the defaulter to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her);

25 (b) subjects the defaulter (if he or she fails to comply with paragraph (a)) to pay a default fine of the maximum amount fixed for level 5 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(3) Any person who carries on prospecting or other mining or development operations —

30 (a) within ten metres of the centre line of an electric power line carrying 33kV or less; or

(b) within twenty-five metres of the centre line of an electric power line carrying more than 33kV but not more than 132kV; or

35 (c) within forty metres of the centre line of any electric power line carrying more than 132kV; or

(d) within ten metres of a pole mounted transformer or ground mounted transformer with a capacity of less than 300kVA; or

40 (e) within twenty-five metres of any other transformer or electricity substation or electrical equipment or building used for the transmission or distribution of electricity;

commits an offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding three years or to both.

(4) The PMD for the mining province wherein a civil default as described in subsection (3) occurs may (additionally or alternatively to prosecution for the offence  
45 under subsection (3)) serve upon the defaulter a civil penalty order which —

(a) directs the defaulter —

50 (i) to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 6; and

- (ii) to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her); and
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
  - (i) if he or fails to pay the default fine specified in paragraph (a)(i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 6 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; and 5
  - (ii) if he or she fails to comply with paragraph (a)(ii), to pay a default fine of the maximum amount fixed for level 6 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 10

(5) The holder of any mining location which is pegged across any works (“anti-erosion works”) designed to prevent soil erosion shall maintain such works in good condition, so that they continue to function for the purposes for which they were made: 15

Provided that this subsection shall not, during the period of an approved cultivation scheme, apply in respect of any mining location to which that scheme relates.

(6) Failure on the part of the holder of any mining location referred to in subsection (5) to comply with that subsection constitutes a civil default for which the PMD for the mining province wherein that civil default occurs has power to serve upon the defaulter a civil penalty order— 20

- (a) directing the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) do or commence doing what is requisite to restore or maintain the anti-erosion works concerned; and 25
- (b) advising the defaulter that failure to comply satisfactorily with paragraph (a) within a specified time (not exceeding seven days) will render him or her liable to pay a default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 30

(7) Nothing in this section shall be deemed in any way to prejudice the right of any person to recover from a prospector or the holder of a mining location damages for any injury which he or she may prove to have been sustained by him or her in consequence of any act or thing done by such prospector or holder even though such prospector or holder has complied with this section. 35

#### **44 Reservations against prospecting and pegging**

(1) The PMD may, and, if so instructed by the Secretary on the authority of the Minister, shall, reserve by notice posted at his or her office any area against prospecting and pegging, and all rights possessed by a prospector shall cease and may not be exercised within such area as from the date and hour of the posting of such notice or such later hour or later date and hour as may be specified in such notice. 40

Provided that the holder of a mining location, other than an exclusive exploration reservation, within any such area shall retain and may exercise all rights lawfully held by him or her which existed at the date and hour as from which such notice takes effect in terms of this subsection. 45

(2) A reservation notice posted in terms of subsection (1) may specify that the reservation shall be for a specific period only:

Provided that nothing in this subsection shall be construed so as to prohibit the earlier withdrawal of the reservation in terms of this section.



(3) Where the PMD has so reserved any area otherwise than on the instructions of the Secretary, he or she shall forthwith report the matter to the Secretary, who shall refer the matter to the Minister.

5 (4) If the Minister does not approve of such reservation, the Secretary shall instruct the PMD to withdraw such reservation, and the PMD shall forthwith comply with such instruction by posting a notice of withdrawal at his or her office.

(5) If the Minister approves of such reservation, the Secretary shall inform the PMD of such approval.

10 (6) Where a reservation has been made on the instructions of the Secretary or the Minister has approved of a reservation mentioned in subsection (5), such reservation shall be advertised by notice in the *Gazette* as soon as possible (and in any event no later than 21 days) after posting notice of the same under subsection (1).

15 (7) Where the PMD has made a reservation mentioned in subsection (3), he or she may before the approval thereof by the Minister, by notice posted at his or her office, withdraw such reservation and, where a reservation has been made on the instructions of the Secretary with the authority of the Minister or where a reservation referred to in subsection (3) has been approved by the Minister, he or she shall, if so instructed by the Secretary on the authority of the Minister, in like manner withdraw such reservation.

20 (8) A reservation may be withdrawn either in whole or in part.

(9) Every withdrawal of a reservation which has been advertised in the *Gazette* shall, likewise, be advertised by notice in the *Gazette* as soon as possible (and in any event no later than 21 days) after posting notice of the same under subsection (7).

25 (10) The beaconing and demarcation of any area reserved under this section shall be carried out in such manner as the PMD may direct.

(11) The failure to advertise in the *Gazette* a reservation under this section or to beacon or demarcate any area reserved under this section shall not affect the validity of the reservation, but such failure shall mitigate the sentence of any prospector convicted under section 291 ("Illegal pegging") of illegal pegging in any area reserved against  
30 pegging by this section.

#### **45 Reservation of timber on application by landholders and RDCs**

(1) In this section and section 46—

"aggrieved person" means any prospector, miner or applicant seeking a review of a decision under section 46(2);

35 "applicant" means the landholder or RDC, as the case may be (and in relation to a rural district council, means the Chief Executive Officer thereof or other person authorised by the RDC in writing to apply for a reservation of land under this section).

(2) Every—

40 (a) landholder may apply for and shall be granted by the PMD a reservation against the cutting or taking by prospectors or miners of fifty *per centum* of such indigenous wood or timber as is existing on his or her land at the time of his or her application for the reservation;

45 (b) rural district council acting on behalf of and with the consent of a group of holders or occupiers of contiguous plots of land in Communal Land or in resettlement areas whose combined holdings do not exceed 200 hectares, may apply for and shall be granted by the PMD a reservation against the

cutting or taking by prospectors or miners of fifty *per centum* of such indigenous wood or timber as is existing on their combined holdings at the time of the application for the reservation.

(3) A reservation of indigenous wood or timber made under subsection (2) shall not restrict prospecting or pegging or the working of mining locations on any such area. 5

(4) Any indigenous wood or timber within any area described in section 37 (“Ground not open to prospecting”)(1)(a)) shall be part of and be included in any timber reservation granted to such landholder.

(5) The applicant shall beacon and demarcate the area in which the wood or timber is reserved in such manner and within such time as the PMD may direct. 10

(6) Where a reservation of timber has been granted under this section—

(a) the applicant shall be entitled—

(i) to cut such wood or timber, and no more, outside the area of the reservation as may be necessary for the *bona fide* purposes of clearing or for the improvement of pastures; 15

(ii) to use the wood or timber so cut for his or her own purposes or to sell it to a prospector or miner or, with the consent of the PMD, to sell it to any other person;

(b) a prospector or miner shall be entitled in the exercise of prospecting or mining rights in the area of the reservation— 20

(i) to cut such indigenous wood or timber, and no more, as interferes with prospecting or mining operations, development work or the erection of buildings for mining purposes:

Provided that he or she shall stack or pile all wood or timber cut; and 25

(ii) with the consent of the applicant, to use for his or her own purposes indigenous wood or timber cut in terms of subparagraph (i).

(7) Where a reservation of timber has been granted under this section and it appears to the PMD that a redistribution of the indigenous wood or timber on the land is necessary or desirable because the holding has been subdivided or for any other reason, he or she may cancel such reservation and grant a fresh reservation, and subsections (3), (4), (5) and (6) shall apply with necessary changes. 30

(8) If any dispute arises as to the equal division of wood or timber under this section, the applicant, prospector or miner may refer the matter to the PMD, whereupon section 46 shall apply to such referral. 35

#### **46 Disputes over reservation of timber under section 45**

(1) In connection with a referral mentioned in section 45(8)—

(a) the referring party must furnish to the PMD proof in the form of an affidavit sworn by him or her that, at least seven days before the referral of the dispute to the PMD, he or she had initiated negotiations with RDC, landholder, prospector or miner (as the case may be) on the issue of the equal division of wood or timber under section 45; 40

(b) within a reasonable period from the receipt of an affidavit referred to in paragraph (a) the PMD must serve one copy of the affidavit of the prospector or miner on the RDC or landholder or one copy of the affidavit of the RDC or landholder on the prospector or miner (as the case may be), together with an invitation to both the parties to attend at the meeting to be presided over by the PMD (giving particulars of its time and venue) to 45  
50

enable the parties to make oral and written representations at that meeting on the question that prompted the prospector to refer the dispute to the PMD:

Provided that in such invitation or at the meeting the PMD may restrict the parties to submitting written representations only, before or no later than forty-eight (48) hours after the conclusion of the meeting.

- (c) if either party fails to attend at the meeting referred to in paragraph (b), the PMD will generally decide the dispute in favour of the party who is present, unless doing so, given the specific facts and circumstances of the case, would be contrary to this Act or result in injustice;
- (d) the applicable rules set out in the Fourth Schedule ("Conduct and powers of PMDs at stakeholders' meetings, referrals and hearings") shall be followed by the PMD at the referral;
- (e) at the conclusion of the referral meeting PMD may, in the presence of the parties (if any) at the meeting announce his or her decision verbally and confirm it in writing within twenty-four hours.

Provided that the PMD may defer making a decision by no more than forty-eight (48) hours after the conclusion of the referral meeting and give notice of his or her decision, and the reasons for it, to the prospector or miner and the applicant, and post a copy of the decision and the reasons for it on the public notice board of the PMD's office.

(2) Any prospector, miner, landholder who or RDC which is aggrieved by a decision of the PMD under subsection (1), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the aggrieved person:

Provided the taking of a decision on review under this subsection shall suspend the decision sought to be reviewed until the review is determined by the Administrative Court.

(3) Upon review the Administrative Court may —

- (a) decide the issue in favour of the PMD; or
- (b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds —
  - (i) allowing extraneous or irrelevant considerations to affect the decision,
  - (ii) failure to take into account relevant considerations in arriving at the decision,
  - (iii) any material mistake of fact or law that tainted the decision;
  - (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision;
  - (v) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
- (c) where there is a substantive factual dispute that cannot be resolved by the Court on the evidence before it, refer the matter to the appropriate PMD with a direction to the PMD to investigate the matter further and make a report and recommendations to the Court (on the basis of which the Court shall decide the matter in accordance with such report or recommendation or make its decision under paragraph (a) or (b)).

- (4) An aggrieved person who is aggrieved by the Administrative Court's decision under subsection (3)(a), may, within twenty-one days after the Administrative Court's decision, refer the matter for review by the High Court, whereupon it may—
- (a) uphold the decision of the Administrative Court; or
  - (b) overturn the decision of the Administrative Court on any one or more of the following grounds—
    - (i) allowing extraneous or irrelevant considerations to affect the decision, or
    - (ii) failure to take into account relevant considerations in arriving at the decision, or
    - (iii) any material mistake of fact or law that tainted the decision;
    - (v) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
- or
- (c) where there is a substantive factual dispute that cannot be resolved by the High Court on the evidence before it, or where the matter had previously been referred by the Administrative Court to the PMD for investigation and report but the High Court is not satisfied with the report for any reason, refer the matter to the appropriate PMD with a direction to the PMD to investigate the matter further and make a further report and recommendations to the High Court (on the basis of which the High Court shall decide the matter in accordance with such report or recommendation or make decisions under paragraph (a) or (b)).

#### **47 Reservation of timber on instruction of Minister**

- (1) The PMD may, when authorised thereto by the Minister, reserve by notice posted at his or her office all indigenous wood and timber or any specified indigenous wood or timber on any area, and all rights conferred by this Act upon any holder of a prospecting licence or special grant or upon any holder of a mining location to cut or take such wood or timber shall cease and may not be exercised within such area as from the date and hour of the posting of the reservation notice, but any such reservation of wood or timber shall not restrict prospecting or pegging within such area or the cutting of wood or timber which interferes with prospecting or mining operations.
- (2) The beaconing and demarcation of any area reserved under subsection (1) shall be carried out in such manner as the PMD may direct.
- (3) The PMD may, under the same conditions and in the same manner, withdraw any reservation made under subsection (1).
- (4) The failure to beacon or demarcate any area reserved under subsection (1) shall not affect the validity of the reservation.
- (5) Any holder of a prospecting licence or special grant who contravenes subsection (1) commits a category one civil default.

#### **48 Notice of intention to prospect**

- (1) This section shall apply to—
- (a) town lands;
  - (b) alienated or partially alienated land the boundaries of which are fenced or clearly marked by beacons and cut lines or consist of rivers, roads or railway lines;
  - (c) any area of land declared under the Forest Act [*Chapter 19:05*] to be demarcated forest or protected private forest;

(d) Communal Land.

(2) Every prospector shall, before exercising any of his or her rights as such on any land to which this section applies, give notice of his or her intention to do so to whichever of the following persons as in his or her case is appropriate—

- 5           (a) if the land is a portion of town lands, he or she shall give notice addressed to the local authority concerned;
- (b) if the land is occupied alienated or partially alienated land, he or she shall give notice to the occupier of the land;
- 10           (c) if the land is unoccupied alienated or partially alienated land, he or she shall give notice to the landholder at his or her ordinary postal address;
- (d) if the land has been declared a demarcated forest, he or she shall give notice to the chief executive officer of the Forestry Commission established under the Forest Act [*Chapter 19:05*];
- 15           (e) if the land has been declared a protected private forest, he or she shall give notice to the holder of such land at his or her ordinary postal address or, if such land is unoccupied, to the PMD;
- (f) if the land is in Communal Land, he or she shall give notice to any rural district council established for the area concerned;
- 20                 and shall state in such notice his or her permanent postal address, and, if applicable, the name and address of the person who will be in charge of prospecting operations on the land concerned.

(3) A notice which has been duly given in terms of this section by the holder of an exclusive prospecting licence shall be valid for a period of one hundred and twenty days from the date on which it was delivered or posted, as the case may be, and, if such holder has not pegged and registered a block on the land concerned within that period, he or shall give fresh notice in terms of this section before continuing to exercise his or her rights under the exclusive prospecting licence.

(4) A notice which has been duly given in terms of this section by the holder of an exclusive exploration licence or a special grant to carry out prospecting operations shall be valid for the period of validity of that licence or special grant.

(5) Notwithstanding subsections (3) and (4), in the event of any change in the particulars notified in terms of subsection (2), the holder shall forthwith give notice of that change, and subsection (2) shall apply with necessary changes to the giving of that notice.

35           (6) Any prospector who has begun exercising any of his or her rights on any land to which this section applies without giving the notice required by this section, commits a civil default and shall be liable to be served with a civil penalty order by the PMD for the mining province wherein the civil default took place, which civil penalty order—

- 40           (a) shall direct the defaulter—
- (i) to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 6; and
- 45                 (ii) to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her, give the notice required by this section);
- and
- (b) shall subject the defaulter to either of both of the following penalties, as may be appropriate—

- (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 6 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 5
- (ii) if he or she fails to comply with subparagraph (i) to pay a default fine of the maximum amount fixed for level 6 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(7) The imposition of a civil penalty order under subsection (6) does not prejudice the right of any complainant who should have been notified by the prospector to object in terms of subsection (8)(a) or to recover from the prospector damages for any injury which he or she may prove to have sustained in consequence of any act or thing done by such prospector. 10

(8) Where a mining location has been pegged by a person who has failed to give any notice required by this section (hereinafter called “the defaulter”)— 15

- (a) such pegging of the location shall be invalid and not confer any rights whatsoever if any person required to have been notified thereof lodges with the PMD an objection in writing to the pegging of the location no later than 120 days from the date when the pegging of the location began (whereupon the pegs must be removed and any registration of the location cancelled, but the defaulter may thereafter give the notice required by this section); 20
- (b) such pegging of the location shall (without prejudice to the application of subsection (6)) be deemed to be valid if no objection as mentioned in paragraph (a) is lodged with the PMD. 25

#### **49 Hours of pegging and posting notices; manner in which notices to be posted**

(1) No person shall peg any mining location, which term includes the posting of a prospecting, discovery or registration notice, between six o’clock in the afternoon and six o’clock in the morning. 30

(2) The pegging of any locations during the period prohibited by subsection (1) shall not confer any rights whatsoever on any person.

(3) No pegging shall be deemed to be illegal by reason of being done on a Sunday or public holiday.

(4) If a prospecting, discovery or registration notice is posted on a notice board, such board shall be fixed on a peg. 35

(5) All notices shall be distinctly and legibly written, printed or painted, and no paper or other material which is liable to be washed off, and no writing liable to be rendered illegible by rain or exposure shall, except for purely temporary purposes (that is to say, for no longer than forty-eight hours), be deemed a proper marking. 40

(6) Any person who—

- (a) contravenes subsection (1) commits a civil default and shall be liable to be served with a civil penalty order by the PMD for the mining province wherein the civil default took place, which civil penalty order—

- (i) shall direct the defaulter— 45

- A. to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 4; and



- 5 B. to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her, remove the unlawful pegs, or prospecting, discovery or registration notice and not re-peg the location or repost the notices until after the lapse of ninety-six hours, at which time the re-pegging and reposting shall be done between the hours of six o'clock in the morning and six o'clock in the afternoon);
- (ii) shall subject the defaulter to either of both of the following penalties, as may be appropriate—
- 10 A. if he or she fails to pay the default fine specified in subparagraph (i)A (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
- 15 B. if he or she fails to comply with subparagraph (i) to pay a default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.
- 20 (b) contravenes subsection (4) or (5) commits a civil default and shall be liable to be served with a civil penalty order by the PMD for the mining province wherein the civil default took place, which civil penalty order—
- (i) shall direct the defaulter—
- 25 A. to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 4 (whether for the contravention of either subsection (4) or (5) exclusively, or of both concurrently); and
- B. to immediately cease the contravention by taking the needed remedial action;
- 30 (ii) shall subject the defaulter to either of both of the following penalties, as may be appropriate—
- 35 A. if he or she fails to pay the default fine specified in subparagraph (i)A (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
- 40 B. if he or she fails to comply with subparagraph (i) to pay a default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

## 50 Prospecting notices

(1) Subject to this Act, any holder of a prospecting licence may and, if he wishes to drill or excavate, whether at the surface or underground, shall post a notice to be called a “prospecting notice” on ground open to prospecting.

45 (2) Such notice shall—

- (a) in so far as material be in the prescribed form, and all the particulars required by such form shall be duly filled in;
- (b) be carried on a peg erected in a conspicuous and accessible place.

(3) On posting a prospecting notice the holder of the prospecting licence under which it is posted shall immediately forward to—

- (a) the PMD; and
- (b) whichever authority or person would be entitled in terms of section 48 (“Notice of intention to prospect”) to be given notice of intention to prospect on the land affected by the prospecting notice; 5  
a certified copy of the prospecting notice, together with a plan based on a map issued under the authority of the State and of a scale of not less than 1:25 000 sufficiently identifying the point where such notice has been posted and the area covered thereby.

(4) No person shall post a second prospecting notice by virtue of any licence until such time as notice of abandonment has been posted on the ground previously located in the manner provided in section 194 (“Abandonment of unregistered locations”) or until the prospecting notice previously posted under the same licence has lapsed. 10

(5) The posting of a prospecting notice in terms of subsection (1) shall confer upon the holder of the prospecting licence under which it is posted the exclusive right of prospecting, including the right to drill and excavate, whether at the surface or underground, for a period of ninety days each of twenty-four hours from the time of such posting on all ground which is open to prospecting at the time of the posting of such notice within an area described by a radius of three hundred metres from the point where the prospecting notice has been posted: 15  
20

Provided that on the posting of a registration notice in terms of section 53 (“Registration notices”) all such rights outside the area of the block pegged shall lapse.

(6) Any holder or an exclusive prospecting licence or person purporting to act by virtue of such licence who—

- (a) being required to post a prospecting notice in terms of subsection (1), fails to do so, commits a civil default and shall be liable to be served with a civil penalty order by the PMD for the mining province wherein the civil default took place, which civil penalty order— 25
  - (i) shall direct the defaulter—
    - A. to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 4; and 30
    - B. to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her, to post a prospecting notice in terms of subsection (1)); 35
  - (ii) shall subject the defaulter to either of both of the following penalties, as may be appropriate—
    - A. if he or she fails to pay the default fine specified in subparagraph (i)A (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 40
    - B. if he or she fails to comply with subparagraph (i)B, to pay a default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 45

- (b) contravenes subsection (4), commits a civil default and shall be liable to be served with a civil penalty order by the PMD for the mining province wherein the civil default took place, which civil penalty order—
- 5 (i) shall direct the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for **level 4**; and
- (ii) shall subject the defaulter, if he or she fails to pay the default fine specified in paragraph (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 4** for each day
- 10 (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
- (c) purporting to act by virtue of a prospecting notice posted in terms of subsection (1), drills or excavates, whether on the surface or underground, beyond the period permitted by subsection (5) or beyond the radius
- 15 prescribed by that subsection, commits a category two civil default.

*Sub-Part C: Discovery and pegging*

**51 Discovery of minerals or precious stones**

(1) If the holder of an exclusive prospecting licence, after posting his or her prospecting notice, by the work of himself or herself or his or her agents, discovers

20 within the area covered by such notice any ore or deposit of precious metals or precious stones, he or she shall mark the point of such discovery by a peg marked “DP”.

(2) If the holder of an exclusive prospecting licence, after the posting of his or her prospecting notice, in like manner discovers within the area covered by such notice any ore or deposit of any base mineral, he or she shall mark the point of such discovery

25 by a peg marked “DP” and indicate upon a notice to be styled a “discovery notice” in the prescribed form, posted at the spot where his or her prospecting notice is posted, the position of the DP peg, the nature of the base mineral he or she has discovered and the date and time of the discovery, and thereupon for the remainder of the period of ninety days mentioned in section 48 (“Prospecting notices”) he or she shall be entitled

30 to the sole and exclusive right of prospecting, including the right to drill and excavate, whether at the surface or underground, upon all ground open to prospecting within an area described by a radius of nine hundred (900) metres from his or her prospecting notice.

(3) The intersection of a reef by a borehole shall be deemed to constitute a

35 discovery within the meaning of this section.

(4) Any person who contravenes subsection (1) or (2) commits a civil default and shall be liable to be served with a civil penalty order by the PMD for the mining province wherein the civil default took place, which civil penalty order—

- (a) shall direct the defaulter—
- 40 (i) to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 4; and
- (ii) to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her, mark the
- 45 point of his or her discovery with an appropriate “DP” peg);
- (b) shall subject the defaulter to either of both of the following penalties, as may be appropriate—
- (i) if he or she fails to pay the default fine specified in paragraph (a)
- (i) (“the original default fine”), to pay a further default fine of the

maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;

- (ii) if he or she fails to comply with paragraph (a)(ii) to pay a default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 5

## 52 Pegging of precious metal, precious stones or base mineral claims

(1) The outer limits of a claim or a group of contiguous claims of precious metal, precious stones or base mineral claims shall, if possible, be pegged in regular polygon form (square, rhombus, rectangle, lozenge shape or parallelogram), and may be pegged in irregular form only if it is not possible to peg it in regular form. 10

(2) The inner limits of a group of two or more contiguous claims of precious metal or precious stones claims need not be marked, but if any part of such group is to be sold, ceded or otherwise alienated to another person, any such part must (if possible) be pegged in any regular polygon such that— 15

- (a) the area sold, ceded or otherwise alienated must not be a fraction of a hectare, unless it consists of only one claim; and
- (b) the area sold, ceded or otherwise alienated must consist of—
  - (i) at least one undivided hectare if the area concerned consists of only two claims; 20
  - (ii) two or more contiguous and undivided hectares, if the area concerned consists of more than two claims.

(3) As to the outer limits of a claim or contiguous claims of precious metal , precious stones or base mineral claims— 25

- (a) the pegger shall demarcate the four corners of the outer limits by pegs to be known as “corner pegs”, marked A, B, C and D respectively;
- (b) the point marked “DP” shall lie within the boundaries of the claim or groups of claims thus established, and no ground not open to prospecting, except as otherwise provided in section 41 (“Roads and railways may be included in location under certain conditions”) shall be included within such boundaries. 30

(4) A claim or a group of contiguous claims, in irregular form, of precious metal, precious stones or base minerals claims shall be so pegged as to fulfil all the following conditions— 35

- (a) it shall be bounded on not more than two sides by ground open to prospecting; and
- (b) its area shall not exceed the maximum area of a regular group of claims, that is 40 hectares; and
- (c) the boundary lines shall be straight lines, and the position of all points at which they intersect shall be established by corner pegs lettered in consecutive alphabetical order commencing with the letter A. 40

(5) For the purpose of recording the boundaries of a pegged claim or group of claims, location or other area, the position of pegs and beacons, and other relevant marks or features shall be determined by means of a prescribed global positioning system. 45

(6) Every peg mentioned in this section shall bear on it, in addition to the distinguishing letter, the number of the licence under which the block was pegged and the name of the holder of the licence.

(7) Any holder of a prospecting licence who contravenes subsection (1), (2), (3), (4) or (6) commits a civil default and shall be liable to be served with a civil penalty order by the PMD for the mining province wherein the civil default took place, which civil penalty order—

- 5           (a) shall direct the defaulter—
  - (i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 4; and
  - 10       (ii) to immediately cease the contravention, that is to say, within forty-eight hours after the civil penalty is served on him or her, do any of the following as may be directed in the order—
    - A. comply with subsection (1); or
    - B. comply with subsection (2) where any part of a group of two or more contiguous claims of precious metal or precious stones claims is to be sold, ceded or otherwise alienated to another person; or
    - 15       C. comply with subsection (3); or
    - D. comply with subsection (4); or
    - E. comply with subsection (6);
- 20       (b) shall subject the defaulter to either of both of the following penalties, as may be appropriate—
  - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
  - 25       (ii) if he or she fails to comply with paragraph (a)(ii)A, B, C, D or E, deem that the failure by the defaulter to take the requested remedial action within the specified time (or any extension of that time not exceeding seven working days requested by the defaulter and granted by the PMD) constitutes an abandonment of all rights acquired by the defaulter by virtue of the posting of his or her exclusive prospecting notice.
  - 30

### 53 Registration notices

- 35       (1) Within the period of ninety days each of twenty-four hours from the posting of the prospecting notice, the holder of the exclusive prospecting licence who has discovered within the area covered by such notice any ore or deposit of precious metals or precious stones or any ore or deposit of any base mineral may peg a claim or a group of contiguous claims (not exceeding 40 hectares), and thereafter, within the said period, post upon such block a notice, to be styled a “registration notice”, in like manner to the posting of the prospecting notice, and such registration notice shall be posted adjacent to the point marked “DP”, and the block so pegged shall include such registration notice and the point marked “DP”.
- 40

- 45       (2) Failure to peg off such block, and thereafter to post such registration notice within the period mentioned in subsection (1), shall be deemed to constitute an abandonment of all rights acquired by the posting of such prospecting notice.

(3) A registration notice shall, so far as material, be in the form prescribed, and particulars required by such form shall be duly filled in.

*Sub-Part D: Registration of claims and mine service sites***54 Registration of claims or group of contiguous claims**

(1) Subject to section 55 (“Registration of mining location by special mining lease applicants”), the holder of any mining location upon which a registration notice has been posted must, on application to the PMD within a period of thirty-one days after the date of posting such registration notice, and on payment of the prescribed fee, obtain a certificate of provisional registration under this section. 5

(2) On every such application the applicant shall lodge the following with the PMD—

- (a) the exclusive prospecting licence and the power of attorney or other document, if any, under and by virtue of which the block was located; and 10
- (b) a copy of the prospecting notice; and
- (c) in the case of a base mineral block, a copy of the discovery notice; and
- (d) a copy of the registration notice; and 15
- (e) a plan in triplicate based on a map issued under the authority of the State and of a scale of not less than 1: 50 000, sufficiently identifying—
  - (i) the position of the claim or group of claims to be registered; and
  - (ii) the position and lettering of the pegs, including the peg marked “DP”; and 20
  - (iii) the position of the prospecting notice; and
  - (iv) the coordinates as determined by a prescribed global positioning system of all the foregoing positions, pegs and notices; and
- (d) a certificate under his or her hand stating that the said copies of such notices are true copies and that all facts stated therein are true and correct; and 25
- (e) if the block is pegged on ground for which the consent of the owner or holder of the ground is required, the written consent of the owner or landholder or some person duly authorised thereto by the owner or landholder. 30

(3) If the PMD is satisfied that the application and its supporting documentation under subsection (2) are in order, the PMD shall—

- (a) return to the applicant one copy of the plan lodged with the provisional registered number of the claim or group of claims endorsed thereon; and 35
- (b) send notification of such provisional registration and one copy of the plan lodged with the registered number of the claim or group of claims endorsed thereon to whichever authority or person would be entitled in terms of section 48 (“Notice of intention to prospect”) to be given notice of intention to prospect on the land on which the claim or group of claims is pegged; and 40
- (c) retain a copy of the plan; and
- (d) enter in the provisional register the particulars of the provisional registration.

(4) If the PMD is not satisfied that the application and its supporting documentation under subsection (2) are in order because of any substantive defect in the application which the applicant is unable to remedy at all or within a reasonable period, the PMD shall (after notifying the Mining Cadastre Registrar of his or her 45



proposed decision and being given leave by the Registrar to proceed accordingly) notify the applicant that provisional registration is refused, giving the reasons therefor (such refusal shall be deemed to be a rejection of the final registration of the mining location by the Mining Cadastre Registrar in terms of proviso (i) to subsection (6)):

- 5           (5) If the holder of any location fails to apply for a certificate of provisional registration in the manner prescribed within the period of thirty-one days, he or she shall be deemed to have abandoned such claim or group of claims:

          Provided that if such holder makes application within the said period to the PMD for an extension of the period and furnishes any reason for such extension which  
10 to the PMD seems good and sufficient, the PMD may extend the said period for a further period not exceeding thirty-one days.

(6) The registration by the PMD in terms of the preceding subsections of a mining location under a single mining title, that is to say—

- 15           (a) a single claim as a mining location in the name of a holder of a mining title;  
          (b) of two or more contiguous claims ( not exceeding 40 hectares in total) in the name of a single holder of the location;  
              shall be regarded as final when the following steps are concluded, namely when—  
20           (c) the particulars of the registration including the number assigned to the mining location by the PMD are communicated to the Mining Cadastre Registrar; and  
          (d) the Mining Cadastre Registrar confirms in writing to the PMD that the particulars have been entered in the Mining Cadastre Register;

25 whereupon the PMD shall, after entering in his or her final register the particulars of the registration and the final number assigned by the Mining Cadastre Registrar to that mining location, notify the holder of the location accordingly:

          Provided that the Mining Cadastre Registrar may—

- 30           (i) reject the registration of the mining location concerned, giving reasons in writing to the PMD, whereupon the PMD shall notify the applicant of the rejection and the reasons thereof and the applicant shall have 30 days from such notification to seek a review of such rejection by the Administrative Court; or  
35           (ii) seek further information or request an adjustment to information submitted by the applicant, in which event the PMD must promptly notify the applicant of the request, and the applicant may either—  
              A. comply with the request of the Mining Cadastre Registrar; or  
              B. appeal to the Administrative Court against such request within 30 days of its notification to the applicant.

40           (7) No holder of a provisional registration under this section may exercise his or her rights in connection with such holding until he or she has received a final registration certificate in relation the mining location.

(8) Upon an review sought in terms of proviso (i) or (ii) to subsection (6) the Administrative Court may—

- 45           (a) decide the issue in favour of the Mining Cadastre Registrar; or  
          (b) refer the decision back to the Mining Cadastre Registrar for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—

- (i) allowing extraneous or irrelevant considerations to affect the decision,
- (ii) failure to take into account relevant considerations in arriving at the decision;
- (iii) any material mistake of fact or law that tainted the decision; 5
- (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
- (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision: 10
  - Provided that the Court shall not make a finding on this ground without affording the Mining Cadastre Registrar an opportunity to respond to such finding;
- (c) where there is a substantive factual dispute that cannot be resolved by the Court on the evidence before it, refer the matter to the Mining Cadastre Registrar with a direction to the Registrar to investigate the matter further and make a report and recommendations to the Court (on the basis of which the Court shall decide the matter in accordance with such report or recommendation or make its decision under paragraph (a) or (b)). 15
- (9) A person who is aggrieved by the Administrative Court's decision under subsection (8)(a), may, within twenty-one days after the Administrative Court's decision, refer the matter for review by the High Court, whereupon it may— 20
  - (a) uphold the decision of the Administrative Court; or
  - (b) overturn the decision of the Administrative Court and (if the party seeking review is the applicant for final registration of a mining location) refer the application for the final registration of the mining location back to the Mining Cadastre Registrar (with or without directions on how to proceed with the application) on any one or more of the following grounds— 25
    - (i) allowing extraneous or irrelevant considerations to affect the decision; or 30
    - (ii) failure to take into account relevant considerations in arriving at the decision; or
    - (iii) any material mistake of fact or law that tainted the decision; or
    - (v) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision; or 35
    - (vi) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:
  - or
  - (c) where there is a substantive factual dispute that cannot be resolved by the High Court on the evidence before it, or where the matter had previously been referred by the Administrative Court to the Mining Cadastre Registrar for investigation and report but the High Court is not satisfied with the report for any reason, refer the matter to the Mining Cadastre Registrar with a direction to the Registrar to investigate the matter further and make a further report and recommendations to the Court (on the basis of which report the Court may then decide the matter in accordance with such report or recommendation or proceed in terms of paragraph (a) or (b)). 40 45
- (10) A holder of a location under provisional registration who, for a period of not less than 90 days from the date when he or she lodged the application under section 50

(1), has not received confirmation that his or her application has been finally accepted or rejected, may make an application under the Administrative Justice Act [*Chapter 10:28*] (No. 12 of 2004) for an order compelling the Mining Cadastre Registrar to accept or reject the final registration of the mining location or give the applicant reasons for the rejection of the same.

## **55 Registration of mining location by special mining lease applicants**

The holder of any mining location who posts a registration notice thereon pursuant to the exercise of rights under an exclusive prospecting licence obtained by virtue of section 31 (“Issue of exclusive prospecting licence”)(3)(d), must, within a period of thirty-one days after the date of posting such registration notice, make an application under section 123 (“Application for mining lease”) (2)(b), for a special mining lease.

## **56 Evidence and priority of mining rights; principle of ‘first come first served’; impeachment of title**

(1) For the purposes of this section—

“holder or claimant in contestation” means a person (and every successor to his or her title) in whose name or on whose behalf a mining location, reef or deposit was registered, or who claims the right to such registration by operation of law or otherwise, but whose title thereto is disputed in whole or in part by another holder or claimant in contestation;

“acquisition of title”, for the purposes of subsection (3), means the registration of the relevant mining right in accordance with section 54 (“Registration of claims or group of contiguous claims”), Part VII (“Exclusive Exploration Licence”), Part IX (“Mining Leases”) or Part XIX (“Special Grants”).

(2) The definitive point of reference for the existence, scope, extent, duration and content of all mining rights is the Mining Cadastre Register; accordingly, if there is any dispute as to the existence, scope, extent, duration and content of any mining right—

(a) the record of that right as it appears in the Mining Cadastre Register shall be presumed to be the correct and definitive record over —

- (i) the record of that right in any register of a PMD; or
- (ii) the record of that right in any certificate of title or other purported document of like character in the possession of any holder in contestation; or
- (iii) any pegging on the location by a holder in contestation;

or

(b) before that right is registered in the Mining Cadastre Register, the record of that right in a provisional or other register of the PMD shall be presumed to be the correct record as against any record or pegging referred to in paragraph (a)(ii) or (iii).

(3) Priority of acquisition of title to any mining location, reef or deposit, if such title has been duly maintained, shall in every case determine the rights as between holder or claimant in contestation of mining locations, reefs or deposits as aforesaid, and in all cases of dispute the rule shall be followed that, in the event of the rights of any subsequent holder in contestation conflicting with the rights of a prior holder in contestation, then, to the extent to which such rights conflict, the rights of any subsequent holder in contestation shall be subordinated to those of the prior holder in contestation, and all certificates of registration shall be deemed to be issued subject to the foregoing conditions.

(4) When a mining location has been registered for a period of two years in the Mining Cadastre Register, it shall not be competent for any person to dispute the title in respect of such location on the ground that the pegging of such location was invalid or illegal or that this Act was not complied with prior to the issue of the certificate of registration.

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(5) A timeously notified dispute of title shall be dealt with by way of an application for the rectification of an entry in the Mining Cadastre Register brought in terms of section 20 ("Entries in Mining Cadastre Register to be conclusive proof of mining right or title; rectification of Mining Cadastre Register; ascertainment of beneficial owner").

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## 57 Registration of dependent mine service sites

(1) In this section—

"temporary beacon" means a non-permanent object or mark on the ground defining or indicating a corner of a piece of land proposed for a site;

"in the vicinity of a location", in relation to a site, means that any part of the outer boundary of a site shares a common boundary with any part of the outer boundary of a mining location;

15

"property" means two or more blocks of claims, whether contiguous or otherwise, owned by one person, from which the ore is being treated at the same milling or reduction plant, or which are under the control of one registered mine manager;

20

"transmit", in relation to the transmission any document, includes scanning or digitising the document and transmitting it by any electronic means;

"site" includes two or more sites where these are applied for in the same application and in relation to the same mining location or property.

25

(2) Before making an application to the PMD for the registration of a site in accordance with subsection (3), the holder of a registered mining location wishing to establish the co-ordinates of the proposed site (in or off the vicinity of his or her mining location) may enter upon land open to prospecting to mark the corners of the site in question with temporary beacons.

30

(3) Upon application made to the Provincial Mining Director having jurisdiction over the registered mining location to which the application relates, the holder of a registered mining location may—

(a) peg on any ground open to prospecting in the vicinity of such location a site or sites not exceeding twenty hectares for the purpose of erecting thereon residences for himself or herself or his or her employees, for a mill or other machinery required for the efficient working of his or her location, or for tailings or waste rock dumps, for a slimes or return water dam or dams, or for any other legitimate object connected with and necessary for the purposes of his or her location: or

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(b) peg on any ground open to prospecting not in the vicinity of such location a site or sites not exceeding twenty hectares in total for the purposes referred to in paragraph (a), furnishing in or together with the application a summary of the reasons why it is not possible or desirable to peg a site or sites in the vicinity of the mining location:

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Provided that if in either case ((a) or (b)) the holder of the registered mining location requires more than twenty hectares for the site or sites applied for, the holder shall in his or her application give a summary of the reasons why the additional hectareage is required.

(4) The application referred to in subsection (3) shall be writing and in the form (if any) prescribed, and shall be accompanied by the prescribed registration fee and a sketch plan based on a map issued under the authority of the State and of a scale of not less than 1: 50 000 identifying the position of the area applied for, specifying the extent of such area and indicating the co-ordinates of the temporary beacons of the site or sites in question.

(5) The application referred to in subsection (3) shall be processed as follows —

- (a) the Provincial Mining Director may provisionally permit the applicant to peg the site or sites applied for under subsection (3)(a) upon production of proof in the form of an affidavit sworn by the occupier of the affected land that the occupier agrees to such pegging:

Provided that if —

- (i) the site or sites in question exceed in total twenty hectares, the Provincial Mining Director must additionally be satisfied that the reasons given by the applicant referred to in the proviso to subsection (3) are justified, otherwise the Director may condition the grant of provisional permission upon the applicant producing to the Director a new sketch plan showing the area of the site or sites as reduced in extent to the maximum permissible area of twenty hectares or any lesser area;

- (ii) the Provincial Mining Director —

A. refuses provisional registration under this paragraph for any reason, or

B. conditions the grant of provisional permission in the manner referred to in proviso (i);

the Director must notify the applicant and occupier of his or her reasons for so refusing provisional registration or, as the case may be, conditioning the grant of provisional permission in the manner referred to in proviso (i), and must invite by such notice the applicant and the occupier to lodge a written objection (not exceeding 2000 words) to such refusal or conditioning within forty-eight (48) hours of the notification by the Director of such refusal or conditioning;

- (b) the Provincial Mining Director may provisionally permit the applicant to peg the site or sites applied for under subsection (3)(b) upon production of proof in the form of an affidavit sworn by the occupier of the affected land that the occupier agrees to such pegging, and upon being satisfied that the reasons given by the applicant for not pegging the site or sites in the vicinity of his or her mining location are justified:

Provided that if —

- (i) the site or sites in question exceed in total twenty hectares, the Provincial Mining Director must additionally be satisfied that the reasons given by the applicant referred to in the proviso to subsection (3) are justified, otherwise the Director may condition the grant of provisional permission upon the applicant producing to the Director a new sketch plan showing the area of the site or sites as reduced in extent to the maximum permissible area of twenty hectares or any lesser area;

- (ii) the Provincial Mining Director —

A. refuses provisional registration under this paragraph for any reason, or





- 5 Mining Director the written objection referred to in proviso (ii) to that subsection, and the Director then accepts the objection to be justified, the Director shall proceed as if he or she had not invited the holder to lodge such objection, and no record of it is required to be made in the provisional register;
- 10 (b) if the holder of the registered mining location in the case of an application referred to in subsection (5)(a) or (b) fails to lodge timeously with the Provincial Mining Director the written objection referred to in proviso (ii) to that subsection, it shall be taken that the holder has abandoned the application to register the site or sites applied for, but the holder is not prevented from making a fresh application under subsection (5)(a) or (b);
- 15 (c) if the holder of the registered mining location or the occupier of the affected land fail to attend at the meeting referred to in subsection (5)(c) (ii), the Director may proceed in the absence of either or both to grant or refuse the application for the registration of the site or sites applied for and, if the application is granted make the relevant recommendations in accordance with paragraph (f);
- 20 (d) the applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD at the meeting referred to in subsection (5) (c) (ii);
- (e) at the conclusion of the meeting referred to in subsection (5)(c)(ii) the PMD may, in the presence of the parties (if any) at the meeting—
- 25 (i) provisionally approve the application of the holder of the mining location or property concerned without amendment (in effect, recommend that the Mining Cadastre Registrar finally registers the site without amendment); or
- 30 (ii) provisionally approve the application of the holder of the mining location or property concerned subject to a defined reduction in the area of the site originally applied for (in effect, recommend that the Mining Cadastre Registrar finally registers the site subject to the amendment); or
- 35 (iii) provisionally reject the application of the holder of the mining location or property concerned (either on the merits of the application or because the PMD is for any reason unable to make a decision on the basis of the evidence presented to him or her):

40 Provided that the PMD may defer making a decision under this paragraph by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it, to the applicant and the occupier, and post a copy of the decision and the reasons for it on the public notice board of the Director’s office;

- 45 (f) as soon as possible after the conclusion of the meeting referred to in subsection (5)(c)(ii) the PMD shall make a written summary of the proceedings of the meeting in the form of a report to the Mining Cadastre Registrar together with his or her recommendation to the Mining Cadastre Registrar to give or refuse final approval for the registration of the site, and if the PMD provisionally approves the application, the PMD shall notify the applicant or occupier accordingly (but if the PMD provisionally rejected the application otherwise than on its merits, the PMD must expressly request the Mining Cadastre Registrar to make the appropriate decision on the basis of any additional information that may be made available to the Mining Cadastre Registrar).
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(7) If the Provincial Mining Director has provisionally approved the application of the holder of the registered mining location to register a site in terms of subsection (5)(a) or (b) or subsection (6)(e)(i) or (ii), the holder—

- (a) may peg the site or sites in question without, however, engaging in any works not strictly relevant to the pegging itself, until final approval for the registration of the site or sites in question is granted under this section; and
- (b) in pegging a site, must ensure that the position of all the points of intersection of the boundary lines, which shall be straight lines, shall be established by pegs, lettered in consecutive alphabetical order commencing with the letter A, and bear the word “site” and the registered number of the mining location in respect of which such site is pegged, and must ensure that no ground not open to prospecting shall be included within such boundaries: 5 10

Provided that in no case shall the distance between two adjacent pegs on the same boundary line exceed three hundred metres.

(8) No site or sites shall be finally registered under this section until the following steps are completed— 15

- (a) the Provincial Mining Director shall, in the case of an application of the type referred to in subsection (5)(a) or (b) where the site or sites do not exceed twenty hectares in extent, transmit all the following particulars of the provisional registration to the Mining Cadastre Registrar within seven working days of the provisional registration — 20
  - (i) a map to the scale of at least 1: 50 000 showing the co-ordinates of the temporary beacons of the site or sites in question; and
  - (ii) a copy of the occupier’s affidavit; and
  - (iii) the provisional registration number assigned to the site or sites;
- (b) the Provincial Mining Director, in the case of an application of the type referred to in subsection (5)(a) or (b) where the site or sites exceed twenty hectares in extent, transmit all the particulars of the provisional registration referred to paragraph (a)(i) to (iii), to the Mining Cadastre Registrar within seven working days of the provisional registration, together with the reasons furnished to the Director by the applicant justifying the excess hectarage; 25 30
- (c) the Provincial Mining Director, in the case of an application of the type referred to in subsection (5)(a) or (b) where the Director has refused provisional registration or refused it because the applicant objected to the conditions for its registration, transmit all the following particulars to the Mining Cadastre Registrar within seven working days of the conclusion of the meeting referred to in subsection (5)(c)(ii)A — 35
  - (i) all the documentation supporting the application referred to paragraph (a)(i) to (iii); and
  - (ii) the notice of the PMD’s decision referred to in subsection (6)(e); and 40
  - (iii) the report to the Mining Cadastre Registrar referred to in subsection (6)(f); and
  - (iv) if, as a result of the meeting referred to in subsection (5)(c)(ii)A. the PMD provisionally approved the application, the provisional registration number assigned to the site or sites; 45
- (d) the Provincial Mining Director, in the case of an application of the type referred to in subsection (5)(c) where the occupier has withheld his or her consent to the pegging of the site in question, transmit all the following particulars to the Mining Cadastre Registrar within seven working days of the conclusion of the meeting referred to in subsection (5)(c)(ii)A — 50

- (i) all the documentation supporting the application referred to paragraph (a)(i) to (iii); and
  - (ii) the notice of the PMD's decision referred to in subsection (6)(e); and
  - 5 (iii) the report to the Mining Cadastre Registrar referred to in subsection (6)(f); and
  - (iv) if, as a result of the meeting referred to in subsection (5)(c)(ii)A. the PMD provisionally approved the application, the provisional registration number assigned to the site or sites;
- 10 (e) upon transmission of the particulars referred to in paragraph (a), (b), (c) or (d), the Mining Cadastre Registrar may, if he or she is of the opinion that the transmitted particulars are—
  - (i) in order, consider whether to accept or reject the final registration of the site or sites in question, and upon consideration may—
    - 15 A. accept the final registration of the site or sites, whereupon the Registrar shall enter the relevant particulars concerning the site or sites in the Mining Cadastre Register and confirm in writing to the PMD that the site or sites have been finally registered, subject to subsection (9);
    - 20 B. reject the final registration of the site, whereupon the Registrar shall transmit the reasons for such rejection to the PMD concerned, subject to subsection (11);
  - (ii) not in order or incomplete or inadequate—
    - 25 A. request through the PMD further information or request an adjustment to the particulars transmitted by the PMD (which adjustment may include a reduction in the area of the site or sites applied for), before making a decision in accordance with subparagraph (i); and
    - 30 B. upon satisfactory compliance with such request, proceed in accordance with paragraph (i)A or B;
- (f) upon receiving from the Mining Cadastre Registrar—
  - 35 (i) confirmation of the final registration of a site or sites in accordance with paragraph (e)(i)A, the PMD shall post a copy of the decision on the notice board of his or her office, notify the applicant for the site or sites and the occupier concerned of the decision and, in the notice to the applicant, request the applicant to apply for a certificate of registration of the site under subsection (9); or
  - 40 (ii) rejection of the final registration of a site or sites in accordance with paragraph (e)(i)B, the PMD shall post a copy of the decision on the notice board of his or her office, notify the applicant for the site or sites and the occupier concerned of the decision and, in the notice to the applicant, inform him or her of the Mining Cadastre Registrar's reasons for rejecting the application; or
  - 45 (iii) a request for further information or a request for an adjustment of the particulars transmitted by the PMD, the PMD shall—
    - A. if he or she is able to comply with the request without the need to involve the applicant, transmit the information or effect the adjustment and transmit it to the Mining Cadastre Registrar forthwith; or

- B. if he or she is not so able as contemplated in subparagraph A, communicate the request to the applicant forthwith:

Provided that if, within 14 days of being notified of such request, the applicant fails to comply with the request, the applicant shall be deemed to have abandoned the application for the site. 5

(9) Upon receiving from the PMD notice of the final registration of the site, the applicant for the site must apply to the for a certificate of final registration of the site in the manner prescribed and on payment of the prescribed fee, no later than 31 days of the receipt of such notice or no later than any extension of that period not exceeding a further 30 days that the PMD may grant for any good and sufficient reason shown to the PMD (and if such applicant fails to apply for a final certificate of registration within such period or extended period, the applicant shall be deemed to have abandoned such site): 10

Provided that if an application for the review of the Registrar's decision is made to the Administrative Court in terms of subsection (11), the application for the certificate of final registration must still be made in accordance with this subsection, but the issuance of the final certificate is suspended pending the determination of the review. 15

(10) The PMD shall enter in his or her — 20

- (a) final register the fact that a final certificate of registration of the site has been issued; or
- (b) defunct register the fact that the site applied for has been abandoned due to the operation of the proviso to subsection (8)(f)(iii) B or of subsection (9); 25

and shall forthwith notify the Mining Cadastre Registrar of such registration or abandonment, as the case may be.

(11) Any person who is aggrieved by a decision of the Mining Cadastre Registrar under this section, that is to say any holder of a registered mining location or property who applied for the registration of a site, or other existing or potential small-scale or other miner having a demonstrable interest in the issue of such registration, or any occupier of any land affected by such registration, may seek a review of such decision by the Administrative Court within 30 days of the decision of the Registrar being communicated to the PMD. 30

(12) Upon a review of the Mining Cadastre Registrar's decision the Administrative Court may — 35

- (a) uphold the decision of the Mining Cadastre Registrar; or
- (b) refer the decision back to the Mining Cadastre Registrar for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds — 40
  - (i) allowing extraneous or irrelevant considerations to affect the decision;
  - (ii) failure to take into account relevant considerations in arriving at the decision;
  - (iii) any material mistake of fact or law that tainted the decision; 45
  - (iv) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;
  - (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision: 50

Provided that the Court shall not make a finding on this ground without affording the Mining Cadastre Registrar an opportunity to respond to such finding;

- 5 (c) if the application for review is made at the instance of an aggrieved occupier of any land affected by such registration, the Administrative Court may uphold the decision of the Mining Cadastre Registrar or—
- (i) refer the decision back to the Mining Cadastre Registrar as provided in paragraph (b); or
  - (ii) prohibit or cancel the pegging or registration of the site; or
  - 10 (iii) order that a lesser area should be pegged or registered; or
  - (iv) impose restrictions on the use to which the site may be put; or
  - (v) give such other order or direction in the matter as the Court considers just.

15 (13) Upon application made to the PMD the holder of registered mining location may—

- (a) amend the certificate of registration of a site;
- (b) obtain a fresh certificate of a site, specifying another mining location in the vicinity as the location for which the site has been registered;

20 whereupon the provisions of this section may shall (except for an application to amend involving the correction of a mere clerical error) apply in the same way as an original application for a site:

Provided that if the effect of an amendment sought by the holder of the location is to reduce the area of a site, the occupier of the affected land shall be deemed for the purposes of subsection (a) and (b) to have consented thereto.

## 25 **58 Registration of independent mine service sites**

(1) In this section words that are defined in section 57(1) shall bear the same meaning when used in this section; additionally—

“cedant” means the miner or landholder referred to in subsection (2)(c)(i) or (ii);

30 “custom milling plant” means any plant for the processing or extraction of gold or gold bullion that is not operated exclusively for the benefit of an operator who mines the gold;

“independent mine service site” or “independent site” means a site for any one or more of the following purposes—

- 35 (a) a custom milling plant; or
- (b) a plant for the milling, leaching, sampling, concentrating, reducing, assaying, transporting or dealing in ores, metals or minerals on a scale deemed by the PMD to be significant; or
- 40 (c) a plant for the beneficiation of minerals from multiple mining locations; or
- (d) a location whereon heavy plant, machinery and equipment primarily or exclusively for use in mining may be operated for the benefit of mining locations in the vicinity or more remote mining locations;

45 “written authority”, for the purpose of subsection (2)(a)(ii), means a document or affidavit by the land holder permitting the use of his or her land or part thereof described in the document or affidavit to be registered as an independent site in the name of the applicant.

- (2) Any person (“applicant”) who—
- (a) wishes to establish an independent mine service site on any land—
- (i) in respect of which a miner has registered a site on it in terms of section 55 (“Registration of dependent mine service sites”) and has ceded that site in writing to the applicant; or 5
  - (ii) over which a land holder (including the State) has granted a lease or a servitude to the applicant, or given written authority to the applicant to register an independent mine service site; or
  - (iii) open to prospecting of which the applicant is the owner, in the case of private land; 10
- and
- (b) otherwise complies with the conditions for registration as an independent mine service site in terms of the Fifth Schedule (“Special Conditions for the Certification of Independent Mine Service Sites”); 15
- may apply to the PMD for the registration of an independent mine service site.
- (3) The application referred to in subsection (2) shall be in writing and in the form (if any) prescribed, and shall be accompanied by the prescribed registration fee together with proof satisfactory to the PMD of the cession, lease, servitude or title of, over or to the land referred to in subsection (2)(a) to be used for the site, and a sketch 20
- plan based on a map issued under the authority of the State and of a scale of not less than 1: 50 000 identifying the position of the area applied for, specifying the extent of such area and indicating the co-ordinates of the site or sites in question:
- Provided that if the applicant requires more than twenty hectares for the site or sites applied for, the applicant shall in his or her application give a summary of the 25
- reasons why the additional hectareage is required.
- (4) The Provincial Mining Director may provisionally permit the applicant to peg the independent site or sites applied for under subsection (5):
- Provided that if—
- (a) the site or sites in question exceed in total twenty hectares, the Provincial Mining Director must additionally be satisfied that the reasons given by the 30
- applicant referred to in the proviso to subsection (3) are justified, otherwise the Director may condition the grant of provisional permission upon the applicant producing to the Director a new sketch plan showing the area of the site or sites as reduced in extent to the maximum permissible area 35
- of twenty hectares or any lesser area; or
- (b) the Provincial Mining Director—
- (i) refuses provisional registration under this paragraph for any reason, or
  - (ii) conditions the grant of provisional permission in the manner referred 40
- to in proviso (a);
- the Director must notify the applicant and (unless the applicant is the owner of the land in question) the cedant of his or her reasons for so refusing provisional registration or, as the case may be, conditioning 45
- the grant of provisional permission in the manner referred to in proviso (a), and must invite by such notice the applicant to lodge a written objection (not exceeding 2 000 words) to such refusal or conditioning within 48 hours of the notification by the Director of such refusal or conditioning;



- (5) In amplification or clarification of the provisions of subsection (4)—
- (a) if the applicant, in the case of an application referred to in proviso (a) or (b) to subsection (4), lodges timeously with the Provincial Mining Director the written objection referred to in proviso (b)(ii) to that subsection, and the Director then accepts the objection to be justified, the Director shall proceed as if he or she had not invited the holder to lodge such objection, and no record of it is required to be made in the provisional register;
  - (b) if the applicant, in the case of an application referred to in proviso (a) or (b) to subsection (4) fails to lodge timeously with the Provincial Mining Director the written objection referred to in proviso (b)(ii) to that subsection, it shall be taken that the applicant has abandoned the application to register the independent site or sites applied for, but the applicant is not prevented from making a fresh application under subsection (2).
- (6) If the Provincial Mining Director has provisionally granted the application to register an independent site in terms of subsection (4), the applicant—
- (a) may peg the site or sites in question without, however, engaging in any works not strictly relevant to the pegging itself, until final approval for the registration of the site or sites in question is granted under this section; and
  - (b) in pegging a site, must ensure that the position of all the points of intersection of the boundary lines, which shall be straight lines, shall be established by pegs, lettered in consecutive alphabetical order commencing with the letter A, and bear the words “independent site”, and must ensure that no ground not open to prospecting shall be included within such boundaries:
- Provided that in no case shall the distance between two adjacent pegs on the same boundary line exceed three hundred metres.
- (7) No site or sites shall be finally registered under this section until the following steps are completed—
- (a) the Provincial Mining Director, in the case of an application for a site or sites that do not exceed twenty hectares in extent, transmit all the following particulars of the provisional registration to the Mining Cadastre Registrar within seven working days of the provisional registration—
    - (i) a map to the scale of at least 1: 50 000 showing the co-ordinates of the temporary beacons of the site or sites in question; and
    - (ii) proof of the cession, lease, servitude or title of, over, or to the land referred to in subsection (2)(a) (i) or (ii); and
    - (iii) the provisional registration number assigned to the site or sites;
  - (b) the Provincial Mining Director, in the case of an application referred to in proviso (a) or (b) to subsection (4) where the site or sites exceed twenty hectares in extent, transmit all the particulars of the provisional registration referred to paragraph (a)(i) to (iii), to the Mining Cadastre Registrar within seven working days of the provisional registration, together with the reasons furnished to the Director by the applicant justifying the excess hectarage;
  - (c) the Provincial Mining Director, in the case of an application of the type referred to in proviso (a) or (b) to subsection (4) where the Director has refused provisional registration or refused it because the applicant objected to the conditions for its registration, transmit all the following particulars to the Mining Cadastre Registrar within seven working days of such refusal or conditioning—

- (i) all the documentation supporting the application referred to paragraph (a)(i) to (iii); and
  - (ii) the reasons for the PMD's refusal of the application or the reasons for the conditions to it proposed by the PMD;
- (d) upon transmission of the particulars referred to in paragraph (a), (b) or (c), the Mining Cadastre Registrar may, if he or she is of the opinion that the transmitted particulars are — 5
  - (i) in order, consider whether to accept or reject the final registration of the independent site or sites in question, and upon consideration may — 10
    - A. accept the final registration of the site or sites, whereupon the Registrar shall enter the relevant particulars concerning the site or sites in the Mining Cadastre Register and confirm in writing to the PMD concerned that the site or sites have been finally registered, subject to subsection (9); 15
    - B. reject the final registration of the site, whereupon the Registrar shall transmit the reasons for such rejection to the PMD concerned, subject to subsection (10);
  - (ii) not in order or incomplete or inadequate —
    - A. request further information or request an adjustment to the particulars transmitted by the PMD (which adjustment may include a reduction in the area of the site or sites applied for), before making a decision in accordance with subparagraph (i); and 20
    - B. upon satisfactory compliance with such request, proceed in accordance with paragraph (i); 25
- (e) upon receiving from the Mining Cadastre Registrar —
  - (i) confirmation of the final registration of an independent site or sites in accordance with paragraph (d)(i)A, the PMD concerned shall post a copy of the decision on the notice board of his or her office and notify the applicant for the site or sites to apply for a certificate of registration under subsection (8): 30
 

Provided that the issuance of the certificate is subject to the special conditions specified in the Fifth Schedule;
  - (ii) rejection of the final registration of an independent site or sites in accordance with paragraph (d)(i)B, the PMD concerned shall notify the applicant for the site or sites, of the Mining Cadastre Registrar's reasons for the rejection of the application; and 35
  - (iii) a request for further information or a request for an adjustment of the particulars transmitted by the PMD concerned, the PMD shall — 40
    - A. if he or she is able to comply with the request without the need to involve the applicant, transmit the information or effect the adjustment and transmit it to the Mining Cadastre Registrar forthwith; or
    - B. if he or she is not so able as contemplated in subparagraph A, communicate the request to the applicant forthwith: 45

Provided that if, within 14 days of being notified of such request, the applicant fails to comply with the request, or no later than any extension of that period not exceeding a

further period of 14 days that the PMD may grant for any good or sufficient reason, the applicant shall be deemed to have abandoned the application for the site;

(8) Upon receiving from the PMD notice of the final registration of the site, the applicant for the site must apply to the PMD for a certificate of final registration in the manner prescribed and on payment of the prescribed fee, no later than 30 days of the receipt of such notice or no later than any extension of that period not exceeding a further 30 days that the PMD may grant for any good and sufficient reason (and if such applicant fails to apply for a final certificate of registration within such period or extended period, the applicant shall be deemed to have abandoned such site).

(9) The PMD shall enter in his or her register the fact that—

- (a) a final certificate of registration has been issued; or
- (b) the site applied for has been abandoned due to the operation of the proviso to subsection (7)(e)(iii)B of subsection (8);

and shall forthwith notify the Mining Cadastre Registrar of such registration or abandonment, as the case may be.

(10) Any person who is aggrieved by a decision of the Mining Cadastre Registrar under this section, that is to say any applicant who applied for the registration of an independent site, or an existing or potential small-scale or other miner having a demonstrable interest in the issue of such registration, may seek a review of such decision by the Administrative Court within 30 days of the decision of the Registrar being posted on the notice board of the PMD's office in accordance with subsection (7)(e)(i).

(11) Upon a review of the Mining Cadastre Registrar's decision the Administrative Court may—

- (a) uphold the decision of the Mining Cadastre Registrar; or
- (b) refer the decision back to the Mining Cadastre Registrar for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—
  - (i) allowing extraneous or irrelevant considerations to affect the decision; or
  - (ii) failure to take into account relevant considerations in arriving at the decision; or
  - (iii) any material mistake of fact or law that tainted the decision; or
  - (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision; or
  - (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.

(12) Upon application made to the PMD the holder of registered independent may—

- (a) amend the certificate of registration of the site;
- (b) obtain a fresh certificate of the site, specifying another cedant as the holder of the land on which the site has been registered;

whereupon the provisions of this section shall apply in the same way as an original application for a site:

Provided that if the effect of an amendment sought by the applicant is to reduce the area of a site, the cedant of the affected land shall be deemed for the purposes of subsection (a) and (b) to have consented thereto.

## **59 Dependent mine service sites to be attached to location; changes in status of landholding where independent mine service site located**

(1) Every site which is registered with the PMD in terms of section 57 (“Registration of dependent mine service sites”) shall be deemed to be inalienably attached to the location in respect of which it was pegged, and every transfer, hypothecation, option, abandonment, forfeiture or cancellation affecting such location shall act as a transfer, hypothecation, option, abandonment, forfeiture or cancellation affecting any site attached to such location, and no separate sale, lease, hypothecation or option purporting to affect any site apart from the mining location to which it is attached shall be valid, unless the sale, lease, hypothecation or option is made contingent upon the registration of the site as an independent mine service centre in terms of section 58. 5 10

(2) Any order of court affecting any mining location shall be deemed to affect similarly any dependent site attached to such location.

(3) At any time prior to the hypothecation, giving of an option or lease, abandonment, forfeiture or cancellation of a mining location the holder thereof may apply to the PMD for the cancellation of the registration of any dependent site attached thereto, and, on filing with the PMD the certificate of registration of such site, and on payment of the fee prescribed in section 57, for the simultaneous re-registration thereof under a fresh registered number as attached to any other mining location registered in his or her name in the same vicinity, and upon such re-registration such other mining location shall, for the purposes of subsection (1), be deemed to be the location in respect of which the site was pegged. 15 20

(4) Notwithstanding any other law, an independent mine service site shall not be affected by any change in the holding of the land upon which such site is located, except to the extent expressly contemplated by the cession, lease, servitude or authority by virtue of which the independent site was established. 25

## **60 Cancellation of certificate of registration of claims or sites**

(1) Subject to subsection (2), the PMD may, notwithstanding section 56 (“Evidence and priority of mining rights; principle of ‘first come first served; impeachment of title’”)(4), at any time cancel a certificate of registration issued in respect of a claim or group of claims or site if he or she is satisfied that— 30

- (a) at the time when such claim or group of claims or site was pegged it was situated on ground reserved against prospecting and pegging under section 37 (“Ground not open to prospecting”) or 44 (“Reservations against prospecting and pegging”) or on ground not open to pegging in terms of subsection (3) of section 194 (“Abandonment of unregistered locations”); or 35
- (b) provisions of this Act relating to the method of pegging a claim or group of claims or site were not substantially complied with in respect of such claim or group of claims or site; or 40
- (c) in the case of a site, the site is no longer used for the purpose for which it was registered.

(2) At least thirty days before cancelling a certificate of registration of a claim, group of claims, or a site, the PMD under subsection (1) shall give notice to the holder of the claim or group of claims or site of his or her intention to cancel such certificate and of the grounds for such cancellation and of the proposed date of such cancellation, and shall at the same time inform the holder that he or she may, at any time before that date, appeal in terms of this section. 45

(3) If before the end of the period of notice referred to in subsection (2) the holder of the claim or group of claims or site objects to the cancellation the holder must furnish the two copies of a written objection (not exceeding 2 000 words) giving reasons why the cancellation should not be made, and where —

- 5           (a) the holder of the claim or group of claims or site concerned lodges timeously with the PMD the written objection and the PMD acknowledges in writing to the holder that the objection is justified, the PMD shall desist from cancelling the certificate of registration concerned; or
- 10           (b) the holder of the claim or group of claims or site concerned fails to lodge timeously with the PMD the written objection, the PMD is entitled to assume that the holder has consented to the cancellation and shall forthwith transmit his or her recommendation to cancel the certificate on these grounds to the to the Mining Cadastre Registrar; or
- 15           (c) the holder of the claim or group of claims or site concerned lodges timeously with the PMD the written objection, the PMD shall forthwith transmit the objection to the Mining Cadastre Registrar together with his or her recommendations thereon.

(4) Upon receiving of the recommendations, objection or both referred to in subsection (3) (b) or (c) the Mining Cadastre Registrar shall consider whether to cancel  
20 or not to cancel the registration, that is to say —

- (a) if he or she accepts the PMD's recommendation to cancel the registration, make the appropriate entry in the Register cancelling the registration; or
- (b) if he or she rejects the PMD's recommendation to cancel the registration, transmit the reasons for such rejection to the PMD concerned;

25 for which purpose the Mining Cadastre Registrar may request further information from the PMD before re making a decision.

(5) Upon receiving from the Mining Cadastre Registrar confirmation of the cancellation of registration, the PMD concerned shall notify the holder and post a notice of the cancellation on the notice board whereon notices of forfeiture are posted at the  
30 PMD's office:

Provided that the holder concerned may, within 14 days of being notified of such cancellation, appeal to the Minister against such cancellation, for which purpose the appellant must —

- 35           (a) lodge (together with the prescribed fee, if any) the appeal with the PMD in writing for onward transmission to the Mining Cadastre Registrar; and
- (b) incorporate in the appeal grounds on which the Mining Cadastre Registrar's decision should be set aside and what decision ought to be substituted for it;

40 and thereupon the Mining Cadastre Registrar shall, without delay, transmit the appeal to the Minister together with the written decision of the Mining Cadastre Registrar on the subject-matter of the appeal.

(6) Upon receiving an appeal, the Minister may —

- (a) dismiss the appeal by upholding the decision of the Mining Cadastre Registrar; or
- 45           (b) refer the decision back to the Mining Cadastre Registrar for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the Registrar to investigate the matter further and make a report and recommendations) on any one or more of the following grounds —

- (i) allowing extraneous or irrelevant considerations to affect the decision, or
  - (ii) failure to take into account relevant considerations in arriving at the decision, or
  - (iii) any material mistake of fact or law that tainted the decision; or 5
  - (iv) gross but unwilful irregularity in the proceedings or the decision; 10
- (the Minister shall, upon receiving the report or recommendations resulting from the Registrar's reconsideration, decide the matter in accordance with such report or recommendation or make a decision in accordance with paragraph (a) or (c);
- or
- (c) uphold the appeal and substitute any other decision for that of the Mining Cadastre Registrar, if the Minister finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision: 15
- Provided that the Minister shall not make a finding on this ground without affording the Mining Cadastre Registrar an opportunity to respond to the proposed finding.
- (7) Any person aggrieved by a decision of the Minister under subsection (6)(a) or (c), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the appellant, whereupon the Court may do any of the things the Minister is empowered to do under subsection (6)(a). (b) or (c). 20
- (8) The taking of a decision on appeal or review under subsection (3) or (7) shall not suspend the decision concerned until it is determined under this section.
- 61 Excess areas pegged** 25
- (1) If at any time the PMD has reason to believe that the number of claims or areas in any block exceeds the number registered in such block, he or she may cause the boundaries of such block to be surveyed by a mining surveyor or land surveyor.
- (2) If the number of claims in such block is found on such survey to exceed the number registered as aforesaid, the holder thereof shall be liable to pay to the PMD the cost of such survey, in addition to any amount which he or she may be liable to pay under this section. 30
- (3) If at any time after the registration thereof it is found that the number of claims in a block pegged and registered under one prospecting licence or other authority exceeds the number of claims registered in such block, the PMD shall notify the holder thereof. 35
- (4) The holder referred to in subsection (3) shall, within thirty days of a date to be fixed by the PMD in such notice, forward to the PMD a certificate of registration of such block, together with a prescribed fee for each claim or portion of a claim in excess of the number of claims originally registered in such block. 40
- (5) Upon receipt of the certificate of registration and the prescribed fee, the PMD shall register such excess claims as part of the original block and shall endorse upon the certificate of registration of such block the number of the excess claims so registered and the date of registration:
- Provided that if the addition of the excess claims will result in the bloc concerned exceeding ten contiguous claims, the claim or so many of the claims as will cause that result must be registered as a separate block; 45



Provided further that if the number of contiguous blocs registered as result of applying the foregoing proviso exceeds four such blocks (or forty claims), the holder must within 60 days of being notified of that fact apply for an ordinary mining lease under Part IX.

- 5 (6) Notwithstanding subsections (1) and (3) the PMD may authorise the holder of any group of contiguous mining locations, after a survey thereof has been made by a land surveyor or mine surveyor, to adjust the beacons of blocks within the outside boundaries of such group of mining locations, and thereupon fees in respect of excess claims shall only be payable on the excess claims existing after the adjustment of the  
10 internal beacons of the mining locations within the area:

Provided that no additional ground outside the boundary of the area originally pegged shall be included in any adjustment of beacons, nor shall the total area originally pegged be reduced.

- 15 (7) The powers of the PMD under this section can be exercised in the first instance by the Mining Cadastre Registrar on notice to the PMD concerned.

(8) Where the powers under this section are exercised in the first instance by the PMD, the PMD shall—

- 20 (a) before taking any action under this section, transmit a report to the Mining Cadastre Registrar stating all the relevant facts and shall proceed on the basis of that report unless the Mining Cadastre Registrar earlier notifies any objection, in which event the PMD shall proceed in accordance with any direction the Mining Cadastre Registrar may give him or her;
- 25 (b) after having taken any action under this section the PMD shall make the appropriate adjustments in his or her register and simultaneously notify the Mining Cadastre Registrar accordingly in order to allow the Mining Cadastre Registrar to make the appropriate adjustments in the Mining Cadastre Register.

- 30 (9) Nothing in this section shall be deemed to relieve any person from liability under this Act to any penalty prescribed for the wilful pegging of a mining location of a larger size than he or she is entitled to or purports to peg.

## 62 Lost certificates of registration

- 35 (1) Subject to this section, if the holder of the certificate of registration or of special registration last issued in respect of any mining location has lost or mislaid such certificate, or such certificate has been destroyed, he or she may, thirty days after publication in the *Gazette*, in a prescribed form, of notice of his or her intention to do so, apply to the PMD for a duplicate copy thereof.

(2) Such holder shall furnish the PMD with his or her application to the PMD, (together with proof of the publication in the *Gazette* referred to in subsection (1)) a solemn declaration which, shall state—

- 40 (a) the fact and if known to the holder, the circumstances of the loss or destruction of the certificate or that the same has been mislaid; and
- (b) that he or she has not delivered or pledged the certificate to any person either as security for money advanced to or owing by him or her or otherwise; and
- 45 (c) that he or she is of right entitled to the mining location mentioned in the certificate of which a duplicate is required; and
- (d) in the case where there are two or more joint holders of the certificate, the names of all the joint holders on the certificate.

(3) On receipt of such application and such solemn declaration the PMD shall, if he or she is satisfied that no good reason to the contrary exists, transmit the particulars of the same to the Mining Cadastre Registrar without delay, and if the Mining Cadastre Registrar makes no objection thereto within seven working days, issue a duplicate copy of such certificate to the applicant on payment of the prescribed fee. 5

(4) A duplicate copy of a certificate issued in terms of this section shall supersede and take the place of the original.

### **63 Address to be given to PMD**

(1) Every holder of a mining location on registration of such location in his or her name at the office of the PMD and every lessee and assignee of such holder shall furnish such PMD with a physical and (if available) electronic address within Zimbabwe at which physical address all notices, orders or other processes shall be served by the PMD or other officer duly appointed for the purposes of this Act, and any such holder, lessee or assignee may at any time change such address by registering at the office of such PMD any other address within Zimbabwe. 10 15

(2) Service of any such notice, order or other process at such registered address shall be deemed to have the same effect as personal service.

(3) In default of any address being registered as by this section required, the posting in the office of the PMD of any such notice, order or other process shall be deemed to have the same effect as personal service. 20

(4) The PMD shall without delay communicate to the Mining Cadastre Registrar the particulars of any address and any change thereof required to be furnished under this section.

(5) Nothing in this section contained shall be construed so as to preclude the High Court from giving such directions with regard to service as to it seem proper or expedient. 25

(6) Service of notices, orders or other process may alternatively be effected electronically under the conditions for such service prescribed in section 5.

### **64 Obligations of joint holders of mining locations**

(1) No more than six persons shall be registered as the joint holders of a mining location, that is to say— 30

- (a) any combination of companies, cooperatives, private business corporations or individuals not exceeding six may jointly hold a mining location:

Provided that a trust shall not be regarded as a person distinct from the donor or settlor of the trust for the purposes of this paragraph, and any rights or obligations attaching to the trustee or trustees of the trust as a holder of a mining location shall be regarded as the rights and obligations of the donor or settlor of the trust regardless of the terms of the trust deed; 35

- (b) a partnership shall not be treated as a single person for the purposes of this section, and no partnership shall be registered as the holder of a mining location if it exceeds six partners; 40

- (c) no syndicate or joint venture or other combinations of persons by whatever name called (in this paragraph called an “association”) of which—

- (i) a company or a cooperative or a private business corporation (hereafter in this paragraph called a “corporate person”) is a member shall be treated as a single person, but each such company, 45

cooperative or private business corporation shall be treated as a separate holder of the mining location, and accordingly no such association may exceed six members;

5                   (ii) one or more corporate persons and one or more individuals are members, shall be treated as a single person but each corporate member and each individual member shall be treated as a separate holder of the mining location, and accordingly no such association may exceed six members;

10                   (iii) one or more partnerships are members shall be treated as a single person, but each partnership and each of its partners shall be jointly and severally liable for the purposes of this section, and no such partnership or combination of partnerships may be the holder of a mining location if the combined number of partners exceeds six partners.

15                   (2) When two or more persons are registered as the joint holders of a mining location, each and every such person—

                  (a) shall be jointly and severally responsible for every obligation and liability attaching to the registered holder of such location;

20                   (b) no such joint registration shall be registered except upon production of the following documents—

                  (i) a document giving the name address and particulars of the agent referred to in subsection (3);

25                   (ii) a document specifying clearly and unambiguously the method by which any joint member and the accredited agent shall be removed or substituted to the satisfaction of the PMD (in a case where the application or interpretation of such document involves the question of the removal or substitution of a joint member, the PMD shall, if he or she cannot determine the question by reference to the document alone, be entitled to require from any of the joint holders that a court order be produced to him or her bearing on the question of such removal or substitution).

30

                  (3) Every partnership or corporate person which is the holder of a mining location whether alone or jointly with others, shall at the time of registration register at the office of the PMD the name of an accredited agent residing in Zimbabwe, and such agent shall, when registered, be personally responsible under this Act for all matters, acts and omissions in connection with such location in the same manner as if such location were registered in his or her name as his or her own property:

35

                  Provided that—

40                   (a) for the avoidance of doubt it is declared that this subsection does not bestow on the agent any greater mandate than is allowed by the common law of agency;

                  (b) an association referred to in paragraph (1)(c) shall be treated as a single partnership or corporate person for the purposes of this subsection;

45                   (4) If such partnership or corporate person at any time revokes the registration of any such accredited agent, it shall, within ninety-six hours of such revocation, register some other person as its accredited agent under subsection (3).

                  (5) A registered accredited agent may at any time resign his or her appointment as such by giving notice in writing to the PMD, but such resignation shall not take effect until the expiration of forty-eight hours after the receipt of such notice by the PMD.

50                   (6) Where a registered accredited agent has resigned, the partnership or corporate person concerned shall, within forty-eight hours after receipt of notice from

the PMD of the fact of such resignation, register some other person as its accredited agent.

(7) Subsections (3), (4) and (6) shall apply to every partnership or corporate person which is working a mining location under tribute or option:

Provided that the time of registration shall be within two weeks of the start of such working. 5

(8) Nothing in this section shall be taken in any way to relieve a corporate person or the members of a partnership of any liability incurred or any duty imposed under this Act in regard to any mining location held by such corporate person or such partnership.

(9) A partnership or corporate person that fails timeously to register a new accredited agent in terms of subsection (4) or (6) commits a civil default and becomes liable to be served with a category 2 civil penalty order by the PMD responsible for registering the accredited agent. 10

## **65 Cancellation of certificate of registration without abandonment**

(1) On application by the holder of any registered mining location, and on the production of the certificate of its registration, the Mining Cadastre Registrar may, at his or her discretion, authorise a PMD to cancel such certificate of registration of such location without abandonment or forfeiture of such location, and cause to be issued to the said holder at one and the same time a fresh certificate or certificates of registration of the whole or any portion or portions of such location which have been previously beaoned off within such location in the manner prescribed in this Act, assigning to such certificate or certificates fresh registered numbers. 15 20

(2) The said holder shall pay to the PMD the prescribed fee for each such fresh certificate.

(3) Within a period of seven days from the date of issue of such fresh certificate or certificates, or within such period as the PMD may fix, the holder of such location shall remove all the beacons of the original mining location not used for the beaconing of the new portion or portions, and on the beacons of the new portion or portions shall replace the registered number originally assigned to such location by the new registered number assigned to such portion or portions. 25 30

## **PART VI**

### **PROSPECTING AND PEGGING ON GROUND RESERVED AGAINST PROSPECTING AND PEGGING**

## **66 Interpretation in Part VI**

In this Part—

“holder of an authority or order”— 35

(a) in the case of an holder of an authority, means the holder of an authority granted under section 68 or 70;

(b) in the case of an holder of an order, means the recipient of an order granted in terms of section 72;

“lands Minister” means the Minister responsible for the Land Commission Act [Chapter 20:29]; 40

“order” means an order made under section 74 (“Applications and reviews”) by consent of the parties or by the Administrative Court or the Supreme Court;

“owner”— 45

- (a) in relation to State land, means the Minister responsible for the administration of such land;
  - (b) in relation to private land means the owner, or in relation to partially alienated land means the holder of an offer letter, 99 year lease or permit in relation to that land, issued by the lands Minister.
- “reserved ground” means land upon which a prospector is prohibited in terms of section 37 (“Ground not open to prospecting”) (1)(a) and (g) from exercising any of his or her rights under his or her prospecting licence without the consent in writing of the owner or holder of the land, but does not include that portion of such land which lies within two hundred and twenty-five metres of the site of the principal homestead mentioned in paragraph (a)(i) of that subsection.

## **67 Application for authority to prospect on reserved ground**

(1) Any person may make a written application to the Board for authority to prospect on reserved ground after having failed to obtain the necessary consent thereto under section 37.

(2) The applicant shall furnish to the Board—

- (a) full details of that portion of the reserved ground on which authority to prospect is sought, together with a plan thereof prepared by a mine or land surveyor; and
- (b) the reasons why he or she thinks that such reserved ground may warrant the granting of the authority; and
- (c) full information as to his or her financial status; and
- (d) any other information relative to the application which may be required of him or her by the Board.

(3) On receipt of the application by the Board—

- (a) the chairperson of the Board may issue a direction to the PMD to reserve the ground to which the application relates against prospecting and pegging in terms of section 44 (“Reservations against prospecting and pegging”), and the PMD shall, without obtaining the authority of the Minister, forthwith reserve such ground accordingly;
- (b) the Board may refuse the application or approve it provisionally.

## **68 Procedure on provisional approval**

(1) If the Board provisionally approves such application it shall—

- (a) unless the chairperson of the Board has issued a direction to the PMD under section 67(3)(a), itself issue such a direction, and the PMD shall comply therewith; and
- (b) after the PMD has reserved the ground in accordance with a direction given under section 67(3)(a) or paragraph (a), notify the owner and the occupier, if any, of the reserved ground, of the application and require them to inform the Board in writing within thirty days of such notification whether they object to the grant of the application.

(2) Notification in terms of subsection (1)(b) shall be given in any of the ways specified in section 5 (“Manner of giving notices and serving documents under this Act”) to the owner and the occupier, if any.

## **69 Grant or refusal of application**

(1) If an owner or occupier of reserved ground informs the Board that he or she has objections to the grant of the application, the Board shall, on a day fixed by it and

notified to the applicant and the objector, hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the application.

- (2) The Board shall proceed with the consideration of the application if—
- (a) no notification of objection to the grant of the application has been received from the owner or the occupier; or 5
- (b) the whereabouts of the owner or occupier are unknown to the Board after diligent inquiry, and after publication of the application in the *Gazette* for two consecutive weeks.

