

No. 20 of 1992.

Mining Act 1992.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Mining Act 1992,

Being an Act to regulate the law relating to minerals and mining, and for related purposes.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C of the *Constitution (Qualified Rights)*, namely–

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*; and
- (d) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the national interest in public order and public welfare.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is hereby declared that this Act relates to a matter of national interest.

(3) For the purposes of the *Land Act 1996*, exploration and mining purposes are declared to be public purposes.

(4) For the purposes of Section 53(1) (*Protection from unjust deprivation of property*) of the *Constitution*, the purpose and reason for which this Act permits possession to be compulsorily taken of any property and permits any interest in or

right over property to be compulsorily acquired are declared and described to be that—

- (a) such property is required for a public purpose and further for a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind; and
- (b) the discovery, appraisal, development and exploitation of minerals in Papua New Guinea is in the national interest and the regulation of exploration for minerals and mining in Papua New Guinea is in the national interest.

2. INTERPRETATION.

(1) In this Act, unless the contrary intention appears—

“**agent**” means a person acting on behalf of the owner or occupier and includes a person having the care or direction of a mine or any part thereof or of any works connected therewith;

“**alluvial**” means all unconsolidated rock materials, transported and deposited by stream action or gravitational action, which are capable of being freely excavated without prior ripping or blasting;

“**alluvial mining lease**” means an alluvial mining lease granted under Section 48;

“**approved programme**” means a programme compliance with which is a condition of an exploration licence;

“**approved proposals**”, in relation to a tenement, means proposals compliance with which is a condition of that tenement;

“**Board**” means the Mining Advisory Board established by Section 11;

“**block**” means a block constituted as provided by Section 153;

“**Chairman**” means the Chairman of the Board;

“**Chief Warden**” means the Chief Warden appointed under Section 16;

¹“**Company**” has the meaning given to it in the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*;

“**Department**” means the Department responsible for minerals matters;

“**development forum**” means a development forum convened under Section 3(1);

“**Director**” means the Director under Section 10;

“**Executive Officer**” means the Executive Officer appointed under Section 12;

¹ Section 2(1) (definition of “Company”) inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

“exploration” includes any manner or method of prospecting for the purpose of locating and evaluating mineral deposits including bulk sampling, feasibility studies and related laboratory testing;

“exploration licence” means an exploration licence granted under Section 20;

“Government land” means land other than—

- (a) customary land that is not leased by the owners to the State; and
- (b) land held by a person other than the State for an estate greater than a term of years; and
- (c) land which is the subject of an existing State lease under the *Land Act 1996*,

and includes land reserved, or deemed to have been reserved, from lease under Section 49 of the *Land Act 1996*, whether or not that land has been placed, or is deemed to have been placed, under the control of trustees under Section 50 of that Act;

“hearing” means a hearing conducted under Section 108;

“holder” means the person whose name appears in the Register as the owner of the tenement;

“improvements”, in relation to compensation under Section 154, includes buildings, crops and economic trees;

“inspector” means an inspector appointed under the *Mining (Safety) Act 1977*;

“land” includes—

- (a) the surface and any ground beneath the surface of the land; and
- (b) water; and
- (c) the foreshore, being that area between the mean high water springs level of the sea and the mean low water springs level of the sea; and
- (d) the offshore area being the seabed underlying the territorial sea from the mean low water springs level of the sea to such depth as admits of exploration for or mining of minerals; and
- (e) the bed of any river, stream, estuary, lake or swamp; and
- (f) any interest in land;

“landholder” means—

- (a) a person who is recognized as an owner of customary land; or
- (b) a person who is in occupancy of Government land by virtue of an agreement with the State; or

(c) a person who is the owner or lawful occupant of land other than customary land or Government land;

“lease for mining purposes” means a lease for mining purposes granted under Section 65;

“minerals” means all valuable non-living substances excluding petroleum obtained or obtainable from land;

“mining” includes any manner or method used for the purpose of deriving minerals and includes quarrying;

“Mining Advisory Board” means the Mining Advisory Board established by Section 11;

“mining development contract” means a mining development contract between the State and the holder of an exploration licence required under Section 18;

“mining easement” means a mining easement granted under Section 80;

“mining lease” means a mining lease granted under Section 38;

²**“Mining Project”** means a project—

(a) for the construction, development and operation of facilities for the recovery, production, transportation and sale of minerals; and

(b) specified or within a class specified in Schedule 1 to the Option Agreement;

³**“MRDC”** means Mineral Resources Development Company Pty Limited;

“non-mechanized mining” means mining by the use of hand tools and equipment but not by pumps nor machinery driven by electric, diesel, petrol or gas-powered motors;

⁴**“Option”** has the meaning given to it in the Option Agreement;

⁵**“Option Agreement”** has the meaning given to it in the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*;

⁶**“Participating Interest”** has the meaning given to it in the Option Agreement;

“petroleum” means—

² Section 2(1) (definition of “Mining Project”) inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

³ Section 2(1) (definition of “MRDC”) inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

⁴ Section 2(1) (definition of “Option”) inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

⁵ Section 2(1) (definition of “Option Agreement”) inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

⁶ Section 2(1) (definition of “Participating Interest”) inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

- (a) any naturally occurring hydrocarbons, whether in a gaseous, liquid or solid state; or
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (c) any naturally occurring mixture of one or more hydrocarbons (whether in a gaseous, liquid or solid state) and any other substance,

and includes any petroleum as defined in Paragraph (a), (b) or (c) that has been returned to a natural reservoir, but does not include coal, shale or any substance that may be extracted from coal, shale or other rock;

“programme” means a written statement of the work to be done and the expenditure to be incurred on or in connection with an exploration licence;

“proposals” means a written statement of the operations proposed to be undertaken on or in connection with a tenement (other than an exploration licence);

“Register” means the Register of Tenements established and maintained under Section 113;

“Registrar” means the Registrar of Tenements appointed under Section 15;

“related company” has the same meaning as “related company” under the *Companies Act 1997*;

“repealed Acts” means the Acts repealed by Section 171;

“reserved land” means land reserved, or deemed to have been reserved, under Section 49 of the *Land Act 1996*, whether or not that land has been placed or is deemed to have been placed, under the control of trustees under Section 50 of that Act;

“river bed” means any ground lying between the banks of any stream of water, whether perennial or intermittent, flowing in a natural channel;

“special mining lease” means a special mining lease granted under Section 33;

“sub-block” means a sub-block constituted as provided by Section 153;

“survey directions” means survey directions issued under Section 37 of the *Survey Act 1969*;

“surveyor” means a surveyor registered under the *Survey Act 1969*;

“tenement” means—

- (a) an exploration licence; or
- (b) a special mining lease; or
- (c) a mining lease; or

- (d) an alluvial mining lease; or
- (e) a lease for mining purposes; or
- (f) a mining easement,
granted or deemed to have been granted under this Act;

“**this Act**” includes the Regulations;

“**tribute agreement**” means an agreement made by the holder of a special mining lease, mining lease or alluvial mining lease with any other person whereby that person may work that special mining lease or mining lease on terms providing that the holder shall receive from that person a portion or percentage of the minerals won or the proceeds of their sale;

“**Warden**” means a Warden appointed under Section 16.

(2) The term of a tenement shall be calculated on and from, and shall include, the date on which it was granted by the Head of State or the Minister.

(3) For the purposes of this Act, “**associated persons**” means a person associated with another person—

- (a) if the other person is a corporation—
 - (i) a director or secretary of the corporation; or
 - (ii) a corporation that is related to the other person; or
 - (iii) a director or secretary of such a related corporation; or
- (b) a person in concert with whom the other person is acting or proposes to act in respect of the matter to which the reference relates; or
- (c) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
- (d) if the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as mentioned in Paragraph (b), (c) or (d), that last-mentioned person,

but a person shall not be taken to be an associate of another person by reason only that one of those persons furnishes advice to, or acts on behalf of the other person in the proper performance of the functions attaching to his professional capacity or to his business relationship with the other person.

(4) In a case where there is more than one person holding a tenement, their obligations in respect of that tenement shall be deemed to be joint and several, except where such obligations are by express provision or necessary implication several obligations.

(5) It is hereby declared that a tenement granted under this Act is not an interest in land for the purposes of the *Land Act 1996*.

3. CONSULTATION.

(1) A development forum shall be convened by the Minister before the grant of any special mining lease to consider the views of those persons whom the Minister believes will be affected by the grant of that special mining lease and shall be conducted by the Minister according to such procedures as will afford a fair hearing to all participants.

(2) The Minister shall invite to a development forum such persons as he considers will fairly represent the views of—

- (a) the applicant for the special mining lease; and
- (b) the landholders of the land the subject of the application for the special mining lease and other tenements to which the applicant's proposals relate; and
- (c) the National Government; and
- (d) the Provincial Government, if any, in whose province the land the subject of the application for the special mining lease is situated.

(3) Before the grant of any mining lease the Minister shall consult with the Provincial Government, if any, in whose province the mining lease will be located.

4. LAND DISPUTE SETTLEMENT.

(1) Where a dispute arises as to interests in customary land or the position of boundaries of customary land such dispute shall not affect—

- (a) the right of a person to make application for and be granted a tenement under this Act; or
- (b) the validity of a tenement granted under this Act.

(2) A dispute referred to in Subsection (1) shall be settled as provided for by the *Land Disputes Settlement Act 1975*.

PART II. – APPLICATION.**5. MINERALS THE PROPERTY OF THE STATE.**

(1) All minerals existing on, in or below the surface of any land in Papua New Guinea, including any minerals contained in any water lying on any land in Papua New Guinea, are the property of the State.

(2) Nothing in Subsection (1) shall be construed as an additional acquisition of property in relation to Section 53 of the *Constitution* beyond that which prevailed under the repealed Acts and all previous Acts.

6. LAND AVAILABLE FOR EXPLORATION AND MINING.

Subject to this Act, all land in the State, including all water lying over that land, is available for exploration and mining and the grant of tenements over it.

7. RESERVATION BY THE MINISTER.

(1) Where the Minister considers it to be in the best interests of the State, the Minister may, by notice published in the National Gazette, reserve from exploration or mining or non-mechanized mining as provided for in Section 9 any land specified in the notice, and such reservation shall be effective on and from the date of publication of the notice.

(2) A notice under Subsection (1) shall specify the area of land under reservation by reference to a description of the land in latitude and longitude and shall comprise sub-blocks.

(3) Subject to Subsection (4), on the coming into effect of a reservation under this section, the Registrar shall defer dealing as required under Section 103(b) with any registered applications for tenements over the land the subject of the reservation until such time as the reservation is revoked or otherwise expires.

(4) A reservation under this section shall have no effect on—

- (a) any tenement or application for the grant of any tenement registered prior to the date of publication of the notice of reservation; or
- (b) any application for extension of the term of a tenement to which Paragraph (a) refers; or
- (c) the right of any person to apply for the grant of a tenement and the requirement that an application be registered under Section 103(a).

(5) Upon the revocation or expiry of a reservation, any application for the grant of a tenement over the land the subject of the reservation that has been registered shall be dealt with by the Registrar in accordance with Section 103(b).

8. EXPLORATION AND MINING ON RESERVED LAND.

(1) An application for a tenement over land reserved for exclusive use under the *Land Act 1996* or any other Act may not be granted without the consent of the Minister responsible for that reserved land.

(2) Where consent has been obtained under Subsection (1) no further consent shall be required if the tenement is converted to another tenement.

9. ALLUVIAL MINING.

(1) Except as provided in Subsection (2), the mining of alluvial minerals shall be undertaken on a tenement and shall be subject to the provisions of Part V.

(2) Any natural person who is a citizen may carry out non-mechanized mining of alluvial minerals on land owned by that natural person, provided that the mining is carried out safely and in accordance with the *Mining (Safety) Act 1977* and that the land is not the subject of a tenement (other than an exploration licence).

(3) The right conferred by Subsection (2) shall not affect the right of any person to make application for and be granted a tenement under this Act.

(4) The Minister may, under Section 7, reserve land from mining under Subsection (2).

PART III. – ADMINISTRATION.

Division 1.

Director.

10. DIRECTOR.

(1) There shall be a Director for the purposes of this Act who shall be the Departmental Head of the Department.

(2) The functions, powers and duties of the Director are as specified in this Act.

(3) The Director may, by instrument in writing, delegate all or any of his powers (except this power of delegation) to any officer in the Department or to any person for the time being occupying a designated position in the Department.

Division 2.

Mining Advisory Board.

11. MINING ADVISORY BOARD.

(1) A Mining Advisory Board is hereby established.

(2) Subject to Subsection (3), the Board shall consist of–

- (a) the Director, who shall be Chairman; and
- (b) three officers of the Department who shall be appointed by the Director; and
- (c) three persons appointed by the Minister; and
- (d) one person appointed by the Minister on the recommendation of the Premiers' Council.

(3) Where a member of the Board, other than the Chairman, is for any reason unable to attend a meeting of the Board or otherwise to perform his functions, he may in writing appoint a person with the consent of the Director to act as his alternate for the period of his inability and a person so appointed shall be deemed a member of the Board for the duration of his appointment.

(4) Where the Chairman is for any reason unable to attend a meeting of the Board or otherwise perform his functions, he shall appoint a member of the Board to act as Chairman in his absence.

(5) In making appointments under Subsection (2) the Minister or Director, as the case may be, shall take into consideration the appointee's qualifications and experience in mining, geology, finance, law or related fields.

12. EXECUTIVE OFFICER TO THE BOARD.

(1) The Board shall appoint an officer of the Department to be Executive Officer to the Board.

(2) The Executive Officer to the Board is responsible for convening meetings of the Board.

13. MEETINGS OF THE BOARD.

(1) The Board shall meet as often as is necessary to carry out its functions and at such times and places as the Chairman directs.

(2) At a meeting of the Board—

- (a) the Chairman and three other members are a quorum; and
- (b) the Chairman shall preside; and
- (c) all questions arising shall be decided by a majority of votes; and
- (d) each member of the Board including the Chairman shall have a deliberative vote, and in the event of an equality of votes on any question the Chairman shall also have a casting vote; and
- (e) subject to this Act, the Board shall otherwise determine its own procedures.

14. FUNCTIONS OF THE BOARD.

The functions of the Board are—

- (a) to advise the Minister on such matters as the Minister may refer to the Board; and
- (b) such other matters as are specified in this Act.