## **70 Board's powers in regard to application for authority to prospect**

(1) The Board may, after holding a hearing in terms of subsection 69(1) or considering the application in terms of subsection (2) of that section— 10

- (a) grant authority to the applicant to prospect on such ground in such manner and by such means and for such period as shall be specified by the Board in such authority, if the Board is satisfied—
- (i) that the applicant's financial status is such that he or she will be able to pay any sum which may become payable by him or her under section 79 ("Compensation under Part VI") or 81 ("Compulsory acquisition of land by holder of an authority or order") as a result of the exercise of his or her rights under such authority; and 15
- (ii) that minerals are likely to occur within the area to which the application relates; and 20
- (iii) that little or no interference with the rights of the owner or occupier of the ground will result from such prospecting;

or

- (b) refuse the application. 25

(2) Before granting any such authority, the Board—

- (a) shall consult the Environment Management Agency;
- (b) may, and, if so required by the owner or the occupier of any of the reserved ground, shall, require the applicant to furnish a guarantee satisfactory to the Board for the payment of the sum mentioned in subsection (1)(a)(i). 30

(3) The Board may attach to an authority such conditions as it may think fit.

## **71 Extension and amendment of authority granted under section 70**

(1) The holder of an authority granted under section 70 may, at any time before the expiry of the period for which the authority was granted, make written application to the Board— 35

- (a) for an extension of the period for which the authority was granted;
- (b) for the amendment of the authority in respect of the manner in or means by which the prospecting operations are to be carried out.

(2) On receipt of such application the Board shall notify the owner and the occupier, if any, of the reserved ground of such application and require them to inform the Board in writing within thirty days of such notification whether they object to the grant of the application, and section 68 ("Procedure on provisional approval")(2) shall apply, with necessary changes, in respect of such notification. 40

(3) Sections 69 and 70 shall apply, with necessary changes, in respect of such application. 45



(4) The holder of an authority in respect of which an extension of the period has been granted under this section may, in like manner and subject to the like conditions, from time to time apply for and be granted an extension or amendment of the authority.

## **72 Board may authorise more extensive prospecting operations**

5 (1) Where, on the written application of the holder of an authority granted under section 70 (“Board’s powers in regard to application for authority to prospect”) made before the date on which the reservation in respect of the reserved ground is withdrawn by the PMD under section 80 (“Withdrawal of reservation”), the Board is satisfied that, having regard to the results of the prospecting operations carried out on the reserved  
10 ground under the authority, such a course is justified, it may, after consultation with the owner and the occupier, if any, of such ground, grant authority for the conduct of such more extensive prospecting operations on such ground as shall be specified by the Board and in such manner and by such means and during such period as the Board may specify.

15 (2) Section 70(2) shall apply, with necessary changes, in respect of such authority.

(3) The Board may attach to an authority such conditions as it may think fit.

(4) It shall be a condition of every authority granted under this section and of every extension thereof that the holder of the authority shall conduct prospecting  
20 operations progressively inwards from the perimeter of the reserved ground in such manner as the Board shall specify in the authority, but the Board may grant exemption from such a condition if it is satisfied that the proper prospecting of the area would be unduly impeded thereby.

## **73 Extension and amendment of authority granted under section 72**

25 (1) The holder of an authority granted under section 72 may, at any time before the expiry of the period for which the authority was granted, make written application to the Board—

- (a) for an extension of the period for which the authority was granted;
- 30 (b) for the amendment of the authority in respect of the manner in or means by which the prospecting operations are to be carried out.

(2) The Board may, after consultation with the owner and the occupier, if any, of the reserved ground, refuse such application or grant it subject to such conditions and for such period as it may think fit.

35 (3) Section 70(2) shall apply, with necessary changes, in respect of such authority.

(4) The holder of an authority in respect of which an extension of the period has been granted under this section may, in like manner and subject to the like conditions, from time to time apply for and be granted an extension or amendment of the authority.

## **74 Applications and reviews**

40 (1) The holder of an authority granted under section 70 or 72 may, at any time before the date on which the reservation in respect of the reserved ground is withdrawn by the PMD under section 80, in writing request the Board to recommend to the Administrative Court that an order be made by that Court authorising the acquisition by him or her of mining title in such form and to or in respect of so much of the reserved  
45 ground as shall be specified in such request.

(2) On receipt of the request, the Board shall—

- (a) if it is not satisfied that, having regard to the results of prospecting operations carried out under the authority, a deposit of minerals exists which is economic or likely to prove economic, refuse the request; or
- (b) if it is so satisfied, refer the matter to the Administrative Court, together with its recommendation that mining title be granted, and its recommendations as to the form of such title, the area to be covered by such title and the conditions to be attached to such title, and as to any other matter which to it may seem relevant: 5

Provided that where the owner and the occupier, if any, of the reserved ground have agreed in writing that the Board should itself issue the order and such agreement has been lodged with the Board, the Board shall not refer the matter to the Administrative Court and may itself issue an order for the grant of mining title in such form as it may determine and subject to such terms and conditions as may have been agreed upon by the parties and notified to the Board and such additional terms and conditions as the Board may determine. 10 15

(3) Where a matter has been referred to the Administrative Court under subsection (2)(b), the Court shall, on a day fixed by it and notified in writing by any of the means specified in its rules to the person seeking the order and the owner and the occupier, if any, of the reserved ground concerned, hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the order. 20

(4) Subject to subsection (3), the Administrative Court may grant or refuse to grant an order.

(5) The Administrative Court shall not grant an order—

- (a) unless it is satisfied that the national interest would be better served by the ground in respect of which the order is sought being used for mining purposes than by its being used for agricultural purposes; 25
- (b) unless, if the owner or occupier of the reserved ground concerned has so required, the person seeking the order has furnished a guarantee satisfactory to the Court for the payment of any sum which may become payable by him or her under the provisions of this Part by way of compensation or in respect of the acquisition by him or her of the reserved ground or of the holding of which the reserved ground forms a part. 30

(6) The Administrative Court may, in granting an order, attach thereto such conditions as to it may seem necessary or desirable, and shall attach a condition as to the period within which the rights under the order may be exercised. 35

(7) The registrar of the Administrative Court shall, in any manner prescribed by its rules, send a copy of the order to the owner and the occupier, if any, of the reserved ground to which the order relates, to the person in whose favour it is made, to the PMD and to the Board. 40

(8) Any person aggrieved by the grant or refusal by the Board of an application for an authority under section 68 or 70 or for the extension or amendment of an authority under section 71 or 73 or the refusal of the Board to recommend a request for an order under subsection (1) or (2) may seek a review of such decision from the Administrative Court, which shall have the same powers on review as the High Court has under subsection (10), and for that purpose references in that subsection to the “High Court” shall read as references to the “Board”. 45

(9) Any person who is aggrieved by a decision of the Administrative Court on a matter referred to it under this section may, within thirty days of such decision, seek a review of the Administrative Court’s decision by the High Court. 50

- (10) In reviewing the Administrative Court's decision the High Court may—
- (a) uphold the decision of the Administrative Court; or
  - (b) refer the decision back to the Administrative Court for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—
    - (i) allowing extraneous or irrelevant considerations to affect the decision;
    - (ii) failure to take into account relevant considerations in arriving at the decision;
    - (iii) any material mistake of fact or law that tainted the decision;
    - (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision;
    - (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;
  - (c) if the application for review is made at the instance of an aggrieved owner or occupier of any land affected by such registration—
    - (i) refer the decision back to the Administrative Court as provided in paragraph (b); or
    - (ii) prohibit or cancel the pegging or registration of the site; or
    - (iii) order that a lesser area should be pegged or registered; or
    - (iv) impose restrictions on the use to which the site may be put; or
    - (v) give such other order or direction in the matter as the Court considers just.

## **75 Authority or order may not be ceded; registration thereof**

(1) The holder of an authority granted under this Part or of an order shall without delay register it in the Mining Cadastre Registry on payment of the prescribed fee (whereupon the Mining Cadastre Registrar shall notify the appropriate PMD to enable the latter to make the appropriate adjustment in his or her final register).

(2) The rights granted under an authority granted under this Part or an order shall be personal to the holder thereof, who may not cede or assign any such rights to any other person, whether directly or indirectly by the transfer of shares or other interests in the holder that has the effect of ceding control over the holder to some other person.

Provided that the rights granted under an order may be ceded or assigned with the permission in writing of the owner of the reserved ground or on the authority of the Administrative Court.

## **76 Rights of holders of authorities and orders**

(1) The person to whom an authority is granted under this Part shall, subject to the terms and conditions of such authority and in terms of this Act, and notwithstanding the reservation of the ground on a direction given under this Part, have the sole and exclusive right of prospecting on the reserved ground to which such authority relates.

(2) The person in whose favour an order is made shall, subject to the terms and conditions of such order and in terms of this Act, and notwithstanding the reservation of the ground on a direction given under this Part, have the sole and exclusive right of pegging and registering mining locations on or acquiring mining leases in respect of the reserved ground to which such order relates.

**77 Revocation of authority or order**

(1) If the person to whom an authority has been granted under this Part or the holder of an order fails to comply with any of the terms and conditions attached to such authority or order, as the case may be, the owner or occupier of the affected land may apply to the PMD under section 273 (“PMD may grant interdicts”) for an interdict in terms of that section as if the affected land is a mining location and the owner or occupier is a person legally interested in it. 5

(2) Where a person to whom such authority has been granted fails to comply with the terms and conditions thereof, the Board may, in addition, revoke the authority.

(3) Where the holder of an order fails to comply with the terms and conditions thereof, the Administrative Court may, in addition, revoke the order and may direct the Board to declare any mining location registered by virtue of such order and held by such holder to be forfeited, the holder of the order shall, whether or not such mining location is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part XI (“Preservation of Mining Rights”), comply with such direction. 10 15

**78 Approval of transfer of mining location subjected to authority or order**

(1) A mining location which has been registered on reserved ground under an order may not, as long as the ground remains reserved, be transferred (whether directly or indirectly by the transfer of shares or other interests in the holder of the mining location that has the effect of ceding control over the holder to some other person) except to a person approved of by the Board, after consultation with the owner and the occupier, if any, of such reserved ground. 20

(2) The Board shall not approve of the transfer of such a mining location to any person unless he or she has furnished a guarantee satisfactory to the Board for the payment of such sum as is mentioned in section 74 (“Applications and reviews”) (5) (b) and the Board is satisfied that the holder of such location has paid all compensation and other moneys payable by him or her in terms of the order by virtue of which the location was pegged and registered or in terms of this Part. 25

(3) The terms and conditions of every order which relates to mining on reserved ground shall be binding on any person to whom a mining location registered under such order is transferred and on any miner thereof. 30

(4) Without derogating from section 77 (“Revocation of authority or order”) (1), if any person referred to in subsection (3) fails to comply with any such terms or conditions, the Board may forthwith direct the PMD to declare such mining location forfeited, and the PMD shall, whether or not such mining location is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part XI (“Preservation of Mining Rights”), comply with such direction. 35

**79 Compensation under Part VI**

Any owner or occupier of reserved ground who is injuriously affected by the exercise of any rights under an authority or order granted under this Part or by any mining operation on any mining location registered under such order shall be entitled to recover compensation from the person to whom the authority was granted or in whose favour the order was made or the holder of the mining location, as the case may be, in such amount as may be agreed upon or, failing such agreement, as shall be determined by the Administrative Court. 40 45

## 80 Withdrawal of reservation

The Board shall, if it is satisfied that the reservation of any ground made under section 44 (“Reservations against prospecting and pegging”) in consequence of a direction given under section 67 (“Application for authority to prospect on reserved ground”)(3)(a) or section 68 (“Procedure on provisional approval”)(1)(a) is no longer  
5 necessary, direct the PMD to withdraw such reservation, and the PMD shall comply with such direction.

## 81 Compulsory acquisition of land by holder of authority or order

(1) Where an authority has been granted under this Part in respect of reserved  
10 ground mentioned in section 37 (“Ground not open to prospecting”) (1)(a)(i) or (ii) or an order has been granted in respect of any reserved ground, the owner of such reserved ground may, subject to this section, apply to the High Court for an order compelling the holder of such authority or order, as the case may be, to acquire by purchase, exchange or otherwise the whole or a portion of the holding of which such reserved ground forms  
15 a part.

Provided that it shall not be competent for any owner so to apply by reason of prospecting or mining operations being conducted by the holder in virtue of the authority or order, if, at the time of the making of such application, or at any time in the period of forty-eight months immediately preceding the date of such application, the owner  
20 or his or her spouse or the minor child of either of them has a direct or indirect interest in such operations or in the holder.

(2) At least thirty days before making such application, the owner of the reserved ground shall by any of the means specified in section 5 (“Manner of giving notices and serving documents under this Act”) give notice in writing to the holder of the authority  
25 or order, as the case may be, of his or her intention to make such application.

(3) Notwithstanding section 83 (“Relinquishment of rights under an authority or order”), the holder of an authority or order, as the case may be, to whom notice has been given under subsection (2), may not after the expiry of a period of twenty-one days from the date of the receipt by him or her of such notice and until the High Court  
30 has disposed of the application or the application has been withdrawn, relinquish his or her rights under such authority or order, as the case may be.

(4) On an application made under this section, the High Court may refuse the order applied for or may grant it if the Court is satisfied that—

- (a) the holder of the authority or order, as the case may be, is not precluded  
35 by the provisions of the Constitution or any enactment from owning such land or receiving any other form of title over or in respect of such land (and where the title required to be given is in respect of partially alienated Gazetted or other State land, the Court may make its order conditional upon such title being granted by the President for the purposes of this paragraph); and
- (b) the exercise by the holder of the authority or order, as the case may be,  
40 of the rights granted thereunder has resulted or is likely to result in such interference with the rights of the owner or occupier of the reserved ground as will render such ground or the holding of which such ground forms a part unsuitable, as far as such owner or occupier is concerned, for the  
45 purpose for which it was being used or was *bona fide* intended to be used immediately before the date of the making of the application to that Court and where such application is for an order compelling the acquisition of the whole of the holding or a portion thereof by an exchange of land, or partly by an exchange of land and partly by some other means, and the

land required to be given in exchange for such holding or portion thereof is State land, the Court may make its order conditional upon such land being made available by the President for the purposes of such exchange.

(5) In deciding whether to grant or refuse the order applied for, the Court shall have regard to the stage which the prospecting operations of the holder of the authority or order, as the case may be, have reached at the time of the application and the extent to which minerals are present on the land and the economic possibilities of such minerals. 5

(6) If the High Court grants the order it shall determine the price to be paid or other consideration to be given for the reserved ground, having regard to the matters set out in section 82 (“Factors to be considered in fixing price”). 10

(7) The costs of both parties to an application under this section shall be borne by the holder of the authority or order, as the case may be:

Provided that the High Court may make such order as to costs as to it seems just if the Court is of the opinion—

- (a) that the applicant has unreasonably refused a fair offer for the acquisition of the holding concerned or portion thereof by such holder; or 15
- (b) that the application is vexatious or frivolous.

(8) Where the owner of the reserved ground and the holder of the authority or order, as the case may be, have agreed in writing, the application mentioned in subsection (1) may be made to the Administrative Court, and in that event subsections (2) to (7) shall apply, with necessary changes, to and in respect of any such application. 20

(9) Any person who is aggrieved by the decision of the Administrative Court on an application made to it under subsection (8) may appeal against that decision to the High Court.

## **82 Factors to be considered in fixing price** 25

Where a Court grants an order under section 81 it shall, in determining the price to be paid or other consideration to be given for the land by the holder of the authority or order, as the case may be, make due allowance for—

- (a) the value of any improvements on and development of the land;
- (b) the possible loss of profits over the period of three years next succeeding the date of the application for such order; 30
- (c) the depreciation, if any, in the value of that portion of the holding which is not the subject of such order;
- (d) the expense or loss, other than loss of profits, caused to the owner by the grant of the authority or order; 35
- (e) any other loss directly or indirectly caused by the grant of the authority or order or the exercise of any right granted thereunder;

but no account shall be taken of any minerals which have been or may be discovered on such land.

## **83 Relinquishment of rights under an authority or order** 40

(1) Save as otherwise provided in section 81 (“Compulsory acquisition of land by holder of an authority or order”), the holder of an authority or order granted under this Part may at any time give notice in writing to the owner or occupier of the reserved ground to which such authority or order, as the case may be, relates of his or her intention to relinquish his or her rights under such authority or order, as the case may be, and shall lodge a copy of such notice with the Board. 45



(2) The rights of such holder under the authority or order, as the case may be, shall cease with effect from the time and date of the lodging of such notice with the Board.

(3) Nothing in this section contained shall affect the right of the owner or the occupier, if any, of the reserved ground to claim compensation from the holder of the authority or order, as the case may be, in respect of damage arising from anything done by the holder before the date of such relinquishment.

#### **84 Board's authority required for acquisition of mining title in certain circumstances**

(1) Where the Board has made a recommendation under section 74 ("Applications and reviews") (1), it shall not be competent, except with the authority of the Board, for any person (hereinafter called the "transferee") other than the person at whose request that recommendation was made (the "transferor") to peg and register a mining location or to be granted a mining lease on or in respect of the whole or any portion of the ground to which such recommendation relates, within a period of seven years from the date of such recommendation.

(2) For the purposes of subsection (1) a reference to a "transferee" includes a reference to any person to whom the right to peg and register a mining location or to be granted a mining lease was ceded or assigned indirectly, that is to say a person who takes transfer of shares or other interests in the transferor that has the effect of ceding control over the transferor to the transferee.

(3) The Board may, in granting such authority, attach thereto such conditions as it thinks fit, including a condition as to the reimbursement of the transferor at whose request the recommendation was made in respect of any expenditure incurred by him or her in connection with or arising out of operations conducted by him or her on the reserved ground concerned and as to the payment to the transferor of such reward for any discovery made by him or her as the Board considers just.

#### **85 Application of sections 81 and 82 to partially alienated land**

(1) Subject to this section, sections 81 ("Compulsory acquisition of land by holder of an authority or order") and 82 ("Factors to be considered in fixing price") shall apply to land referred to paragraph (b) of the definition of owner in this Part.

(2) For the purposes of this section, in section 81 —

(a) the reference in subsection (1) to the owner of reserved ground is a reference to the holder of partially alienated land:

Provided that such holder shall first seek the consent of the lands Ministry to apply to the High Court for the order there mentioned, which consent shall not be unreasonably withheld;

(b) the nature of the title which the holder may compel the holder of an authority or order to acquire is the offer letter, lease or permit, as the case may be, held by the holder, suitably amended to permit the holder of an authority or order to exercise mining rights in relation to any part of the land to which the offer letter, lease or permit relates:

Provided that if the holder of an authority or order at any time abandons any rights under the authority or the rights thereunder are forfeited or cancelled, the rights shall revert automatically to the lands Ministry without any compensation being payable to the holder of an authority or order;

- (c) it shall be presumed for the purposes of section 81(4)(a) that the holder of an authority or order is not precluded by the Constitution or any enactment from holding such land under an offer letter, lease or permit if the lands Ministry has given consent thereto under the proviso to paragraph (a).

(3) For the purposes of this section, in section 82, the High Court shall, in determining the price to be paid or other consideration to be given for the land by the holder of the authority or order, as the case may be, make due allowance for the factors referred to in paragraphs (a), (b), (c), (d), (e) of section 82. and in addition the Court shall order the reimbursement to the holder of not more than three preceding years' worth of rentals paid in respect of the holding of the land under the offer letter, lease or permit.

(4) Any rentals that were previously payable to the lands Ministry in respect of the holding of land under an offer letter, lease or permit that is required by this section to be acquired and transferred to the holder of an authority or order shall continue to be payable by that holder to the lands Ministry.

## PART VII

### EXCLUSIVE EXPLORATION LICENCE

#### 86 Interpretation in Part VII

In this Part—

- “application” means an application made under section 87(1) for an exclusive exploration licence, and “applicant” shall be construed accordingly;
- “exclusive exploration reservation” or “reservation” means the area embraced by an exclusive exploration licence;
- “licensee” means the person in whose favour an exclusive exploration licence has been issued;
- “programme” means the programme of operations mentioned in section 99 (“Programmes of work to be submitted by licensee”);
- “promptly”, for the purposes of a submitting or resubmitting a report referred to in section 100(3) and (5), means submitting it no later than seven days of being required by the Board to do so, or within such shorter period of not less than 48 hours as the Board may specify in its request.

#### 87 Application for EEL

(1) Any person may apply to the Board, in writing, for an exclusive exploration licence over a defined area in Zimbabwe, including an area reserved under section 44 (“Reservations against prospecting and pegging”).

(2) An applicant shall—

- (a) pay the prescribed application fee to the Mining Cadastre Registrar; and
- (b) furnish the Board with such information as to—
- (i) his or her financial status; and
  - (ii) the minerals which he or she wishes to explore; and
  - (iii) the nature and extent of the exploration operations he or she intends to carry out within the exclusive exploration reservation and any measures to mitigate any environmental damage (hereinafter called “the prospectus”, a copy of which must be served on the Director General of the Environmental Management Agency); and
  - (iv) any other matter as may be prescribed.

(3) On receipt of an application the Board shall—

- (a) publish, at the applicant's expense, a notice in the *Gazette* and in a newspaper circulating in the area concerned, giving details of the application and inviting objections to it to be lodged within 21 days from date of such publication; and
- (b) if in any application authorisation is sought to explore on any registered block within the proposed exclusive exploration reservation, give written notice to every registered holder of the block.

(4) The Board shall without delay inform the applicant of the essence of any objections lodged in response to a notice published in terms of subsection (3)(a).

(5) The chairperson of the Board may provisionally approve an application before it is considered by the Board and, if he or she does so, he or she shall issue a direction to the PMD to reserve the area embraced by the application against prospecting and pegging in terms of section 44 ("Reservations against prospecting and pegging"), and the PMD, without obtaining the authority of the Minister, shall forthwith reserve such area accordingly.

(6) A reservation under subsection (5) shall simultaneously be recorded in the Mining Cadastre Register.

## **88 Hearing of application by Board**

On a date and at a time and place notified in writing to—

- (a) the applicant; and
- (b) any person who lodged objections in response to the notice published in terms of section 87(3)(a);

the Board shall hear such evidence and arguments as those persons may wish to lay before it regarding the grant or refusal of the application:

Provided that if no such objections have been lodged, the Board shall consider the merits of the application before making recommendations.

## **89 Board's recommendation regarding application**

(1) If, after considering an application, the Board is satisfied that—

- (a) the applicant is a fit and proper person and has the resources to undertake operations under an exclusive exploration licence; and
- (b) it would not be against the national interest to issue the applicant with the exclusive exploration licence sought;

the Board may, subject to this Part, recommend to the Minister the issue of an exclusive exploration licence to the applicant over such area and subject to such terms and conditions as the Board may recommend.

(2) Terms and conditions recommended by the Board under subsection (1) may include conditions requiring the applicant—

- (a) to furnish guarantees to the Minister's satisfaction that his or her obligations under the licence will be discharged;
- (b) to abandon a portion of the exclusive exploration reservation within such period as may be specified in the licence.

(3) If the Board is not satisfied that an applicant meets the requirements of subsection (1), it shall reject the application and shall notify the applicant accordingly.

(4) Where the Board has rejected the application of an exclusive exploration licence, any reservation made in terms of section 87(5) shall be deemed to have been withdrawn by the PMD with effect from the date of rejection.

**90 Issue of EEL**

(1) Where the Board recommends the issue of an exclusive exploration licence, the Board shall submit the application to the Minister without delay, together with all relevant supporting documents and the Board's written report and recommendation.

(2) On receipt of documents and other material in terms of subsection (1), the Minister shall submit them to the President, who may decline the application in the national interest or authorise the issue of an exclusive exploration licence in terms of the Board's recommendation or on such amended terms and conditions as the President may consider appropriate. 5

(3) Where the President has authorised the issue of an exclusive exploration licence, the Minister shall— 10

- (a) on receipt of proof of payment of the prescribed issuance fee; and
- (b) on being notified that a copy of the prospectus, and if appropriate, the EIA which he or she is required to submit to the Director General of the Environmental Management Agency in terms of XI of the Environmental Management Act [*Chapter 20:27*] has been submitted; 15

without delay, issue an EEL in favour of the applicant which shall be in accordance with the terms and conditions fixed by the President and which shall specify the date from which the rights granted thereunder may be exercised and the date upon which the exercise of those rights shall cease. 20

(4) Every EEL and any renewal thereof under section 90—

- (a) shall be published in the *Gazette* and a copy of such EEL shall be sent to the applicant, to the Board and to the PMD of the mining province in which the reservation is situated; and
- (b) be entered in the Mining Cadastre Register and in the appropriate register of the PMD concerned. 25

(5) Where an EEL is issued any reservation of the ground made in accordance with a direction given under section 87(5) shall be deemed to have been withdrawn by the PMD in all respects as if he or she had posted a notice of such withdrawal under that section at six o'clock in the morning on the day specified in the EEL being the date from which the rights granted thereunder may be exercised. 30

**91 Form, duration and renewal of EEL**

(1) An exclusive exploration licence shall specify—

- (a) the area of the exclusive exploration reservation; and
- (b) the minerals for which the licensee may prospect; and 35
- (c) the period of validity of the licence; and
- (d) the conditions under which the licence is issued.

(2) Subject to section 92 ("Conditions for renewal of EEL") an exclusive exploration licence shall not be issued for a definite period of more than twelve years and if issued for twelve years shall consist of the following periods— 40

- (a) on the expiry of the first three years of the EEL, the Minister on written application by the licensee made through the Board, may renew it for another three years on the basis of the Board's recommendation, and a report referred to in section 100 ("Licensees to carry out work, etc");
- (b) if the EEL is extended under paragraph (a) the President may renew it for another three years on the written application by the licensee made through the Board and the Minister, and on the basis of the Minister's 45

and the Board's recommendation, and of a report referred to in section 100;

- (c) if the EEL is extended under paragraph (b) the President may renew it for a final period of three years on the written application by the licensee made through the Board and the Minister, and on the basis of the Minister's and the Board's recommendation, and of a report referred to in section 100.

(3) The holder of an exclusive exploration licence wishing to renew that licence after the expiry of the licence or of the last period of the licence under subsection (2) (c) (as the case may be), shall lodge an application therefor as if it was an original application, and sections 87 to 90 shall apply thereto:

Provided that if the application is lodged no later than six months before the expiry of the exclusive exploration licence the holder will be entitled to exercise all the rights under the original exclusive exploration licence up to the date when the President authorises or refuses to authorise the issuance of the new exclusive exploration licence, even though the original exclusive exploration licence had expired.

(4) The Minister shall ensure that, as soon as practicable after he or she has issued an exclusive exploration licence—

- (a) the licence is published in the *Gazette* at the expense of the licensee; and  
(b) a copy of the licence is sent to the licensee, the Board, the Mining Cadastre Registrar and the PMD concerned.

## 92 Conditions for renewal of EEL

Unless different conditions respecting the abandonment at specified intervals of portions of the exclusive exploration reservation are to be specified in the licence in terms of section 91(2) or 93(3), on an application for renewal of an exclusive exploration licence (in addition to the considerations that the Board must take into account when considering an original application), the applicant must—

- (a) surrender not less than fifty *per centum* of the area of the original exclusive exploration licence and furnish the Board with a map showing the coordinates of the remaining area covered by the EEL together with a written abandonment report, that is to say a report giving reasons why the area concerned is being surrendered, and a summary of the exploration work and other work undertaken in relation to that area that led to such decision; and  
(b) undertake to surrender at the end of each period of 12 months during the subsistence of the renewed EEL a further fifty *per centum* of the area of the renewed EEL and furnish to the Board no later than three months after the end of each such period a map showing the coordinates of the remaining area covered by the EEL together with an abandonment report as described in paragraph (a);

and upon any failure to comply with this section, the Board shall (in the case of a failure to comply with paragraph (a)) reject the application or (in the case of a failure to comply with paragraph (b)), cancel the EEL.

## 93 Limitation of area of reservation

(1) Subject to subsection (2), no reservation shall exceed thirty-two thousand five hundred hectares irrespective of the nature of the mineral being sought, and no exclusive exploration licence shall be granted in respect of an area which is less than two thousand hectares.

(2) A reservation may exceed the maximum area specified in subsection (1), if the Board, having due regard to—

- (a) the particular suitability of the applicant and his or her financial and operational capacity to fulfill the obligations under and within the period of the exclusive exploration licence recommended by the Board in relation to the minerals specified therein; and
- (b) the geographical situation of the area and the nature and extent of previous and current prospecting and mining activity therein; and 5
- (c) the absence of and the need for geological mapping, geophysical and geochemical investigations and other relative geological detail in respect of the area;

recommends that the reservation should exceed the said maximum area. 10

(3) An exclusive exploration licence may require a licensee—

- (a) to furnish guarantees to the Minister to his or her satisfaction that the obligations of the holder under the exclusive exploration licence will be discharged;
- (b) to abandon a portion or portions of the reservation within such period or periods as are specified in the exclusive exploration licence. 15

(4) Nothing contained in this section shall be deemed to prohibit the fixing of additional terms and conditions under an exclusive exploration licence.

#### **94 Rights of licensee regarding exploration and pegging**

(1) Subject to such terms and conditions as may be prescribed in the exclusive exploration licence, an exclusive exploration licence may authorise the licensee to prospect on all registered base mineral blocks or specified registered base mineral blocks that are not being worked for two years or more when the licensee applied for the EEL, even if in respect of which there is in force an inspection certificate on the date of the lodging of the application for the licence. 20 25

(2) Subject to this section and to the terms and conditions of his or her exclusive exploration licence, a licensee—

- (a) shall have the exclusive right—
  - (i) of exploration and pegging within the exclusive exploration reservation; and 30
  - (ii) (if this right is expressly granted in its licence) of registering any mining location therein in anticipation of obtaining a special mining lease or special grant:

Provided that any mining location so registered shall not exceed the area permitted to be pegged under an exclusive prospecting licence, and Part IV (“Acquisition and registration of mining rights”) shall otherwise apply, with necessary changes, to the registration of any such mining location as if the licensee were the holder of an exclusive prospecting licence in respect of the area within which the mining location is to be sited; 35 40

- (b) may be issued with a special mining lease or special grant over any area within the exclusive exploration reservation in accordance with Part IX or XIX, as the case may be;

and no other person may prospect, peg or register a mining location therein, or be issued with such a special mining lease or special grant: 45

(3) Where under an exclusive prospecting licence issued before the date of commencement of an exclusive exploration licence, a prospector is entitled to prospect and peg within an area situated in the exclusive exploration reservation, the licensee



shall not explore or peg within that area except with the prospector's consent, which consent shall not be unreasonably withheld.

- (4) The Minister, on the recommendation of the Board and with the consent of the licensee, which consent shall not be unreasonably withheld, may authorise any person to peg and register a mining location within an exclusive exploration reservation for a mineral other than a mineral for which the licensee is authorised to explore:

Provided that—

- (a) no person shall peg and register more than three mining locations under such an authority;
- (b) the licensee shall retain his or her right to explore over any mining location pegged and registered under such an authority.

- (5) The rights set out in subsections (1) and (2) shall be exercised only by an approved staking agent, and where such licensee is not an approved staking agent they shall be exercised only through an approved staking agent whom the licensee has appointed in writing to be his or her representative.

(6) Except as otherwise provided in this Act, the issue of an exclusive exploration licence shall not affect the rights of the holder of a mining location within the exclusive exploration reservation.

(7) Any—

- (a) holder of a registered mining location who, except in the *bona fide* exercise of his or her rights, hinders or obstructs a licensee in the exercise of any rights to explore the mining location;
  - (b) licensee who unlawfully hinders or obstructs the holder of a registered mining location in the exercise of his or her rights;
- shall be guilty of an offence and liable to a fine not exceeding level 6 or, in default of payment, to imprisonment for a period not exceeding twelve months.

## 95 Right of licensee to take water

- Subject to this Act and the Water Act [Chapter 20:24] (No. 31 of 1998) and to the terms and conditions of the licence, a licensee shall, when *bona fide* exercising any of the rights conferred by his or her exclusive exploration licence, have the right to take for primary purposes, any water from land in the exclusive exploration reservation which is not closed to prospecting in terms of section 37 ("Ground not open to prospecting") or 44 ("Reservations against prospecting and pegging"), but only in so far as such taking does not interfere with the use of the water for primary purposes by the owner or occupier of the land.

## 96 Right of licensee to erect and remove temporary buildings and structures

- (1) Subject to this section and to the terms and conditions of the licence, a licensee shall, when *bona fide* exercising the rights conferred by his or her exclusive exploration licence, have the right—

- (a) to erect, on land in the exclusive exploration reservation which is open to prospecting, temporary accommodation for himself or herself and for his or her employees, and temporary buildings or machinery for the purposes of their work;

- Provided that this paragraph shall not confer any right, title or interest in the land upon which any such accommodation, buildings or machinery have been erected;

- (b) to remove, within three months or such longer period as may be determined by the PMD after the expiration or revocation of the licence, any accommodation, buildings or machinery which have been erected under paragraph (a).
- (2) A licensee who accommodates employees on occupied land situated within his or her exclusive exploration reservation for longer than seven days shall forthwith give the occupier of the land written notice of that fact, describing the site of the accommodation. 5
- (3) If—
  - (a) an occupier of land to whom notice has been given in terms of subsection (2) objects to the site chosen to accommodate the licensee’s employees; and 10
  - (b) the occupier and the licensee are unable to reach agreement on any such objection;

the licensee may, no earlier than seven days or later than thirty days after giving the notice to the occupier under subsection (2) or after such longer period as the PMD may allow, refer the matter to the PMD by transmitting to the PMD (in any of the ways specified in section 5 (“Manner of giving notices and serving documents under this Act”)) an authenticated copy of the notice to the occupier together with— 15

  - (a) an affidavit sworn by the licensee that he or she has tried in good faith but failed to agree terms with the occupier concerning the matter of the referral; and 20
  - (b) a duplicate notice of referral; and
  - (c) a duplicate written memorandum (not exceeding 2 000 words) giving the reasons why the employees in question ought to be accommodated in the area chosen by the licensee. 25- (4) Upon receipt by the PMD of the documentation referred to in subsection (3) (a), (b) and (c) the PMD must serve one copy of the notice of referral and memorandum of the licensee on the occupier of the land affected, together with a written notice (a copy of which must be simultaneously served on the licensee) of a meeting to be held before the PMD at the time and venue notified (not being more than seven working days after the service of the notice), at which meeting the PMD shall receive oral and written representations on the question where to accommodate the employees concerned. 30
- (5) If—
  - (a) the licensee or both the licensee and the occupier concerned fail to attend the meeting the PMD shall deem that the licensee waived his or her right to accommodate his or her employees on the land concerned; 35
  - (b) the occupier of the affected land fails to attend the meeting, the PMD may proceed to consider the merits of the reference and make such decision on the matter as he or she deems just and fair. 40
- (6) At the meeting the PMD shall follow the applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”).
- (7) At the conclusion of the meeting the PMD may make any of the following decisions (which decisions shall be reduced to writing and communicated to the parties without delay together with reasons therefor)— 45
  - (a) make a decision in accordance with the request of the licensee embodied in his or her memorandum; or

- (b) make a decision in accordance with the suggestion, if any, of the occupier of the land on the question where to accommodate the employees of the licensee; or
- (c) make his or her own decision on the same question; or
- 5 (d) dismiss the referral and forbid the employees of the licensee to be accommodated in the land in question;

10                    Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it, to the licensee and the occupier in any of the ways contemplated by section 5, and post a copy of the decision and the reasons for it on the public notice board of the Director's office.

(8) Any party to a referral under subsection (3) who is aggrieved by the decision of PMD may seek a review by the Administrative Court of such decision within twenty-one days after the date of its notification to the parties, whereupon the court may —

- 15 (a) uphold the decision of the PMD; or
- (b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds —
  - 20 (i) allowing extraneous or irrelevant considerations to affect the decision,
  - (ii) failure to take into account relevant considerations in arriving at the decision,
  - (iii) any material mistake of fact or law that tainted the decision;
  - (iv) gross irregularity in the proceedings of the PMD;
- 25 (whereupon the PMD may make the same or a different decision on the question referred back to him or her);
- (c) if it finds after affording the PMD the opportunity to respond (in writing, in person or through his or her legal representative), that there was interest in the cause, bias, malice or corruption on the part of PMD, substitute its
- 30 own decision on the matter for that of the PMD.

## 97 Right of licensee to take wood and timber

(1) Subject to this section and the Forestry Act [*Chapter 19:05*] and to the terms and conditions of the licence, a licensee shall, when *bona fide* exercising the rights conferred by his or her exclusive exploration licence, have the right to take and use, for firewood or for any purposes connected with exploration operations, any indigenous wood or timber from land in the exclusive exploration reservation which is open to prospecting and which is neither Communal Land nor land in regard to which a reservation has been made in terms of section 45 ("Reservation of timber on application by landholders and RDCs") or 47 ("Reservation of timber on instruction of Minister").

(2) Before taking indigenous wood or timber from alienated or partially alienated land in terms of subsection (1), a licensee shall give written notice —

- (a) if the land is occupied, to the occupier of the land,
  - (b) if the land is unoccupied, to the owner;
- 45 and thereafter the licensee and the occupier or owner may agree as to the area and period within which wood or timber may be taken, the quantity and kinds of wood or timber to be taken, the price to be paid for it and any other terms and conditions relating to the taking of wood or timber;

(3) A licensee shall not permit any person other than an employee of the licensee to cut, transport, burn any or wood or timber in terms of subsection (1) without first giving the occupier, if any, of the land on which the wood or timber is situated the right to do so on terms and conditions mutually agreed upon.

(4) If the occupier and the licensee are unable to reach an agreement on the matters referred to in subsection (2) and (3) within 14 days of the giving of the notice referred to in subsection (2) the licensee may (if the licensee wishes to exercise any rights in terms of this section) refer the matter to the PMD by transmitting to the PMD (in any of the ways specified in section 5 (“Manner of giving notices and serving documents under this Act”)) an authenticated copy of the notice referred to in subsection (2) together with—

- (a) an affidavit sworn by the licensee that he or she has tried in good faith but failed to agree terms with the occupier concerning the matter of the referral; and
- (b) a duplicate notice of referral; and
- (c) a duplicate written memorandum (not exceeding 2 000 words) giving the reasons why he or she should exercise the rights as specified in the notice referred to in subsection (2).

(5) Upon receipt by the PMD of the documentation referred to in subsection (4) the PMD must serve one copy of the notice of referral and memorandum of the licensee on the occupier of the land affected, together with a written notice (a copy of which must be simultaneously served on the licensee) of a meeting to be held before the PMD at the time and venue notified (not being more than seven working days after the service of the notice), at which meeting the PMD shall receive oral and written representations on the question whether and to what extent the licensee should exercise the rights specified in the notice referred to in subsection (2).

(6) If—

- (a) the licensee or both the licensee and the occupier concerned fail to attend the meeting the PMD shall deem that the licensee has waived his or her rights specified in the notice referred to in subsection (2);
- (b) the occupier of the affected land fails to attend the meeting, the PMD may proceed to consider the merits of the reference and make such decision on the matter as he or she deems just and fair:

Provided that the PMD shall not award to the licensee any rights in excess of those sought by the licensee made in a notice in terms of subsection (2).

(7) At the meeting the PMD shall follow the applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”).

(8) At the conclusion of the meeting the PMD may make any of the following decisions (which decision must be reduced to writing and communicated to the parties without delay together with the reasons therefor)—

- (a) make a decision in accordance with the request of the licensee embodied in his or her memorandum; or
- (b) make a decision in accordance with the suggestion, if any, of the occupier of the land on the question of whether and to what extent and subject to what conditions the licensee should exercise the rights specified in the notice referred to in subsection (2); or
- (c) make his or her own decision on the same question (subject to the proviso to subsection (5)(b)); or

- (d) dismiss the referral and forbid the licensee to exercise any rights under this section:

Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it, to the licensee and the occupier in any of the ways contemplated by section 5, and post a copy of the decision and the reasons for it on the public notice board of the Director's office.

(9) Any party to a referral who is aggrieved by the decision of PMD in terms of subsection (8) may seek a review by the Administrative Court of such decision within twenty-one days after the date of its notification to the parties, whereupon the court may—

- (a) uphold the decision of the PMD; or
- (b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—
  - (i) allowing extraneous or irrelevant considerations to affect the decision;
  - (ii) failure to take into account relevant considerations in arriving at the decision;
  - (iii) any material mistake of fact or law that tainted the decision;
  - (iv) gross irregularity in the proceedings of the PMD;

(whereupon the PMD may make the same or a different decision on the question referred back to him or her);

- (c) if it finds after affording the PMD opportunity to respond (in writing, in person or through his or her legal representative), that there was interest in the cause, bias, malice or corruption on the part of PMD, substitute its own decision on the matter for that of the PMD:

Provided that if the decision of the Administrative Court is in favour of the licensee, it shall not award greater rights than what the licensee sought in a notice referred in subsection (2).

## **98 Prohibition against sale, transfer, cession and assignment of EEL**

(1) The rights and obligations granted under an exclusive exploration licence shall be personal to the licensee, who may not, except with the Minister's written permission given in terms of subsection (2), sell, cede, assign or transfer any of those rights to any other person, whether directly or indirectly by the transfer of shares or other interests in the licensee that has the effect of transferring control over the licensee to some other person.

(2) The Minister may, on the recommendation of the Board and on such terms and conditions as the Board may recommend, which conditions the Minister may vary, permit a licensee to sell, cede, assign or transfer any of his or her rights and obligations to another person, whether directly or indirectly, subject to payment of a prescribed fee.

(3) Any sale, transfer, cession or assignment of an exclusive exploration licence in contravention of this section shall be invalid and the Minister shall on receiving proof of any such transaction direct the Board to cancel the licence, and the Mining Cadastre Registrar and the PMD concerned shall make the appropriate adjustments to their registers.

**99 Programmes of work to be submitted by licensee**

(1) At least once every six months from the commencement of an exclusive exploration licence, the licensee shall submit to the Board for its approval a programme of the exploration operations which will be carried out in the exclusive exploration reservation during the next six months.

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(2) Programmes submitted in terms of subsection (1) shall contain particulars of the licensee's exploration operations during the period in question, and the estimated cost of those operations.

(3) The Board shall without delay consider every programme submitted to it in terms of subsection (1), and—

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- (a) if satisfied that the programme makes provision for the proper exploration of the reservation and that the estimated expenditure is consistent with the programme, the Board shall approve it;
- (b) if not so satisfied, the Board shall reject the programme.

(4) If a licensee fails to submit a programme in terms of subsection (1), or if a programme submitted does not satisfy the Board, the Board shall by written notice require the licensee to submit a programme or an amended programme, as the case may be, within such period, being not more than thirty days, as the Board shall specify in the notice.

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(5) If at the end of the period specified in the notice in terms of this subsection (4), the licensee has not submitted a programme satisfactory to the Board or furnished compelling reasons to the Board why such programme cannot be timeously submitted, the Board shall inform the Minister and the Minister shall revoke the licence, whereupon and the Mining Cadastre Registrar and the PMD concerned shall make the appropriate adjustments to their registers.

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**100 Licensee to carry out work in accordance with programme, and to report thereon**

(1) A licensee shall carry out every programme of exploration operations approved by the Board under section 99 within the period covered by the programme, and within thirty days after the expiry of the period shall submit for the approval of the Board a written report on the work that was carried out during that period, including particulars of the expenditure incurred in the carrying out of the work.

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(2) The report referred to in subsection (1) shall include any information of a geological nature, including logs and assay results of drill cores from surface diamond drill holes, and reports on any geological, geochemical and geophysical work, obtained by the licensee in the course of his or her exploration, and copies of the report shall be submitted, no later than the date when it is submitted to the Board, to the Director of Geological Survey and the PMD.

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(3) In addition to the reports referred to in subsection (1), a licensee shall promptly submit to the Board such further reports as the Board may reasonably require in order to satisfy itself that the terms and conditions of the exclusive exploration licence are being complied with.

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(4) If a licensee fails to submit a report in terms of subsection (1), (2) or (3), or submits a report for the purpose of either of those subsections that is inadequate, or incomplete, or incorrect or inaccurate in any material particular, the Board shall notify him or her, in writing, that no report has been received or that the report is inadequate, or incomplete, or incorrect or inaccurate in any material particular, as the case may be.

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(5) If a licensee fails promptly to satisfy the Board that there are good reasons for the delay in reporting under subsection (1), (2) or (3), or fails promptly to respond to the Board's request to make good any inadequacy, incompleteness, incorrectness or inaccuracy in a report, the Board must recommend in writing to the Minister that the exclusive exploration licence be revoked.

(6) Where the Board has recommended in terms of subsection (4) that a licence be revoked, the Minister may either revoke the licence or direct on the basis of the national interest that the exclusive exploration licence shall continue to subsist subject to such conditions as the Minister shall notify in writing to the licensee through the Board.

### **101 Fees payable by licensee**

(1) For each year or part thereof during which an exclusive exploration licence subsists, the licensee shall pay the Mining Cadastre Registrar a fee, calculated in the prescribed manner by reference to the area of the exclusive exploration reservation (but excluding any area surrendered by the licensee on or before the date of payment of the fee), the minerals for which the licensee may explore and the duration of the licence.

(2) The fee referred to in subsection (1) shall be paid at such times as may be prescribed.

### **102 Failure to comply with conditions attaching to licence**

If, after due investigation, the Board is satisfied that a licensee has failed to comply with a material term or condition of his or her exclusive exploration licence—

- (a) the Board shall notify the licensee of that fact, in writing, and call upon the licensee to remedy the failure within a reasonable period specified by the Board in the notification; and
- (b) if the Board is not satisfied that the failure has been adequately remedied within the period specified in terms of paragraph (a), the Board shall inform the Minister, and the Minister shall without delay revoke the licence:

Provided that before making such a recommendation, the Board shall afford the licensee an adequate opportunity to make representations in the matter within seven days of such notification.

### **103 Amendment of EEL**

(1) A licensee may—

- (a) apply to the Board for the inclusion of an additional area in his or her exclusive exploration reservation:

Provided that such an application shall not be made before the licensee's first programme has been approved in terms of section 99 ("Programmes of work to be submitted by licensee");

- (b) at any time apply to the Board for the inclusion of an additional mineral in his or her exclusive exploration licence.

(3) In making an application in terms of subsection (1), the licensee shall state why the additional area or additional mineral should be included in the exclusive exploration licence, and if it is as a result of a discovery of an unlicensed mineral, or the additional discovery of a licensed mineral, he or she shall furnish full particulars of the nature of the mineral so discovered and the circumstances of its discovery.

(4) Sections 89, 90, 91 and 92 shall apply to an application in terms of subsection (1) as if the references in those sections to an application for an EEL were

to an application for an amendment to a EEL, and the references so the issuance of an EEL were references to an EEL as amended.

(5) Where an exclusive exploration licence is amended in terms of this section, the licensee shall—

- (a) pay the Mining Cadastre Registrar a prescribed amendment fee; and 5
- (b) submit, within such period as the Board may specify, an amended programme of operations to be carried out in the exclusive exploration reservation as so amended, and thereafter sections 99 and 100 shall apply with any necessary changes.

#### **104 Abandonment of exclusive exploration reservation** 10

(1) This section does not apply to the surrender by the licensee of any area of the EEL in terms of section 92 (“Conditions for renewal of EEL”) (if such surrender does not result in the area of the reservation to be retained by the licensee being divided into separate portions or being less than the minimum area specified in section 93 (“Limitation of area of reservation”)(1)) but in that event, notice of such surrender must be made in writing to the Board without delay. 15

(2) At any time before the Board has approved the second programme mentioned in section 99 (“Programmes of work to be submitted by licensee”), the licensee may, subject to subsection (3), by written notice to the Board abandon the whole or a portion of his or her exclusive exploration reservation. 20

(3) A licensee shall not be entitled—

- (a) to give more than one notice in terms of subsection (2); or
- (b) to give notice in terms of subsection (2) in respect of such portions of the exclusive exploration reservation as would result in the area of the reservation to be retained by him or her being divided into separate portions or being less than the minimum area specified in section 91(1). 25

(4) On receipt of a notice given under subsection (2), the Board shall inform the Minister thereof, and the Minister shall—

- (a) in the case of the abandonment of the whole reservation, revoke the licence; or 30
- (b) in the case of the abandonment of a portion of the reservation, amend the licence accordingly if the Board so recommends.

(5) At any time after the Board has approved the second programme mentioned in section 99, the licensee may make a written application to the Board to abandon the whole or a portion of his or her EEL (but in the latter case, no such application shall be made if the effect of the abandonment is that the area of the reservation to be retained by the licensee will be divided into separate portions or become less than the minimum area specified in section 93 (1)). 35

(6) If, on an application made under subsection (5), the licensee satisfies the Board that— 40

- (a) he or she has carefully explored the area authorised in his or her exclusive exploration licence or that portion which he or she desires to abandon, as the case may be; and
- (b) an economic deposit of any mineral which he or she is authorised to explore under the licence is unlikely to be discovered in the area authorised in his or her exclusive exploration licence or that portion which he or she desires to abandon, as the case may be; and 45

- (c) he or she has complied with all the terms and conditions of his or her licence; and
  - (d) he or she has duly carried out the programme last approved by the Board under section 99;
- 5 the Board may recommend to the Minister that the licence be revoked or amended, as the case may be, and the Minister may revoke or amend the licence accordingly.

(7) If on an application under subsection (5), the Board is not satisfied as to any matter mentioned in subsection (6), it shall refuse the application, and such refusal shall be final.

- 10 (8) Where an EEL is revoked or amended by the Board under this Part, the Board shall publish notice thereof in the *Gazette* and the ground shall become open to prospecting and pegging in terms of this Act on the day following the date of such publication.

- 15 (9) After having taken any action under this section the Board shall notify the PMD and Mining Cadastre Registrar to make the appropriate adjustments in their registers.

#### **105 Plans and reports to be lodged by licensee following expiry or revocation of EEL**

- 20 (1) Not later than three months after the expiry or revocation of an exclusive exploration licence, the person who was the licensee shall lodge with the Board in triplicate a final report, including plans and other relevant information, with respect to—

- 25 (a) exploration work carried out by the licensee on any mining location within the area authorised in his or her exclusive exploration licence during the currency of the licence; and
- (b) exploration work carried out by the licensee in any area within the area authorised in his or her exclusive exploration licence which has not been registered as a mining location.

- 30 (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

#### **106 Protection of dangerous workings and other environmental rehabilitation**

- 35 (1) Section 201 (“Open workings to be protected on abandonment, forfeiture or cancellation of location”) shall apply, with any necessary changes, to a licensee or former licensee in respect of shafts, open surface workings and excavations made by him or her in the area authorised in his or her exclusive exploration licence, and for this purpose the date on which the licence expired or was revoked shall be regarded as the date of abandonment of the reservation.

- 40 (2) In addition to subsection (1) the licensee or former licensee shall carry out on a continuous basis all restorative and other environmental remedial works which it has undertaken in its prospectus and environmental impact assessment to do, and in any event undertake and complete these works no later than three months after the abandonment of the reservation.

- 45 (3) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

**107 Challenge to validity of EEL, when barred**

After twelve months have elapsed since the date of publication in the *Gazette* of a licence, or an amendment of a licence, it shall not be competent for any person to allege that any of the provisions of this Act were not complied with in regard to the issue of the licence or the effecting of the amendment, as the case may be.

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**108 Appeals under Part VII**

(1) Any—

(a) applicant who is aggrieved by the Board's refusal to recommend the issue of an exclusive exploration licence to him or her in terms of section 89 ("Board's recommendation regarding application") or by any term or condition which the Board has recommended should be attached to such a licence to be issued to him or her; or

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(b) licensee or former licensee who is aggrieved by the amendment or revocation of his or her exclusive exploration licence in terms of this Part;

may appeal to the Minister against the decision, for which purpose the appellant must—

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(c) lodge (together with the prescribed fee, if any) the appeal in writing with the Secretary, no later than two working days after the appellant has received notification decision to be appealed against; and

(d) incorporate in the appeal the grounds on which the Board's decision should be set aside and what decision ought to be substituted for it;

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and thereupon the Secretary shall, without delay, transmit the appeal to the Minister together with the written decision of the Board in question.

(2) Upon receiving an appeal, the Minister may—

(a) dismiss the appeal by upholding the decision of the Board; or

(b) refer the decision back to the Board for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the Board to investigate the matter further and make a report and recommendations) on any one or more of the following grounds—

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(i) allowing extraneous or irrelevant considerations to affect the decision; or

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(ii) failure to take into account relevant considerations in arriving at the decision; or

(iii) any material mistake of fact or law that tainted the decision; or

(iv) gross but unwilful irregularity in the proceedings or the decision;

(the Minister shall, upon receiving the report or recommendations resulting from the Board's reconsideration, make a decision in accordance with paragraph (a), (c) or (d);

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or

(c) uphold the appeal and substitute any other decision for that of the Board, if the Minister finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

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Provided that the Minister shall not make a finding on this ground without affording the Board an opportunity to respond to the proposed finding;

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or

(d) in an exceptional case, overturn the decision of the Board and substitute his or her own decision on the basis of the overriding national interest.

(3) Any person aggrieved by a decision of the Minister under subsection (2)(a), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the appellant, whereupon the court may do any of the things the Minister is empowered to do under subsection (2)(a) or (b), as if references to the “Board” in those provisions were references to the Minister.

(4) The taking of a decision on review under subsection (3) shall not suspend the decision sought to be reviewed until the review is determined by the Administrative Court.

### 109 Exemptions

(1) If a licensee satisfies the Board that his or her operations have been or are likely to be restricted or curtailed by abnormal circumstances beyond his or her control, the Minister may, on the recommendation of the Board, give such directions as he or she considers appropriate for the relief of the licensee from the provisions of this Part.

(2) Directions given in terms of subsection (1) may include provision for—

(a) where the whole or a portion of the area authorised in the licensee’s exclusive exploration licence is abandoned, reserving the area so abandoned against prospecting and pegging pending a return to circumstances permitting normal operations, and granting the licensee a first option over the ground so reserved in respect of any fresh application in terms of this Part on the return of such circumstances;

(b) the suspension for an appropriate period of the licensee’s obligations under this Part and the extension of the exclusive exploration licence for a similar period.

(3) To the extent that any direction given in terms of subsection (1) is inconsistent with any other provision of this Act, the direction shall prevail.

(4) The Minister, on the recommendation of the Board, may at any time amend or revoke a direction given in terms of subsection (1).

(5) Where a direction given has the effect of lengthening the period of the licence in terms of subsection (1), the Minister shall publish notice of it in the *Gazette*:

Provided that despite anything in this section no direction or combination of directions shall be given the effect of which is to lengthen the period of a licence to more than double the period of the licence.

## PART VIII

### PEGGING OF UNDERGROUND EXTENSIONS

#### 110 Interpretation in Part VIII

In this Part—

“authorised holder” means a holder in whose favour an order has been made;

“holder”, in relation to an underground extension block, means the person in whose name such block is from time to time registered;

“order” means an order issued under this Part authorising a holder of a registered mining location to peg and register an underground extension;

“owner”, in relation to State land, means the Minister responsible for the administration of such land;

“reserved ground” means land upon which a prospector is prohibited in terms of section 37 (“Ground not open to prospecting”) (1)(a), (c), (d), (e), (f), (g) or (h) or section 44 (“Reservations against prospecting and pegging”) from exercising any of his or her rights under his prospecting licence;

“underground extension block” means a block which has been pegged and registered under an order.

### 111 Application for order

(1) If the holder of a registered mining location, other than a site, has reason to believe that a deposit of any mineral occurs underground beneath reserved ground, he or she may make written application to the Board for an order authorising him or her to peg and register an underground extension block or blocks contiguous to such location. 5

(2) The applicant shall furnish to the Board—

- (a) full details of the reserved ground; and 10
- (b) the reasons why he or she considers that such reserved ground warrants the granting of the authority; and
- (c) the depth from the surface of the ground at which he or she wishes to be authorised to mine such reef; and
- (d) full information as to his or her financial status; and 15
- (e) any other information required of him or her by the Board.

(3) On receipt of the application by the Board—

- (a) the chairperson of the Board may, if the application relates to reserved ground referred to in section 37(“Ground not open to prospecting”)(1) (a) or (g) issue a direction to the PMD to reserve the ground to which the application relates against prospecting and pegging in terms of section 44 ( “Reservations against prospecting and pegging”) and the PMD shall, without obtaining the authority of the Minister, forthwith reserve such ground accordingly; 20
- (b) the Board may refuse the application or approve it provisionally. 25

### 112 Procedure on provisional approval

If the Board provisionally approves such application it shall—

- (a) unless the chairperson of the Board has issued a direction to the PMD under section 111 ( “Application for order”) (3)(a), itself issue such a direction, and the PMD shall comply therewith; and 30
- (b) after the PMD has reserved the ground in accordance with a direction given under section 111(3)(a) or paragraph (a), notify the owner and the occupier, if any, of the reserved ground, of the application and require them to lodge, within thirty days of such notification, or such longer period not exceeding sixty days as the Board may, on application made within the period of thirty days, approve, their objections, if any, to the grant of the application. 35

### 113 Grant or refusal of application

(1) If an owner or occupier of reserved ground lodges objections to the grant of the application, the Board shall on a day fixed by it and notified to the applicant and the objector hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the application. 40

(2) If no objection has been received or if no notification was given in terms of section 112 ( “Procedure on provisional approval”)(1)(b) owing to the whereabouts of the owner and the occupier, if any, being unknown to the Board, after due inquiry, the Board shall proceed with the consideration of the application. 45

(3) After holding a hearing in terms of subsection (1) or considering the application in terms of subsection (2), the Board may refuse the application or, subject



to section 114 (“Board to be satisfied on certain points”), grant it, in whole or in part, subject to such terms and conditions as it may fix, including a condition as to the period within which the rights under the order may be exercised.

5 (4) If the owner or the occupier of the reserved ground is aggrieved by the grant of the application, he or she may, within twenty-one days after the Board’s decision, appeal to the Minister against the decision, for which purpose the appellant must—

- (a) lodge (together with the prescribed fee, if any) the appeal in writing with the Secretary; and
- 10 (b) incorporate in the appeal the grounds upon which the Board’s decision should be set aside and what decision ought to be substituted for it;

and thereupon the Secretary shall, without delay, transmit the appeal to the Minister together with the written decision of the Board in question.

15 (5) On any such appeal the Minister may revise or alter the decision of the Board and may revoke the grant of the application or amend the terms and conditions fixed by the Board, and thereupon any person aggrieved by the Minister’s decision may seek a review of such decision from the Administrative Court, which shall have the same powers on review as the High Court has under section 74(10), and for that purpose references in that subsection to the “Administrative Court” shall read as references to the “Board”.

20 (6) The taking of a decision on review under subsection (5) shall not suspend the decision sought to be reviewed until the review is determined by the Administrative Court.

#### **114 Board to be satisfied on certain points**

The Board shall not grant an order unless it is satisfied—

- 25 (a) that there is reason to believe that the deposit occurs beneath the reserved ground; and
- (b) that conditions permit of the mining of such reef below the surface without disturbing or detracting from the use or value of the reserved ground; and
- 30 (c) that the mining of such reef will be carried out without in any way interfering with the rights of the owner or occupier in the reserved ground or causing any foreseeable loss or damage to such owner or occupier; and
- (d) that the financial status of the applicant is such that he will be able to pay any compensation payable under section 120 (“Compensation under Part VIII”).

#### **35 115 Publication of order**

(1) If no appeal is made to the Minister within the prescribed time or, if an appeal is made, on receipt of the Minister’s decision thereon, the Board shall make an order consistent with the terms and conditions fixed by it or the Minister under section 113(3) or (5), as the case may be, authorising the applicant to peg and register  
40 an underground extension block on the reserved ground.

(2) Every order shall be published in the *Gazette* and a copy of the order shall be sent to the applicant and to the PMD of the mining province in which the reserved ground is situated and to the owner or the occupier of the reserved ground affected by such order.

**116 Rights of applicant; order may not be ceded**

(1) An authorised holder shall, subject to the terms and conditions of the order and in terms of this Act, have the sole and exclusive right of pegging and registering an underground extension block or blocks on the reserved ground:

Provided that such authorised holder need not post a prospecting notice or DP peg in terms of this Act. 5

(2) The rights granted under an order shall be personal to the holder thereof, who may not cede or assign any such rights to any other person (whether directly or indirectly by the transfer of shares or other interests in the holder that has the effect of transferring control over the holder to some other person), except to a person approved of by the Board, after consultation with the owner and the occupier, if any, of such reserved ground. 10

**117 Approval of transfer of underground extension block**

(1) An underground extension block may not be transferred (whether directly or indirectly by the transfer of shares or other interests in the holder of the block that has the effect of transferring control over the holder to some other person) except to a person approved of by the Board. 15

(2) The Board shall not approve of the transfer of an underground extension block to any person unless it is satisfied that his or her financial status is such that he or she will be able to pay any compensation payable under section 120 ("Compensation under Part VIII") and that the existing holder of the block has paid all compensation payable by him or her in terms of that section. 20

**118 Forfeiture of underground extension block**

(1) The terms and conditions attached to an order shall be binding on every registered holder of an underground extension block. 25

(2) If the holder of an underground extension block fails to comply with such terms and conditions, he shall be guilty of an offence and liable to a fine not exceeding level 6 or, in default of payment, to imprisonment for a period not exceeding twelve months.

(3) Whether or not an in compliant holder of an underground extension block is prosecuted for and convicted of an offence under subsection (2), if such holder fails to comply with any of the terms and conditions attached to such order, the owner or occupier of the affected land may apply to the PMD under section 273 ("PMD may grant interdicts") for an interdict in terms of that section as if the owner or occupier is a person legally interested in the mining location concerned. 30 35

(4) In addition the Board may direct the PMD to declare the underground extension block to be forfeited and the PMD shall, whether or not such block is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part XI ("Preservation of Mining Rights"), comply with such direction.

**119 Indicatory beacons; surface rights abrogated; secondary reefs**

(1) Notwithstanding anything to the contrary contained in this Act, the PMD may authorise the authorised holder to demarcate his or her underground extension block by indicatory beacons posted off the reserved ground in accordance with regulations.

(2) The holder of an underground extension block may not exercise in respect of such block any of the surface rights mentioned in section 140 ("Surface rights of miners"). 45

(3) The holder of an underground extension block who discovers a secondary reef therein shall notify the Board of such discovery, whereupon the Board may authorise such holder on such terms and conditions as it thinks fit to impose to mine such secondary reef.

5 (4) Such holder shall upon such authorisation register the secondary reef with the PMD in terms of this Act, but shall not post a DP peg or secondary reef registration notice or Q and R pegs.

(5) If the holder of an underground extension block contravenes subsection (2), (3), or (4), he or she shall be guilty of an offence and liable to a fine not exceeding  
10 level 6 or, in default of payment, to imprisonment for a period not exceeding twelve months.

(6) Whether or not a holder of an underground extension block is prosecuted for and convicted of an offence under subsection (2), (3) or (4), if such holder is reasonably suspected of contravening any of those provisions, the owner or occupier of the affected  
15 land may apply to the PMD under section 273 (“PMD may grant interdicts”) in terms of that section for the appropriate interdict as if the owner or occupier is a person legally interested in the mining location concerned.

(7) In addition the Board may direct the PMD to declare the underground extension block to be forfeited and the PMD shall, whether or not such block is currently  
20 protected from forfeiture by an inspection or protection certificate issued in terms of Part XI (“Preservation of Mining Rights”), comply with such direction.

## **120 Compensation under Part VIII**

Any owner or occupier of reserved ground who is injuriously affected by any mining operations carried on in any underground extension block shall be entitled to  
25 recover compensation from the holder of such block in such amount as may be agreed or, failing agreement, as shall be determined by the Administrative Court.

## **121 Conversion of underground extension block**

(1) If the surface of an underground extension block ceases to be reserved ground, the holder of such block shall immediately notify the PMD of the fact, and if  
30 the PMD is, after due inquiry, satisfied that such ground is no longer reserved ground, he or she shall direct such holder to beacon the block in terms of this Act and, if such block has been pegged in irregular form, to erect pegs in terms of section 52 (“Pegging of precious metal, precious stones or base mineral claims”) (4).

(2) As soon as the holder has complied with the directions of the PMD under  
35 subsection (1) the block shall cease to be an underground extension block and shall no longer be held subject to the order under which it was pegged and registered.

## **PART IX**

### **MINING LEASES**

## **122 Interpretation in Part IX**

40 In this Part—

“application” means an application under section 123(1), (2) or (3) for an ordinary or special mining lease;

“applicant”, without qualification, means an ordinary mining lease applicant or special mining lease applicant;

45 “lessee”, without qualification, means the holder of an ordinary mining lease or a special mining lease;

- “material change”, in relation to the particulars of a special mining lease, includes, but is not limited to, any increase the area of the special mining lease by adding a contiguous area;
- “mining development plan” means a plan for the development and operation of a proposed special mining lease conforming to section 127 (“Processing of special mining lease applications”)(1)(b)(i) A or B, and including all the elements specified in Part II of the Sixth Schedule (“Information and Plan Required in Connection with Application for Ordinary and Special Mining Leases”); 5
- “non-consenting occupier”, for the purpose of section 125(3)(a), means an occupier of land who either refuses or fails to swear an affidavit referred to in section 125(1)(e)(i); 10
- “ordinary mining lease applicant” means an applicant for a mining lease in the circumstances referred to in section 123(1);
- “special mining lease applicant” means an applicant for a mining lease which— 15
- (a) is a juristic person incorporated in one of the ways specified in section 123(5); and
  - (b) is the holder of an exclusive exploration licence, or of one or more contiguous registered mining locations; and
  - (c) proposes to implement a mining development plan. 20

### 123 Application for mining lease: preliminary requirements

- (1) A person who seeks the registration of—
  - (a) more than four contiguous blocks; or
  - (b) one or more claims or blocks which, if, registered would result in a person being the holder of more than four or more contiguous blocks; 25

shall be deemed to be applying for an ordinary mining lease in respect of the area covered by those blocks:

- (2) The following holders of mining locations namely—
  - (a) every such holder whose holding on the date of commencement of this Act consists of four contiguous blocks of claims and any one or more additional and contiguous claims, must make application for an ordinary mining lease under this Part: 30
 

Provided that every such holder shall have 90 days from such date to lodge an ordinary mining lease application under this section;
  - (b) every such holder whose holding, after the date of commencement of this Act— 35
    - (i) at any time exceeds the maximum holding (that is to say exceeds four contiguous blocks of claims) beyond which the mining locations must be held under title of an ordinary mining lease, must make an application for an ordinary mining lease under this Part within 90 days of his or her; 40
    - (ii) consists of four contiguous blocks of claims but wishes at any time after that date to register one or more additional and contiguous claims to such block of claims, must make an application for a ordinary mining lease comprising the additional claims or blocks under this Part instead of registering the additional claim or block separately; or 45
  - (c) every such holder who is not a Zimbabwean small scale miner, whether or not his or her holding after the date of commencement of this Act

exceeds the maximum holding (that is to say exceeds four contiguous blocks of claims) beyond which the mining locations must be held under title of an ordinary mining lease, must make application for an ordinary mining lease in respect of his or her claim or contiguous blocks of claims (however few or many such claims or blocs are) under this Part:

Provided that only one mining lease shall be issued in respect of any single combination of claims or blocks of claims that are contiguous.

(3) A holder of one or more mining locations person who is in breach of the requirement to register an ordinary mining lease in terms of subsection (2)(a), (b) or (c) commits a civil default, for which the PMD for the mining province wherein a civil default is committed shall serve upon the defaulter a civil penalty order which—

(a) directs the defaulter—

(i) to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 4; and

(ii) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) commence the process of applying for an ordinary mining lease under this Part;

(b) subjects the defaulter to either or both of the following penalties, as may be appropriate—

(i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;

(ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(4) A person—

(a) who wishes to carry out mining operations, or any other operations for mining purposes upon a defined area within an area reserved under section 44 (“Reservations against prospecting and pegging”) against prospecting or pegging in the following circumstances—

(i) under authority to prospect on reserved ground granted in favour of that person; or

(ii) pursuant to an exclusive exploration licence issued to that person; or

(iii) pursuant to a special grant held by that person;

must apply in writing to the PMD for a special mining lease in respect of that defined area; or

(b) who wishes to register one or more claims or a block of claims, whether or not exceeding 40 hectares in extent, pursuant to rights conferred by an exclusive prospecting licence, must apply in writing to the PMD for a special mining lease in the following circumstances, namely where—

(i) he or she is not a citizen of Zimbabwe, or is a company, private business corporation, partnership, syndicate, joint venture or other business entity the majority of whose members are not citizens of Zimbabwe; and

(ii) he or she does not intend to operate as a small-scale miner, in that he or she is able to satisfy the PMD that—

- A. he or she intends, within the first year of operation, to achieve either or both of the following targets—
      - I. to employ at any time more than 50 persons (including contractors) for periods (whether continuous or not) exceeding six months in any year; and 5
      - II. to produce more than 1 200 tonnes of ore a year; or
    - B. before commencing mining operations or within the first year of commencing such operations, he or she will invest not less than one hundred thousand United States dollars or its equivalent in any foreign currency in implementation of his or her mining development plan. 10
  - (5) No application for an ordinary mining lease shall may be made except by or in the name of the following, and no ordinary mining lease shall be issued except to the following— 15
    - (a) an individual, unless he or she is a citizen of Zimbabwe; or
    - (b) a partnership consisting of a majority of whose partners who are citizens or permanent residents of Zimbabwe; or
    - (c) a private company the majority of whose members are citizens or permanent residents of Zimbabwe; or 20
    - (d) a public company incorporated in Zimbabwe:

Provided that an ordinary mining lease may be issued to two or more persons jointly if each of them is qualified under this subsection to be issued with the lease.
  - (6) No application for an special mining lease shall may be made except by or in the name of the following, and no ordinary mining lease shall be issued except to the following— 25
    - (a) a private company incorporated in Zimbabwe; or
    - (c) a foreign company registered in Zimbabwe; or
    - (d) a locally incorporated subsidiary of a foreign company; or
    - (d) a public company incorporated in Zimbabwe; 30

Provided that a special mining lease may be issued to two or more persons jointly if each of them is qualified under this subsection to be issued with the lease.
  - (7) Where mining lease is issued to two or more persons jointly, their obligations under the lease shall be joint and several. 35
- 124 Form and contents of mining leases, duration of leases, mining rights of lessees, etc**
- (1) A mining lease shall be in the form prescribed and shall contain special conditions, if any, imposed by the Board or the Minister (as the case may be), and in addition be subject to the following standard conditions— 40
    - (a) the mining lessee must, before commencing operations comply with the section 154 (“Pre-inspection requirements and first and subsequent inspection certificates”), and must have special regard for its environmental and social responsibilities undertaken pursuant to that section; and 40
    - (b) the mining lessee’s programme of mining operations must ensure the efficient, timely and beneficial use of the mineral resources concerned; 45



and

- (c) the mining lessee must, to the fullest extent possible, procure and use local goods and services and employ of Zimbabwean citizens; and
- (d) promptly notify the PMD upon becoming aware of—
  - 5 (i) any accident or incident resulting from or connected with its mining operations having an adverse impact on the health or safety of its employees or other persons, or on the health of the environment; and
  - (ii) any material breach of its lease;
- 10 (e) in the case of a special mining lease, the lessee must provide and maintain a prescribed security deposit to secure funding for the fulfilment of obligations of all or any kind under the lease, including obligations of all or any kind under the lease that may arise in the future.

15 (2) Upon issuance of a mining lease, the holder of the mining lease shall be deemed to have signed it and to have agreed to be subject to its terms and conditions.

(3) Subject to section 154 (“Pre-inspection requirements and first and subsequent inspection certificates”)—

- 20 (a) an ordinary mining lease shall be issued for a definite period of twenty five years subject to renewal for a further periods of not more twenty-five years commensurate with the size of the discovery, the plans for its exploitation and the life of the project, on the basis of an evaluation made by the Board ;
  - 25 (b) a special mining lease shall not be issued for a period exceeding twenty-five years, but provision may be made for its renewal by the Minister on notice to the Board and with the President’s approval for periods not exceeding ten years, having regard to the life of the mine concerned and the circumstances then prevailing.
- (4) Every lessee shall have the exclusive right of mining, within the vertical limits of the mining lease—
- 30 (a) any ore or deposit of a mineral which he or she is authorised to mine by the terms and conditions of the lease; and
  - (b) any ore or deposit of any other mineral, except energy minerals, precious stones and declared strategic minerals, which may be discovered within the mining lease, after he or she has notified the PMD of the discovery.

## 35 **125 Processing of ordinary mining lease applications**

(1) An ordinary mining lease applicant shall make application to the PMD having jurisdiction over the area in which the mining lease is to be located by taking the following steps—

- 40 (a) peg on any ground open to prospecting the boundaries of the proposed mining lease area (in the case of a section 122(2)(b) mining lease applicant, such area shall not exceed the area permitted to be pegged under an exclusive prospecting licence); and
- (b) make a written application to the PMD in the form (if any) prescribed, accompanied by—
  - 45 (i) a sketch plan based on a map issued under the authority of the State and of a scale of not less than 1: 50 000 identifying the position of the area applied for, specifying the extent of such area and indicating the co-ordinates of the temporary beacons of the site or sites in question;

- (ii) a report on the anticipated impact of mining operations on the environment and any measures to be taken to assess, prevent or minimise such impact, including proposals for—
      - A. the prevention or treatment of pollution; and
      - B. the treatment and disposal of waste; and 5
      - C. the protection of rivers and other sources of water; and
      - D. the reclamation and rehabilitation of land disturbed by mining operations; and
      - E. monitoring the effect of mining operations on the environment; (this part of the report shall constitute the environmental impact assessment of the applicant, and a copy of it must be served on the Director General of the Environmental Management Agency before or at the same time as an application for a special mining lease is made under this section); 10
    - and 15
    - (iii) particulars of the minerals which are being mined or are to be mined in the area applied for; and
    - (iv) a plan of work to be done in the next twelve months in connection with the mining lease concerned (being the “work plan” that is to be furnished to the PMD under section 154 (“Pre-inspection requirements and first and subsequent inspection certificates”)); 20
    - (v) a list of all the registered mining locations of which he or she is the sole or joint holder and which are situated within the area applied for, and the certificates of registration of such locations; and
    - (vi) the name and address of each owner and the occupier, if any, of the land to which the application relates; and 25
    - (vii) any other information which might reasonably affect the grant or refusal of the application or which relates to the applicant’s ability to perform his or her obligations under an ordinary mining lease;
    - (c) furnish to the PMD any other information relevant to the application which the PMD or the Board may require; 30
    - (d) furnish to the PMD the following affidavits—
      - (i) an affidavit sworn by the occupier of the affected land that the occupier agrees to such pegging; or
      - (ii) in the absence of affidavits referred to in subparagraph (i) by every one of the affected occupiers, an affidavit sworn by the applicant that he or she has served notice (in any of the ways specified in section 5, on any affected occupier of the land, to the effect that the ordinary mining lease applicant proposes to register a mining lease that includes land open to prospecting belonging to or being held by any occupier of such land: 35 40
- Provided that this paragraph (paragraph (e)) does not apply to an applicant referred to in section 123(2)(a) or (c) if no additional area is sought to be included in the proposed ordinary mining lease area. 45
- (2) Within 14 days of receiving an application for an ordinary mining lease in terms of subsection (1) the PMD shall—
- (a) provisionally approve the application for the ordinary mining lease in a case referred to in the proviso to section (1)(e), and notify the applicant in writing accordingly; or 50

(b) proceed in terms of subsection (3) in any other case.

(3) Pursuant to subsection (2)(b) the PMD must —

(a) notify the applicant and every non-consenting occupier of a meeting to be held before the PMD at the time and venue notified (not being more than seven working days after the service of the notice), at which meeting the PMD shall receive oral and written representations on the application for the provisional registration of the ordinary mining lease area;

(b) post one copy on the public notice board of the PMD's office of an invitation to interested persons (that is to say existing or potential small-scale or other miners or other interested persons within or adjacent to the area affected by the proposed ordinary mining lease area) to attend at the meeting referred to in paragraph (a) and make oral and written representations at that meeting on the question whether to grant or refuse provisional registration for the proposed ordinary mining lease area:

Provided that in such invitation or at the meeting the PMD may restrict such interested persons to submitting written representations only before or no later than 48 hours after the conclusion of the meeting.

(4) In amplification or clarification of the provisions of subsection (3)—

(a) the only objections by an owner, occupier or other interested person that the PMD can entertain are—

(i) that the ground which is the subject of the proposed mining lease is not ground that is open to prospecting and pegging; or

(ii) any allegation that the title of the ordinary mining lease applicant to any of the mining locations to which the application relates is defective on the ground that the pegging of such locations was invalid or illegal or that this Act was not complied with prior to the issuance of the certificate of registration in respect of such locations;

(b) the PMD may provisionally approve the application in respect of the whole of the area applied for or, having regard to the dispersal of the mineral deposits within the area, to the extent of the ground necessary for the mining operations mentioned in subsection (3)(b)(iii) and to any other factor which the PMD may deem to be relevant;

(c) if the PMD has provisionally granted the application of the ordinary mining lease applicant, the applicant may peg the site or sites in question without, however, engaging in any works not strictly relevant to the pegging itself, until final approval for the registration of the mining lease is granted under this Part;

(d) if the ordinary mining lease applicant or the occupier of the affected land fail to attend at the meeting referred to in subsection (3)(b), the PMD may proceed in the absence of either or both to grant or refuse the application for the provisional registration of the lease applied for and, if the application is granted, make the relevant recommendations in accordance with subparagraph (g)(i);

(e) at the meeting referred to in subsection (3) the PMD shall follow the applicable rules set out in the Fourth Schedule ("Conduct and powers of PMDs at stakeholders' meetings, referrals and hearings");

(f) at the conclusion of the meeting referred to in subsection (3) the PMD may, in the presence of the parties (if any) at the meeting—

(i) provisionally approve the application of the ordinary mining lease applicant without amendment, that is to say, in respect of the whole of the area applied for; or

- (ii) provisionally approve the application of the ordinary mining lease applicant subject to a defined reduction in the area of the site originally applied for; or
- (iii) provisionally reject the application of the ordinary mining lease applicant (either on the merits of the application or because the PMD is for any reason unable to make a decision on the basis of the evidence presented to him or her): 5

Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it, to the applicant and the occupier in any of the ways contemplated by section 5, and post a copy of the decision and the reasons for it on the public notice board of the PMD's office; 10

- (g) as soon as possible after the conclusion of the meeting notified under subsection (3) the PMD shall take the following steps— 15
  - (i) make a written summary of the proceedings of the meeting in the form of a report to the Board together with his or her recommendation to the Board to give final approval to his or her decision referred to in paragraph (e), and in so doing may suggest to the Board any conditions subject to which final registration may be made (but if the PMD provisionally rejected the application otherwise than on its merits, the PMD must expressly request the Board to make the appropriate decision on the basis of any additional information that may be made available to the Board); 20
  - (ii) transmit together with his or her report all the following particulars of the provisional registration to the Board within seven working days of the provisional registration— 25
    - A. a map to the scale of at least 1: 50 000 showing the co-ordinates of the temporary beacons of the site or sites in question; and
    - B. all copies of the occupiers' affidavits if any; and 30
    - C. the notice of the PMD's decision referred to in paragraph (f); and
    - D. if, as a result of the meeting notified under subsection (3), the PMD provisionally approved the application, the provisional registration number assigned to the ordinary mining lease. 35

(5) Upon transmission of the particulars referred to in subsection (4)(g) the Board (subject to subsection (6)) may, if it is of the opinion that the transmitted particulars are—

- (a) in order, consider whether to grant or reject the final registration of the ordinary mining lease in question, and if— 40
  - (i) the Board—
    - A. grants the final registration of the ordinary mining lease in question, subject to any conditions it may impose (including an amendment of the area of the ordinary mining lease originally applied for, in which event section 162 ("Submission of amended plan") shall apply to such amendment), it shall issue to the applicant an ordinary mining lease and enter the relevant particulars concerning the lease in the Mining Cadastre Register and confirm in writing to the PMD concerned that the ordinary mining lease has been finally issued and registered, subject to subsection (12); 45 50

- B. rejects the final registration of the ordinary mining lease, transmit the reasons for such rejection to the PMD concerned;
- (ii) not in order or incomplete or inadequate —
- A. request further information or request an adjustment to the particulars transmitted by the PMD (which adjustment may include a reduction in the area of the site or sites applied for), before making a decision in accordance with subparagraph (i); and
- B. upon satisfactory compliance with such request, proceed in accordance with paragraph (i);
- (c) upon receiving from the secretary of the Board —
- (i) confirmation of the final registration of the ordinary mining lease in accordance with paragraph (a)(i)A, the PMD concerned shall notify the ordinary mining lease applicant to apply for a certificate of registration of the ordinary mining lease under subsection (7); or
- (ii) notice of rejection of the final registration of the ordinary mining lease in accordance with paragraph (a)(i)B, the PMD concerned shall notify the ordinary mining lease applicant of the Board's reasons for the rejection of the application; or
- (iii) a request for further information or a request for an adjustment of the particulars transmitted by the PMD concerned (which adjustment may include a reduction in the area of the site or sites applied for), the PMD shall —
- A. if he or she is able to comply with the request without the need to involve the applicant, obtain the information or effect the adjustment and transmit the further information or adjusted particulars to the Board forthwith; or
- B. if he or she requires the cooperation of the applicant to comply with the Board's request, communicate the request to the applicant forthwith:
- Provided that if —
- I. within 21 days of being notified of such request, the applicant fails to comply with the request, the applicant shall be deemed to have abandoned the application for the lease; or
- II. in the case of a request for the adjustment of the application to reduce the area of the ordinary mining lease area applied for, the applicant must within 21 days of being notified of such request (or such extension of that period not exceeding 30 days as the PMD, on notice to the Board, may approve at the request of the applicant) submit to the Board through the PMD an amended sketch plan showing the reduced area;
- (iv) notice of any additional conditions which the Board wishes to attach to the ordinary mining lease, the PMD shall communicate the conditions to the ordinary mining lease applicant forthwith:
- Provided that if, within 21 days of being notified of such conditions, the ordinary mining lease applicant —

- A. signifies its assent to those conditions through the PMD, the Board shall without delay proceed in terms of paragraph (a)(i)(A);
  - B. fails to make any written response to the proposed conditions or refuses assent to any condition without giving reasons therefor, the ordinary mining lease applicant shall be deemed to have abandoned the application; 5
  - C. refuses assent to any of the conditions, giving reasons for such refusal, the PMD shall transmit particulars of the same to the Board, whereupon it may uphold, withdraw or vary the conditions, and the applicant within 21 days of being notified thereof may signify his or her assent to those conditions through the PMD (in which event the Board shall without delay proceed in terms of paragraph (a)(i)(A)), or if within that period the applicant rejects or fails to respond to the Board's decision on the conditions, the applicant shall (unless it has earlier lodged an application for review of the Board's decision under subsection (8)) be deemed to have abandoned the application. 10 15
- (6) In considering an application under subsection (5) the Board shall not approve an application unless it is satisfied— 20
- (a) that the applicant's financial status is such that he or she will be able to meet any payment which may become due by him or her under the provisions of section 244 ("Compulsory purchase or sale of private land covered by mining lease"); and 25
  - (b) that mining operations on a substantial scale are likely to be conducted for a considerable period within the area applied for; and
  - (c) that no ground not open to prospecting, save as provided in section 37 ("Ground not open to prospecting") is included in the area to which such approval would relate. 30
- (7) Upon receiving from the PMD notice of the final registration of the ordinary mining lease, the applicant must apply to the PMD for a certificate of final registration in the manner prescribed and on payment of the prescribed fee, no later than 30 days of the receipt of such notice or no later than any extension of that period not exceeding a further 30 days that the PMD may grant for any good and sufficient reason shown to the PMD (and if such applicant fails to apply for a final certificate of registration within such period or extended period, the applicant shall be deemed to have abandoned the ordinary mining lease). 35
- (8) The PMD shall enter in his or her register the fact that—
- (a) a final certificate of registration of the ordinary mining lease has been issued; or 40
  - (b) the ordinary mining lease applied for has been abandoned due to the operation of subsection (7);
- and shall forthwith notify the Mining Cadastre Registrar of such registration or abandonment, as the case may be, whereupon the Mining Cadastre Registrar shall— 45
- (c) make the appropriate entries in the Mining Cadastre Register and as soon as possible; and
  - (d) send a copy of the lease to the lessee if the ordinary mining lease applied for has not been abandoned.