Division 3.

Registrar of Tenements.

15. REGISTRAR OF TENEMENTS.

(1) There shall be a Registrar of Tenements, who shall be an officer of the Department appointed by the Director by notice in the National Gazette.

(2) The functions, powers and duties of the Registrar are as specified in this Act.

(3) The Registrar may, by instrument in writing, delegate all or any of his powers (except this power of delegation) to any officer of the Department or to any person occupying a designated position in the Department.

Division 4.

Wardens.

16. WARDENS.

(1) The Director shall appoint—

- (a) an officer of the Department to be Chief Warden; and

(b) such other number of officers as he considers necessary to be Wardens, for the purpose of this Act.

(2) The functions, powers and duties of a Warden are as specified in this Act.

(3) The Chief Warden shall undertake—

(a) the duties of a Warden; and

(b) such additional functions as are specifically allocated to him under this Act or as the Director may refer to him.

(4) The Chief Warden may, by instrument in writing, delegate all or any of his powers (except this power of delegation) to a Warden.

PART IIIA.⁷ – ACQUISITION OF STATE INTERESTS.**16A. ACQUISITION OF STATE INTERESTS.**

⁸(1) Notwithstanding any provision of any other Part or the terms of any agreement made by the State—

- (a) the State, MRDC and the Company shall each have the right to acquire and, as appropriate, transfer a Participating Interest in a Mining Project in accordance with the Option Agreement; and
- (b) without limitation—
 - (i) the conditions of any exploration licence; and
 - (ii) the conditions of any special mining lease, mining lease, lease for mining purposes or mining easement granted in relation to a Mining Project; and
 - (iii) the terms of any mining development contract or any agreement referred to in Section 17 made in relation to a Mining Project,

granted or made after the coming into operation of Parts II and III of the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996* shall recognise and provide for the exercise of those rights.

(2) The State shall, subject to and in accordance with the Option Agreement, nominate MRDC or the Company to acquire its Participating Interest referred to in Subsection (1).

⁷ Part IIA inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

⁸ Section 16A inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

PART IV. – MINING DEVELOPMENT CONTRACTS.

Division 1.

Agreements Generally.

17. POWER TO ENTER INTO AGREEMENTS.

(1) The State may enter into an agreement, not inconsistent with this Act, relating to a mining development or the financing of a mining development under a tenement and, without prejudice to the generality of the foregoing, any such agreement may contain provisions relating to—

- (a) the circumstances or the manner in which the Minister or the Director shall exercise any discretion conferred by this Act; and
- (b) the settlement of disputes arising out of or relating to the agreement or the administration of this Act, including provisions relating to the settlement of any such dispute by international arbitration; and
- (c) the acquisition by the State either directly or indirectly of a participating interest in a mining development; and
- (d) any other matter connected therewith as the parties to the agreement may consider necessary.

(2)⁹ ¹⁰Nothing in Subsection (1) shall be read or construed as authorizing the State to enter in a special agreement relating to the payment of any applicable tax, duty, fee or other fiscal impost, or to grant in respect thereof any exemption, moratorium, tax holiday, or other indulgence howsoever described.

(3)¹¹ ¹²Where this Act confers on the Minister or the Director a discretion, the Minister or the Director, as the case may be, shall exercise that discretion subject to and in accordance with any relevant stipulation contained in an agreement made under Subsection (1).

Division 2.

Mining Development Contracts.

18. CIRCUMSTANCES UNDER WHICH THE MINISTER MAY REQUIRE MINING DEVELOPMENT CONTRACT.

Where the Minister considers, on reasonable grounds, that the size or distribution of a mineral deposit, the method of mining or treating it, the infrastructure required for it or financial or economic considerations make a mining development contract necessary, the Minister may require that the mining of that deposit takes place under a special mining lease and under the terms of a mining development contract.

⁹ Section 17 Subsection (2) substituted by No. 95 of 2006, s. 1.

¹⁰ Section 17 Subsection (2) substituted by No. 95 of 2006, s. 1.

¹¹ Section 17 Subsection (3) inserted by No. 95 of 2006, s. 1.

¹² Section 17 Subsection (3) inserted by No. 95 of 2006, s. 1.

19. EFFECT OF MINING DEVELOPMENT CONTRACT.

The mining development of a mineral deposit in respect of which a mining development contract has been entered into shall be undertaken in accordance with the provisions of the mining development contract, except that, to the extent of any conflict between the provisions of the mining development contract and the provisions of this Act, the provisions of this Act shall prevail.

PART V. – TENEMENTS.***Division 1.******Exploration Licences.*****20. GRANT OF EXPLORATION LICENCE.**

(1) The Minister may, on the application of any person and after considering a recommendation of the Board, grant to that person an exploration licence.

(2) An exploration licence–

- (a) shall be on the prescribed form; and
- (b) shall require that as a condition of the exploration licence the holder complies with the approved programme; and
- (c) may contain such other conditions as the Minister may determine.

21. TERM OF EXPLORATION LICENCE.

An exploration licence may be granted for a term not exceeding two years, which may be extended under Section 28.

22. AREA OF EXPLORATION LICENCE AND RELINQUISHMENT OF PORTIONS.

(1) The area of land in respect of which an exploration licence may be granted shall be–

- (a) no more than 750 sub-blocks; and
- (b) one area comprising–
 - (i) one sub-block; or
 - (ii) more than one sub-block, each of which shall share a common side with at least one other such sub-block.

(2) Subject to Subsection (3), at the time of application for any extension of the term of an exploration licence, the holder of the exploration licence shall relinquish a portion or portions comprising in aggregate not less than half of the area held at the commencement of that term so that after each relinquishment the area of land that remains subject to the exploration licence consists of not more than three discrete areas each or which comprises one sub-block or more than one sub-block, each of which shall have a common side with at least one other such sub-block.

(3) Where, as a result of the requirements of Subsection (2), the area of an exploration licence has been reduced to not more than–

- (a) 30 sub-blocks–the holder shall not be required to make any further relinquishments under Subsection (2); or
- (b) 75 sub-blocks–the holder may apply to the Director to waive or vary the requirements of Subsection (2) and where the Director is satisfied, after

receiving advice from the Board, that special circumstances exist which in his opinion justify retention of more than 30 sub-blocks, he may waive or vary those requirements, but the total area permitted to be held after such a waiver or variation shall not exceed 75 sub-blocks.

(4) A relinquishment under this section shall take effect on the date on which the exploration licence would have expired but for the lodgement of an application for an extension of term.

23. RIGHTS CONFERRED BY EXPLORATION LICENCE.

(1) An exploration licence authorizes the holder, in accordance with any conditions to which it may be subject, to—

- (a) enter and occupy the land which comprises the exploration licence for the purpose of carrying out exploration for minerals on that land; and
- (b) subject to Section 162, extract, remove and dispose of such quantity of rock, earth, soil or minerals as may be permitted by the approved programme; and
- (c) take and divert water situated on or flowing through such land and use it for any purpose necessary for his exploration activities subject to and in accordance with the provisions of the *Water Resources Act 1982*; and
- (d) do all other things necessary or expedient for the undertaking of exploration on the land.

(2) the holder of an exploration licence is entitled to the exclusive occupancy for exploration purposes of the land in respect of which the exploration licence was granted.

24. APPLICATION FOR GRANT OR EXTENSION OF EXPLORATION LICENCE.

An application for the grant or extension of the term of an exploration licence shall be—

- (a) on the prescribed form and have attached—
 - (i) a schedule as prescribed describing the boundary of the required tenement area in latitude and longitude; and
 - (ii) a sketch map showing the boundary of the area with respect to latitude and longitude; and
- (b) accompanied by—
 - (i) a programme on the prescribed form; and
 - (ii) a statement giving particulars of the technical and financial resources available to the applicant; and
- (c) lodged in triplicate with the prescribed application fee; and

(d) lodged in accordance with the procedures specified in Division VI.1.

25. EXPENDITURE REQUIREMENTS.

(1) The minimum expenditure required to be spent annually in connection with an approved programme shall be as prescribed.

(2) For the purposes of this section, acceptable expenditures are those directly connected with the acquisition and interpretation of exploration data from the area of the exploration licence, including related laboratory and feasibility work.

(3) Without limiting the generality of Subsection (2), expenditures in respect of—

- (a) the purchase of a tenement; or
- (b) the purchase of land or buildings,

are not acceptable expenditures for the purposes of this section.

26. APPROVED PROGRAMME.

(1) In assessing an application under Section 24 and any variation under Section 27, the Board shall consider—

- (a) whether the programme submitted by the applicant—
 - (i) provides for a substantial increase in the acquisition and interpretation of exploration data from the area of the exploration licence, or the conduct of related laboratory or feasibility work; and
 - (ii) meets the prescribed minimum expenditure requirements; and
- (b) whether the applicant has the technical and financial resources available effectively to carry out the programme,

and may request the applicant to provide further information and amend the application or programme.

(2) Where the Board considers that the applicant has satisfied the conditions of Subsection (1), the Board shall recommend approval of the programme.

(3) Where the programme does not meet the prescribed minimum expenditure requirements, but the Board considers that the applicant has otherwise satisfied the conditions in Subsection (1), the Board may recommend approval of the programme.

(4) Where an applicant has located a mineral deposit and has demonstrated to the reasonable satisfaction of the Board that he cannot reasonably mine the deposit at that time for one of the following reasons:—

- (a) that the deposit is not capable of being developed at current market prices, utilizing proven technology or with financing on commercial terms which are reflective of current market conditions for other mining projects;

- (b) that the deposit is required to sustain future operations of an existing or proposed mining operation at another location;
- (c) that difficulties in obtaining requisite approvals prevent mining or restrict it in a manner that is, or subject it to conditions that are, for the time being impracticable,

and further demonstrates to the reasonable satisfaction of the Board that he has progressed exploration as far as is practicable at the time and therefore cannot comply with the requirements of Subsection (1) the Board shall approve the programme.

(5) A programme approved under Subsection (4) may include—

- (a) the maintenance of public relations with landholders of the land the subject of the application; and
- (b) the maintenance of airstrips, buildings and services established in the course of exploration on the land the subject of the application; and
- (c) a review of the feasibility of commencing mining operations.

27. VARIATION OF APPROVED PROGRAMME.

(1) The holder of an exploration licence may at any time apply to the Director in writing for a variation of the approved programme.

(2) An application under Subsection (1) shall specify one or more of the following bases on which a variation is sought:—

- (a) that events beyond the reasonable control of the holder of the exploration licence prevent him from carrying out the approved programme;
- (b) that the holder of the exploration licence wishes to conduct exploration in a manner different from that originally proposed;
- (c) that the holder is unable to establish a mining operation for one or more of the reasons referred to in Section 26(4),

and shall be accompanied by a revised programme on the prescribed form.

(3) The Director may, on the recommendation of the Board—

- (a) require the applicant to provide further information or to amend the revised programme; or
- (b) approve the variation requested which shall be on the prescribed form and—
 - (i) shall be substituted for the previously approved programme; and
 - (ii) may include such further conditions as the Director considers necessary; or
- (c) refuse the variation.

28. EXTENSION OF TERM OF EXPLORATION LICENCE.

(1) Subject to Subsection (2), the Minister shall, on the application under Section 24 of the holder of an exploration licence, extend the term of the exploration licence for periods each of up to two years, where the Board advises the Minister that the holder has—

- (a) complied with the conditions of the exploration licence during the previous term of the exploration licence; and
- (b) paid compensation as required by this Act; and
- (c) submitted a programme for the proposed extended term which the Board recommends for approval under Section 26.

(2) Where he considers that it is in the best interests of the State to do so, the Minister may refuse to extend the term of an exploration licence.

(3) Where the Board is unable to give the advice required under Subsection (1) to the Minister, the Minister may, after receiving a recommendation from the Board, extend the term of the exploration licence for such period or periods of up to two years as he may determine, and include such further conditions of the exploration licence as he may consider necessary.

(4) In considering whether the holder of an exploration licence has paid compensation as required by this Act, the Board shall rely on the advice of the Chief Warden.

29. EFFECTS OF APPLICATION FOR AND GRANT OF A SPECIAL MINING LEASE OR MINING LEASE OVER EXPLORATION LICENCE AND VICE VERSA.

- (1) The application for—
- (a) a special mining lease; or
 - (b) a mining lease,

by the holder of an exploration licence over the land or part of the land the subject of that exploration licence does not affect the rights and obligations of the holder of the exploration licence until such time as the application is determined except in so far as any conditions of an approved programme have been varied under Section 27.

(2) Where an application for a special mining lease or mining lease has been made, the term of the exploration licence over the land the subject of the application shall continue until the application has been determined.

(3) The effect of the grant of a special mining lease or mining lease over land or part of land over which there is an existing exploration licence is to excise from the exploration licence the natural surface of that land and the land lying beneath it at which time all rights under the exploration licence cease to have effect with respect to the excised land.

(4) On the surrender, cancellation or expiry of a special mining lease or mining lease, the special mining lease or mining lease shall cease to have effect and—

- (a) any land excised from an exploration licence under Subsection (3) shall revert to that exploration licence; or
- (b) where another tenement has been granted to surround or partially surround the land the subject of the special mining lease or mining lease that part of the land that would otherwise have reasonably been included in the other tenement but for the existence of the special mining lease or mining lease shall be amalgamated with the land the subject of that other tenement.

30. RESTRICTIONS ON APPLICATIONS FOR CERTAIN TENEMENTS OVER LAND SURRENDERED OR RELINQUISHED FROM AN EXPLORATION LICENCE.

Where—

- (a) an exploration licence expires, or is surrendered or cancelled; or
- (b) any part of land within the land the subject of an exploration licence is surrendered or relinquished,

no valid application for an exploration licence over the same land shall be made by any person, within a period of 30 days after the date on which the land ceases to be the subject of the exploration licence as provided for under Sections 22(4), 141 and 145.

31. NO DEALING WITH AN EXPLORATION LICENCE DURING FIRST TWO YEARS.

(1) A person whose only legal or equitable interest in a tenement is held directly or indirectly in an exploration licence which is in its first term of two years (or where there is more than one exploration licence, which are all in their first term of two years) shall not validly create, transfer or otherwise dispose of such interests either directly or indirectly, except as provided for in Subsections (2) and (3).