- (9) Any person who is aggrieved by a decision of the Board under this section, that is to say any ordinary mining lease applicant, or other existing or potential small-scale or other miner having a demonstrable interest in the issue of such registration, or any occupier of any land affected by such registration, may, within twenty-one days after the date of the notification of its decision, seek a review of such decision by the Administrative Court, whereupon the court may —
- (a) uphold the decision of the Board; or
  - (b) refer the decision back to the Board for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds —
    - (i) allowing extraneous or irrelevant considerations to affect the decision; or
    - (ii) failure to take into account relevant considerations in arriving at the decision; or
    - (iii) any material mistake of fact or law that tainted the decision; or
    - (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision; or
    - (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;
  - or
  - (c) if the application for review is made at the instance of an aggrieved occupier of any land affected by such registration —
    - (i) refer the decision back to the Board as provided in paragraph (b); or
    - (ii) order that a lesser area should be registered because it is satisfied that the area to be excised is not ground open to prospecting; or
    - (iii) give such other order or direction in the matter as the court considers just.

#### **126 Reservation of ground against prospecting and pegging in respect of special mining lease application, and termination of reservation**

- (1) Where a special mining lease application is made for a mining lease over land which is not registered as a mining location in the name of the special mining lease applicant, the PMD shall, without delay, reserve the ground against prospecting and pegging in terms of section 44 (“Reservations against prospecting and pegging”).
- (2) The owner or occupier of land shall, in respect of the ground not so registered in the name of the special mining lease applicant and reserved under subsection (1) and which was open to prospecting at the time such reservation was made, during the period of the reservation, have the same rights in all respects as if the ground not so registered formed part of a mining location registered in the name of the special mining lease applicant.
- (3) Where the PMD has reserved ground under subsection (1) and —
- (a) the application is withdrawn or is deemed to have been withdrawn or abandoned under this Part, or has been refused, the PMD shall forthwith withdraw the reservation;
  - (b) the application has been provisionally approved in respect of a portion of the area applied for, the PMD shall forthwith withdraw the reservation in respect of the portion not approved;
  - (c) the application has been approved in respect of the whole or a portion of an area applied for, the PMD shall forthwith withdraw the reservation —

- (i) after the mining lease has been issued; or
- (ii) after the application has been withdrawn or is deemed to be withdrawn or abandoned under this Part;

as the case may be.

## **127 Processing of special mining lease applications** 5

(1) A holder of an exclusive exploration licence, or of one or more contiguous registered mining locations, may apply in writing in the first instance to the appropriate PMD for a special mining lease in respect of a defined area within which its mining location or locations are or are to be situated, for which purpose it shall—

- (a) make a written application to the PMD in the form (if any) prescribed, accompanied by— 10
  - (i) a draft mining development plan incorporating, or under cover of, a declaration setting forth the following—
    - A. that the applicant intends to establish or develop a mine in the defined area and that— 15
      - I. investment in the mine will be wholly or mainly in foreign currency and will exceed one hundred million United States dollars in value (or such lesser or greater sum as the Minister may prescribe generally or in relation to a specific mineral, whether that mineral is strategic or not); 20

and
      - II. the mine's output is intended principally for export; 25

or
    - B. that the applicant intends to establish or develop a mine in the defined area in respect of which it will seek permission from the Board to depart from either or both of the criteria mentioned in subparagraph (i) A, BI or II, having regard to— 25
      - I. the nature and size of the mineral deposits within the area over which the applicant seeks a special mining lease; 30

and
      - II. the estimated life and economic viability of the proposed mine; and
      - III. the extent of the investment that will be made in the proposed mine; and
      - IV. the proposed method of extraction, mining and treatment of ore from the proposed mine; and 35
      - V. any other relevant circumstance;
  - (ii) a sketch plan based on a map issued under the authority of the State and of a scale of not less than 1: 50 000 identifying the position of the area applied for, specifying the extent of such area and indicating the co-ordinates of the temporary beacons of the site or sites in question; and 40
  - (iii) a report on the anticipated impact of mining operations on the environment and any measures to be taken to assess, prevent or minimise such impact, including proposals for— 45
    - A. the prevention or treatment of pollution; and
    - B. the treatment and disposal of waste; and

- C. the protection of rivers and other sources of water; and
  - D. the reclamation and rehabilitation of land disturbed by mining operations; and
  - E. monitoring the effect of mining operations on the environment;
- (this part of the report shall constitute the environmental impact assessment of the applicant, and a copy of it must be served on the Director General of the Environmental Management Agency before or at the same time as an application for a special mining lease is made under this section);
- and
- (iv) particulars of the minerals which are being mined or are to be mined in the area applied for and other information specified in Part I of the Sixth Schedule (“Information and Plan Required in Connection with Applications for a Special Mining Lease”); and
  - (v) a list of all the registered mining locations of which it is the sole or joint holder and which are situated within the area applied for, and the certificates of registration of such locations; and
  - (vi) the name and address of each owner and the occupier, if any, of the land to which the application relates; and
  - (vii) any other information which might reasonably affect the grant or refusal of the application or which relates to the applicant’s ability to perform its obligations under a special mining lease, including in particular any agreement entered into under section 6 (“Strategic minerals”) to exploit any strategic mineral under the title of a special mining lease;
- and
- (b) any other information relevant to the application which the PMD or the Board may require; and
  - (c) the following affidavits—
- (i) an affidavit sworn by the occupier or each of the occupiers of the affected land that the occupier or occupiers agree to the pegging of the outer boundaries of the area of the special mining lease applied for; or
  - (ii) in the absence of the affidavit or any of the affidavits referred to in subparagraph (i), an affidavit sworn by the special mining lease applicant that it has served notice (in any of the ways specified in section 5) on any affected occupier of the land, to the effect that the special mining lease applicant proposes to register a mining lease that includes land open to prospecting belonging to or being held by any occupier of such land.
- (2) The PMD shall—
- (a) grant approval for the provisional registration of the special mining lease if the sole occupier or every occupier (as the case may be) of land within the area applied for has furnished the affidavit referred to in subsection (1)(c)(i), whereupon the special mining lease applicant may peg on any ground open to prospecting the outer boundaries of the area of the special mining lease applied for within which its mining location or mining locations are or will be situated:
- Provided that—
- (i) save as is provided in section 41 (“Roads and railways may be included in location under certain conditions”), ground not registered

- as a mining location in the name of the applicant shall not be included within the defined area unless it is open to prospecting;
- (ii) the applicant shall not engage in any works not strictly relevant to the pegging itself, until final approval for the registration of the special mining lease is granted under section 128 (“Issuance of special mining lease, registration of same; reviews, etc”); 5
- or
- (b) in the absence of the affidavit or any of the affidavits referred to in paragraph (i). proceed in terms of subsection (3).
- (3) On receipt of a special mining lease application under subsection (1) the PMD must, if he or she withholds provisional registration under subsection (2)— 10
- (a) notify the applicant and every non-consenting occupier of a meeting to be held before the PMD at the time and venue notified (not being more than seven working days after the service of the notice), at which meeting the PMD shall receive oral and written representations on the application for the provisional registration of the mining lease area; and 15
- (b) post one copy on the public notice board of the PMD’s office of an invitation to interested persons (that is to say existing or potential small-scale or other miners or other interested persons within or adjacent to the area affected by the proposed mining lease area) to attend at the meeting referred to in paragraph (a), to enable them to make oral and written representations at that meeting on the question whether to grant or refuse provisional registration for the proposed mining lease area: 20
- Provided that in such invitation or at the meeting the PMD may restrict such interested persons to submitting written representations only before or no later than 48 hours after the conclusion of the meeting. 25
- (4) In amplification or clarification of the provisions of subsection (3)—
- (a) the only objection by an owner, occupier or other interested person that the PMD can entertain is that the ground which is the subject of the proposed mining lease is not on the date of reservation of the ground open to prospecting and pegging; 30
- (b) the PMD may approve the application in respect of the whole of the area applied for or, having regard to the dispersal of the mineral deposits within the area, to the extent of the ground necessary for the mining operations and to any other factor which the PMD may deem to be relevant; 35
- (c) if the special mining lease applicant or the occupier of any affected land fail to attend at the meeting as notified under subsection (3), the PMD may proceed in the absence of either or both to grant or refuse the application for the provisional registration of the lease applied for and, if the application is granted, make the relevant recommendations in accordance with paragraph (f)(i); 40
- (d) at the meeting notified under subsection (3) the PMD shall follow the applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”);
- (e) at the conclusion of the meeting notified under subsection (3) the PMD may, in the presence of the parties (if any) at the meeting — 45
- (i) provisionally approve the application of the special mining lease applicant without amendment that is to say, in respect of the whole of the area applied for; or
- (ii) provisionally approve the application of the special mining lease applicant subject to a defined reduction in the area of the site originally applied for; or 50

- (iii) provisionally reject the application of the special mining lease applicant (either on the merits of the application or because the PMD is for any reason unable to make a decision on the basis of the evidence presented to him or her);

5 and give notice of his or her decision, and the reasons for it, to the lease applicant and the occupier in any of the ways contemplated by section 5, and post a copy of the decision and the reasons for it on the public notice board of the PMD's office:

10                    Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it, to the applicant and the occupier in any of the ways contemplated by section 5, and post a copy of the decision and the reasons for it on the public notice board of the PMD's office;

15 (f) as soon as possible after the conclusion of the meeting notified under subsection (3) the PMD shall take the following steps—

20                    (i) make a written summary of the proceedings of the meeting in the form of a report to the Board together with his or her recommendation to the Board to give or withhold final approval for the special mining lease, and in so doing may suggest to the Board any conditions subject to which final registration may be made (but if the PMD provisionally rejected the application otherwise than on its merits, the PMD must expressly request the Board to make the appropriate decision on the basis of any additional information that may be made available to the Board);

25                    (ii) transmit together with his or her report all the following particulars to the Board within seven working days of the conclusion of the meeting notified under subsection (3)—

30                    A. a map to the scale of at least 1: 50 000 showing the co-ordinates of the temporary beacons of the site or sites in question; and

B. all copies of the occupiers' affidavits if any; and

C. the notice of the PMD's decision referred to in paragraph (e); and

35                    D. if, as a result of the meeting notified under subsection (3), the PMD provisionally approved the application, the provisional registration number assigned to the special mining lease.

(5) Upon transmission of the particulars referred to in subsection (4)(f) the Board (subject to subsection (8)) may, if it is of the opinion that the transmitted particulars are—

40                    (a) in order, proceed to consider the special mining lease application in terms of subsection (7);

45                    (b) not in order or incomplete or inadequate, request (through the secretary of the Board) further information or request an adjustment to the particulars transmitted by the PMD (which adjustment may include a reduction in the area of the special mining lease applied for), and upon satisfactory compliance with such request, proceed to consider the special mining lease application in terms of subsection (7).

(6) Upon receiving from the secretary of the Board a request for further information or a request for an adjustment of the particulars transmitted by the PMD concerned (including an adjustment of the area applied for), the PMD shall—

- (a) if he or she is able to comply with the request without the need to involve the special mining lease applicant, transmit the information or effect the adjustment and transmit it to the Board forthwith; or
  - (b) if he or she is not so able as contemplated in paragraph (a), communicate the request to the special mining lease applicant forthwith: 5
    - Provided that if—
    - (i) within 14 days of being notified of such request, the special mining lease applicant fails to comply with the request, the special mining lease applicant shall be deemed to have abandoned the application for the lease; or 10
    - (ii) in the case of an adjustment of the application to reduce the area of the special mining lease area applied for, the applicant shall within that 14-day period mentioned (or such extension of that period not exceeding 30 days as the PMD, on notice to the Board, may approve at the request of the applicant) submit to the PMD for onward transmission to the Board— 15
      - A. an amended sketch plan showing the reduced area; or
      - B. written reasons why it is not agreeable to reducing the area of the special mining lease area in accordance with the Board's request, whether absolutely or to the extent the applicant shall specify. 20
- (7) In considering an application under subsection (5) the Board shall not approve an application unless it is satisfied—
- (a) the area to which the application relates contains a mineral or group of minerals which may profitably be mined and sold or otherwise disposed of; and 25
  - (b) the applicant's mining development plan takes proper account of environmental and safety factors; and
  - (c) the applicant's programme of mining operations will ensure the efficient, timely and beneficial use of the mineral resources concerned; and 30
  - (d) the applicant's proposals for the procurement and use of local goods and services and the employment of Zimbabwean citizens are satisfactory; and
  - (e) the applicant is able and willing to comply with the terms and conditions of any special mining lease that may be granted to him or her, including in particular any prior agreement entered into under section 6 ("Strategic minerals") to exploit any strategic mineral under the title of a special mining lease: 35
    - Provided where the mineral for which the special mining lease is sought is not a strategic mineral, the Board may (given the importance of the mineral and the potential magnitude of its occurrence in the proposed special mining lease area) recommend to the Minister that the mineral be declared a strategic mineral, whether generally or in relation to the proposed special mining lease area, and that the final approval of the application for the special mining lease be conditioned upon such a declaration and the conclusion between the Minister and the applicant of a prior agreement under section 6; 40
  - (f) the applicant possesses or can obtain the technical and financial resources required to develop and operate the proposed mine; and
  - (g) that the applicant's financial status is such that he or she will be able to meet any payment which may become due by him or her under the 50



- provisions of section 244 (“Compulsory purchase or sale of private land covered by mining lease”); and
- (h) that mining operations on a substantial scale are likely to be conducted for a considerable period within the area applied for; and
  - 5 (i) that no ground not open to prospecting, save as provided in section 37 (“Ground not open to prospecting”) is included in the area to which such approval would relate; and
  - (j) that the construction of the proposed mine will commence within a reasonable period; and
  - 10 (k) it would be in the national interest for the applicant to be granted a special mining lease.
- (8) For the purpose of subsection (7), the Board shall have regard to—
- (a) the nature and size of the mineral deposits within the area over which the applicant seeks a special mining lease; and
  - 15 (b) the estimated life and economic viability of the proposed mine or mines; and
  - (c) the extent of the investment that will be made in the proposed mine or mines; and
  - 20 (d) the proposed method of extraction, mining and treatment of ore from the proposed mine or mines; and
  - (e) any other relevant circumstance that the Board considers is desirable or relevant to have regard for in the interests of the development of Zimbabwe’s mineral resources.
- (9) The Board shall not—
- 25 (a) refuse an application on the ground that it is not satisfied as to any matter referred to in subsection (7) or (8); or
  - (b) recommend that the application be granted in respect of only part of the area sought for;
- unless the Board has notified the applicant of its objection and reasons therefor, and has
- 30 given the applicant a reasonable opportunity to modify his or her mining development plan or make representations or otherwise to remove the ground on which the proposed recommendation is based.

**128 Issuance of special mining lease, and standard terms and conditions; registration of same; reviews, etc**

- 35 (1) Having considered an application for a special mining lease under section 127, the Board shall without delay forward the application to the Minister together with its recommendations thereon and—
  - (a) copies of all objections lodged in respect of the application and copies of the determinations made in respect of the objections; and
  - 40 (b) the PMD’s report on the application.
- (2) The Minister, having considered the documents forwarded to him or her in terms of subsection (1), may—
  - (a) issue a special mining lease in accordance with the Board’s recommendations; or
  - 45 (b) issue a special mining lease on such other terms and conditions as the Minister thinks fit (giving reasons to the Board where such terms and conditions depart from the Board’s recommendations); or

- (c) refuse to issue a special mining lease, giving reasons to the Board for such refusal.

(3) Upon the issuance of a special mining lease the Mining Cadastre Registrar shall cause copies of the lease and the plan to be sent to the Board and the appropriate PMD for final registration under subsections (6) and (7). 5

(4) Upon receiving from the Mining Cadastre Registrar —

- (a) confirmation of the issuance of the special mining lease, the PMD concerned shall notify the special mining lease applicant to apply for a certificate of registration of the special mining lease under subsection (5); or 10
- (b) notice of rejection of the final registration of the special mining lease, the PMD concerned shall notify the applicant of the Minister's reasons for the rejection of the application.

(5) Upon receiving from the PMD notice of the confirmation of the issuance of the special mining lease, the special mining lease applicant must apply to the PMD for a certificate of final registration in the manner prescribed and on payment of the prescribed fee, no later than thirty days of the receipt of such notice or no later than any extension of that period not exceeding a further thirty days that the PMD may grant for any good and sufficient reason shown to the PMD (and if such special mining lease applicant fails to apply for a final certificate of registration within such period or extended period, the special mining lease applicant shall be deemed to have abandoned the special mining lease). 15 20

(6) The PMD shall enter in his or her final register the fact that —

- (a) a final certificate of registration of the special mining lease has been issued; or 25
- (b) the mining lease applied for has been abandoned due to the operation of subsection (5);

and shall forthwith notify the Mining Cadastre Registrar of such registration or abandonment, as the case may be, whereupon the Mining Cadastre Registrar shall —

- (c) make the appropriate entries in the Mining Cadastre Register and as soon as possible; and 30
- (d) send a copy of the lease to the lessee if the special mining lease applied for has not been abandoned.

(7) Any person who is aggrieved by a decision of the Minister under this section, that is to say any special mining lease applicant, or any existing or potential small-scale or other miner having a demonstrable interest in the issue of such registration, or any occupier of any land affected by such registration, may seek a review of such decision by the Administrative Court. 35

(8) Upon a review of the Minister's decision the Administrative Court may —

- (a) uphold the decision of the Minister; or 40
- (b) refer the decision back to the Minister for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds —
  - (i) allowing extraneous or irrelevant considerations to affect the decision; or 45
  - (ii) failure to take into account relevant considerations in arriving at the decision; or
  - (iii) any material mistake of fact or law that tainted the decision; or

- (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision; or
- (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;
- 5 (c) if the application for review is made at the instance of an aggrieved occupier of any land affected by such registration—
  - (i) refer the decision back to the Minister as provided in paragraph (b); or
  - 10 (ii) order that a lesser area should be registered because it is satisfied that the area to be excised is not ground open to prospecting; or
  - (iii) give such other order or direction in the matter as the court considers just.

### **129 Recording of mining leases in Mining Cadastre Register and appropriate provincial registers**

15 (1) The Mining Cadastre Registrar shall assign a number to each ordinary and special mining lease and shall cause that number and the particulars of each lease to be recorded in the Mining Cadastre Register distinctly and separately from the other entries in that Register.

20 (2) The PMD shall in his or her final register record distinctly and separately from the other entries in that register every ordinary and special mining lease whose area is located in his or her mining province, assigning to each such lease the number assigned to it in the Mining Cadastre Register.

### **130 Limitation on second or subsequent applications following refusal or withdrawal of application**

25 Where under this Part an application has been refused or has been abandoned or is deemed to have been abandoned, the applicant may not make a second or subsequent application in respect of the same area until twelve months have elapsed from the date of the refusal or withdrawal or the date on which the application is deemed to have been abandoned, as the case may be.

### **30 131 Beaconing of mining lease area**

(1) Subject to this section, within a period of two months from the date of issue of a mining lease or such longer period as the PMD may allow, the lease holder shall—

- 35 (a) erect beacons of concrete or solid mason work at all points of intersection of the boundary lines of the area covered by the lease and at all points of intersection of such boundary lines by the boundary lines of any piece of land in respect of which an approved diagram or general plan is filed on record in the office of the Surveyor-General; and
- (b) if any boundary is more than three hundred metres in length, erect intermediate beacons so that no beacon shall be more than three hundred  
40 metres from the next adjoining beacon on either side.

(2) All beacons mentioned in subsection (1)(a) shall be erected under the supervision of, and in the position determined by, a land surveyor and may be so erected at the time the area concerned is surveyed for the purposes of preparing the plan mentioned in section 125(1)(b)(i) or proviso II to section 125(5)(c)(iii)B, as the  
45 case may be.

(3) The beacons referred to in subsection (1) shall be lettered in consecutive alphabetical order in a clockwise direction commencing with the letter A but omitting the letters Y and Z, and if there are more beacons than twenty-four the letters and

figures A2, B2 and so on shall be used in respect of the beacons up to forty-eight and thereafter the letters and figures A3, B3 and so on shall be used.

(4) Every beacon mentioned in this section shall bear on it, in addition to the distinguishing letter, the words “Ordinary Mining Lease” or “Special Mining Lease” followed by the number assigned to such lease by the Board. 5

(5) The distinguishing letter and the particulars mentioned in subsection (4) shall be engraved upon the beacon or otherwise affixed thereto in such permanent manner and in such position as the PMD may approve.

(6) The prescribed conditions applicable to beacons generally shall apply, with necessary changes, to and in respect of all such beacons. 10

### **132 Cancellation of certificates of registration**

Upon the issue of a mining lease the certificates of registration in respect of all mining locations situated within the area covered by the lease shall be deemed to have been cancelled:

Provided that any site attached to any such mining location shall be deemed to be attached to the lease, and section 59 (“Dependent mine service sites to be attached to location; changes in status of landholding where independent mine service site located”) shall apply, with any necessary changes, to or in respect of such a site. 15

### **133 No impeachment of title to mining leases**

When a mining lease has been issued it shall not be competent for any person to dispute the title of the lease holder to any of the ground covered by the lease on the following grounds— 20

- (a) that the pegging of any of the mining locations which were included in the area covered by such lease or of any secondary reef which was registered in respect of any such location was invalid or illegal or that provisions of this Act or of any other enactment were not complied with prior to the issue of the certificate of registration of any such location or reef; 25
- (b) that any ground not open to prospecting was included in the area covered by the lease;
- (c) that provisions of this Act were not complied with in respect of such lease prior to the issue thereof. 30

### **134 Programmes to be submitted by lessees**

(1) In this section—

“development” includes mining activity, mineral production, expenditure and any other work or activity undertaken in or in regard to a mining lease; 35

“development programme” means the “plan of work” required to be submitted in terms section 154 (“Pre-inspection requirements and first and subsequent inspection certificates”) (2)(a), having the additional features or conditions prescribed by this section.

(2) Within the time specified in section 154 (“Pre-inspection requirements and first and subsequent inspection certificates”), a lessee shall submit to the PMD a written programme showing the development which he or she intends to undertake in regard to the mining lease during the next twelve-month period. 40

(3) The development programme shall include or be accompanied by a report of any information of a geological nature, including logs and assay results of drill cores from surface diamond drill holes, and reports on any geological, geochemical and geophysical work, obtained by the lessee in the course of his or her operations. 45

(4) The PMD shall communicate the information referred to in subsection (3) to the Director of Geological Survey as soon as he or she receives the report.

### **135 Amendment of mining leases; increase of area of mining lease**

(1) The holder of registered ordinary or special mining lease may apply to the PMD to amend it whereupon—

- (a) the PMD may amend the certificate of registration of the mining lease if it involves no material change to any of the particulars of the mining lease or its area (which amendment shall take effect immediately upon the PMD notifying the holder that the amendment has been confirmed by the Mining Cadastre Registrar and recorded in the Mining Cadastre Register); or
- (b) if the application is for the inclusion in his or her mining lease of an additional contiguous area of ground which is open to pegging, the PMD may treat the application as an application for an ordinary or special mining lease in respect of the additional area, and section 125 (in the case of an increase in the area of an ordinary mining lease) or sections 127 and 128 (in the case of an increase in the area of a special mining lease) shall apply, with any necessary changes (such as substituting references to a “lease” by references to an “amendment of a lease”), in respect of an application under this paragraph; or
- (c) the PMD may advise the applicant to obtain a fresh certificate in respect of the ordinary or special mining lease if in the opinion of the PMD the amendment (not being limited to one referred to in paragraph (b)) is material (in which event the provisions of this Part bearing on ordinary or special mining lease applications (as the case may be) shall apply as if the holder of registered ordinary or special mining lease were applying for a new lease):

Provided that—

- (i) if the effect of an amendment sought by the holder of the mining lease is to reduce the area of the mining lease, such amendment shall be dealt with as an abandonment of a portion or portions of the mining lease in accordance with section 136 (“Abandonment of whole or portion of mining lease and transfer of mining lease”);
- (ii) in the case of a new application for a mining lease incorporating a material amendment, the existing mining lease shall remain in force pending the outcome of the application.

(3) Where the Board has approved an application under subsection (1)(a) or (b), the Board shall, unless the application has been withdrawn or is deemed to have been withdrawn, amend the original and the copies of the mining lease accordingly, and shall return the amended original and a copy of the lease to the lessee and the Mining Cadastre Registrar respectively, and send a copy of the plan to each of them and shall retain one copy of the lease and of the plan.

### **136 Abandonment of whole or portion of mining lease and transfer of mining lease**

(1) A lessee may apply in writing to the PMD for the abandonment of the whole or of a portion of his, her or its mining lease:

Provided that it shall not be competent for a lessee so to apply if—

- (a) the mining lease is the subject of a hypothecation or option registered under Part XVII (“Registration of Transfers, Hypothecations, Options, Tribute Agreements and Conditions Governing Mining on Reserved Ground”); or

- (b) in the case of the abandonment of a portion of the mining lease, the abandonment would result in the area of the lease being divided into separate portions.
- (2) An applicant under subsection (1) shall submit with the application—
- (a) in the case of the abandonment of a portion of the mining lease, three copies of a plan showing the area which the applicant wishes to abandon; and 5
- (b) in the case of the total abandonment of a mining lease, a copy of the applicant's mining lease; and
- (c) in either case ((a) or (b)), in respect of each mine (if any) affected by the abandonment, a plan or plans complying with the following conditions (or if the conditions are prescribed, in accordance with the prescribed conditions)— 10
- (i) where development work has been executed to a vertical or incline depth of more than one hundred metres on the dip, the plan or plans shall be prepared by a mine surveyor; 15
- (ii) where development work has been executed to a vertical or incline depth of not more than one hundred metres on the dip, the plan or plans shall be prepared by a mine surveyor or otherwise shall be based on tape and compass survey; 20
- (iii) the plan or plans shall show details of all work done on the mine, together with such further particulars as the PMD may require;
- (iv) plans prepared by a mine surveyor shall be drawn to any recognised scale; other plans shall be drawn to a scale of 1: 250 or 1: 500; and
- (d) in either case ((a) or (b)), an affidavit sworn by the lessee— 25
- (i) that the mining lease is not the subject of a hypothecation or option registered under Part XVII, or, if it is, that the application is made with the consent of the holder of the hypothecation or option:
- Provided that in the latter case the written consent holder of such hypothecation or option shall be lodged with the PMD together with the affidavit; 30
- (ii) giving reasons why the abandonment of the whole portion or portions in question is being sought;
- and upon receipt of all the foregoing documentation to the satisfaction of the PMD the PMD shall provisionally approve the application. 35
- (3) On receipt of the documentation in terms of subsection (2) the PMD shall without delay—
- (a) post on the notice board of his or her Office notice of the application to abandon the whole or portion or portions of the lease area specified in the notice; and 40
- (b) transmit copies of all of the documentation to the Board.
- (4) Upon transmission of the particulars referred to in subsection (2) the Board shall, unless it finds compelling reasons to do otherwise, finally approve—
- (a) the abandonment of a portion or portions of the mining lease, whereupon it shall amend the original and the copies of the mining lease accordingly, retaining one copy of the same to enable the Mining Cadastre Registrar to make the appropriate entry in the Mining Cadastre Register, and sending a copy each to the PMD (to enable him or her to make the appropriate entry in his or her final register and the applicant); or 45



- (b) the total abandonment of the mining lease, whereupon it shall cancel the mining lease and without delay and inform the Mining Cadastre Registrar, the PMD and the applicant accordingly.

(5) Upon the amendment of a mining lease being finally approved under this section, the lessee shall demarcate the new area of the lease in the manner prescribed or as the PMD may direct.

### **137 Failure to comply with terms and conditions of mining lease**

(1) If the Board, on its own motion or upon a report of a PMD communicated to the Secretary of the Board, is satisfied after due investigation, that a lessee has failed to comply with any material terms or conditions of his or her mining lease, then—

- (a) the Board shall notify the lessee of that fact, in writing, and call upon the lessee to remedy the failure within a reasonable period specified by the Board in the notification; and
- (b) if the Board is not satisfied that the failure has been adequately remedied within the period specified in terms of paragraph (a), the Board may, in the case of an ordinary mining lease, cancel it and, or, in the case of a special mining lease, recommend its cancellation to the Minister together with the forfeiture of the prescribed security deposit referred to in 124 (“Form and contents of mining leases, duration of leases, mining rights of lessees, etc”) (1)(e).

(2) Where a lease is cancelled under this section, the Board shall inform the Mining Cadastre Registrar to make the appropriate entry of cancellation in the Mining Cadastre Register, and Mining Cadastre Registrar shall in turn inform the PMD accordingly.

(3) A holder of a mining lease that is cancelled under this section may seek a review of such decision by the Administrative Court, within twenty-one days after the date of its notification to the applicant, and upon such review the Administrative Court may—

- (a) uphold the decision of the Board; or
- (b) refer the decision back to the Board for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—
  - (i) allowing extraneous or irrelevant considerations to affect the decision; or
  - (ii) failure to take into account relevant considerations in arriving at the decision; or
  - (iii) any material mistake of fact or law that tainted the decision; or
  - (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision; or
  - (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.

### **138 Approval of transfer of mining lease**

(1) In this section—

“transfer” in relation to a mining lease—

- (a) includes the transfer of the sole or majority ownership of the mining lease or of any interest in the mining lease that is equivalent to sole or majority ownership;

- (b) does not include a transfer is effected from one company to another under the same control, in the course of or in furtherance of a scheme of reconstruction of a group of companies or a merger or other business operation which, in the opinion of the PMD, is of a similar nature.
- (2) No transfer of a mining lease may occur except in accordance with this section, and if no application made in accordance with this section for the approval of such transfer within six months of the date of the agreement or transaction by which such transfer is purported to be concluded between the transferor and the transferee, it shall be deemed that the transferor has abandoned the mining lease. 5
- (3) A mining lease may not be transferred except to a person approved of by the Board, in accordance with this section. 10
- (4) The mining lessee wishing to transfer the mining lease in circumstances otherwise than those mentioned in paragraph (b) of the definition of “transfer” (hereafter in this section referred to as the “transferor”) shall in the first instance make written application in the form (if any) prescribed, to the PMD having jurisdiction in the area in which the mining lease area is located, which form must be accompanied by— 15
- (a) the following affidavits—
- (i) the affidavit by the transferor stating his or her reasons for wishing to transfer the mining lease to the transferee and the consideration paid or payable for such transfer; 20
- (ii) the affidavit by the person to whom the lease is to be transferred (hereafter in this section referred to as the “transferee”) giving full particulars of his or her name and address, and in the case of a company particulars of the date of incorporation and registration and the names of the directors of the body corporate together with relevant particulars of the financial status of the transferee and his or her readiness to assume all the obligations of the transferor under the mining lease; 25
- (b) a written statement by the transferor stating whether—
- (i) if the transfer is approved, the transferor intends to continue holding the mining lease in its name or in the name of the transferee; or 30
- (ii) if the transfer is not approved, the transferor intends to continue holding the mining lease in its name, or wishes to abandon it.
- (5) On receipt of the affidavits the PMD shall post a copy of a notice on the notice board of his or her office giving relevant particulars of the proposed transfer and in such notice invite representations on the proposed transfer in writing to be made to the PMD within 14 days of the posting. 35
- (6) Having received representations, if any, the PMD shall transmit to the Board—
- (a) the copies of the affidavits referred to in subsection (4); and 40
- (b) copies of any representations made by a interested party in response to a notice referred to in subsection (5); and
- (c) a report by the PMD in which he or she shall state whether he recommends, does not recommend or makes no recommendation as to the proposed transfer together with reasons therefor: 45
- Provided that if any recommendation is adverse to the transferor the PMD must avail a copy of the report incorporating the recommendation to the transferor concerned to afford the transferor an opportunity no later than 48 hours after such report is availed to him or her to make a written response to the same not exceeding two thousand words, which response 50

shall be annexed to the report of the PMD that is transmitted in terms of this paragraph.

5 (7) The mining lessee wishing to transfer the mining lease in the circumstances mentioned in paragraph (b) of the definition of “transfer” in subsection (1) shall in the first instance make written application in the form (if any) prescribed, to the PMD having jurisdiction in the area in which the mining lease area is located, which form must be accompanied by an affidavit specifying those circumstances, and on receipt of such affidavit the PMD shall forthwith despatch it to the Board.

10 (8) Upon transmission of the particulars referred to in subsection (6) the Board may, if it is of the opinion that the transmitted particulars are —

- (a) in order, consider whether to accept or reject the transfer of the mining lease in question, that is to say —
  - 15 (i) if the Board accepts the transfer of the mining lease in question, enter the relevant particulars concerning the mining lease in the Mining Cadastre Register and confirm in writing to the PMD concerned that the mining lease has been transferred, subject to subsection (12);
  - (ii) if Board rejects the transfer of the mining lease, transmit the reasons for such rejection to the PMD concerned, subject to subsection (13);
- (b) not in order or incomplete or inadequate —
  - 20 (i) request further information or request an adjustment to the particulars transmitted by the PMD before making a decision in accordance with paragraph (a); and
  - (ii) upon satisfactory compliance with such request, proceed in accordance with paragraph (a).

25 (9) Upon transmission of the affidavit referred to in subsection (7) the transaction referred to in that affidavit shall take effect unless the Board, within fourteen days of the transmission thereof, requests further particulars of the transaction from the deponent, in which event the transaction shall not take effect unless the Board notifies to the deponent through the PMD that it has no objection to the transaction taking effect (and  
30 if no such notification is made within fourteen days of the request being complied with, the transaction shall take effect from the expiry of that period).

(10) Upon receiving from the secretary of the Board —

- 35 (a) confirmation of the transfer of the mining lease in accordance with subsection (8)(a)(i), the PMD concerned shall notify the transferor to apply for a new certificate of registration of the mining lease in the name of the transferee; or
- (b) a notice of rejection of the transfer of the mining lease in accordance (8)(a)(ii), the PMD concerned shall notify the transferor of the Board’s reasons for the rejection of the application; or
- 40 (c) a request for further information or a request for an adjustment of the particulars transmitted by the PMD concerned, the PMD shall —
  - (i) if he or she is able to comply with the request without the need to involve the transferee, transmit the information or effect the adjustment and transmit it to the Board forthwith; or
  - 45 (ii) if he or she is not so able as contemplated in subparagraph A, communicate the request to the transferee forthwith:

Provided that if, within 14 days of being notified of such request, the transferee fails to comply with the request the transferee shall be deemed to have abandoned the proposed transfer of the mining lease and the mining lease shall remain in the name  
50 of the transferor or, if he or she had expressed a wish to abandon it in the statement

referred to in subsection (4)(b)(ii), section 134 (“Abandonment of whole or portion of mining lease and transfer of mining lease”) shall apply to such abandonment.

(11) In considering an application under subsection (8)(a) the Board shall not approve an application unless it is satisfied—

- (a) that the transferee’s financial status is such that he or she will be able to meet any payment which may become due by him or her under section 244 (“Compulsory purchase or sale of private land covered by mining lease”); and 5
- (b) that mining operations on a substantial scale are likely to be conducted for a considerable period within the area applied for. 10

(12) The PMD shall enter in his or her register the fact that—

- (a) a certificate of registration in the name of the transferee has been issued; or
- (b) the mining lease applied for has been abandoned due to the operation of subsection (2) or been abandoned in accordance with the proviso to subsection (10)(c); 15

and shall forthwith notify the Mining Cadastre Registrar of such registration or abandonment, as the case may be, whereupon the Mining Cadastre Registrar shall make the appropriate entries in the register and as soon as possible.

(13) Any person aggrieved by the refusal of the Board to approve a transfer of a mining lease may appeal within 14 days of such refusal to the Minister and the Minister may overturn any such decision on the following grounds— 20

- (a) interest in the cause, bias, malice or corruption on the part of any person who is a party to the decision; or
- (b) gross irregularity in the proceedings or the decision of the Board; or 25
- (c) in exceptional cases, the overriding of the national interest.

## PART X

### RIGHTS OF CLAIM HOLDERS, SITE HOLDERS AND LANDHOLDERS

#### 139 Mining rights

(1) In this section and section 141 (“Surface rights of miners”)— 30

“conversion”, in relation to a mining location or site, means a conversion referred to in section 141 (“Conversion as between primary and secondary minerals and as between sites and mining locations: preliminary provisions”) and 142 (“Processing of applications under section 142”) and “convert”;

“mining location” means such a location, whether held as a claim, block of claims or a mining lease, wherein a primary mineral is, under the terms of the mining title over the location, being mined; 35

“primary mineral” means the single mineral or set of defined minerals which are the minerals predominantly being mined at the mining location or were intended to be predominantly mined at the location concerned at the time the mining title to the location was obtained; 40

“registration”, in connection with a conversion of a mining location or a site, means re-registration of a converted block of mineral claims or the amendment of a certificate of registration or mining lease reflecting the conversion from a primary to a secondary mineral or to or from a site; 45

“secondary mineral” means the single mineral or set of defined minerals which are discovered after, or are being mined together, with the primary mineral.

(2) Subject this Act, every holder of a registered block of claims shall possess the following mining rights—

- (a) the exclusive right of mining any ore or deposit of the primary mineral in respect of which the mining location is registered which occurs within the vertical limits of his or her mining location; and
- (b) the exclusive right within the horizontal and vertical limits of his or her mining location, of prospecting for any ore or deposit of any mineral other than the primary mineral, and if any such ore or deposit of a secondary mineral is discovered within such location, the holder thereof shall, subject to this section and section 141(2), notify the PMD of such discovery and shall, subject to this Act, thereafter have the right of mining such secondary mineral within the vertical limits of his or her location:

Provided that nothing in this paragraph contained shall confer any rights to mine any coal or mineral oil or natural gas or nuclear energy source material.

(3) The holder of a mining location who discovers any ore or deposit of any secondary mineral shall—

- (a) within a period of thirty days from the date of the discovery submit to the PMD a discovery notice in the prescribed form (together with a registration certificate in relation to the location), which discovery notice must disclose the following particulars—
  - (i) the nature of the secondary mineral; and
  - (ii) whether or not the holder considers that the secondary mineral occurs in such amount as to exceed in value the amount of the primary mineral, and if so an estimate of that value; and
  - (iii) whether or not the holder intends to exploit the secondary mineral; and
  - (iv) if he or she does not intend to exploit the secondary mineral, how the holder proposes to dispose of the secondary mineral if he or she mines any of it in the course of mining the primary mineral; and
  - (v) if he or she intends to exploit the secondary mineral, whether and at what time the holder proposes to convert the mining location:

Provided that if such holder makes application within the said period to the PMD for an extension of the period and furnishes any reason for such extension which to the PMD seems good and sufficient, the PMD may extend the said period for a further period not exceeding thirty days;

- (b) if the PMD having received a discovery notice under paragraph (a), is satisfied that the information furnished in the discovery notice is well founded on the basis of the information available to the holder and the PMD at the time of the lodging of the notice, the PMD shall without delay transmit a copy of the discovery notice to the Mining Cadastre Registrar and the Director of Geological Survey.

(4) Any holder of a mining location who fails timeously to disclose and account for the discovery of any ore or deposit of any secondary mineral in terms of subsection (2) commits a criminal offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level eight or to imprisonment for a period not exceeding three years or to both.

(5) The PMD for the mining province wherein a civil default as described in subsection (4) occurs may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter—
  - (i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 6; and
  - (ii) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) —
    - A. submit the appropriate discovery notice in terms subsection (3); and
    - B. cease exercising the right referred to in section (2)(b) until the discovery notice is processed in terms of subsection (3);
- (d) subjects the defaulter to either or both of the following penalties, as may be appropriate—
  - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 6 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
  - (ii) if he or she fails to comply with paragraph (a)(ii)A or B, to pay a default fine of the maximum amount fixed for level 6 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served (and two default fines shall be payable if there is concurrent noncompliance with paragraph (i) and this subparagraph).

#### 140 Surface rights of miners

- (1) For the purposes of subsection (2)(d)(ii)—
 

“property” means two or more blocks of claims, whether contiguous or otherwise, owned by one person, from which the ore is being treated at the same milling or reduction plant or which are under the control of one registered mine manager.
- (2) Every miner of a registered mining location shall have and possess the following respective surface rights—
  - (a) the right, subject to any existing rights, to the use of any surface within the boundaries thereof for all necessary mining purposes of his or her location; and as against the holder of an exclusive prospecting licence or of any other mining location, the right, except as in section 262 (“PMD may authorise certain works”) provided, to the use of all surface within such boundaries; and
  - (b) the right to use, free of charge, soil, waste rock or indigenous grass situated within his or her location for all necessary mining purposes of such location; and
  - (c) the right to sell or otherwise dispose of waste rock recovered by him or her from his or her location in the course of *bona fide* mining operations:
 

Provided that as from the date on which the rights of the miner to carry on the work of mining on the location cease, the rights of the miner to sell or otherwise dispose of such waste rock shall cease and any agreement for the sale or other disposition of such waste rock shall be of no further force or effect; and
  - (d) the same right of taking water for primary purposes and of taking indigenous wood or timber as is possessed by the holder of an exclusive prospecting licence:



Provided that—

- (i) section 36 (“Surface rights of holder of exclusive prospecting licences”) applies in the case of any dispute between the miner and the owner or occupier of the land affected by such taking;
- 5 (ii) nothing in this paragraph shall be construed so as to permit a miner to use any wood or timber taken by him or her for firewood elsewhere than on his or her location or, where his or her location is a block forming part of a property, on that property.

**141 Conversion as between primary and secondary minerals and as  
10 between sites and mining locations: preliminary provisions**

(1) In this section and section 142—

“conversion applicant” means a holder of a mining location or a site who makes an application in terms of subsection (2), (3), (4) or (5), and “conversion application” shall be construed accordingly.

- 15 (2) The holder of a mining location may, if he or she proves to the satisfaction of the PMD that a secondary mineral occurs in such block in such amount as to exceed in value the amount of the primary mineral contained therein, apply for the conversion of the location or any part thereof into the name of the secondary mineral mined therein (that is to say what was previously the secondary mineral in that block or part thereof  
20 becomes the primary mineral by which the block or part thereof is denominated):

(3) The PMD may, if it appears to him or her that any secondary mineral discovered in any mining location occurs in such quantity in such location as to exceed in value the primary mineral or that such location includes any ground which formerly formed part of a location registered for a secondary mineral, call upon the holder to  
25 show cause why the location should not be redenominated by the name of the secondary mineral mined therein, and if the holder of such location fails to show such cause to the satisfaction of the PMD, the holder shall forthwith make an application under subsection (2).

(4) The holder of a mining location may apply for the conversion of the whole  
30 or any portion of such location into a dependent mine service site or independent mine service site.

(5) The holder of a dependent mine service site or independent mine service site may apply to the PMD for the conversion of the whole or any portion of such site into a mining location.

35 (6) If any conversion application referred to in subsection (2), (3) or (5) involves a strategic mineral then, unless subsection (5) of section 6 (“Strategic minerals”) applies to such applicant (in that the applicant was, immediately before the date of commencement of this Act, mining a strategic mineral on a site registered in his or her name in terms of section 176 of the repealed Act, and is required to make a conversion  
40 application in terms of section 315 (“Repeal of Cap. 21:05; savings and transitional provisions”)(8)), the PMD shall not process such application in terms of section 142 until—

- (a) he or she refers such application to the Mining Cadastre Registrar, and
- 45 (b) he or she notifies the applicant of the relevant provisions of section 6, in particular subsection (4) of that provision; and
- (c) the Mining Cadastre Registrar certifies in writing to the PMD that the applicant has complied with the provisions of section 6(4).

**142 Processing of applications under section 141**

(1) A conversion application shall be made in writing in the form (if any) prescribed to the Provincial Mining Director having jurisdiction over the mining location or site to which the application relates, and shall be accompanied by—

- (a) a sketch plan based on a map issued under the authority of the State and of a scale of not less than 1: 50 000 identifying the mining location or the site affected by the conversion; 5
- (b) in the case of a conversion application referred to in section 141(2), the discovery notice referred to in section 139 (“Mining rights”)(3)(a);
- (c) in the case of a conversion application referred to in section 141(5)— 10
  - (i) a copy of the certificate of registration for the site; and
  - (ii) a memorandum not exceeding 2 000 words, setting out how the holder proposes to carry on the projected mining operations on the site, with particular reference to how the health and safety of the workers, if any resident on the site, are to be safeguarded; and 15
  - (iii) an affidavit deposed by the applicant stating that he or she has notified the owner or occupier of the land on which the site is located of the applicant’s intention to conduct mining operations on the site.

(2) The conversion application shall be processed as follows—

- (a) every conversion application shall (unless, in the case of a conversion application referred to in section 141(3), such provisional conversion is directed by the PMD) be deemed also to be an application for the provisional authorisation of the conversion, for which purpose the Provincial Mining Director may provisionally permit or refuse (by written notice served on the applicant no later than 48 hours after the conversion application is received by the PMD) the conversion applicant to convert the mining location or site to the purpose applied for, subject to such restrictions as the PMD may specify: 20 25

Provided that if the PMD refuses provisional conversion under this paragraph, the PMD must in his or her notice of refusal give the conversion applicant the reasons for the refusal, and invite by such notice the conversion applicant to lodge a written memorandum (not exceeding 2 000 words) objecting to such refusal within 48 hours of the notification by the PMD of such refusal; 30

- (b) the PMD upon receiving the conversion application must no earlier than 48 hours or later than 72 hours thereafter post notice of the conversion application on the public notice board of the PMD’s office together with— 35
  - (i) a copy of the memorandum of objection to the non-approval of provisional conversion lodged in terms of the proviso to paragraph (a) (if any); and 40
  - (ii) an invitation to interested persons (that is to say any affected occupiers of land and existing or potential small-scale or other miners or other interested persons within the area of the jurisdiction of the PMD) to attend a meeting to be convened by the PMD (giving particulars of its time and venue) to enable them to make oral and written representations at that meeting on the question whether to grant or refuse final approval for the conversion concerned: 45

Provided that in such invitation or at the meeting the PMD may restrict such interested persons to submitting written representations only, before or no later than 48 hours after the conclusion of the meeting. 50

(3) In amplification or clarification of the provisions of subsection (2)—

(a) if a conversion applicant who was refused provisional conversion—

(i) lodges timeously with the Provincial Mining Director the memorandum of objection referred to the proviso to subsection (2)(b)(i), and the PMD then accepts the objection to be justified, the PMD shall proceed as if he or she had not invited the applicant to lodge such memorandum, and no record of it is required to be made in the provisional register;

(ii) if the applicant fails to lodge timeously with the Provincial Mining Director the memorandum of objection, it shall be taken that the holder has abandoned the conversion application, but the holder is not prevented from making a fresh application under section 141 (2), (3), (4) or (5) (as the case may be);

(b) if the conversion applicant or the occupier of the affected land fails to attend at the meeting referred to in subsection (2)(b)(ii), the PMD may proceed in the absence of either or both to grant or refuse the application and, if the application is granted, make the relevant report and recommendations in accordance with subparagraph (e);

(c) at the meeting referred to in subsection (2)(b)(ii) the PMD shall follow the applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at quasi-judicial meetings, referrals and hearings”);

(d) at the conclusion of the meeting referred to in subsection (2)(b)(ii) the PMD may, in the presence of the parties (if any) at the meeting—

(i) provisionally approve the conversion application, or confirm the provisional approval of the conversion application (as the case may be) of the holder of the block of claims concerned without amendment; or

(ii) provisionally approve the conversion application or confirm the provisional approval of the conversion application (as the case may be), subject to a recommendation to the Mining Cadastre Registrar that the area of the block of claims or site originally applied for be reduced to a defined extent; or

(iii) provisionally reject the conversion application of the applicant concerned, and rescind any provisional approval of it previously given (either on the merits of the application or because the PMD is for any reason unable to make a decision on the basis of the evidence presented to him or her):

Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the meeting, and in any event, within that period, give notice of his or her decision, and the reasons for it, to the conversion applicant and any affected occupier in any of the ways contemplated by section 5, and post a copy of the decision and the reasons for it on the public notice board of the PMD’s office;

(e) as soon as possible after the conclusion of the meeting referred to in subsection (2)(b)(ii) the PMD shall make a written summary of the proceedings of the meeting in the form of a report to the Mining Cadastre Registrar together with his or her recommendation to the Registrar to give final approval to his or her decision referred to in paragraph (d) (but if the PMD provisionally rejects the application otherwise than on its merits, the PMD must expressly request the Mining Cadastre Registrar to make the appropriate decision on the basis of any additional information that may be made available to the Mining Cadastre Registrar):

Provided that where the PMD makes a recommendation of a kind referred to in paragraph (d)(ii), he or she must avail an extract of the report incorporating this recommendation to the conversion applicant so as to afford the applicant an opportunity no later than 48 hours after such extract is availed to him or her to agree to the reduction in writing or to make a written response to the same not exceeding two thousand words which response shall be annexed to the report of the PMD that is transmitted in terms of this paragraph. 5

(4) No conversion shall be finally registered under this section until the following steps are completed— 10

- (a) the PMD shall transmit all the following particulars to the Mining Cadastre Registrar within seven working days of the conclusion of the meeting referred to in subsection (2)(b)(ii)—
  - (i) a copy of the conversion application and sketch plan referred to in subsection (1)(a); and 15
  - (ii) a copy of the memorandum of objection to the non-approval of provisional conversion lodged in terms of the proviso to subsection (2)(a) (if any); and
  - (iii) in the case of a conversion application referred to in section 141(2), a copy of the discovery notice referred to in section 139(“Mining rights”)(3)(a); and 20
  - (iv) in the case of a conversion application referred to in section 141(5), the documentation referred to in subsection (1)(c) (i) to (iii); and
  - (v) the notice of the PMD’s decision referred to in the proviso to subsection (3)(d); and 25
  - (vi) the report to the Mining Cadastre Registrar referred to in subsection (3)(e); and
  - (vii) if, as a result of the meeting referred to in subsection subsection (2)(b)(ii) the PMD—
    - A. provisionally approved the conversion application, or confirmed its provisional approval, the provisional registration number assigned to the converted blocks or sites; or 30
    - B. recommends approval of the conversion subject to a reduction in the the area of the block of claims or site originally applied for in the conversion application, and the applicant has objected to that recommendation in terms of the proviso to subsection (3)(e), a copy of the applicant’s memorandum of objection there referred to; 35
- (b) upon transmission of the particulars referred to in paragraph (a), the Mining Cadastre Registrar may, if he or she is of the opinion that the transmitted particulars are— 40
  - (i) in order, consider whether to accept or reject the final conversion of the block or sites in question, that is to say—
    - A. if the Mining Cadastre Registrar accepts the final conversion of the block or site, amend or enter the relevant particulars concerning the block or site in the Mining Cadastre Register and confirm in writing to the PMD concerned that the block or site have been re-registered in accordance with the conversion application, subject to subsection (5); in particular— 45

- 5 I. in the case of a conversion application referred to in  
section 141(2) or (3), the PMD, immediately upon  
receiving confirmation of the approval of the conversion  
from the Mining Cadastre Registrar, shall in his or her  
final register re-register the block concerned so that  
the secondary mineral in that block or part thereof that  
becomes the primary mineral by which the block or part  
thereof is denominated (if only portion of the whole  
10 block is thus re-registered, the holder shall abandon that  
portion of the block which is not so re-registered or may  
re-register such portion under the name of the original  
(primary) mineral);
- 15 II. in the case of a conversion application referred to in  
section 141(4), the PMD, immediately upon receiving  
confirmation of the approval of the conversion from the  
Mining Cadastre Registrar, shall in his or her final register  
re-register the mining location concerned as a dependent  
mine service site or independent mine service site (if only  
20 portion of the whole location is thus re-registered, the  
holder shall abandon that portion of the location which  
is not so re-registered or, in the case of a conversion to a  
dependent mine service site, may re-register such portion  
under the name of the original (primary) mineral);
- 25 III. in the case of a conversion application referred to in  
section 142(5), the PMD, immediately upon receiving  
confirmation of the approval of the conversion from the  
Mining Cadastre Registrar, shall in his or her final register  
re-register the dependent mine service site or independent  
mine service site concerned as a mining location (if  
30 only portion of the whole site is thus re-registered, the  
remainder shall be deemed to be the registered dependent  
mine service site for the location);
- B. if the Mining Cadastre Registrar rejects the final registration or  
amendment of the block or site, transmit the reasons for such  
35 rejection to the PMD concerned;
- (ii) not in order or incomplete or inadequate —
- A. request further information or request an adjustment to the  
particulars transmitted by the PMD (which adjustment may  
include a reduction in the area of the block or site applied for),  
40 before making a decision in accordance with subparagraph (i);  
and
- B. upon satisfactory compliance with such request, proceed in  
accordance with paragraph (i);
- (c) upon receiving from the Mining Cadastre Registrar —
- 45 (i) confirmation of the final registration of the conversion of the block  
or site in accordance with paragraph (b)(i)A, the PMD concerned  
shall notify the conversion applicant to apply for a certificate of  
registration under subsection (5);
- 50 (ii) rejection of the final registration of the block or site in accordance  
with paragraph (b)(i)B, the concerned PMD shall notify the  
conversion applicant of the Mining Cadastre Registrar's reasons  
for the rejection of the application; and

- (iii) a request for further information or a request for an adjustment of the particulars transmitted by the PMD concerned, the PMD shall —
  - A. if he or she is able to comply with the request without the need to involve the applicant, transmit the information or effect the adjustment and transmit it to the Cadastre Registrar forthwith; or
  - B. if he or she is not so able as contemplated in subparagraph A, communicate the request to the conversion applicant forthwith:
    - Provided that if, within 14 days of being notified of such request, the conversion applicant fails to comply with the request, the applicant shall be deemed to have abandoned the conversion application;

(5) Upon receiving from the PMD notice of the final registration of the conversation of the block or site in terms of subsection (4)(c)(i), the conversion applicant must apply to the PMD for a certificate of final registration in the manner prescribed and on payment of the prescribed fee, no later than 30 days of the receipt of such notice, or no later than any extension of that period not exceeding a further 30 days that the PMD may grant for any good and sufficient reason shown to the PMD (and if such applicant fails to apply for a final certificate of registration within such period or extended period, the conversion applicant shall be deemed to have abandoned such site).

(6) The PMD shall —

- (a) in addition to the relevant particulars referred to in subsection (4)(b)(i)A, enter in his or her final register the fact that a final certificate of registration has been issued; or
- (b) enter in his or her final register the fact that the conversion applied for has been abandoned due to the operation of subsection (3)(a)(ii) or (5);

and shall forthwith notify the Mining Cadastre Registrar of such registration or abandonment, as the case may be. The Mining Cadastre Registrar shall, in accordance with the PMD's notification, forthwith record in the Register that a final certificate of registration has been issued or, in the case of a deemed abandonment, effect the necessary reversal of the final registration of the conversion in the Mining Cadastre Register.

(7) Any person who is aggrieved by a decision of the Mining Cadastre Registrar under this section, that is to say any conversion applicant or affected occupier of land or other person having a demonstrable interest in the issue of such conversion, may seek a review of such decision by the Administrative Court.

(8) Upon a review of the Mining Cadastre Registrar's decision the Administrative Court may —

- (a) uphold the decision of the Mining Cadastre Registrar; or
- (b) refer the decision back to the Mining Cadastre Registrar for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds —
  - (i) allowing extraneous or irrelevant considerations to affect the decision; or
  - (ii) failure to take into account relevant considerations in arriving at the decision; or
  - (iii) any material mistake of fact or law that tainted the decision; or
  - (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision; or



- (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;
- (c) if the application for review is made at the instance of an aggrieved occupier of any land affected by such conversion—
  - 5 (i) refer the decision back to the Mining Cadastre Registrar as provided in paragraph (b); or
  - (ii) prohibit or cancel the pegging or registration of the block or site subject to the conversion; or
  - (iii) order that a lesser area should be converted; or
  - 10 (iv) impose restrictions on the use to which the block or site subject to the conversion may be put; or
  - (v) give such other order or direction in the matter as the court considers just.

15 (9) Where any conversion is effected under this section the holder shall pay to the PMD in respect of the new certificate of registration the fee that would have been payable under Part III if such certificate of registration had been an original certificate of registration.

### **143 Right of landholder to graze stock upon or cultivate surface of mining location**

- 20 (1) For the purposes of this section and sections 145, 146 and 147—  
“landholding parties” means—
- (a) in relation to land, other than Communal Land, to which an approved cultivation scheme or proposed scheme relates—
    - 25 (i) the landholder; and
    - (ii) where the occupier of the land is not the owner thereof, the occupier of that land;
  - (b) in relation to Communal Land to which an approved cultivation scheme or proposed scheme relates, any rural district council within the area of which that Communal Land is situated;
- 30 “mining parties” means—
- (a) the holder of; and
  - (b) where the miner of the registered mining location is not the holder thereof, the miner of; and
  - 35 (c) the holder of a hypothecation or option registered under this Act over;
- the registered mining location to which an approved cultivation scheme or proposed scheme relates.

40 (2) Subject to this section, the landholder or the occupier of land on which a registered mining location is situated shall retain the right to graze stock upon or cultivate the surface of such location in so far as such grazing or cultivation does not interfere with the proper working of the location for mining purposes.

(3) Subject to subsection (4), the occupier of any land on which a registered mining location is situated, or a rural district council containing such a registered mining location, may lodge with the PMD a written scheme, together with three copies thereof, in regard to the cultivation of the whole or any part of the surface of any registered mining location by such occupier, or (where the RDC lodges the scheme) by persons—

- (a) entitled to reside in Communal Land within the area of such rural district council; or
  - (b) belonging to a group of five or more land permit holders within the area of such rural district council.
- (4) Not later than thirty days before lodging a scheme under subsection (3), the occupier or rural district council, as the case may be, shall give notice of his or its desire to lodge the scheme, together with a copy of the scheme, to—
- (a) each of the mining parties affected thereby; and
  - (b) where notice is being given by the occupier and he or she is not the owner or holder of the land, the landholder;
- Provided that, if a scheme has been agreed to by all the landholding and mining parties and the agreement of each such party has been endorsed on the scheme and signed by him or her, this subsection shall not apply and the scheme may forthwith be lodged under subsection (5).
- (5) On receipt of a scheme under subsection (3), the PMD must be satisfied that—
- (a) subsection (4) has been complied with or does not apply; and
  - (b) the scheme does not provide for the cultivation of land for the purpose of planting or establishing orchards, tree plantations or other permanent crops; and
  - (c) the period of the scheme is clearly stated in the scheme and terminates on a date specified therein; and
  - (d) the scheme specifies the basis on which the compensation shall be calculated in the event of termination of the scheme under section 145 (“Termination of scheme by miner”); and
  - (e) the registered mining location concerned is being held for *bona fide* mining purposes; and
  - (f) the scheme is satisfactory in all respects and is not designed or likely to hinder or prevent the future exploitation of the mineral resources of the mining location.
- (6) If the PMD is not satisfied as to any of the matters referred to in subsection (5), he or she shall refuse to approve the scheme and may submit to the landholding and mining parties affected by the scheme such amendments to the scheme as he or she may deem fit and require them to state within a specified period—
- (a) in the case of a landholding party, whether or not he or she agrees to the amendments;
  - (b) in the case of a mining party, whether he or she has any objection to the amendments.
- (7) If the landholding parties agree to the amendments submitted to them by the PMD under subsection (6), the PMD may, after considering any objections to the amendments stated by the mining parties, amend the scheme accordingly and approve the scheme as amended.
- (8) Where the PMD has approved a scheme he or she shall—
- (a) endorse his or her approval on the original copy of the scheme and on the copies thereof and record the scheme in his or her register; and
  - (b) retain the original copy of the scheme; and
  - (c) send a copy of the scheme to each of the parties to the scheme.

(9) If the PMD receives any objections to a scheme under subsection (6)(b), or any landholding party does not agree to the amendments submitted to them by the PMD under subsection (6), the PMD must—

- 5 (a) serve on every landholding party and mining party concerned a written notice of a meeting to be held before the PMD at the time and venue notified (not being more than seven working days after the service of the notice), at which meeting the PMD shall receive oral and written representations on the proposed scheme, and decide whether or not to approve the scheme, or approve it subject to alterations or conditions:

10                    Provided that in such invitation or at the meeting the PMD may restrict the invitees to submitting written representations only before or no later than 48 hours after the conclusion of the meeting;

- (b) post one copy of the scheme and notice of the meeting in connection with it on the public notice board of the PMD's office:

15 (10) The following provisions apply to a meeting convened by the PMD in terms of subsection (9)—

- (a) if either the landholding parties or the mining parties fail to attend the meeting, the PMD may assume that the absent party has abandoned the application for the scheme, or has dropped his or her objections to it, as the case may be;
- 20

- (b) the applicable rules set out in the Fourth Schedule ("Conduct and powers of PMDs at quasi-judicial meetings, referrals and hearings") shall be followed by the PMD at the meeting;

- (c) at the conclusion of the meeting the PMD may, in the presence of the parties (if any) at the meeting—
- 25

- (i) approve the scheme without amendment; or
- (ii) approve the scheme subject to a defined reduction in the area of the site originally applied for; or
- (iii) reject the scheme:

30                    Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it, to the parties, and post a copy of the decision and the reasons for it on the public notice board of the PMD's office;

- 35 (d) as soon as possible after the conclusion of the meeting, the PMD shall make a written summary of the proceedings of the meeting in the form of a report to the Mining Cadastre Registrar.

40 (11) Any landholding party or mining party who is aggrieved by a decision of the PMD under this section, may, within seven days of being notified of the decision, seek a review of such decision by the Administrative Court.

(12) Upon a review of the PMD's decision the Administrative Court may—

- (a) uphold the decision of the PMD; or
- (b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—
- 45
- (i) allowing extraneous or irrelevant considerations to affect the decision;
- (ii) failure to take into account relevant considerations in arriving at the decision;

- (iii) any material mistake of fact or law that tainted the decision;
- (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision;
- (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.

#### 144 Exercise of rights under scheme upon approval

- (1) Upon approval of a scheme by the PMD under section 143—
  - (a) in the case of land other than Communal Land, the occupier shall be entitled, subject to the provisions of the scheme, to exercise the rights conferred on him or her by the scheme, and
  - (b) in the case of Communal Land, persons entitled in terms of the Communal Land Act [*Chapter 20:04*] to cultivate the land concerned shall be entitled, subject to the provisions of the scheme, to exercise the rights conferred on them by the scheme; and
  - (c) the scheme shall be binding on the holder of the registered mining location concerned and on the miner, if any, thereof; and
  - (d) any rights of cultivation conferred by section 143(2) in respect of the land to which the scheme relates shall be suspended for the duration of the scheme.
- (2) Upon the approval of a scheme by the PMD under section 143 the PMD shall forthwith, without obtaining the authority of the Minister, reserve the ground covered by the scheme against prospecting and pegging under section 44(“Reservations against prospecting and pegging”) for the period of the scheme.
- (3) Upon the termination of a scheme, whether by effluxion of time or otherwise, the PMD shall by notice posted at his or her office withdraw the reservation.

#### 145 Termination of scheme by miner

- (1) Subject to this section, the miner of the registered mining location concerned or, if the location is not being mined, the holder thereof may at any time during the currency of an approved cultivation scheme terminate the scheme by giving written notice of termination to each of the landholding parties, in any of the ways contemplated by section 5 (“Manner of giving notices”):
  - Provided that, if the miner is not the holder of the registered mining location, no notice of termination may be given unless the holder has agreed thereto and his or her agreement has been endorsed thereon and signed by him or her.
  - (2) The notice of termination of a scheme shall specify the date on which the termination is to take effect which shall be a date not less than two months from the date of the giving of the notice of termination to the landholding parties:
    - Provided that, if notice has to be given to two or more landholding parties and is not given to them on the same day, the date so specified shall be not less than two months from the date of the last giving of such notice.
  - (3) Where notice of termination of a scheme has been given under this section—
    - (a) the miner or, if there is no miner, the holder of the registered mining location shall on or before resumption of the land concerned pay to—
      - (i) in the case of land other than Communal Land, the occupier or, if there is no occupier, the landholder;
      - (ii) in the case of Communal Land, any rural district council established for the area concerned, for distribution to the persons entitled in

terms of the Communal Land Act [*Chapter 20:04*] to cultivate the land;

such compensation as may be mutually agreed upon or, failing agreement, as fixed by the PMD on the basis specified in the scheme under section 143 (“Right of landholder to graze stock upon or cultivate the surface of mining location”)(5)(d), or by the Administrative Court on appeal from the determination of the PMD under subsection (5);

(b) the scheme shall cease to be of effect and the miner or holder, as the case may be, may resume possession of the land to which the scheme related—

(i) on the date specified for that purpose in the notice of termination; or

(ii) where the compensation referred to in paragraph (a) has not been paid before the date referred to in subparagraph (i), as soon as that compensation has been paid.

(4) Notwithstanding subsection (3), no person shall be disturbed in his or her cultivation of land under a scheme terminated under this section until he or she has had time to reap at the proper season any annual crops sown before the date of receipt of the notice of termination by—

(a) in the case of land other than Communal Land, the occupier of the land;

(b) in the case of Communal Land, the rural district council, if any, established for the area concerned.

(5) For the purpose of fixing any compensation payable under this section the PMD shall, on failure of the parties to reach a settlement by the time the notice of termination of a scheme takes effect under subsection (2)—

(a) serve on the miner and the disputing landholding party concerned a written notice of a meeting to be held before the PMD at the time and venue notified (not being more than seven working days after the service of the notice), at which meeting the PMD shall attempt to fix, on the basis specified in the scheme under section 143 (“Right of landholder to graze stock upon or cultivate the surface of mining location”)(5)(d), the amount of compensation to be paid to the landholding party or parties concerned:

Provided that in such invitation or at the meeting the PMD may restrict the invitees to submitting written representations only before or no later than 48 hours after the conclusion of the meeting.

and

(b) post one copy of the scheme and notice of the meeting in connection with it on the public notice board of the PMD’s office.

(6) Section 143(10) applies to a meeting under subsection (5) except that at the conclusion of the meeting the PMD may—

(a) in the presence of the parties (if any) at the meeting fix the compensation payable to the landholding party or parties concerned; or

(b) defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it, to the parties, and notify the parties in any of the ways specified in section 5(2)(a), (b) or (c).

(7) Any landholding party or mining party who is dissatisfied with the determination of compensation by the PMD may, within seven days of receiving notice of it, seek a review of such decision by the Administrative Court and section 143(12) shall apply to such review.

**146 Termination of scheme by consent**

(1) An approved cultivation scheme may at any time be terminated, either as to the whole or a part of the area covered thereby, by the mutual consent of the landholding and mining parties affected by the scheme.

- (2) The termination of a scheme by mutual consent shall not take effect— 5
- (a) unless all the parties to the scheme together have notified the PMD of their consent, in which event the scheme is terminated from the date of such notification; or
  - (b) in the case where only one or some of the parties to the scheme have notified the PMD of their consent, until seven days have lapsed from the date when the PMD posts notice of the termination on the notice board of the PMD's office, no objection thereto having by any of the parties involved been received by PMD before then. 10

**147 PMD may cancel scheme**

(1) Where the landholder or occupier of any land, other than Communal Land, to which an approved cultivation scheme relates has in the opinion of the PMD failed adequately to exercise his or her rights under the scheme, the PMD may call upon him or her to show cause why the scheme should not be cancelled and, if the landholder or occupier fails to show such cause to the satisfaction of the PMD, the PMD may cancel the scheme. 15 20

(2) Where the persons entitled in terms of the Communal Land Act [*Chapter 20:04*] to cultivate Communal Land to which an approved cultivation scheme relates have in the opinion of the PMD failed adequately to exercise their rights under the scheme, the PMD may call upon any rural district council established for the area concerned to show cause why the scheme should not be cancelled, and, if the rural district council fails to show such cause to the satisfaction of the PMD, the PMD may cancel the scheme. 25

**148 Resumption of rights by miner**

On the expiry of the period of an approved cultivation scheme or on the termination of a scheme under section 146 or the cancellation of a scheme under section 147, the miner or, if there is no miner, the holder of the registered mining location concerned may exercise his or her full rights in respect of the registered mining location or part thereof, as the case may be, without payment to any person for or in respect of anything done in the exercise of any rights under the scheme. 30

**149 Termination of scheme on forfeiture or abandonment of location** 35

(1) Subject to 204 ("Relocation of abandoned, forfeited or cancelled locations and reinstatement of forfeited locations") (3), if title to a mining location to which an approved cultivation scheme relates is extinguished by forfeiture or abandonment or in any other manner before the period of the scheme expires, the scheme shall be deemed to have been terminated and Part V ("Acquisition and Registration of Mining Rights") shall thereafter apply to or in respect of so much of the land covered by the scheme as comes within the definition of "land under cultivation" contained in section 30 ("Interpretation in Part V") 40

(2) Where a portion of a mining location to which an approved cultivation scheme relates is abandoned before the period of the scheme expires, the scheme shall be deemed to have been terminated in respect of that portion of the location which has been abandoned and Part V shall apply to so much of the abandoned portion as comes within the definition of "land under cultivation" contained in section 30 ("Interpretation in Part V")(1). 45



**150 Scheme to bind successors in title**

Unless an approved cultivation scheme is terminated or deemed to have been terminated or is cancelled before the expiry of the period thereof, the scheme and sections 143 to 149 shall for the period of the scheme apply to or in respect of and be binding on—

- (a) any person to whom the mining location to which the scheme relates is transferred and on any miner thereof; and
- (b) any person to whom land, other than Communal Land, covered by the scheme is transferred and on any occupier thereof; and
- (c) any person becoming entitled in terms of the Communal Land Act [*Chapter 20:04*] to cultivate any Communal Land covered by the scheme:

Provided that, where a scheme has been terminated under section 149 (“Termination of scheme by consent”) as to part only of the area covered thereby, this section shall apply in relation to the remainder of the area.

**151 Inspection certificates and payments to landholders during period of agreement**

During the currency of an approved cultivation scheme—

- (a) any inspection certificate falling due in respect of the registered mining location to which the scheme relates shall, notwithstanding anything contained in Part XI (“Preservation of Mining Rights”), be obtainable, without any work having been executed for the purpose, on payment of the fee referred to in section 154 (“Pre-inspection requirements and first and subsequent inspection certificates”)(9)(e); and
- (b) no landholder shall be entitled to any payment under section 152 (“Payments from provincial MIEPF to landholders affected by mining”) in respect of such location which would otherwise be due for the period of the scheme.

**152 Payments from Mining Industry Environmental Protection Fund to landholders affected by mining**

(1) In this section—

“affected by mining”, in relation to a landholder so affected, means that, on account of mining operations, whether past or present, on the registered mining location concerned, the landholder is denied the use of the surface of the location or a substantial portion thereof;

“MIEPF payment” means a payment to a landholder for the purpose of this section.

(2) Payment to landholders affected by mining shall be made in accordance with this section from the amount remitted to a RDC by the trustees of the MIEPF in terms of section 188 (“Annual Programmes of Fund; financial year of fund”) (1)(d).

(3) In every financial year the RDC concerned shall determine whether the amount so received is sufficient to make any meaningful disbursement to landholders under this section, and if in its opinion the amount so received is not sufficient for that purpose, it shall defer making any payments to landholders under this section and aggregate the amount so received in the current financial year with the amount received in the following and every subsequent financial year until, in its opinion, meaningful payments can be made:

Provided that no more than three consecutive deferrals may be made before landholders receive payments under this section.

(4) MIEPF payments shall be distributed equally to landholders, regardless of the size of their holdings and the degree of impact caused by mining to their farming operations.

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(5) No deductions from payments to landholders may be made under this section except for—

(a) an amount not exceeding two comma five *per centum* of the total amount available for distribution to landholders in the financial year of the RDC concerned, which withheld amount shall be carried over to the next financial year and aggregated to the amount received in that financial year from the Trustee of the Fund in terms of section 188 (“Annual programmes of Fund; financial year of Fund”)(1)(d); and

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(b) an amount that may be retained by the RDC concerned for its expenses incurred in connection with administering payments under this section, which retention shall not exceed two comma five *per centum* of the total amount available for distribution to landholders in the financial year concerned, minus the amount referred to in paragraph (a);

15

(6) Subject to this section and any regulations made under this Act—

(a) every landholder becomes entitled to receive an MIEPF payment if he or she satisfies the RDC that he or she is affected by mining for any period falling within the year ending on the previous 31st December during which a registered mining location was situated in any part of their land, for which purpose he or she must apply (in writing or on the prescribed form and within such period as may be prescribed) to the Chief Executive Officer of the RDC in which his or her land is located, to be registered on a list of those entitled to such payment;

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(b) a Chief may, on behalf of those inhabitants of the Communal Land under the Chief’s jurisdiction who are landholders affected by mining, make application in terms of paragraph (a) as if the Chief was the landholder of the area of Communal Land concerned (except that the Chief must append to his or her application a list of the landholders under the Chief’s jurisdiction affected by mining for incorporation in the RDC’s own list of those entitled to such payment, and any MIEPF payments made by the RDC through the Chief on their behalf shall be distributed to such landholders without delay);

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Provided that no entitlement to MIEPF payments shall vest in any landholder during any year that the RDC decides, in terms of subsection (3), not to make any MIEPF payments.

(7) On receipt of an application under subsection (6) the Chief Executive Officer may send particulars of the application to the PMD for verification.

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(8) Notwithstanding anything contained in this section, a landholder shall not be entitled to receive MIEPF payments if he or his spouse or any child of either of them holds any direct or indirect pecuniary interest in the mining location in respect of which a claim for MIEPF payments is made.

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(9) For the purposes of subsection (8), a person shall not be regarded as holding a pecuniary interest in a mining location solely by reason of his or her ownership of shares in a public company unless—

(a) his shareholding is such that he has: or

- (b) where any other person referred to in subsection (8) owns shares in the same company, their combined shareholding is such that they have;  
a controlling interest in the company.

## PART XI

## 5 PRESERVATION OF MINING RIGHTS

**153 Interpretation in Part XI**

In this Part—

- “holder” means the holder of a certificate of registration of a mining block, a mining leaseholder or the holder of a special grant;
- 10 “statutory environmental impact assessment report” or “EIA” means an environmental impact assessment report which an applicant is required by Part XI of the Environmental Management Act [*Chapter 20:27*] to submit to the Director-General of the Environmental Management Agency before commencing mining operations;
- 15 “work” includes—
- (a) development work;
  - (b) the production of minerals;
  - (c) capital expenditure, other than—
    - (i) expenditure incurred in acquiring a mining location; or
    - 20 (ii) expenditure incurred in the exercise of rights of rights under an exclusive exploration licence;
  - (d) any other work, expenditure or development in connection with a mining location or mining lease or special grant that may be prescribed for the purpose of this definition.

25 **154 Pre-inspection requirements and first and subsequent inspection certificates**

(1) In this section—

- “compelling reasons”, in relation to reasons which may excuse an applicant for an inspection certificate from strict compliance with his or her work plan, includes—
- 30 (a) general market conditions prevailing in respect of, or any other circumstances relating to, a mineral that are such as to discourage the production of such mineral; or
- 35 (b) any temporary incapacity on the part of the applicant which is not due to any fault on the part of the applicant and which is remediable within a reasonable time;
- “mining social responsibility certifier” means a person accredited by the Ministry who is or who employs or retains persons having credentials in any social science (including but not limited to law, economics, sociology, political science, social work and welfare, and community relations);
- 40 “objective criteria”, in relation to the criteria used by a mining social responsibility certifier for the purpose of subsection (2)(c) means criteria that in the opinion of the Minister (after consultation with the ministries responsible for the environment and social welfare), strike a reasonable balance between on the one hand, the national interest in developing mineral resources for the benefit of the people of Zimbabwe, and on the other hand satisfying the reasonable and legitimate concerns of a community affected by mining operations;
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“qualified” or “unqualified” in relation to a social responsibility certificate, means qualified or unqualified by reference to subsection (5)(a) or (b);

“social responsibility certificate” in relation to a certificate, means a social responsibility certificate issued by a mining social responsibility certifier in terms of this section.

5

(2) No later than thirty days (or any extension of that period not exceeding a further thirty days as the PMD may in writing allow on good cause shown by the holder concerned) after the final registration of a mining block, mining lease or special grant, the holder thereof shall submit to the PMD the following (the failure to submit any of which shall be taken by the PMD to constitute abandonment of the block, lease or grant)—

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(a) a plan of work to be done in the next twelve months in connection with the block, mining lease or special grant concerned (hereinafter called a “work plan”);

(b) a copy of the statutory environmental impact assessment report which in addition to other relevant information must contain the following particulars—

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(i) written information on the extent of any quitance work or other work that will be required in terms of section 201 (“Open workings to be protected on abandonment, forfeiture or cancellation of location”) upon the cessation of mining operations in the block, mining lease or mining location concerned; and

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(ii) particulars of any provision that the applicant has made or will make for meeting the cost of the work referred to in subparagraph (i), and for meeting the cost of any other work required to protect or restore the environment; and

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(iii) particulars of the kind mentioned in paragraph (c) bearing on the social responsibility of the miner;

(c) with respect to the part of the EIA of a mining leaseholder or special grantee bearing on social responsibility, a social responsibility certificate from a mining social responsibility certifier certifying its opinion that the mining leaseholder or holder of the special grant will be (from the undertakings expressed in that part of the EIA) a socially responsible actor by reference to objective criteria (used by the certifier and accepted as such by the Ministry), including—

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35

(i) the up-to-date payment of all development levies due to the local authority in question;

(ii) the depth of engagement with any community in the immediate vicinity of the mining location (including regular consultation with the community on issues of concern to them in relation to the impact of the mining operations of the miner);

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(iii) sensitivity to cultural heritage, including respect for culturally significant sites in the immediate vicinity of the mining location;

(iv) sensitivity generally to the cultural values and norms of the community in the vicinity of the mining location;

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(v) the extent to which the mining operations economically and socially benefit any community in the immediate vicinity of the mining location;

(vi) the implementation of fair and safe labour practices;

and

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(d) a valid and up to date tax clearance certificate issued by the Zimbabwe Revenue Authority; and

- (e) proof satisfactory to the PMD of the following as required by section 184 (“Requirement for insurance or guarantee against statutory liability to repair environmental damage, etc”)—
- 5           (i) that the miner has obtained the insurance or guarantee or security referred to in subsection 184(1); or
- (ii) that the miner has paid to MIEPF levy referred to in subsection 184(2);
- and
- 10          (f) an address for mutual service of documents between the applicant and PMD, and in particular an electronic mail address, if the applicant has one; and
- (g) a prescribed fee.