(2) Except where—

- (a) the holder is a corporation which is listed on a public stock exchange somewhere in the world; or
- (b) the creation, transfer or other disposal of a legal or equitable interest in the shares of a corporation holding an exploration licence arises in the course of those shares being listed on a stock exchange,

the creation, transfer or other disposal of a legal or equitable interest in the shares of a corporation directly or indirectly holding an exploration licence shall be deemed to be a contravention of Subsection (1) where more than 25% of the issued shares of that corporation are so affected within the first two years of the term of the exploration licence.

(3) Subsection (1) shall not apply where the creation, transfer or other disposal of a legal or equitable interest in or affecting an exploration licence arises in the due administration of the estate or affairs of a holder—

- (a) who is dead; or
- (b) who is a person who is insolvent within the meaning of the *Insolvency Act 1951*; or
- (c) who is otherwise incapacitated at law; or
- (d) which is in the course of being wound up (not being a voluntary winding up).

32. REPORTING REQUIREMENTS IN RESPECT OF AN EXPLORATION LICENCE.

(1) The holder of an exploration licence shall lodge with the Director the following reports in duplicate covering the following periods:—

- (a) in respect of every period of six months calculated from the date of grant, on expiry, on cancellation and on making an application to surrender the exploration licence—a report on the prescribed form summarizing all works undertaken on or in connection with the exploration licence since lodging the previous report;
- (b) in respect of every period of six months calculated from the date of grant, on expiry, on cancellation and on making an application to surrender the exploration licence—a report on the prescribed form summarizing all acceptable expenditure incurred under Section 25(2) on or in connection with the exploration licence since lodging the previous report;
- (c) in respect of every period of one year calculated from the date of grant of the exploration licence—a report giving full details of all work undertaken on or in connection with the exploration licence so as to convey accurately and comprehensively the aims of the works, the procedures adopted and the conclusions reached, and containing all data which may be of relevance to the geology and mineral resources of the State;
- (d) in respect of the period up to the date of relinquishment or surrender of the whole or any portion of an exploration licence or on expiry or cancellation of the exploration licence, a report which summarizes all work undertaken on or in connection with the whole or (as applicable) that portion of the relevant exploration licence since the date of grant, and which also meets the requirements of Paragraph (c) in relation to the period since the last report was filed.

(2) A report under—

- (a) Subsection (1)(a) or (b) shall be lodged within 30 days of the end of the reporting period; and

(b) Subsection (1)(c) or (d) shall be lodged within 90 days of the end of the reporting period.

(3) A report under Subsection (1)(a) or (b) shall not be made available to any person outside the Department nor shall its content be revealed except to the extent necessary for the Director to publish statistical information concerning the geology and mineral resources of the State or for him to give advice to the National Executive Council on a confidential basis.

(4) Subject to Subsection (5), except with the consent of an exploration licence holder, until the exploration licence has expired or been cancelled or surrendered, a report lodged under Subsection (1)(c) shall not be made available to any person outside the Department nor shall its content be revealed except to the extent necessary for the Director to publish statistical information concerning the geology and mineral resources of the State or for him to give advice to the National Executive Council on a confidential basis.

(5) Where an exploration licence has been converted to a special mining lease or to a mining lease a report lodged under Subsection (1)(c) shall be deemed to be a report lodged under Section 47(1)(b).

(6) A report lodged under Subsection (1)(d) shall be available for perusal and copying by any person.

Division 2.

Special Mining Leases.

33. GRANT OF A SPECIAL MINING LEASE.

(1)¹³ ¹⁴Subject to this section, the Head of State, acting on advice, shall, on the application of the holder of an exploration licence who is also a party to a mining development contract and after considering a recommendation by the Board, grant to the applicant or his assignee a special mining lease over the land, or part of the land, the subject of the exploration licence.

(2) A special mining lease—

(a) shall be on the prescribed form; and

(b) shall require that as a condition of the lease the holder complies with the approved proposals; and

(c) may include such other conditions, consistent with the mining development contract, as may be determined by the Head of State, acting on advice.

¹³ Section 33(1) repealed and replaced by the *Mineral Resources Development Company Pty Limited (Privatisation) Act* 1996.

¹⁴ Section 33(1) repealed and replaced by the *Mineral Resources Development Company Pty Limited (Privatisation) Act* 1996.

(3)¹⁵ ¹⁶The Head of State, acting on advice, shall not grant a special mining lease under this section in relation to a Mining Project unless the Minister has first given to the Company written notice.

34. TERM OF SPECIAL MINING LEASE.

A special mining lease may be granted for a term not exceeding 40 years, which may be extended under Section 36.

35. APPLICATION FOR SPECIAL MINING LEASE.

An application for a special mining lease—

- (a) shall be on the prescribed form and shall have attached either—
 - (i) a schedule on the prescribed form describing the corners of the boundary of the required tenement area in latitude and longitude, and a sketch map showing the boundary of the area and such other natural features as shall enable the area to be correctly located; or
 - (ii) a survey as required under Section 97; and
- (b) shall be accompanied by—
 - (i) the applicant's proposals; and
 - (ii) a statutory declaration that the area of land in respect of which the application is made has been marked out in accordance with Section 96; and
- (c) shall be lodged in triplicate with the prescribed application fee; and
- (d) shall otherwise be lodged in accordance with the procedures specified in Division VI.1.

36. EXTENSION OF TERM OF SPECIAL MINING LEASE.

(1) The Head of State, acting on advice, may, on the application by the holder of a special mining lease, and after considering a recommendation from the Board extend the term of a special mining lease for such period or periods each not exceeding 20 years as the Head of State, acting on advice, determines.

(2) An application for an extension of the term of a special mining lease—

- (a) shall be on the prescribed form; and
- (b) shall be lodged in triplicate with the prescribed application fee; and
- (c) shall be lodged in accordance with the procedures specified in Division VI.1.

¹⁵ Section 33(3) inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

¹⁶ Section 33(3) inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

37. CERTAIN PROVISIONS RELATING TO MINING LEASES TO APPLY TO SPECIAL MINING LEASES.

Subject to the foregoing provisions of this Division, the provisions of this Act applicable to a mining lease shall also apply to a special mining lease.

Division 3.

Mining Leases.

38. GRANT OF A MINING LEASE.

(1)¹⁷ ¹⁸Subject to this section the Minister may, on the application of—

- (a) the holder of an exploration licence, in respect of the land the subject of the exploration licence; or
- (b) the exploration licence holder and any other person to whom the holder of the exploration licence at the time of application for a mining lease applies to transfer his interest in the application under Section 118, in respect of land the subject of the exploration licence; or
- (c) any person, in respect of land that is not the subject of an exploration licence, a special mining lease, a mining lease or an alluvial mining lease,

after considering a recommendation from the Board, grant to the applicant a mining lease.

(2) A mining lease which is for the sole purpose of mining alluvial minerals may be held only by—

- (a) a citizen; or
- (b) a company of which at least 51% of the issued ordinary shares are beneficially owned by citizens; or
- (c) an unincorporated joint venture at least 51% of the interest in which is beneficially owned by citizens.

(3) A mining lease—

- (a) shall be on the prescribed form; and
- (b) shall require that as a condition of the lease the holder complies with the approved proposals; and
- (c) may include such other conditions as the Minister determines.

(4)¹⁹ ²⁰The Minister shall not grant a mining lease under this section in relation to a Mining Project unless he has first given to the Company written notice.

¹⁷ Section 38(1) amended by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

¹⁸ Section 38(1) amended by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

¹⁹ Section 38(4) inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

²⁰ Section 38(4) inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

39. TERM OF MINING LEASE.

A mining lease may be granted for a term not exceeding 20 years, which may be extended under Section 46.

40. AREA AND SHAPE OF MINING LEASE.

The area of land in respect of which a mining lease shall be granted shall be—

- (a) not more than 60 Km²; and
- (b) in a rectangular or polygonal shape.

41. RIGHTS CONFERRED BY A MINING LEASE.

(1) A mining lease authorizes the holder, in accordance with the *Mining (Safety) Act 1977* and any conditions to which the mining lease is subject, to—

- (a) enter and occupy the land over which the mining lease was granted for the purpose of mining the minerals on that land and carry on such operations and undertake such works as may be necessary or expedient for that purpose; and
- (b) construct a treatment plant on that land and treat any mineral derived from mining operations, whether on that land or elsewhere, and construct any other facilities required for treatment including waste dumps and tailings dams; and
- (c) take and remove rock, earth, soil and minerals from the land, with or without treatment; and
- (d) take and divert water situated on or flowing through such land and use it for any purpose necessary for his mining or treatment operations subject to and in accordance with the *Water Resources Act 1982*; and
- (e) do all other things necessary or expedient for the undertaking of mining or treatment operations on that land.

(2) Subject to this Act, the holder of a mining lease—

- (a) is entitled to the exclusive occupancy for mining and mining purposes of the land in respect of which the mining lease was granted; and
- (b) owns all minerals lawfully mined from that land.

42. APPLICATION FOR A MINING LEASE.

An application for the grant of a mining lease—

- (a) shall be on the prescribed form and shall have attached either—
 - (i) a schedule on the prescribed form describing the corners of the boundary of the required tenement area in latitude and longitude, and a sketch map showing the boundary of the area and such

- other natural features as shall enable the area to be correctly located; or
- (ii) a survey as required under Section 97; and
- (b) shall be accompanied by—
- (i) the applicant's proposals; and
 - (ii) a statutory declaration that the area of land over which the application is made has been marked out in accordance with Section 96; and
 - (iii) a statement giving the particulars of the technical and financial resources available to the applicant; and
- (c) shall be lodged in triplicate with the prescribed application fee; and
- (d) shall be lodged in accordance with the procedures specified in Division VI.1.

43. APPROVED PROPOSALS FOR A MINING LEASE.

(1)²¹ ²²In assessing an application for a mining lease, the Board shall consider whether—

- (a) the proposals submitted by the applicant—
 - (i) provide for the development of the mineral deposits situated on the land in accordance with good mining industry practice; and
 - (ii) provide adequately for the protection of the environment, in which case evidence that the applicant has complied with the requirements of the Department responsible for environmental matters will be conclusive of adequate protection under this section; and
- (b) the area and term applied for are appropriate for the proposed operations,

and may request the applicant—

- (c) to provide further information and proposals, including, without limitation, information and proposals relating to—
 - (i) the acquisition by the State or its nominee of a Participating Interest in the Mining Project to which the proposals relate; and
 - (ii) the transfer of some or all of the Participating Interest to the Company in accordance with the Option Agreement and other

²¹ Section 43(1) repealed and replaced by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

²² Section 43(1) repealed and replaced by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

matters and transactions contemplated by the Option Agreement;
or

(d) to amend the application or proposals.

(1A)²³ ²⁴The Minister may require the Board, in assessing the application, to consider whether the proposals include proposals which provide for the performance of the transactions contemplated in the Option Agreement on the terms specified in the Option Agreement.

(2) Where the Board considers that the applicant has reasonably satisfied the requirements of Subsections (1) and (1A) the Board shall recommend approval of the proposals.

(3) Where—

- (a) an application has been made for a special mining lease under Section 35 or a mining lease under Section 42; and
- (b) proposals for development have been submitted under those sections; and
- (c) such further information or revised proposals as may have been required have been submitted,

but the Minister, after considering the recommendations of the Board, is not prepared to approve the proposals, the Minister shall, before refusing the application, inform the applicant by written notice that he is prepared to approve the proposals and grant the application subject to the applicant—

- (d) making such alterations to the proposals; and
- (e) complying with such conditions,

as the Minister determines.

(4) A notice under Subsection (3) shall—

- (a) contain details of the Minister's reasons for requiring alterations or imposing conditions; and
- (b) specify a date which is reasonable in the circumstances on or before which the applicant shall, if he wishes to pursue the application—
 - (i) make such alterations or comply with such conditions as are specified; or
 - (ii) submit, for the consideration of the Minister, any matters including new proposals generally or in respect of a particular matter; and
- (c) contain a statement to the effect that the application will be refused if the applicant fails to respond to Paragraph (b).

²³ Section 43(1A) inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

²⁴ Section 43(1A) inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

(5) Where the applicant complies with the requirements of Subsection (3) the Minister shall approve the proposals and grant the application.

44. REFUSAL TO GRANT.

(1) Subject to Section 43(5) the Minister may refuse an application for a mining lease but shall not do so before—

- (a) giving the applicant a full opportunity to consult with him; and
- (b) taking into account, after considering a report from the Board, any proposals submitted under Section 43(4)(b)(ii).

(2) Where, after consultation and consideration of matters specified in Section 43, the Minister is not prepared to grant the application, he shall give to the applicant written notice of his refusal stating the grounds for that refusal.

45. VARIATION OF APPROVED PROPOSALS.

(1) The holder of a mining lease may at any time apply to the Minister for a variation of the approved proposals.

(2) An application under Subsection (1) shall—

- (a) be made in writing; and
- (b) specify one or more of the following bases on which a variation is sought:—
 - (i) that events beyond the reasonable control of the holder of the mining lease prevent him from carrying out the approved proposals;
 - (ii) that the holder of the mining lease wishes to develop the mine or conduct mining operations or conduct operations ancillary to mining in a manner different from that originally proposed;
 - (iii) that the holder wishes to reduce or suspend production because—
 - (A) at the time economic or marketing conditions are such that the mining operation is not viable; or
 - (B) difficulties in obtaining requisite approvals prevent mining or restrict it in a manner that is, or subject it to conditions that are, for the time being impracticable.

(3) The Minister, after considering a recommendation of the Board, shall consider an application for variation under this section and—

- (a) may require the applicant to provide further information or to amend any revised proposals submitted with the variation; or
- (b) may approve the variation requested which—
 - (i) shall be substituted for the previously approved proposals; and

- (ii) may include such further conditions as the Minister considers necessary; or
- (c) may, after due consultation with the applicant, refuse the variation.

(4) Where the Minister refuses an application for variation under this section he shall give notice in writing to the applicant of the reasons for his refusal.

46. EXTENSION OF TERM OF MINING LEASE.

(1) The Minister may, on the application by the holder of a mining lease and after considering a recommendation from the Board, extend the term of the mining lease for such period or periods each not exceeding 10 years, as the Minister determines.

- (2) An application for the extension of the term of a mining lease—
 - (a) shall be on the prescribed form; and
 - (b) shall be lodged in triplicate with the prescribed application fee; and
 - (c) shall be lodged in accordance with the procedures specified in Division VI.1.