(3) The PMD shall, in consultation with a mine surveyor, mining engineer and geologist, within 14 working days of receiving a work plan (which period may be  
15 extended with the consent of the holder, or if no such consent is given, or no response is given to the holder after 14 days, the work plan shall be deemed to have been approved without amendment), consider the adequacy of the work plan submitted to him or her (that is to say, judge the adequacy of the plan against such standards of best practice as may be prescribed) and may—

- 20          (a) reject the work plan and require the holder to submit a new work plan that takes into account the objections of the PMD to the original work plan; or
- (b) require any specific amendment of the work plan;

and if the holder fails within seven working days (or such further period not exceeding  
25 an additional seven working days as the PMD may allow for good cause shown) to comply with paragraph (a) or (b), the holder shall be deemed to have abandoned the block or lease or area to which the plan relates.

(4) Except as otherwise provided in this Act, the holder of any block of claims or of any mining lease or special grant shall, within a period of twelve months from the  
30 date of registration of such block or the issue of such mining lease or special grant, as the case may be—

- (a) apply in writing to the PMD for and obtain a first inspection certificate therefor in respect of work executed upon such block, mining lease or area of the special grant; and
- 35          (b) attach to such application an affidavit stating what work has been done in connection with the block, mining lease or area of the special grant concerned;
- (c) attach to such application—
- 40           (i) a separate affidavit stating the extent to which the applicant has complied with his or her EIA;
- (ii) in the case of an applicant who is a mining leaseholder or special grantee, a social responsibility certificate from a mining social responsibility certifier, certifying the extent to which the applicant has lived up to his or her expressed undertakings under subsection  
45 (2)(c) (and subsection (5) applies with respect to the extent the applicant has complied or not complied with its social responsibility obligations).

(5) For the purpose of subsection (4)(c)(ii), if the mining social responsibility certifier—

- (a) issues an unqualified certificate, that is to say if in the certifier's opinion the applicant has substantially lived up to its undertakings, the applicant shall pay half the prescribed amount of the inspection certificate fee; or
- (b) issues a qualified certificate, that is to say if in the certifier's opinion the applicant has not substantially lived up to its undertakings, but the certifier is satisfied that it will do so in the foreseeable future, the applicant shall pay double the contribution to the MIEP Fund due from it under the relevant section; or 5
- (c) refuses to issue either a qualified or unqualified certificate for any specified reasons, the PMD may, after considering the reasons given by the certifier for its refusal and taking into account the circumstances of the particular case— 10
  - (i) refuse to issue an inspection certificate to the applicant for the reasons that the certifier refused to issue it with a qualified or unqualified social responsibility certificate; or 15
  - (ii) issue the applicant with a first inspection certificate on the conditions that the applicant—
    - A. pays treble the contribution due to MIEPF from him or her under Part XV ("Mining Industry Environment Protection Fund and related Matters"); and 20
    - B. undertakes that he or she will endeavour to secure social responsibility certification by the time that he or she applies for second inspection certificate.
- (6) In considering whether to issue a first inspection certificate, the PMD shall—
- (a) satisfy himself or herself as to the truth of any material statement in the affidavit, and if not so satisfied, the PMD shall (as the case may be)— 25
  - (i) cancel the registration of the block; or
  - (ii) in the case of a mining lease, recommend through the Mining Cadastre Registrar to the Mining Affairs Board cancellation of the lease; or 30
  - (iii) in the case of a special grant, recommend through the Mining Cadastre Registrar the cancellation of the special grant in terms of section 233 ("Cancellation of special grant");
- and
- (b) if satisfied as to the truth of the affidavit referred to in paragraph (a), have particular regard of the extent to which the holder has adhered to his or her work plan of work referred to in subsection (1)(a), and if the holder has not so adhered to the full extent required, the holder must furnish to the PMD compelling reasons in writing (whether in the affidavit concerned or in a separate written memorandum not exceeding 2 000 words) explaining why full adherence was not achieved, and additionally the holder must (whether in the affidavit concerned or by way of the aforesaid memorandum) undertake to do any one or more of the following to the satisfaction of the PMD— 40
  - (i) make good any defaults in compliance with the work plan no later than six months from the date of issuance of the first inspection certificate; or 45
  - (ii) seek an amendment in writing of specific parts of the work plan and fully comply with the work plan as amended no later than six months from the date of issuance of the first inspection certificate; 50
- or



- (iii) if it satisfies the PMD that there are compelling reasons for doing so, suspend the operation of the work plan for not more than six months.

5 (7) A first inspection certificate shall protect the block or the mining lease or special grant from forfeiture or (in the case of a special grant) cancellation for a period of twelve months from the date of registration of the block or the date of issue of the mining lease or special grant, as the case may be (in the case of a special grant, such certificate is presumptive proof for the purpose of section 233 (“Cancellation of special grant”) that the grantee is in compliance with the terms and conditions attached to his or her special grant). This provision applies in respect of a second or any subsequent inspection certificate.

15 (8) At least thirty days before the end of each period of twelve months from the date of issuance of a current inspection certificate (or any extension of the period beyond the date of expiry of the current inspection certificate not exceeding a further thirty days as the PMD may in writing allow on good cause shown by the holder concerned), the holder of a block or mining or area of a special grant must submit to the PMD the following (the failure to submit any of which shall render the block or lease liable to forfeiture, or shall trigger the application of subsection (6)(a)(iii) in relation to a special grant, as the case may be)—

- 20 (a) an application in writing to the PMD for an inspection certificate in respect of work executed on such block or mining lease or area; and
- (b) an affidavit stating what work has been done in connection with the block or mining lease or area concerned in the previous twelve months; and
- 25 (c) a plan of work to be done in the next twelve months in connection with the block or mining lease or area concerned (hereinafter called a “work plan”);
- (d) any changes to or replacement of the statutory environmental impact assessment report referred to in subsection (1)(b); and
- (e) a prescribed fee.

30 (9) Subsections (2) to (8) apply with respect to an application for a second or any subsequent inspection certificate:

Provided that—

- 35 (a) any reference to a work plan in subsection (3) shall be taken as a reference to the work plan submitted for the previous twelve months, unless the holder submits to the PMD a new work plan identifying and justifying any variance from the previous work plan;
- (b) the provisions of subsections (2)(b), (c), (4)(c) (ii) and (5) shall be not iterated with each application for an inspection certificate, unless the Environmental Management Agency, in consultation with the PMD,
- 40 requires the holder to obtain a new EIA.

45 (10) A work plan shall be binding upon every person who has from the applicant for the inspection certificate an option or a tribute which has been approved in terms of Part XVIII, and the fact that such option or tribute holder has not executed the work required to be done under the work plan, or such of the work under such plan as has been apportioned to such holder, shall not excuse the applicant from compliance with such plan.

(11) The PMD may before issuing any inspection certificate under this section, himself or herself or through an inspector of mines or any other official of the Ministry of Mines, inspect any mining location for the purpose of ascertaining the accuracy of any information furnished to him or her by affidavit or in a work plan.

(12) The PMD shall give at least 24 hours' notice to the holder of the block or mining lease or area concerned of such inspection, and such holder shall if so required by the PMD be present at such inspection and afford all facilities and information necessary for the inspection.

**155 Complaints by RDC or EMA of alleged breaches by miners of social responsibility and environmental obligations; Minister's power to intervene in environmental emergencies** 5

(1) With respect to the social responsibility obligations of a small-scale miner, if at any time between—

- (a) pre-inspection and the application for the first inspection certificate; or 10
- (b) the issuance of the first inspection certificate and the second inspection certificate, or between the issuance of any subsequent inspection certificate and the application for the next one;

the PMD receives any affidavit from a member of the RDC within whose jurisdiction the small-scale miner operates to the effect that— 15

- (c) the miner has not, during the period since pre-inspection (or during the currency of the existing inspection certificate, as the case may be), paid the development levies due from him or her to the RDC; or
- (d) the miner is not socially responsible by reference to any one or more of the criteria mentioned in section 154(2)(c), and specifying in what particular ways the applicant has offended against such criteria; 20

the PMD may, after notifying the miner of the affidavit and its contents, require such small-scale miner to lodge at the office of the PMD, a memorandum not exceeding two thousand words responding to the affidavit and, on the basis of that response the PMD may notify the miner in writing that he or she will not qualify to receive a first inspection certificate (or any subsequent inspection certificate, as the case may be) unless, by the time of the application for— 25

- (e) the first inspection certificate, he or she undertakes in writing to remedy any defaults or complaints complained of no later than the date when he or she applies for the second inspection certificate; or 30
- (f) the next inspection certificate on expiry of the current inspection certificate, he or she undertakes in writing to remedy any defaults or complaints herein mentioned no later than the date of expiry of that next inspection certificate.

(2) With respect to the environmental obligations of a small-scale miner, mining lessee or holder of a special grant, if at any time between— 35

- (a) pre-inspection and the application for the first inspection certificate; or
- (b) the issuance of the first inspection certificate and the second inspection certificate, or between the issuance of any subsequent inspection certificate and the application for the next one; 40

the PMD receives any affidavit from a member of the RDC within whose jurisdiction the miner operates, or from an official of the Environmental Management Agency, to the effect that—

- (c) the miner has, during the since pre-inspection (or during the currency of the existing inspection certificate, as the case may be), failed to comply to a significant degree with any of the environmental obligations assumed by the miner in his or her EIA; or 45
- (d) the miner is responsible for any specified action or omission resulting in significant environmental degradation, destruction, contamination or

other harm to the health or well-being of people, animals or the physical environment;

the PMD may, after notifying the miner of the affidavit and its contents, require such miner to lodge at the office of the PMD, a memorandum not exceeding two thousand  
5 words responding to the affidavit and, on the basis of that response the PMD may notify the miner in writing that he or she will not qualify to receive a first inspection certificate unless, by the time of the application for—

- 10 (e) the first inspection certificate, he or she undertakes in writing to remedy any defaults or complaints complained of no later than the date when he or she applies for the second inspection certificate; or
- (f) the next inspection certificate on expiry of the current inspection certificate, he or she undertakes in writing to remedy any defaults or complaints herein mentioned no later than the date of expiry of that next inspection certificate.

15 (3) If at any time referred to in subsection (2)(a) or (b) the Minister believes on reasonable grounds (upon a report from the PMD having jurisdiction over the province concerned or from evidence obtained from any other source that the Minister considers to be credible) that a miner is in default with respect to his or her environmental obligations referred to in subsection (2)(c) or is responsible for any damage to the environment  
20 referred to in subsection (2)(d), and that as a result significant environmental degradation, destruction, contamination or other severe harm to the health of people, animals or the physical environment, has happened or is threatened, the Minister may by a written order to the miner concerned, which order shall be communicated through the PMD, stop the miner immediately from engaging in any mining operations for a  
25 specified period not exceeding 60 days from the date of issuance of the order.

(4) Within the period during which mining operations are stopped, the miner concerned shall have the right to show cause to the PMD why the operations should recommence, whereupon the PMD may recommend to the Minister that the mining operations in question should be recommenced subject to the fulfilment of such  
30 conditions as the PMD may recommend, or that they should be permanently stopped, in which event the inspection certificate relating thereto shall not be renewed or be immediately withdrawn, as may be appropriate.

(5) If any miner engages in any mining operations (except such operations as are strictly necessary to secure the safety, health or well-being of people, animals or  
35 the physical environment, the proof whereof shall rest with the miner) on a mining location subjected to an order of the Minister made under subsection (3), then the PMD may deal with such miner and his or her employees, agents and contractors as if they were illegal occupiers of the mining location, and section 300 (“Eviction of illegal occupiers”) shall thereupon apply to secure their eviction from the mining location.

40 (6) Subsections (3), (4) and (5) are complementary to, and not in derogation of section 182 (“Suspension of mining rights in response to threats to environment, public safety, public health, etc”).

### **156 Unutilised dumps**

(1) Where the Minister has cause to believe that any dump on any registered  
45 mining location appears to be unutilised, the Minister may direct the Board to investigate—

- (a) whether or not the dump is economically viable; and
- (b) whether the dump is in fact unutilised and, if so, the reasons therefor.

- (2) In making an investigation in terms of subsection (1), the Board shall take into account—
- (a) the length of time that the dump has not been worked; and
  - (b) the reasons, if any, given by the holder of the registered mining location concerned as to why the dump has not been worked; and 5
  - (c) the intentions of the holder of the registered mining location concerned in regard to the future working of the dump; and
  - (d) any other relevant factors bearing on the matter.
- (3) The Board or any member thereof, or the appropriate PMD at the direction of the Board, may itself, himself or herself or through an inspector of mines or any other official of the Ministry of Mines, inspect on at least twenty-four (24) hours' notice to the holder concerned any mining location for the purpose of this section, and such holder shall if so required by the Board or PMD be present at such inspection and afford all facilities and information necessary for the inspection. 10
- (4) At the conclusion of the investigation carried out in terms of subsection (2), the Board shall submit a report to the Minister advising whether or not it considers the dump to be unutilised, and whether or not the dump is economically viable, and shall forward a copy thereof to the holder of the registered mining location concerned. 15
- (5) A holder of a registered mining location may, upon receipt of a copy of a report in terms of subsection (4) submit his or her comments thereon to the Minister for consideration. 20
- (6) Where the Board reports that it considers the dump to be unutilised and that it is economically viable, the Minister may, if he or she considers it to be in the public interest to do so, direct the holder of the registered mining location concerned to work the dump himself or herself or to tribute it so that it can be worked by someone else, within such reasonable period as the Minister may specify. 25
- (7) Any holder of a registered mining location who fails timeously to comply with a direction of the Minister under subsection (6) commits a criminal offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 4, or to imprisonment for a period not exceeding three months, or both. 30
- (8) The PMD for the mining province wherein a civil default as described in subsection (7) occurs may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—
- (a) directs the defaulter— 35
    - (i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 2; and
    - (ii) to immediately (that is to say, within one hundred and twenty hours after the civil penalty order is served on him or her) set in motion any of the following— 40
      - A. begin working the dump himself or her herself; or
      - B. tribute the dump to someone else of his or her own choosing; or
      - C. tribute the dump to someone identified in writing by the PMD (or someone chosen by the holder from a list of potential 45
 tributors submitted to the holder by the PMD); or

- D. (unless the time for seeking such review has lapsed) seek a review of the Minister's direction in terms of section 158 ("Appeals under Part IX"); or
- (b) subjects the defaulter to either or both of the following penalties, as may be appropriate —
- (i) if he or she fails to pay the default fine specified in paragraph (a)(i) ("the original default fine"), to pay a further default fine of the maximum amount fixed for level 2 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
- (ii) if he or she fails to comply with paragraph (a)(ii) A, B, C or D, to pay a default fine of the maximum amount fixed for level 2 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served (and two default fines shall be payable if there is concurrent noncompliance with paragraph (a)(i) and (ii)).

### 157 Retention licences

(1) If the holder of a registered block or mining lease or special grant fails, or has reason to believe that he or she is likely to fail, to develop or work, or adequately to develop or work, such block or mining lease or area of the special grant by the time that an inspection certificate falls due, he or she may nevertheless, on payment of the prescribed fee, be given such certificate if he or she obtains a retention licence in accordance with this section.

(2) The holder may, at any time before an inspection certificate falls due, apply to the Board, through the PMD, for a retention licence under subsection (1), and if the Board is satisfied that—

- (a) the failure to develop or work, or adequately to develop or work such block or mining lease or area of the special grant, is due to circumstances beyond the control of the holder and that he or she has made every effort to overcome them; or
- (b) it is the holder's declared intention to start or continue developing or working the block or mining lease or grant within a period of six months on a scale satisfactory to the Board; or
- (c) general market conditions prevailing in respect of or any other circumstances relating to any mineral are such as to discourage the production of such mineral, and such market conditions or circumstances, as the case may be, have prevailed for a period of at least two years immediately preceding the date of the application; or
- (d) there is reasonable cause for the delay in developing or working the block or mining lease or special grant or for not adequately developing or working such block or mining lease or area of the special grant; or
- (e) the block forms part of a series of not more than ten blocks contiguous to a main block being worked by the holder and is essential to the proper working of such main block;

the Board may recommend to the Minister, in writing, that he or she should issue a retention licence to the holder, and may recommend the period (not exceeding three years) for which the licence should be issued and any terms and conditions that should attach to it.

(3) Upon receipt of a recommendation from the Board under subsection (2), the Minister may in his or her discretion issue a retention licence to the holder or lessee or grantee concerned for the period and subject to the conditions recommended by the Board:

Provided that, if the Minister refuses to issue a licence, or issues one for a different period or subject to different terms and conditions from those recommended by the Board, he or she shall inform the Board, in writing, of his or her reasons for doing so and the Board shall inform the holder or lessee or grantee accordingly.

(4) The effect of a retention licence is that the holder of the licence — 5

(a) is granted protection against forfeiture of the block or lease or cancellation of the special grant to which the licence relates during the period of validity of the licence; and

(b) must be issued with an inspection certificate at any time it falls due during the period of validity of the licence. 10

(5) The holder of a retention licence may apply in accordance with this section for the issuance of a new retention licence no later than thirty days before the expiry of the current one, but no more than three consecutive retention licences may be issued.

(6) The Minister shall ensure that copies of every retention licence issued under this section are sent to the Board and the PMD, and those copies shall be open to inspection by members of the public, free of charge, at all reasonable times during normal business hours. 15

(7) If —

(a) an application for a retention licence under this section is refused, and the applicant fails to obtain an inspection certificate on the date on which certificate falls due next after such refusal, the PMD, shall — 20

(i) declare the registered block or mining lease concerned block to be forfeited in terms of section 198 (“Forfeiture of registered blocks”) (5); or

(ii) in the case of a special grant, recommend through the Mining Cadastre Registrar the cancellation of the special grant in terms of section 233 (“Cancellation of special grant”); 25

or

(b) despite the issuance of a retention licence, the PMD has reason to believe that a registered block or mining lease or special grant is being held for any purpose other than *bona fide* mining purposes, he or she may through Mining Cadastre Registrar report the matter to the Board, which in turn may, after considering the matter, recommend to the Minister in writing, that the Minister cancel the retention licence concerned; and if the Minister cancels it — 30 35

(i) the PMD shall (in the case of a mining title other than a special grant) without delay upon being notified by the Board of such cancellation, declare such block or lease to be forfeited in terms of section 198 (“Forfeiture of registered blocks”) (5); or

(ii) in the case of a special grant, recommend that the President cancel the special grant in terms of section 233 (“Cancellation of special grant”). 40

## 158 Appeals under Part XI

(1) Any person who is aggrieved by a PMD’s —

(a) refusal to issue an inspection certificate or an extra work certificate; or 45

(b) assessment of work done for the purposes of this Part;

may, within seven days of being notified of such refusal or assessment, appeal to the Board against the refusal or assessment, for which purpose the appellant must —



- (c) lodge (together with the prescribed fee, if any) the appeal in writing with the Provincial Mining Director concerned, and copy it to the Secretary, no later than two working days after the person has received notification decision to be appealed against; and
- 5 (d) incorporate in the appeal grounds on which the PMD's decision should be set aside and what decision ought to be substituted for it;

and thereupon the Provincial Mining Director shall, without delay, transmit the appeal to the Secretary together with the written decision of the PMD on the referral.

- (2) The effect of lodging an appeal under subsection (1) shall be to suspend
- 10 the decision appealed against until the appeal is determined by the Board.

(3) Upon receiving an appeal, the Secretary shall promptly (and in any event no later than the next meeting of the Board after receiving it) refer the appeal together with its supporting documentation to the Board, which, after considering it, may —

- (a) dismiss the appeal by upholding the decision of the PMD; or
- 15 (b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the PMD to investigate the matter further and make a report and recommendations) on any one or more of the following grounds —
  - (i) allowing extraneous or irrelevant considerations to affect the
  - 20 decision, or
  - (ii) failure to take into account relevant considerations in arriving at the decision, or
  - (iii) any material mistake of fact or law that tainted the decision; or
  - (iv) gross but unwilful irregularity in the proceedings or the decision;
  - 25 (the Secretary shall, upon receiving the report or recommendations resulting from the PMD's reconsideration, promptly refer the report or recommendation to the Board which, after considering the same, dismiss or uphold the appeal in accordance with such report or recommendation;
  - or
  - 30 (c) uphold the appeal and substitute any other decision for that of the PMD, if the Board finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

35 Provided that the Board shall not make a finding on this ground without affording the PMD an opportunity to respond to the proposed finding;

- or
- (d) dismiss or uphold the appeal and, where necessary, substitute the
- 40 Board's own decision, on the basis of any policy directive previously communicated to the Board by the Minister setting forth the overriding national interest as it affects cases of a like nature to the one being considered by the Board.

(4) Any person aggrieved by a decision of the Board under subsection (3)(a), (c) or (d), may seek a review of such decision by the Administrative Court within seven

45 days after the date of its notification to the appellant, whereupon the court may do any of the things the Board is empowered to do under subsection (4)(a). (c) or (d), except that with reference to a case decided in accordance with subsection (4)(d) the Court shall satisfy itself that the policy directive there referred to —

- (a) is not inconsistent with this Act; and

- (b) was issued in good faith before the case was referred to the PMD, and is of general applicability; and
  - (c) clearly delimits the scope of its application and is otherwise not vague or ambiguous in its terms; and
  - (d) clearly expresses the national interest at stake; and 5
  - (e) can reasonably be applied to the case in question and has not been applied in a discriminatory or selective way.
- (5) The taking of a decision on review under subsection (4) shall not suspend the decision sought to be reviewed until the review is determined by the Administrative Court. 10
- (6) Any miner or holder of a registered mining location aggrieved by a decision of the Minister made under section 155(3) or 156(6) may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the holder of a registered mining location, whereupon the court may—
- (a) dismiss the appeal by upholding the decision of the Minister; or 15
  - (b) refer the decision back to the Minister for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the Minister to investigate the matter further and make a report and recommendations) on any one or more of the following grounds—
    - (i) allowing extraneous or irrelevant considerations to affect the decision, or 20
    - (ii) failure to take into account relevant considerations in arriving at the decision, or
    - (iii) any material mistake of fact or law that tainted the decision; or
    - (iv) gross but unwilful irregularity in the proceedings or the decision; 25

(the court, upon receiving the report or recommendations resulting from the Minister’s reconsideration, shall, after considering the same, make a decision in accordance with paragraph (a) or substitute any other decision for the original decision of the Minister in the light of such report or recommendations). 30
- (7) The lodging of an application for review under subsection (6) shall suspend the decision of the Minister pending the outcome of the review.
- (8) Any person who is aggrieved by the Board’s refusal to recommend to the Minister the issue of a retention licence under section 157 (“Retention licences”) may, within seven days after being notified of the decision or refusal, appeal against it to the Minister, who upon considering it may— 35
- (a) dismiss the appeal by upholding the decision of the Board; or
  - (b) refer the decision back to the Board for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the Board to investigate the matter further and make a report and recommendations) on any one or more of the following grounds— 40
    - (i) allowing extraneous or irrelevant considerations to affect the decision, or
    - (ii) failure to take into account relevant considerations in arriving at the decision, or 45
    - (iii) any material mistake of fact or law that tainted the decision; or
    - (iv) gross but unwilful irregularity in the proceedings or the decision;

(the Minister shall, upon receiving the report or recommendations resulting from the Board's reconsideration, dismiss or uphold the appeal in accordance with such report or recommendation;

or

- 5 (c) uphold the appeal and substitute any other decision for that of the Board, if the Minister finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

10 Provided that the Minister shall not make a finding on this ground without affording the Board an opportunity to respond to the proposed finding;

or

- 15 (d) dismiss or uphold the appeal and, where necessary, substitute the Minister's own decision, on the basis of any policy directive previously communicated to the Board by the Minister setting forth the overriding national interest as it affects cases of a like nature to the one being considered by the Board.

(9) Any person aggrieved by a decision of the Minister under subsection (8) (a), (c) or (d), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the appellant, whereupon the court may do any of the things the Minister is empowered to do under subsection (8)(a), (c) or (d), except that with reference to a case decided in accordance with subsection (8)(d) the Court shall satisfy itself that the policy directive there referred to—

- (a) is not inconsistent with this Act; and  
 25 (b) was issued in good faith before the case was referred to the Minister, and is of general applicability; and  
 (c) clearly delimits the scope of its application and is otherwise not vague or ambiguous in its terms; and  
 (d) clearly expresses the national interest at stake; and  
 30 (e) can reasonably be applied to the case in question and has not been applied in a discriminatory or selective way

(10) The noting of an appeal under subsection (8) or (9) shall suspend the forfeiture of the block or mining lease or the cancellation of the special grant until the decision of the Minister or the Administrative Court, as the case may be, has been  
 35 given.

## PART XII

### CONTROL OF SITING OF WORKS ON MINING LOCATIONS

#### 159 Interpretation in Part XII

40 In this Part, any reference to the owner or occupier of land shall be construed, in relation to—

- (a) Communal Land, as a reference to any rural district council established for the area concerned;  
 (b) State land, as a reference to the Minister responsible for the administration of the land concerned.

**160 Approved plan required prior to erection of certain works**

(1) Subject to section 163 (“When works may be erected or constructed without approved plan”), no miner of a registered mining location shall erect or construct upon his or her mining location any of the following works—

- (a) machinery or plant used for the treatment of ores, concentrates, tailings, slimes or other residues; 5
- (b) dumps;
- (c) dams for the storage of waste water or slimes;
- (d) any block of housing units for his or her employees;
- (e) buildings of a permanent nature; 10
- (f) sewage disposal works;
- (g) recreation grounds;
- (h) roads;

unless and until the miner has lodged with the PMD a plan showing the position of such works and such plan has been approved under this Part. 15

(2) Before erecting or constructing any works mentioned in subsection (1), the miner of any registered mining location shall—

- (a) lodge with the PMD for his or her approval a plan in triplicate showing the position of the boundaries of the location and of the proposed site of such works or of the areas within which such works are to be situated; 20
- (b) furnish to the PMD the name and address of any owner and occupier, if any, of the land concerned and particulars of all mining locations which are contiguous to the mining location to which the plan relates.

(3) Such plan shall, in addition to the particulars mentioned in subsection (2) (a), indicate the position of the workings of such location, the position of any works erected or constructed under section 163 (“When works may be erected or constructed without approved plan”) and the position of any rivers, hills and other natural features, and shall be prepared in such a manner as to indicate as clearly as possible the position of the proposed site and to conform to the requirements of the PMD as to manner of preparation. 30

(4) The miner shall, at the same time, furnish a copy of such plan to each such owner and occupier, if any, of land in which such works are to be situated.

**161 Procedure on receipt of plan and approval of plan**

(1) On receipt of the plan referred to in section 160, the PMD shall forthwith—

- (a) notify— 35
  - (i) every owner and occupier, if any, of the land concerned; and
  - (ii) every holder of a contiguous mining location;

of the receipt of the plan and require them to lodge, within twenty-one days after the date of such notification, their objections, if any, to the approval of the plan or to any works which may have been erected or constructed under section 163; and 40
- (b) consult the provincial planning officer of the Department of Physical Planning, the regional mining engineer, the provincial water engineer and the Environment Management Agency and, where it is proposed to construct a road, the regional agricultural extension officer of the Department of Agricultural Technical and Extension Services. 45

(2) If any objections have been lodged under subsection (1), the PMD shall, on a day fixed by him or her and notified to the miner who submitted the plan and the objectors, hear such evidence and arguments as those persons may wish to lay before him or her in regard to the approval or otherwise of the plan or the siting of any works which have been erected or constructed under section 163.

(3) If no objection has been received or if no notification was given under subsection (1) owing to the whereabouts of the owner or the occupier or the holder of a contiguous mining location not being known to the PMD after due inquiry, the PMD shall proceed to consider the matter without a hearing.

(4) The applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at quasi-judicial meetings, referrals and hearings”) shall be followed by the PMD at a hearing in terms of subsection (2).

(5) After holding a hearing in terms of subsection (2) or considering the matter in terms of subsection (3), the PMD may —

- (a) approve the plan; or
- (b) approve the plan with such amendments and subject to such conditions as he or she may deem necessary; or
- (c) refuse to approve the plan:

Provided that the PMD shall not uphold any objection or require any amendment or impose any condition if the mining operations of the miner who lodged the plan are likely to be affected adversely and materially thereby.

(6) In arriving at a decision for the purposes of subsection (5), the PMD shall take into account the views, if any, expressed by the provincial planning officer of the Department of Physical Planning, the regional mining engineer, the provincial water engineer, the Environment Management Agency or the regional agricultural extension officer of the Department of Agricultural Technical and Extension Services:

Provided that, if he or she considers it necessary for the fair decision of the application, he or she shall give the applicant an opportunity of making representations in relation to such views, either at the hearing in terms of subsection (2) or otherwise.

(7) If the PMD —

- (a) approves a plan under this section, the PMD shall return one copy of the plan to the miner concerned with such approval endorsed thereon and send one copy similarly endorsed to the landholder and to the occupier of the land, if any, concerned, and shall retain the other copy similarly endorsed for purposes of record; or
- (b) does not so approve of the siting of any works which may have been erected or constructed under section 163, such works shall thereupon be deemed to have been erected or constructed in contravention of this Part and section 164 (“PMD may order removal of unauthorised works”) shall apply thereto.

(8) If any person (“the appellant”) is aggrieved by the decision of the PMD he or she may appeal against the decision to the Secretary, for which purpose the appellant must —

- (a) lodge an appeal to the Secretary in writing with the Provincial Mining Director concerned, and copy it to the Secretary, no later than two working days after the appellant has received notification of such decision; and
- (b) incorporate in the appeal the grounds on which the PMD’s decision should be overturned and what decision ought to be substituted for it;

and thereupon the Provincial Mining Director shall, without delay, transmit the appeal to the Secretary together with the grounds upon which the PMD based his or her decision under subsection (7).

(9) Upon receiving an appeal in terms of subsection (8) the Secretary shall promptly (and in any event no later than seven working days of receiving it)— 5

- (a) dismiss the appeal by upholding the decision of the PMD; or
- (b) refer the decision back to the PMD for reconsideration within a specified period (whether with or without directions on how the decision is to be reconsidered, including a direction to the PMD to investigate the matter further and make a further report and recommendations) on any one or more of the following grounds— 10

- (i) allowing extraneous or irrelevant considerations to affect the decision, or
- (ii) failure to take into account relevant considerations in arriving at the decision, or 15

- (iii) any material mistake of fact or law that tainted the decision; (the Secretary shall, upon receiving the report or recommendations resulting from the PMD's reconsideration, dismiss or uphold the appeal in accordance with such report or recommendation or make a decision in accordance with paragraph (c) or (d)); 20

or

- (c) uphold the appeal and give the PMD directions on what to do, if the Secretary finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision: 25

Provided that the Secretary shall not make a finding on this ground without affording the PMD an opportunity to respond to such finding;

or

- (d) in an exceptional case, overturn the decision of the PMD and substitute the Secretary's own decision on the basis of the overriding national interest (in which case the Secretary shall give the PMD directions on what to do). 30

(10) Any person who is aggrieved by a decision of the Secretary under subsection (9), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the person, whereupon the court may do any of the things the Secretary is empowered to do under subsection (9) other than paragraph (d) of that subsection. 35

(11) A plan approved under this section, and any amendment of it approved under section 162 ("Amendment of plan"), shall be binding upon any holder or miner of the mining location concerned and upon any owner or occupier of the land. 40

## **162 Amendment of plan**

At any time after a plan has been approved under section 161, the miner of the mining location to which the plan relates, or the owner or occupier of the land concerned, may apply to the PMD for an amendment of the plan, and this Part shall apply, with necessary changes, in respect thereof as if such application were a plan submitted to the PMD under section 160 ("Approved plan required prior to erection of certain works"). 45

## **163 When works may be erected or constructed without approved plan**

(1) For the purposes of subsection (2)—



“property” means two or more blocks of claims, whether contiguous or otherwise, owned by one person, from which the ore is being treated at the same milling or reduction plant, or which are under the control of one registered mine manager.

5 (2) Notwithstanding anything contained in section 160 (“Approved plan required prior to erection of certain works”), the miner of any registered mining location or property may, subject to section 161 (“Procedure on receipt of plan and approval of plan”) (7)(b), at any time before a plan has been approved under section 161, erect or construct upon such location or property all or any of the following works—

- 10 (a) dumps other than tailings;
- (b) residences to house not more than thirty-two persons employed in mining operations;
- (c) roads not exceeding four metres in width which have no artificial surface such as gravel, stone or similar material:

15 Provided that—

- (i) nothing in this paragraph contained shall be construed so as to permit the construction of a road if there is in existence any other suitable road which serves the same purpose;
- 20 (ii) no such road may be constructed unless and until the siting thereof has been approved by—
- A. in the case of Communal Land, any rural district council established for the area concerned;
- B. in any other case, the conservation and extension officer of the district.

25 (3) For the removal of doubt it is hereby declared that a miner mentioned in subsection (2) may, prior to the erection or construction of any of the works mentioned in that subsection, lodge with the PMD for his or her approval in respect of such works the plan referred to in section 160 (“Approved plan required prior to erection of certain works”)(2)(a).

30 **164 PMD may order removal of unauthorised works; re-siting of existing roads**

(1) Any miner who erects or constructs any works on a registered mining location in contravention of this Part or of any condition attached to the approval of a plan under section 161 (“Procedure on receipt of plan and approval of plan”), commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding twelve months or to both.

(2) If a civil default as described in subsection (2) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- 40 (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
- (i) pay to the PMD a default fine of the maximum amount fixed for level 4; and
- 45 (ii) remove such works or to discontinue the use thereof.
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
- (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the

maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;

- (ii) if he or she fails to comply with paragraph (a)(ii), to pay a default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 5

(2) If a miner continues in defiance of a civil penalty order for a period of more than seven days after it is served on him or her, the PMD may authorise the owner or occupier of the land concerned or the holder or miner of a contiguous mining location to remove such works, and if such owner, occupier, holder or miner does so he or she shall be entitled to recover the cost of such removal from the holder or miner to whom the civil penalty order was served. 10

(3) Where any road in respect of. which a plan has not been approved under section 161 has been constructed upon a registered mining location, the PMD may, on the application of the owner or occupier of the land concerned, order the holder or miner of the mining location concerned to discontinue the use of such road or to alter the course thereof within such period as the PMD may specify. 15

(4) If the holder or miner referred to in subsection (3) fails to comply with such order within the period specified therein, the PMD may serve upon the defaulter a civil penalty order which— 20

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
  - (i) pay to the PMD a default fine of the maximum amount fixed for level 4; and 25
  - (ii) discontinue the use of the road concerned or to alter the course thereof;
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
  - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 30
  - (ii) if he or she fails to comply with paragraph (a)(ii), to pay a default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 35

### PART XIII

#### ROYALTY 40

#### 165 Royalty

(1) Subject to this Part, the miner of a registered mining location shall pay royalty on all minerals or mineral-bearing products won from such location which have been disposed of by him or her or on his or her behalf, whether within or outside Zimbabwe, during any month, at such rate per unit of mass as may be fixed in terms of section 166 (“Fixing of royalty”). 45

(2) Where a registered mining location forms part of a property mentioned in section 167 (“Meaning of “property””), royalty shall be paid in terms of subsection (1) on the total of all minerals or mineral-bearing products won from such property.

(3) Where the royalty assessed in respect of minerals or mineral-bearing products disposed of in any one month—

- (a) does not exceed two hundred United States dollars, there shall be a full rebate of such royalty;
- 5 (b) exceeds two hundred United States dollars but does not exceed three hundred United States dollars, the royalty payable shall be three times the amount by which the assessed royalty exceeds two hundred United States dollars.

(4) There shall be a full rebate of royalty in respect of all minerals or mineral-bearing products used wholly within Zimbabwe.

(5) There shall be a rebate of royalty in respect of any mineral or mineral-bearing product which is—

- (a) disposed of to or received for treatment by an approved beneficiation plant; and
- 15 (b) specified in relation to that approved beneficiation plant;

at the rate specified by the Minister in terms of section 168 (“Beneficiation plant”) in respect of that approved beneficiation plant:

Provided that where the degree of beneficiation specified in the application made in terms of section 168(1) relating to the approved beneficiation plant is not carried out in relation to any mineral or mineral-bearing product in respect of which a rebate referred to in this subsection has been earned, the owner of such mineral or mineral-bearing product shall, on the disposal thereof, pay royalty in the amount of the rebate to the PMD within whose mining province the registered mining location from which the mineral or mineral-bearing product was won is situated.

(6) The Schedule to Chapter VII of the Finance Act [*Chapter 23:04*] may, in any fiscal year, make different provision in respect of the matters for which subsections (3), (4) and (5) make provision.

### **166 Fixing of royalty**

(1) The rate of royalty payable in terms of section 165 (“Royalty”) shall be fixed for the financial year in question by the National Assembly in the Schedule to Chapter VII of the Finance Act [*Chapter 23:04*], for which purpose the Minister responsible for finance shall have due regard for—

- (a) any recommendations made by the Minister responsible for this Act, for the purpose of which recommendations the Minister responsible for this Act may take into account representations made to him or her by the Chamber of Mines and other bodies the Minister considers to be representative of small-, medium- and large-scale miners; and
- 35 (b) the prices at which minerals or mineral-bearing products were sold during the period of three years immediately preceding the 1st July in the year in which the rate is fixed; and
- 40 (c) any other matter which the Minister responsible for finance deems relevant.

(2) In fixing the rate of royalty payable in terms of subsection (1) the National Assembly may fix different rates of royalty in respect of different minerals and mineral-bearing products.

### **167 Meaning of “property”**

(1) For the purpose of calculating royalty on any mineral or mineral-bearing product, other than chrome, when ore from two or more blocks of claims, whether

contiguous or otherwise, owned or held under a tribute agreement by the same person is treated at the same milling or reduction plant, then such blocks of claims shall be deemed to be one property.

(2) For the purpose of calculating royalty on chrome, all blocks owned or held under a tribute agreement and worked by the same person in any one mining province shall be deemed to be one property. 5

(3) Notwithstanding anything to the contrary contained in section 165 (“Royalty”), a dump shall be deemed to be a separate property if—

- (a) the right to work the dump is held by a person other than the miner working the block on which it is situated; or 10
- (b) the dump is worked by a person other than the miner working the block on which it is situated; or
- (c) the reduction plant for the treatment of the dump is entirely separate from that in or at which the ore extracted from the block on which the dump is situated is being treated; or 15
- (d) the person who has disposed of the right to work the dump or block on which the dump is situated has no interest in the working of the reduction plant for the treatment of the dump or of the ore extracted from the block on which the dump is situated, as the case may be, or the extraction from such dump or block, other than the payment, rental or royalty specified in the agreement under which the right to work the dump or block is given. 20

## 168 Beneficiation plant

(1) The Minister may, upon application in writing by the owner thereof, by notice in the *Gazette*, declare any bank assay department, factory, refinery, smelter or treatment plant which is situated in Zimbabwe to be an approved beneficiation plant in relation to a mineral or mineral-bearing product to be specified in the notice. 25

(2) In a declaration made in terms of subsection (1) the Minister shall specify the rate of rebate of royalty which shall apply in respect of any specified mineral or mineral-bearing product treated at the approved beneficiation plant referred to in the declaration. 30

(3) A person making an application referred to in subsection (1) shall specify the degree of beneficiation which it is proposed to carry out at the bank assay department, factory, refinery, smelter or treatment plant, as the case may be.

(4) The Minister may, by notice in the *Gazette*, withdraw a declaration made in terms of subsection (1) in respect of any approved beneficiation plant— 35

- (a) where the approved beneficiation plant is not operated as such for any period which exceeds, or aggregate of periods which exceed, three months in any one year; or
- (b) where the degree of beneficiation carried out at the approved beneficiation plant is reduced below that specified in the application made in terms of subsection (1) relating to that plant; or 40
- (c) if the owner thereof fails to comply with subsection (5), having been notified by the PMD in writing to make good any delay in rendering any return required by that section.

(5) The owner of an approved beneficiation plant shall, not later than the tenth day of each month, render a return in the form prescribed of all minerals and mineral-bearing products disposed of to or received for treatment by the beneficiation plant in the preceding month to the PMD within whose mining province the registered mining location from which the minerals or mineral-bearing products were won is situated. 45

**169 Exemption of royalty in certain circumstances**

(1) If any miner—

(a) desires to extract or treat ore from his or her location for experimental or similar purposes, he or she may apply to the Secretary for permission to treat or deal with the mineral or mineral-bearing product obtained from his or her location for a limited period or up to a limited amount, and the Secretary may permit such treatment or dealing without payment of royalty under such terms and conditions as may by the Secretary be deemed expedient;

(b) of diamonds or other precious stones—

(i) enters into a written agreement with the Minister whereunder the miner undertakes—

A. to train or fund the training (whether locally or abroad or both) of a specified number of Zimbabwean citizens, annually or over a specified period, in the cutting, polishing, grading, valuation and beneficiation of diamonds and precious stones, and in all aspects of the diamond or jewellery trade generally; and

B. to establish or help to establish any one or a combination of the following: a significant local jewellery fabrication plant; one or more local jewellery retail outlets; or a local laboratory for the certification of cut and polished diamonds or precious stones in Zimbabwe;

and

(ii) satisfies the Minister that he or she has the resources and plans to comply with his or her undertakings referred to in subparagraph (i) within a specified period;

the Minister may, with the approval of the Minister responsible for finance, waive the payment of royalty, export tax and all fees and commissions charged by the Minerals Marketing Corporation of Zimbabwe on the export of rough diamonds or other unbeneficiated precious stones up to a limit of 10 000 carats of rough diamonds or precious stones per month.

(2) Where a miner of diamonds or other precious stones is in default of any undertaking made in a written agreement in terms of subsection (1)(b), the miner (after having been put on not less than 30 and not more than 90 days' written notice by the Minister to rectify the default or to take the specified steps to rectify the default within that period, and having failed to rectify the default or to take the specified steps), shall pay royalty—

(a) in the amount due for any diamonds disposed of from the relevant date of the agreement to the final date for the rectification of the specified default;

(b) thereafter in the amount fixed by the Finance Act in respect of the disposal of the diamonds after the final date referred to in paragraph (a).

**170 Acquisition or removal of ore, etc., to be declared**

(1) If any person acquires or removes from the mining location from which it was derived any ore, tailings, slimes, concentrates, residues or other mineral-bearing product, he or she shall immediately (and in any event not later than fourteen days after such acquisition or removal)—

(a) declare such acquisition or removal to the PMD; and

(b) render to the PMD such returns thereof as may be prescribed.

(2) Any person who contravenes subsection (1) commits an offence and a civil default and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both.

(4) The PMD for the mining province wherein a civil default as described in subsection (2) is committed may (additionally or alternatively to prosecution for the offence under subsection (2)) serve upon the defaulter a civil penalty order which— 5

(a) directs the defaulter—

(i) to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 3; and 10

(ii) to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) render to the PMD such returns as prescribed in relation to the removal of the ore, tailings, slimes, concentrates, residues or other mineral-bearing product; and

(b) subjects the defaulter to either of both of the following penalties, as may be appropriate— 15

(i) if he or fails to pay the default fine specified in paragraph (a)(i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 3 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; and 20

(ii) if he or she fails to comply with paragraph (a)(ii), to pay a default fine of the maximum amount fixed for level 3 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(3) Additionally, any person who renders a false return for the purposes of subsection (1)(b) or (3)(a)(ii) shall, if he or she is a miner, be liable to the cancellation of his or her mining rights under section 301 (“Cancellation of mining rights for breach of this Act or other laws”) and prosecution under section 291 (“False declarations and certificates”). 25

## **171 Monthly returns and payment of royalty** 30

(1) A miner (or his, her or its representative) shall (in addition to the monthly returns referred to in section 290), not later than the tenth day of each month—

(a) render to the PMD of the mining province to which the return relates (for onward transmission to Commissioner-General of the Zimbabwe Revenue Authority, or an officer of the Authority appointed for the purpose by the Commissioner-General), a return in the prescribed form showing— 35

(i) in respect of precious stones won from his or her mining location, such details relating thereto and to the disposal thereof during the preceding month and the quantity thereof held by him or her at the end of the preceding month as may be prescribed; 40

(ii) in respect of other minerals or mineral-bearing products won from his or her mining location—

A. the output; and

B. full details of the disposal thereof by him or her or on his or her behalf; 45

and

(b) furnish the PMD with such affidavits, certificates and documents relating to any matter referred to in paragraph (a) as the PMD may require; and



- (c) submit to the PMD for onward transmission to the Commissioner-General or officer the royalty payable by him or her in terms of section 165 (“Royalty”) in respect of the preceding month or the provisional amount of royalty assessed in terms of subsection (2).

5 (2) Where it is impracticable for any reason to calculate before the tenth day of any month the royalty payable in respect of the preceding month the Commissioner-General or officer may assess a provisional amount of royalty which shall be payable, and when the correct amount of royalty is assessed the miner shall —

- 10 (a) be entitled to a refund of any sum paid by him or her in terms of this subsection which exceeds the correct amount of royalty payable in terms of section 166; or
- (b) pay to the Commissioner-General or officer such sum as represents the difference between the correct amount of royalty payable in terms of section 165 and the amount paid in terms of this subsection.

15 (3) Any miner who contravenes subsection (1) commits an offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both.

20 (4) The PMD for the mining province wherein a civil default as described in subsection (3) is committed shall (additionally or alternatively to prosecution for the offence under subsection (3)), at the written request of the Commissioner-General of the Zimbabwe Revenue Authority, or an officer of the Authority appointed for the purpose by the Commissioner-General, serve upon the defaulter a civil penalty order which —

- 25 (a) directs the defaulter —
  - (i) to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 3; and
  - 30 (ii) to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) do either or both of the following —
    - A. render the return referred to in subsection (1)(a), if he or she has failed to render such return;
    - B. submit to the Commissioner-General or officer authorised by him or her the royalty payable by him or her in terms of section 35 165 (“Royalty”) in respect of the preceding month or the provisional amount of royalty assessed in terms of subsection (2), if he or she has failed to do so;
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate —
  - 40 (i) if he or she fails to pay the default fine specified in paragraph (a)(i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 3 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; and
  - 45 (ii) if he or she fails to comply with paragraph (a)(ii) A or B, to pay a default fine of the maximum amount fixed for level 3 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

50 (6) Additionally, any miner convicted for a contravention of subsection (1) shall be liable to the cancellation of his or her mining rights under section 301 (“Cancellation of mining rights for breach of this Act or other laws”).

**172 Inspection of books and records, etc.**

(1) The PMD or any person or any person duly authorised by him or her shall at all reasonable times have access for the purpose of inspection to all books and records, reports and other documents relating to the acquisition, disposal or removal of any precious stones, mineral or mineral-bearing product as may be necessary for the purpose of ascertaining or verifying any return, details, solemn declaration, certificate or document rendered under this Part. 5

(2) Any person who refuses access to the PMD or any person duly authorized by him or her for the purposes of subsection (1), or who in any way hinders or obstructs the PMD or his or her authorised agent in carrying out their duties under subsection (1), shall be guilty of the offence referred to in section 296 ("Obstruction of officials"). 10

**173 Prohibition of disposal of minerals when royalty or returns, etc., have not been lodged**

(1) If the miner of a registered mining location fails to pay any royalty due in respect of such location, the PMD shall on basis of a court order obtained by the Commissioner-General of the Zimbabwe Revenue Authority requiring such payment, issue an order prohibiting the disposal of any precious stone, minerals or mineral-bearing products from such location or from any other location which is being worked by the miner, whether or not the miner has failed to pay any royalty due in respect of the other location, until all outstanding royalty has been paid or until an arrangement has been made which is acceptable to the Commissioner-General or officer of the authority for the payment of such royalty. 15 20

(2) If the PMD or officer has reason to believe that precious stones, minerals or mineral-bearing products have been produced or disposed of from any registered mining location and he or she has not received in respect thereof the return, details, solemn declarations, certificates and documents referred to in section 171 ("Monthly returns and payment of royalty"), he or she may issue an order prohibiting the disposal of any minerals or mineral-bearing products from that location until the return, details, solemn declarations, certificates and documents have been rendered and any royalty due in respect of such disposal has been paid or until an arrangement has been made which is acceptable to the Commissioner-General or officer for the payment of such royalty. 25 30

(3) A miner who fails to observe an order issued in terms of subsection (1) or (2) and any person who, knowing of such order, receives any minerals from the location referred to in the order contrary to the terms thereof, commits an offence and a civil default and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding twelve months or to both. 35

(4) The PMD for the mining province wherein a civil default as described in subsection (4) is committed shall (additionally or alternatively to prosecution for the offence under subsection (4)), upon the written request of the Commissioner-General of the Zimbabwe Revenue Authority, or an officer of the Authority appointed for the purpose by the Commissioner-General, serve upon the defaulter a civil penalty order which— 40

(a) directs the defaulter— 45

(i) to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 4; and

(ii) to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) do either or both of the following— 50 50

- 5                                   A.    cease the disposal of any precious stones, minerals or mineral-bearing products from any location that is the subject of an order referred to in subsection (1) or (2), or from any other location which is being worked by the miner, whether or not the miner has failed to pay any royalty due in respect of the other location, until all outstanding royalty has been paid or until an arrangement has been made which is acceptable to the Commissioner-General or officer for the payment of such royalty;
- 10                                  B.    submit to the Commissioner-General or officer authorised by him or her the return, details, solemn declarations, certificates and documents referred to in section 171 (“Monthly returns and payment of royalty”), in terms of subsection (2);
- 15                   (b)    subjects the defaulter to either of both of the following penalties, as may be appropriate —
- (i)    if he or fails to pay the default fine specified in paragraph (a)(i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; and
- 20                                  (ii)   if he or she fails to comply with paragraph (a)(ii) A or B, to pay a default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.
- 25                   (6) Additionally, any miner convicted for a contravention of subsection (1) or (2) shall be liable to the cancellation of his or her mining rights under section 314 (“Cancellation of mining rights for breach of this Act or other laws”).

#### 174 Remission of royalty

The President may remit, in whole or in part, the royalty payable on —

- 30                   (a)    any mineral or mineral-bearing product or class thereof; or
- (b)    any mineral or mineral-bearing product won from any specified registered mining location or property mentioned in section 167 (“Meaning of “property”);

for such period as he or she may determine whenever he or she deems it expedient to do so as an inducement to —

- 35                   (i)    the commencement or continuation of mining operations; or
- (ii)   the processing or refining within Zimbabwe of minerals or mineral-bearing products; or
- (iii)   the development of any export market.

#### 175 Orders prohibiting stockpiling of minerals affected by section 4(4) declaration

- 40                   (1) Subject to subsection (3), at any time after the Minister has, in relation to any mineral, made a declaration in terms of section 4(4) (a), a PMD or any person authorised in that behalf by the Minister or the PMD, may, by notice in writing served upon any person holding any stockpile of the mineral concerned, order such person to
- 45                   reduce, within such time as Minister or PMD shall specify, the quantity of any mineral which such person owns, possesses or controls to the quantity fixed by the notice.

(2) Any person who fails, without just cause, to comply with a notice served upon him or her in terms of subsection (1), shall thereupon become liable to pay royalty on the stockpile as if it had been disposed of by sale on the last day for compliance with the notice at the price it would have fetched on that day by reference to a reputable metals exchange. 5

(3) Any person proposing to stockpile any mineral affected by a declaration made in terms of section 4(4)(a) may, by application in writing made to the Minister setting forth—

- (a) good and sufficient reasons for stockpiling the mineral; and
- (b) the site, premises or place at which the mineral will be stockpiled, the extent to which it will be stockpiled and for how long; 10

obtain from the Minister a permit authorising the stockpiling of the mineral concerned, and the Minister may, if he or she issues it, attach to it any conditions that the Minister thinks fit.

(4) No later than ten days after— 15

- (a) the issuance of an notice under subsection (1) to any person aggrieved thereby; or
- (b) notice is given to any person aggrieved thereby that the Minister has refused an application for a permit under subsection (3);

the aggrieved person may seek a review of such notice or refusal by the Administrative Court. 20

(5) Until the review is determined the lodging of an application for it in terms of subsection (4) shall—

- (a) not suspend the notice issued under subsection (1);
- (b) not permit the applicant— 25
  - (i) to accumulate a stockpile of the mineral; or
  - (ii) to disperse or dispose of any part of an existing stockpile of the mineral;

for which a permit had been sought under subsection (3) except to the extent expressly authorised by the Minister in writing. 30

(6) Upon a review the Administrative Court may—

- (a) decide the issue in favour of the Minister; or
- (b) refer the decision back to the Minister for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds— 35
  - (i) allowing extraneous or irrelevant considerations to affect the decision,
  - (ii) failure to take into account relevant considerations in arriving at the decision;
  - (iii) any material mistake of fact or law that tainted the decision; 40
  - (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
  - (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision: 45

Provided that the Court shall not make a finding on this ground without affording the Minister an opportunity to respond to such finding.

## PART XIV

## PAYMENTS TO LOCAL AUTHORITIES

**176 Interpretation and application of Part XIV**

In this Part—

- 5 “gross value of mineral production”, for the purposes of section 177(3)(c)—
- (a) includes such part of such production as is beneficated by the miner in the quarter concerned;
  - (b) means the market value of the unbeneficated and beneficated minerals produced at end of the quarter concerned as determined
- 10 by reference to a reputable metals exchange;
- “standard tariff” means the standard tariff prescribed in terms of section 179 (“Local authorities’ standard tariff of rates, taxes, fees, levies and other charges liable to be paid by miners”)(1) of maximum local government rates, taxes, fees, levies and other charges chargeable upon miners;
- 15 “subvention” means a sum payable by miners for the purposes of section 177 (“Miners to make certain payments to local authorities”) (1).

**177 Miners to make certain payments to local authorities**

- (1) The Minister, acting with the approval of the Minister responsible for finance and after consultation with the Minister responsible for local government and
- 20 any organisation which the Minister considers represents mining interests, may by statutory instrument require any miner of a registered mining location, or any class of such miners, to pay a subvention, that is to say a specified sum at specified intervals to any local authority within whose area the registered mining location is situated.

- (2) For the purposes of subsection (1), a dump shall be deemed to be a separate
- 25 mining location if—

- (a) the right to work the dump is held by a person other than the miner working the mining location on which it is situated; or
- (b) the dump is worked by a person other than the miner working the mining location on which it is situated;

- 30 and the person working the dump or holding the right to work it shall be deemed to be the miner of the dump.

- (3) The Minister may—

- (a) specify a subvention as a lump sum or as a percentage of the value of the output of the mining location concerned, or in such other manner as the
- 35 Minister may think appropriate;
- (b) make the local authority’s entitlement to a subvention dependent upon the local authority—
    - (i) adopting the standard tariff, if such a tariff has been prescribed; or

- (ii) mitigating or eliminating any specified local government rates, taxes, fees, levies and other charges chargeable upon miners of registered mining locations within the area of the local authority concerned;
- (c) instead of fixing a subvention in relation to local authorities individually, fix (after consultation with the Minister responsible for Finance and the Minister responsible for local government), a uniform subvention payable by all miners to the local authority in which they operate of 0,01% of the gross value of the mineral production at the end of every quarter year (which quarterly subvention shall be paid to any local authority concerned no later than fourteen days of the end of the quarter year).

(4) Every miner to whom a notice in terms of subsection (1) applies shall make the subventions required by the notice, and in the event of his or her default any sums unpaid shall be a debt due to the local authority concerned, and may be recovered by the local authority from the miner by proceedings in a competent court.

### **178 Remission or exemption from liability to make subventions**

(1) The Minister, acting with the approval of the Minister responsible for finance and after consultation with the Minister responsible for local government and any organisation which the Minister considers represents mining interests, may remit, in whole or in part, the subventions payable —

- (a) by any miner or class thereof; or
- (b) in respect of any mineral or mineral-bearing product or class thereof;

for such period as the Minister may determine, whenever he or she considers it expedient to do so as an inducement to —

- (i) the commencement or continuation of mining operations; or
- (ii) the development of any export market;

and the Minister shall cause any such remission to be notified in writing to every miner and local authority concerned.

(2) On application being made by a miner who wishes to extract ore from his or her mining location for experimental or similar purposes, the Secretary may permit the miner, subject to such terms and conditions as the Secretary may fix, to extract the ore without paying any subventions in respect of it.

(3) The Secretary shall ensure that the local authority concerned is notified in writing of any permission granted by him or her in terms of subsection (2).

### **179 Local authorities' standard tariff of rates, taxes, fees, levies and other charges liable to be paid by miners**

(1) The Minister, acting with the approval of the Minister responsible for finance and after consultation with the Minister responsible for local government and any organisation which the Minister considers represents mining interests and the interests of local authorities, may by statutory instrument prescribe a standard tariff of maximum local government rates, taxes, fees, levies and other charges chargeable



upon miners of registered mining locations by any local authority within whose area the registered mining locations are situated.

(2) Every local authority that adopts the standard tariff (or any variation of the standard tariff in which any of the levels of rates, taxes, fees, levies and other charges chargeable upon miners is less than the maximum prescribed by the standard tariff) shall, upon notification of its adoption to the Minister, be entitled to be paid with effect from a date no later than three months after the adoption of the tariff, a prescribed share of the royalties payable and collected in respect of any minerals mined within the area of the local authority concerned, which share shall be fixed from time to time in the Schedule to Chapter VII of the Finance Act [*Chapter 23:04*].

(3) Upon the date of promulgation of the standard tariff, even if the local authority concerned has not adopted the standard tariff, a miner holding a mining location within the area of the local authority shall be deemed to be in compliance with—

- (a) section 154 (“Pre-inspection requirements and first and subsequent inspection certificates”)(2)(c)(i) if the miner swears by affidavit submitted to a PMD for the purposes of that provision that he or she has paid or tendered the payment of the maximum amount of the development levy prescribed by the standard tariff for that local authority (without prejudice to the right of the local authority to sue for the recovery of any excess development levy due from the miner); and
- (b) section 207 (“Registration of transfer of mining locations and transfer duty payable”) (8)(b) if (instead of producing the certificate from the rural district council there mentioned) the miner swears by affidavit submitted to a PMD that he or she has paid or tendered the payment of the amount (calculated by reference to the maximum amount for those or similar charges prescribed by the standard tariff) of all charges payable to the council in respect of the location during the period of five years immediately preceding the date of application for the transfer of the mining location in terms of that provision (without prejudice to the right of the local authority to sue for the recovery of any amount in excess of the charges so paid or tendered that are due from the miner).

## PART XV

### MINING INDUSTRY ENVIRONMENT PROTECTION FUND AND RELATED MATTERS

#### *Sub-Part A: Interpretation and General*

#### **180 Interpretation in Part XV**

(1) In this Part—

“Committee” means the Environmental Protection Fund Committee established in terms of section 186(1);

“emergency mining environmental and occupational safety works” means any such works which, in the Trustee and Committee’s opinion, are necessary

- to be done urgently to protect against serious harm to human health or safety, or the environment, or serious damage to property, such as the control of floods, and the prevention and remediation of air, water or land pollution;
- “environment” has the meaning given to it in section 2 of the Environmental Management Act [*Chapter 20:27*] (No. 13 of 2002), or any other law that may be substituted for the same; 5
- “Fund” or “MIEPF” means the Mining Environmental Protection Fund established in terms of section 185(1);
- “mining environmental and occupational safety works” include, but are not limited to— 10
- (a) works and measures to prevent or mitigate occupational health hazards faced by mining workers;
  - (b) works to prevent, mitigate or remediate nuisances that inhibit or preclude the use and enjoyment of their land by occupiers adjoining the mining location, or by communities in the vicinity of a mining location; 15
  - (c) works and alternative strategies to minimise habitat destruction at or around a mining location, such as the adoption of more energy efficient methods in substitution for the cutting and burning of timber or the production of charcoal; and 20
  - (d) works to prevent the erosion of topsoil and the siltation of watercourses and water bodies, including tree-planting, grassing, and sediment control; and
  - (e) works to prevent, mitigate or remediate contamination of soil, groundwater and surface water by mining waste, effluent and chemicals emitted in the course of mining operations, such as— 25
    - (i) the construction and maintenance of segregated surface water drains and effluent drains, and works for the safe storage or treatment of contaminated water within a mining location, or for the safe discharge of treated water from a mining location into natural or artificial water bodies; 30
    - (ii) the safe sequestration of oils and other hazardous liquids so that they do not contaminate water bodies, groundwater or the soil; 35
    - (iii) the protection of watercourses, water bodies, groundwater and soil from pollution by mercury, lead, cadmium, arsenic, chromium, thallium and other heavy metals;
    - (iv) recycling works for the capture and treatment of waste water;
    - (v) the siting away from watercourses and water bodies of ore processing and vehicle and equipment washing operations; 40

- (vi) works to secure against breaches of tailings ponds and dams;
  - (f) land reclamation works, backfilling, and other works to prevent the destruction of productive grazing land and croplands in the immediate vicinity of the mining location;
  - 5 (g) works to prevent or mitigate air pollution from smelting or other mining operations;
  - (h) waste management works and strategies to avoid or mitigate waste, debris and litter through the re-use, recycling or safe disposal of mining waste and other waste generated at the mining location, including the contracting of waste carriers to safely dispose of waste away from water courses, water bodies, areas of cultivable land and grazing land;
  - 10 (i) works to prevent, minimise or mitigate the emission of greenhouse gases from mining operations, in line any with any climate change prevention and mitigation measures mandated by any law in force at the time of the implementation of such works;
  - 15
- “greenhouse gas” means any one of the following—
- (a) carbon dioxide (CO<sub>2</sub>),
  - (b) methane (CH<sub>4</sub>),
  - 20 (c) nitrous oxide (N<sub>2</sub>O),
  - (d) hydrofluorocarbons (HFCs),
  - (e) perfluorocarbons (PFCs),
  - (f) sulphur hexafluoride (SF<sub>6</sub>);
  - 25 (g) any other gas that contributes to climate change which may be prescribed for the purpose of this definition.

“Trustee” means the Minister as Trustee of the Fund.

## **181 General objective of Part XV**

It is the objective of this Part to obligate and enable every miner without exception to take measures within the mining area they operate to ensure the following—

- 30 (a) environmental safety;
- (b) rehabilitation of land where mining activities are being conducted;
- (c) promotion of mining environmental and occupational safety works.

### *Sub-Part B: Environmental, Rehabilitation and Occupational Health and Safety Provisions*

## **35 182 Suspension of mining rights in response to threats to environment, public safety, public health, etc**

(1) Where the Minister is of opinion that it is necessary or expedient in the interest of regulation of mines and mineral development, the preservation of natural environment, control of floods, prevention of pollution, the avoidance of danger to public

health or public communications, or to ensure the safety of buildings, monuments or other structures, or for conservation of mineral resources, or for maintaining safety in the mines or for such other purpose limited to a specified period of time, the Minister may by order in writing transmitted to the licensee, miner, lessee or grantee concerned through the appropriate PMD, suspend a prospecting or exploration licence, the registration of a mining location, or a mining lease or special grant in respect of any mineral in any area or part thereof, for a specified period of time: 5

Provided that the Minister may in like manner lift the suspension earlier than the specified time for its lifting if the occurrence (threatened or actual) that prompted the suspension has been avoided, mitigated or remediated. 10

(2) Before suspending a prospecting or exploration licence, the registration of a mining location, or a mining lease or special grant, the Minister shall afford the recipient of the notice at least forty-eight hours to make written representations on the matter before the suspension takes effect, unless the occurrence that prompted the suspensions poses an immediate and serious risk to public health or safety, in which the case the notice must specify that the suspension must take immediate effect, without prejudice to the recipient's right to make written representations on the matter afterwards. 15

(3) Within the period during which mining operations are stopped, the miner concerned shall have the right to show cause to the PMD why the operations should recommence, whereupon the PMD may recommend to the Minister that the mining operations in question should be recommenced subject to the fulfilment of such conditions as the PMD may recommend, or that they should be permanently stopped, in which event the inspection certificate relating thereto shall not be renewed or be immediately withdrawn, as may be appropriate. 20

(4) If any miner engages in any mining operations (except such operations as are strictly necessary to secure the safety, health or well-being of people, animals or the physical environment, the proof whereof shall rest with the miner) on a mining location subjected to an order of the Minister made under subsection (1), then the PMD may deal with such miner and his or her employees, agents and contractors as if they were illegal occupiers of the mining location, and section 300 ("Eviction of illegal occupiers") shall thereupon apply to secure their eviction for the mining location. 25 30

### **183 Conservation of minerals and protection of environment**

(1) The Minister shall take all such steps as may be necessary for the conservation and systematic development of minerals in Zimbabwe and for the protection of environment by preventing or controlling any degradation or pollution which may be caused by prospecting or mining operations. 35

(2) Without limiting to the generality of subsection (1), the Minister may make regulations to provide for all or any of the following matters, namely —

- (a) the opening of new mines and the regulation of mining operations in any area; 40
- (b) the regulation of the excavation or collection of minerals from any mine;

- (c) the development of mineral resources in any area;
- (d) the regulation of prospecting operations;
- (e) the employment of qualified geologists or mining engineers to supervise prospecting or mining operations;
- 5 (f) the disposal or discharge of waste slime or tailings arising from any mining or metallurgical operations carried out in a mine;
- (g) the manner in which and the authority by which directions may be issued to the owners of any mine to do or refrain from doing certain things in the interest of conservation or systematic development of minerals or for the
- 10 protection of environment by preventing or controlling pollution which may be caused by prospecting or mining operations.

**184 Requirement for insurance or guarantee against statutory liability to repair environmental damage, etc; levy in lieu of insurance, etc**

(1) Subject to subsection (2), every mining lessee or special grantee, and every  
15 holder of a mining location other than a mining lessee or special grantee, shall—

- (a) take out and annually renew an insurance; or
- (b) obtain a financial guarantee or other form of security;

acceptable to the Minister to cover the cost of reasonably foreseeable mining  
environmental and occupational safety works for which the miner may become liable  
20 under this Act during the next year of its mining operations.

(2) If any mining lessee or special grantee or holder of a mining location other than a mining lessee or special grantee, is unable to take out an insurance or obtain a financial guarantee or security acceptable to the Minister in time for the issuance of the first or next inspection certificate for the year in question, then it must (in each  
25 year that it is unable to take out an insurance or obtain a financial guarantee or security acceptable to the Minister) pay into the MIEPF a levy equivalent to 0,1 *per centum* of the gross value of its mineral production as reflected in the last monthly returns rendered for the purposes of payment of royalty in terms of section 171 (“Monthly returns and payment of royalty”):

30 Provided that if no such return was rendered by the miner concerned or the miner concerned is exempted from paying royalty, the levy shall be such specific amount as the Minister shall prescribe.

(3) A mining lessee or special grantee, or holder of a mining location other than a mining lessee or special grantee, must, before receiving a first or subsequent  
35 inspection certificate, furnish proof to the PMD of—

- (a) the insurance or guarantee or security referred to in subsection (1); or
- (b) payment of the environmental protection fund levy referred to in subsection (2).

(4) To avoid doubt, where any insurance, guarantee, security or disbursement  
40 from the MIEPF is inadequate to cover the environmental liabilities of the holder of any mining right or title, whether foreseen or unforeseen as informed by the holder’s approved EIA, the holder shall be liable to make up the deficit.

*Sub-Part C: Environmental Protection Fund***185 Mining Industry Environmental Protection Fund: establishment, objects and constitution**

- (1) There is hereby established a fund, to be known as the Mining Industry Environmental Protection Fund. 5
- (2) The objects of the Fund shall be—
- (a) to make grants to miners for the purpose of carrying out mining environmental and occupational safety works;
  - (b) to make grants to any small scale miner or group of small-scale miners, or their appointed contractors, for any purpose in connection with the achievement of the objects specified in paragraph (c), (d) or (e), or to hire or engage contractors for that purpose on behalf of any small scale miner or group of small scale miners; and 10
  - (c) with respect to the expenses of environmental protection and rehabilitation, the following— 15
    - (i) any quittance work or other work that will be required in terms of section 201 (“Open workings to be protected on abandonment, forfeiture or cancellation of location”) upon the cessation of mining operations by any small-scale miner in the mining province concerned; and 20
    - (ii) any other work required, whether under this Act or any other enactment, to protect or restore the environment from the consequences of the miner’s mining operations, including—
      - A. tailing and waste dump breaches and contamination;
      - B. chemical spillage or acid mine drainage; 25
  - and
  - (d) the carrying out of mining emergency environmental and occupational safety works ordered by the PMD in terms of section 275 (“PMD may authorise certain works”); and
  - (e) with respect to the occupational health and safety of the mining employees, the safeguarding of the occupational health and safety of mining employees on a continuous basis, including— 30
    - (i) the prevention of and coping with mine entrapments and inundations; and
    - (ii) preventing and coping with closed mine risks, including chemical leaks, water contamination and mine collapse; and 35
    - (iii) the prevention and coping with mine fires and explosions; and
  - (f) to contribute towards the compensation of owners or occupiers of land who are detrimentally affected by mining activities. 40
- (3) The Fund shall consist of—
- (a) levies paid in terms of section 184 (“Requirement for insurance or guarantee against statutory liability to repair environmental damage, etc”) (2);
  - (b) money appropriated for the purpose by Parliament, representing at least half of the amounts collected by way of civil penalties in all mining provinces; and 45
  - (c) other money appropriated for the purpose by Parliament; and



- (d) any gifts or grants made to the Fund by any person or by the government of any country, with the approval of the Minister responsible for finance; and
- (e) any interest or increase in value derived from the holding of money or any assets of the Fund in any form whatsoever; and; and
- (f) any revenue, other than revenue referred to in paragraphs (a) to (e), pertaining to the Fund.

(4) The Trustee of the Fund shall be the Minister, in whom the Fund shall be vested and who shall, subject to this Act, have the sole management, control and use of the Fund.

(5) The Trustee of the Fund has standing to sue for the amount of any levies, surcharges or monies owing to it in any court of competent jurisdiction, and the court shall award the costs of such action against such miner or former miner if he or she is found liable for the amount due.

#### 186 Governance of Fund

(1) The Fund shall be managed and administered by the Mining Industry Environmental Protection Fund Committee which shall be chaired by the Secretary and consist of the Director-Geological Survey, the Director of Metallurgy, and the following persons appointed by the Minister—

- (a) a person nominated by the Director General of the Environmental Management Agency with approval of the Minister responsible for the environment; and
- (b) a person representing the Ministry responsible for finance nominated by such Minister; and
- (c) two persons nominated by the Chamber of Mines; and
- (d) two persons representing small-scale miners contributing to the Fund who will be appointed in consultation with body representing small-scale miners contributing to the Fund;
- (e) two other members appointed by the Minister as the Minister may deem necessary after consultation with EMA.

(2) The Vice-Chairperson of the Committee shall be elected by the members from amongst themselves.

(3) Where any member referred to in subsection (1) is unable to attend any meeting of the Committee, that member may in writing nominate another person to attend in that member's stead and such member shall be deemed to be a member for the purpose of that meeting.

(4) The Committee shall be responsible for—

- (a) determining issues on the use of the Fund and making decisions on the investment of the Fund; and
- (b) approving the withdrawals of moneys from the Fund; and
- (c) the overall good management of the Fund.

(5) The Committee shall regulate its own procedure to the extent that its procedure is not prescribed.

(6) The quorum of the Committee shall be seven members.

(7) A decision of the Committee shall be determined by a majority of the members present and voting.

(8) There shall preside at any meeting of the Committee, the Chairperson or in the absence of the Chairperson the Vice Chairperson or in the absence of both the Chairperson and the Vice Chairperson such member as the members present may elect for the purpose of that meeting.

(9) The Committee shall cause to be kept minutes of the proceedings of every meeting of the Committee. 5

### **187 Appointment of Fund Manager and other staff**

(1) The Minister shall, on the recommendation of the Committee, appoint a Fund Manager to manage the affairs of the Fund.

(2) The Fund Manager shall be a member of the Public Service contracted by the Public Service Commission on terms of service that are not pensionable. 10

(3) The secretariat of the Committee and staff of the Fund Manager shall be filled by members of the Public Service employed in the Ministry and designated by the Secretary.

(4) The Fund Manager shall be responsible to the Committee but shall report to the Chairperson for routine administrative purposes. 15

(5) The Fund Manager shall attend all meetings of the Committee but shall not have a right to vote on any matter.

### **188 Annual programmes of Fund; financial year of Fund**

(1) On or before such date prior to the beginning of the financial year as the Trustee and the Committee agree, the Trustee shall cause to be prepared an environmental rehabilitation and occupational health and safety programme which shall make provision during the financial year for the Fund for— 20

- (a) the estimated amount of grants to be paid in that year to miners or their appointed contractors, for any purpose in connection with the achievement of the objects specified in paragraphs (a) and (b) of section 185(2), or to hire or engage contractors for that purpose on behalf of any miner or group of miners; and 25
- (b) an amount to be reserved to meet any unforeseen contingency not of an emergency character expressed in 185(2)(c), where for instance the amount for which provision was made under paragraph (a) was underestimated; and 30
- (c) an amount to be reserved to meet any unforeseen emergency of an environmental character or of a character that impacts the safety or health of any significant number of mining workers on a significant scale; and 35
- (d) an amount constituting one *per centum* of the estimated revenues of the Fund for the financial year to which the programme relates to be paid as a lump sum to each RDC for onward disbursement by the RDC concerned to landholders within the RDC who are adversely affected by the mining operations. 40

(2) The financial year of each Fund shall be the period of twelve months ending on the 31st December in each year.

### **189 Manner of making disbursements from Fund**

(1) No grant or disbursement shall be made from the fund for the purpose of section 185 (2) (1)(a), (b), (c), (d) or (e) except as follows— 45

- (a) every miner seeking a grant from the Fund shall furnish evidence to the Trustee, in the form of invoices, receipts or other documentary evidence

of the expenditure that the miner has incurred in the previous period of twelve months on environmental works made in compliance with his or her EIA submitted or renewed in terms of section 154 ("Pre-inspection requirements and first and subsequent inspection certificates") (2)(b) or (9)(b), whereupon, the Trustees shall authorise a disbursement to the miner of—

- (i) one quarter of such expenditure if it was incurred during the period of validity of the first inspection certificate of the miner, or the prescribed amount, whichever is the lesser figure;
- (ii) one third of such expenditure if it was incurred during the period of validity of the second inspection certificate of the miner, or the prescribed amount, whichever is the lesser figure;
- (iii) one half of such expenditure if it was incurred during the period of validity of the third and subsequent inspection certificate of the miner, or the prescribed amount, whichever is the lesser figure;
- (b) where in the opinion of the Trustee there has occurred an emergency of an environmental character or of character that impacts the safety or health of any significant number of mining workers on a significant scale, the Trustee shall first make a disbursement from the amount reserved in the annual program for such emergencies, if any:

Provided that in the event of any accident causing significant environmental damage or any significant injury or loss of life, that is found by a mining inspector to have been due to the wilful or grossly negligent disregard of any prescribed mining safety measures, the Trustee shall attribute the whole (or such proportion as the mining inspector determines to be attributable to the fault of the miner concerned) of the cost of remediating such accident to the miner at fault, who shall be liable to repay such cost by way of a prescribed surcharge to the miners annual contribution (which charge may be staggered in equal instalments over a period of not more than five years).

(2) The Fund shall not be used to provide personal loans, or for investment in any other way other than that authorised under this Act.

(3) The administrative expenses of operating the Fund shall not exceed 1.0 *per centum* of the total income of the Fund.

## **190 Accounts of Fund**

(1) The Chairperson of the Committee (or the Manager, if he or she is appointed) shall cause to be kept proper books of accounts and other books and records in relation thereto, in which he or she shall record all the financial transactions of the Fund.

(2) The Committee (or the Manager, if he or she is appointed) shall before 31st March, in each year cause the Fund to be audited and submit an annual report and a statement of comprehensive income as at preceeding 31st March.

(3) The Fund shall be audited annually by an auditor appointed by the Trustee on the recommendation of the Committee.

(4) The audit report shall be submitted annually by the Committee to the Minister for publication in the *Gazette*.

## **191 Fund to be kept in dedicated bank account**

(1) All monies forming part of the Fund shall, pending the investment or application therefor in accordance with this Act, be paid or transferred into a dedicated bank account with a banking institution registered under the Banking Act [Chapter 24:01].

(2) The interest and income earned on the cash deposits of the Fund shall, subject to the approval of the Minister responsible for finance, be tax free.

## **192 Suspension of disbursements from Fund**

(1) If due to circumstances beyond the control of the Trustee, the Fund is unable to make in full any payments it is required to make under this Part, the Trustee may, by notice in the *Gazette*, suspend payments from the Fund (without suspending contributions thereto) for a period not exceeding twelve months (and not more than one such suspension may be made and implemented in any period of three consecutive years). 5

(2) The effect of a suspension is that— 10

- (a) miners are not thereby excused from making the contributions to the Fund that are due from them, and will be subject to the penalties provided for noncompliance in that respect;
- (b) the expense of any mining environmental and occupational safety works required to be undertaken by any miner during the period of suspension shall be fully borne by such miner and no claim for recovery of any part of such expenses may be made from the Fund after such suspension terminates. 15

## **193 Investment of surplus monies of Fund**

Any monies in the Fund that are not immediately required for the objectives of the Fund may be invested by the Committee in any manner as may be authorised by the Minister. 20

## **PART XVI**

### **ABANDONMENT AND FORFEITURE**

## **194 Abandonment of unregistered locations** 25

(1) The holder of any mining location with respect to which no certificate of registration has yet been obtained may at any time abandon such location.

(2) Prior to such abandonment, the holder shall remove all beacons, if any, from such location, and shall post on a peg on the location a notice stating the fact and date of such abandonment. 30

(3) No person shall make any relocation upon any unregistered mining location abandoned or deemed to be abandoned under this Act until after the expiration of seven clear days from and exclusive of the date on which such location was abandoned or deemed to be abandoned.

## **195 Abandonment of registered blocks or sites** 35

(1) Subject to subsection (4), the holder of a registered block or site may abandon such block or site, or any portion of such block or site, by applying in writing to the PMD for and obtaining a certificate of abandonment.

(2) Such certificate of abandonment shall be deemed to constitute valid and sufficient proof of such abandonment. 40

(3) If such holder abandons a portion only of such block or site, he or she shall re-beacon the remainder of such block or site in such manner as may be prescribed.

(4) The registration under Part XVII ("Registration of Transfers, Hypothecations, Options, Tribute Agreements and Conditions Governing Mining on Reserved Ground") of a hypothecation or option over any mining location shall, during the period for 45

which such hypothecation or option continues to be of force and effect, be a bar to the abandonment of the whole or portion of such mining location, unless the holder of such hypothecation or option consents in writing thereto, which consent shall be lodged with the PMD together with the application for abandonment.

5     **196 Forfeiture of registered blocks and sites**

(1) In accordance with this section, the PMD shall cause to be forfeited a registered block of claims in respect of which the holder has failed to apply for or obtain an inspection certificate within the period prescribed in section 154 (“Pre-inspection requirements and first and subsequent inspection certificates”), unless the holder thereof  
10     has obtained a retention licence in respect of the block under section 157 (“Retention licences”).

(2) The PMD shall affix a notice on the notice board of his or her office notifying that the holder is in default of compliance with section 154, and that the block concerned shall be deemed to have been forfeited on the thirtieth day from the day of such posting.

15     (3) If at any time the monthly rent of any registered mining site has remained due and unpaid for a period of three months or more, such site shall be liable to forfeiture:

        Provided that in the case of a site attached to a mining lease, the PMD shall notify the lease holder that payment of the site rent is so in arrear and if such rent is not paid within thirty days of such notification, the PMD may declare the site to be  
20     forfeited.

(4) The person who at the date of the declaration of forfeiture was the holder of a block or site which has been declared forfeited in terms of subsection (2) owing to his or her failure to obtain the necessary inspection certificate or to pay site rent therefor in terms of subsection (3) may, on payment of the prescribed fee, apply to the  
25     PMD for the revocation of such declaration of forfeiture.

(5) If—

- 30     (a) the application is made in writing together with the prescribed fee under subsection (4) is made within twenty-one days of the date of the posting in terms of subsection (2) of the notice of forfeiture relating to such mining location; and
- (b) at the date specified by the PMD, the applicant complies with section 154 or initiates the process for obtaining a retention licence in accordance with section 157;

35     the PMD shall, as soon as applicant obtains an inspection certificate or retention licence, as the case may be, revoke the declaration of forfeiture by affixing a notice to that effect on his or her notice board, and upon such revocation such mining location shall be regarded for all purposes as if no forfeiture thereof had been declared and any approved cultivation or pasturage scheme which relates to such mining location shall not be affected by such forfeiture.