47. REPORTING REQUIREMENTS IN RESPECT OF A MINING LEASE.

(1) The holder of a mining lease shall lodge with the Director the following reports within the prescribed times covering the following periods:—

- (a) in respect of each calendar month from the date of grant of the lease—a report on the prescribed form detailing the production of minerals, if any, including particulars of quantity and value of ore mined or treated and quantity and value of minerals recovered;
- (b) in respect of each period of one year calculated from the date of grant of the lease—a report giving full details of all work undertaken on or in connection with the lease including particulars of production of minerals, development work, exploration and all other information which may reasonably be thought to be of relevance to the geology and mineral resources of the State;
- (c) in respect of the period up to the date of surrender of the whole or any portion of the mining lease, or expiry or cancellation of the lease—a report which summarizes all work undertaken on and all production from—
 - (i) in the case of the surrender of a portion of the mining lease—that portion; and
 - (ii) otherwise—from the whole of the mining lease,

since the date of grant and which also meets the requirements of Paragraph (b) in relation to the period since the last report was lodged under that paragraph.

- (2) A report—

- (a) under Subsection (1)(a)—shall be lodged within 30 days; and
- (b) under Subsection (1)(b)—shall be lodged within 90 days,

of the end of the reporting period.

(3) A report lodged under Subsection (1)(a) shall not be made available to any person outside the Department nor shall its content be revealed except to the extent necessary for the Director to publish statistical information concerning the geology and mineral resources of the State or to give advice to the National Executive Council on a confidential basis.

(4) Except with the consent of the holder of a mining lease, until the mining lease has expired or been surrendered or cancelled, a report lodged under Subsection (1)(b) shall not be made available to any person outside the Department, nor shall its content be revealed except to the extent necessary for the Director to publish statistical information concerning the geology and mineral resources of the State or to give advice to the National Executive Council, other Departments or the Central Bank on a confidential basis.

(5) A report lodged under Subsection (1)(c) shall be available for perusal and copying by any person.

Division 4.

Alluvial Mining Leases.

Subdivision A. – General.

48. GRANT OF AN ALLUVIAL MINING LEASE.

(1) Subject to Subsection (2), the Minister may, on the application of a natural person who is a citizen or of a land group in respect of land owned by that natural person or land group and after considering a recommendation from the Board, grant an alluvial mining lease over that land to that natural person or land group.

(2) An alluvial mining lease shall not be granted over land that is the subject of an existing tenement except as provided for in Sections 59 and 90.

(3) An alluvial mining lease—

- (a) shall be on the prescribed form; and
- (b) shall require that as a condition of the alluvial mining lease the holder complies with the approved proposals; and
- (c) may include such other conditions as the Minister determines.

49. TERM OF ALLUVIAL MINING LEASE.

An alluvial mining lease may be granted for a term not exceeding five years which may be extended under Section 55.

50. AREA AND SHAPE OF ALLUVIAL MINING LEASE.

(1) An alluvial mining lease may only be granted over land that is a river bed, and land that extends no further than 20m from any river bed.

(2) The area of land in respect of which an alluvial mining lease may be granted shall be—

- (a) not more than 5ha; and
- (b) in a rectangular or polygonal shape.

(3) An alluvial mining lease may only be granted to a depth which is consistent with the safe conduct of the mining development described in the approved proposals and the depth shall be specified on the lease document.

51. RIGHTS CONFERRED BY ALLUVIAL MINING LEASE.

(1) An alluvial mining lease authorizes the holder, in accordance with the *Mining (Safety) Act 1977* and conditions to which it is subject, to—

- (a) enter and occupy the land for the purpose of mining alluvial minerals only located on that land and carry on such operations and undertake such works as may be necessary or expedient for that purpose and for the purpose of treating those alluvial minerals; and
- (b) take and remove rock, earth, soil and alluvial minerals from that land, with or without treatment; and
- (c) take and divert water situated on or flowing through such land and use it for any purpose necessary for his mining or treatment activities subject to and in accordance with the *Water Resources Act 1982*; and
- (d) do all things necessary or expedient for the undertaking of alluvial mining or treatment operations on that land.

(2) Subject to this Act, the holder of an alluvial mining lease—

- (a) is entitled, for alluvial mining purposes, to the exclusive occupancy of the land in respect of which the alluvial mining lease was granted; and
- (b) owns all alluvial minerals derived from alluvials lawfully mined from that land.

52. APPLICATION FOR ALLUVIAL MINING LEASE.

An application for the grant of an alluvial mining lease—

- (a) shall be on the prescribed form and shall have attached either—
 - (i) a schedule on the prescribed form describing the corners of the boundary of the required tenement area in latitude and longitude, and a sketch map showing the boundary of the area and such other natural features as will allow the area to be correctly located; or

- (ii) a survey as required under Section 97; and
- (b) shall be accompanied by—
 - (i) the applicant's proposals; and
 - (ii) a statutory declaration that the area of land over which the application is made has been marked out in accordance with Section 96; and
 - (iii) a statutory declaration to the effect that the applicant is an owner of the land the subject of the application; and
- (c) shall be lodged in triplicate with the prescribed application fee; and
- (d) shall be lodged in accordance with the procedures specified in Division VI.1.

53. APPROVED PROPOSALS FOR AN ALLUVIAL MINING LEASE.

In assessing an application for the grant of an alluvial mining lease, the Board shall consider whether the proposals and any mining agreement submitted by the applicant under Section 64 are appropriate and may request the applicant to provide further information or amend the application or the proposals or mining agreement submitted by him.

54. VARIATION OF APPROVED PROPOSALS.

(1) The holder of an alluvial mining lease may at any time apply to the Minister in writing for a variation of the approved proposals.

(2) An application under Subsection (1) shall specify the basis on which the variation is sought.

- (3) The Minister, after considering a recommendation of the Board—
 - (a) may require the applicant to provide further information or to amend any revised proposals submitted with the variation; or
 - (b) may approve on the prescribed form the variation requested, which variation—
 - (i) shall be substituted for the previously approved proposals; and
 - (ii) may include such other conditions as the Minister considers necessary; or
 - (c) may refuse the variation.

55. EXTENSION OF TERM OF ALLUVIAL MINING LEASE.

(1) The Minister may, on the application by the holder of an alluvial mining lease and after considering a recommendation from the Board, extend the term of an alluvial mining lease for such period or periods each not exceeding five years as the Minister determines.

- (2) An application for extension of the term of an alluvial mining lease—
 - (a) shall be on the prescribed form; and
 - (b) shall be lodged in triplicate with the prescribed application fee; and
 - (c) shall be lodged in accordance with the procedures specified in Division VI.1.

56. REPORTING REQUIREMENTS FOR AN ALLUVIAL MINING LEASE.

(1) The holder of an alluvial mining lease shall, in respect of each month during which any alluvial mineral is produced or obtained from the land, record the quantity and value of alluvial minerals recovered in a form that may be produced for inspection by an officer of the Department.

(2) The holder of an alluvial mining lease shall lodge annually with the Director the records under Subsection (1).