40     (6) In addition to the cases where the PMD declares a mining location to be forfeited under subsection (1), the PMD may, subject to section 197 (“Forfeiture of mining leases”), declare any mining location that is liable to forfeiture under this Act to be forfeited by affixing such a notice as is mentioned in subsection (2):

45     Provided that nothing in this subsection shall be construed as affecting in any way the PMD’s duty to declare a location to be forfeited under—

- (a) section 77 (“Revocation of authority or order”); or
- (b) section 78 (“Approval of transfer of mining location subjected to authority or order”); or

- (c) section 118 (“Forfeiture of underground extension block”); or
- (d) section 157 (“Retention licences”); or
- (e) section 211 (“Registration of conditions governing mining rights on reserved ground”)
- (f) section 255 (“Forfeiture of expropriated location”). 5

### 197 Forfeiture of mining lease

- (1) If a lessee of a mining lease—
- (a) fails to submit a development programme in terms of section 134 (“Programmes to be submitted by lessees”) within the time prescribed in that section for its submission; or 10
- (b) when called upon to do so by the Board, fails to explain to the satisfaction of the Board any discrepancy between a development programme submitted in terms of section 134 and any return or other document submitted in terms of this Act; or
- (c) fails to obtain an inspection certificate within the period prescribed in Part XI (“Preservation of Mining Rights”) for the obtaining of such certificate; 15

the Board may serve a notice on the lessee informing him or her that if he or she does not rectify the failure within such period, being not less than thirty days, as may be specified in the notice, the mining lease will be liable to forfeiture.

- (2) If, within the period specified in a notice referred to in subsection (1), or within any extension of that period granted by the Board, the lessee has not rectified the failure that prompted the Board to serve the notice, the Board may direct the mining PMD to declare the mining lease to be forfeited, and the PMD shall without delay comply with the direction by affixing the notice of forfeiture on the notice board of his or her office. 25

### 198 Forfeiture of mining locations

(1) If a holder of a registered mining location fails to comply with a directive given by the Minister in terms of section 156 (“Unutilised dumps”)(5), the Minister may order in writing that the registered mining location on which the dump concerned is situated be forfeited, unless the holder thereof satisfies the Minister that he or she took all reasonable and practicable steps to comply with the directive either by working the dump himself or herself or by tributing it to someone else, but was unable to do so. 30

(2) An order in terms of subsection (1) shall not take effect until a period of thirty days has expired after the holder of the registered mining location concerned has been notified in writing of the order. 35

(3) On expiry of the period referred to in subsection (2) the Minister shall direct the PMD to affix the appropriate notice of forfeiture on the notice board of his or her office.

### 199 Locations belonging to estate of deceased persons, etc.: special conditions as to forfeiture 40

(1) Any registered mining location belonging, and which is notified in writing to the PMD by any person interested as belonging, to the estate or registered in the name of any deceased person, minor, mentally incompetent person or insolvent shall not, after the date of the receipt of such notification by the PMD, be liable to forfeiture by reason of failure to take out any certificate within the prescribed period, or to pay licence moneys, rents, dues, fees or fines, until after the expiration of a period of thirty days from the issue of letters of administration to the executor or executors of such 45



deceased person, or, in the case of the estate of any minor, mentally incompetent person or insolvent, from the date of appointment of a curator or trustee of such estate.

(2) It shall be competent for any executor, curator or trustee within the aforesaid period of thirty days, according to the circumstances of the case, either to take out any certificate required as aforesaid or make the necessary payments in respect of licence moneys, dues, fees or fines, and to retain such location as aforesaid as an asset in such estate:

Provided that—

- (i) if the issue of such letters of administration or the appointment of such curator or trustee has been made outside Zimbabwe, the above period of thirty days shall be reckoned from the date of the official recognition in Zimbabwe of such letters of administration or appointment, as the case may be;
- (ii) in all cases after the expiration of six months from the date of the aforesaid notification to the PMD, the provisions of this section shall cease to apply to such location unless the High Court otherwise directs.

## **200 Removal of buildings and machinery, and beacons, from abandoned, forfeited or cancelled location**

(1) Subject to section 277 (“PMD may sue for and have hypothec for amounts due”), the former holder of any mining location which has been abandoned, forfeited or cancelled—

- (a) may, within a period of three months from the date of such abandonment, forfeiture or cancellation, remove any buildings or machinery belonging to him or her:

Provided that the PMD may, if he or she is satisfied that it is necessary to do so, extend the period within which the buildings or machinery may be removed by a further period not exceeding three months;

- (b) shall, without delay, remove all pegs and beacons appertaining to such location or the part abandoned:

and any buildings or machinery belonging to the former holder of any mining location that are not removed within the period referred to in paragraph (a) or any extension thereof shall be forfeited to the State and become liable to dealt with in accordance with subsection (2):

Provided that—

- (i) if such location or any part of it is repegged by any other person as a fresh mining location, the holder of such fresh mining location shall not be liable for any damage done to such buildings or machinery in the due and proper exercise of his or her rights as such holder;
- (ii) the owner or the occupier of the land on which such buildings or machinery are situated shall not be liable for any damage done to such buildings or machinery in the due and proper exercise of his or her rights as owner or occupier of the land.

(2) Whenever any mining location or part of such location has been abandoned, or whenever any mining location has been duly forfeited according to law, and the former holder has not removed any buildings or machinery belonging to him or her within the time allowed under subsection (1), or all pegs and beacons appertaining to such location or the part abandoned, it shall be lawful for any PMD or claim inspector—

- (a) at any time after the period referred to in subsection (1)(a), to remove, destroy or otherwise dispose of all buildings or machinery belonging to him or her;
- (b) at any time after the date of such abandonment or forfeiture, and on the failure of the former holder to do so upon not less than seven days' written notice to him or her, to remove, destroy or otherwise dispose of all the beacons, pegs and boundary marks of such location, or of so much as has been abandoned: 5

Provided that no such removal or destruction may be carried out until a quittance certificate has been issued in terms of section 201 ("Open workings to be protected on abandonment, forfeiture or cancellation of location") in respect of such mining location or part thereof. 10

(3) The PMD may recover the costs of any removal, destruction or other disposal (being a disposal other than a sale in which the costs of the same were fully met from the proceeds thereof) from the former holder thereof by action in any court of competent jurisdiction. 15

### **201 Open workings to be protected on abandonment, forfeiture or cancellation of location**

(1) In this section—

"director" means any person who controls or governs the company or is a member of a body or group of persons which controls or governs the company or, where there is no such body or group, is a member of the company; 20

"holder" includes the person who was the holder of an abandoned, forfeited or cancelled mining location before its abandonment, forfeiture or cancellation; 25

"occupier", in relation to Communal Land, means any rural district council established for the area concerned;

"owner", in relation to State land, means the Minister responsible for the administration of such land; 30

"quittance work" means any work required for proper compliance with subsection (2).

(2) On or before the abandonment, forfeiture or cancellation of a registered mining location or not later than thirty days after the affixing by the PMD of the notice mentioned in section 204 ("Relocation of abandoned, forfeited or cancelled locations and reinstatement of forfeited locations"), the holder of such location shall fill in all shafts, open surface workings and excavations or otherwise so deal with them as permanently to ensure the safety of persons and stock: 35

Provided that the PMD may in circumstances which he or she may deem exceptional extend such period of thirty days by a further period not exceeding thirty days. 40

(3) A holder who fails to comply with subsection (2) commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding three years or to both. 45

(4) If a civil default as described in subsection (3) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
    - (i) pay to the PMD a default fine of the maximum amount fixed for level six; and
    - 5 (ii) commence filling in all shafts, open surface workings and excavations or otherwise so deal with them as permanently to ensure the safety of persons and stock, so that no later than fourteen days after the civil penalty order is served the task is completed to the satisfaction of the PMD;
  - 10 (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
    - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level six for each day (not exceeding 15 ninety days) during which the defaulter fails to pay the original default fine;
    - (ii) if he or she fails to comply with paragraph (a)(ii), either by—
      - A. failing to commence the ordered works; or
      - B. failing to complete them to the satisfaction of the PMD on the 20 fourteenth day after the civil penalty order is served;to pay a default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.
- 25 (5) The manner in which shafts, open surface workings and excavations shall be dealt with for the purposes of subsection (2) or (4) shall be prescribed by regulation, and compliance with such regulations shall be sufficient compliance with those subsections.
- 30 (6) When such shafts, open workings or excavations have been filled in or suitably enclosed and protected, the holder shall, not later than seven days after the completion of such work, send to the PMD a certificate in the form prescribed by regulation (hereinafter called a “compliance certificate”) stating the nature of the work which has been done for the purposes of subsection (2) or (4), and if there are no shafts, open surface workings or other excavations on the mining location which require quittance work, the holder shall, not later than seven days after the posting of the notice mentioned in section 204 (“Relocation of abandoned, forfeited or cancelled 35 locations and reinstatement of forfeited locations”) by the PMD, send to the PMD a certificate to that effect.
- (7) In addition to the compliance certificate, the holder shall send to the PMD the written consent of the occupier or, if there is no occupier, the owner of the land upon which the relevant mining location was situated, to the issue of a quittance certificate 40 in terms of this section:

Provided that, if the holder has not been able to obtain such written consent, he or she shall send instead to the PMD a written statement to that effect.
- (8) If written consent to the issue of a quittance certificate is lodged in terms of subsection (7), the PMD shall issue a quittance certificate relieving the holder from 45 any further responsibility in terms of subsection (2) or (4).
- (9) If written consent to the issue of a quittance certificate is not lodged in terms of subsection (7), the PMD shall—
  - (a) affix a notice on the public notice board at the PMD’s office for a period of at least seven days notifying all interested persons and that a quittance

- certificate relieving such holder from any further responsibility under subsection (2) will be granted to such holder unless a written objection giving full details of all unprotected or insufficiently protected shafts, open surface workings or excavations is lodged by or on behalf any person demonstrating an interest in the matter; and 5
- (b) on the same day that the PMD posts the notice referred to in paragraph (a), notify the occupier of the land or, if there is no occupier, the owner of the land upon which the relevant mining location was situated. that the PMD has received a compliance certificate and that a quittance certificate relieving such holder from any further responsibility under subsection (2) or (4) will be granted to such holder unless a written objection giving full details of all unprotected or insufficiently protected shafts, open surface workings or excavations is lodged by or on behalf of such owner or occupier within thirty days of the date of the affixing of the notice referred to in paragraph (a). 10 15
- (10) If the whereabouts of the owner or the occupier of any land are unknown to the PMD after due inquiry or if no objection is lodged with the PMD within the prescribed period, the PMD shall issue a quittance certificate relieving the holder from any further responsibility under subsection (2) or (4).
- (11) If an objection is received to the issue of a quittance certificate, the PMD shall notify the person who lodged such objection and the holder of the time when a claim inspector will inspect the abandoned or forfeited mining location, and the objector may attend at such inspection and point out to the inspector in what respect he or she considers the quittance work to be insufficient. 20
- (12) If the PMD is satisfied from the report of the claim inspector that the quittance work is adequate, the PMD shall issue a quittance certificate relieving the holder from any further responsibility under subsection (2) or (4). 25
- (13) If the PMD is not satisfied in terms of subsection (12), the PMD shall give written notice to the holder of what additional work is necessary and shall order the holder to perform such work within a time specified by the PMD. 30
- (14) A holder who fails to comply with the order of the PMD given under subsection (13) within the specified time commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding three years or to both.
- (15) If a civil default as described in subsection (15) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which— 35
- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
- (i) pay to the PMD a default fine of the maximum amount fixed for level 6; and 40
- (ii) commence performing the necessary additional work specified by the PMD in his or her original order (plus any additional work that has since become necessary on account of the defaulter's delay), so that no later than fourteen days after the civil penalty order is served the task is completed to the satisfaction of the PMD; 45
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate —
- (i) if he or she fails to pay the default fine specified in paragraph (a) (i) ("the original default fine"), to pay a further default fine of the 50

maximum amount fixed for level six for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;

(ii) if he or she fails to comply with paragraph (a)(ii), either by—

- 5 A. failing to commence the necessary additional work; or
  - B. failing to complete them to the satisfaction of the PMD on the fourteenth day after the civil penalty order is served;
- to pay a default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(16) When the holder has complied with any order made by the PMD in terms of this subsection (13) or (15), the PMD shall issue to such holder a quittance certificate relieving such holder from any further responsibility under subsection (2).

15 (17) A copy of every quittance certificate issued in terms of this section shall be sent by the PMD to the relevant owner or occupier of land.

(18) If any holder—

- 20 (a) fails to furnish a certificate or written statement in terms of subsection (6) or (7), the holder shall be guilty of an offence and liable to fine not exceeding level 5, or to imprisonment for a period not exceeding six months, or both; or
- (b) makes any false statement in such certificate or written statement, the holder shall be guilty of an offence liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding three years, or both.

25 (19) On the conviction of any person for a contravention of subsection (3), (14) or (18), the court may order the forfeiture of any prospecting licence or licences held by such convicted person and thereupon such licence or licences shall be forfeited and no new licence shall be issued to such person until he or she has proved to the satisfaction of the Secretary that the shafts, workings or excavations in respect of which he was so convicted have been properly filled in, fenced or otherwise dealt with in accordance with those sections.

(20) Where, in the case of a registered mining location formerly held by a company, the company has been dissolved before the issue of a quittance certificate in terms of this section in respect of that registered mining location, every person who was a director of the company—

- 35 (a) at the time of the abandonment, forfeiture or cancellation of the registered mining location or at any time thereafter; or
- (b) where the dissolution of the company occurred before the forfeiture or cancellation of the registered mining location, at the commencement of the winding up of the company or, in the event of a dissolution not preceded by a winding up, at its dissolution;

shall upon the dissolution of the company be deemed to be a holder of the registered mining location for the purposes of this section.

## **202 Removal of or interference with protective works prohibited**

45 (1) Except in the exercise of any right acquired under this Act or with the permission in writing of the PMD and subject to such conditions as the PMD may attach to such permission, no person shall remove or interfere with any fencing or other works erected or constructed under section 201 (“Open workings to be protected on abandonment, forfeiture or cancellation of location”) for the protection of mine workings.

(2) Any person who contravenes subsection (1) commits a criminal offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding twelve months or to both.

(3) If any person is convicted of an offence under subsection (2), the court may, in addition to any other penalty imposed by it, order such person to restore such fencing or other works or otherwise so to deal with them as permanently to ensure the safety of persons or stock. 5

(4) If a civil default as described in subsection (2) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which— 10

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
    - (i) pay to the PMD a default fine of the maximum amount fixed for level 4; and 15
    - (ii) restore such fencing or other works or otherwise so to deal with them as permanently to ensure the safety of persons or stock so that no later than fourteen days after the civil penalty order is served the task is completed to the satisfaction of the PMD;
  - (b) subjects the defaulter to either of both of the following penalties, as may be appropriate— 20
    - (i) if he or she fails to pay the default fine specified in paragraph (a)(i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 25
    - (ii) if he or she fails to comply with paragraph (a)(ii), either by—
      - A. failing to commence the necessary restoration work; or
      - B. failing to complete them to the satisfaction of the PMD on the fourteenth day after the civil penalty order is served; 30
- to pay a default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

### **203 Recording of abandonments and forfeitures; appeals under Part XVI**

- (1) Whenever the PMD— 35
  - (a) issues a certificate of abandonment in terms of section 195 (“Abandonment of registered blocks or sites”); or
  - (b) makes a declaration of forfeiture in terms of section 196 (“Forfeiture of registered blocks and sites”); or
  - (c) receives notice from the Board of the forfeiture of a mining lease under section 197 (“Forfeiture of mining lease”); or 40
  - (d) receives notice from the Minister of the forfeiture of a mining location under section 198 (“Forfeiture of mining locations”);

the PMD shall without delay make the appropriate deletions and entries in his or her provisional register and transmit the relevant particulars of the abandonment or forfeiture to the Mining Cadastre Registrar. 45

(2) Upon receiving the particulars of the abandonment or forfeiture from the PMD, the Mining Cadastre Registrar shall, if satisfied that the documentation



transmitted under subsection (1) is in order, make the appropriate deletions and entries in the Mining Cadastre Register and promptly notify the PMD accordingly, whereupon the PMD shall make the corresponding deletions and entries in his or her final register:

Provided that—

- 5 (i) if no appeal is made in terms of subsection (3) or (5) in relation to the decision concerned, the date on which an abandonment or forfeiture shall be deemed to have taken effect shall be (as the case may be) the date on which the PMD issues the certificate of abandonment under section 195
- 10 (1), or the expiry of the period from dating from the posting of a forfeiture notice provided under section 196 (2), or the expiry of the period of the notice issued by the Board that is referred to in section 197 (1) or the expiry of the period of the period for compliance with the Minister's order referred to in section 198 (2);
- 15 (ii) if an appeal is made in terms of subsection (3) or (5) in relation to the decision concerned—
  - A. any forfeiture remains in effect until the appeal is abandoned or determined; but
  - 20 B. the Mining Cadastre Registrar shall not make the appropriate deletions and sentries in the Mining Cadastre Register until the appeal is determined or abandoned, in which event the date on which an abandonment of a registered mining location or forfeiture shall be deemed to have taken effect shall be the date when the appropriate deletions and sentries in the Mining Cadastre Register are made after the appeal is determined or abandoned.
- 25 (3) Any person aggrieved by a refusal by the PMD to issues the certificate of abandonment under section 195(1), or by a forfeiture under this Part (other than a forfeiture resulting from an order of the Minister issued under section 198) may, no later than thirty days from the notification of such refusal or declaration of such forfeiture
- 30 appeal to the Minister against such refusal or declaration, and on receiving the appeal, the Minister may—
  - (a) uphold the decision of the PMD or the Board, as the case may be; or
  - (b) refer the decision back to the PMD or the Board, as the case may be, for re-consideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—
  - 35 (i) allowing extraneous or irrelevant considerations to affect the decision,
  - (ii) failure to take into account relevant considerations in arriving at the decision,
  - (iii) any material mistake of fact or law that tainted the decision;
  - 40 (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision;
  - (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
- 45 (4) Any person who is aggrieved by a decision of the Minister under subsection (3), may seek a review of such decision by the Administrative Court within twenty-one days after the date of its notification to the person, whereupon the court may do any of the things the Minister is empowered to do under subsection (3).
- 50 (5) Any person aggrieved by a forfeiture resulting from an order of the Minister issued under section 198 may, no later than 30 days from the date when such forfeiture takes effect, appeal to the Administrative Court against such refusal or declaration, and on receiving the appeal, the Court may—

- (a) uphold the decision of the Minister; or
- (b) refer the decision back to the Minister for re-consideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—
  - (i) allowing extraneous or irrelevant considerations to affect the decision, 5
  - (ii) failure to take into account relevant considerations in arriving at the decision,
  - (iii) any material mistake of fact or law that tainted the decision;
  - (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision; 10
  - (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.

#### **204 Relocation of abandoned, forfeited or cancelled locations and reinstatement of forfeited locations** 15

(1) Lists of registered mining locations which have been abandoned or forfeited in terms of this Part or in terms of—

- (a) section 77 (“Revocation of authority or order”); or
- (b) section 78 (“Approval of transfer of mining location subjected to authority or order”); or 20
- (c) section 118 (“Forfeiture of underground extension block”); or
- (d) section 157 (“Retention licences”); or
- (e) section 255 (“Forfeiture of expropriated location”);

shall from time to time be affixed on a board to be exhibited in some conspicuous way outside the office of the PMD, and any such location may be relocated (that is to say, have the mining location and the mining rights attached to it re-assigned to some other person who meets the requirements for exercising them under the Act) after the expiration of thirty-five clear days from and exclusive of the date of the posting of the notice relating thereto, unless the declaration of forfeiture is revoked in terms of this section or in the said notice it is upon instruction of the Secretary otherwise provided. 25 30

#### **205 Mine plans to be lodged on abandonment or closing down**

(1) This section shall not apply to any mine upon which no development work has been done at a depth of more than fifteen metres.

(2) If the miner of any mine on which mining operations are being carried out intends to close down such mine or substantially reduce mining operations, he or she shall, not less than sixty days before such closing down or such substantial reduction of mining operations, give written notice to the PMD of such intention. 35

(3) A notice given in terms of subsection (2) shall state the reasons why the miner intends to close down the mine or substantially reduce mining operations.

(4) The PMD shall, as soon as practicable after receiving a notice given in terms of subsection (1), forward it to the Minister, together with his or her comments thereon. 40

(5) Within thirty-one days of the date of closing down a mine or substantially reducing mining operations, the miner shall lodge with the PMD in respect of each mine a plan or plans which shall comply with the following conditions— 45

- (a) where development work has been executed to a vertical or incline depth of more than one hundred metres on the dip, the plan or plans shall be prepared by a mine surveyor;
- 5 (b) where development work has been executed to a vertical or incline depth of not more than one hundred metres on the dip, the plan or plans shall be prepared by a mine surveyor or otherwise shall be based on tape and compass survey;
- (c) the plan or plans shall show details of all work done on the mine, together with such further particulars as the PMD may require;
- 10 (d) plans prepared by a mine surveyor shall be drawn to any recognized scale; other plans shall be drawn to a scale of 1: 250 or 1:500:

15 Provided that with effect from the promulgation of the regulations made under section 332 ("Regulations")(2)(e) the plans to be lodged in terms of this paragraph shall comply with the said regulations and not with the aforesaid conditions.

(6) If the miner of any mine shows to the satisfaction of the Chief Government Mining Engineer that he or she is unable to prepare or cause to be prepared the plans required under subsection (5), the Chief Government Mining Engineer shall cause such plans to be prepared by a Government mining engineer.

- 20 (7) The miner of any mine who —
  - (a) fails to furnish such notice or to lodge such plans as are prescribed; or
  - (b) wilfully refuses to produce such plans or to allow them to be examined or copied by the inspector of mines or any other officer duly authorised thereto by the Minister; or
  - 25 (c) conceals any part of the workings of the mine from a Government mining engineer who has been instructed to prepare the plans under subsection (6); or
  - (d) knowingly produces or transmits an imperfect or inaccurate plan;

30 commits a criminal offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding twelve months or to both.

(8) If a civil default as described in subsection (7) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which —

- 35 (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) —
  - (i) pay to the PMD a default fine of the maximum amount fixed for level 4; and
  - 40 (ii) do any one or more of the following as may specified in the civil penalty order no later than seventy-two hours after the civil penalty order is served, to the satisfaction of the PMD —
    - A. lodge such plans as are specified in the order; or
    - B. produce such plans such plans as are specified in the order or allow them to be examined or copied by the inspector of mines or any other officer duly authorised thereto by the Minister; or
    - 45 C. disclose all or any part of the workings of the mine to a Government mining engineer who has been instructed to prepare the plans under subsection (6); or

- D. produce and transmit a new plan for any previous plan specified to be imperfect or inaccurate in any respect;
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate —
- (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 5
  - (ii) if he or she fails to comply with paragraph (a)(ii) A, B, C or D, to pay a default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 10

## PART XVII

### REGISTRATION OF TRANSFERS, HYPOTHECATIONS, OPTIONS, TRIBUTE AGREEMENTS AND CONDITIONS GOVERNING MINING ON RESERVED GROUND 15

#### 206 Interpretation in Part XVII

In this Part —

- “mining location” does not include for the purposes of sections 208 to 211 an exclusive exploration reservation or, a special grant; 20
- “option contract” means a contract whereby any holder of a registered mining location or locations has agreed in writing to grant to any other person (the “option holder”), the option of exercising the right to purchase, or in any other manner to deal with, such location or locations at a certain future date; 25
- “pertinent particulars”, with reference to the registration by the PMD and the Mining Cadastre Registrar of the particulars of a transfer of a mining location, means the names of the parties to the transfer, the name and registered number of the mining location, the nature and amount of the stipulated consideration, if any, and the extent of the interest transferred. 30

#### 207 Registration of transfer of mining locations and transfer duty payable

(1) To avoid doubt, it is declared that this section applies to the transfer of all mining locations, including the transfer of individual mining locations within a mining lease area or a special grant mining area (but does not apply to any transfer of a mining lease or a special grant as a whole, because of section 138 (“Approval of transfer of mining lease”) and section 230 (“Transfer, cession or assignment of special grant”)). 35

(2) No transfer of any registered mining location or any interest therein pursuant to any sale or other alienation of the location in any manner whatsoever (and whether directly or indirectly by the transfer of shares or other interests in any entity holding the mining location that has the effect of ceding control over the mining location to some other person), shall be valid unless it has been registered in accordance with this section: 40

Provided that the registration under this Part of a hypothecation or option over any mining location during the period for which such hypothecation or option continues to be of force, shall be a bar to the transfer of the whole or portion of such mining location, unless — 45

- (a) the holder of such hypothecation or option consents in writing thereto, which consent shall be lodged with the PMD together with the application and other documentation referred to in subsection (8); or

- (b) the transfer is effected in the circumstances referred to in subsection (8) (h).

(3) When any registered mining location or any interest therein is sold or otherwise alienated in any manner whatsoever, the seller or person who so alienates  
5 shall notify the PMD of the transaction within sixty days of the date of such transaction, and shall inform him or her of the name of the person to whom such location or interest is sold or otherwise alienated and of the amount of the valuable consideration, if any, agreed upon, and the date of the transaction.

(4) When any registered mining location or any interest therein has been sold  
10 or otherwise alienated, whether before or after the date of commencement of this Act, in any manner whatsoever for valuable consideration, transfer duty at the rate fixed by Parliament shall be paid by the purchaser, which term shall include any person becoming entitled to such location or interest therein by way of sale, exchange or other like transaction.

(5) If the holder of a registered mining location has granted to any person the  
15 right to purchase such location, and if the said right to purchase becomes vested in some other person by cession or assignment of the said right, then upon the exercise of the said right to purchase any sums paid for any such cession or assignment shall be deemed to form part of the consideration in the sale or alienation of such mining  
20 location.

(6) The transfer duty payable in terms of subsection (4) shall be calculated on the cash value of the consideration. If the consideration consists partly of cash and partly of shares in a company already formed or to be formed, which is to acquire such location, the cash value of such shares shall be deemed to be their nominal value; if the  
25 consideration of any portion thereof consists of anything other than cash or such shares, then the duty shall be payable on the true cash value thereof, to be assessed by the parties concerned to the satisfaction of the PMD. If the payment of the consideration or any portion thereof is contingent upon the happening of some future event, the purchaser shall give security to the satisfaction of the PMD that he will pay transfer duty at the  
30 rate fixed as aforesaid on such consideration or such portion thereof if and when such consideration becomes payable.

(7) The transfer duty payable in terms of subsection (4) shall be paid within six months from the date of the sale or other alienation of the mining location, as the case may be:

35 Provided that—

- (i) such period may be extended by the Secretary on cause shown, but in any such case from and after the expiration of such period of six months and until payment or deposit of the amount of such duty, interest thereon at the rate of twelve *per centum* per annum shall be payable and paid by  
40 the purchaser;
- (ii) if the payment of the consideration or any portion thereof is contingent upon the happening of some future event, the period of six months provided for by this subsection shall, in respect of the transfer duty on such consideration or such portion thereof, be calculated as from the  
45 happening of such event.

(8) Subject to this Act, any person entitled to be registered as the holder of a registered mining location, or any interest therein, shall make application to the PMD for the transfer of such location or interest, and every such application shall be in writing and signed by or on behalf of the applicant, and shall be accompanied by the  
50 following particulars—

- (a) the last issued certificate of registration or of special registration of the location, or the holder's copy of the mining lease, as the case may be;
  - (b) certificates by the transferor and transferee in the prescribed form;
  - (c) a duplicate original, grosse or notarially certified copy of any and every existing written agreement affecting or bearing upon the sale, alienation, exchange or transfer; 5
  - (d) a valid and up to date Capital Gains Tax Clearance Certificate Issued by the Zimbabwe Revenue Authority;
  - (e) in the event of there being no such existing written agreement, certificates by the transferor and transferee to that effect; 10
  - (f) the original or a notarially certified copy of any power of attorney which may be required to authorize an agent to act on behalf of any party to the transfer; if the original power is lodged with the PMD and the applicant does not wish the PMD to retain it, he or she shall furnish with it a copy which the PMD shall compare with the original, certify to be a true copy and retain; 15
  - (g) if such application is in respect of the transfer of any mining location registered for precious stones or any strategic minerals or any interest therein, a certificate from the Secretary that the Minister has granted the permission required under section 215 ("No tribute, sale or alienation of precious stones or strategic minerals locations without approval of Minister") in respect of such transfer; 20
  - (h) if such application relates to a mining location over which a hypothecation or option has been registered in terms of section 208 or 209, an affidavit by the holder of the hypothecation or option that he or she consents to the transfer or that the hypothecation or option has been cancelled, as the case may be; 25
  - (i) if such application is made—
    - (i) in virtue of the execution of the judgment of any competent court by the officer appointed by law or by that court; or 30
    - (ii) by the trustee of an insolvent estate or by such an assignee as is described in Part VIII of the Insolvency Act [*Chapter 6:04*]; or
    - (iii) by an executor administering and distributing an estate under the Administration of Estates Act [*Chapter 6:07*]; or
    - (iv) by the liquidator of a company which is being wound up by or under the supervision of the High Court: 35

an affidavit to that effect by the officer, trustee, executor or liquidator, as the case may be.
- (All certificates or affidavits lodged in terms of paragraphs (a) to (i) shall be filed in the office of the PMD for a period of at least six years from lodgement under this subsection). 40
- (9) The PMD shall without delay set in motion the process for the registration of a transfer in accordance with this subsection and subsection (10) on receipt of such application and other documents and of the transfer duty (or, if no such duty is or may in the future be payable or the whole of such duty has been remitted under subsection (14), of the prescribed fee), and if on the date on which the application and supporting documentation is received— 45
- (a) the PMD is satisfied that on the date on which the application and supporting documentation is received—
    - (i) the mining location in question is not liable to forfeiture or under attachment; and 50



(ii) all duties, fees, royalties, rents or other moneys due and payable to the PMD under this Act in respect of the mining location to be transferred have been paid; and

(iii) where security is required under subsection (6), such security has been given to the satisfaction of the PMD;

and

(b) there is produced to the PMD a certificate (in the case where the mining location is situated in the area of a rural council), issued by the rural council concerned, stating that all charges payable to the council in respect of the location during the period of five years immediately preceding the date of issue of the certificate have been paid or are, in the opinion of the council, irrecoverable:

Provided that no such certificate shall be valid for the purposes of this paragraph for a longer period than three months from the date of issue thereof;

and

(c) all requirements imposed by or under the Exchange Control Act [*Chapter 22:05*] have, where the transferee is not a permanent resident of or ordinarily resident in Zimbabwe, been complied with (for the purpose of which a certificate to that effect must have been produced to the PMD by the Reserve Bank of Zimbabwe);

(d) the other provisions of this Act have been complied with;

provisionally register the transfer by entering in his or her provisional register the pertinent particulars of the transfer.

(10) The PMD shall without delay after provisional registration of the transfer transmit the particulars of the provisional transfer to the Mining Cadastre Registrar, and upon receiving notification from the Registrar—

(a) that the particulars of the transfer are in order and have been entered under an assigned reference number in the Mining Cadastre Register with effect from a specified date:

Provided that if the Registrar indicates that any particulars are not in order by reason of some remediable defect in them, and the PMD is unable, with or without the cooperation of either the transferor or transferee (or both) to rectify them, the PMD shall reject the transfer, giving the transferor or transferee (or both) the reasons therefor and informing them of the right of appeal under section 213 (“Appeals under Part XVII”) (4);

and

(b) authorising the PMD to approve the transfer, the effective date of which shall be the date of the entry of the pertinent particulars relating to it in the Mining Cadastre Register;

whereupon the PMD shall record the fact and date of the approval of the transfer in his or her final register and notify the parties to it in writing accordingly.

(11) Where the location transferred is a mining lease, the PMD shall endorse on the holder’s copy of the mining lease the fact of transfer, the date of registration thereof and the name of the transferee and shall transmit to the Board the particulars of such transfer;

(12) The PMD shall also, on receipt of the prescribed fee, issue to the transferee a certificate of registration in the form prescribed and such certificate shall record the interest of the transferee, whether whole or otherwise, in such block.

(13) If it is proved to the satisfaction of the Minister that a transfer applied for is merely for the purpose of carrying out the reconstruction of any company holding a mining location, or the amalgamation of two or more companies holding such locations, the duty to be paid in respect of such transfer shall be one-half of the rate aforesaid.

(14) If in any transfer from one company to another registered by the PMD under this section, it is shown to the satisfaction of the Minister that at the date of the sale or other alienation of the mining location such mining location was acquired—

- (a) by a company from its wholly-owned subsidiary; or
- (b) by a wholly-owned subsidiary of a company from its parent company; or
- (c) by a wholly-owned subsidiary of a company from another wholly-owned subsidiary of the same parent company, or
- (d) by a company in which the majority shareholder is the same person who holds a majority of shares in the company which transferred the location;

the Minister shall remit the whole or any part of the duty payable under this section.

(15) If when any transfer is applied for the applicant did not derive his or her rights to transfer from the holder, but there has been any intermediate agreement of sale or alienation, or some other person has previously acquired the right to obtain transfer, transfer may be made direct to the applicant:

Provided that if transfer duty payable on any such intermediate transaction or acquisition of rights has not been paid, such duty shall be payable by the applicant and the requirements of subsection (2) shall be met in respect of each such intermediate transaction or acquisition of rights.

(16) No transfer in terms of subsection (15) shall be registered until each seller and purchaser, or their respective agents, has filed a certificate in accordance with the prescribed form.

## **208 Registration of hypothecation of mining location**

(1) Any holder of a registered mining location may make application to the PMD for the hypothecation of the whole or of any portion of his or her interest in such location, and no such hypothecation shall be valid unless it has been registered in accordance with this section:

Provided that the registration under this Part of a prior hypothecation or option over the same mining location or portion thereof shall during the period for which such hypothecation continues to be of force, be a bar to the registration of the subsequent hypothecation, unless—

- (a) the holder of the prior hypothecation or option consents in writing thereto, which consent shall be lodged with the PMD together with the application and other documentation referred to in subsection (2); or
- (b) the subsequent hypothecation or option is effected in the circumstances referred to in subsection (2)(e).

(2) Every such application as aforesaid shall be accompanied by—

- (a) three duplicate original notarial copies or three notarially certified copies of the agreement between the parties to the transaction, embodying the terms upon which the hypothecation is to be effected, which notarial copies shall be endorsed by the notary before whom the same were completed to the effect that the minute or original filed in his or her protocol is stamped with revenue stamps in accordance with the fees fixed by Parliament:

Provided that where such notarial copies are endorsed by the notary to the effect that the hypothecation is auxiliary or collateral to or

- substituted for a previous hypothecation executed by the same person for the same debt or obligation and that the minute or original relating to such previous hypothecation was duly stamped in accordance with such prescribed fees, no such stamps or corresponding endorsement shall be required in respect of such subsequent hypothecation; and
- (b) the original or an authenticated copy of the certificate of registration or of special registration or the holder's copy of the mining lease, as the case may be, of the location to which the hypothecation relates; and
- (c) if the mining location sought to be hypothecated is registered for precious stones or any strategic mineral or, in the case of a mining lease, the principal mineral being mined or to be mined on such location is precious stones or any strategic mineral, the written permission of the Minister required under section 215 ("No tribute, sale or alienation of precious stones or strategic minerals locations without approval of Minister") in respect thereof.
- (d) if such application relates to a mining location over which a hypothecation or option has already been registered in terms of this section or section 208 or 209 and is still in force, an affidavit by the holder of the hypothecation or option that he or she consents to the registration of the hypothecation being applied for, or that the existing hypothecation or option of which the deponent is the holder has been cancelled, as the case may be; and
- (e) if such application is made—
- (i) in virtue of the execution of the judgment of any competent court by the officer appointed by law or by that court; or
  - (ii) by the trustee of an insolvent estate or by such an assignee as is described in Part VIII of the Insolvency Act [*Chapter 6:07*] (No. 7 of 2018); or
  - (iii) by an executor administering and distributing an estate under the Administration of Estates Act [*Chapter 6:01*]; or
  - (iv) by the liquidator of a company which is being wound up by or under the supervision of the High Court:
- an affidavit to that effect by the officer, trustee, executor or liquidator, as the case may be.
- (3) If the PMD is satisfied that the hypothecation agreement—
- (a) contains full particulars as to the date and nature of the transaction, the names of the parties concerned, the official number of the mining location to be hypothecated, the stipulated amount for which the hypothecation is to be effected and the rate per centum and the times at which interest, if any, is payable; and
  - (b) is not contrary to any provisions of this Act and is likely to result in the mine being mined to the best advantage;

the PMD shall, without delay, enter in his or her provisional register the pertinent particulars of the hypothecation agreement and transmit a copy of the agreement to the Mining Cadastre Registrar, upon receipt of which the Registrar shall without delay notify the PMD—

- (c) that the particulars of the hypothecation agreement are in order and have been entered under an assigned reference number in the Mining Cadastre Register with effect from a specified date:

Provided that if the Registrar indicates that any particulars are not in order by reason of some remediable defect in them, and the PMD is unable, with or without the cooperation of either or both of the parties

to it to rectify them, the PMD shall reject the hypothecation agreement, giving the parties the reasons therefor and informing them of the right of appeal under section 213 (“Appeals under Part XVII”);  
and

- (d) authorising the PMD to finally approve the hypothecation agreement, the effective date of which shall be the date of the entry of the particulars relating to it in the Mining Cadastre Register; 5

whereupon the PMD shall record the fact and date of the final approval of the hypothecation agreement in his or her final register and notify the parties to it in writing accordingly. 10

(5) Should the hypothecation of any interest in any mining location be for the purpose of securing any issue of debentures, the fees fixed in terms of subsection (2) (a) shall only be payable on such amount of debentures as are actually issued from time to time in respect of such location.

- (6) For the prescribed fee (if any), upon the request of— 15
  - (a) either of the parties to the hypothecation registered under this section, the Registrar may issue a certificate of registration of such hypothecation;
  - (b) the person in whose favour an hypothecation registered under this section is effected, the Registrar shall inscribe upon the deed of hypothecation an official or registered number, and shall return to the notary who prepared it one copy, file another at the Mining Cadastre Registry and issue the third copy to the person in whose favour such hypothecation is effected. 20

## 209 Hypothecation in respect of loans granted by State

(1) If out of moneys provided by Parliament the Minister has, at the request of the holder of a mining location— 25

- (a) made a loan to such holder; or
- (b) caused work to be done on such location; or
- (c) sold to such holder mining machinery for use on such location;

and such holder has failed to give suitable and sufficient security for the repayment of such loan, the payment for such work or the purchase price of such machinery, the Minister may instruct the Mining Cadastre Registrar to register a hypothecation of all or any of the mining locations registered in the name of such holder in favour of the State. 30

(2) On receipt of such instruction the Mining Cadastre Registrar shall, in respect of every mining location to be hypothecated in terms of subsection (1), enter in the Mining Cadastre Register— 35

- (a) the official number of such location; and
- (b) the amount of the loan, the cost of the work done or the amount of the purchase price owed by the holder, as the case may be; and
- (c) the rate *per centum* and the terms on which interest is payable; and
- (d) the fact that such location is hypothecated to the State. 40

(3) Such entries shall constitute a hypothecation of such location in favour of the State from the date on which such entries were made and for the amount stated and the interest thereon.

(4) The Mining Cadastre Registrar shall transmit the particulars of the hypothecation referred to in subsection (2) to the PMD having jurisdiction over the mining location affected, upon receipt of which the PMD shall without delay make the 45

appropriate entries in his or her final register and notify the Mining Cadastre Registrar accordingly:

5        Provided that the failure by the Mining Cadastre Registrar or PMD for any reason to record or maintain the record of such hypothecation, or to do so accurately, shall not affect the validity of the same as it is recorded in the surviving entry, and any inconsistency between such entry relating to the hypothecation in the Mining Cadastre Register and the entry in the PMD's final register shall be resolved in favour of the former.

## **210 Registration of options on mining locations**

10        (1) Any holder of a registered mining location or locations may make application to the PMD for the for the registration of an option contract, and no such option contract shall be valid unless it has been registered in accordance with this section:

15        Provided that the registration under this Part of a prior option contract over any mining location shall during the period for which such option continues to be of force, be a bar to the registration of the subsequent option contract, unless—

- (a) the holder of the prior option consents in writing thereto, which consent shall be lodged with the PMD together with the application and other documentation referred to in subsection (2); or
- 20        (b) the subsequent option is effected in the circumstances referred to in subsection (2)(f).

(2) Every such application as aforesaid shall be accompanied by—

- (a) three duplicate original notarial copies or three notarially certified copies of the option agreement; and
- 25        (b) three duplicate original notarial copies or three notarially certified copies of the option contract, which notarial copies shall be endorsed by the notary before whom the same were completed to the effect that the minute or original filed in his or her protocol is stamped with revenue stamps in accordance with the fees fixed by Parliament:

30        Provided that where consideration is given and received for such option and the whole consideration is not in cash, the true cash value of such consideration shall, for the purpose of determining the fees payable by the applicant, be declared by the option holder and the registered holder at the time of the application for the registration of the option; and

- 35        (c) the original or an authenticated copy of the certificate of registration or of special registration or the holder's copy of the mining lease, as the case may be, of the location to which the option contract relates; and
- 40        (d) if the application is in respect of a contract relating to a mining location registered for precious stones or any strategic mineral or a mining lease on which the principal mineral being mined or to be mined is precious stones or any strategic mineral or any interest therein, a certificate from the Secretary that the Minister has granted the permission required under section 215 ("No tribute, sale or alienation of precious stones or strategic minerals location without approval of Minister") in respect thereof;
- 45        (e) if such application relates to a mining location over which an hypothecation or option has already been registered in terms of this section or section 208 and is still in force, an affidavit by the holder of the hypothecation or option that he or she consents to the registration of the option contract being applied for, or that the existing hypothecation or option of which the deponent is the holder has been cancelled, as the case may be; and
- 50

- (f) if such application is made—
- (i) in virtue of the execution of the judgment of any competent court by the officer appointed by law or by that court; or
  - (ii) by the trustee of an insolvent estate or by such an assignee as is described in Part VIII of the Insolvency Act [*Chapter 6:07*] (No. 7 of 2018); or 5
  - (iii) by an executor administering and distributing an estate under the Administration of Estates Act [*Chapter 6:01*]; or
  - (iv) by the liquidator of a company which is being wound up by or under the supervision of the High Court: 10
- an affidavit to that effect by the officer, trustee, executor or liquidator, as the case may be.
- (3) If the PMD is satisfied that the option contract—
- (a) contains full particulars as to— 15
    - (i) the names of the parties to the contract; and
    - (ii) the name and registered number of the mining location or locations to which such contract relates; and
    - (iii) the date upon which the right or option conferred by such contract commences and expires;
  - and 20
  - (b) is not contrary to any provisions of this Act and is likely to result in the mine being mined to the best advantage;
- the PMD shall, without delay, enter in his or her provisional register the pertinent particulars of the option contract and transmit a copy of the contract to the Mining Cadastre Registrar, upon receipt of which the Registrar shall without delay notify the PMD— 25
- (c) that the particulars of the option contract are in order and have been entered under an assigned reference number in the Mining Cadastre Register with effect from a specified date: 30
 

Provided that if the Registrar indicates that any particulars are not in order by reason of some remediable defect in them, and the PMD is unable, with or without the cooperation of either or both of the parties to it to rectify them, the PMD shall reject the option contract, giving the parties the reasons therefor and informing them of the right of appeal under section 213(4); 35
  - and
  - (d) authorising the PMD to finally approve the option contract, the effective date of which shall be the date of the entry of the particulars relating to it in the Mining Cadastre Register;
- whereupon the PMD shall record the fact and date of the final approval of the option contract in his or her final register and notify the parties to it in writing accordingly. 40
- (4) Whenever an agreement registered in terms of this section contains provisions granting a tribute or any other limited right to work the mining location to the option holder, so much of such agreement as relates to the tribute or other limited right to work the mining location, hereinafter called the tribute agreement, shall, while it remains in force, be binding upon any person who acquires the ownership of such mining location or any interest therein, and it shall not be lawful for the holder of such mining location to abandon such location during the period that such tribute agreement remains in force. 45



(5) Any holder of a mining location who contravenes subsection (4) by abandoning it while a tribute agreement in relation to it remains in force shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding twelve months or to both.

5 (7) Whenever an agreement registered in terms of this section contains provisions granting a tribute or any other limited right to work the mining location to the option holder, the PMD shall, in addition to inscribing on the certificate of registration or of special registration or the holder's copy of the mining lease, as the case may be, of such mining location the fact of an option having been effected and the date of the  
10 registration thereof, inscribe on such certificate of registration or of special registration or copy of the mining lease, as the case may be, the fact of the existence of the agreement granting a tribute or any other limited right to work such mining location.

(8) For the prescribed fee (if any), upon the request of—

- 15 (a) either of the parties to the option contract registered under this section, the Registrar may issue a certificate of registration of such contract;
- (b) the option holder, the Registrar shall inscribe upon the option contract an official or registered number, and shall return to the notary who prepared it one copy, file another at the Mining Cadastre Registry and issue the third copy to the option holder.

20 **211 Registration of conditions governing mining rights on reserved ground**

(1) In giving written consent in terms of section 37 ("Ground not open to prospecting")(1)(a) the President or other person giving such consent may impose terms prescribing the conditions under which mining rights on any mining location that may  
25 be pegged and registered in terms of such consent may be exercised.

(2) On the date of or at any time within twenty-one days of the registration of any mining location pegged under such consent as is mentioned in subsection (1), the President or other person has given the written consent (hereinafter called "the registrant") shall (together with the prescribed fee, if any) submit three copies of the  
30 consent duly signed or authenticated by him or her and countersigned by the holder of the mining location to the PMD, who shall thereupon without delay—

- (a) register the consent in his or her provisional register; and
- (b) report such provisional registration of the consent to the Mining Cadastre Registrar and to the holder of the mining location concerned; and
- 35 (c) retain one copy of the consent and furnish the Mining Cadastre Registrar with the other copy; and
- (d) return the other copy of the consent deed to the registrant with an endorsement made thereon by the PMD of the fact of such provisional registration.

40 (3) The PMD shall not finally register a consent until, having transmitted without delay the a copy of the consent to the Mining Cadastre Registrar, the PMD has received notification from the Registrar that the consent has been entered under an assigned reference number in the Mining Cadastre Register, whereupon the PMD shall record the fact and date of the entry of the consent in the Mining Cadastre Register in  
45 his or her final register and notify the parties to it in writing accordingly;

Provided that any failure on the part of the Mining Cadastre Registrar to make the notification to the PMD required by this section shall not affect the validity of the consent nor the application of subsections (4), (5) and (6) to enforce it.

(4) The terms of any written consent registered under subsection (3) (or, in the case contemplated by the proviso to subsection (2), provisionally registered under subsection (2)) shall be binding upon the holder of the registered mining location and upon any person who acquires the ownership of such mining location or any interest therein. 5

(5) No holder or any lessee or tributor or manager of the mining location shall breach any of the terms imposed in any written consent registered in terms of this section.

(6) Any person who contravenes subsection (5) commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding twelve months or to both. 10

(7) The PMD for the mining province wherein a civil default as described in subsection (6) is committed may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which— 15

(a) directs the defaulter—

(i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 6; and

(ii) to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her); 20

(b) subjects the defaulter to either of both of the following penalties, as may be appropriate—

(i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 6 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 25

(ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 30

(7) After a conviction for a contravention of subsection (6) or notification of a breach of a civil penalty order under subsection (7) the PMD shall, upon application by the person who owns the land upon which such mining location is situated, declare the mining location in question to be forfeited. 35

(8) In any prosecution for a contravention of subsection (6) or of a civil penalty order under subsection (7) pursuant to paragraph 3(7) of the First Schedule, a copy of any written consent certified as correct by the PMD shall be received in evidence upon its production by the prosecutor. 40

## **212 No sale or alienation of precious stones or strategic minerals locations without approval of Minister**

(1) Notwithstanding anything contained in this Act or any other enactment, no holder of a mining location registered for precious stones or any strategic mineral, or a mining lease on which the principal mineral being mined or to be mined is precious stones or any strategic mineral, shall cede, assign, sell or otherwise alienate in any manner whatsoever, that mining location or mining lease or any interest therein without the permission of the Minister. 45

(2) The Minister may require the holder and such other person to furnish to him or her such information as the Minister may require for the purpose of deciding whether he or she should or should not grant his or her permission under this section.

### 213 Appeals under Part XVII

- 5 (1) If the PMD refuses for any reason to provisionally register—
- (a) the transfer of a mining location in terms of section 207(8); or
  - (b) an hypothecation agreement in terms of section 208; or
  - (c) an option contract in terms of section 210;
- 10 either party to the transfer, hypothecation agreement or option contract may appeal to the Registrar to reverse the PMD's decision by lodging (together with the prescribed fee, if any) an appeal in writing through the PMD to the Registrar no later than seven days after the decision is notified in writing to the parties.
- (2) In transmitting the appeal the PMD shall transmit together with it—
- (a) his or her written reasons for the decision that prompted the appeal; and
  - 15 (b) the documentation he or she would have transmitted to the Registrar had the PMD not refused provisional registration.
- (3) Upon receiving an appeal in terms of subsection (1) the Registrar shall without delay—
- (a) dismiss the appeal by upholding the decision of the PMD; or
  - 20 (b) refer the decision back to the PMD for reconsideration within a specified period (whether with or without directions on how the decision is to be reconsidered, including a direction to the PMD to investigate the matter further and make a further report and recommendations) on any one or more of the following grounds—
- 25 (i) allowing extraneous or irrelevant considerations to affect the decision, or
  - (ii) failure to take into account relevant considerations in arriving at the decision, or
  - (iii) any material mistake of fact or law that tainted the decision;
  - 30 (and the Registrar shall, upon receiving the report or recommendations resulting from the PMD's reconsideration, make a decision in accordance with paragraph (a), (c) or (d))
- or
- (c) uphold the appeal and direct the PMD to effect the final registration of—
  - 35 (i) the transfer of a mining location in terms of section 207(10) on payment of the prescribed fee; or
  - (ii) an hypothecation agreement in terms of section 208(3) on payment of the prescribed fee; or
  - (iii) the option contract in terms of section 210(3); or
  - 40 if the Registrar finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision, and that there is no other impediment to the tribute agreement being approved.
- (4) If the Registrar refuses for any reason to register —
- 45 (a) the transfer of a mining location in terms of section 207; or
  - (b) an hypothecation agreement in terms of section 208; or
  - (c) an option contract in terms of section 210;

whether after an appeal referred to in subsection (1) or after the PMD has provisionally registered the transfer, hypothecation agreement or option contract, either party to the transfer, hypothecation agreement or option contract may seek a review of such decision by the Administrative Court within twenty-one days after the date of its notification to the party, whereupon the court may do any of the things the Registrar is empowered to do under subsection (3). 5

## PART XVIII

### APPROVAL OF TRIBUTE AGREEMENTS

#### 214 Interpretation in Part XVIII

- (1) In this Part— 10
- “grantor” means any person who has under a tribute agreement given a tributor the right to mine a mining location;
- “mining location” does not include a special grant;
- “tribute agreement” means any agreement or arrangement entered into on or after the commencement of this Act, whereunder the registered holder of a mining location gives a tribute, licence, concession, authority or other right to mine a mining location to a tributor; and which is renewed after such date, and any agreement to alter the terms of a tribute agreement which has been approved by the Board, and any renewal of a tribute agreement which has been approved by the Board; 15 20
- “tributor” means the person who has been granted the right to mine a mining location under a tribute agreement.

(2) References to a party or parties to a tribute agreement for the purposes of pursuing an appeal mentioned in section 216 or 217 may be construed as references to the parties acting jointly, or to either or anyone of them acting with the written concurrence of the other or others. 25

#### 215 No tribute of precious stones or strategic minerals location without approval of Minister

(1) Notwithstanding anything contained in this Act or any other enactment, no holder of a mining location registered for precious stones or any strategic mineral or a mining lease on which the principal mineral being mined or to be mined is precious stones or any strategic mineral shall tribute that mining location or mining lease or any interest therein without the permission of the Minister. 30

(2) The Minister may require the holder and such other person to furnish to him or her such information as the Minister may require for the purpose of deciding whether he or she should or should not grant his or her permission under this section. 35

#### 216 Submission of tribute agreements for approval by PMD or Board

(1) The terms of every tribute agreement shall be embodied in a notarial deed and must include the following particulars—

- (a) the names of the parties to the agreement; and 40
- (b) the name and registered number of the mining location or the registered number of the mining lease to which such agreement relates; and
- (c) the date upon which the rights conferred by such agreement commence and expire.

(2) The tributor (or the grantee, with the tributor’s express authority in writing) shall submit the following to the PMD for examination and approval by the Board or the PMD— 45

- (a) four duplicate original notarial copies or four notarially certified copies of a notarial deed embodying the terms of the tribute agreement; and
- (b) the original or an authenticated copy of the certificate of registration or of special registration or the holder's copy of the mining lease, as the case may be, of the location to which the tribute agreement relates; and
- (c) if the application is in respect of a tribute agreement relating to a mining location registered for precious stones or any strategic mineral, or a mining lease on which the principal mineral being mined or to be mined is precious stones or any strategic mineral or an interest therein, a certificate from the Secretary that the Minister has granted the permission required under section 215 ("No tribute of precious stones or strategic minerals location without approval of Minister") in respect thereof;
- (d) if the application is being submitted by the grantee under the tributor's authority, a copy of that authority signed by the tributor.
- (3) The Board may authorise the PMD to approve any tribute agreement which conforms to a standard agreement drawn up and approved by the Board:
- (4) If any tribute agreement submitted to the PMD conforms to such standard agreement, the PMD, on receipt of an application and documents in terms of subsection (2), shall—
- (a) register the agreement in his or her provisional register; and
- (b) report such provisional registration to the Board and to the occupier or, if there is no occupier, the owner of the land concerned; and
- (c) retain one copy of the deed and furnish the Mining Cadastre Registrar with the other copy; and
- (d) return the other copies of the deed to the applicant with an endorsement made thereon by the PMD of the fact of such provisional registration.
- (5) There shall be paid by the applicant for the registration of such deed the fee fixed by Parliament.
- (6) If the PMD refuses to provisionally approve an agreement or is only prepared to provisionally approve an agreement with such amendments as the parties refuse to accept, the parties may appeal to the Board to reverse the PMD's decision by lodging (together with the prescribed fee, if any) an appeal in writing through the PMD to the Board no later than seven days after the decision is notified in writing to the parties.
- (7) Upon receiving an appeal in terms of subsection (3) the Board shall without delay—
- (a) dismiss the appeal by upholding the decision of the PMD; or
- (b) refer the decision back to the PMD for reconsideration within a specified period (whether with or without directions on how the decision is to be reconsidered, including a direction to the PMD to investigate the matter further and make a further report and recommendations) on any one or more of the following grounds—
- (i) allowing extraneous or irrelevant considerations to affect the decision, or
- (ii) failure to take into account relevant considerations in arriving at the decision, or
- (iii) any material mistake of fact or law that tainted the decision;
- (and the Board shall, upon receiving the report or recommendations resulting from the PMD's reconsideration, make a decision in accordance with paragraph (a) or (c));

or

- (c) uphold the appeal and direct the PMD to approve the tribute agreement if the Board finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision, and that there is no other impediment to the tribute agreement being approved. 5

(8) Any party who is aggrieved by a decision of the Board under subsection (3) or (7), may seek a review of such decision by the Administrative Court within twenty-one days after the date of its notification to the party, whereupon the court may do any of the things the Board is empowered to do under subsection (7). 10

## **217 Consideration of non-standard tribute agreements by Board**

(1) Subject to this section, sections 216 and 218 applies also to non-standard tribute agreements.

(2) The PMD shall submit the application and documents referred to in section 216(2) in relation to non-standard tribute agreement to the Board for consideration. 15

(3) If upon examination of any non-standard tribute agreement which has been submitted to it by a PMD the Board is satisfied—

- (a) that the method of fixing the tribute royalty payable to the grantor and the rate of such royalty are satisfactory and are not likely to retard the progress or expansion of the mine or bring about the early cessation of mining operations; and 20
- (b) that the interests of both the grantor and the tributor are adequately safeguarded thereunder; and
- (c) that the period of such agreement is clearly defined and, if termination of the agreement by notice is provided for, that the interests of the parties to the agreement are adequately protected; and 25
- (d) that the development work required by the agreement is reasonable in the circumstances and is not unduly burdensome or likely to cause the premature cessation of mining operations on the mine; and
- (e) that the tributor is required to carry out sufficient development work to ensure the continuity of mining operations on the mine; and 30
- (f) that the grantor is entitled periodically and at reasonable times to inspect the mine and satisfy himself or herself that the terms of the agreement are being observed; and
- (g) that in all respects the agreement is satisfactory and likely to result in the mine being mined to the best advantage; 35

the Board may approve the agreement and shall—

- (h) communicate its approval of the tribute agreement to the PMD through the Secretary, whereupon the PMD shall proceed in terms of section 218 (“Records of agreements and amendments thereof”); 40
- (i) retain one copy of the deed and furnish the Mining Cadastre Registrar with the other copy; and
- (j) return the other copies of the deed to the applicant with an endorsement made thereon by or on behalf of the Chairperson of the Board of the fact of such provisional registration. 45

(4) If the Board is not satisfied in terms of subsection (2), it may refuse to approve the agreement or may submit to the parties thereto such amendments as it may deem fit.



(5) If the parties agree to such amendments the Board shall make the necessary amendments to the agreement and the agreement shall have effect as so amended and approved by the Board.

5 (6) If the Board refuses to approve an agreement or is only prepared to approve an agreement with such amendments as the parties refuse to accept, the parties may appeal to the Minister to reverse the Board's decision by lodging (together with the prescribed fee, if any) an appeal in writing through the Secretary of the Board no later than seven days after the decision is notified in writing to the parties.

10 (7) Upon receiving an appeal in terms of subsection (5) the Minister shall promptly (and in any event no later than seven working days of receiving it) —

(a) dismiss the appeal by upholding the decision of the Board; or  
(b) refer the decision back to the Board for reconsideration within a specified period (whether with or without directions on how the decision is to be reconsidered, including a direction to the Board to investigate the matter further and make a further report and recommendations) on any one or more of the following grounds —

15 (i) allowing extraneous or irrelevant considerations to affect the decision, or  
(ii) failure to take into account relevant considerations in arriving at the decision, or  
20 (iii) any material mistake of fact or law that tainted the decision;

(and the Minister shall, upon receiving the report or recommendations resulting from the Board's reconsideration, make a decision in accordance with such report or recommendation);

25 or

(c) uphold the appeal and direct the Board to approve the non-standard tribute agreement if the Minister finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision, and that there is no other impediment to the tribute agreement being approved; or  
30 (d) in an exceptional case, overturn the decision of the Board and substitute the Minister's own decision on the basis of the overriding national interest.

(8) Any party who is aggrieved by a decision of the Minister under subsection (6), may seek a review of such decision by the Administrative Court within twenty-one days after the date of its notification to the party, whereupon the court may do any of the things the Minister is empowered to do under subsection (6) other than paragraph (d) of that subsection.  
35

(9) An applicant whose appeal in terms of subsection (6) has been dismissed by the Minister and not upheld if taken on further appeal to the Administrative Court, may not enter into a tribute agreement on substantially the same terms as the one that was rejected until after the expiry of a period of twelve months from the date on which his or her appeal was dismissed by the Minister (or such lesser period as the Minister may specify when dismissing the appeal), or from the date of the dismissal of the appeal by the Administrative Court, as the case may be.  
40

(10) If the Minister reverses or alters the Board's decision, the Board shall approve the agreement in accordance with the Minister's decision and shall and shall —  
45

(a) endorse such approval thereon and shall inform the owner or occupier of the land concerned of such approval; and

- (b) communicate its approval of the tribute agreement to the PMD through the Secretary, whereupon the PMD shall proceed in terms of section 218 (“Records of agreements and amendments thereof”).

## 218 Records of agreements and amendments thereof

(1) The PMD shall without delay enter in his or her provisional register the particulars of every tribute agreement submitted for approval under this Part and— 5

- (a) not finally approve a tribute agreement which conforms to a standard agreement drawn up and approved by the Board until, having transmitted without delay the particulars of the tribute agreement to the Mining Cadastre Registrar, he or she has received notification from the Registrar— 10

- (i) that the particulars of the tribute agreement are in order and have been entered under an assigned reference number in the Mining Cadastre Register with effect from a specified date:

Provided that if the Registrar indicates that any particulars are not in order by reason of some remediable defect in them, and the PMD is unable, with or without the cooperation of either the grantor or tributor (or both) to rectify them, the PMD shall reject the tribute agreement, giving the the grantor or tributor (or both) the reasons therefor and informing them of the right of appeal under this Part; and 15 20

- (ii) authorising the PMD to approve the tribute agreement, the effective date of which shall be the date of the entry of the particulars relating to it in the Mining Cadastre Register;

whereupon the PMD shall record the fact and date of the approval of the tribute agreement in his or her final register and notify the parties to it in writing accordingly; 25

- (b) not record in his or her final register the fact and date of the approval of a tribute agreement for which the Board must give approval under section 216 or 217 until the Board notifies him or her that—

- (i) it has approved the tribute agreement; and 30

- (ii) the particulars of the tribute agreement have been entered under an assigned reference number in the Mining Cadastre Register with effect from a specified date;

whereupon the PMD shall record the fact and date of the approval of the tribute agreement in his or her final register and notify the parties to it in writing accordingly; 35

(2) Any tribute agreement finally registered in terms of this section shall, while it remains in force, be binding upon any person who acquires the ownership of such mining location or any interest therein, and it shall not be lawful for the holder of such mining location to abandon the whole or part of such location during the period that such agreement remains in force. 40

(3) If in any tribute agreement the tributor is granted the option of exercising the right to purchase or in any other manner to deal with such mining location at a certain future date, then the agreement may only be registered in terms of section 210 (“Registration of options on mining locations”). 45

(4) Every amendment by the parties to a tribute agreement approved under section 216 or 217 shall be dealt with in the same way as the original tribute agreement was dealt with, so that references to a “tribute agreement” in section 216 or 217 and this section shall be construed as references to an amendment of the tribute agreement concerned. 50

- (5) If an amendment is proposed to be made to an approved tribute agreement which had conformed to a standard agreement drawn up and approved by the Board, and the PMD is of the opinion that the amendment will alter the tribute agreement to such an extent that it no longer conforms to the standard agreement, the PMD shall
- 5 cause the amendment to be consolidated with the principal agreement and direct the parties to proceed in accordance with section 217 as if the amended tribute agreement is a new tribute agreement.

### **219 Penalty for contracting out mining otherwise than by virtue of tribute agreement**

- (1) No miner or holder of a registered mining location ("the principal") shall, otherwise than by means of a tribute agreement registered under this Part, contract out (that is to say, lease out, farm out, license, permit, or otherwise allow any other person as an independent contractor or agent of the principal) to conduct mining operations on the whole or any part of his or her location or other area in respect of which principal
- 15 exercises or may exercise any mining right, whether or not for a fee or other reward or consideration payable, given or promised to the principal or in consideration for the cancellation of a debt or other liability of the principal).

- (2) Any party who contravenes subsection (1) commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be liable to a fine
- 20 not exceeding level twelve or to imprisonment for a period not exceeding two years, or to both.

(3) The PMD for the mining province wherein a civil default as described in subsection (2) is committed may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty which—

- (a) directs the defaulter—
- (i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 12; and
- (ii) to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her);
- 30 (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
- (i) if he or she fails to pay the default fine specified in paragraph (a) (i) ("the original default fine"), to pay a further default fine of the maximum amount fixed for level twelve for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
- 35 (ii) if he or she fails to comply with paragraph (a)(ii), to pay a default fine of the maximum amount fixed for level twelve for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.
- 40

### **220 Penalty for acting under unapproved agreement**

- (1) No party to a tribute agreement shall exercise any right under such agreement unless and until such agreement has been examined and approved by the Board or a PMD and the party has been notified in writing of such approval under section 218(1) (a) or (b).
- 45

- (2) Any party who contravenes subsection (1) commits a criminal offence and a civil default and on prosecution, and conviction for the offence shall be liable to a fine not exceeding level six or to imprisonment for a period not exceeding twelve months, or to both.
- 50

(3) The PMD for the mining province wherein a civil default as described in subsection (2) occurs may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter—
  - (i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 6; and 5
  - (ii) to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her);
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate— 10
  - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 15
  - (ii) if he or she fails to comply with paragraph (a)(ii), to pay a default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

## **221 Prohibition of disposal of minerals** 20

(1) If a tributor is mining a mining location under an unapproved agreement or in conflict with the terms of an approved agreement, the PMD shall issue an order prohibiting the disposal of minerals from such mining location until he or she is satisfied that the agreement has been approved under this Part or until the terms of the approved agreement are complied with. 25

(2) Any party who fails to observe such an order and any person knowing of such an order who contrary thereto receives any minerals from such mining location commits a criminal offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level six or to imprisonment for a period not exceeding twelve months, or to both. 30

(3) The PMD for the mining province wherein a civil default as described in subsection (2) occurs may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter—
  - (i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 6; and 35
  - (ii) to immediately comply with the order (that is to say, within forty-eight hours after the civil penalty is served on him or her);
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate— 40
  - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 45
  - (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 50

PART XIX

SPECIAL GRANTS

**222 Interpretation in Part XIX**

In this Part—

- 5 “divided special grant” means a special grant under which the right to mine any coal, mineral oil, natural gas, nuclear energy source material or strategic mineral (whether or not in relation to the whole area covered by the special grant or to only a part or parts of of such area)—
- 10 (a) may be carried on concurrently with the exercise of mining and other rights by another holder of a mining right or title (whether for the same or different minerals, precious stones or metals) in relation to the whole or a part of the same piece of ground; and
- 15 (b) is specifically restricted to a surface stratum or one or more sub-surface strata whose coordinates are plotted on a map approved by the Department of Geology, in such a manner that no stratum overlaps with another stratum above or below it, or overlaps with it as little as possible;
- “energy minerals” means coal, coalbed methane, mineral oils, natural gases or nuclear energy source materials;
- 20 “grantee” means any person to whom a special grant has been issued, ceded or assigned under this Part;
- “non-energy special grant” means a special grant for a strategic mineral that is not an energy mineral;
- “special grant” means a divided or undivided special grant issued under this Part;
- 25 “undivided special grant” means a special grant other than a divided special grant.

**223 Special grant for mining coal, mineral oils, nuclear energy source materials, natural gases or strategic minerals**

- (1) The rights to mine—
- 30 (a) coal, mineral oils or natural gases or nuclear energy source materials, may not be acquired except in accordance with a special grant issued under this Part;
- (b) strategic minerals may be acquired in accordance with a special grant issued under this Part;
- 35 (c) the following co-existent minerals—
  - (i) coal and coalbed methane; or
  - (ii) mineral oil and natural gas;
 may be acquired with a divided or undivided special grant issued under this Part.
- 40 (2) If coal or any specific mineral oil, natural gas or nuclear energy source material is, by virtue of section 6 designated (whether generically or in relation to a designated area in respect of which the special grant is sought) to be a strategic mineral, then the provisions of this Part applicable to strategic minerals shall apply to coal or any such mineral or natural gas or nuclear energy source material so designated as a
- 45 strategic mineral.
- (3) No special grant may be applied for, or held, in the name of an individual.

**224 Application for special grant and provisional approval thereof**

- (1) Any person who wishes to mine—
- (a) coal, mineral oils or natural gases or nuclear energy source materials must apply to the Board for a special grant; or
  - (b) a strategic mineral— 5
    - (i) other than an energy mineral under the title of a non-energy special grant rather than a mining lease, must, before concluding an agreement referred to in section 6 (“Strategic minerals”) first apply to the Minister for evaluation of the application in terms of this section and section 225; 10
    - (ii) that is an energy mineral under the title of a special grant rather than a mining lease must, before concluding an agreement referred to in section 6 (“Strategic minerals”), apply to the Minister for a special grant;
 

Provided that such application may be made by virtue of 15  
an agreement (whether preparatory to the main agreement or not)  
whereunder the exercise of rights under the proposed special grant  
is expressly made contingent upon—

      - A. the grant of the application for a special grant under this Part; 20  
and
      - B. the outcome of exploration work done within a specified time  
in the area reserved for the grantee against prospecting and  
pegging;
  - (c) any mineral that is not an energy mineral or a strategic mineral under the title of a non-energy special grant must first apply to the Minister for evaluation of the application in terms of this section and section 225. 25
- (2) On such application the applicant shall furnish to the Board or the Minister as the case may be—
- (a) full information as to his or her financial status; and
  - (b) particulars of any guarantees that may be required for the performance of his or her obligations under the special grant; and 30
  - (c) information whether the application relates to coal, mineral oils, nuclear energy source materials or natural gases or a strategic mineral; and
  - (d) where the application relates to coal, coalbed methane, mineral oils or natural gas, a statement whether the applicant proposes to exploit— 35
    - (i) coal and coalbed methane under an undivided special grant; or
    - (ii) mineral oils and natural gas under an undivided special grant; or
    - (iii) coal alone under a divided special grant for coal; or
    - (iv) coalbed methane alone under a divided special grant for coalbed methane; or 40
    - (v) mineral oils alone under a divided special grant for mineral oils; or
    - (vi) natural gas alone under a divided special grant for natural gas;
  - and
  - (d) details illustrated by a sketch plan of the area to be embraced by the grant and the size of such area; and 45
  - (e) the nature and extent of the exploration operations he or she intends to carry out within the exclusive exploration reservation and any measures to mitigate any environmental damage (hereinafter called “the



prospectus”, a copy of which must be served on the Director General of the Environmental Management Agency); and

(f) if the applicant is —

(i) a company, the full names and nationality of each director and the full names by which those directors have at any time been known in any part of the world; or

(ii) an entity other than a company, the individual or individuals who, through the ownership of any share or stake in the entity or of all or any of the assets of the entity, is able to exert a significant or preponderant voice in the affairs of the entity, including any individual who exerts such control through a nominee who holds such stake, share or assets on behalf of such individual;

and

(g) any further information required of him or her by the Board or the Minister, as the case may be.

(3) If the Minister or the chairperson of the Board, as the case may be, after consultation with the Mining Cadastre Registrar and the Department of Geological Survey —

(a) is satisfied that, on the face of it, the application appears to be in order, and otherwise has a good prospect of being granted, provisionally approve an application before it is considered for final approval by the Minister or the Board, whereupon the Minister or the chairperson shall issue a direction to the PMD to reserve the area embraced by the application against prospecting and pegging in terms of section 44 (“Reservations against prospecting and pegging”), and the PMD, (without obtaining the authority of the Minister if the application relates to coal, mineral oils or natural gases or nuclear energy source materials) shall forthwith reserve such area accordingly:

Provided that the applicant shall not —

(i) carry out prospecting operations in the reserved area; or

(ii) carry out mining operations or any other operations for mining purposes in the reserved area

until the application has been approved and the special grant issued by the President under section 229 (“President may grant or refuse application for special grant”);

or

(b) is not satisfied as provided in paragraph (a), refuse the application or refer it back to the applicant for clarification or amendment in specific respects (in the latter case the Minister or Chairperson shall, upon receiving the clarification or amended application, make a decision in accordance with paragraph (a) or this paragraph)

(4) If two or more applications for a special grant are received within thirty days of each other (or such longer or shorter period as may be prescribed by notice in the *Gazette*) in respect of the same area, or the areas subject to the applications overlap each other, the Minister or the Chairperson of the Board, as the case may be, may grant provisional approval to two or more applicants who appear to the Minister or Chairperson to qualify for provisional approval under subsection (3), even if the applications seek to mine the same resource.

(5) A reservation under subsection (3) shall simultaneously be recorded in the Mining Cadastre Register by the Mining Cadastre Registrar.

## 225 Evaluation of non-energy special grants by Non-Energy Special Grants Evaluation Committee

(1) If an application for a non-energy special grant has been given provisional approval in terms of section 224 then, before it proceeds to final approval in terms of this Part, the Minister shall refer the application for evaluation by the Non-Energy Special Grants Evaluation Committee in terms of this section. 5

(2) For the purposes of this section the Minister shall constitute (on an *ad hoc* or permanent basis) a committee, to be called the Non-Energy Special Grants Evaluation Committee (hereinafter called the “Evaluation Committee”), to assist him or her in determining whether or not the application should proceed to finality in terms of this Part. 10

(3) The Evaluation Committee shall consist of the following members (of whom one of the members appointed under paragraph (a) shall be designated the chairperson of the Committee by the Minister, and the deputy chairperson shall be any one of the members appointed under paragraph (c), (d), (e) or (f) and designated as such by the Minister)— 15

- (a) three shall be employees of the Ministry responsible for this Act (one of whom shall be qualified as a legal practitioner) whose seniority shall not be less than that of a director and who shall be appointed by the Minister on the recommendation of the Secretary; and 20
- (b) a representative of the Ministry responsible for agriculture, nominated by the Minister responsible for agriculture and appointed by the Minister responsible for this Act; and
- (c) one representatives each of two other Ministries deemed by the Minister responsible for this Act to have an interest in the application being evaluated; and 25
- (d) a geologist in the employment of the Ministry, nominated by the Secretary and appointed by the Minister; and
- (e) a metallurgist in the employment of the Ministry, nominated by the Secretary and appointed by the Minister; and 30
- (f) a mining engineer in the employment of the Ministry, nominated by the Secretary and appointed by the Minister.

(4) The quorum for any meeting of the Evaluation Committee shall consist of at least five members, including the chairperson or deputy chairperson, and the member appointed under subsection (3)(b) or (c). 35

(5) The procedure to be adopted by the Evaluation Committee shall be as prescribed or, in relation to any matter that is not prescribed, as may be fixed by the Committee:

Provided that the Committee shall afford the applicant and any parties it deems to be interested in the application an adequate opportunity to make representations in the matter in writing or in person and, generally, shall observe the rules commonly known as the rules of natural justice. 40

(6) The evaluation of every application for a non-energy special grant shall be conducted on the basis of such criteria as the Evaluation Committee may agree beforehand or as may be prescribed. 45

(7) Any decision of the Evaluation Committee must be determined by a majority of the members present, and the decision, together with the reasons therefor, must be communicated by the Chairperson in writing to the Minister, who shall not be bound by

the decision but must give written reasons to the Evaluation Committee if the Minister substitutes his or her own decision for that of the Committee:

5        Provided that if the Chairperson reports to the Minister that the Committee is unable to reach a majority decision after at least seven days' deliberation, the Minister shall make his or her decision on the matter on the basis of the reasoning of those members that to the Minister appear to be the most persuasive or compelling.

10        (8) If the majority of the Evaluation Committee evaluates an application for a non-energy special grant positively, it shall, after communicating its evaluation to the Minister in terms of subsection (7) and obtaining the Minister's written agreement thereto, refer the application for pre-consideration by the PMD concerned in terms of section 226.

## **226 Pre-consideration procedures by PMD**

15        (1) Immediately upon receipt from the Mining Cadastre Registrar of notification of a provisional approval of a special grant (and in any case no later than seven days from receipt of such notification), the PMD shall post particulars of the proposed special grant on the public notice board of his or her office together with an invitation to interested persons (that is to say the applicant for the special grant, any occupiers of land, existing or potential small-scale or other miners or other interested persons within the area of the jurisdiction of the PMD) to attend at a meeting (giving particulars of its time and venue) to enable them to make oral and written representations at that meeting on any matter in connection with the proposed special grant:

      Provided that in such invitation or at the meeting the PMD may restrict such interested persons to submitting written representations only before or no later than 48 hours after the conclusion of the meeting.

25        (2) In amplification or clarification of the provisions of subsection (1)—  
       (a) at the meeting the PMD shall follow the applicable rules set out in the Fourth Schedule ("Conduct and powers of PMDs at quasi-judicial meetings, referrals and hearings");  
       (b) the meeting shall proceed whether or not the applicant for the special grant is present or represented;  
       (c) as soon as possible after the conclusion of the meeting, the PMD shall make a written summary of the proceedings of the meeting in the form of a report to the Mining Cadastre Registrar setting forth any possible objections to the final approval of the application.

35        (3) The Minister or the Board, as the case may be, shall not consider an application for final approval of a special grant before the date when the Mining Cadastre Registrar has received the report of the PMD in terms of subsection (2):

40        Provided that if no such report is received within thirty days of the date of the provisional approval of the application, the Minister or the Board (as the case may be) may —

      (a) on the written request of the PMD made within that period, extend the period for the holding of the meeting referred to in subsection (1) or for the making of the report, or both, by no more than 30 days; or  
       (b) proceed to consider the application in terms of section 227 ("Consideration on application for special grant for strategic minerals") or 228 ("Consideration and report by Board on application for special grant for mineral oils, natural gases, or nuclear source energy material").

## 227 Consideration of application for special grant for strategic minerals and non-energy minerals

(1) Where, under section 226, the Minister has received from the PMD through the Mining Cadastre Registrar any recommendation that is adverse to the applicant for a special grant for a strategic mineral or non-energy mineral, the Minister shall avail to the applicant a copy of the PMD's report incorporating the recommendation, and afford the applicant an opportunity no later than 96 hours after such report is availed to the applicant to make adjustments to the application to take into account any of the PMD's observations or to make a written response to the adverse recommendation or recommendations not exceeding two thousand words. 5 10

(2) If adjustments are made to the original application submitted to the Minister, the applicant shall be afforded the opportunity to withdraw the original application and submit the adjusted one to the Minister no later than five days after a report of the PMD is availed to him or her under subsection (1).

(3) The Minister shall (after taking into account any adjustments to the application or response of the applicant in terms of subsection (2)), consider the application and shall report thereon to the President with his or her recommendation whether the application should be granted or refused. 15

- (4) In considering an application the Minister shall have regard to whether—
- (a) the applicant is a fit and proper person to be issued with a special grant for the strategic mineral or non-energy mineral; 20
  - (b) the financial status of the applicant is such that he or she will be able to comply with the terms and conditions of any special grant that may be issued to him or her;
  - (c) it would be in the national interest to issue the special grant. 25

(5) In addition to the considerations referred to in subsection (4), where two or more applications for a special grant for strategic or non-energy minerals are made as described in section 224(4), and both or more than two such applications qualify for acceptance under subsection (3), the Minister must recommend to the President no more than one application as being the most suited (in the Minister's opinion) to be awarded the special grant, unless the areas subject to the applications do not overlap each other by more than fifty *per centum* of either or any of the areas applied for, in which event the Minister shall give notice to the parties— 30

- (a) that he or she intends to recommend to the President that the overlapping area be awarded to one of the applicants, or that it be divided in a specified manner between them; and 35
- (b) affording either or any of the parties the opportunity to withdraw their applications within a specified period if either or any of them objects to the proposal under paragraph (a).

(6) Where the Minister recommends that an application should be granted, he or she may include in his or her report recommendations relating to— 40

- (a) the minimum capital which the applicant should be required to invest in the development of the area to be covered by the special grant; and
- (b) the period that should be permitted to the applicant to bring operations in the area to be covered by the special grant to the producing stage; and 45
- (c) the minimum rate of production of the strategic or non-energy mineral concerned that should be conducted by the applicant; and
- (d) the amount of royalty that should be paid by the applicant in respect of the strategic or non-energy mineral won by the applicant; and

- (e) the annual fee that should be paid by the applicant as a consideration for the issue of the special grant:

Provided that no recommendation of the Minister under this subsection shall, if the subject-matter of any recommendation is governed by an agreement with the applicant concluded under section 6 ("Strategic minerals") contingently upon the issuance of the special grant, be inconsistent with such agreement.

**228 Consideration and report by Board on application for special grant for coal, mineral oils, natural gases, or nuclear source energy materials**

(1) Where, under section 224, the Chairperson of the Board has received from the PMD through the Mining Cadastre Registrar any recommendation that is adverse to the applicant for a special grant for coal, mineral oils, natural gases, or nuclear source energy materials, the Chairperson shall avail to the applicant a copy of the PMD's report incorporating the recommendation, and afford the applicant an opportunity no later than 96 hours after such report is availed to the applicant to make adjustments to the application to take into account any of the PMD's observations or to make a written response to the adverse recommendation or recommendations not exceeding two thousand words.

(2) If adjustments are made to the original application submitted to the Chairperson of the Board, the applicant shall be afforded the opportunity to withdraw the original application and submit the adjusted one to the Chairperson no later than five days after a report of the PMD is availed to him or her under subsection (1).

(3) The Board shall consider every application for a special grant for coal, mineral oils, natural gases, or nuclear source energy materials, and shall report thereon to the Minister with its recommendation whether the application should be granted or refused.

(4) In considering an application the Board shall have regard to whether—

- (a) the applicant is a fit and proper person to be issued with a special grant;
- (b) the financial status of the applicant is such that he or she will be able to comply with the terms and conditions of any special grant that may be issued to him or her;
- (c) it would be in the national interest to issue the special grant.

(5) In addition to the considerations referred to in subsection (4), where two or more applications for a special grant for coal, mineral oils, natural gases, or nuclear source energy materials are made as described in section 224(4), and both or more than two such applications qualify for acceptance under subsection (4), the Board must recommend to the Minister no more than one application as being the most suited (in the Board's opinion) to be awarded the special grant, unless the areas subject to the applications do not overlap each other by more than fifty *per centum* of either or any of the areas applied for, in which event the Board shall give notice to the parties—

- (a) that it intends to recommend to the Minister that the overlapping area be awarded to one of the applicants, or that it be divided in a specified manner between them; and
- (b) affording either or any of the parties the opportunity to withdraw their applications within a specified period if either or any of them objects to the proposal under paragraph (a).

(6) Where the Board recommends that an application shall be granted it may include in its report recommendations relating to—

- (a) the minimum capital which the applicant should be required to invest in the development of the area to be covered by the special grant;
- (b) the period that should be permitted to the applicant to bring operations in the area to be covered by the special grant to the producing stage;
- (c) the minimum rate of production of coal, mineral oils or natural gases or nuclear energy source material concerned that should be conducted by the applicant; 5
- (d) the amount of royalty that should be paid by the applicant to the Minister in respect of coal, mineral oils or natural gases or nuclear energy source material won by the applicant; 10
- (e) the annual fee that should be paid by the applicant to the Minister as a consideration for the issue of the special grant.

## 229 President may grant or refuse application for special grant

- (1) The Minister shall—
  - (a) in relation to an application referred to in section 227 submit the report and his or her recommendations to the President, who may refuse the application or authorise the Minister to issue a special grant on such terms and conditions as he or she may fix and (unless such agreement has already been concluded contingently upon the special grant being issued) enter into the agreement referred to in section 6 (“Strategic minerals”) 15 20
  - (b) in relation to an application referred to in section 228 submit—
    - (i) the report and recommendations of the Board; and
    - (ii) his or her own views, if any, on the Board’s recommendations; to the President, who may refuse the application or authorise the Minister to issue a special grant on such terms and conditions as the President may fix. 25

(2) Where the President has refused an application made in terms of section 227 or 228 the applicant shall not make a fresh application in terms of the appropriate section until at least three months have elapsed since the refusal of his or her last application. 30

(3) Where the President has issued a special grant, the Mining Cadastre Registrar shall instruct the PMD concerned—

- (a) to reserve the area covered by the special grant against prospecting or pegging under section 44 (“Reservations against prospecting and pegging”) for a period of two years or such lesser period as may be specified in such special grant; and 35
- (b) to enter in his or her final register the fact that a special grant in the name of the applicant has been issued;

## 230 Transfer, cession or assignment of special grant

- (1) In this section— 40
  - “transfer” in relation to a special grant means the transfer of the sole or majority ownership of the special grant or of any interest in the special grant that is equivalent to sole or majority ownership;
  - “transferee”, in the case a corporate transferee, means the corporate secretary or any individual authorised by the transferee in writing to act on its behalf for the purposes of this section. 45

(2) Subject to this section, the rights granted under a special grant shall be personal to the grantee, who may not cede or assign any such rights to any other person unless authorised to do so by the President.



(3) No transfer of a special grant may occur except in accordance with this section, and if no application made in accordance with this section for the provisional approval of such transfer within six months of the date of the agreement or transaction by which such transfer is purported to be concluded between the transferor and the transferee, it shall be deemed that the transferor has abandoned the special grant and the special grant shall be deemed cancelled.

(4) A special grant may not be transferred except to a person provisionally approved of by the Board (in the case of coal, mineral oils, nuclear energy sources or natural gases) or the Minister (in the case of strategic or non-energy minerals), in accordance with this section.

(5) The grantee wishing to transfer the grant (hereafter in this section referred to as the “transferor”) shall in the first instance make written application (in the form (if any) prescribed), to the Mining Cadastre Registrar, which application must be accompanied by—

(a) the following affidavits—

- (i) the affidavit by the transferor stating his or her reasons for wishing to transfer the special grant to the transferee and the consideration paid or payable for such transfer;
- (ii) the affidavit by the person to whom the special grant is to be transferred (hereafter in this section referred to as the “transferee”) giving full particulars of his or her name and address, and in the case of a company or other body corporate (“the entity”) particulars of the date of incorporation and registration and the names of the directors of the entity, together with relevant particulars of the financial status of the transferee and his or her readiness to assume all the obligations of the transferor under the special grant;
- (b) a written statement by the transferor stating whether the transferor is willing to continue holding the special grant in its name or to abandon it in the event that the application for the transfer is rejected under this section.

(6) Having received the copies of the affidavits and statement referred to in subsection (5), the Mining Cadastre Registrar shall compile a report to the Board or the Minister, as the case may be, stating whether he or she recommends, does not recommend or makes no recommendation as to the proposed transfer, together with reasons therefor:

Provided that if any recommendation is adverse to the transferor the Mining Cadastre Registrar must avail a copy of the report incorporating the recommendation to the transferor concerned to afford the transferor an opportunity, no later than 48 hours after such report is availed to him or her, to make a written response to the same not exceeding two thousand words, which response shall be annexed to the report of the Mining Cadastre Registrar that is transmitted to the Minister or the Board, as the case may be.

(7) Upon transmission of the documentation referred to in subsection (6) the Board or the Minister may, if the Board or the Minister is of the opinion that the transmitted documentation is in order, consider whether to recommend to the President the acceptance or rejection of the transfer of the special grant in question and effect or reject the transfer accordingly, that is to say—

- (a) if the Board or the Minister recommends to the President the acceptance of the transfer of the special grant in question, and the President notifies in writing the Board or the Minister that he or she accepts the transfer,

- the Board or the Minister (as the case may be) shall enter the relevant particulars concerning the transfer of the special grant in the Mining Cadastre Register and confirm in writing to the PMD concerned that the special grant has been transferred;
- (b) if Board or the Minister recommends to the President the rejection of the transfer of the special grant, notify the transferor accordingly and, if necessary, notify the appropriate PMD that the special grant has been cancelled, subject to subsection (10). 5
- (8) In considering an application under subsection (7)(a) the Board or the Minister, as the case may be, shall not recommend approval a transfer unless the Board or the Minister is satisfied— 10
- (a) that the transferee's financial status is such that he or she will be able to meet any payment which may become due by him or her under the provisions of section 244 ("Compulsory purchase of land covered by mining locations"); and 15
- (b) that mining operations on a substantial scale are likely to be conducted for a considerable period within the area in respect of which approval for the transfer is sought.
- (9) The PMD shall enter in his or her final register the fact that—
- (a) a special grant in the name of the transferee has been issued; or 20
- (b) the special grant has been abandoned due to the operation of subsection (3).
- (10) Any person aggrieved by the refusal of the Board or the Minister to recommend the approval of a transfer of a special grant may (in the prescribed manner and together with the prescribed fee, if any) appeal in writing within fourteen days of such refusal to the President, who may overturn any such decision on the following grounds— 25
- (a) that the appellant has satisfied the President that, but for any gross irregularity in the proceedings or the decision, the appellant would have qualified to be given the special grant: 30
- Provided that the President shall, before overturning any decision on this ground, afford the Board or the Minister, as the case may be, an opportunity to respond to the allegations of the appellant in this regard; or
- (b) the overriding national interest. 35

### **231 Rate of royalty and annual fee**

(1) Notwithstanding anything to the contrary contained in Part XIII ("Royalty"), provision may be made in a special grant stipulating for the payment of royalty on all coal, mineral oils or natural gases, nuclear energy source material or strategic or non-energy minerals won by the grantee under his special grant at such rate as the President may fix. 40

(2) Provision may be made in a special grant for the payment by the grantee of such annual fee as the President may fix as consideration for the issue of the special grant.

### **232 Amendment of area covered by special grant and other amendments** 45

(1) The President may, on application by a grantee, extend or reduce the area covered by his or her special grant or may alter the boundaries thereof:

Provided that if the effect of the application is to extend the area covered by his or her special grant, an application therefor must be made to the Board or the Minister in terms of section 227 or 228 as the case may be.

- (2) Every material amendment of the terms of a special grant other than one affecting the area of the covered by the special grant shall be dealt with in the same way as the original application for the special grant was dealt with, so that references to an “application” in section 227 or 228 shall be construed as references to an amendment of the special grant.

### **233 Cancellation of special grant**

- (1) If a grantee contravenes the terms and conditions attached to his or her special grant, the President may cancel such grant.

(2) No grant shall be cancelled in terms of subsection (1) unless written notice has been given to the grantee of the proposed cancellation twelve months before such cancellation.

- (3) Instead of giving notice of cancellation under subsection (2), the President may direct the Minister to apply the provisions of section 313 (“Cancellation of mining rights for breach of this Act or other laws”)(8) in relation to the special grant, in which event the President shall cancel the special grant as soon as the Minister makes a report to him or her that the grantee is in default of the terms and conditions of the special grant.

### **234 Recording of special grants; fee for special grant**

(1) The Mining Cadastre Registrar shall without delay record—

- (a) the particulars of every special grant issued under this Part in the Mining Cadastre Register as soon as possible after its issuance (and no special grant shall be deemed to have been finally issued until such recording has been made and written notification of such recording in writing is given to the grantee); and
- (b) the particulars of every amendment of a special grant that is approved under this Part; and
- (c) the cancellation of a special grant that is effected under this Part.

(2) Each special grant shall be assigned an official number.

(3) The grantee shall pay the prescribed fee in respect of the issue of a special grant or any renewal thereof.

(4) The PMD shall without delay after being notified thereof enter—

- (a) in his or her provisional register the particulars of every application for a special grant within his or her province that is made under this Part; and
- (b) in his or her final register—
  - (i) the particulars of every application for a special grant within his or her province that is issued by the President under this Part; and
  - (ii) the particulars of every amendment of a special grant within his or her province that is approved under this Part; and
  - (iii) the cancellation of a special grant within his or her province that is effected under this Part.

### **235 Application of other provisions of this Act to special grants**

- (1) Where a special grant authorises the carrying out of mining operations, the provisions of this Act relating to mining leases shall apply to the special grant but only

is so far as those provisions do not conflict with the terms and conditions of the special grant:

Provided that no special grant may exempt the grantee from the application of Sub-Part B of Part V (“Acquisition and Registration of Mining Rights”), Part VI (“Prospecting and Pegging on Ground Reserved against Prospecting and Pegging”), Part VIII (“Pegging of Underground Extensions”), Part XI (“Preservation of Mining Rights”), Part XV (“Provincial Environmental, Rehabilitation and Occupational Health and Safety Trust Funds”) and Part XX (“Mining on Town Lands”) 5

(2) Where a special grant authorises the carrying out prospecting operations, the grantee shall, subject to terms the terms and conditions of the special grant, have the following rights— 10

- (a) the exclusive right of prospecting within the area of the special grant on all ground which is open to prospecting on the date on which the special grant is issued, including the right to drill and excavate, whether at the surface or underground; 15
- (b) the same surface rights within the area of the special grant as are conferred upon a prospector under section 36 (“Surface rights of holder of exclusive prospecting licence”) and for that purpose the date on which the special grant is issued shall be deemed to be date of the posting of a prospecting notice by the grantee: 20

Provided that the grantee shall have the right of removing any accommodation, buildings or machinery which have been erected within that area within three months or such longer period as may be determined by the PMD after the expiration or cancellation of the special grant.

(3) Section 201 (“Open workings to be protected on abandonment, forfeiture or cancellation of location”) shall apply, with such changes as may be necessary, to a grantee in respect of his or her mining location registered under the special grant, and for this purpose the date of the expiration or cancellation of the special grant shall be regarded as the date of the forfeiture of such mining location. 25

### **236 Conversion of special grant for any strategic or non-energy mineral to special or ordinary mining lease in certain circumstances** 30

(1) In this section—

“affected”, in relation to a foreign or other holder of a special grant, means such a holder to whom a special grant was issued in relation to a strategic mineral, where that strategic mineral later (during the subsistence of the special grant) ceases to be designated as such in terms of section 6 (“Strategic minerals”); 35

“cessation date” means the date on which a strategic mineral ceases to be designated as such in terms of section 6 (“Strategic minerals”);

“foreign holder of a special grant” means— 40

- (a) a company or other business entity, whether or not incorporated or registered under the Companies and Other Business Entities Act [Chapter 24:31], the majority of whose members are not citizens or permanent residents of Zimbabwe ordinarily resident in Zimbabwe; or 45
- (b) a partnership, syndicate or joint venture—
  - (i) the majority of whose partners or members are not citizens of Zimbabwe ordinarily resident in Zimbabwe; or

- (ii) made up of two or more companies, the majority of which are not owned or controlled citizens or permanent residents of Zimbabwe ordinarily resident in Zimbabwe; or
- (iii) made up of any combination of companies, partnerships, syndicates or joint ventures, the majority of which are not owned or controlled citizens or permanent residents of Zimbabwe ordinarily resident in Zimbabwe.

(2) Notwithstanding anything in this Part, this section shall apply to every special grant that was issued in relation to a strategic mineral, where that strategic mineral later (while the special grant is still in force) ceases to be designated as such in terms of section 6 (“Strategic minerals”); in particular—

- (a) subsection (3) shall apply to every foreign holder of such grant; and
- (b) subsections (4) shall apply to every holder of a special grant who is not a foreign holder.

(3) An affected foreign holder of special grant shall, no later than twelve months from the cessation date, make application in terms of Part IX (“Mining Leases”) for a special mining lease:

Provided that if after the lapse of twelve months from the cessation date the affected holder fails to lodge an application for a special mining lease in accordance with Part IX (or within a further period not exceeding 30 days that the Secretary may grant for any good and sufficient reason shown to the Secretary), the affected holder shall be deemed to have surrendered the special grant and to have abandoned any mining location or site comprised within the special grant.

(4) An affected holder of a special grant who is not a foreign holder of such grant shall, no later than twelve months from the cessation date, make application in writing in the form (if any) prescribed to the PMD having jurisdiction over the mining location or site comprised within the special grant, which application shall be accompanied by a sketch plan based on a map issued under the authority of the State and of a scale of not less than 1: 50 000 identifying the mining location or locations or the site or sites affected by the conversion, and the areas which the applicant proposes to convert into a block of claims, together with any site or sites attached thereto:

Provided that if after the lapse of twelve months from the cessation date the affected holder fails to lodge the appropriate conversion application (or within a further period not exceeding 30 days that the PMD may grant for any good and sufficient reason shown to the PMD), the affected holder shall be deemed to have surrendered the special grant and to have abandoned any mining location or site comprised within the special grant.

(5) Upon receiving the conversion application the PMD must no earlier than 48 hours or later than 72 hours thereafter post notice of the conversion application on the public notice board of the PMD’s office together with an invitation to interested persons (that is to say any affected occupiers of land and existing or potential small-scale or other miners or other interested persons within the area of the jurisdiction of the PMD) to attend a meeting to be convened by the PMD (giving particulars of its time and venue) to enable them to make oral and written representations at that meeting on the question whether to grant or refuse final approval for the conversion concerned:

Provided that in such invitation or at the meeting the PMD may restrict such interested persons to submitting written representations only, before or no later than 48 hours after the conclusion of the meeting.

- (6) In amplification or clarification of the provisions of subsection (5)—
- (a) if the conversion applicant or the occupier of the affected land fails to attend at the meeting referred to in subsection (5), the PMD may proceed in the absence of either or both to grant application with or without amendment, and, if the application is granted, make the relevant recommendations in accordance with subsection (); 5
  - (b) at the meeting referred to in subsection (5) the PMD shall follow the applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at quasi-judicial meetings, referrals and hearings”);
  - (c) at the conclusion of the meeting referred to in subsection (5) the PMD may, in the presence of the parties (if any) at the meeting— 10
    - (i) provisionally approve the conversion application of the affected special grantee concerned without amendment; or
    - (ii) provisionally approve the conversion application, subject to a recommendation to the Mining Cadastre Registrar that the area 15
 formerly encompassed by the special grant be reduced to a defined extent, with specific reference to the reduction of the proposed block of claims and any site or sites attached thereto:

Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the meeting, and in any event, within that period, give notice of his or her decision, and the reasons for it, to the conversion applicant any affected occupier in any of the ways contemplated by section 5, and post a copy of the decision and the reasons for it on the public notice board of the PMD’s office; 20

- (d) as soon as possible after the conclusion of the meeting referred to in subsection (5) the PMD shall make a written summary of the proceedings of the meeting in the form of a report to the Mining Cadastre Registrar together with his or her recommendation to the Registrar to give final approval to his or her decision referred to in paragraph (c): 25

Provided that where the PMD makes a recommendation of a kind referred to in paragraph (c)(ii), he or she must avail an extract of the report incorporating this recommendation to the conversion applicant so as to afford the applicant an opportunity no later than 48 hours after such extract is availed to him or her to agree to the reduction in writing or to make a written response to the same not exceeding two thousand words which response (“memorandum of objection”) shall be annexed to the report of the PMD that is transmitted in terms of this paragraph. 30 35

(7) No conversion shall be finally registered under this section until the following steps are completed—

- (a) the PMD shall transmit all the following particulars to the Mining Cadastre Registrar within seven working days of the conclusion of the meeting referred to in subsection (5)— 40
  - (i) a copy of the conversion application and sketch plan referred to in subsection (4); and
  - (ii) the notice of the PMD’s decision referred to in the proviso to subsection (6)(d); and 45
  - (iii) if, as a result of the meeting referred to in subsection (5) the PMD—
    - A. provisionally approved the conversion application, the provisional registration number assigned to the proposed ordinary mining lease; or
    - B. recommends approval of the conversion subject to a reduction 50
 in the the area of the block of claims or site originally applied



for in the conversion application, and the applicant has objected to that recommendation in terms of the proviso to subsection (6)(d), a copy of the applicant's memorandum of objection there referred to;

- 5           (b) upon transmission of the particulars referred to in paragraph (a), the Mining Cadastre Registrar may, if he or she is of the opinion that the transmitted particulars are—
- (i) in order, consider whether to accept the final conversion of the block or sites in question with or without amendment, that is to say—
- 10           A. if the Mining Cadastre Registrar accepts the final conversion of the block or site without amendment, enter the relevant particulars concerning the block or site in the Mining Cadastre Register and confirm in writing to the PMD concerned that the block or site have been registered as an ordinary mining
- 15           lease in accordance with the conversion application, subject to subsection (10); in particular the PMD, immediately upon receiving confirmation from the Mining Cadastre Registrar of the approval of the conversion—
- I. without amendment, shall in his or her final register re-register the special grant concerned as an ordinary mining lease together with any site attached thereto or associated therewith;
- 20           II. subject to amendment, shall in his or her provisional register, re-register the special grant concerned as an ordinary mining lease together with any site attached thereto or associated therewith (and if no review of the amendment is sought within the time specified in subsection (9) or, having been sought, the application for review is abandoned or determined, the PMD shall thereupon in his or her final register re-register the special grant concerned as an ordinary mining lease together with any site attached thereto or associated therewith);
- 25           (ii) not in order or incomplete or inadequate—
- A. request further information or request an adjustment to the particulars transmitted by the PMD (which adjustment may include a reduction in the area of the block or site applied for), before making a decision in accordance with subparagraph (i); and
- 30           B. upon satisfactory compliance with such request, proceed in accordance with paragraph (i);
- 40           (c) upon receiving from the Mining Cadastre Registrar—
- (i) confirmation of the final registration of the conversion of the block or site in accordance with paragraph (b)(i)A, the PMD concerned shall notify the conversion applicant to apply for a certificate of registration under subsection (7);
- 45           (ii) confirmation subject to amendment of the final registration of the block or site in accordance with paragraph (b)(i)B, the PMD concerned shall notify the conversion applicant of the Mining Cadastre Registrar's reasons for the amendment of the application; and
- 50

- (iii) a request for further information or a request for an adjustment of the particulars transmitted by the PMD concerned, the PMD shall —
  - A. if he or she is able to comply with the request without the need to involve the applicant, transmit the information or effect the adjustment and transmit it to the Mining Cadastre Registrar forthwith; or
  - B. if he or she is not so able as contemplated in subparagraph A, communicate the request to the conversion applicant forthwith:

Provided that if, within 14 days of being notified of such request, the conversion applicant fails to comply with the request, the applicant shall be deemed to have abandoned the conversion application and all the mining rights or titles that were the subject of the application.

(8) Upon receiving from the PMD notice of the final registration of the conversion of the block or site in terms of subsection (6)(c)(i), the conversion applicant must apply to the PMD for a certificate of final registration in the manner prescribed and on payment of the prescribed fee, no later than 30 days of the receipt of such notice, or no later than any extension of that period not exceeding a further 30 days that the PMD may grant for any good and sufficient reason shown to the PMD (and if such applicant fails to apply for a final certificate of registration within such period or extended period, the conversion applicant shall be deemed to have abandoned such site).

(9) The PMD shall —

- (a) in addition to the relevant particulars referred to in subsection (6)(b)(i)A, enter in his or her final register the fact that a final certificate of registration has been issued; or
- (b) enter in his or her final register the fact that the conversion applied for has been abandoned due to the operation of the proviso to subsection (7)(c), or subsection (8);

and shall forthwith notify the Mining Cadastre Registrar of such registration or abandonment, as the case may be. The Mining Cadastre Registrar shall, in accordance with the PMD's notification, forthwith record in the Register a final certificate of registration has been issued or, in the case of a deemed abandonment, effect the necessary reversal of the final registration of the conversion in the Mining Cadastre Register.

(10) Any person who is aggrieved by a decision of the Mining Cadastre Registrar under this section, that is to say any conversion applicant or affected occupier of land or other person having a demonstrable interest in the issue of such conversion, may seek a review of such decision by the Administrative Court within fourteen days of being notified of the decision.

(11) Upon a review of the Mining Cadastre Registrar's decision the Administrative Court may —

- (a) uphold the decision of the Mining Cadastre Registrar; or
- (b) refer the decision back to the Mining Cadastre Registrar for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds —
  - (i) allowing extraneous or irrelevant considerations to affect the decision; or
  - (ii) failure to take into account relevant considerations in arriving at the decision; or

- (iii) any material mistake of fact or law that tainted the decision; or
- (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
- (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

Provided that the Court shall not make a finding on this ground without affording the Mining Cadastre Registrar an opportunity to respond to such finding;

- (c) if the application for review is made at the instance of an aggrieved occupier of any land affected by such conversion—
  - (i) refer the decision back to the Mining Cadastre Registrar as provided in paragraph (b); or
  - (ii) prohibit or cancel the pegging or registration of the block or site subject to the conversion; or
  - (iii) order that a lesser area should be converted; or
  - (iv) impose restrictions on the use to which the block or site subject to the conversion may be put; or
  - (v) give such other order or direction in the matter as the court considers just.

(12) Where any conversion is effected under this section the holder shall pay to the PMD in respect of the new certificate of registration the fee that would have been payable under Part III if such certificate of registration had been an original certificate of registration.

(13) This section also applies to the conversion a special grant for non-energy minerals, where the holder thereof wishes to make such conversion or is compelled to do so in virtue of a notice published in the *Gazette* by the Minister requiring special grants for any specified class of non-energy minerals to be converted to mining leases.

### **237 Additional application requirements where divided special grants are sought; conversion to divided special grants from undivided special grants**

(1) In this section—

“contested application” means a divided special grant application in respect of which it appears from the documentation relating to the same that any primary right holder objects or may object to the application being granted;

“divided special grant application” means an application for a divided special grant, whether in its original application for the special grant or by conversion of its an existing undivided special grant into a divided special grant;

“objecting primary right holder” includes such a holder who had failed to respond to a divided special grant application when it was first mooted by the applicant in terms of subsection (3)(c);

“primary right holder” means the holder of any overlapping mining right referred to in subsection (2)(a)(ii).

(2) This section applies to—

- (a) an applicant for a divided special grant (hereinafter referred to as a “divided special grant applicant”); and

- (b) a holder of an undivided special grant who wishes to covert its special grant into a divided special grant (hereinafter referred to as a “conversion applicant”).
- (3) A divided special grant applicant shall, together with the particulars it furnishes to the Board or the Minister (as the case may be) under section 224 (“Application for special grant and provisional approval thereof”)(2) furnish— 5
- (a) two copies of map prepared by or on behalf of, and certified by, a geologist, mining engineer or other person having experience or expertise in the matter—
- (i) on which are plotted the coordinates of any surface stratum or one or more sub-surface strata wherein it is proposed that the applicant shall extract the mineral that is the subject matter of the application for the special grant; and 10
- (ii) clearly demonstrating the extent of any overlap between such surface stratum or sub-surface stratum, and the surface stratum or sub-surface stratum in respect of which mining rights (whether for the same or different minerals, precious stones or metals) are being exercised by another holder of such rights; 15
- and
- (b) an affidavit sworn by the geologist, mining engineer or other person certifying the map referred to in paragraph (a), setting forth the credentials in virtue of which he or she is qualified to certify the map; and 20
- (c) proof in the form of an affidavit sworn by the applicant that, at least seven days before the lodging off the application, the applicant had initiated or attempted to initiate negotiations with any primary right holder, and that— 25
- (i) the primary right holder has or (if there are two or more of them), the primary right holders, have no objection to the application being granted (in which event the applicant shall append to the affidavit one or more memoranda of no objection signed and dated by the primary right holders concerned); or 30
- (ii) the primary right holder has or (if there are two or more of them), any of the primary right holders have objected to the application, or that it was not possible for any reason to elicit any response to the proposed application from any primary right holder. 35
- (4) The consideration of a divided special grant application may, if it otherwise appears to the Minister or the chairperson of the Board (as the case may be) to be in order—
- (a) proceed to its conclusion in terms of sections 223, 224, 225 or 226 and 227, if the primary right holder or all the primary right holders (as the case may be) have no objection to the application; or 40
- (b) proceed in terms of section 223 and 224, but not proceed to its conclusion in terms of sections 225 or 226 and 227, until any actual or potential objections to it are disposed of in accordance with the following subsections. 45
- (5) The Minister or the chairperson of the Board (as the case may be) shall without delay refer a contested application, together with copies of all relevant supporting documentation, to the PMD within whose area of the jurisdiction the special grant will be situated, whereupon the PMD must serve every objecting primary right holder with a copy of the contested application together with— 50
- (a) its supporting documentation; and

- 5 (b) an invitation to every objecting primary right holder to attend at a hearing to be presided over by the PMD (giving particulars of its time and venue) to enable the applicant and any objector to make oral and written representations at that hearing on the question whether, or in what form, the application should be recommended for approval by the Minister or the Board (as the case may be).

(6) The following provisions apply to every hearing for the consideration of an objection—

- 10 (a) if any objector fails to attend the hearing he or she shall be deemed to have abandoned his or her objection, and if there is no other objector, the application shall be deemed not have been objected to in the form it was originally presented to the Minister or the Board, as the case may be;
- 15 (b) the applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD at the hearing;
- (c) any objector bears the burden of showing on a balance of probabilities why the application should not be recommended for approval, or should be recommended for approval in a form proposed by the objector;
- 20 (d) at the conclusion of the hearing the PMD may, in the presence of the parties (if any) at the hearing announce that he or she will make any of the following recommendations to the Minister of the Board (as the case may), namely that in response to any objection, the PMD will recommend—
- (i) approval of the application without amendments; or
- (ii) approval of the application with amendments; or
- 25 (iii) rejection of the application:

30 Provided that the PMD may defer making a recommendation by no more than 48 hours after the conclusion of the hearing, and in any event must give notice of his or her recommendation, and the reasons for it, to every objector, and post a copy of the recommendation and the reasons for it on the public notice board of the PMD’s office.

(7) If within seven days of the posting notice of any recommendation in terms of the proviso to subsection (6)(d) any objector who attended the hearing referred to in subsection (6) notifies the PMD in writing that he or she is opposed to the proposed recommendation for specified reasons, the PMD shall, without delay, transmit to the Secretary the recommendation, together with the reasons for it, and the reasons against it given by the objector in terms of this subsection.

35

(8) Upon receiving a recommendation or any objections in terms of subsection (7) the Secretary shall promptly refer the recommendation together with its supporting documentation to—

- 40 (a) the Minister, in the case of an application for divided special grant in respect of any strategic or non-energy mineral; or, as the case may be
- (b) the Board, in the case of an application for any other divided special grant; and the Minister or the Board, after considering it, may—
- (c) accept the recommendation of the PMD, without amendment; or
- 45 (d) accept the recommendation of the PMD, with any amendment (giving reasons for the amendment); or
- (e) reject the recommendation of the PMD, giving reasons for the rejection;

whereupon the PMD shall promptly, after being notified by the Secretary of the Board’s decision—

- (i) notify the applicant and any objector who attended the PMD hearing of the Minister's or the Board's decision; and
- (ii) take the necessary action in accordance with the Minister's or the Board's decision.

(9) If any applicant or objector who attended the hearing referred to in subsection (6) is aggrieved by a decision of the Minister or the Board under subsection (8), he or she may seek a review of the decision by the Administrative Court within seven days after the date of its notification to the applicant or objector, whereupon the court may—

- (a) decide the issue in favour of the Minister or the Board, as the case may be; or
- (b) refer the decision back to the Minister or the Board, as the case may be, for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—
  - (i) allowing extraneous or irrelevant considerations to affect the decision;
  - (ii) failure to take into account relevant considerations in arriving at the decision;
  - (iii) any material mistake of fact or law that tainted the decision;
  - (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;
  - (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

Provided that the Court shall not make a finding on this ground without affording the Minister, the Board or the PMD an opportunity to respond to such finding;

- (c) where there is a substantive factual dispute that cannot be resolved by the Court on the evidence before it, refer the matter to the Minister or the Board, as the case may be, with a direction for the referent to investigate the matter further and make a report and recommendations to the Court (on the basis of which the Court shall make its decision in accordance with the report or recommendation).

(10) An application for review under subsection (9) shall not suspend the decision sought to be reviewed until the review is determined by the Court.

(11) A conversion applicant must make application in the prescribed form and together with the prescribed fee to the Minister or the Board (as the case may be) to convert its special grant from an undivided one to a divided one, and must furnish together with its application the documentation referred to in subsection (3)(a) to (c), and thereafter subsections (4) to (11) shall apply to a conversion application with such changes as may be necessary.

## PART XX

### MINING ON TOWN LANDS

#### **238 Application of Act to town lands**

(1) This Part shall apply to town lands.

(2) The right to prospect for and mine and win minerals on or under any town lands shall be governed by the other Parts of this Act, except in so far as they conflict with this Part.



**239 Local authorities may make by-laws on certain matters**

The local authority having control over any town lands shall have full power and authority to make and enforce regulations and by-laws for proper and efficient sanitary arrangements, for the enclosing of all pits, excavations and dangerous surface works and for the protection of the neighbourhood within which prospecting and mining are being carried on, and shall for the above purposes have the right to enter upon and inspect all such works existing or proceeding on such lands:

Provided that no such regulation or by-law shall be of any force or effect until approved by the Minister and duly published in a statutory instrument.

**240 Consent required for pegging of sites on town lands**

No holder of a registered mining location shall be entitled to peg or acquire any dependent mine service sites or independent mine service site on any town lands under section 57 ("Registration of dependent mine service sites") or 58 ("Registration of independent mine service sites"). unless and until he or she has obtained the consent in writing of the local authority concerned or, failing the consent of such local authority, the consent of the President.

**241 Limitation of timber rights**

No holder of a prospecting licence or of a mining location situated on town lands shall have the right of cutting indigenous wood or timber upon such lands without the consent of the PMD, who shall only give his or her consent when such wood or timber interferes with prospecting or mining operations or the erection of buildings required for such operations.

**242 Disposal of subterranean water**

(1) The holder of any mining location situated on town lands shall lead into the nearest natural water channel any water issuing from or brought to the surface of the ground from the subterraneous working of such location and not being used by such holder.

(2) The holder, while complying with subsection (1), or while leading water into any other natural channel, shall not pollute the water in such channel.

(3) A holder who fails to comply with subsection (1) or (2) commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be liable, in the case of a contravention of—

- (a) subsection (1), to a fine not exceeding level 8 or to imprisonment for a period not exceeding three years; or
- (b) subsection (2), to a fine not exceeding level 12 or to imprisonment for a period not exceeding ten years;

or to both.

(4) If a civil default as described in subsection (3)(a) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
  - (i) to pay to the PMD a default fine of the maximum amount fixed for level 8; and
  - (ii) if the default is continuing on the day the civil penalty order is served, to immediately ensure, to the satisfaction of the PMD, that any water issuing from or brought to the surface of the ground from

- the subterranean working of the mining location that is not being used by the defaulter is led into the nearest natural water channel;
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
- (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 8 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; and 5
  - (ii) if he or she fails to comply with paragraph (a)(ii), to pay a default fine of the maximum amount fixed for level 8 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 10
- (5) If a civil default as described in subsection (3)(b) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which— 15
- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
    - (i) to pay to the PMD a default fine of the maximum amount fixed for level 12; and 20
    - (ii) if the default is continuing on the day the civil penalty order is served, to immediately ensure, to the satisfaction of the PMD, that no natural water channel into which water is being led from the mining location is being polluted;
  - (b) subjects the defaulter to either of both of the following penalties, as may be appropriate— 25
    - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 12 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 30
    - (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for level 12 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 35
- (6) For the avoidance of doubt it is declared that it shall be competent for a PMD to issue a single civil penalty order providing for multiple fixed and cumulative penalties upon a defaulter who commits civil defaults against both subsection (3)(a) and (b), if the defaults occur simultaneously in relation to the same set of facts.

## PART XXI

40

## ACQUISITION OF LAND BY HOLDERS OF MINING LEASES OR BY STATE

**243 Interpretation in and application of Part XXI**

- (1) In this Part—
- “private land” means any land the ownership of which has by law, grant or title deed become vested in any person. 45
- (2) The Land Acquisition Act [*Chapter 20:10*] shall apply, with such changes as may be necessary, in respect of matters arising under this Part.
- (3) This Part does not apply to—

- (a) any owner of private land whose land is subject to an authority or order made under section 70, 72 or 74 that is issued or made in respect of reserved ground as defined in section 66 (“Interpretation in Part VI”) (but, to avoid doubt, sections 79 (“Compensation under Part VI”), 81 (“Compulsory acquisition of land by holder of authority or order”) And 82 (“Factors to be considered in fixing price”) apply to such owners of private land;
- (b) any holder of partially alienated land (but, to avoid doubt, Part VI (“Prospecting and Pegging on Ground Reserved against Prospecting and Pegging”) applies to such holders, and in particular sections 79 and 85 (“Application of sections 81 and 82 to partially alienated land”).

#### 244 Compulsory purchase or sale of private land covered by mining lease

(1) Subject to subsection (3), where a mining lease has been issued and the whole or a portion of the land covered by such mining lease is private land, the owner of such private land may apply to the Administrative Court for an order compelling the holder of such mining lease to purchase—

- (a) so much of his or her land as falls within the area of the mining lease;
- (b) where a portion only of his or her land falls within the area of the mining lease and by reason of the presence of such mining lease or the nature of the mining operations carried out in the area of such mining lease all his or her land has become unsuitable, so far as he or she or the occupier of the land, if any, is concerned, for the agricultural purpose for which it is being used or is *bona fide* intended to be used, all such land.

(2) Subject to subsection (3), the holder of a mining lease may apply to the Administrative Court for an order compelling an owner of private land to sell to him or her so much of such land as falls within the area of the mining lease, and the Administrative Court may grant or refuse the order applied for.

(3) The Administrative Court, in deciding whether to grant or refuse an order, shall have regard to the following matters—

- (a) the extent to which the surface of the land concerned is required or likely to be required for mining operations;
- (b) the value of permanent improvements erected or constructed for mining purposes or likely so to be erected or constructed on the land concerned;
- (c) the value of the land for agricultural purposes;
- (d) the interference or possible interference with the use or intended use of the land by the owner or occupier thereof of the mining operations being carried out or intended to be carried out by the holder of the mining lease;
- (e) in the case of an order referred to in subsection (1)(b), whether the land concerned has become unsuitable, so far as the owner or occupier of the land, if any, is concerned, for the agricultural purpose referred to in that paragraph;
- (f) any other matter which to the Court may seem relevant.

(4) If the Administrative Court grants the order it shall determine the price to be paid for the land and shall in doing so make allowance for the depreciation, if any, in the value of any remaining portion of the land concerned due to the reduction in area of the land or the mining operations of the holder of the mining lease, but no deduction shall be made in respect of the appreciation, if any, in the value of such remaining portion due to such mining operations.

**245 Compulsory purchase of land not covered by mining lease**

(1) For the purposes of this section—

“mining property” means a registered block or two or more such blocks, whether contiguous or otherwise, owned by one person from which the ore is being treated at the same milling or reduction plant or which are under the control of one registered mine manager. 5

(2) Where the owner of any private land on which the whole or a portion of a mining property, other than a mining lease, is situated considers that the nature and extent of the mining operations being carried out or likely to be carried out thereon fulfil the requirements in that regard for the issue of a mining lease in respect of such mining property, he or she may make application in writing to the Board, through the PMD, for a certificate to that effect. 10

(3) The Board shall, on a day fixed by it, being not less than thirty days after the date of posting such notification, and notified to the applicant and the holder of the mining property, hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the application. 15

(4) If the Board is satisfied that mining operations on a substantial scale are likely to be conducted for a considerable period on the mining property concerned it shall issue the certificate unless the holder of the mining property satisfies the Board that his or her financial status is such that he or she is unable to meet any payment for which he or she would be liable if the order mentioned in subsection (6) were granted. 20

(5) The Board may, if it considers that any application made under this section is vexatious or frivolous, order the applicant to reimburse the holder of the mining property in respect of any costs or expenses incurred by him or her in connection with the application in such amount as to the Board may seem just and equitable. 25

(6) No later than 21 days after the Board has notified the owner of the private land and the holder of the mining property in writing of its decision to grant or refuse the application, a person aggrieved by the decision (including a decision to refuse the application on the sole ground that the financial status of the holder is inadequate or a decision by the Board to penalise the applicant for being vexatious or frivolous), may appeal against the decision to the Administrative Court, and until the application is determined any decision to grant the application is suspended. 30

(7) Upon an appeal the Administrative Court may—

- (a) uphold the decision of the Board; or
- (b) refer the decision back to the Board for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—
  - (i) allowing extraneous or irrelevant considerations to affect the decision,
  - (ii) failure to take into account relevant considerations in arriving at the decision; 40
  - (iii) any material mistake of fact or law that tainted the decision;
  - (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
  - (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision: 45

Provided that the Court shall not make a finding on this ground without affording the Board an opportunity to respond to such finding;

(c) where there is a substantive factual dispute that cannot be resolved by the Court on the evidence before it, refer the matter back to the Board, with a direction to the Board to investigate the matter further and make a report and recommendations to the Court (on the basis of which the Court shall make its decision under paragraph (a) or substitute its own decision for that of the Board).

(6) Not earlier than 21 days after the issuance of a certificate referred to in subsection (2) (or, if the decision to issue the certificate was appealed against, no later than 21 days after the appeal is determined in favour of the owner of the land), the owner of the land concerned may apply to the Administrative Court for an order compelling the holder of the mining property to purchase—

- (a) so much of his or her land as falls within the area of such mining property; or
- (b) where a portion only of his or her land falls within the area of the mining property and by reason of the presence of such mining property or the nature of the mining operations carried out thereon all his or her land has, so far as he or she or the occupier of the land, if any, is concerned, become unsuitable for the agricultural purpose for which it is being used or is *bona fide* intended to be used, all such land;

and subsections sections 244 (“Compulsory purchase or sale of private land covered by mining lease”) (3) and (4) shall apply, with such changes as may be necessary, in respect of such application.

#### **246 Compulsory purchase of land covered by mining locations**

(1) If the owner of any holding of private land upon which one or more registered mining locations are situated finds that by reason of the presence of such mining locations or the nature of the mining operations carried out thereon such holding has become unsuitable, so far as he or she or the occupier of the land, if any, is concerned, for the purpose for which it is being used or is *bona fide* intended to be or she used, he or she may apply to the Minister for the purchase by the President of such holding of land and shall inform the Minister of the price which he or she considers should be paid to him or her for such land:

Provided that it shall not be competent for any owner so to apply by reason of the presence of a registered mining location owned by him or her or in which the owner or his or her spouse or the minor child of either of them has a direct or indirect interest or of any registered mining location, other than a mining lease, which was registered within a period of two years before the making of such application.

- (2) If the President is satisfied that—
  - (a) the holding of land has, by reason of the presence thereon of the mining location or by reason of the nature of the mining operations carried out thereon, become unsuitable, so far as the applicant or the occupier, if any, of such land is concerned, for the purpose mentioned in subsection (1); and
  - (b) the price stipulated by the applicant is fair and reasonable;
 he or she shall purchase such holding at that price.

(3) If the President is not so satisfied as to the matter mentioned in subsection (2) (a) or as to the price stipulated by the applicant or as to both such matters, the President shall refer such matter or matters to the Administrative Court for determination.

(4) The Administrative Court shall determine any matter referred to it under subsection (3) and shall cause a copy of such determination to be sent to the Minister and to the applicant

(5) If the Administrative Court finds in favour of the applicant on the matter mentioned in subsection (2)(a) or the President has not referred that matter to the Administrative Court for determination, the President shall purchase the land at the price stipulated by the applicant or, if the matter of the price to be paid for such land has been referred to the Administrative Court and the applicant agrees within thirty days of the Court's determination to accept the price determined by that Court, at the price so determined: 5

Provided that if the applicant does not so agree to accept the price as determined by the Administrative Court, the President shall not be bound to purchase the land.

(6) Where the President has purchased land under this section then, for the purposes of section 244 ("Compulsory purchase or sale of private land covered by mining lease") (1), such land shall be deemed to be private land and the President shall be deemed to be the owner thereof. 10

#### **247 Cost of survey to be borne by holder of mining location**

Where any land is purchased by the holder of a mining location under the provisions of this Part, the cost of the survey of such land for the purpose of obtaining title thereto shall be borne by such holder. 15

### **PART XXII**

#### **EXPROPRIATION OF MINING LOCATIONS NOT BEING WORKED OR DEVELOPED**

#### **248 Interpretation in Part XXII** 20

In this Part—

"expropriated location" means a mining location which has been transferred to the Minister in terms of this Part and is registered in his or her name;

"order" means an order of expropriation made under this Part.

#### **249 Report that mining location not being adequately worked** 25

(1) If any person has reason to believe that a registered mining location is not being worked at all or is not being adequately developed or worked, he or she may report the matter in writing to the PMD and, with such report, shall lodge a deposit equivalent to the maximum amount fixed for level 6 .

(2) On receipt of such report the PMD shall obtain from a Government mining engineer a report on the matter. 30

(3) If the PMD has reason to believe, whether in consequence of the receipt of a report mentioned in subsection (1) or otherwise, that a registered mining location is not being worked at all or is not being adequately developed or worked, he or she shall obtain a report from a Government mining engineer. 35

(4) On receipt of the report of the Government mining engineer under subsection (2) or (3), which report —

(a) gives grounds for holding that the registered mining location is not being worked at all or is not being adequately developed or worked, the PMD shall refer the matter to the Board; or 40

(b) does not give such grounds as are mentioned in paragraph (a), the PMD shall, if the report was occasioned by a person referred to in subsection (1), tender the return of half the deposit to the person who paid it under that provision:

Provided that if such person, within fourteen days of the tender, refuses in writing to receive it and reiterates his or her belief that, despite 45



the findings of the Government mining engineer, the registered mining location concerned is not being worked at all or is not being adequately developed or worked, the PMD shall refer the matter to the Board and inform the person in writing accordingly.

5     **250 Procedure of Board on receipt of Government mining engineer's report**

(1) Upon the receipt of a report in terms of section 249, the Board shall inquire into the history of the mining location and investigate the mining activities that have been or are being conducted on such mining location with a view to discovering whether  
10    such location is being adequately developed or worked.

(2) If after investigation the Board is of opinion that the mining location is not being developed or worked at all or is not being adequately developed or worked, it shall call upon the registered holder of such location to show cause why such location should not be expropriated.

15    **251 Recommendation for order of expropriation**

(1) After considering the representations made by the registered holder under section 250(2), the Board may recommend to the President that an order expropriating the mining location be made by him or her unless the Board is satisfied as to any one of the following matters—

- 20           (a) that the failure to develop or work or adequately to develop or work such location is due to causes beyond the control of the holder, which he or she has made every effort to overcome;
- (b) that it is the holder's intention to start or continue developing or working the location within a period of six months on a scale satisfactory to the  
25           Board;
- (c) that the location is essential to other mining operations being conducted by the holder and will be worked when the mine which he or she is at present operating ceases to be productive;
- 30           (d) that there is reasonable cause for the delay in developing or working such location or for not adequately developing or working such location;
- (e) that the location forms part of a series of not more than ten blocks contiguous to a main block being worked by the holder and is essential to the proper working of such main block.

(2) The deposit mentioned in section 249 ("Report that mining location not  
35    being adequately worked") shall, after the Board has considered the matter under this section, be refunded to the person who made the deposit:

Provided that if the Board is of the opinion that the report made under section 249 is frivolous or vexatious, it may direct that such deposit be forfeited and be paid by the Secretary into the Consolidated Revenue Fund.

40    **252 Order of expropriation**

(1) Whenever the Board makes a recommendation for the making of an order of expropriation, it shall submit to the President all relevant documents and a written report setting out the grounds for its recommendation.

(2) Upon receipt of such report and recommendation the President may require  
45    the Board to make further investigations and shall afford the holder of the location an opportunity of making representations to him or her why the order should not be granted.

(3) If after considering all the information laid before him or her the President is of opinion that the mining location is not being worked at all or is not being adequately developed or worked, he or she may make a provisional order declaring that the mining location is expropriated.

(4) The Secretary shall without delay — 5

(a) transmit relevant particulars of the provisional order of expropriation to the PMD where the mining location is situated to enable the PMD to enter the particulars of the provisional order in his or her provisional register; and

(b) send one copy of the provisional order of expropriation to the holder of the certificate of registered mining location that is to be expropriated, accompanied by a written reminder to the latter of his or her right to appeal against the cancellation in terms of section 316. 10

(5) The holder of a registered mining location aggrieved by a provisional order of expropriation may within twenty-one days of the date it is sent to him or her in terms of subsection (4)(b) appeal against it in terms of section 316 (“Appeals against decisions under sections 252, 312, 313 and 314”), for which purpose it shall cite the Board as the respondent, on the basis that its recommendation to the President ought not be upheld for any specified reason. 15

(6) If no appeal against the expropriation is lodged in terms of section 316 within twenty-one days, or if the appeal is unsuccessful, the Secretary shall make the necessary entry in the Mining Cadastre Register and notify the appropriate PMD to make the corresponding entry in his or her final register. 20

(7) Every order made by the President under this section shall be published in the *Gazette* and a copy of the order shall be sent to the holder of the expropriated mining location and (through the Secretary) to the PMD of the province in which the mining location is situated and, where the expropriated mining location is a mining lease, to the Board. 25

### **253 Transfer of expropriated location; Part XI not to apply in certain respects** 30

(1) Upon receipt of a copy of the final order of expropriation from the Secretary under section 252(7), the PMD shall transfer the expropriated location to the Minister by noting that fact in his or her final register, and shall forthwith confirm the same to the Mining Cadastre Registrar.

(2) No fee or duty shall be payable in respect of anything done in terms of subsection (1). 35

(3) Save as provided by section 245 (“Compulsory purchase of land not covered by mining lease”), no compensation shall be payable to the holder of any expropriated location or to any other person in respect of an expropriated location.

(4) Part XI (“Preservation of mining rights”) in regard to the obtaining of inspection certificates shall not apply to an expropriated location before it is transferred in terms of this section. 40

### **254 Sale or disposal of expropriated location**

(1) Subject to subsection (5), the Board may sell any expropriated location on such terms and conditions as it thinks fit: 45

Provided that the Minister may, on the recommendation of the Board, transfer any expropriated location to any person for no valuable consideration or refer it to the

Mining Auction Platform for sale by open bidding in terms of section 259 (in which event references to the “Board” in this section shall be read as references to the mining Auction Platform.

(2) The Board shall publish monthly in the *Gazette* and in such newspapers circulating in Zimbabwe as it may select a statement describing expropriated locations and calling for tenders for their purchase.

(3) The Board shall be under no obligation to accept any tender or the highest tender.

(4) In determining the purchaser the Board shall pay due regard to his or her ability to finance and conduct mining operations on the expropriated location.

(5) The purchase price of any expropriated location shall be paid by the Board to the holder from whom such location was expropriated less any costs incurred by the Board in connection with such location and its sale.

(6) The Board shall without delay notify the PMD concerned of the transfer of any expropriated location to any person under this section, and upon receipt of such notice the PMD shall register the transfer of the expropriated location in the name of the transferee in his or her final register, and shall forthwith notify the Cadastre Registrar of such transfer, whereupon the Cadastre Registrar shall without delay make the appropriate entries in the Mining Cadastre Register.

(7) An expropriated location which has been transferred to any person under this section shall be subject to Part XI in regard to the obtaining of inspection certificates, and for such purpose, the date of registration by the PMD of the transfer shall be deemed to be the date of the registration of the block or the date of the issue of the mining lease, as the case may be.

## **255 Forfeiture of expropriated location**

If an expropriated location has not been sold or transferred within twelve months of the date when it was transferred to the Minister, the Board shall, in the case of a mining lease, cancel such lease, and in any other case the PMD shall declare such expropriated location to be forfeited, whether or not it is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part XI:

Provided that if the Board is of the opinion that no economic deposit of any mineral has been found or is likely to be found thereon, such location may be so cancelled or forfeited after the expiration of such shorter period as the Board may fix.

## **256 Applicability of Part XXII**

Nothing in this Act contained shall be construed so as to preclude the expropriation under this Part of a mining location, the last issued inspection certificate for which was obtained by payment under section 154 (“Pre-inspection requirements and first and subsequent inspection certificates”) (8).

## **PART XXIII**

### **AUCTIONING OF MINING RIGHTS AND TITLES**

## **257 Interpretation in Part XXIII**

In this Part—

“eligibility criteria” means the criteria to be fulfilled by an applicant for an EPL, the registration of a claim or block of claims, an independent mining site, an EEL, an ordinary or special mining lease, or a special grant, as a precondition for issuance to that applicant of the relevant mining right or title;

“Mining Auction Platform”, “Auction Platform” or “Platform” means the Mining Auction Platform established in terms of section 258;

## **258 Establishment of Mining Auction Platform**

(1) There is hereby established a department of the Ministry to be known as the Mining Titles Auction Platform (the “Auction Platform”) which shall be an actual and virtual platform for the auctioning of mining titles in terms of this Part. 5

(2) The Department shall be headed by a Director, to be known as the Director of the Mining Titles Auction Platform, who shall be appointed by the Public Service Commission to hold that post on a fulltime basis.

(3) The Director shall— 10

- (a) in the name of, and subject to the instructions of, the Secretary, exercise general supervision and direction of the Mining Auction Platform; and
- (b) select, by means of auctions conducted from time to time, and in accordance with the Ninth Schedule, successful bidders for auctioned mining rights or titles who fulfill the eligibility criteria attaching to the kind of mining right or title in question. 15

(4) The staff of the Department shall consist of such officers employed in the Ministry who are designated by the Secretary to perform (whether exclusively or on a part-time basis alongside their other duties as officers of the Ministry) the duties of the Auction Platform. 20

(5) The functions of the Mining Auction Platform shall be, in accordance with the Ninth Schedule, to—

- (a) plan, organise, advertise and execute mining auctions; and
- (b) evaluate bids received for mining claims, and award claims to successful bidders based on prescribed criteria; and 25
- (c) issue or cause to be issued mining rights or titles; and
- (d) collect revenue from winning bidders for mining rights and titles auctioned on the Platform.

## **259 Open bidding for abandoned or vacated mining locations and independent mining sites, and certain EPLs**

(1) The Secretary, after consultation with the Minister, shall from time to time transmit to the Director of the Mining Auction Platform the particulars of—

- (a) any existing mining location or independent mining site—
  - (i) whose previous registered holder has abandoned it; or
  - (ii) which has been vacated because the previous holder’s right to possess or operate it has been cancelled or forfeited under this Act; 35
- or
- (b) any ground open to prospecting in any mining province respect of which the Director of Geological Survey has certified to contain any valuable mineral suitable for prospecting. 40

(2) The Director shall, subject to such instructions as the Secretary may reasonably give to him or her concerning the bidding parameters for the auction, publish a notice in the *Gazette* or on the electronic notice board of the Platform’s website the following particulars depending on the type of mining right or title being auctioned—

- (a) in the case of an auction of— 45

- (i) one or more abandoned or vacated mining locations, the area or areas and coordinates of the mining locations, and the mineral or minerals which are or may be mined at the location;
  - 5 (ii) one or more abandoned or vacated independent mining sites, the area or areas and coordinates of the sites, and the purposes or purposes for which the site was established;
  - 10 (iii) any ground open to prospecting in any mining province, the area or areas and coordinates of the ground open to prospecting in the mining province concerned, and the mineral or minerals which are or may be prospected for;
  - and
  - 15 (b) the mining right or title (EPL, claim, block of claims, independent mining site, EEL, ordinary mining lease, special mining lease or special grant) for which bids are sought from applicants who fulfill the eligibility conditions for the grant of such title under the appropriate Part of this Act:
- Provided that the Secretary, after consulting the Director of Geological Survey and obtaining the leave of the Minister, may, in respect of any abandoned or vacated mining location previously worked under an ordinary mining lease, special mining lease or special grant, ease the eligibility criteria by downgrading the mining right or title under which it was previously worked—
- 20 (i) from a special grant to a special mining lease or ordinary mining lease; or
  - (ii) from a special mining lease to an ordinary mining lease; or
  - 25 (iii) from a special mining lease or an ordinary mining lease to a registered claim or block of claims;
  - (c) the particulars and date of the last valid geological report that was made or approved by the Director of Geological Survey in respect of the ground open for prospecting or mining location (if available), or information about where or how such a report may be accessed;
  - 30 (d) the date or dates, time or times and venue or venues (including any specified virtual platform) at which the Mining Auction Platform shall receive bids for the mining title concerned on a competitive basis;
  - 35 (e) a summary of the bidding and post-bid procedures for the auction based on the relevant provisions of the Ninth Schedule.

## 260 Restricted bidding for contested ground

- (1) If the Secretary notifies the Minister that—
- 40 (a) two or more applicants have sought to obtain an EEL, special mining lease or special grant for the exploration or mining of the same mineral (whether the ground sought by each of the applicants is coterminous or consists of areas that substantially- that is, to the extent of more than fifty *per centum*-overlap each other), and that the decision of the Board in respect of those applicants is still pending; and
- 45 (b) that the applicants' eligibility criteria to hold the mining right or title in question have been verified in that the Board has found them to be qualified to hold the mining title in question and that, in the case of rival applicants for—
- 50 (i) an EEL, their applications therefor in terms of Part VII ("Exclusive Exploration Licence") have progressed up to the point where the Board must make a recommendation on the application before the EEL is issued;

- (ii) a special mining lease, their applications therefor in terms of Part IX (“Mining Leases”) have progressed up to the point where the Board has considered the application but not yet approved it;
- (iii) a special grant, their applications therefor in terms of Part XIX (“Mining Grants”) have progressed up to the point where the Board must make a recommendation to the President to grant or refuse the special grant;

then the Minister may either allow the applications to proceed to finality, or determine that the mining rights or titles in question must be put up for auction by restricted bidding at the Mining Auction Platform (and in the latter case the Secretary shall without delay transmit all the relevant particulars of the restricted bidders and of the mining right or title sought by them to the Director for action in accordance with the Ninth Schedule).

#### **261 Bidding for areas certified to be suitable for exploration or working under EELs, special mining leases or special grants**

(1) If the Secretary receives a report by the Director of Geological Survey that any specified area open to prospecting contains or may contain a sizeable deposit of any valuable mineral suitable for exploration or working by means of an EEL, special mining lease or special grant, and if no application therefor is pending, then the Secretary may recommend to the Minister that the mining rights or titles in question be put up for auction by open bidding at the Mining Auction Platform.

(2) If the Minister accepts the recommendation, then Secretary shall, without delay, transmit all the relevant particulars of the area in question, and the kind of mining right or title to be auctioned, to the Director for action in accordance with the Ninth Schedule, but subject to prequalification of bidders for their eligibility to hold the mining right or title in question.

(3) In order to prequalify as a potential bidder, the Director in the bidding document must advise every potential bidder for—

- (a) for an EEL, to make application therefor in terms of Part VII (“Exclusive Exploration Licence”), to enable the Board to verify that the applicant is eligible to obtain the EEL (at which point the Board must cease processing the application and make the appropriate report to the Minister and Director);
- (b) for a special mining lease, to make an application therefor in terms of Part IX (“Mining Leases”) to enable the Board to verify that the applicant is eligible to obtain the special mining lease (at which point the Board must cease processing the application and make the appropriate report to the Minister and Director);
- (c) for a special grant, to make an application therefor in terms of Part XIX (“Mining Grants”) to enable the Board to verify that the applicant is eligible to obtain the special grant (at which point the Board must cease processing the application and make the appropriate report to the Minister and Director);

(4) Having received all the relevant reports, the Director must—

- (a) if only one bidder prequalifies for the mining right or title in question, make the appropriate notification of that fact in terms of the Ninth Schedule, and refer the bidder’s application back to the Board so that it may proceed to finality in accordance with Part VII. IX or XIX, as the case may be; or
- (b) if two or more bidders prequalify for the mining right or title in question, make the appropriate notification of that fact in terms of the Ninth



Schedule, and put up the mining right or title in question for auction by restricted bidding at the Mining Auction Platform.

## **262 Bidding for special mining leases or special grants to exploit strategic minerals in designated areas**

- 5 (1) Where the Minister makes an order under section 6 (“Strategic minerals”)  
 (2) designating a mineral to be a strategic mineral in relation to a defined area of Zimbabwe, the Minister may —
- 10 (a) transmit all the relevant particulars of the area in question, and strategic mineral for the mining of which the area was so designated, to the Director for action in accordance with the Ninth Schedule, but subject to prequalification of bidders for their eligibility to hold a special mining lease or special grant;
  - 15 (b) instruct the Director to specify in the bidding documents whether, in addition to having the eligibility criteria for holding a special mining lease or special grant, bidders will be required to enter into a public private partnership with the State for the purposes of exploiting the strategic mineral in question, and if so, the broad terms of the public private partnership.
- 20 (2) In order to prequalify as a potential bidder, the Director in the bidding document must advise every potential bidder for —
- 25 (a) for a special mining lease, to make an application therefor in terms of Part IX (“Mining Leases”) to enable the Board to verify that the applicant is eligible to obtain the special mining lease (at which point the Board must cease processing the application and make the appropriate report to the Minister and Director);
  - 30 (b) for a special grant, to make an application therefor in terms of Part XIX (“Mining Grants”) to enable the Board to verify that the applicant is eligible to obtain the special grant (at which point the Board must cease processing the application and make the appropriate report to the Minister and Director);
- (3) Having received all the relevant reports, the Director must —
- 35 (a) if only one bidder prequalifies for the mining right or title in question, make the appropriate notification of that fact in terms of the Ninth Schedule, and refer the bidder’s application back to the Board so that it may proceed to finality in accordance with IX or XIX, as the case may be; or
  - (b) if two or more bidders prequalify for the mining right or title in question, make the appropriate notification of that fact in terms of the Ninth Schedule, and put up the mining right or title in question for auction by restricted bidding at the Mining Auction Platform.

## **263 No fees or charges leviable for mining rights or titles won by auction; cost of administering auctions**

- 40 (1) Despite anything to the contrary in this Part, but subject to subsection (2), no fee or charge prescribed by or under this Act for the issuance of a mining right or title shall be levied on a person who purchases such mining right or title by auction in terms of this Part.
- 45 (2) To cover all or some part of the costs of administering an auction and the costs of the issuance of any mining right or title obtained by auction, the Minister may prescribe any part of the bid security deposit lodged by a bidder with the Platform in terms of paragraph of the Ninth Schedule to be non-refundable.

**264 Powers of Minister under Part XXIII**

(1) In respect of any matter not prescribed by this Part or the Ninth Schedule, the Minister may by regulations prescribe the terms and conditions, and procedure, subject to which an auction shall be conducted, including the bidding parameters for the selection, which may include a share in the production of the mineral, or any payment linked to the royalty payable, or any other relevant parameter, or any combination or modification of them. 5

(2) The Minister may, after consultation with the Secretary and the Board, by notice in a statutory instrument directly or indirectly amend any of the following Parts of this Act (whether by addition, substitution or repeal) in the circumstances and to the extent stated hereunder, insofar as such amendment is strictly necessary for the purpose of— 10

- (a) simplifying the application procedures for an EEL in terms of Part VII (“Exclusive Exploration Licence”), where one or more applicants wish to prequalify to bid at an auction for the EEL (without, however, relaxing the eligibility criteria for EEL applicants, and without prejudice to the Board’s mandate to evaluate the eligibility criteria for such applicants); 15
- (b) simplifying the application procedures for a special mining lease in terms of Part IX (“Mining Leases”), where one or more applicants wish to prequalify to bid at an auction for the a special mining lease (without, however, relaxing the eligibility criteria for special mining lease applicants, and without prejudice to the Board’s mandate to evaluate the eligibility criteria for such applicants); 20
- (c) simplifying the application procedures for a special grant in terms of Part XIX (“Mining Grants”), where one or more applicants wish to prequalify to bid at an auction for the a special grant (without, however, relaxing the eligibility criteria for special grant applicants, and without prejudice to the Board’s mandate to evaluate the eligibility criteria for such applicants). 25

(3) A statutory instrument referred to in subsection (2) shall prescribe any amendment of this Act in a conditional fashion and in the form of an additional Schedule to this Act, making it clear that the amendments apply only to the extent that the provisions concerned are affected by an auction of a mining right or title. 30

(4) The Minister shall lay the draft statutory instrument referred to in subsection (2) before the National Assembly on one of first seven days when it sits after the Minister makes the draft, and if the National Assembly makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is so laid before the National Assembly, the Minister shall cause it to be published in the *Gazette*. 35

(5) In the event of inconsistency between this Act and the statutory instrument referred to in subsection (4) then— 40

- (a) the statutory instrument shall prevail over this Act to the extent of the inconsistency; and
- (b) this Act shall be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with the statutory instrument. 45

(5) The Minister may, after consultation with the Secretary and the Director of the Mining Auction Platform, by notice in a statutory instrument amend or replace the Ninth Schedule, in which event the Minister shall lay the draft statutory instrument amending or substituting the Ninth Schedule before the National Assembly, and if the National Assembly makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is so laid before the National Assembly, the Minister shall cause it to be published in the *Gazette*. 50

## PART XXIV

## ADMINISTRATION OF ACT

*Sub-Part A: Administration of Ministry and Act***265 Administration of Ministry**

5 (1) The Secretary shall be and is hereby vested with authority generally to supervise and regulate the proper and effectual carrying out of this Act by PMDs or other officers of the Public Service duly appointed thereto, and to give all such orders, directions or instructions as may be necessary and not inconsistent with this Act.

10 (2) The Secretary may at his or her discretion assume all or any of the powers, duties and functions by this Act vested in any PMD, and may lawfully perform all such acts and do all such things as a PMD may perform or do, and is further empowered in his or her discretion to authorise the correction of any error in the administration or in the carrying out of the provisions of this Act, or to perform any other lawful act which may be necessary to give due effect to its provisions.

15 (3) The Secretary may exercise such of the powers by this Act vested in the Minister as may be delegated to him or her by the Minister in writing.

**266 Powers of Minister with respect to mining provinces and mining districts**

(1) In this section—  
20 “district” and means any district the boundaries of which are set out in Part II of the First Schedule to the Rural District Councils (Districts) Notice, 1992 (Statutory Instrument 67 of 1992), or any other law that may be substituted for the same.

25 (2) There shall in Zimbabwe be eight mining provinces which shall follow the boundaries of the eight non-metropolitan provinces listed in section 267(1)(c) to (j) of the Constitution of Zimbabwe.

30 (3) The Minister may, from time to time, by notice in a statutory instrument, declare any area within a mining province to be a mining district, which shall follow the boundaries of one or more districts within that province and be headed by an assistant PMD subordinate and answerable to the PMD of the mining province concerned (and by like notice, the Minister may alter the boundaries of or abolish any such mining district).

(4) Where any mining title—  
35 (a) straddles the boundaries of two or more mining provinces; or  
(b) impinges on the boundaries of a metropolitan province

the Minister may, by notice in a Statutory Instrument, declare that the area covered by the mining title shall belong to a specific mining province and may, by like notice, revoke the declaration or vary it by increasing or decreasing the area or re-assigning it to any other mining province whose boundaries it straddles.

40 (5) In the absence of a notice referred to in subsection (3) the mining title in question is deemed to be under the jurisdiction of the Provincial Mining Director in whose mining province the greater part of the mining title is located.

**267 Appointment of officers**

For the purposes of this Act, there shall be—

45 (a) a Chief Provincial Mining Director; and

- (b) in respect of every mining province, a PMD who shall perform the functions imposed upon him or her under this Act or any other enactment; and
- (c) whenever the exigencies of the mining industry so require, an acting PMD, assistant PMD or such other officer to perform the functions of a PMD; and 5
- (d) a Director of Geological Survey; and
- (e) a Director of Metallurgy; and
- (f) a Chief Government Mining Engineer; and
- (g) Regional Mining Engineers; and 10
- (h) a Chief Mine Surveyor; and
- (i) Regional Mine Surveyors; and
- (j) such inspectors of mines and other mining officers as may be necessary for the efficient administration of this Act;

whose offices shall be public offices and shall form part of the Public Service. 15

## **268 Delegation of PMD's powers and PMD's power to take oaths**

(1) Any PMD, acting PMD or assistant PMD may, with the consent of the Secretary, delegate to any other officer any of the powers or duties that are by this Act vested in him or her.

(2) In all matters in which, in terms of this Act, an oath or solemn declaration is required to be made, such PMD, assistant PMD, acting PMD or any other person may and is hereby empowered to administer such oath or receive such solemn declaration. 20

## **269 Avoidance of Conflict of Interests**

- (1) An official in the Ministry responsible for mines—
- (a) may hold shares or other securities in a public company whose shares and other securities are dealt in or quoted on a securities exchange registered under the Securities and Exchange Act [*Chapter 24:25*] or on a stock exchange of good repute outside Zimbabwe; 25
- (b) may—
- (i) himself or herself (personally or through another person or as an alter ego) own or operate any mining location, 30

Provided that if such shares, securities or interest are held in or in relation to a mining location that is situated in a mining province of which the official is the PMD or assistant PMD, full disclosure of that fact must be permanently displayed on the public notice board of the PMD's office while he or she retains such shares, securities or interest 35

- (ii) whether as nominee or in his or her own right, hold shares, securities or any interest (whether contingent or vested) in any private company, foreign company, private business corporation, cooperative, trust, partnership, syndicate or other entity not being a public company that owns or works a mining location, whether itself or through an agent or intermediary, and whether as the holder of the mining location or as a tributor, but in that event the official must disclose this fact to the Permanent Secretary no later than seven days after the commencement of this Act or after acquiring such shares, securities or interest (as the case may be), describing in full 40 45

the circumstances of such acquisition and the nature and extent of such shares, securities or interest; and

(2) The duty imposed by subsection (1)(b)(i) applies also to any official who at any time inherits any mining location in his her personal capacity or in whom is vested  
5 (by virtue of a prior contingent right) the personal ownership or control of a mining location.

(3) Any official who—

- (a) contravenes subsection (1); or
- (b) contravenes subsection (2) by contravening paragraph (b)(i) or (b)(ii); or
- 10 (c) having made such arrangements as are described in subsection (1)(b)(ii), breaches either or both of his or her undertakings referred to in subparagraph A or B of that provision;

shall be guilty of an offence to a fine not exceeding level 8 or to imprisonment for a period not exceeding three years or to both.

15 (4) Any official who engages in any conduct for which he or she would be liable to be convicted under subsection (4) may, at any time before the institution of criminal proceedings against the official, or at any time after they have been concluded, be subjected to disciplinary proceedings for dismissal and other sanctions provided under Public Service disciplinary regulations, whether or not he or she has been convicted  
20 for such conduct.

(5) In any criminal or disciplinary proceedings involving an official bound by such arrangements as are described in subsection (2)(b)(ii), the official bears the burden of proving on a balance of probabilities that his or her holding of the shares, securities or interest in question did not cause him or her to act in his or her own interest to the  
25 detriment of his or her duties as an official of the Ministry.

## **270 Prohibition of use of patented metallurgical process, etc.**

(1) Subject to sections 34, 35 and 36 of the Patents Act [*Chapter 26:03*], no official in the Ministry responsible for mines shall, within ten years of his or her leaving the service of the Ministry, use for his or her personal reward or gain or for  
30 that of any other person any metallurgical process, prototype plant, machine or other invention produced with public funds for the service of the State, in respect of which specifications relating thereto have been lodged with the Patent Office.

(2) Subsection (1) shall apply, with necessary changes, to the reproduction, refinement or simulation of any metallurgical process, prototype plant, machine or  
35 other invention referred to in that subsection.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding ten years, or to both.

## **271 Indemnity of officials; protection against false imputation of dishonesty, bad faith, etc on the part of officials**

40 (1) No action for injury or wrong shall lie in any court against any PMD or other official for any act done in good faith by him or her in the exercise of the functions vested in him or her by this Act.

(2) Without prejudice to any other delictual action that the PMD or official  
45 concerned may bring, if, in any proceedings under this Act or in any civil or criminal proceedings, in which the conduct of the PMD or other official is in issue, any person falsely and wilfully, or without having any reasonable grounds therefor, makes any

allegation of corruption, bias, malice, conflict of interest or bad faith against the PMD or other official discharging his or her functions under this Act, the PMD or official concerned shall have a right of action against such person for damages of not less than the maximum amount specified for level 12.

(3) In his or her sole discretion the Permanent Secretary may, at the Ministry's own expense, institute proceedings in terms of subsection (2) in any civil court of competent jurisdiction on behalf of any affected PMD or other official. 5

*Sub-Part B: Quasi-judicial and other powers of PMDs*

**272 PMD's powers when encroachment alleged**

(1) Any PMD may at his or her discretion upon the application of any person claiming to be legally interested in any mining location, by writing under the hand of such PMD, authorize a surveyor or other duly appointed officer to enter upon any mining location or land adjacent to such first-mentioned mining location for the purpose of ascertaining whether the holder, owner or occupier of the mining location or land so to be entered upon is encroaching upon such first-mentioned mining location. 10 15

(2) Such surveyor or officer may thereupon enter upon the mining location or land described in such order and descend any shaft or mine, and for such purpose use the engines and machinery ordinarily employed for that purpose.

(3) Such surveyor or officer may make such plans or sections of the mining location or land entered upon and of any drives or other works therein or thereon as are necessary for the purpose aforesaid. 20

(4) Every such surveyor or officer shall, before entering upon such mining location or land, make a sworn declaration before such PMD that he or she, the said surveyor or officer, will not, except as a witness in a court of justice, without the consent in writing of the holder, owner or occupier of the mining location or land to be entered upon, divulge or cause to be divulged, to any person whomsoever, any information obtained upon or by such entry, save only as to whether such holder, owner or occupier is encroaching upon such first-mentioned mining location. 25

**273 PMD may grant interdicts**

(1) Any person claiming to be legally interested in any mining location, or in any servitude appertaining to a mining location, or complaining that he or she has been obstructed or interfered with in the enjoyment of his or her rights in respect of such location or servitude, may make application to the PMD for an interdict in terms of this section. 30

(2) This section applies also to any owner or occupier of land wishing to obtain an interdict against the holder of a mining location in the circumstances referred to in section 77 ("Revocation of authority or order")(2). 35

(3) At least twenty-four hours before the making of such application the applicant shall serve or cause to be served notice thereof on all the parties interested in opposing the application, or on such persons as appear to the PMD sufficiently to represent such parties. 40

(4) If the PMD is satisfied that reasonable attempts have been made to serve notices on the parties mentioned in subsection (3) without success it shall be sufficient service of any such notice if the same is advertised in such newspaper and for such time as the PMD appoints. 45

(5) Upon such application the PMD may in the presence of such parties as aforesaid, or in the absence of any of them upon whom service of such notice is proved to his or her satisfaction to have been effected, hear, receive and examine evidence.



(6) The applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at quasi-judicial meetings, referrals and hearings”) shall be followed by the PMD in connection with every such application.

5 (7) The PMD may in his or her discretion and upon such terms as he or she may consider just, by order under his or her hand, enjoin any person named in such order to refrain from encroaching upon, occupying, using or working such mining location or servitude as aforesaid, or from prospecting thereon or extracting or removing any mineral or other substance to which this Act applies from such mining location, or from selling or disposing of or otherwise interfering with such mining location, servitude, mineral or other substance or any share or interest therein, or from doing any act whereby the right, title or interest of such applicant in or to the same might be affected, or from obstructing or interfering with such applicant in the enjoyment of his or her rights in respect of such location or servitude.

10 (8) Every such order shall be in force for such period as is named therein unless it is sooner discharged by the PMD making it or by the provincial Magistrates Court in his or her mining province.

(9) Nothing in this section contained shall be deemed to divest the High Court of the power of granting interdicts in any matter arising under this Act.

#### **274 When PMD may permit working of locations under interdict**

15 When any interdict has been granted by a PMD under this Act, such PMD may, upon application of any holder or holders of any registered mining location adjacent to the mining location under such interdict, who shows to the satisfaction of such PMD that the location of such holder or holders will sustain damage, or be materially depreciated in value, by reason of the non-working of the mining location under interdict, order, upon  
20 such terms and conditions as he or she thinks fit, such working of the mining location as in his or her opinion will be sufficient to prevent such damage or depreciation and the PMD shall make such order as to the cost of such working as he or she thinks just.

#### **275 PMD may authorise certain works**

25 (1) Any holder of any mining location may apply to the PMD for an order authorising the applicant to sink such boreholes for water on any land or any other mining location or to construct or erect upon or over any land or any other mining location such aqueducts, roads, railways, tramways, wires, electric power lines, fencing or other works as may be necessary for the more advantageous working of the mining location held by the applicant.

30 (2) In like manner, the owner or the occupier of any land may apply to the PMD for an order authorising the applicant to sink such boreholes for water on any mining location or to construct or erect upon or over any mining location such aqueducts, dams, roads, fencing or other works as may be necessary for the better working of his or her land.

35 (3) In like manner, any local authority may apply to the PMD for an order authorising it to construct or erect upon or over any mining location such works as may be necessary for the institution or maintenance of any public services which such local authority may lawfully institute and maintain.

40 (4) In like manner, the holder of any mining location may apply to the PMD for an order authorising the applicant to use any existing private road for any lawful purpose in connection with such location.

(5) In like manner, any local authority or the owner or occupier of any land may apply to the PMD for an order authorising the applicant, or requiring the holder

of a mining location (whichever order it sought for in the application) to undertake any emergency mining environmental and occupational safety works (as defined in section 180(1)) specified in the application.

(6) On receipt of any such application the PMD shall forthwith give notice to the holder, owner and occupier, if any, of the land or mining location on which the borehole for water is to be sunk or upon or over which such works are to be constructed or erected or on which the tunnels or boreholes are to be sunk or over which the road mentioned in subsection (4) passes, as the case may be, calling upon him or her to appear before the PMD upon a fixed day, not being a day within thirty days of such notice, and to show cause why the order applied for should not be granted:

Provided that if both the applicant and the respondent consent the period of notice may be less than thirty days.

(7) The applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at quasi-judicial meetings, referrals and hearings”) shall be followed by the PMD in connection with the hearing of every such application and to the hearing of any application to amend or cancel an order granted under this section.

(8) On the day appointed, or on any other day to which the hearing of the matter may be adjourned, the PMD may grant an order authorising the applicant to do all or any of the acts or things applied for, in, upon or in respect of such land or mining location:

Provided that, before making any order authorising the applicant to construct a road, the PMD shall consult—

- (a) where any land concerned is Communal Land, any rural district council established for the area concerned;
- (b) in the case of land which is not Communal Land, the environmental officer and the extension officer for the area concerned.

(9) No such order shall be granted unless the PMD is satisfied that the use and working of any land or mining location belonging to any person other than the applicant will not be materially impeded, interfered with or obstructed by any act or thing done pursuant to such order.

(10) The PMD granting any such order may limit such order by such terms, conditions and restrictions as appear to him or her to be required for the protection of the owner, occupier or holder of such last-mentioned land or mining location, and shall include a condition requiring the holder of the mining location to maintain or contribute towards the cost of maintaining any road mentioned in subsection (4), and may at any time on due cause shown amend or cancel such order.

(11) No such order shall be deemed in any way to affect or bind any owner, occupier or holder to whom no such notice as aforesaid has been given.

(12) Nothing in this section contained shall be deemed in any way to prejudice the right of any person thereafter to recover from the applicant or any other person acting under any such order damages for any injury which he or she may prove to have been sustained by him or her in consequence of any act or thing done by the applicant pursuant to any such order by any PMD.

## **276 Claim holders must point out boundaries of their locations**

(1) The holder of a mining location shall, when called upon by a PMD or any other person duly authorised thereto by PMD, point out all notices, beacons, pegs or other landmarks defining or purporting to define in terms of this Act the boundaries of any mining location registered in his or her name or belonging to him or her.

(2) Subsection (1) shall apply to any person who was the holder of an abandoned, forfeited or cancelled mining location in respect of which a quitance certificate is required and has not been issued under section 200 (“Open workings to be protected on abandonment, forfeiture or cancellation of location”).

5 (3) If the holder of the mining location fails or refuses to comply with subsection (1), the PMD may by written notice call upon him or her so to comply and at the same time warn him or her that on failure to do so within the period stated in such notice such location will become liable to forfeiture, and if the address of the holder is not known the PMD shall cause a notice in the like terms to be inserted in the *Gazette*.

10 (4) If within the period mentioned in subsection (3) such holder has not so complied, the PMD may declare the mining location to be forfeited, and such forfeiture shall not relieve such holder from any other penalty to which he or she may be liable under this Act.

### **277 PMD may sue for and have hypothec for amounts due**

15 (1) The PMD or other official duly authorised thereto by him or her, may ask, demand, sue for, recover and receive all amounts due and payable in respect of civil penalties, licences, royalties, fines, transfer duties or any other fees payable on or in connection with any mining location in his or her mining province.

20 (2) For any such amounts the PMD shall have a hypothec against such location and all buildings, machinery or plant thereon which are the property of the holder of the location, and against any machinery and plant thereon which are the property of a lessee of the location; such hypothec shall be preferment to any other hypothec or lien whatsoever:

25 Provided that where such royalty is payable by any person other than the holder of the mining location, the PMD shall not have a hypothec therefor against such location or such buildings, machinery or plant which are the property of such holder.

### **278 Appeals against decisions under sections 273 and 275**

(1) No later than ten days after—

- 30 (a) the issuance of an interdict by the PMD under section 273 (“PMD may grant interdicts”) to any person aggrieved thereby; or
- (b) the service of an order under section 275 (“PMD may authorise certain works”) upon any person aggrieved thereby; or
- 35 (c) notice is given to any person aggrieved thereby that the PMD has refused an application for an interdict under section 273 or order under section 275;

the aggrieved person may appeal against such cancellation or transfer to the Administrative Court.

(2) Until the appeal is determined the noting of an appeal in terms of subsection (1) shall—

- 40 (a) not suspend the interdict issued under section 273;
- (b) suspend the order made under section 275.

(3) Upon an appeal the Administrative Court may—

- (a) decide the issue in favour of the PMD; or
- 45 (b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—

- (i) allowing extraneous or irrelevant considerations to affect the decision; or
  - (ii) failure to take into account relevant considerations in arriving at the decision; or
  - (iii) any material mistake of fact or law that tainted the decision; or 5
  - (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision; or
  - (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision: 10
- Provided that the Court shall not make a finding on this ground without affording the PMD an opportunity to respond to such finding;
- or
- (c) where there is a substantive factual despite that cannot be resolved by the Court on the evidence before it, refer the matter back to the PMD, with a direction to the PMD to investigate the matter further and make a report and recommendations to the Court (on the basis of which the Court shall make its decision under paragraph (a) or (b)). 15
- (4) A person who is aggrieved by the Administrative Court's decision under subsection (3), may, within twenty-one days after the Administrative Court's decision, refer the matter for review by the High Court, whereupon it may — 20
- (a) uphold the decision of the Administrative Court; or
  - (b) overturn the decision of the Administrative Court (with or without directions on how to proceed with the application) on any one or more of the following grounds — 25
- (i) allowing extraneous or irrelevant considerations to affect the decision; or
  - (ii) failure to take into account relevant considerations in arriving at the decision, or
  - (iii) any material mistake of fact or law that tainted the decision; or 30
  - (v) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision; or
  - (vi) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision: 35
- or
- (c) where there is a substantive factual despite that cannot be resolved by the High Court on the evidence before it, or where the matter had previously been referred by the Administrative Court to the PMD for investigation and report but the High Court is not satisfied with the report for any reason, refer the matter to the PMD with a direction to the PMD to investigate the matter further and make a further report and recommendations to the Court (on the basis of which report the Court may then proceed in terms of paragraph (a) or (b)). 40

*Sub-Part C: Specialised Departments of the Ministry responsible for Mines*

**279 Interpretation in Sub-Part C of Part XXIII**

In this Sub-Part —

“Director” means director of a Department;

“Department” means the Department of Geological Survey, Department of Mining Engineering or Department of Metallurgy.

## **280 Department of Geological Survey, Department of Mining Engineering and Department of Metallurgy**

(1) The following departments, namely—

- (a) the Department of Geological Survey;
- 5 (b) the Department of Mining Engineering;
- (c) the Department of Metallurgy;

in the Ministry responsible for mines which existed before the date of commencement of this Act shall continue to operate in accordance with this Sub-Part.

## **281 Functions, mandates and powers of Departments**

10 (1) Subject to this Act, the overall function of the Department of Geological Survey shall be to create and maintain geological information about the country, and to curate, process, interpret and present such information according to user requirements in Government, the mining industry, other earth resources based sectors and the public at large, for which purpose it shall—

- 15 (a) systematically map the country's rock formations and other geological structures at appropriate scales, and publish such information recorded on maps and geological reports for various uses;
- (b) study and describe the country's mineral resources and deposits;
- 20 (c) search for minerals and make such information available to Government and the public through reports, maps, assay results, and other easily accessible formats;
- (d) provide up-to-date information on the mineral and other geological potential of Zimbabwe to the Government and the public at large,
- 25 (e) monitor for compliance to work programmes the exploitation of mineral exploration in various licence areas including claims, mining leases, special grants, exclusive exploration licences, and exclusive prospecting licences,
- (f) be the national repository for all information on geology and mineral resources generated variously by the Geological Survey, other
- 30 governmental organisations, individuals, academic institutions, mining companies, and miners.

35 (2) Subject to this Act, the overall function of the Department of Mining Engineering is to promote sustainable mining practices and management through regulation of the mining industry with a view to creating a safe and healthy mine environment, for which purpose it shall—

- (a) enforce all relevant mining legislation bearing on mine safety;
- (b) monitor and control all mining activities through inspections of operations and investigation of mine accidents;
- 40 (c) provide professional and technical advisory services to the mining industry with emphasis on assisting the development of the small scale mining sector.
- (d) conduct statutory competency examinations for the professional development of mine managers, mine surveyors and miners;
- 45 (e) administer financial loans and plant hire schemes through Mining Industry Loan Fund for the benefit of the small scale mining sector;
- (f) monitor and audit mines for compliance with environmental requirements;
- (g) monitor the rate of mineral production and of mine development generally.

(3) Subject to this Act, the overall function of the Department of Metallurgy is to provide technical services to the mining, ceramic and foundry industries, for which purpose it shall—

- (a) conduct research into products and processes that generate value added products from Zimbabwe's mineral resources; 5
- (b) operate specialised sections, namely a chemical laboratory, a section for mineral dressing (ore beneficiation), a section for fire assaying, a section on mineralogy, a section on physical metallurgy, a ceramic section and any other metallurgical science or technology section.

(4) The Departments shall have the power— 10

- (a) in the name and with the approval of the Minister, to enter into agreements with other similar departments at the regional and international level;
- (b) to do or cause to be done, with the approval of the Minister and the Minister responsible for finance, either by itself or through its agents, any of the things specified in the Seventh Schedule ("Ancillary Powers of Department of Geological Survey, Department of Mining Engineering and Department of Metallurgy"). 15

(5) Subject to subsection (6), the Minister may by notice in a statutory instrument substitute or amend the Seventh Schedule as and when he or she deems it necessary or desirable for giving effect to the purposes of this sub-Part. 20

(6) When the Minister wishes to amend or substitute the Seventh Schedule the Minister shall lay the draft statutory instrument amending or substituting the Seventh Schedule before the National Assembly, and if the National Assembly makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is so laid before the House, the Minister shall cause it to be published in the *Gazette*. 25

## 282 Directors and staff of Departments

(1) The operations of the Department of Geological Survey, the Department of Mining Engineering and the Department of Metallurgy shall, subject to this Act, be controlled and managed by the Director of Geological Survey, the Director of Mining Engineering and the Director of Metallurgy, respectively, whose offices shall be public offices and shall form part of the Public Service. 30

(2) The Directors shall be responsible for ensuring that the functions of their respective Departments and any directions of the Minister issued to them in terms of section 273 are carried out. 35

(3) In addition to the Directors, there shall be such members of staff as are needed for the exercise of the functions of each of the Departments, whose offices shall be public offices and shall form part of the Public Service.

(4) The staff of each department shall be subject to the direction of the Director of the Department concerned, and the Directors shall in turn be subject to the direction of the Secretary. 40

## 283 Charges, levies and fees

(1) Each Director shall have power, subject to any directions of the Minister given after consultation with the Minister responsible for finance, to charge and levy such fees as will be prescribed for their services to clients of the Department concerned. 45

(2) Each Director shall, subject to the approval of the Minister, enter into financial arrangements with other State departments for payment in respect of specialised services provided to them by the Department concerned.



**284 Minister may give policy directions to Directors of Departments**

- (1) Subject to subsection (3), the Minister may, through the Secretary, give any Director such general directions relating to the policy the Department concerned is to observe in the exercise of its functions as the Minister considers to be necessary in the national interest, which policy directions must—
- (a) not be inconsistent with any provision of this Act; and
  - (b) be issued in good faith, apply prospectively and not retrospectively, and be of general applicability; and
  - (c) clearly delimit the scope of their application, and otherwise not be vague or ambiguous in their terms; and
  - (d) clearly express the national interest at stake; and
  - (e) be clear (whether expressly or by necessary implication) that they apply or are in force for a fixed or indefinite period, or that they expire on the happening of any event.
- (2) The Director concerned shall take necessary steps to comply with any direction given to him or her in terms of subsection (1).

**285 Intellectual property rights of Departments**

- (1) In accordance with the law governing intellectual property rights, each Department shall retain intellectual property rights over any data, geological or metallurgical or mining engineering information, inventions, discoveries and improvements generated by the Department concerned in the fulfilment of its functions.
- (2) Any of the things or information specified in subsection (1) that are provided to a client of the Department concerned shall not be provided to any other person without a written licence or other authority of the appropriate Director.
- (3) Any publication not authored by one of the Departments which uses information specified in subsection (1) must acknowledge the responsible Department as the source of the information.

**286 Regulatory powers of the Minister**

- The Minister may, in consultation with the Director concerned, make regulations prescribing matters that by this Sub-Part are required or permitted to be prescribed or that in the opinion of the Minister are necessary or convenient to be prescribed for carrying out or giving effect to this Sub-Part.

**PART XXV****OFFENCES AND PENALTIES****287 Prospecting prohibited save in certain circumstances**

- (1) Subject to subsections (2) and (3), no person shall prospect or search for any mineral, mineral oil or natural gas except in the exercise of rights granted under a prospecting licence, exclusive exploration licence or special grant, or unless he or she is the duly authorised representative of the holder of such prospecting licence, exclusive exploration licence or special grant, and is acting in the exercise of such rights.
- (2) No person shall prospect or search for any mineral, mineral oil or natural gas unless he or she is a staking agent or a prospector as defined in this Act.
- (3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to fine not exceeding level 6, or to imprisonment for a period not exceeding one year, or both.

**288 Production of authority to prospect**

(1) Every person prospecting or searching for any mineral, mineral oil or natural gas shall, if so requested by any official duly authorised thereto by the PMD or at the request of any police officer or of the owner or the occupier of the land on which he or she is so prospecting or searching, or of the duly authorised representative of such owner or occupier, produce his or her certificate of registration as a staking agent, his or her exclusive prospecting licence, or evidence of any other authority under which he or she is prospecting. 5

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to fine not exceeding level 6, or to imprisonment for a period not exceeding one year, or both. 10

**289 Protection of open workings by prospectors**

(1) Every person digging a prospecting trench shall throw out the earth in such manner as to form as far as possible regular ridges on either side of such trench.

(2) Every person acting under and by virtue of any exclusive prospecting licence, exclusive exploration licence or special grant shall fence or enclose the mouths of all his or her shafts and other open surface workings and excavations sufficiently to ensure the safety of persons and stock, and he or she shall maintain such fencing or other works in good and effective repair while carrying on his or her work and, before abandoning any prospecting area, he or she shall fill in such shafts, workings and excavations or shall so fence or deal with them as permanently to ensure the safety of persons and stock, and shall restore any work previously erected or constructed for the protection of mine workings which he or she may have removed or interfered with, and shall notify the occupier, if any, of the land that he or she has completed the protection work required under the provisions of this subsection: 15 20

Provided that if any such shaft, working or excavation is within twenty metres of a public road or thoroughfare he or she shall not fence it, but shall fill it in. 25

(3) Subject to the proviso to subsection (2), the manner in which shafts, open surface workings and excavations shall be dealt with for the purposes of subsection (2) shall be prescribed by regulations, and compliance with such regulations shall be sufficient compliance with that subsection. 30

(4) A holder who fails to comply with subsection (1) or (2) commits a criminal offence and a civil default, and on prosecution and conviction for the offence shall be liable—

- (a) in the case of a contravention of subsection (1) (other than failing to notify an occupier of the land concerned of the completion of the required protection works), to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both; 35
- (b) in the case of a contravention of subsection (1) involving the failure to notify an occupier of the land concerned of the completion of the required protection works, to a fine not exceeding level 4 or to imprisonment for a period not exceeding three months or to both; 40
- (c) in the case of a contravention of subsection (2), to a fine not exceeding level 8 or to imprisonment for a period not exceeding three years or to both. 45

(5) On the conviction of any person for a contravention of subsection (2), the court may order the forfeiture of any prospecting licence or licences held by such convicted person, and thereupon such licence or licences shall be forfeited and no new licence shall be issued to such person until he or she has proved to the satisfaction of

the Secretary that the shafts, workings or excavations in respect of which he was so convicted have been properly filled in, fenced or otherwise dealt with in accordance with those sections.

(6) If a civil default is committed with respect to a contravention of subsection (1), the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) to take the specified remedial action to throw out the earth or gather the earth thus thrown out in such manner as to form as far as possible regular ridges on either side of such trench;
- (b) subjects the defaulter to a default fine of the maximum amount fixed for level 5 for each day, not exceeding ninety days, during which the defaulter continues to be in default (beginning on the day after the last day on which the defaulter fails to take the remedial action).

(7) If a civil default with respect to a contravention of subsection (1) is committed for the second or any subsequent time by the same holder in relation to the same or other prospecting trench in the vicinity within any period of twelve months, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
  - (i) to pay to the PMD a default fine of the maximum amount fixed for level 5; and
  - (ii) if the default is continuing on the day the civil penalty order is served, to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) to take the specified remedial action to throw out the earth in such manner as to form as far as possible regular ridges on either side of such trench;
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
  - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 5 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
  - (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for level 5 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(8) If a civil default is committed with respect to a contravention of subsection (2) referred to in subsection (4)(a), the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
  - (i) to pay to the PMD a default fine of the maximum amount fixed for level 8; and
  - (ii) to commence doing the works which by that subsection are required and in respect of which the defaulter is in default, so that no later

than fourteen days after the civil penalty order is served the works are completed to the satisfaction of the PMD;

- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
  - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 8 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 5
  - (ii) if he or she fails to comply with paragraph (a)(ii), either by— 10
    - A. failing to commence the ordered works; or
    - B. failing to complete them to the satisfaction of the PMD on the fourteenth day after the civil penalty order is served;
      - to pay a default fine of the maximum amount fixed for level 8 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 15

## 290 Duties of absentee staking agent or prospector

Whenever a staking agent or prospector, acting under and by virtue of—

- (a) an exclusive prospecting licence, proposes to be absent from the area covered by a prospecting notice; or 20
- (b) an exclusive exploration licence or special grant for prospecting, proposes to be absent from his or her area of operations;

for a continuous period of more than twenty-four hours and to leave any employees in such area during his or her absence, he or shall appoint a suitable person to be in charge of such employees and shall provide him or her with written evidence of such appointment which the appointee shall produce upon request by the owner or occupier of the land or the duly authorized representative of such owner or occupier. 25

## 291 Illegal pegging

- (1) No person shall peg any ground which is not open to prospecting. 30
- (2) No person shall post—
  - (a) a prospecting notice;
  - (b) a discovery notice; or
  - (c) a registration notice, save a registration notice applicable to the pegging of a site in terms of section 57 (“Registration of dependent mine service sites”) or 58 (“Registration of independent mine service sites”); 35

unless he or she is a staking agent or the holder of an exclusive prospecting licence or the duly authorised representative of such holder, and there is correctly stated in such notice the number of the exclusive prospecting licence under which such notice is to be posted. 40

(3) No person shall peg any ground, save ground to be pegged as a site in terms of section 57 (“Registration of dependent mine service sites”) or 58 (“Registration of independent mine service sites”), unless he or she is a staking agent.

- (4) No person shall—
  - (a) post a prospecting, discovery or registration notice which is incorrect in any material particular; or 45

- (b) peg a mining location in a manner other than that prescribed; or
- (c) wilfully peg a larger or longer mining location than he or she is entitled to peg or purports to peg; or
- 5 (d) register or attempt to register a mining location under or by virtue of an exclusive prospecting licence other than the one under which it was pegged; or
- (e) register or attempt to register a mining location under or by virtue of an exclusive prospecting licence of which he or she was not the lawful holder at the time of pegging.

10 (5) The PMD may refuse to register a mining location in respect of which there has been a contravention of this section.

(6) A holder who fails to comply with subsection (1), (2), (3) or (4) commits a criminal offence and a civil default, and on prosecution and conviction for the offence shall be liable, in the case of a contravention of—

- 15 (a) subsection, (2) or (3), or (4) (a) or (b), to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year; or
- (b) subsection (1) or (4) (c), (d) or (e), to a fine not exceeding level 8 or to imprisonment for a period not exceeding three years or to both.

20 (7) If a civil default as described in subsection (6)(a) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
  - (i) to pay to the PMD a default fine of the maximum amount fixed for level 6; and
  - 25 (ii) if the default is continuing on the day the civil penalty order is served, to immediately (as the case may be)—
    - A. remove the notices referred to in subsection (2), or to have them immediately re-posted by a staking agent or the holder of an exclusive prospecting licence or the duly authorised representative of such holder, ensuring as well that there is correctly stated in such notice the number of the exclusive prospecting licence under which such notice is posted; or
    - 30 B. remove the pegs referred to in subsection (3); or
    - 35 C. remove any notice referred to in subsection (4)(a); or
    - D. re-peg a mining location in a manner prescribed;
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
  - 40 (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 6 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
  - 45 (ii) if he or she fails to comply with paragraph (a)(ii), to pay a default fine of the maximum amount fixed for level 6 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

50 (8) If a civil default as described in subsection (6)(b) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
  - (i) pay to the PMD a default fine of the maximum amount fixed for level 8; and
  - (ii) if the default relates to a breach of subsection (1) or (4)(c) which is continuing on the day the civil penalty order is served, to immediately (as the case may be) remove any pegs referred to in subsection (1) or (4)(c); 5
- (b) cautions the defaulter that any repetition of the default for which he or she is being civilly penalised, may result in the cancellation of his or her mining rights if he or she commits any other breach of this section; 10
- (c) subjects the defaulter to either of both of the following penalties, as may be appropriate—
  - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 8 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 15
  - (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for level 8 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 20

## 292 Illegal cutting of wood

(1) No person purporting to act under section 36 (“Surface rights of holder of exclusive prospecting licence”), 140 (“Surface rights of miners”) or 235 (“Application of other provisions of this Act to special grants”) shall cut, fell, remove or use any indigenous wood or timber for any other purpose than those therein authorised. 25

(2) A person who fails to comply with subsection (1) commits a criminal offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding three years, or to both. 30

(3) In the case of a civil default against subsection (1), the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)— 35
  - (i) pay to the PMD a default fine of the maximum amount fixed for level 8; and
  - (ii) if the default is continuing on the day the civil penalty order is served, to immediately cease the default specified in the civil penalty order; 40
- and
- (b) cautions the defaulter that any repetition of the default for which he or she is being civilly penalised, may result in the cancellation of his or her mining rights if he or she commits any other breach of this section in relation to the same or any other land; 45
- (c) subjects the defaulter to either of both of the following penalties, as may be appropriate—
  - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 8 for each day (not exceeding 50



ninety days) during which the defaulter fails to pay the original default fine; and

- (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for level 8 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

### 293 Interference with fences

(1) Save as provided in section 202 (“Removal of or interference with protective works prohibited”), no holder of an exclusive prospecting licence, exclusive exploration licence or special grant and no miner, shall cut or in any way interfere with any fence on any land, except with the consent in writing of the owner or the occupier of such land, or under an order granted in terms of section 275 (“PMD may authorise certain works”).

(2) No owner or occupier of any land shall cut or in any way interfere with any fence on any mining location erected by the holder or miner of such location, except with the consent in writing of such holder or such miner or under an order granted in terms of section 275 (“PMD may authorise certain works”).

(3) A holder, owner or occupier who fails to comply with subsection (1) or (2) (as the case may be) commits a criminal offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 5, or to imprisonment for a period not exceeding six months, or both.

(4) In the case of a civil default against subsection (1), the PMD may (additionally or alternatively to prosecution for the offence under subsection (3)) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—

- (i) to pay to the PMD a default fine of the maximum amount fixed for level 5; and

- (ii) if the default is continuing on the day the civil penalty order is served, to immediately cease the default specified in the civil penalty order;

and

- (b) cautions the defaulter that any repetition of the default for which he or she is being civilly penalised, may result in the cancellation of his or her mining rights if he or she commits any other breach of this section in relation to the same or any other land; and

- (c) subjects the defaulter to either of both of the following penalties, as may be appropriate—

- (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 5 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; and

- (ii) if he or she fails to comply with paragraph (a)(ii), to pay a default fine of the maximum amount fixed for level 5 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

### 294 Beacons and pegs to be maintained in good order

(1) The holder of any mining location who fails, in terms of this Act, to erect or to keep in proper order and in their proper positions his or her notices, pegs, beacons

or trenches of such location commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year, or to both.

(2) Subsection (1) shall apply to any person who was the holder of an abandoned or forfeited mining location in respect of which a quitance certificate is required and has not been issued under section 201 ("Open workings to be protected on abandonment, forfeiture or cancellation of location"). 5

(3) If a civil default as described in subsection (1) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which— 10

(a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) take the specified remedial action to erect or to keep in proper order and in their proper positions his or her notices, pegs, beacons or trenches of such location; and 15

(b) subjects the defaulter to a default fine of the maximum amount fixed for level 6 for each day, not exceeding ninety days, during which the defaulter continues to be in default (beginning on the day after the last day on which the defaulter fails to take the remedial action);

(4) If a civil default as described in subsection (1) is committed for the second or any subsequent time by the same holder in relation to the same mining location within any period of twelve months, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which— 20

(a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)— 25

(i) to pay to the PMD a default fine of the maximum amount fixed for level 6; and

(ii) if the default is continuing on the day the civil penalty order is served, to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) take the specified remedial action to erect or to keep in proper order and in their proper positions his or her notices, pegs, beacons or trenches of such location; 30

and

(b) subjects the defaulter to either of both of the following penalties, as may be appropriate— 35

(i) if he or she fails to pay the default fine specified in paragraph (a) (i) ("the original default fine"), to pay a further default fine of the maximum amount fixed for level 6 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; and 40

(ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for level 6 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 45

## **295 Position of beacons and pegs may not be altered**

(1) No person shall, except as provided in this Act, deface, alter the position of, remove, pull down, injure, destroy or erect or renew in any other than its proper or original position any peg, notice, beacon or landmark designating or intended to

designate the position, boundary, name or other particular of any mining location, reef or deposit or designating the name of the discoverer or holder thereof.

5 (2) Save as otherwise provided in this Act, if the position of any one or more of the pegs or beacons of any mining location has been altered or dealt with by the holder of such location or his or her agent so as to make it appear that any of the original ground is cut off from or any fresh ground is added to such location, or if the holder or his or her agent has consented to or condoned any such action, the PMD may, in addition to any other penalty attaching to such action, declare any ground so cut off to have ceased to be a portion of such location from the date of such action or from any later date, and no fresh ground so added shall in any case be deemed to have become a portion of such location.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 7 or to imprisonment for a period not exceeding two years, or to both.

15 (4) On any contravention by any person of subsection (1), the registered holder and any lessee, tributator or manager of the mining location in respect of which the contravention occurred shall be liable to prosecution and conviction for that contravention.

## **296 Mining permitted under certain objects on certain conditions**

20 (1) For the purposes of this section—

“road” includes any area of land reserved for road purposes under Part III of the Roads Act [*Chapter 13:12*] and any restricted road declared under Part IV of that Act.

25 (2) Save as otherwise provided in subsection (3), the holder of a mining location shall not exercise any right to carry out mining operations in respect of such location beneath any of the following—

- (a) any road, railway or railway reserve or pipeline reserve;
- (b) any electric power line;
- (c) any aqueduct, pipeline, well or borehole;
- 30 (d) any land within the surveyed limits of any city, town, township or village referred to in section 37 (“Ground not open to prospecting”) (1)(c);
- (e) any licensed aerodrome or any State emergency landing ground or State aerodrome;
- (f) any State rifle range;
- 35 (g) any cemetery;
- (h) any race course, public park or playground reserved under section 37 (“Ground not open to prospecting”);
- (i) any enclosure for cattle or other livestock belonging to members of a community settled nearby,
- 40 (j) any building stand or machinery site;
- (k) any river, lake, dam, reservoir or irrigation work other than irrigated lands;
- (l) land under cultivation or land to which an approved cultivation scheme relates;
- 45 (m) any other surface object or feature which in the opinion of the Chief Government Mining Engineer requires protection and of which he or she has given written notice to the holder;

or beneath the land outside the boundaries of any such premises as aforesaid and lying within two hundred metres of such boundaries, or otherwise as the PMD may specify after consultation with the authority responsible for the surface object or feature concerned.

(3) The Chief Government Mining Engineer or other official authorized thereto by him or her may grant permission in writing to such holder to carry out mining operations beneath any work mentioned in subsection (2) subject to such terms and conditions as may be specified by the Chief Government Mining Engineer or such other official, as the case may be: 5

Provided that no such permission shall be given until the owner of such work or other person interested therein has been given an opportunity to submit any objections which he or she may have. 10

(4) Nothing in this section contained shall be deemed in any way to prejudice the right of any person to recover from the holder of the mining location damages for any injury which he or she may prove to have been sustained by him or her in consequence of any act or thing done by such holder even though the permission mentioned in subsection (3) has been given. 15

(5) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level 7 or to imprisonment for a period not exceeding two years, or to both. 20

(6) On any contravention by any person of subsection (2), the registered holder and any lessee, tributor or manager of the mining location in respect of which the contravention occurred shall be liable to prosecution and conviction for that contravention.

## **297 Salting** 25

(1) No person shall place or deposit or be accessory to the placing or depositing of any minerals in any spot or place with intent to mislead any person as to the payable nature of such spot or place.

(2) No person shall mingle or cause to be mingled with any sample of any valuable mineral any valuable mineral or substance whatsoever which will increase the value of or in way change the nature of the said ore with intent to deceive, cheat or defraud. 30

(3) Any person who contravenes subsection (1) or (2) shall be guilty of contravening section 136 ("Fraud") of the Criminal Law Code and be liable to be punished accordingly. 35

(4) In any proceedings taken for the contravention of subsection (1), if the accused person is proved to have placed or deposited or to have been accessory to the placing or depositing of any mineral in any spot or place where the finding thereof would tend to mislead any other person as to the payable nature of such spot or place, he or she shall be deemed to have so placed or deposited such mineral in contravention of that subsection unless he or she produces satisfactory evidence to the contrary. 40

## **298 Theft of ore**

Any person who breaks, severs or removes any mineral from any mining location, reef or deposit, or who takes, removes or conceals any mineral, slags, slimes, amalgam, residues, tailings or concentrates, the product of any mining location, reef or deposit, with intent to deprive the lawful owner or holder thereof, shall be guilty of contravening section 113 ("Theft") of the Criminal Law Code and be liable to be punished accordingly. 45

**299 Fraudulent acts**

Any person engaged in the business of milling, leaching, sampling, concentrating, reducing, assaying, transporting or dealing in ores, metals or minerals, who keeps or uses any false or fraudulent scales or weights for weighing such ores, metals or minerals, or  
5 who keeps or uses any false or fraudulent assay scales or weights, or enriched fluxes used for ascertaining the assay value of minerals, knowing them to be false or fraudulent, shall be guilty of contravening section 136 ("Fraud") of the Criminal Law Code and be liable to be punished accordingly

**300 Eviction of illegal occupiers**

10 (1) If it appears to the PMD that a registered mining location occupied by any person in purported reliance on mining title is being occupied otherwise than for *bona fide* mining purposes in accordance with the rights conferred on the miner thereof by section 140 ("Surface rights of miners."), the PMD may serve notice in writing upon the occupier to vacate the mining location within fourteen days of the service of the  
15 notice.

(2) If any person, having been notified by the PMD in terms of subsection (1), fails to vacate a mining location timeously, the PMD may bring an action of ejectment against him or her in any court of a magistrate having jurisdiction in or over the mining province concerned.

20 (3) If the court does not order the person or persons against whom an ejectment action is brought to pay the costs of the action, the PMD may recover the costs of an action of ejectment from any holder of a mining location at whose instance or for whose benefit the PMD instituted the action.

(4) Alternatively the any holder of a mining location concerned may (in any  
25 court of a magistrate having jurisdiction in or over the mining province concerned) himself or herself bring an action of ejectment against any person who, having been notified by the PMD in terms of subsection (1), fails to vacate the mining location timeously.

(5) An affidavit by the PMD—

- 30 (a) affirming that a notice under subsection (1) was served on the person sought to be ejected; or  
(b) giving reasons why the notice was served;

shall be admissible in any legal proceedings on its production by the PMD or a holder of a mining location referred to in subsection (4) as prima facie evidence of the facts  
35 stated therein.

(6) For the purpose of this section a single notice issued under subsection (1) may refer by name to two or more persons occupying the same mining location, and a single action for ejectment may be brought against those persons collectively.

40 (7) The ejectment of a person from a mining location in terms of this section does not prevent the return of that person to the mining location if the PMD is satisfied that the intention of the person concerned is to occupy the mining location for bona fide mining purposes.

(8) This section does not apply to the case any person illegally occupying a mining location otherwise than in reliance upon mining title, which case shall be dealt  
45 with as a contravention of section 132 ("Criminal trespass") of the Criminal Law Code, and in which event the person may be arrested and removed by the police pending prosecution.

**301 Monthly returns to be furnished**

(1) The holder of any mining location (and the mine manager thereof if the holder is not the miner at the mining location) and the owner of any independent mining site, or his or her representative, shall furnish to the PMD such monthly (or, if so prescribed in relation to any type of return, more or less frequently than monthly) returns and reports of his or her operations thereon or therein, and such certificates or solemn declarations in respect of them, as are prescribed by or under this Act. 5

(2) In particular, the holder of any mining location and the miner thereof and the owner of any metallurgical establishment, or his or her representative, shall furnish to the PMD the following monthly affidavits, sworn declarations, certificates and documents relating to the following matters— 10

- (a) a sworn declaration by the miner that to the best of his or her knowledge the miner is fully compliant with all applicable labour laws (and if not, the extent to which he or she is not so fully compliant, and the measures he or she is taking to bring his or her operations into full compliance within specified time); and 15
- (b) a sworn declaration by the miner that to the best of his or her knowledge the miner is fully compliant with applicable health and safety laws (and if not, the extent to which he or she is not so fully compliant, and the measures he or she is taking to bring his or her operations into full compliance within specified time); 20
- (c) a valid tax clearance certificate issued in terms of section 34C of the Revenue Authority Act [*Chapter 23:11*] not earlier than twelve months before the date when it is rendered to the PMD in terms of this section;
- (d) an up-to-date schedule of expatriate employees (that is to say, who do not have permanent residence status in Zimbabwe or who are employed on the strength of an employment visa) listed in or annexed to an affidavit who are in the employ of or under contract to the miner together; 25
- (e) a labour return for the month, specifying the number of employees (that is to say persons employed full-time, part-time or on a casual basis) and the total number of hours worked by all employees for the month in question; and 30
- (f) if regulations under section 325 are enforced any monthly returns required by those regulations.

(3) Any person who is required to furnish a return, report, certificate or solemn declaration under subsection (1) and fails to do so, or to furnish a corrected return, report, certificate or solemn declaration after due notice that any such return, report, certificate or declaration is defective, shall be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months, or to both. 35

**302 False declarations and certificates**

(1) Subject to subsection (4) any person who makes any declaration, supplies any certificate or renders any return in terms of this Act which he or she knows to be false or which he or she does not know or reasonably believe to be true in any material particular shall be guilty of contravening section 180 (“Deliberately supplying false information to public authority”) of the Criminal Law Code (or any section that may be substituted for the same) and be liable to be punished accordingly. 40 45

(2) In addition to any other penalty which it may inflict, the court may order that any person who has been convicted of an offence in terms of subsection (1) shall forfeit his or her prospecting licence and all his or her title to or interest in any mining location to which such declaration, certificate or return had reference. 50



(3) It shall be lawful for the Minister to prohibit the issue of a prospecting licence to any person who has been convicted of an offence in terms of subsection (1) for such period and on such terms as he or she deems fit.

(4) With specific reference to returns rendered under section 301 —

- 5 (a) the PMD shall cancel the registration of the mining location of any holder who whether himself or herself or through his or her mine manager renders a false return, whether or not such holder has been convicted of an offence against this section:

10                    Provided that if such a holder is acquitted for an offence under this section the holder may apply to the Minister for the reinstatement of his or her registration, for which purpose the Minister shall refer the application to the Appeals Committee in terms of paragraph (b) for disposal.

- (b) any holder of a mining location —
- 15                    (i) referred to in the proviso to paragraph (a), may appeal to the Minister within thirty days of his or her acquittal; or
- (ii) who disputes that he or she has rendered a false return under section 301, may appeal to the Minister within thirty days of the cancellation of his or her registration;

20 whereupon the Minister, shall refer the matter to the Appeals Committee for consideration, and if the Appeals Committee determines that the person did not deliberately render such a return knowing it to be false due to some error or oversight, or other mitigating circumstances it may recommend to the Minister that the holder be exonerated and the registration of a mining location be reinstated, or that the registration of the mining location be reinstated subject to a final written warning being issued.

### 25 **303 Dams or reservoirs to be left intact**

(1) On abandonment, forfeiture or cancellation of any mining location to which a dam or reservoir is attached the holder of such location shall leave such dam or reservoir intact, together with the water it contains:

Provided that —

- 30 (i) all machinery and appliances in connection with such dam or reservoir which can be readily removed without in any way injuring, weakening or impairing such dam or reservoir, or impairing the water it contains, may be taken away by the holder within the period of three months next succeeding such abandonment, forfeiture or cancellation;
- 35 (ii) the owner or the occupier of the land on which such machinery or appliances are situated shall not be liable for any damage done to such machinery or appliances in the due and proper exercise of his or her rights as owner or occupier of the land;
- 40 (iii) the PMD may, if he or she is satisfied that it is necessary to do so, extend the period within which the machinery or appliances or the machinery and appliances may be removed, by a further period not exceeding three months.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 7 or to imprisonment for a period not exceeding 45 two years, or to both.

(3) On any contravention by any person of subsection (1), the registered holder and any lessee, tributator or manager of the mining location in respect of which the contravention occurred shall be liable to prosecution and conviction for that contravention.

**304 Plans and returns of mines to be confidential**

(1) In subsection (2) “tributor” has the meaning assigned thereto in section 243 (“Interpretation in Part XVIII”).

(2) No person shall, without the permission in writing of the holder or tributor of the registered mining location concerned or the manager of the mine concerned, furnish to any person or allow any person to inspect any— 5

- (a) plan of any mine working or any copy thereof; or
- (b) return or report or any copy thereof;

which has been taken, transmitted or rendered in terms of this Act.

(3) Subsection (3) shall not apply to persons performing duties under this Act which require the plan, return or report concerned to be inspected, nor does it apply in respect of any plan, return or report relating to any mining location which has been abandoned, forfeited or cancelled. 10

(4) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year, or to both. 15

**305 PMD’s powers of entry upon locations**

(1) The PMD or other official duly authorised thereto by him or her may at all times enter upon any mining location or any premises or workings thereof or thereunder for the purpose of— 20

- (a) generally inspecting such location, premises or workings and examining the mining operations or the treatment of minerals performed thereon and any plans, books, registers or other documents relating thereto; or
- (b) ascertaining whether provisions of this Act are being carried out; or
- (c) ascertaining whether precious stones have been discovered or are being mined, and determining the nature of such stones and whether the extent of the deposit of such stones warrants an application for a licence or permit to mine for precious stones and what measures, if any, are necessary for the protection of any such deposit; or 25
- (d) ascertaining whether any nuisance exists upon such location, premises or workings; or 30
- (e) giving directions and taking steps to enforce any provisions of this Act or to abate or remove any nuisance; or
- (f) taking samples or specimens of the rocks, strata or minerals situated upon such location for the purpose of determining the nature or the percentage of the minerals contained therein. 35

(2) Any person who fails, neglects or refuses to provide all reasonable facilities and assistance to the PMD or other authorised official when acting under subsection (1) or to comply with any direction as aforesaid of the PMD or duly authorised official, or who commits a breach of any duty imposed on him or her thereunder, shall be guilty of an offence and liable to a fine not exceeding level 5 or, in default of payment, to imprisonment for a period not exceeding six months (or both), and the court may, in addition to imposing such fine, order him or her to provide such facilities and assistance or to comply with such direction or to perform such duty, as the case may be, within such period as the court may specify, and if within the period so specified he or she fails to comply with such order the PMD may recover from him or her by way of penalty the sum of twenty United States dollars (or its equivalent in local currency at the rate prevailing on the days in question) for each day or portion of a day he or she fails to 40 45

comply with such order after the expiry of such period (this penalty may be enforced and recovered as if it were a civil penalty).

(3) The powers of entry conferred upon a PMD under subsection (1) are hereby conferred upon the Director of Metallurgy, the Chief Government Mining Engineer, the Director of Geological Survey and any Government mining engineer, inspector of mines or other officer appointed in terms of section 267 ("Appointment of officers"), and subsection (2) shall be read as including a reference to those officials.

### 306 Geological survey

(1) The Director of Geological Survey and any person duly authorised in writing by him or her may for the purpose of carrying out any prospecting or exploration work on behalf of the State or a geological survey of Zimbabwe or any part thereof—

- (a) enter at all reasonable hours upon any land with such persons, animals, vehicles, appliances, instruments and materials as are necessary for such survey;
- (b) break up the surface of any part of such land for the purpose of ascertaining the rocks, strata or minerals within or under the same;
- (c) take and carry away samples and specimens of the rocks, strata or minerals found therein;
- (d) fix any post, stone, mark or object to be used in the survey in any such land;
- (e) dig up any ground for the purposes of fixing any such post, stone, mark or object;
- (f) enter into or upon any land on which it is proposed to carry out such prospecting or exploration work, or through which it may be necessary to pass for the purposes of such survey or such work:

Provided that—

- (i) it shall not be lawful to fix any object, post, stone or mark within any walled garden, orchard or pleasure ground without the consent of the owner or the occupier thereof;
- (ii) reasonable notice of the intention to exercise any of the powers conferred by this subsection shall be given to the owner or the occupier of such land unless such land is unoccupied State land;
- (iii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this section and such owner or occupier shall be entitled to compensation for any damage sustained in the execution of the powers conferred by this subsection.

(2) Any prospecting or exploration work carried out in terms of subsection (1) shall be subject to the provisions of sections 37 ("Ground not open to prospecting") and 41 ("Roads and railways may be included in location under certain conditions"), save those of section 35((1)(b)).

(3) No prospecting or exploration work shall be carried out on a mining location pursuant to the powers conferred by subsection (1) without prior consultation with the holder of such location.

(4) Any person who in any way whatsoever prevents, obstructs or impedes the exercise of any of the powers conferred by subsection (1) or who displaces, defaces or destroys any stone, post, mark or object set up and placed for the purposes of any geological survey shall be guilty of an offence and liable to a fine not exceeding level 4 or to imprisonment for a period not exceeding three months, or to both.

(5) If any dispute arises as to the amount of compensation payable under this section, the matter shall be referred to the Administrative Court for determination.

### 307 Obstruction of officials

(1) No person shall—

- (a) obstruct or resist any PMD or any person duly authorised in writing by any court or PMD in lawfully entering upon any mining location or land or in performing any other act authorised by this Act; or 5
- (b) obstruct or resist any inspector of mines or other person in the performance of his or her duty or in the exercise of his or her powers under this Act; or 10
- (c) after being removed under this Act from any mining location or other place, forcibly or clandestinely retake or retain or endeavour to retake or retain possession thereof or of any portion thereof; or
- (d) after any decision that any complainant is entitled to use for mining purposes or to divert any water, obstruct or resist such complainant or his or her agents in such use or diversion. 15

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to fine not exceeding level 6, or to imprisonment for a period not exceeding one year, or both.

### 308 Discovery of precious stones to be notified

20

(1) Any person who discovers any precious stones shall, within ten days of the date of such discovery, give notice thereof and of the place where such discovery has been made to the PMD.

(2) Any person who fails to comply with subsection (1) by the due date shall be guilty of an offence and liable to fine not exceeding level 4, or to imprisonment for a period not exceeding three months, or both. 25

### 309 Other specified offences and penalties; spot-fineable offences

(1) Any person who fails to comply with section 29 (“Duplicate certificate of registration as staking agent”)(5), 240 (“Consent required for pegging of sites on town lands”), 241 (“Limitation of timber rights”), 272 (“PMD’s powers when encroachment alleged”) (4), 276 (“Claim holders must point out boundaries of their locations”) (1) (whether or not the mining location is forfeited pursuant to subsection (4)), 285 (“Intellectual property rights of Departments”) (2) or (3), or 290 (“Duties of absentee staking agent or prospector”), shall be guilty of an offence and liable to fine not exceeding level 4 or to imprisonment for a period not exceeding three months, or both. 30 35

(2) The following subsections ((3) to (13)) shall apply to the offences mentioned in subsection (1) as well as to contraventions of the following (hereafter in this section called a “spot-fineable offence”)—

- (a) sections 288 (“Production of authority to prospect”) (2), 289 (“Protection of open workings by prospectors”) (4) (b), 308 (“Discovery of precious stones to be notified”)(2); and 40
- (b) any provision of regulations made under section 332 for which a fine not exceeding level 3 (or a fine not exceeding level 8 for a repeated offence) is leviable. 45

(3) Where any person has, in respect of any spot-fineable offence committed by him or her, been informed by a PMD or an inspector of mines that it is intended

to institute criminal proceedings against him or her for that offence and the PMD or the inspector of mines, as the case may be, has reasonable grounds for believing that the court which will try that person for that offence will, on convicting him or her of that offence, not impose a sentence of imprisonment or a fine exceeding level 3, that  
5 person may sign and deliver to the PMD or inspector of mines, as the case may be, a document admitting that he or she is guilty of that offence and deposit with the PMD or inspector of mines, as the case may be, a deposit equivalent to the maximum amount fixed for level 3.

(4) Subject to subsection (9), a person who has signed an admission of guilt  
10 and paid a deposit in terms of subsection (3) shall not be required to appear in court to answer the charge of having committed the offence concerned.

(5) An admission of guilt signed and delivered in terms of subsection (3) shall forthwith be transmitted to the clerk of the court before which the person concerned would otherwise have appeared and shall be entered by him or her in the records of  
15 that court.

(6) As soon as an admission of guilt has been recorded in terms of subsection (5) it shall be laid before the court and the court shall thereupon—

(a) proceed to convict the person concerned of the offence charged and forthwith sentence him or her to a fine equivalent to the maximum amount fixed for level 3, or a lesser or greater fine not exceeding that provided for  
20 under the provision for the contravention of which the person is convicted; or

(b) by endorsement on the document signify its refusal to convict such person by the procedure set forth in this section.

(7) If the sum deposited is not sufficient to pay the fine imposed by the court, the balance remaining due shall be recovered from the offender in the manner provided by section 348 of the Criminal Procedure and Evidence Act [*Chapter 9:07*].  
25

(8) If the sum deposited is greater than the fine imposed by the court, the difference shall be refunded to the offender.

(9) Where the court has refused to convict the person concerned, as in subsection  
30 (6)(b) provided, the sum deposited shall be refunded to him or her and he or she may be prosecuted in the ordinary course.

(10) Any magistrate of the court which will try the person concerned for the offence may advise the PMD or inspector of mines, as the case may be, as to what the court is likely to consider an appropriate fine in any case, and in fixing the sum of money  
35 to be deposited under subsection (3) regard shall be had to the magistrate's advice.

(11) For the purpose of deciding whether to convict the person concerned in accordance with subsection (6) or determining the amount of the fine to be imposed, the court may have regard to any statements relevant to the offence charged made by the PMD or inspector of mines or any other person having knowledge thereof.  
40

(12) Where the admission of guilt signed and delivered in terms of subsection (3) purports to have been signed by a director, manager or secretary of a corporate body as the representative of that corporate body, the director, manager or secretary shall, notwithstanding proviso (i) to section 385(2) of the Criminal Procedure and Evidence  
45 Act [*Chapter 9:07*], be presumed to have been authorised by that corporate body to plead guilty on its behalf, unless the contrary is proved.

(13) The magistrate who convicted a person in accordance with subsection (6) may, notwithstanding anything contained in any law, set aside the conviction and order

the refund to the person concerned of the fine paid by him or her in respect thereof if satisfied that that person should not have been convicted.

(14) Any person who, within twelve months of having been convicted of any offence specified in subsection (1) or (2), repeats that offence, whether with respect to the same mining location or another mining location in the same mining province, shall, in respect of that repeated offence, be liable to fine not exceeding level 8 or to imprisonment for a period not exceeding three years, or both (and subsection (3) to (13) shall not apply to any person alleged to have committed the repeated offence). 5

### **310 Manner of imposing criminal penalties upon corporate offenders or joint holders of mining title** 10

If any person convicted of an offence against this Act—

- (a) is a corporate offender, then every one of the officers of the company or other corporate entity may be sentenced for any period of imprisonment not exceeding the maximum penalty of imprisonment provided for that offence, or be sentenced to pay in equal shares the fine imposed upon the corporate offender, if the corporate offender fails to pay it; or 15
- (b) is a person (whether individual or corporate) who is a joint holder of the mining title under cover of which any act constituting the offence was committed, then every joint holder shall be jointly and severally liable to pay the fine imposed by the court, and (in the case of an individual offender or an officer of a corporate offender), may be sentenced for any period of imprisonment not exceeding the maximum penalty of imprisonment provided for that offence. 20

## **PART XXVI**

### **PROPRIETARY COMPENSATION CLAIMS AND COMPULSORY ACQUISITION, CANCELLATION, FORFEITURE OR COMPULSORY TRANSFER OF MINING RIGHTS AND LOCATIONS** 25

#### **311 Application of Cap. 20:10**

Wherever it is provided in this Act that any matter relating to the payment of compensation shall be referred to or determined by the Administrative Court—

- (a) at least two months before the claim is so referred the claimant shall, unless the other party agrees otherwise, submit to the other party a claim for compensation which complies with section 22 (“Claims for compensation: land other than agricultural land required for resettlement purposes”) (1) of the Land Acquisition Act [*Chapter 20:10*]; and 30
- (b) that Act shall thereafter apply, with such changes as may be necessary. 35

#### **312 Acquisition by President of location for public purposes**

(1) Subject to this section, the President may at any time, for the utilisation of any mining location for a purpose beneficial to the public generally, or to any section thereof, acquire either the whole or any portion of such mining location, or limit the rights enjoyed by the owner thereof under this Act. 40

(2) The Land Acquisition Act [*Chapter 20:10*] shall apply, with such changes as may be necessary, to such acquisition or limitation of rights as is referred to in subsection (1).

(3) For the purpose of ascertaining the amount of compensation payable to any person for an acquisition in terms of subsection (1), the Minister may direct any person employed in his or her Ministry (an “investigator”) to conduct an investigation into the nature and extent of any mining operations that have been or are being conducted on the mining location that has been or is to be acquired. 45



(4) The Minister shall furnish such investigator with a certificate signed by or on behalf of the Minister stating that he or she has been appointed as an investigator for the purpose of this section.

5 (5) An investigator shall, on demand by any person affected by the exercise of the investigator's powers under subsection (6), exhibit the certificate issued to him or her in terms of subsection (4).

(6) An investigator shall have power at all reasonable times —

- (a) to enter the mining location that has been or is to be acquired; and
- 10 (b) to require any person to supply any information or to produce any book, record or document relating to any mining operations that have been or are being conducted on the mining location that has been or is to be acquired; and
- (c) to make copies of or extracts from any book, record or document referred to in paragraph (b);

15 and shall make a written report to the Minister on the results of the investigation within such period as the Minister may direct.

(7) Any report of an investigator referred to in subsection (6) shall be admissible on its production by any person in any proceedings relating to the payment of compensation for an acquisition in terms of subsection (1), and the court concerned  
20 shall pay due regard to the contents of any report so produced.

(8) Any person who contravenes or fails to comply with any direction or requirement in terms of this section shall be guilty of an offence and liable to a fine not exceeding level 7 or to imprisonment for a period not exceeding two years, or to both.

### 25 **313 Cancellation of mining rights for using wasteful mining methods, etc**

(1) If a PMD has reason to believe that the holder of a registered mining location is using wasteful mining methods or metallurgical processes, he or she shall inspect the registered mining location forthwith and report to the Board accordingly.

30 (2) After receiving the report referred to in subsection (1), if the Board is satisfied that the holder of a registered mining location is using wasteful mining methods or metallurgical processes, the Board shall forthwith institute an inquiry into the matter and invite the holder of the registered mining location concerned to make representations to the inquiry as to why his or her certificate of registered mining location should not be cancelled for using wasteful mining methods or metallurgical processes.

35 (3) If in the light of an inquiry held in terms of subsection (2), and after due consideration of any representations made by the holder, the Board is still satisfied that the holder has actually used wasteful mining methods or metallurgical processes, the Board shall notify the holder accordingly and request him or her, within such reasonable time as the Board shall specify in the notification, to remedy the situation or to show  
40 cause why his or her certificate of registered mining location should not be cancelled.

(4) If within the time specified in the notification referred to in subsection (3), the holder of the registered mining location fails to remedy the situation, or to satisfy the Board that he or she has not used wasteful mining methods or metallurgical processes, the Board shall provisionally order the cancellation of his or her certificate of registered  
45 mining location.

(5) The Secretary shall without delay —

- (a) transmit relevant particulars of the provisional cancellation order to the PMD where the mining location is situated to enable the PMD to enter the particulars of the provisional cancellation in his or her provisional register; and
- (b) send one copy of the provisional cancellation order to the holder of the certificate of registered mining location that is to be cancelled, accompanied by a written reminder to the latter of his or her right to appeal against the cancellation in terms of section 316. 5

(6) If no appeal against the cancellation is lodged in terms of section 315 within twenty-one days, or if the appeal is unsuccessful, the Secretary shall make the necessary entry in the Mining Cadastre Register and notify the appropriate PMD to make the corresponding entry in his or her final register. 10

### 314 Cancellation of mining rights for breach of this Act or other laws

- (1) If the Minister has reason to believe that a miner—
    - (a) has failed, within a reasonable period after commencing mining operations, to declare any output from his or her mining location, according to the work plan submitted by the miner whether in terms of this Act or any other enactment; or 15
    - (b) has knowingly rendered a false return or declaration regarding the output from his or her mining location, whether in terms of this Act or any other enactment; or 20
    - (c) has, in relation to his or her mining location or the output thereof, contravened—
      - (i) section 5 or 6 of the Gold Trade Act [*Chapter 21:03*]; or
      - (ii) section 5, 6 or 14 of the Precious Stones Trade Act [*Chapter 21:06*]; 25
      - or
      - (iii) section 42 or 50 of the Minerals Marketing Corporation of Zimbabwe Act [*Chapter 21:04*];
- whether or not he or she has been convicted thereof by a court;
- the Minister may do either or both of the following— 30
- (d) by written notice served on the miner concerned, notify the miner concerned of his or her intention to cancel his or her rights in relation to the mining location concerned, and call on the miner to show cause, within such reasonable period as may be specified in the notice, why such rights should not be cancelled; 35
  - (e) direct any person employed in his or her Ministry (“the investigator”) to conduct an investigation into the nature and extent of any mining operations that have been conducted on the mining location concerned.

(2) The Minister shall furnish an investigator with a certificate signed by or on behalf of the Minister stating that he or she has been appointed as an investigator for the purpose of this section. 40

(3) An investigator shall, on demand by any person affected by the exercise of the investigator’s powers, exhibit the certificate issued to him or her in terms of subsection (2).

- (4) An investigator shall have power at all reasonable times— 45
  - (a) to enter the mining location concerned; and
  - (b) to require any person to supply any information or to produce any book, record or document relating to any mining operations conducted on the mining location concerned; and

- (c) to make copies of or extracts from any book, record or document referred to in paragraph (b);

and shall make a written report to the Minister on the results of his or her investigation within such period as the Minister may direct.

5 (5) If, at the expiration of the period specified in a notice given in terms of subsection (1)(d), and after considering any representations made to him or her by the miner concerned and any report made in terms of subsection (4), the Minister is satisfied on reasonable grounds that the miner—

- (a) has failed in a respect referred to in subsection (1)(a); or
- 10 (b) has rendered a false return or declaration referred to in subsection (1)(b); or
- (c) has contravened a provision referred to in subsection (1)(c);

the Minister may, by notice in writing to the miner, cancel the miner's rights in relation to the mining location and make such order as the Minister thinks fit in regard to the disposal of any output from the mining location which is in the possession of the miner or held on the miner's behalf by any other person.

(6) The Minister shall copy the order of cancellation to the PMD where the mining location concerned is situated, whereupon the PMD shall record in his or her provisional register the fact that the mining rights in relation to the mining location are provisionally cancelled.

(7) Where the Minister has made an order in terms of subsection (5) in regard to the disposal of any output from a mining location, that order shall be enforced in the manner specified in the order.

25 (8) If no appeal against the cancellation of the miner's rights in relation to his or her mining location is lodged in terms of section 316 within twenty-one days, or if the appeal is unsuccessful, the Secretary shall notify the appropriate PMD accordingly, whereupon the following steps must ensue—

- (a) if the mining location concerned—
  - 30 (i) is registered in the miner's name, the PMD shall declare the mining location to be forfeited, and thereafter sections 200 ["Removal of buildings and machinery from abandoned, forfeited or cancelled location"] to 204 ["Relocation of abandoned, forfeited or cancelled locations and reinstatement of forfeited locations"] shall apply in relation thereto;
  - 35 (ii) is not registered in the miner's name, any tribute agreement between the miner and the holder of the mining location shall thereupon expire and neither the miner nor any other person shall exercise any right to mine the mining location except in accordance with the Minister's written approval;
- 40 (b) in either case (paragraph (a) (i) or (ii)) the PMD shall record the fact of the forfeiture of the mining location in his or her final register, and transmit the relevant particulars of the forfeiture and of the expiry of any tribute agreement to the Secretary, to enable the Secretary to make the necessary entry in the Mining Cadastre Register.

45 (9) If the President (on his or her own motion or upon a report by the Minister) has reason to believe that a grantee of a special grant—

- (a) has contravened the terms and conditions attached to his or her special grant; or

- (b) is in default with respect to any matter mentioned in subsection (1)(a), (b) or (c);

the President may direct the Minister to give to the grantee the notice referred to in subsection (1)(d) (as if the reference to a “mining location” were a reference to the special grant) and to appoint an investigator in terms of subsection (1)(e), in which event the President may cancel the special grant as soon as the Minister notifies the President that the special grant should be cancelled because the grantee has contravened the terms and conditions attached to his or her special grant or is in default in any respect mentioned in paragraph (b) (or both).

(10) Subsections (5), (6), (7), (8) and (9) apply to the cancellation of a special grant as they apply to the cancellation of a miner’s rights in relation to his or her mining location, except that—

- (a) an appeal against the cancellation shall lie against the Minister and not the President; and
- (b) neither the Administrative Court, in referring the decision to cancel the special grant back to the Minister in terms of section 308(3)(a), nor the High Court, in overturning in favour of the grantee the decision of the Administrative Court pursuant to section 233(4)(b), may make a binding direction or order that the cancellation of the special grant be reversed, but any finding by the Administrative Court or the High Court to the effect that the special grant was cancelled contrary to its terms and conditions may form the basis of a separate action for damages if the President does not reverse the cancellation of the special grant.

(11) Any person who—

- (a) contravenes or fails to comply with any order, direction or requirement in terms of this section; or
- (b) mines any mining location in contravention of subsection (8)(a)(ii);

shall be guilty of an offence and liable to a fine not exceeding level 7 or to imprisonment for a period not exceeding two years, or to both.

### **315 Minister may order holder of mining location to transfer it**

(1) The holder of any registered mining location may apply in writing to the Board for the issue of an order authorising the transfer to him or her of a registered mining location held by any other person, hereinafter referred to as the other location.

(2) On receipt of such application the Board shall give notice of it to the holder of such other location and any person to whom a duly approved tribute has been granted over such location or in whose favour any option or hypothecation over such location has been registered with the PMD, and require them to lodge with the Board in writing within sixty days of the giving of such notice their objections, if any, to the grant of the application.

(3) If any person lodges any objection with the Board within such period, the Board shall, on a day fixed by it and notified to the applicant and every objector, hear such arguments and evidence as such persons may wish to lay before it in regard to the grant or refusal of the application.

(4) If no objection is lodged to the grant of the application, the Board shall proceed with the consideration of the application.

(5) If the Board is satisfied that—

- (a) it is essential for the better working of the mining location owned by the applicant that he or she should have the use of the surface of the whole

or a portion of such other location and that an order under section 275 (“PMD may authorise certain works”) could not lawfully be granted or, if granted, would not adequately meet the needs of the case; and

- 5 (b) the applicant has made a reasonable offer to the holder of such other location to purchase such location which such holder has refused to accept; and
- (c) the applicant is able to pay any compensation likely to become payable if the order were granted; and
- (d) the granting of the order would be in the national interest;

10 it may recommend to the Minister that an order be made by him or her authorising the transfer of such other location to the applicant or, if the Board is not so satisfied, it shall refuse the application, and such refusal shall be final and without appeal.

(6) Where the Board recommends that the order be granted, it shall submit to the Minister the application, together with all relevant documents and its written report and recommendation in regard thereto, and the Minister shall submit such recommendation to the President, who may provisionally approve or refuse to approve the making of the order.

(7) Where the President has provisionally approved the making of an order, the Minister shall without delay make a provisional order authorising the transfer of such relevant location to the applicant, whereupon the Secretary shall without delay—

- (a) transmit the provisional order to the PMD where the mining location is situated to enable the PMD to enter the particulars of the provisional cancellation in his or her provisional register; and
- 25 (b) send one copy of the provisional order to the applicant and another copy to the holder of the mining location that is to be transferred, accompanied by a written reminder to the latter of his or her right to appeal against the transfer in terms of section 305.

(8) If no appeal against the provisional order is lodged under section 305 within twenty-one days of the copy of the order being sent to the holder of the mining location, or the appeal is unsuccessful, the Minister shall forthwith make an order authorising the PMD to effect transfer of such other location to the applicant, in terms of this section, and such order shall be valid for a period of three months unless the Minister for any reason which to him or her seems good and sufficient extends such period.

(9) The PMD shall send a copy of such order to the applicant, the holder of such other location and every person who lodged objections under subsection (2), and require such holder or other person to inform him or her in writing, within a period of sixty days, whether he or she intends to claim compensation.

(10) Any person who may be adversely affected by the exercise of the rights granted under an order shall be entitled to be paid such compensation by the person in whose favour the order has been made as may be agreed upon or, failing agreement, as may be determined by arbitration:

Provided that such right shall be deemed to have lapsed unless such person has informed the PMD in writing within the period of sixty days mentioned in subsection (8) of his or her intention to claim such compensation.

45 (11) The person in whose favour an order has been made under this section shall, before obtaining transfer of the other location, either pay to the person or persons entitled thereto the compensation mentioned in subsection (10), or furnish a guarantee satisfactory to the PMD for the payment of such compensation.

(12) The PMD shall, notwithstanding any bar to the registration of transfer under section 209 (“Registration of transfer of mining locations and transfer duty

payable”), on application made within the period of validity of the order by the person in whose favour the order has been made and on payment of the transfer duty mentioned in section 275, forthwith provisionally register transfer of such other location to such person by making the necessary entries in his or her final register:

Provided that the PMD shall not so register transfer unless he or she is satisfied that the compensation mentioned in subsection (10) has been paid or the guarantee mentioned in that subsection has been furnished. 5

(13) As from the date on which the holder of the other location is notified by the Board of an application made under this section and until the date on which such application is refused or, if it is granted, until the period of the validity of the order has expired, it shall not be lawful for the holder of such other location to sell, cede, assign or otherwise dispose of such location or any part thereof or interest therein, or to abandon or hypothecate such location or any part thereof or interest therein, or to grant an option or tribute over such location or any part thereof or interest therein. 10

(14) If the person in whose favour an order is made does not, during the period of validity of the order, apply to the PMD under subsection (12) and satisfy the PMD that the compensation mentioned in subsection (10) has been paid or furnish the guarantee mentioned in that subsection, the order shall be deemed to have lapsed. 15

(15) The PMD, upon being satisfied as described in the proviso to subsection (12), shall— 20

- (a) transmit the particulars of the transfer to the Secretary to enable the Secretary to make the corresponding entry in the Mining Cadastre Register; and
- (b) upon being notified by the Secretary that the particulars of the transfer have been entered in the Mining Cadastre Register, make the corresponding entry in his or her final register. 25

### **316 Appeals against decisions under sections 252, 302, 303 and 304**

(1) No later than twenty-one days after—

- (a) notification is sent of the provisional order of expropriation of a registered mining location in terms of section 251 (“Order of expropriation”) (4) (a); or 30
- (b) notification is sent of the cancellation of a certificate of a registered mining location in terms of section 311 (“Cancellation of mining rights for using wasteful mining methods, etc”) (4); or
- (c) notification is sent that a miner’s rights in relation to his or her mining location have been cancelled in terms of section 312 (“Cancellation of mining rights for breach of this Act or other laws”) (3); 35
- (d) a provisional order of the transfer of a mining location is sent to the holder of the mining location that is to be transferred in terms of section 304 (“Minister may order holder of mining location to transfer it”)(9); 40

an aggrieved person may appeal against such cancellation or transfer to the Administrative Court.

(2) Until the appeal is determined the noting of an appeal in terms of subsection (1) shall—

- (a) not suspend the cancellation referred to in section 302 or 303; 45
- (b) suspend the transfer of a mining location referred to in section 251 or 304.



(3) Upon an appeal the Administrative Court may —

- (a) decide the issue in favour of the Board or the Minister, as the case may be; or
- (b) refer the decision back to the Board or the Minister, as the case may be for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds —
  - (i) allowing extraneous or irrelevant considerations to affect the decision,
  - (ii) failure to take into account relevant considerations in arriving at the decision;
  - (iii) any material mistake of fact or law that tainted the decision;
  - (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
  - (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

Provided that the Court shall not make a finding on this ground without affording the Minister or the Board, as the case may be, an opportunity to respond to such finding;

- (c) where there is a substantive factual dispute that cannot be resolved by the Court on the evidence before it, refer the matter back to the Minister or the Board, as the case may be, with a direction to the Minister or the Board to investigate the matter further and make a report and recommendations to the Court (on the basis of which the Court shall make its decision under paragraph (a)).

(4) A person who is aggrieved by the Administrative Court's decision under subsection (3), may, within twenty-one days after the Administrative Court's decision, refer the matter for review by the High Court, whereupon it may —

- (a) uphold the decision of the Administrative Court; or
- (b) overturn the decision of the Administrative Court (with or without directions on how to proceed with the application) on any one or more of the following grounds —
  - (i) allowing extraneous or irrelevant considerations to affect the decision; or
  - (ii) failure to take into account relevant considerations in arriving at the decision, or
  - (iii) any material mistake of fact or law that tainted the decision;
  - (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;
  - (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

or

- (c) where there is a substantive factual dispute that cannot be resolved by the High Court on the evidence before it, or where the matter had previously been referred by the Administrative Court to the Minister or the Board (as the case may be) for investigation and report but the High Court is not satisfied with the report for any reason, refer the matter to the Minister or the Board (as the case may be) with a direction to the Minister or the Board to investigate the matter further and make a further report and recommendations to the Court (on the basis of which report the Court may then proceed in terms of paragraph (a) or (b)).

## PART XXVII

## REGULATION OF GEOLOGY PROFESSION

**317 Interpretation in Part XXVII**

In this Part —

- “certified geologist” means a geologist certified as such in accordance with rules published in terms of section 318; 5
- “chartered geologists’ society” or “society” means a geologists’ society that is chartered in terms of section 319;
- “geology” means the branch of natural science concerned with the Earth and other astronomical objects, the rocks of which they are composed, and the processes by which they change over time; 10
- “geologist” means a practitioner of any one or more of the geology disciplines or specialisms associated with geology (with particular reference the making of explorations and examinations of the mineral resources of the land), as defined in the chartered geologists’ charter, who is entitled to call himself or herself an geologist by virtue of — 15
  - (a) holding such university or college degree or other qualification and having such relevant experience as are recognised by the chartered geologists’ society for the purposes of the geologist profession of which he or she is a practitioner; and 20
  - (b) being —
    - (i) at the date of commencement of the approval of the charter, a fellow or member of the appropriate grade in good standing of the chartered geologists’ society; or
    - (ii) a certified geologist; 25
- “practise as geologist” means engage in the profession of geology for reward or gain as a fulltime or part-time occupation, whether on one’s own account or as an employee or agent of another person;
- “society of geologists” means a society, institute, institution, body or federation established by geologists to promote their collective professional interests in one or more of the geology disciplines defined in their constitution or other constitutive document. 30

**318 Application for approval as chartered geologists’ society**

(1) Any society of geologists operating in Zimbabwe for an uninterrupted period of twenty years may, in terms of this Part, apply to the President through the Minister to become the chartered geologists’ society by submitting to the Minister the draft charter of the society and such other documentation and fee as may be prescribed. 35

(2) The draft charter of the applicant society of geologists shall make provision for the following matters —

- (a) the name of the society; and 40
- (b) the objects and functions of the society; and
- (c) the membership and governance of the society; and
- (d) the administration of the society; and
- (e) the making of internal regulations, by-laws or rules by which the society will be governed; and 45
- (f) the appointment, removal and conditions of service of members of staff of the society;

(3) The Minister shall refer the application to the Secretary who shall, in terms of section 11, evaluate and verify the suitability of an application under this section and advise the Minister accordingly.

5      (4) Where upon the advice and report of the Minister the President is satisfied that—

- (a) the financial and other resources required to enable the applicant to discharge its functions are available or are likely to become available; and
- 10      (b) the applicant, if approved, is likely to maintain the best professional standards of the geologist profession on a long-term basis; and
- (c) the approval of the applicant to become the sole society responsible for certifying professional geologists is in the public interest and the national interest of Zimbabwe;

15      the President may grant the applicant a charter for a indefinite period, or a definite period of not less than ten years from the date of its grant, and shall publish a proclamation in a statutory instrument setting forth the terms of the charter:

Provided that if the President rejects the application, or the charter, having been granted, subsequently lapses or is revoked, the continued existence of the applicant as a registered or unregistered incorporated association shall not be affected thereby.

20      (5) Upon publication of a proclamation, the private institution concerned shall be established as a body corporate capable of suing and being sued in its corporate name and, subject to its charter, of performing all acts that a body corporate may by law perform.

25      (6) The chartered geologists society shall keep a register of professional geologists certified by it at its offices which shall be available for inspection by members of the public during normal working hours, upon payment of the prescribed fee, if any.

### **319 Professional certification and disciplinary rules by chartered geologists' society**

30      (1) The chartered geologists' society shall be responsible for the professional conduct of its members who are registered persons and, for that purpose, the society shall have power, in accordance with its charter, to undertake disciplinary proceedings against such members and to punish them for breaches of the rules referred to in subsection (2).

35      (2) Subject to subsection (3), the chartered geologists' society shall make rules governing—

- (a) the admission to or cancellation or suspension of membership of the society concerned;
- (b) the professional conduct to be observed by certified geologists;
- 40      (c) the examinations required to be passed or qualifications required to be obtained for certification as a geologist in any geology discipline governed by that society.

45      (3) Rules made in terms of this section shall be referred to the Secretary for onward transmission to the Minister as soon as possible after they are made, and shall not be of any force and effect until they have been approved by the Minister on the recommendation of the Secretary and published in the *Gazette*.

(4) Every certified geologist shall, for the purposes of being subject to the disciplinary rules of the chartered geologists' society, be deemed to be a member of the chartered geologists' society, but no certified geologist shall be entitled to participate

in the internal governance of such society unless, in addition to the certification fee, the certified geologist also pays the fee for membership of such society as prescribed in its rules or by-laws.

### **320 Offences by unregistered persons and those employing them**

(1) As soon as the rules referred to in section 317 have been published in the *Gazette*, no person other than a person who— 5

(a) at the date of commencement of the approval of the charter, is a fellow or member of the appropriate grade in good standing of the chartered geologists' society; or

(b) is a certified geologist; 10

shall hold himself or herself out to be a geologist or use the designation of geologist or any other name, title, description or letters indicating that he or she is a certified geologist, whether by advertisement or description or in any document.

(2) If immediately before the date on which rules referred to in section 317 have been published in the *Gazette*, any person (not being a fellow or member of the chartered geologists' society as described in subsection (1)(b)) is practising as a geologist, he or she may continue to practise as such for a period of not more than six months from such date, after which he or she must have become certified as a geologist or applied for and obtained a temporary practising certificate in terms of section 319. 15

(3) Any person who contravenes subsections (1) or engages or knowingly accepts the services of a person who contravenes subsections (1), shall be guilty of an offence and liable to a fine not exceeding level eight or imprisonment for a period not exceeding one year or to both. 20

(4) A conviction for an offence under subsection (3) shall not preclude further prosecution or conviction if the offence continues or recurs. 25

### **321 Temporary practising certificate**

(1) Any geologist who is in Zimbabwe by virtue of a temporary residence permit, or who is not ordinarily resident in Zimbabwe, and who wishes to practise as such in Zimbabwe, may apply to the chartered geologists' society for a temporary practising certificate, for which purpose he or she shall submit with his or her application such contribution to the chartered geologists' society as may be prescribed in rules, together with such certificates, documents and information as the secretary of the society may reasonably require. 30

(2) On receipt of an application for the issuance or renewal of a temporary practising certificate, the secretary of the chartered geologists' society shall issue or, as the case may be, renew the practising certificate, if he or she is satisfied that— 35

(a) the applicant is a qualified geologist in the country in which he or she ordinarily resides; and

(b) the contribution referred to in subsection (1) has been submitted together with the application. 40

(3) If the secretary has any question about the nature of the applicant's qualifications as a geologist, the secretary shall refer the application to the governing body of the society.

(4) Where an application has been referred to it in terms of subsection (2), the the governing body of the society, after making such inquiry into the matter as it considers necessary shall— 50

- (a) direct the secretary of the society to issue or, as the case may be, renew the temporary practising certificate concerned; or
- (b) refuse to issue or, as the case may be, to renew the temporary practising certificate concerned, and shall direct the secretary of the society to advise the applicant of its decision and the reasons for it.

(5) For the duration of the temporary practising certificate, the holder thereof is subject to the disciplinary rules of the chartered geologists' society.

(6) Subject to subsection (7), a temporary practising certificate shall be valid—

- (a) for the period of twelve months from the 1st January next following the application therefor; or
- (b) if the applicant so requires, from the date of its issue until the 31st December of the year in which it is issued.

(7) A temporary practising certificate issued to a person who is prohibited or suspended from practice as a geologist for being in breach of the disciplinary rules of the chartered geologists' society, shall cease to be valid from the date of such prohibition or suspension, and the person shall forthwith return the temporary practising certificate to the secretary of the society for destruction

## PART XXVIII

### MISCELLANEOUS

#### 322 Minister's Appeal Committee

(1) The Minister shall constitute a committee, to be called the Minister's Appeal Committee, to assist him or her in determining appeals that under the following provisions are made to the Minister—

- (a) section 37 ("Ground not open to prospecting") (6);
- (b) section 60 ("Cancellation of certificate of registration of claims or sites") (5) (the proviso thereto);
- (c) section 108 ("Appeals under Part VII")(1);
- (d) section 113 ("Grant or refusal of application for underground extension") (4);
- (e) section 138 ("Approval of transfer of mining lease") (13);
- (f) section 203 ("Recording of abandonments and forfeitures; appeals under Part XVI");
- (g) section 217 ("Consideration of non-standard tribute agreements by Board") (6);
- (h) any other provision for an appeal to the Minister contained in or under this Act.

(2) The Minister's Appeal Committee shall consist of the following members (of whom the member appointed under paragraph (a) shall be the chairperson of the Committee, and the deputy chairperson shall be any one of the members appointed under paragraph (c), (d), (e) or (f) and designated as such by the Minister)—

- (a) a Provincial Mining Director or former Provincial Mining Director, nominated by the Secretary and appointed by the Minister; and
- (b) in the case of an appeal under section 37(6), 113(4) or 108(1), a representative of the Ministry responsible for lands or agriculture, nominated by the Minister responsible for lands or agriculture and appointed by the Minister (and in the absence of any such nomination, a representative of large-scale or small-scale farmers, appointed by the

Minister from a panel of at least three names submitted by an association which, in the Minister's opinion, represents a substantial number of large-scale farmers in Zimbabwe or (as the case may be) represents a substantial number of small-scale farmers in Zimbabwe); and

- (c) a geologist in the employment of the Ministry, nominated by the Secretary and appointed by the Minister; and 5
- (d) a metallurgist in the employment of the Ministry, nominated by the Secretary and appointed by the Minister; and
- (e) a mining engineer in the employment of the Ministry, nominated by the Secretary and appointed by the Minister; and 10
- (f) a legal practitioner in the employment of the Ministry nominated by the Secretary and appointed by the Minister.

(3) The Minister's Appeal Committee for any appeal shall consist of at least four members, including the chairperson or deputy chairperson, and the member appointed under subsection (3)(f): 15

Provided that if the appeal is one lodged in terms of section 37(6), 113(4) or 108(1), the Committee must include a member appointed under subsection (3)(b).

(4) The procedure to be adopted by the Committee shall be as prescribed or, in relation to any matter that is not prescribed, as may be fixed by the Committee:

Provided that the panel shall afford the parties to the appeal an adequate opportunity to make representations in the matter in writing or in person and, generally, shall observe the rules commonly known as the rules of natural justice. 20

(6) The decision on the appeal must be determined by a majority of the members present, and the decision, together with the reasons therefor, must be communicated by the Chairperson in writing to the Minister, who shall not be bound by the decision (but if the Minister rejects or departs from the decision in any way, the Minister must record the reasons for the rejection or departure and communicate them to the Secretary): 25

Provided that if the Chairperson reports to the Minister that the Committee is unable to reach a majority decision after at least seven days' deliberation, the Minister shall make his or her decision on the matter on the basis of the reasoning of those members that to the Minister appear to be the most persuasive or compelling. 30

(7) To avoid doubt, any reference in this Act to an "appeal to the Minister" is a reference to an appeal to the Minister assisted by Minister's Appeal Committee and determined in accordance with this section.

### **323 Submission of geological information** 35

(1) The miner of a registered mining location shall submit annually to the Director of Geological Survey any information of a geological nature, including logs and assay results of drill cores from surface diamond drill holes, and reports on any geological, geochemical and geophysical work, obtained by him or her during the course of his or her prospecting or mining operations. 40

(2) The Director of Geological Survey shall not, without the consent of the holder, disclose any information submitted in terms of subsection (1) to any person, or allow any person to inspect it unless the mining location to which it relates is forfeited, abandoned, or has been cancelled:

Provided that the Minister may, after consultation with the miner, disclose such information if he or she considers it necessary in the public interest to do so. 45

(3) In addition to the information specified in subsection (1), the miner of a registered mining location shall submit to the Director of Geological Survey, if called



for, any representative rock samples obtained by him or her in the course of his or her prospecting and mining operations.

- (4) Any person who, after being ordered in writing by the Director of Geological Survey to comply with subsection (1) or (3) within seven days of the service order, fails to do so without good cause shown to the Director (who may extend the period for compliance with order by no more than 30 days), shall be guilty of an offence and liable to a fine not exceeding level 7 or to imprisonment for a period not exceeding two years, or to both.

### 324 Site rent

- The holder of a registered mining site shall in respect of such site pay annually in advance to the PMD rent calculated at the prescribed rate.

### 325 Land surveyors to be subject to Cap. 20:12

- Any land surveyor who carries out any surface survey under this Act shall have the same duties and be subject to the same liabilities as if he or she were carrying out a survey in terms of the Land Survey Act [Chapter 20:12].

### 326 Training institutions

- (1) The Minister may provide for the establishment, equipment, maintenance, administration and operation of any institution for the technical education and training of persons leading to the award of diplomas, certificates and other qualifications relevant to the mining industry.

(2) For the purpose of establishing, equipping, maintaining, administering and operating any institution referred to in subsection (1), the Minister may—

- (a) enter into agreements and execute contracts or other instruments; and
- (b) provide suitable premises, equipment and amenities for the institution; and
- (c) with the approval of the Minister responsible for finance, make grants of money to the institution; and
- (d) subject to any charter referred to in subsection (3), appoint a board of management to control, manage and administer the institution; and
- (e) do all such other things as, in the Minister's opinion, are necessary or desirable for the purpose.

(3) The legal capacity, objects, autonomy and administration of an institution referred to in subsection (1) shall be provided for in a charter granted by the President by proclamation in the *Gazette*.

- (4) All expenditure incurred by the Minister in terms of subsection (1) shall be met from moneys appropriated for the purpose by Act of Parliament.

### 327 Mining Skills Development and Local Content Promotion

- (1) The Minister may by regulations provide that not less than two *per centum*—
- (a) of the total full-time non-managerial workforce of every holder of a mining lease or special grant; and
  - (b) of the workforce of a small-scale miner who employs at any time twenty-five (25) or more persons (including contractors) for periods (whether continuous or not) exceeding six months in a year;

must consist of persons who are undergoing or have undergone any graduate training course pertinent to the mining industry, whether on attachment or otherwise.

(2) The Minister may by regulations provide that a certain percentage of all goods and services of a specified description connected with the mining industry must be locally procured.

### **328 Mining of limestone for agricultural operations**

(1) If the Minister is satisfied that any owner or occupier of land needs limestone for his or her own farming purposes, the Minister may, on application by such owner or occupier, authorise the reservation in terms of section 42 (“Reservations against prospecting and pegging”) of such area of the land of such owner or occupier as the Minister deems sufficient. 5

(2) Such owner or occupier may in the area so reserved search for and mine limestone solely for his or her own farming purposes, and this Act shall not apply to such owner or occupier in relation to such search and mining. 10

(3) If the Minister is satisfied that any such owner or occupier is using any limestone mined under subsection (2) or any lime derived therefrom for any purpose other than his or her own farming purposes, the Minister shall order the withdrawal of any reservation authorised in terms of subsection (1), and after such withdrawal the right of such owner or occupier to search for and mine limestone under subsection (2) shall cease. 15

### **329 Provincial advisory boards**

(1) The Minister may establish a provincial advisory board for any mining province to advise him or her generally on mining affairs in that mining province and additionally, or alternatively, on any particular matter in connection with the mining industry in that mining province, as may be specified by the Minister. 20

(2) The Minister shall appoint the members of a provincial advisory board who shall hold office during the pleasure of the Minister on such terms and conditions as the Minister may fix. 25

(3) The functions and duties of a provincial advisory board shall be to advise the Minister as required in terms of subsection (1).

(4) All expenditure incurred by the Minister in terms of this section shall be met from moneys appropriated for the purpose by Act of Parliament. 30

### **330 How acts ordered by PMD to be performed**

Whenever a PMD is empowered or required by this Act to cause any act to be performed, and the mode of performing such act is not otherwise expressly provided for, any person verbally authorised by the PMD in his or her presence, or any police officer authorised in writing by the PMD, may perform such act, and all police officers shall, if so required, aid and assist any PMD or person authorised as aforesaid in the performance of his or her duty under this Act. 35

### **331 Establishment of Mining Court as division of High Court**

(1) As soon as practicable after the commencement of this Act, the Chief Justice shall, in terms of section 46A (“Specialised divisions of High Court”) of the High Court Act [Chapter 7:06] create a specialised division of the High Court presided over by at least two judges of the High Court, to be called the “Mining Court”, which shall have jurisdiction to hear and entertain all such matters as under this Act are heard and entertained by the Administrative Court. 40

(2) The Chief Justice may, having created the Mining Court in terms of subsection (1), postpone the activation of the Mining Court to a fixed date no later 45

than sixty days after its creation, during which interval, by mutual agreement, parties to matters pending before the Administrative Court who wish to transfer their matters to the Mining Court for continuation, may seek directions from a judge of the Mining Court on when, where and how their matters will continue to be heard before the Mining Court.

(3) Upon the creation of the Mining Court—

- (a) the Administrative Court shall cease to hear and entertain all such matters (other than part-heard matters) as under this Act are heard and entertained by the Administrative Court, and all references to the Administrative Court in this Act shall, subject to subsection (4)), thereupon be read as references to the Mining Court;
- (b) all references to the High Court in this Act shall, subject to subsection (4), be read as references to the Supreme Court;
- (c) a judge of the Administrative Court shall continue to be seized of any part-heard matter, that is to say a matter pending before the Administrative Court on the date of the creation of the Mining Court, unless the parties to the matter (within the interval, if any, specified in subsection (2)) consent to have the matter transferred to the Mining Court (in which event the matter shall commence to be heard in the Mining Court at the stage it had reached in the Administrative Court):

Provided that no pending matter shall be transferred in terms of this paragraph if judgment in the matter had reserved by the judge of the Administrative Court on the date of the creation of the Mining Court (in which event the president shall continue to be seized of the matter until he or she delivers the judgment).

(4) The Mining Court shall be a review court as well as a court of first instance.

(5) To avoid doubt, any matter taken or review to the Mining Court shall not be taken on further review to the High Court.

(6) Notwithstanding the establishment of the Mining Court, the Administrative Court shall continue to have exclusive jurisdiction in respect of the matters referred to in the provisions specified in the Eighth Schedule.

### **332 Amendment of certain Schedule**

The Minister may amend the First, Fourth, Fifth, Sixth, Eighth and Ninth Schedules in the manner provided for in section 6 (“Strategic Minerals”) (8), (9) and (10).

### **333 Regulations**

(1) The Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in the Minister’s opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without derogating from the generality of subsection (1), regulations may provide for the following matters—

- (a) the proper and efficient management and working of all mining locations, quarries and mining operations;
- (b) the submission to the Minister by miners and persons operating or managing quarries of programmes of their intended exploration development and mining operations, showing the estimated amount of minerals to be produced during any specified period and the estimated cost thereof, and the right of the Minister to recommend changes thereto;
- (c) the registration of quarries and the licensing of persons who operate or manage quarries;

- (d) the grading of mica and its examination by a mining officer and the control of the sale, disposal or export of mica which has not been graded in accordance with such regulations;
- (e) in relation to the surveying of mines and quarries —
  - (i) the preparation, keeping and inspection of survey plans of mining locations and quarries, including underground workings; 5
  - (ii) the details and particulars to be shown on such plans, the manner of their preparation and the scale and size of plans;
  - (iii) the limits of error allowable on surveys in connection with the preparation of such plans; 10
  - (iv) the application of the latest geomatic technology to improve the on-site work of mine surveyors and staking agents;
  - (v) the preparation of survey plans by the Chief Government Mining Engineer or a person authorised by him or her in case of failure by any person to comply with the regulations, and the recovery by the Minister of the costs of survey and preparation of such plans; 15
- (f) the examination of mine surveyors and the fee payable in respect of such examination and the grant of certificates to successful candidates;
- (g) the inspection of books and documents relating thereto for the purpose of enforcing regulations; 20
- (h) the conditions of work, safety and health of persons employed in or about any mining location, quarry or mining operations, including —
  - (i) the regulation of works and machinery in so far as protection and safety is concerned;
  - (ii) sanitation and waste disposal; 25
  - (iii) the proper feeding and housing of mining employees;
  - (iv) measures to ensure that no child labour is used;
  - (v) the appointment by employers of suitable persons approved by the Minister to supervise all matters relating to the welfare of mining employees and the observance of regulations affecting them; 30
  - (vi) the safety and health of persons employed in or about any mining location, quarry or mining operations;
  - (vii) the prompt reporting of accidents, serious injuries or illnesses and deaths occurring on any mining location or quarry;
  - (viii) the establishment of burial places; 35
- (i) what works, other than those defined in this Act, may be deemed to be development work;
- (j) any forms required for the purposes of this Act;
- (k) search and inspection fees, fees for duplicate copies of certificates issued under this Act, and any other fees, charges, levies, sums, amounts or payments required or permitted to be prescribed for the purposes of this Act; 40
- (l) the criteria for the designation by the Minister of mining social responsibility entities, the fee payable to the Ministry for such designation, and the maximum fee or other sum chargeable to holders of certificates of registration of a mining block, mining leaseholders and holders of special grants in respect of the issuance of social responsibility certificates in terms of section 154 (“Pre-inspection requirements and first and subsequent inspection certificates”); 45

- (m) the conditions under which prospecting and mining may be conducted along or within natural watercourses;
- (n) the manner or procedure in regard to the hearing of any action, suit or cause arising out of this Act, other than any appeal to the Supreme Court, and (notwithstanding any statutory tariff prescribing higher minimum amounts) the fees and charges to be taken by officers and practitioners in connection therewith;
- (o) the periods for which and within which the payments prescribed for the purpose of the Mining Industry Environmental Protection Fund may be claimed and the manner of allocation of such payments in cases where a mining location is situated partly on one holding and partly on another;
- (p) the duties and responsibilities of holders, lessees or assignees of the rights of a holder, managers and other persons engaged in or about a mine or quarry;
- (q) the qualifications to be possessed by persons engaged in or about a mine or quarry in the capacity of mine manager, resident engineer or underground manager, and the keeping of official registers of persons so engaged;
- (r) the examination of persons wishing to be engaged in any capacity referred to in paragraph (q) and the fees payable in respect of such examination and the grant of diplomas or certificates to successful candidates;
- (s) the making by the mine manager or other person in authority of special rules, not inconsistent with this Act, for the maintenance of order and discipline and the prevention of accidents at any mine or quarry, such rules to have the same force and effect as the regulations.

(3) Before prescribing any tariff rate for the purposes of section 36 (“Surface rights of holder of prospecting licence”), 94 (“Rights of licensee regarding exploration and pegging”) or 140 (“Surface rights of miners”) in respect of indigenous wood or timber taken from private or partially alienated land other than Communal Land, the Minister shall consult the members of the Mining Affairs Board referred to in section 8(1)(b), (i), (ii), (iii) and (iv), and any tariff rate so prescribed shall be reviewed at intervals of not more than five years after like consultation.

(4) On non-compliance with any regulation made in the interests of safety or health, the Minister may order that work on any mine or any section thereof shall cease, save and in so far as work is necessary to remedy any defect complained of; and any miner of such mine who, knowing of such order, fails to comply therewith, shall be guilty of an offence and liable to a fine not exceeding level six for every day or portion of a day during which such non-compliance continues, and in default of payment of the fine, to imprisonment of seven days for each day of non-payment of the fine.

(5) Regulations may provide for concurrent or non-concurrent criminal offences and civil defaults for any contravention thereof:

Provided that penalties for any criminal offence or civil default shall not exceed—

- (a) in the case of a regulation made in the interests of safety or health and sanitation, a fine or penalty not exceeding level seven or, in default of payment of a fine, imprisonment for a period not exceeding two years, or both;

- (b) in the case of any other regulation, a fine or penalty not exceeding level five or, in default of payment of a fine, imprisonment for a period not exceeding six months, or both.

### 334 Repeal of Cap. 21:05; savings and transitional provisions

- (1) In this section— 5
  - “former Part VIII mining lease” means a mining lease issued under Part VIII (“Mining Leases”) of the repealed Act and in force at the date of commencement of this Act;
  - “former Part XIX special grant” means a special grant issued under Part XIX (“Special Grants”) of the repealed Act and in force at the date of commencement of this Act; 10
  - “former Part XX special grant” means a special grant issued under Part XX (“Special Grants for Coal, Mineral Oils, and Natural Gases”) of the repealed Act and in force at the date of commencement of this Act;
  - “former Part IX special mining lease” means a special mining lease issued under issued under Part IX (“Special Mining Leases”) and in force at the date of commencement of this Act. 15
- (2) Subject to this section, the Mines and Minerals Act [*Chapter 21:05*] is repealed.
- (3) Despite the repeal of the Mines and Minerals Act [*Chapter 21:05*]— 20
  - (a) every prospecting licence, mining location or other mining right whatsoever legally acquired before the date of commencement of this Act and legally held at that date, is (subject to subsection (4)) hereby confirmed, but shall from and after that date be held under and be subject to this Act: 25

Provided that in the case of an exclusive prospecting order, such order shall continue in force, notwithstanding anything contained in this Act which is contrary to or inconsistent with its terms or conditions, as though the repealed Act were still in force, until the expiry or revocation of the order, or the abandonment of the concession; 30
  - (b) every special reservation of any area against prospecting and pegging which was lawfully made by a PMD before the date of commencement of this Act, and which was still in force immediately before that date, shall be deemed to be a reservation made by notice by the PMD on the instructions of the Secretary under section 44 (“Reservations against prospecting and pegging”); 35
  - (c) an agreement or transaction entered into or deemed to have been entered into under that Act, including every hypothecation option and tribute agreement registered under that Act and in force immediately before the date of commencement of this Act, shall continue in force; 40
  - (d) regulations made or deemed to have been made under that Act and in force immediately before the date of commencement of this Act, shall continue in force until amended, repealed or replaced in terms of this Act, and shall be deemed to have been made in terms of this Act;
  - (e) anything done, or commenced under that Act and which, immediately before the date of commencement of this Act, had or was capable of acquiring legal effect, shall be deemed, on or after that date, to have been made, done or commenced under the appropriate provision of this Act and shall continue to have or to be capable of acquiring, as the case may be, the same legal effect; 45



- (f) every inspection certificate in force immediately before the date of commencement of this Act shall continue in force until it is renewed under this Act:

5                    Provided section 154 (“Pre-inspection requirements, etc) shall apply to the first renewal of an inspection certificate after the date of commencement of the Act as if the certificate was being issued for the first time;

- 10            (g) any dispute commenced or complaint lodged under that Act (other than a dispute that is the subject of ongoing judicial or arbitration proceedings and not resolved immediately before the date of commencement of this Act) shall be resolved in accordance with the appropriate mechanisms for the settlement of complaints and disputes provided for by this Act:

15                    Provided that, notwithstanding section 56 (“Evidence of priority of mining rights etc”) of this Act, subsections (4), (5), (6), (7) and (8) of section 178 of that Act shall (unless the parties otherwise agree) continue to apply to the resolution of disputes between holders in contestation (in those provisions referred to as “peggers”) if any such dispute arose before the date of commencement of this Act;

- (4) The provisions of this Act relating to—

- 20            (a) mining leases shall apply to every former Part VIII mining lease and every former Part IX special mining lease as if such mining lease or special mining lease were an ordinary or special mining lease issued under Part IX (“Mining Leases”) of this Act, except in so far as any of the provisions of this Act relating thereto are substantively inconsistent with any express term or condition of the former Part VIII mining lease or the former Part IX special mining lease, as the case may be (the proof whereof shall rest with the holder of the lease concerned);

25                    (In particular any former Part VIII mining lease issued for an indefinite period shall unless earlier abandoned, forfeited or cancelled expire at the end of the tenth year after the date of commencement of this Act, subject to renewal in terms of this Act);

- 30            (b) special grants shall apply to every former Part XIX special grant and every former Part XX special grant as if such special grant were a special grant issued under Part XIX (“Special Grants”) of this Act, except in so far as any of the provisions of this Act relating thereto are substantively inconsistent with any express term or condition of the former Part XIX special grant or former Part XX special grant, as the case may be (the proof whereof shall rest with the holder of the special grant concerned).

- 35                    (5) Subject to subsections (6), every certificate of registration of a claim or block of claims, former Part VIII mining lease, and former Part IX special mining lease, former Part XIX special grant, former Part XX special grant and other mining right or title in force immediately before the date of commencement of this Act, shall (unless earlier cancelled or expired) be entered in the Mining Cadastre Register automatically, that is to say, be entered by the Mining Cadastre Registrar without compliance with the formalities for the registration of equivalent mining rights or titles under this Act.

- 40                    (6) Section 21 (“Entries in Mining Cadastre Register to be conclusive proof of mining right or title; rectification of Mining Cadastre Register, etc.”) shall apply for the purpose of correcting or updating any entry in the Mining Cadastre Register created by virtue of subsection (5).

- 45                    (7) Until such time as the Mining Cadastre Register is declared to be fully operational under section 1(2), references in this Act to anything registered or required to

registered in the Mining Cadastre Register shall be construed as references to anything registered or required to be registered with the PMD or with the Mining Affairs Board or with the Secretary, as the case may be.

(8) Every holder of a registered site, who, immediately before the date of commencement of this Act, was exercising mining rights in terms of section 176 (“Sites: mining rights”) of the repealed Act must, no later than six months after the date of commencement of this Act, make application in terms of section 139 (“Conversion as between primary and secondary minerals and as between sites and mining locations”) of this Act to convert the site in question into a registered mining location: 5

Provided that no hearing of the application in terms of that section shall be required (and the conversion application concerned shall be processed as if the PMD had provisionally registered the site as a mining location in terms of that section, (and recommends in terms of that section its final registration to the Munising Cadastre Registrar) if the holder in question satisfies the PMD by affidavit that the mining rights in question have been exercised more or less continuously for a period of twelve months before the date of commencement of this Act. 10 15

#### FIRST SCHEDULE (*Section 6*)

##### CIVIL PENALTY ORDERS

##### ARRANGEMENT OF PARAGRAPHS

##### *Section*

1. Interpretation in First Schedule.
2. Power of PMD to issue civil penalty orders and categories thereof.
3. Service and enforcement of civil penalties and destination of proceeds thereof.
4. Limitation on issuance and enforcement of civil penalty orders.
5. Civil penalties to be paid in foreign currency by certain defaulting miners.
6. When hearings on question whether to serve civil penalty orders may be held.
7. Evidentiary provisions in connection with civil penalty orders.

##### *Interpretation in First Schedule*

1. In this Schedule, unless the context otherwise requires —

“citation clause”, in relation to a civil penalty order, is the part of the order in which the PMD names the defaulter and cites the provision of this Act in respect of which the default was made or is alleged, together with (if necessary) a brief statement of the facts constituting the default;

“civil penalty register” means the register referred to in paragraph 7 (“Evidentiary provisions in connection with civil penalty orders”);

“continuing default” means a default in complying with any statutory obligation or duty which is continuous in nature at the time it is detected and of which the remediation consists exclusively or primarily in ceasing to do the action complained of;

“corporate defaulter” means a defaulter which is a company, syndicate or other corporate person (and includes a partnership for the purpose of paragraph 3(3) and (6));

“date of issuance”, in relation to the service of a civil penalty order, means the date on which it is served in any of the ways specified in section 5 (“Manner of giving notices etc”) of the Act;

“defaulter” means the person on account of whose default a civil penalty order is served, and includes an alleged defaulter;

“level”, in relation to a fine, means a level on the standard scale;

“officer”, in relation to a corporate defaulter, means a member of its board or other governing body (by whatever name called), and if there is no such board or governing body, any employee or agent of the corporate defaulter acting on behalf of the corporate defaulter;

“penalty clause”, in relation to a civil penalty order, is the part of the order that fixes the penalty to be paid by the defaulter, and “fixed penalty clause” and “cumulative penalty clause” shall be construed accordingly;

“remediation clause” in relation to a civil penalty order, is the part of the order that stipulates the remedial action to be taken by the defaulter;

“show cause clause” in relation to a civil penalty order, is the part of the order that requires the defaulter to show cause why the civil penalty order should not have been served or should be withdrawn;

“standard scale” means the standard scale of fines referred to in section 280 of the Criminal Law Code and the First Schedule thereto.

*Power of PMD to issue civil penalty orders and categories thereof*

2. (1) Where default is made in complying with any provision of this Act or of any regulations or order made under this Act for which a civil penalty is specified to be leviable, the PMD may, in addition to, and without derogating from, any other non-criminal or criminal penalty that may be imposed by this Act or any other law for the conduct constituting the default, serve upon the defaulter a civil penalty order of the appropriate category specified in subparagraph (2), (3), (4), (5) or (6) or any combination of such orders as the provision in question may allow.

(2) A category 1 civil penalty order provides for—

- (a) a combination of a fixed penalty and a cumulative penalty over a period not exceeding ninety days for a specified completed and irremediable default (that is to say a default in respect of which no remediation is sought by the PMD or is possible), of which—
  - (i) the fixed penalty shall be the maximum amount specified for level 7; and
  - (ii) the cumulative penalty shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the fixed penalty under subparagraph (i);
- (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the PMD why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown within that period the order shall be deemed to have been issued with effect from the beginning of such period;
- (ii) if within that period it is shown that the order was issued in error the PMD shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

(3) A category 2 civil penalty order provides for—

- (a) a cumulative civil penalty for a specified completed but remediable default which—
  - (i) must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order immediately

(that is to say, within forty-eight hours after the civil penalty order is served on him or her);

- (ii) upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide for a penalty of the maximum amount of level three for each day, not exceeding ninety days, during which the defaulter continues to be in default (beginning on the day after the last day on which the defaulter fails to take the remedial action);
- (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the PMD why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown within that period the order shall be deemed to have been issued with effect from the beginning of such period;
  - (ii) if within that period it shown that the order was issued in error the PMD shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.
- (4) A category 3 civil penalty order provides—
- (a) for a combination of a fixed penalty and potentially two cumulative penalties for a specified completed but partially remediable default, of which—
    - (i) the fixed penalty shall be the maximum amount specified for level five; and
    - (ii) the cumulative penalty—
      - A. relating to subparagraph (i) shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the fixed penalty under subparagraph (i); and
      - B. relating to the taking of the specified remedial action—
        - I. shall be the maximum amount of level three for each day, not exceeding ninety days, that the defaulter fails to take the specified remedial action with effect from a specified date; and
        - II. must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order;
  - (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the PMD why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown within that period, the order shall be deemed to have been issued with effect from the beginning of such period;
  - (ii) if within that period it shown that the order was issued in error, the PMD shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.
- (5) A category 4 civil penalty order provides for—
- (a) a cumulative penalty for a continuing default which—

- (i) must be suspended conditionally upon the defaulter immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) ceasing the default;
- (ii) upon the civil penalty becoming operative because of failure to cease the default immediately, shall be the maximum amount fixed for level six for each day during which the default continues, not exceeding a period of ninety days;
- (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the PMD why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown within that period, the order shall be deemed to have been issued with effect from the beginning of such period;
  - (ii) if within that period it shown that the order was issued in error the PMD shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.
- (6) A category 5 civil penalty order provides for—
- (a) a combination of a fixed penalty and a cumulative penalty for a specified continuing default where the time of compliance is of the essence—
    - (i) both of which penalties must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order immediately (that is, within 24 hours of the issuance of the order, or a lesser specified time specified in the order);
    - (ii) which, upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide—
      - A. a fixed penalty of the maximum amount for level 7 for not meeting the specified deadline; and
      - B. a cumulative penalty of the maximum amount of level 3 for each day, not exceeding ninety days, during which the defaulter fails to pay the amount of the fixed penalty specified in—
        - I. subparagraph (i); and
        - II. subparagraph (ii) A;
  - (b) the suspension of the operation of the civil penalty order for a period of 24 hours from the date of its issuance to enable the alleged defaulter to show cause to the PMD why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown within that period, the order shall be deemed to have been issued with effect from the beginning of such period;
- (ii) if within that period it shown that the order was issued in error the PMD shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

*Service and enforcement of civil penalties and destination of proceeds thereof*

3. (1) References to the PMD serving upon a defaulter any civil penalty order in terms of this Act, are to be interpreted as requiring the PMD to serve such order in writing to the defaulter concerned in the manner specified in—

- (a) section 5(2)(a) of the Act, that is to say by hand delivery to the defaulter or his or her director, manager, secretary or accounting officer in person (or through an inspector or other person employed in the office of the PMD, or a police officer), or to a responsible individual at the place of business of the defaulter; or
- (b) section 5(2)(b) of the Act, that is to say by delivery through a commercial courier service to the defaulter's place of business in the mining province concerned or his or her principal office in Zimbabwe or other place of business of the defaulter; or
- (c) section 5(2)(c) of the Act, that is to say by electronic mail address furnished by the defaulter to the PMD in terms of section 141 ("Pre-inspection requirements and first and subsequent inspection certificates")(2)(d);
- (d) section 5(2)(d) of the Act, that is to say, if, after diligent inquiry, service of the civil penalty order by any of the foregoing means cannot be made, the defaulter shall be deemed to be notified of the civil penalty order if the PMD posts a copy of it for fourteen continuous days on the notice board at his or her Office (in which event the civil penalty order shall be deemed to be served on the defaulter on the first date of such posting):

Provided that in this case the PMD shall also depose in an affidavit to the following facts, namely that —

- (i) service of the civil penalty order could not be made by any of the means referred to in subparagraphs (a), (b) or (c); and
- (ii) the first date on which the copy of the civil penalty order was posted on the notice board of his or her Office;

and the PMD shall file such affidavit for record.

(2) The PMD shall not extend the period specified in a civil penalty order for compliance therewith except upon good cause shown to him or her by the defaulter, and any extension of time so granted (not exceeding in any case 30 days) shall be noted by the PMD in the civil penalty register.

(3) The PMD may, if the defaulter is a corporate defaulter —

- (a) in the same civil penalty order, name the corporate defaulter and every officer of the company, syndicate, other corporate person or partnership concerned as being so liable separately, or issue separate civil penalty orders in respect of the defaulter and each of the officers concerned; or
- (b) choose to serve the order only upon the corporate defaulter without naming the officers if, in his or her opinion (which opinion the PMD shall note in the civil penalty register), there may be a substantial dispute of fact about the identity of the particular officer or officers who may be in default:

Provided that nothing in this subparagraph affects the default liability of officers of the defaulter mentioned in subparagraph (6).

(4) The PMD may, in the citation clause of a single civil penalty order, cite two or more defaults relating to different provisions of this Act if the defaults in question —

- (a) occurred concurrently or within a period not exceeding six months from the first default or defaults to the last default or defaults; or
- (b) arose in connection with the same set of facts.

(5) Where in this Act the same acts or omissions are liable to both criminal and civil penalty proceedings, the PMD may serve a civil penalty order at any time before the commencement of the criminal proceedings in relation to that default, that is to say at any time before —



- (a) summons is issued to the accused person for the prosecution of the offence; or
- (b) a statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or
- (c) an indictment has been served upon the accused person, where the person is to be tried before the High Court;

as the case may be, but may not serve any civil penalty order after the commencement of the criminal proceedings until after those proceedings are concluded (the criminal proceedings are deemed for this purpose to be concluded if they result in a conviction or acquittal, even if they are appealed or taken on review). (For the avoidance of doubt it is declared that the acquittal of an alleged defaulter in criminal proceedings does not excuse the defaulter from liability for civil penalty proceedings).

(6) Every officer of a corporate defaulter mentioned in the civil penalty order by name or by office, is deemed to be in default, and any one of them can, on the basis of joint and several liability, be made by the PMD to pay the civil penalty in the event that the corporate defaulter does not pay.

(7) Upon the expiry of the ninety day period within which any civil penalty order of any category must be paid or complied with, the defaulter who fails so to pay or comply shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or both:

Provided that—

- (a) in the case of a corporate offender, every one of its officers is liable to pay the fine in equal shares if the corporate offender fails to pay it, and may be sentenced to imprisonment for a period not exceeding one year if he or she does not pay his or her share of the fine; or
- (b) in the case where the offender is a person (whether individual or corporate) who is a joint holder of the mining title under cover of which any act constituting this offence was committed, every joint holder shall be jointly and severally liable to pay the fine or (in the case of an individual offender or an officer of a corporate offender) to be imprisoned for a period not exceeding one year, or both.

(8) The amount of any civil penalty shall—

- (a) be payable to the PMD and—
  - (i) half shall form part of the Consolidated Revenue Fund; and
  - (ii) half shall form part of the Mining Industry Environment Protection Fund; and
- (b) be a debt due to the State and shall be sued for in any proceedings in the name of the PMD acting for the State in any court of competent civil jurisdiction:

Provided that for this purpose, the court of the provincial magistrate for the mining province concerned shall be deemed to have jurisdiction to hear the suit even if the monetary amount exceeds its prescribed jurisdiction.

(9) Proceedings in a court for the recovery of a civil penalty shall be deemed to be proceedings for the recovery of a debt as if the defaulter had acknowledged the debt in writing.

(10) If the PMD in terms of subparagraph (8)(b) desires to institute proceedings to recover the amounts of two or more civil penalties in any court of competent civil

jurisdiction, the PMD may, after notice to all interested parties, bring a single action in relation to the recovery of those penalties if the orders relating to those penalties—

- (a) were all served within the period of twelve months preceding the institution of the proceedings; and
- (b) were served—
  - (i) on the same defaulter; or
  - (ii) in relation to the same default or set of defaults, whether committed by the same defaulter or different defaulters; or
  - (iii) on two or more defaulters whose registered offices are in the same area of jurisdiction of the court before which the proceedings are instituted.

(11) Unless the PMD has earlier recovered in civil court the amount outstanding under a civil penalty order, a court convicting a person of an offence against subparagraph (7), may on its own motion or on the application of the prosecutor, and in addition to any penalty which it may impose, give summary judgement in favour of the PMD for the amount of any outstanding civil penalty fines due from the convicted defaulter.

*Limitation on issuance and enforcement of civil penalty orders*

4. (1) No civil penalty order may be issued more than twelve months from the date when the default or alleged default occurred or ceased to occur.

(2) A single civil penalty order may be served in respect of two or more defaults committed by the defaulter within a single period not exceeding six months, but if the aggregate of such defaults results in the defaulter becoming liable to a penalty or combined penalties in excess of the equivalent of one hundred and twenty thousand United States dollars (or its equivalent in local currency), the PMD may select one or any combination of those defaults which will not result in the defaulter becoming so liable, while reserving the right to serve a second or further additional civil penalty orders in respect of the defaults not so selected if the defaulter does not comply with the first civil penalty order.

(3) Any amount owing under a civil penalty order is a debt owed to the State for the purposes of section 15(b) of the Prescription Act [*Chapter 8:11*].

*Civil penalties to be paid in foreign currency by certain defaulting miners*

5. A defaulter who is a special mining lease holder or holder of a special grant shall pay any monetary penalty under a civil penalty order in United States dollars or another tradable foreign currency at the interbank rate of exchange of the local currency for the United States dollar prevailing on the day the civil penalty order is issued.

*When hearings on question whether to serve civil penalty orders may be held*

6. (1) If, in response to a show cause clause, an alleged defaulter satisfies the PMD, that it is not possible within 48 hours to demonstrate that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control, the PMD shall afford the alleged defaulter an opportunity to be heard by making oral representations before the PMD, for which purpose—

- (a) no later than 96 hours after the issuance of the civil penalty order, the alleged defaulter must furnish to the PMD an affidavit sworn by him or her giving reasons to show that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control;

- (b) within a reasonable period from the receipt of an affidavit referred to in paragraph (a) the PMD—
  - (i) may serve copies of the affidavit on any person who, in the PMD’s opinion, is affected by or may be a party to the default, together with an invitation to the parties to attend at the meeting to be presided over by the PMB (giving particulars of its time and venue) to enable the parties to make oral and written representations at that meeting on the question whether the civil penalty order was issued in error to the alleged defaulter and whether it should be issued to some other miner or not issued at all;
  - (ii) post an invitation to interested persons (that is to say existing or potential small-scale or other miners or other interested persons, including occupiers of land, within the area of the jurisdiction of the PMD) to attend at the meeting referred to in subparagraph (i) (giving particulars of its time and venue) to enable them to make oral and written representations at that meeting;

Provided that in such invitation (referred to in subparagraph (i) or (ii)) or at the meeting the PMD may restrict the parties to submitting written representations only, before or no later than 48 hours after the conclusion of the meeting.

(2) The following provisions apply to every hearing in connection with the issuance of a civil penalty order—

- (a) if the alleged defaulter fails to attend at the hearing the PMD will generally decide the issue against him or her and proceed to issue the civil penalty order, unless doing so, given the specific facts and circumstances of the case, would be contrary to this Act or result in injustice;
- (b) the applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD at the hearing;
- (c) the alleged defaulter bears the burden of showing on a balance of probabilities that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter’s control;
- (d) at the conclusion of the meeting PMD may—
  - (i) in the presence of the parties (if any) at the meeting announce his or her decision verbally whether or not to issue a civil penalty order, and if so to upon whom, and if the PMD decides to issue the civil penalty order the PMD shall do so within twenty-four hours; or
  - (ii) cancel the civil penalty order or re-issue it with effect from the date of his or her decision on the same or another defaulter, or re-issue it with effect from the date on which it was initially issued if the PMD finds that the defaulter’s objections to its issuance were baseless, vexatious or frivolous;

Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it (together with the civil penalty order, if any), to the alleged defaulter or any miner found to be liable for the civil penalty, and post a copy of the decision together with the civil penalty order, if any) and the reasons for it on the public notice board of the Director’s office.

(3) An alleged defaulter or substituted alleged defaulter who wishes to appeal against the PMD's decision in terms of subparagraph (2) (d) must—

- (a) lodge (together with the prescribed fee, if any) an appeal in writing with the Provincial Mining Director concerned, and copy it to the Secretary, no later than two working days after the alleged defaulter has received notification decision under subparagraph (2)(d); and
- (b) incorporate in the appeal the grounds on which the PMD's decision should be set aside and what decision ought to be substituted for it;

and thereupon the Provincial Mining Director shall, without delay, transmit the appeal to the Secretary together with any report the PMD may wish to attach thereto giving the grounds upon which the PMD based his or her decision.

(4) The effect of lodging an appeal under subparagraph (3) shall be to suspend the decision appealed against until the appeal is determined by the Secretary.

(5) Upon receiving an appeal in terms of subparagraph (3) the Secretary shall promptly (and in any event no later than seven working days of receiving it)—

- (a) dismiss the appeal by upholding the decision of the PMD; or
- (b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the PMD to investigate the matter further and make a further report and recommendations) on any one or more of the following grounds—
  - (i) allowing extraneous or irrelevant considerations to affect the decision, or
  - (ii) failure to take into account relevant considerations in arriving at the decision, or
  - (iii) any material mistake of fact or law that tainted the decision;or
- (c) uphold the appeal and substitute any other decision for that of the PMD, if the Secretary finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

Provided that the Secretary shall not make a finding on this ground without affording the PMD an opportunity to respond to the proposed finding.

(6) Any alleged defaulter who is aggrieved by a decision of the Secretary under subparagraph (5), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the alleged defaulter, whereupon the court may do any of the things the Secretary is empowered to do under subparagraph (5):

Provided the taking of a decision on review under this subparagraph shall not suspend the decision sought to be reviewed until the review is determined by the Administrative Court.

*Evidentiary provisions in connection with civil penalty orders*

7. (1) For the purposes of this Schedule the PMD shall keep a civil penalty register wherein shall be recorded—

- (a) the date of service of every civil penalty order, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the defaulter was in default, and the date on which the civil penalty order was complied with or the penalty thereunder was recovered, as the case may be;

- (b) if the alleged defaulter responded to the show cause clause in the civil penalty order with the result that—
    - (i) the order was cancelled because it was issued in error, the fact and the date of such cancellation; or
    - (ii) a hearing was held in accordance with paragraph 6, then—
      - A. a record or an adequate summary of any representations made at the hearing by way of an entry or cross-reference in, or annexure to, the register (and if recorded by way of annexure or cross-reference, the representations must be preserved for a period of at least six years from the date when they were made to the PMD);
      - B. a record of the outcome of the hearing, that is to say, whether or not the civil penalty order was cancelled, and if not, the date from which it was to have effect, and whether a different defaulter was served with it.
- (2) A copy of—
- (a) any entry in the civil penalty register, and of any annexure thereto or record cross-referenced therein, authenticated by the PMD as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the contents therein; or
  - (b) any civil penalty order that has been served in terms of this Act, authenticated by the PMD as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the service of the order on the date stated therein upon the defaulter named therein, and of the contents of the order.

## SECOND SCHEDULE (*Section 6 (8)*)

### DEEMED STRATEGIC MINERALS

#### PART I

#### DEEMED DECLARATION OF STRATEGIC MINERALS

#### Diamonds

#### PART II

#### SPECIAL CONDITIONS FOR EXPLOITATION OF ANY OF THE LISTED MINERALS

1. With respect to diamonds, the cleaning of such diamonds as are extracted in Zimbabwe shall be done in Zimbabwe (Provided that the Minister may, by general notice published in the *Gazette*, temporarily exempt any named miner from this condition for periods of not more than 6 months at a time but in any event for not longer than 18 months).
2. With respect to diamonds, not more than four named miners whose names shall be published by general notice in the *Gazette* shall at any time be given title, one of which shall be the Zimbabwe Consolidated Diamond Company (incorporated on 11th May, 2015), or its successor in title, which is hereby empowered to enter into one or more joint ventures with any other miner wishing to extract diamonds.
3. With respect to any of the listed strategic minerals, the miners thereof shall comply with such conditions as may be prescribed in this Schedule or by general notice in the *Gazette* concerning the nature of the benefits entitled to be received by any community immediately impacted by the mining of such minerals.

THIRD SCHEDULE (*Section 19 (3)*)

PROCEDURE FOR RECTIFICATION OF ENTRIES IN MINING CADASTRE REGISTER

*Application of Third Schedule*

1. To avoid doubt, this Schedule applies only to the rectification of errors or omissions discovered after an entry in the Mining Cadastre Register has been duly recorded or amended in accordance with the appropriate provision of this Act for the recording or amending of that entry.

*Non-substantive rectification of entries in Mining Cadastre Register*

2. (1) The Mining Cadastre Registrar (whether or not on the oral or written application of a PMD or an interested person)—

- (a) may at any time to correct any error or omission in, or update, any entry in the Mining Cadastre Register; or
- (b) shall make any alteration to an entry in the Mining Cadastre Register to reflect the true nature, scope or extent of the rights and interests of any person interested in the mining title to which the entry is related.

(2) In the case of an alteration in terms of subparagraph (1)(a) which the Registrar considers does not make any material or substantive change to the rights and interests of any person interested in the mining title to which the entry relates, the Registrar shall without delay cause to be posted on the electronic notice board of the Mining Cadastre Registry a notice informing interested members of the public of the alteration (and the notice shall continue to be so posted for a continuous period of two weeks thereafter).

*Substantive rectification of entries in Mining Cadastre Register*

3. In the case of an alteration which in the Registrar's opinion makes any material or substantive change to the rights and interests of any person interested in the mining title to which the entry relates; or the Registrar shall, before changing the entry—

- (a) cause to be posted on the electronic notice board of the Mining Cadastre Registry a notice informing interested members of the public of the alteration and inviting objections or representations from any interested person on the proposed alteration (and the notice shall continue to be so posted for a continuous period of two weeks thereafter); and
- (b) cause the notice referred to in paragraph (a) to be published in the *Gazette* for two successive weeks;

and if no objection is made in relation thereto by the seventh day after the last date on which the notice was posted or published in the *Gazette* (whichever is the later date), the Registrar may effect the proposed alteration to the entry concerned.

*Objections to proposed rectification of entries in Mining Cadastre Register to be heard by Registrar or PMD*

4. (1) If any objection to a proposed alteration is lodged timeously with the Registrar under paragraph 3, the Registrar shall determine from the nature of the entry concerned whether he or she should conduct the hearing into the objection or whether the hearing should be conducted by the PMD of the province in which the mining title relating to the entry is held.

(2) In the former case mentioned in subparagraph (1) (where the Registrar or his or her delegate is to preside at the hearing), the Registrar shall notify every objector and every other interested person in writing that the Registrar or delegate shall at the



date, time and place notified, hear such evidence and arguments as those persons may wish to lay before him or her regarding the proposed alteration or rectification of the entry in question.

(3) In the latter case mentioned in subparagraph (1) (where the PMD is to preside at the hearing), upon being notified of the objection by the Registrar, the PMD shall without delay post a copy of it on the notice board of his or her office together with an invitation to any interested persons to attend at the meeting to be presided over by the PMD (giving particulars of its time and venue) to enable the parties to make oral and written representations at that meeting on the question whether the mining right or title whose alteration or rectification is the subject of the proposed objection ought to be altered in the manner specified in the notice:

Provided that in such invitation or at the meeting the PMD may restrict the parties to submitting written representations only, before the meeting or no later than 48 hours after the conclusion of the meeting.

*Hearing of objections to proposed rectification by Registrar*

5. (1) The following provisions apply to every meeting for the consideration of an objection by the Registrar—

- (a) if any objector fails to attend at the hearing he or she shall be deemed to have abandoned his or her objection, and if there is no other objector, the Registrar may proceed to make such decision on the objection as appears to him or her to be the correct one;
- (b) the applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at quasi-judicial meetings, referrals and hearings”) shall be followed by the Registrar at the hearing;
- (c) the objector bears the burden of showing on a balance of probabilities why the proposed alteration or rectification should not be made, or made subject to any specified amendments;
- (d) at the conclusion of the meeting Registrar may, in the presence of the parties (if any) at the hearing announce his or her decision on the objection:

Provided that the Registrar may defer making a decision by no more than 48 hours after the conclusion of the hearing and in any event must give notice of his or her decision, and the reasons for it, to every objector and interested party, and post a copy of decision and the reasons for it on the on the electronic notice board of the Mining Cadastre Registry.

(2) Within seven days of the posting of the notice of any decision in terms of the proviso to subparagraph (1)(d) any objector or other interested party who attended the hearing referred to in subparagraph (1) may appeal against decision in terms of paragraph 7.

*Hearing of objections to proposed rectification by PMD*

6. (1) The following provisions apply to every meeting for the consideration of an objection by the PMD—

- (a) the object of the hearing is to enable the PMD to make a recommendation to the Registrar to make or not make the proposed alteration or rectification, or to make it subject to any specified amendments;
- (b) if any objector fails to attend at the meeting he or she shall be deemed to have abandoned his or her objection, and if there is no other objector, the PMD may proceed to make such recommendation as appears to him or her to be the correct one;

- (c) the applicable rules set out in the Fourth Schedule (“Conduct and powers of PMDs at quasi-judicial meetings, referrals and hearings”) shall be followed by the PMD at the hearing;
- (d) the objector bears the burden of showing on a balance of probabilities why the proposed alteration or rectification should not be made, or made subject to any specified amendments;
- (e) at the conclusion of the meeting PMD may, in the presence of the parties (if any) at the meeting announce the recommendation he or she is going to make to the Registrar:

Provided that the PMD may defer making a recommendation by no more than 48 hours after the conclusion of the hearing and in any event must give notice of his or her recommendation, and the reasons for it, to every objector and interested party, and post a copy of the recommendation and the reasons for it on the public notice board of the Director’s office.

(2) If within seven days of the posting notice of any recommendation in terms of the proviso to subparagraph (1)(e) any objector or other interested party who attended the meeting referred to in subparagraph (1) notifies the PMD in writing that he or she is opposed to the proposed recommendation for specified reasons, the PMD shall, without delay, transmit to the Registrar the recommendation, together with the reasons for it, and the reasons against it given by any objector or other interested party in terms of this subparagraph.

(3) Upon receiving a recommendation in terms of subsection (2) the Registrar may —

- (a) accept the recommendation of the PMD, without amendment; or
- (b) accept the recommendation of the PMD, with any amendment (recording reasons for the amendment); or
- (c) reject the recommendation of the PMD, recording reasons for the rejection;

whereupon the PMD shall promptly, after being notified by the Registrar’s decision —

- (i) notify any objector or interested party who attended the hearing referred to in subparagraph (1) of the Registrar’s decision (and where applicable, his or her reasons therefor); and
- (ii) make an entry in his or her provisional register in conformity to the Registrar’s decision.

#### *Judicial review*

7. (1) If any —

- (a) person objects to the Registrar making any alteration in terms of paragraph 2(2), on the basis that the alteration made by the Registrar is substantive, he or she may seek a review of the Registrar’s decision by the Administrative Court within seven days after the last date of its notification under that paragraph; or
- (b) objector or interested party who attended the hearing referred to in paragraph 5 or 6 is aggrieved by a decision of the Registrar under paragraph 5(1)(d) or 6(3), he or she may seek a review of the Registrar’s decision by the Administrative Court within seven days after the date of its notification to the objector or party.

(2) Upon review, the Administrative Court may —

- (a) decide the issue in favour of the Registrar; or
- (b) refer the decision back to the Registrar for reconsideration (whether with or without directions on how the decision is to be or she reconsidered) on any one or more of the following grounds —

- (i) allowing extraneous or irrelevant considerations to affect the decision,
- (ii) failure to take into account relevant considerations in arriving at the decision;
- (iii) any material mistake of fact or law that tainted the decision;
- (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
- (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

Provided that the Court shall not make a finding on this ground without affording the Registrar or the PMD an opportunity to respond to such finding;

- (c) where there is a substantive factual dispute that cannot be resolved by the Court on the evidence before it, refer the matter to the Registrar with a direction for it to investigate the matter further and make a report and recommendations to the Court (on the basis of which the Court shall make its decision under paragraph (a) or (b)).

(3) The lodging of an application for review under subparagraph (3) shall suspend the decision appealed against until the review is determined by the court.

FOURTH SCHEDULE (*Sections 34 (7)(b); 35 (5)(d); 36(2)(d); 38(3)(c); 44(1)(e); 55(6)(d); 94(6); 95(7); 123(4)(e); 125(4)(d); 143(3)(c); 144(10)(b); 162(4); 189(2)(b)(ii); 224(2)(a); 263(5); 265(6)*)

CONDUCT AND POWERS OF PMDS AT QUASI-JUDICIAL MEETINGS, REFERRALS AND HEARINGS

#### ARRANGEMENT OF PARAGRAPHS

##### *Paragraph*

1. Interpretation in Second Schedule.
2. Application of Schedule.
3. Summary and informal nature of hearing.
4. Keeping of order at hearings.
5. Venue of hearings.
6. Agreement between the parties.
7. Costs of hearings.
8. Consideration of written representations.
9. Questions of law.
10. Adjournment of hearing.
11. Taking of evidence at hearings.
12. Appointment of secretary.
13. Penalty for contempt of PMD's hearing.
14. Virtual hearings.
15. When assistant PMD may preside at hearings.
16. Legal fees and charges.
17. Recording and publication of decisions.

##### *Interpretation in Fourth Schedule*

1. In this Schedule—

“direct interest in the subject-matter of a hearing”, in relation to a PMD having such an interest for the purposes of paragraph 15, means that the PMD or any of his or her family members or associates has, to his or her knowledge, a financial interest in the subject matter in controversy or in a party to the proceedings, or any other interest that could be substantially affected by the outcome of the proceedings;

“hearing” means any stakeholders’ meeting, referral or hearing that is conducted as a quasi-judicial hearing in terms of this Schedule;

“serve, in relation to any notice or document served upon anyone for the purposes of a hearing, means served on that person in any of the ways specified in section 5 of the Act.

#### *Application of Fourth Schedule*

2. This Schedule applies to the conduct and powers of a PMD presiding at a hearing.

#### *Summary and informal nature of hearing*

3. Subject to this Schedule, the PMD shall hear and determine any matter at a hearing with the least formality and in the simplest, speediest and cheapest manner possible that is not unfair or unjust to any party to the hearing.

#### *Keeping of order at hearings*

4. To keep order at such hearing, the PMD may invite any police officer or other peace officer to be in attendance for the duration of hearing, and may order the removal from such hearing of any disruptive person.

#### *Venue of hearings*

5. The PMD may hold a hearing in any part of the mining province to which he or she is appointed, or at his or her discretion in such place outside the said mining province as may be convenient to the parties interested, and may (subject the provisions of the Act in terms of which such hearing is held) adjourn such hearing from time to time and from place to place as occasion may require.

#### *Agreement between the parties*

6. (1) Where possible, the PMD shall endeavour to achieve an agreement between the parties to the dispute that is not inconsistent with this Act, and shall reduce such agreement to writing, subscribed and dated by the parties concerned, and authenticated by the PMD.

(2) Any such agreement shall be deemed to the decision of the PMD resulting from the hearing, and be communicated as such (together with a copy thereof authenticated by the PMD) without delay to the Secretary, Mining Cadastre Registrar, the Board or the Minister, as may be appropriate.

#### *Costs of hearings*

7. Every party to a hearing shall bear the costs incurred by him or her in connection with any such hearing, including in particular the costs of legal representation and the expense of producing witnesses on his or her own behalf:

Provided that a legal practitioner shall not charge his or her client any costs exceeding the amount of the costs which he or she would have recovered had he or she instituted the proceedings in a magistrates court.

#### *Consideration of written representations*

8. (1) Where the PMD has requested the parties to make written representations to him or her before a hearing, the PMD may in his or her discretion restrict the parties

to the submissions they made in those representations, and not allow the introduction of any additional facts, evidence or issues not contained in those representations.

(2) If a party fails to make written representations for the purpose of a hearing as requested by the PMD, that party shall be regarded as having absented itself from the hearing and be treated accordingly.

*Questions of law*

9. The PMD may himself or herself, provisionally determine any question of law that arises in the course of a hearing or may adjourn the hearing to consult with a legal officer in the employment of the Ministry to obtain a verbal or written opinion on that question.

*Adjournment of hearing*

10. Unless this Act expressly provides otherwise, the PMD may adjourn a hearing only once in each the following cases—

- (a) with the agreement of the parties concerned in the hearing, to an agreed time, date and venue; or
- (b) by no later than 48 hours to obtain an opinion on a question on law in accordance with paragraph 9; or
- (c) if the PMD's original invitation to the hearing indicated that the PMD would consider only written representations from the parties, the PMD may adjourn the hearing by no later than 48 hours to enable any party to submit to the PMD those written representations.

*Taking of evidence at hearings*

11. (1) The PMD shall not be bound by the strict rules of evidence, and the PMD may ascertain any relevant fact by any means which he or she thinks fit and which is not unfair or unjust to either party.

(2) As far as is possible, expedient or desirable, a PMD shall hear, receive and examine, and take down or record by written or audio-visual means, all evidence that is presented at a hearing without administering oaths or summoning witnesses, and for that purpose shall not be bound by the common law rules on the admissibility of evidence, such as the hearsay rule.

(3) However if the PMD feels this to be necessary in any particular exceptional case or set of circumstances, the PMD—

- (a) may examine witnesses on oath, which oath he or she is hereby empowered to administer, and take down the evidence in writing to be signed by the person giving the same; and
- (b) has power to summon all witnesses required by the respective parties, or whom he or she may deem necessary to appear before him or her, and, in default of any such witness appearing, may, upon proof that his or her reasonable expenses have been paid or tendered to him or her, issue a warrant for his or her arrest, and may inflict upon him or her such penalties as he or she would have been liable to for disobedience to a subpoena to appear before a magistrates court.

(4) The service of the summons and the execution of the warrant, issued in terms of subparagraph (3), may be lawfully performed by any police officer or peace officer appointed for that purpose by the PMD.

(5) Any witness who, being duly sworn, wilfully gives false evidence before such PMD on any question material to the matter at issue, knowing such evidence to be false, or not knowing or believing it to be true, shall be guilty of perjury, and liable to be prosecuted and punished accordingly.

*Appointment of secretary*

12. The PMD may appoint an employee of his or her Office or of the Ministry to attend the hearing as secretary to record its proceedings, to keep its papers, to summon and minute the testimony of witnesses and generally to perform such duties connected with such hearing as the PMD shall direct (and if no such appointment is made the PMD shall discharge these tasks himself or herself).

*Penalty for contempt of PMD's hearing*

13. If any person wilfully insults the PMD during his or her hearings, or wilfully interrupts the proceedings of any such hearing, or on being summoned or examined as a witness before a PMD, refuses to be sworn or to answer any lawful question, such PMD may, if he or she thinks fit, impose on him or her a category 5 civil penalty in which the fixed penalty shall be an amount equivalent to the maximum fine for level 3.

*Virtual hearings*

14. (1) In addition to meeting with parties physically present, the PMD may hold a hearing partially or exclusively by the use of any means of communication by which all the parties at the hearing can hear and be heard at the same time (hereinafter referred to as an "virtual hearing").

(2) A person who participates in an virtual hearing is taken for all purposes to have been present at the hearing.

*When assistant PMD may preside at hearing*

15. The PMD shall direct any one of his or her assistant PMDs to preside over a hearing only if—

- (a) the hearing overlaps with any other hearing; or
- (b) the PMD has any direct interest in the subject-matter of the hearing that may affect or appear to affect his or her objectivity:

Provided that the PMD must first declare such interest to the parties concerned, and may only recuse himself or herself if either or any of the parties objects in writing to him or her presiding at the hearing.

*Legal fees and charges*

16. (1) No statutory tariff of legal practitioners' fees and charges shall apply to any fee or charge levied by a legal practitioner for work done at or in connection with any hearing to the extent that such fee or charge is prescribed in such tariff as a minimum fee or charge.

(2) In the interests of mitigating the costs of hearings, and notwithstanding any statutory tariff of legal practitioners' fees and charges, the Minister may, in terms of section 314 ("Regulations"), and after consultation with the Minister responsible for justice, prescribe the fees and charges that legal practitioners may seek or take in connection with work done at any hearing.

*Recording and publication of decisions*

17. The decision of the PMD at the conclusion of every hearing (including a deemed decision in terms of paragraph 6(2)) shall—

- (a) be recorded on at least two hard copies signed and stamped by the PMD, in the English language or in any of the official languages in which the hearing was held, and be filed and kept as part of the official records of the PMD for at least six years; and
- (b) be posted without delay on the notice board of the PMD's office for the public to read for at least seven continuous days.



FIFTH SCHEDULE (*Section 56 (2)(b)*)

SPECIAL CONDITIONS FOR THE CERTIFICATION OF INDEPENDENT MINE SERVICE SITES

*Paragraph*

1. Interpretation.
2. Additional requirements for registration of independent mine service sites.
3. Certification requirements for of independent mine service sites.
4. Effect of registration and certification of custom milling plants re dealings in gold.
5. Permit to transport gold ore to custom milling plant.
6. Monthly returns by operators.
7. Inspection of books and records, etc..
8. Cancellation of certificates and permits.
9. Offences and penalties.

APPENDIX 1: Fees.

APPENDIX 2: Metallurgical Requirements of Custom Milling Plants.

*Interpretation in Fifth Schedule*

1. (1) In this Schedule—

“controlling interest”, in relation to a company, means—

- (a) not less than fifty-one *per centum* of shares in the company; or
- (b) shares entitling the holders thereof to not less than fifty-one *per centum* of the votes in the affairs of the company;

“Gold Trade Enforcement Unit” means the Unit established by section 22B of the Gold Trade Act [*Chapter 21:03*];

“law enforcement agencies” means the Police Force and any intelligence service maintained by the State;

“Minerals Unit” means the Unit established by the Mines and Minerals (Minerals Unit) Regulations, 2008 (Statutory Instrument 82 of 2008) (or any other law that may be substituted for the same);

“operator” means the operator of a custom milling plant;

“prescribed fee” means the appropriate fee prescribed in Appendix 1;

“Reserve Bank” means the Reserve Bank of Zimbabwe established by the Reserve Bank of Zimbabwe Act [*Chapter 22:10*].

(2) Any word or expression to which a meaning has been assigned in the Gold Trade (Gold-buying Permits for Concession Areas) Regulations, 2002 (or any law that may be substituted for the same), shall have the same meaning when used in this Schedule.

*Additional requirements for registration of independent mine service sites*

2. (1) No independent mine service site shall be registered in terms of section 53 of the Act unless—

- (a) in the case of an applicant who, at the date of commencement of this Act, is operating a custom milling plant, the applicant is, or undertakes in writing to form within six months from the date of registration of the plant—
  - (i) a company incorporated or registered in terms of the Companies Act [*Chapter 24:03*] in which—

- A. not less than forty-nine *per centum* of shares in the company;  
or
- B. shares entitling the holders thereof to not less than forty-nine *per centum* of the votes in the affairs of the company;  
are held by one or more Zimbabwean citizens;  
or
- (ii) a partnership in which a share of not less than forty-nine *per centum* of the assets, profits and liabilities of the partnership is held by one or more Zimbabwean citizens;  
or
- (b) in the case of an applicant who, at the date of commencement of this Act, is not operating a custom milling plant, the applicant is—
  - (i) a company incorporated or registered in terms of the Companies Act [*Chapter 24:03*] in which a controlling interest is held by one or more Zimbabwean citizens;
  - (ii) a partnership in which a share of not less than fifty-one *per centum* of the assets, profits and liabilities of the partnership is held by one or more Zimbabwean citizens.

(3) In addition to the documentation required by section 53 of the Act, an applicant for registration of an independent mine service site for the establishment of a custom milling plant shall—

- (a) in his or her application, disclose—
  - (i) the maximum milling capacity of the plant; and
  - (ii) in what respects the plant complies with the metallurgical requirements specified in Appendix 2;
 and
- (b) if he or she operates or intends to operate more than one custom milling plant, make a separate application in respect of each plant; and
- (c) furnish proof of prior vetting and clearance of his or her application by the Minerals Unit or Gold Trade Enforcement Unit.

*Certification requirements for of independent mine service sites*

3. (1) The PMD shall, for the purposes of section 53(10)(f)(i) certify an independent mine service site for a period of twelve months at a time subject to—

- (a) in the case of a custom milling plant, the plant's conformity with the metallurgical requirements specified in Appendix 2; and
- (b) compliance with the applicable operational standards prescribed in the Mining (Management and Safety) Regulations, 1990, published in statutory instrument 109 of 1990 (or any other law that may be substituted for the same); and
- (c) such other conditions relating to—
  - (i) the observance of minimum operational standards; and
  - (ii) standards of safety, health and sanitation at the plant; and
  - (iii) the keeping of records; and
  - (iv) environmental protection;
 as the PMD shall specify in writing to the operator.

(2) Upon certification an operator shall take such steps as are satisfactory to the PMD to notify—

- (a) the Reserve Bank; and
- (b) the rural district council within whose area of jurisdiction the independent mine service site is located;

of the location of the independent mine service site and fact that it has been certified.

(3) An operator wishing to renew the certification of his or her independent mine service site shall pay the prescribed (non-refundable) registration renewal fee to the PMD no later than fourteen days after the end of the period of twelve months for which he or she was certified, and paragraph 2 and subparagraphs (1) and (2) of this paragraph shall apply to such application as it applied to the original application for registration under section 53 of the Act and to the original certification under this paragraph, with the additional requirement that the applicant (if he or she is operating a custom milling plant) shall obtain from the Reserve Bank written confirmation that he or she has substantially complied with all the requirements of the Act, the Gold Trade Act [*Chapter 21:03*] and this Schedule.

(4) Any person may, on payment of the prescribed fee, inspect the register of certificates at all reasonable times at the premises of the PMD or at such other place as the PMD may direct.

*Effect of registration and certification of custom milling plants re dealings in gold*

4. (1) Upon registration and certification of a independent mine service site for the establishment of a custom milling plant in terms of paragraphs 2 and 3 the operator thereof shall, for all purposes of the Gold Trade (Gold-buying Permits for Concession Areas) Regulations, 2002, and the Gold Trade Act [*Chapter 21:03*] be deemed to be a gold-buying agent of the permit-holder for the concession area where his or her custom milling plant is located.

(2) Within forty-eight hours after coming into possession of more than 100 grams of gold, an operator of a custom milling plant shall sell or dispose of the gold to the permit-holder for the concession area where his or her custom milling plant is located or to a gold-buying agent of such permit-holder.

(3) The operator shall be solely responsible for the security of any gold that comes into his or her possession until it is sold or disposed of to a permit-holder or his or her agent in terms of subparagraph (2).

*Permit to transport gold ore to custom milling plant*

5. (1) No person shall transport gold ore for milling at a custom milling plant, and no operator of a custom milling plant may accept such ore for milling, unless the person obtains a permit for the transportation of the ore for that purpose from the PMD of the mining province within which the custom milling plant is situated.

(2) An application for a permit referred to in subparagraph (1) shall be in the form required by the PMD and be accompanied by the prescribed fee.

(3) The PMD shall issue a permit to a person who makes application therefor for a period of six months at a time, subject to such conditions as the PMD shall specify in the permit.

*Monthly returns by operators*

6. An operator shall, within fourteen days after the end of each month, render a return to the PMD in Form M.M.21A ("Return of mineral or mineral bearing products (beneficiation plant)") referred to in the First Schedule to the Mining (General) Regulations, 1977 (or any other law that may be substituted for the same).

*Inspection of books and records, etc.*

7. The PMD or any person duly authorised by him or her shall at all reasonable times have access for the purpose of—

- (a) inspection to all books and records, reports and other documents relating to the acquisition, disposal or removal of any gold or gold ore as may be necessary for the purpose of ascertaining or verifying any return, details, certificate or document rendered under this Schedule;
- (b) ensuring compliance with the conditions subject to which the custom milling plant was registered and any provisions of the Act and regulations made thereunder which apply to the custom milling plant.

*Cancellation of certificates and permits*

8. (1) If the PMD is satisfied that an operator or person referred to in paragraph 5 is in breach of any condition subject to which he or she was registered and certified under the Act and this Schedule, or permitted under paragraph 5, as the case may be, he or she may, after affording the operator or person concerned a reasonable opportunity to make representations in the matter or to remedy the breach, as may be appropriate in the circumstances, cancel the registration, certification or permit by notice in writing to the operator or person concerned, giving the reasons therefor.

(2) A person whose certificate of registration is or permit cancelled in terms of this paragraph may appeal to the Minister against such cancellation within thirty days of the notification thereof.

(3) The noting of an appeal in terms of subparagraph (2) shall not suspend the cancellation until the Minister's decision on the appeal has been given.

(4) Upon an appeal in terms of subparagraph (2), the Minister may confirm the cancellation or set it aside.

*Offences and penalties*

9. (1) Any person who—

- (a) being the operator of an independent mine service site—
  - (i) fails to register the site in accordance with the Act;
  - (ii) fails to render the return required by paragraph 6;
  - (iii) knowingly accepts gold ore for milling from a person who does not have a permit to transport it for that purpose in terms of paragraph 5;
  - (iv) obstructs the PMD or any person duly authorised by him or her in the performance of his or her duties in terms of paragraph 7;
- (b) transports gold ore to a custom milling plant without a permit in terms of paragraph 6;

shall be guilty of an offence and liable to a fine not exceeding level five or, in default of payment, imprisonment for a period not exceeding six months.

(2) Without prejudice to any other penalty provided by or under the Gold Trade Act [Chapter 21:03], any operator who contravenes paragraph 4(2) shall be guilty of an offence and liable to a fine not exceeding level five or, in default of payment, imprisonment for a period not exceeding six months.

APPENDIX 1 (*Paragraph 2*)

FEES

Type of Application	Fee
Application for registration as operator of custom milling plant	As
Application fee . . . . .	prescribed
Registration fee . . . . .	”

Type of Application	Fee
Inspection fee (s. 3 (8)) . . . . .	”
Application for permit to transport gold or to custom milling plant	
Application fee . . . . .	”
Permit fee . . . . .	”

APPENDIX 2 (*Paragraph 2*)

## METALLURGICAL REQUIREMENTS OF CUSTOM MILLING PLANTS

Every custom milling plant shall conform to the following requirements as approved by the Director of Metallurgy:

1. The gravity section must be comprised of any of the following—
  - A centrifugal concentrator in series with rubber strakes; or
  - A James Table producing three products, namely, a concentrate product, a middling product and a tailings product; or
  - A copper plate in series with rubber strakes.
2. The free gold recovery unit must be equipped with an amalgam barrel having an amalgam separator and a copper plate.
3. The plant must be equipped with an amalgam retort for recycling mercury.

SIXTH SCHEDULE (*Section 122(1)(a)(4)*)

## INFORMATION AND PLAN REQUIRED IN CONNECTION WITH APPLICATIONS FOR ORDINARY AND SPECIAL MINING LEASES

## PART I

## INFORMATION REQUIRED IN CONNECTION WITH ORDINARY AND SPECIAL APPLICATIONS FOR A MINING LEASE

1. General information to be furnished by an applicant in connection with an application for an ordinary or special mining lease—
  - (a) the nature and size of the mineral deposits within the area over which the applicant seeks a mining lease; and
  - (b) particulars of the minerals which are being mined (by the applicant or other miners) or are to be mined by the applicant in the area applied for; and
  - (c) the estimated life and economic viability of the proposed mine; and
  - (d) the extent of the investment that will be made in the proposed mine; and
  - (e) the proposed method of extraction, mining and treatment of ore from the proposed mine; and
  - (f) any other relevant circumstance.

## PART II

## PLAN REQUIRED IN CONNECTION WITH APPLICATION FOR SPECIAL MINING LEASE

2. The plan for the development and operation of the proposed mine must include—
  - (a) a feasibility study relating to the development of the proposed mine; and
  - (b) a financing plan indicating the type and source of finance to be obtained in order to develop the proposed mine and construct the necessary infrastructure and facilities; and

- (b) a marketing plan setting out proposals and a timetable for the beneficiation and disposal of the output of the proposed mine, together with any relevant marketing studies; and
- (c) proposals for the efficient and economic exploitation of the mineral deposits to be mined, specifying the proposed method of mining and treatment of the ore and the dates on which such mining and treatment will commence; and
- (d) an economic evaluation of the proposed mine, including a detailed forecast of the capital investment, operating costs and projected revenues and profits; and
- (e) a comprehensive report, supported by documentary evidence, on the mineral deposits to be mined, including details of their extent, grade and quantity and distinguishing between proven, probable and estimated ore reserves and indicating the anticipated mining conditions; and
- (f) details of any roads, railway lines, electricity supply and other infrastructure which will be required and which the applicant proposes to provide for the purposes of mining operations; and
- (g) the proposed timetable for the establishment and operation of the proposed mine and the facilities associated with it; and
- (h) details of any insurance to be taken out against liability arising from mining operations, including liability for damage to the environment and injury to persons and property; and
- (i) proposals for the storage, recording and shipment of the output of the proposed mine; and
- (j) information on the extent to which local goods and services will be utilized in the development and operation of the proposed time; and
- (k) details of the manpower requirements of the proposed time, including the numbers of expatriate staff and any proposals for training citizens of Zimbabwe.

#### SEVENTH SCHEDULE (*Section 269 (5)*)

##### ANCILLARY POWERS OF DEPARTMENT OF GEOLOGICAL SURVEY, DEPARTMENT OF MINING ENGINEERING AND DEPARTMENT OF METALLURGY

1. To acquire by lease, purchase or otherwise, immovable property, and to construct buildings thereon.

2. To enter into agreements and to modify or rescind such agreements:

Provided that the Department shall not enter into agreements of suretyship or guarantee without the approval of the Minister and the Minister responsible for finance.

3. To accept a grant, donation or bequest of movable property, including money, made to the Department:

Provided that if a grant, donation or bequest referred to in this paragraph—

- (a) is made subject to any conditions; or
- (b) would involve additional or recurrent expenditures on the part of the Department;

the Department shall not accept the grant, donation or bequest without the consent of the Minister and the Minister responsible for finance.

4. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research and to pay for the aforesaid, where necessary.



5. To provide such services as the Department considers could properly be provided by the Department.

6. Generally, to do all such things as are incidental or conducive to the exercise of the functions or the performance of the duties of the Department or which are incidental to the powers specified in this Schedule, or which are calculated, directly or indirectly, to enhance the value of, or develop, the services provided by the Department.

#### EIGHTH SCHEDULE (*Section 314 (4)*)

##### MATTERS IN RESPECT OF WHICH ADMINISTRATIVE COURT SHALL CONTINUE TO HAVE EXCLUSIVE JURISDICTION AFTER ESTABLISHMENT OF MINING COURT

Part IV (“Staking Agents”)

Section 46 (“Disputes over reservation of timber under section 45”) (2), (3) and (4) (the references to the “High Court” in section 46(4) shall be substituted by references to the “Mining Court”).

Section 54 (“Registration of Claims or group of contiguous claims”)

Section 74 (“Applications and Reviews”)

Section 267 (“Appeals against decisions under sections 263 and 265”)

Paragraph 7 of the Third Schedule

Part XXVI and Ninth Schedule

#### NINTH SCHEDULE (*Section 314 (4)*)

##### OPERATION OF THE MINING AUCTION PLATFORM

##### PART I

##### PROCEDURES FOR COMPETITIVE AND RESTRICTED BIDDING

##### ARRANGEMENT OF PARAGRAPHS

##### *Paragraph*

1. Interpretation in Ninth Schedule.
2. Form of communication and invitations to bid.
3. Contents and publication of bidding document.
4. Bidding period.
5. Bidding documents.
6. Clarification and modification of bidding documents.
7. Cancellation of auctions or rejection of bids.
8. Submission of bids or applications to pre-qualify.
9. Bid security.
10. Amendment or withdrawal of bid.
11. Opening of bids.
12. Examination of opened bids.
13. Clarification of bids.
14. Rejection of bids.
15. Evaluation of bids.
16. Prohibition of negotiation regarding bids; reserve price may be set.
17. Confidentiality.
18. Award of mining right or title to winning bidder.

PART II

CHALLENGE PROCEEDINGS

19. Challenge to auction proceedings.
20. Application for review of auction proceedings by review panel.
21. Appointment of review panels.
22. Review by review panel.
23. Appeal to Administrative Court against decision of review panel.

*Interpretation in Ninth Schedule*

1. In this Schedule, unless the context otherwise requires—

“accreditation of the right or title” means a certificate of registration of a claim or mining location or independent mining site, ordinary mining lease, special mining lease or special grant, as the case may be;

“auction documents” means the official record of the proceedings of any particular auction, compiled by or on behalf of the Director of the Platform, together with any documentation (including bidding documents), material or electronic, pertinent to that auction;

“bid” means an offer, solicited by the platform in accordance with Part XXIII, which if accepted would bind the bidder to purchase the mining right or title;

“bid security” means a monetary assurance given by a bidder and guaranteed by a bank or other third party that—

(a) if the bidder withdraws his or her bid before the end of the bidding period; or

(b) refuses to sign the auction contract if selected;

the bidder will forfeit the bid security amount to the Secretary;

“bidder” means a potential party to an auction contract with Secretary for the purchase of the mining right or title;

“bidding period” means the period described in paragraph 4(i), within which bids may be submitted;

“bidding document” means a document provided by the Platform to bidders and indicating the form in which they are to submit their bids and the information they are to provide in their bids;

“responsive bid” means a bid that meets the requirements of the Platform;

“restricted bidding” means bidding restricted to those applicants for mining rights or title referred to section 260;

*Form of communication and invitations to bid*

2. (1) All communications between bidders and the Platform shall be in writing, and the Platform shall not entertain or respond to a communication from a bidder that is not in writing:

Provided that the Platform may comply with an oral or telephonic request for the supply of a document that is generally available to bidders.

- (2) The Platform shall invite bids through the publication of a bidding document.

*Contents and publication of bidding document*

3. (1) A bidding document containing the Platform’s invitation to bid or, as the case may be, invitation to prequalify, shall contain the following information—

- (a) the address of the Platform and the contact details of the Director of the Platform from whom further information can be obtained; and
- (b) a description of the mining right or title being auctioned (and if the mining right or title involves a certificate of registration of a mining block, or a special or ordinary mining lease or special grant, the bidding document must disclose that realisation of the right or title is dependent on the bidder satisfying section 155 (“Pre-Inspection requirements”) within a specified time after the award of that right or title to the winning bidder); and
- (c) how the bidding documents or, if applicable, the prequalification documents may be obtained and the price, if any, payable for them; and
- (d) the place (virtual or physical) at which and the time within which bids or applications to prequalify must be submitted; and
- (e) such other matters as may be prescribed or as may be set out in standard forms issued by the Platform.

(2) The Platform shall cause the bidding document containing its notice of invitation to bid or to pre-qualify, as the case may be, to be published in the *Gazette* and—

- (a) in at least one national newspaper of wide enough circulation to reach sufficient bidders to ensure effective competition; or
- (b) to the extent it is feasible to do so, on the Internet and on any website established by the Platform;

and may cause the notice to be broadcast over radio or television, so as to reach as many potential bidders as possible.

(3) For the purpose of ensuring wide competition, the Platform may send its notice of invitation to bid or pre-qualify directly to potential bidders, to the Chamber of Mines or other chambers of commerce and to trade or professional associations concerned in any way with mining after the notice has been published in terms of subparagraph (2)

Provided that the Platform shall keep a record of any bidders to whom the notice is sent directly, and shall file the record with the auction documents.

#### *Bidding period*

4. (1) The bidding period shall commence on the date on which the bidding document is published in the *Gazette* in terms of paragraph 3(2), and shall end on the date specified in that document or in a subsequent notice as the closing date for the submission of bids.

(2) In determining the appropriate bidding period for any auction, the Platform shall take into account—

- (a) the time reasonably required for bidders to prepare their bids, taking into account the level of detail required and the complexity of the bids, including the time needed for any site visits and pre-bid meetings; and
- (b) any need for bidders to submit authenticated legal documents or similar documents as part of their bids and the time required to obtain such documents; and
- (c) the time potential bidders need to obtain the bidding document and to deliver and submit their bids to the Platform.

Provided that the bidding period for any auction shall not be shorter than the period prescribed for the auction of any class of mining right or title.

*Bidding documents*

5. (1) For the purposes of any auction, the Platform may use the prescribed standard bidding documents, including any manuals or guidelines pertaining thereto that may be issued by the Procurement Regulatory Authority of Zimbabwe established by the Public Procurement and Disposal of Public Assets Act [*Chapter 22:23*].

(2) The Platform shall ensure that its bidding documents are ready for distribution before the publication of the invitation to bid and shall provide them, promptly and without discrimination—

- (a) to all potential bidders that respond to the invitation to bid; or
- (b) in the case of competitive bidding with pre-qualification, to all bidders that have been prequalified; or
- (c) in the case of restricted bidding, to all the bidders that have been selected or invited to participate in the auction.

(3) The Platform shall not charge more for bidding documents than the cost of printing and distributing them, and where they are delivered by electronic means they shall be free of charge.

(4) Bidding documents shall provide bidders with all the information they need in order to submit responsive bids, and shall give them such particular information as may be prescribed.

(5) The Platform shall record the name, postal address, telephone number and e-mail address of every bidder to whom an invitation to bid is issued, together with details of the bidder's contact person, and shall file the record with the procurement documents.

*Clarification and modification of bidding documents*

6. (1) The Platform shall respond promptly and in writing to a written request from a bidder for clarification of any bidding document, and the response shall be communicated simultaneously to all the bidders without identifying the bidder that requested the clarification and in a manner that does not disclose the identities of the other bidders.

(2) For the purpose of clarifying bidding documents, the Platform may, before the close of the bidding period—

- (a) hold one or more meetings of bidders; and
- (b) conduct one or more site visits;

which all bidders shall be invited to attend.

(3) Any clarification of bidding documents in terms of subparagraph (1) or (2) shall be effected within such period as may be prescribed.

(4) The Platform may modify its bidding documents at any time before the end of the bidding period, but the modification shall be communicated simultaneously to all the bidders and, where necessary, the Platform shall extend the bidding period to allow bidders to alter their bids to take the modification into account.

*Cancellation of auctions or rejection of bids*

7. (1) If possible the Platform shall avoid cancelling any auction, but may do so where—

- (a) the need for the auction has ceased to exist or changed significantly; or
- (b) the subject matter of the mining right or title has been destroyed, or expropriated by the State in the exercise of its eminent domain, or is for

any other reason no longer available for any purpose in connection with mining; or

- (c) subject to subparagraph (5), insufficient, or no responsive bids are received; or
- (d) there is evidence of collusion among bidders; or
- (e) it is otherwise in the public interest.

(2) Whenever the Platform cancels an auction it shall promptly notify bidders accordingly, and cause a written statement detailing the reasons for the cancellation to be filed with the auction documents.

(3) Where the Platform cancels an auction proceedings before the end of the bidding period, it shall—

- (a) ensure that all hard-copy bids received are available for the bidders to collect for a period of thirty days following the announcement of the cancellation; and
- (b) destroy all bids after the thirty-day period referred to in paragraph (a).

(4) If so specified in the bidding documents, the Platform may reject all bids at any time prior to their acceptance, where the bids are not substantially responsive, or where there is evidence of lack of competition:

Provided that the Platform shall notify all the bidders promptly of the rejection of their bids and, upon request by any such bidder, shall inform the bidder of the reasons for the rejection.

(5) Where no responsive bids are received or the auction is otherwise unsuccessful, the Platform shall conduct a reasonably adequate investigation into the failure and record—

- (a) the reasons for the failure; and
- (b) the course of action taken by the Platform;

and shall file the record with the auction documents.

(6) The Platform shall incur no liability towards bidders for action taken by it in terms of this paragraph:

Provided that this subparagraph shall not relieve the Platform, or any of its officers, employee or agents, from liability for gross negligence or for anything done in bad faith.

#### *Submission of bids or applications to pre-qualify*

8. (1) Bids and applications to pre-qualify shall be submitted in writing, duly signed, before the end of the bidding period or, as the case may be, before the date stated in the invitation to pre-qualify as the date by which applications to pre-qualify must be submitted.

(2) Bids and applications to pre-qualify may be submitted to the Auction Platform by hand or by post or by courier, at the option of the bidder:

Provided that, subject to any e-procurement policy laid down by the Platform, the Platform in its bidding documents may authorise other methods of submission of bids, such as by electronic mail, as long as the confidentiality and security of bids are assured.

(3) Where a bid or application to pre-qualify is received by the Platform after the deadline specified in subparagraph (1)—

- (a) if the bid or application is received in electronic form, the Platform shall not consider it;

- (b) if the bid or application is received in hard copy, the Platform shall not open it but instead shall permit the bidder to collect it within thirty days after the deadline, following which the Platform may return it or destroy it unopened.

(4) Bids shall remain valid for the period indicated in the bidding documents, and if a bidder modifies or withdraws a bid while it is valid the bidder shall forfeit any bid security he or she may have provided in respect of the bid.

(5) The period of validity of a bid may be extended only during that period and with the agreement of the bidder concerned, and a bidder that agrees to extend the period shall be entitled to a corresponding extension of any bid security he or she may have provided.

*Bid security*

9. (1) Subject to subparagraph (2) and to any prescribed requirements or conditions, the Platform may require bidders to provide bid security in order to deter irresponsible bids and encourage bidders to fulfil the conditions of their bids.

- (2) A requirement for the provision of bid security —
  - (a) shall be stated in the procurement documents; and
  - (b) shall be imposed equally on all bidders.

*Amendment or withdrawal of bid*

10. (1) A bidder may amend or withdraw his or her bid by submitting a notice of amendment or withdrawal to the Platform not later than the end of the bidding period.

- (2) A notice of amendment or withdrawal of a bid —
  - (a) shall comply with any directions that may be specified in the invitation to bid; and
  - (b) in the case of —
    - (i) a hard-copy bid, shall be submitted in an envelope identifying the invitation to bid and clearly labelled “Amendment of Bid or Proposal” or “Withdrawal of Bid or Proposal”, as the case may be;
    - (ii) a bid submitted as an electronic communication, shall comply with such requirements as may be prescribed or as the Platform may specify.

*Opening of bids*

11. (1) At the end of the bidding period, or as soon as possible thereafter, the Platform shall, at the time and place specified in the bidding documents, open all the bids it has received.

(2) The opening of bids shall be conducted in public and the Platform shall invite bidders or their representatives to witness it.

(3) At the opening of bids, an employee or agent of the Platform shall read aloud and record the following particulars of each opened bid —

- (a) the name of the bidder; and
- (b) the total amount of the bid; and
- (c) any discounts or alternatives offered by the bidder; and
- (d) whether or not bid security has been given, where that is required; and
- (e) any essential supporting documents.

(4) Where bids have been received by electronic communication, the procedure to be followed at the opening of bids shall be as prescribed or as specified by the Platform.



(5) The Platform shall ensure that a copy of the record of bids received is made available to any bidder that requests it.

(6) No decision regarding the disqualification or rejection of any bid shall be taken or announced in the opening of bids.

(7) Following opening of bids, and until a preliminary decision on awarding the mining right or title has been notified to the successful bidder, no bidder shall make any unsolicited communication to the Platform or try in any way to influence the Platform's examination or evaluation of the bids.

(8) Where a bidder contravenes subparagraph (7), his or her bid shall be rejected by the Platform.

*Examination of opened bids*

12. Following the opening of bids, the Platform shall first determine whether the bidders meet the qualification criteria, if any, contained in the bidding documents and reject those that do not, and then shall examine the bids in order to determine whether the bids are complete and responsive:

Provided that bidders shall be deemed to have met the qualification criteria if any default of compliance therewith relates simply to the failure to submit company registration or incorporation documents, credentials or other historic documents that can be readily availed or accessed.

*Clarification of bids*

13. (1) Subject to this paragraph, the Platform may seek clarification from a bidder of its bid, but the request and any response to it shall be made in writing.

(2) A request for clarification in terms of subparagraph (1) shall not seek, and the bidder shall not be permitted to—

- (a) amend the bid price, except to correct arithmetical errors; or
- (b) change the substance of the bid; or
- (c) alter substantially anything that is a deciding factor in the evaluation of the bid.

(3) Any clarification received from a bidder which is not in response to a request in terms of subparagraph (1) shall not be taken into account in the evaluation of the bid.

(4) If a bidder fails to reply to a request for clarification in terms of subparagraph (1), the Platform may reject his or her bid.

*Rejection of bids*

14. (1) The Platform shall reject a bid if it finds that information submitted in the bid—

- (a) is materially false or misleading; or
- (b) is inaccurate or incomplete to an extent that makes it impossible to evaluate the bid.

(2) This paragraph shall not be construed as limiting any other provision of Part XXIII that requires or permits the Platform to reject a bid.

*Evaluation of bids*

15. (1) Having examined the opened bids in terms of paragraph 11 and obtained any necessary clarification in terms of paragraph 13, the Platform shall proceed to evaluate those that have not been rejected, in order to provide an equal basis for comparing them.

- (2) The evaluated price for bids shall be determined by—
  - (a) taking the bid prices, as read out when the bids were opened; and
  - (b) correcting any arithmetic errors, in accordance with paragraph 13 and the methodology, if any, stated in the bidding documents; and
  - (c) making adjustments for any non-material non-conformity, error or omission in accordance with paragraph 13; and
  - (d) converting all bids to a single currency, using the currency and the source and date of exchange rate indicated in the bidding documents.

(3) In addition to price, the Platform may evaluate bids according to such criteria as may be prescribed and to the prescribed relative weight to be assigned to such criteria.

*Prohibition of negotiation regarding bids; reserve price may be set*

16. (1) Subject to subparagraph (3), there shall be no negotiation between the Platform and a bidder with respect to a bid submitted by the bidder.

(2) The Secretary, after consultation with the Minister, and taking into consideration any representations made by the Director on the issue, may instruct the Director fix a reserve price for the auction of any particular mining right or title, and the fact that the auction of the mining right or title in question is subject to a reserve price, but not its amount, shall be disclosed in the bidding document.

(3) If the price of the highest responsive bid falls below any reserve price the Platform may—

- (a) request new bids; or
- (b) offer the highest bidder the opportunity to make good the difference between his or her bid and the reserve price.

*Confidentiality*

17. The Platform shall take all necessary steps to ensure that information relating to—

- (a) the content of pre-qualification applications and bids; or
- (b) the examination, clarification, evaluation and comparison of bids;

is not disclosed to any person not officially involved in the examination, evaluation, comparison or acceptance of bids.

*Award of mining right or title to winning bidder*

18. (1) Having evaluated the bids, the Platform shall award the mining right or title concerned to the bidder that submitted the highest bid.

(2) Before the expiry of the period of bid validity, the Platform shall notify—

- (a) the successful bidder of the proposed award and of the date within which—
  - (i) the appropriate accreditation of the right or title shall be issued to him or her (which date must not be earlier than at least fourteen days after the giving of the notice);
  - (ii) the pre-inspection requirements of section 155 must be satisfied;
  - (iii) any agreement must be concluded and signed between the winning bidder and the Minister where the auctioned mining right or title involves the exploration for or exploitation of a strategic mineral; subject to any intervening challenge filed in accordance with Part II; and
- (b) the other bidders of the name and address of the proposed successful bidder and the winning price;

(3) If the successful bidder fails satisfy the pre-inspection requirements of section 155 when required to do so, the Platform shall accept the next ranked bidder from among the remaining bids that have not been rejected, and shall thereupon comply with subparagraph (2) in relation to that bid:

Provided that the procedure set out in this subparagraph may be applied only to the next two ranked bidders after the original successful bidder, and only to the extent that the bids can be economically justified.

## PART II

### CHALLENGE PROCEEDINGS

#### *Challenge to auction proceedings*

19. (1) A potential or actual bidder in auction proceedings who claims to have suffered, or to be likely to suffer, loss or injury due to a breach of a duty imposed on the Platform by or under this Part XXIII, may challenge the auction proceedings by lodging a written notice with the Platform in accordance with this paragraph.

(2) Where notice of the award of a contract has not yet been issued, a challenge may be lodged at any stage of the auction proceedings up to the date on which such notice is issued:

Provided that, where the grounds of a challenge concern alleged improprieties in the invitations to bid or to pre-qualify which have become apparent before bids were opened, the challenge shall be lodged prior to bid opening.

(3) Where notice of the award of a mining right or title has been issued, a challenge may be lodged only within the fourteen-day period referred to in paragraph 18(2)(a)(i).

(4) A challenge shall not be entertained unless—

- (a) in the written notice the bidder has identified the specific act or omission alleged to constitute a breach of duty on the part of the Platform; and
- (b) when lodging the written notice, the bidder deposits with the Platform a sum of money in the prescribed amount by way of security for costs.

(5) If the Platform concedes that it breached a duty as alleged in the challenge, it shall within five days—

- (a) notify the bidder concerned of its concession; and
- (b) take whatever steps it considers necessary, or as the Secretary may direct, to rectify the breach.

#### *Application for review of auction proceedings by review panel*

20. (1) Where—

- (a) the Platform has not conceded that it breached a duty as alleged in a challenge; or
- (b) the bidder that lodged the challenge is dissatisfied with any steps taken or to be taken in terms of paragraph 19(5)(b) to rectify the breach alleged in a challenge;

the bidder may within five days after lodging the challenge apply in writing to the Secretary for the auction proceedings concerned to be reviewed by a review panel.

(2) An application shall be made in writing, setting out—

- (a) the grounds of the challenge, as stated in the written notice lodged with the Platform in terms of paragraph 19(1); and

- (b) whether the Platform has notified the bidder of any steps it has or proposes to take to rectify the breach alleged in the challenge, and if it has done so, the reasons why the bidder is dissatisfied with them.

(3) Within seven days after receiving an application under subparagraph (1), the Secretary shall appoint a review panel to hear the challenge and shall fix a date for the hearing.

(4) The making of an application to the Secretary within the seven-day period specified in subparagraph (1) shall suspend the challenged auction proceedings until—

- (a) the review panel determines the challenge; or
- (b) the review panel cancels the suspension in terms of paragraph 22(7).

*Appointment of review panels*

21. (1) Review panels shall be appointed from one or more lists of panellists prepared by the Secretary in terms of this paragraph.

(2) The Secretary shall select persons for inclusion on a list of panellists by—

- (a) requesting—
  - (i) the Law Society of Zimbabwe; and
  - (ii) the Public Service Commission; and
  - (iii) the Chamber of Mines of Zimbabwe; and
  - (iv) the association representing the interests of small-scale miners in Zimbabwe which is represented on the Board;
 to nominate persons for inclusion on the list; and
- (b) publishing advertisements in newspapers circulating in Zimbabwe, or in the *Gazette*, or by means of post on the electronic notice board of the Ministry's website calling on persons to apply for inclusion on the list;

and selecting from the nominees and the persons who respond to the advertisements panellists who—

- (i) are or have been registered legal practitioners; or
- (ii) have been senior officers in the Public Service with experience in procurement; or
- (iii) have qualifications or experience in fields relating to mining.

(3) The Secretary shall keep the lists of panellists at its offices available for inspection by members of the public, free of charge, during normal office hours.

(4) A review panel for any challenge shall consist of at least three members appointed by the Secretary from a list of panellists, of whom—

- (a) one shall be a registered legal practitioner or former legal practitioner or a member or former member of the judiciary; and
- (b) one shall be a former member of the Public Service with experience in procurement; and
- (c) one shall be a person nominated by an organisation referred to in subparagraph (2)(a).

(5) The terms and conditions of service for members of a review panel shall be as prescribed.

*Review by review panel*

22. (1) A review panel appointed to hear a challenge shall conduct such investigation and hearing as it considers appropriate and deliver its written decision in the matter,

setting out its reasons for the decision, within fourteen days after the application for review of the auction proceedings concerned was received by the Platform.

(2) The procedure to be adopted by a review panel shall be as prescribed or, in relation to any matter that is not prescribed, as may be fixed by the panel:

Provided that the panel shall afford the parties to the challenge an adequate opportunity to make representations in the matter and, generally, shall observe the rules commonly known as the rules of natural justice.

(3) The decision of a review panel shall be binding on the bidder that lodged the challenge and the Platform.

(4) A review panel shall dismiss a challenge where—

- (a) the statement of the grounds of the challenge is vague or embarrassing; or
- (b) the grounds of the challenge do not constitute a valid basis for a challenge; or
- (c) the bidder that lodged the challenge has failed to establish the grounds of the challenge;

and may order the bidder to compensate the Platform for any expense or loss it incurred as a result of the challenge.

(5) Where a review panel finds that a bidder that lodged a challenge has established valid grounds for the challenge, the panel may, as appropriate—

- (a) prohibit the Platform from reaching any decision or doing any thing in an unauthorised manner or from following incorrect procedure; or
- (b) annul in whole or in part any unauthorised act or decision of the Platform, other than an act or decision bringing an agreement referred to in paragraph 18(2)(a)(iii) into force; or
- (c) order the Platform to begin the auction proceedings afresh; or
- (d) award damages to the bidder to compensate for any loss he or she has suffered.

(6) Where a review panel orders compensation to be paid to the Platform in terms of subparagraph (4) or damages to be paid to a bidder in terms of subparagraph (5), the Platform or the bidder, as the case may be, may register a copy of the panel's award, certified by the chairperson of the panel, with the clerk of the magistrates court for the province in which the panel conducted its hearing, whereupon the award may be enforced as if it were a judgment of a magistrate of that court.

(7) At any stage after a review panel has been appointed and before it delivers its decision, the panel may, upon the application of the Platform, cancel the automatic suspension of the auction proceedings imposed by paragraph 20(4), if the Platform satisfies the panel that continuation of the suspension would cause disproportionate harm to the public interest, to the Platform or to other bidders.

*Appeal to Administrative Court against decision of review panel*

23. (1) A bidder or the Platform aggrieved by a decision of a review panel may appeal against the decision to the Administrative Court within twenty days after the panel's decision was notified to the party concerned.

(2) In an appeal the Administrative Court shall not set aside the decision of the review panel but may award fair and adequate compensation to the appellant for any patrimonial loss or damage the appellant may have suffered.