57. NO TRANSFER OR OTHER DEALINGS IN AN ALLUVIAL MINING LEASE.

(1) A legal or equitable interest in or affecting an alluvial mining lease shall not validly be created, transferred or otherwise disposed of, whether directly or indirectly, unless—

- (a) the dealing arises in the due administration of the estate or affairs of a holder—
 - (i) who is dead; or
 - (ii) who is a person who is insolvent within the meaning of the *Insolvency Act 1951*; or
 - (iii) who is otherwise incapacitated at law; and
- (b) prior written consent to the dealing is given by the Director or an officer of the Department acting with the authority of the Director.

(2) Nothing in Subsection (1) prevents, or affects the validity of, any agreement made in contemplation of a dealing to which that subsection applies where the agreement expressly provides that the consent required by that subsection is to be obtained as a condition of the agreement.

(3) The Director shall only consent to the dealing if the transferee or person in whose favour the interest is to be created is a landowner of the land the subject of the alluvial mining lease.

58. NO CONSOLIDATION OF AN ALLUVIAL MINING LEASE.

Notwithstanding the provisions of Section 131, an alluvial mining lease may not be consolidated with any other alluvial mining lease.

Subdivision B. – Application over Existing Tenements.

59. ALLUVIAL MINING LEASE MAY BE GRANTED OVER LAND THE SUBJECT OF AN EXISTING EXPLORATION LICENCE AND VICE VERSA.

(1) An alluvial mining lease may be granted over land or part of land over which there is an existing exploration licence.

(2) A person may make application in accordance with Division VI.1 for an exploration licence over land which is the subject of an alluvial mining lease and may be granted such exploration licence over such portion of the land as is below the depth to which the alluvial mining lease was granted.

60. EFFECT OF ALLUVIAL MINING LEASE ON EXPLORATION LICENCE AND VICE VERSA.

(1) The effect of the grant of an alluvial mining lease over land or part of land over which there is an existing exploration licence is to excise from the exploration licence the natural surface of that land and such portion of that land lying beneath it to the depth to which the alluvial mining lease was granted.

(2) Where an alluvial mining lease has been granted over an exploration licence or *vice versa* the exploration licence shall have full force and effect below the depth to which the alluvial mining lease was granted.

(3) After consultation between the holders of the respective tenements the holder of an exploration licence may enter on and occupy the land over which there is an alluvial mining lease for the purpose of carrying out exploration and (where the holder of an exploration licence converts his tenement to a mining lease or special mining lease) mining the land below the depth to which the alluvial mining lease was granted, but he shall not unreasonably interfere with the operations of the holder of the alluvial mining lease.

(4) On the surrender, cancellation or expiry of an alluvial mining lease, the alluvial mining lease shall cease to have effect and—

- (a) any land excised from an exploration licence under Subsection (1) shall revert to that exploration licence; or
- (b) where another tenement has been granted over all or part of the land the subject of the alluvial mining lease that part of the land that would otherwise have reasonably been included in the other tenement but for the existence of the alluvial mining lease shall be amalgamated with the land the subject of that other tenement.

61. REGISTRAR TO NOTIFY HOLDER OF EXPLORATION LICENCE OF APPLICATION FOR ALLUVIAL MINING LEASE.

Where an application for the grant or extension of the term of an alluvial mining lease is registered in respect of land which is the subject of an exploration

licence, the Registrar shall immediately notify the holder of the exploration licence of the application and supply him with a copy of the application and the proposals as provided for in Section 106.

62. HOLDER OF EXPLORATION LICENCE MAY OBJECT TO APPLICATION FOR AN ALLUVIAL MINING LEASE, ETC.

(1) The holder of an exploration licence may, within 30 days of receiving notification under Section 61 of an application, lodge an objection to the application on the prescribed form with the Registrar.

(2) On receipt of an objection under Subsection (1), the Registrar shall forward it to the Board.

(3) The Board shall recommend to the Minister that he refuse or defer any application for grant of an alluvial mining lease where mining on the land the subject of the application will be of material detriment to—

- (a) the exploration programme of; or
- (b) any mining operation or operation ancillary to mining proposed to be established by,

the holder of the exploration licence.

63. OBJECTOR TO BE GIVEN NOTICE OF MEETING OF BOARD TO CONSIDER APPLICATION.

The Registrar shall give to the holder of an exploration licence, who lodges an objection under Section 62(1) to an application, notification of the date and place of the meeting of the Board at which the application is to be considered and the holder of the exploration licence may attend for the purpose of supporting his objection.

64. HOLDER OF EXPLORATION LICENCE MAY ELECT TO NEGOTIATE ON THE MINING OF ALLUVIAL MINERALS.

(1) The holder of an exploration licence may, within 30 days of receiving notice under Section 61, in the case of an application for the grant of an alluvial mining lease, lodge with the Registrar a notice on the prescribed form and duly endorsed by the applicant that the applicant and the exploration licence holder wish to negotiate on the mining of the alluvial minerals the subject of the application for the alluvial mining lease.

(2) On receipt of a notice under Subsection (1), the Registrar shall so advise the Board, and the Board shall defer consideration of the application for a period of six months from the date the notice was registered by the Registrar.

(3) Within the period of six months provided for in Subsection (2) the applicant and the holder of the exploration licence may submit to the Registrar any agreement relating to the proposed mining of the alluvial minerals the subject of the application for the alluvial mining lease and such other matters as have been agreed.

(4) On the expiration of the six months period under Subsection (3) or on receipt by the Registrar of an agreement, whichever first happens, the Board shall deal with the application taking into consideration any agreement submitted to the Registrar under Subsection (3).

(5) No other agreement for the mining of alluvial minerals the subject of the application for the alluvial mining lease shall be valid until the procedures specified in this section have been complied with.

Division 5.

Lease for Mining Purposes.

Subdivision A. – General.

65. GRANT OF A LEASE FOR MINING PURPOSES.

(1) Other than in respect of land that is the subject of an existing tenement (except as provided for in Sections 75 and 90), the Minister may, on the application of any person and after considering a recommendation from the Board, grant to that person a lease for mining purposes.

(2) A lease for mining purposes—

- (a) shall be on the prescribed form; and
- (b) shall specify the purpose or purposes under Section 68 for which it was granted; and
- (c) shall require as a condition of the lease for mining purposes that the holder complies with the approved proposals; and
- (d) may include such other conditions as the Minister may determine.

66. TERM OF LEASE FOR MINING PURPOSES.

The term of a lease for mining purposes shall be identical to the term of the special mining lease or mining lease in relation to which the lease for mining purposes is granted or, where there is no related lease, for a term not exceeding 20 years and the term of the lease for mining purpose may be extended under Section 73.

67. AREA AND SHAPE OF A LEASE FOR MINING PURPOSES.

(1) The area of land in respect of which a lease for mining purposes may be granted shall be—

- (a) not more than 60 Km²; and
- (b) in a rectangular or polygonal shape.

(2) A lease for mining purposes shall be granted to a depth consistent with the purposes for which it was granted.

68. PURPOSES FOR WHICH A LEASE FOR MINING PURPOSES MAY BE GRANTED.

A lease for mining purposes may be granted in connection with mining operations conducted or to be conducted by the applicant for the lease for mining purposes or some other person for one or more of the following purposes:—

- (a) the construction of buildings and other improvements, and operating plant, machinery and equipment;
- (b) the installation of a treatment plant and the treatment of minerals therein;
- (c) the deposit of tailings or waste;
- (d) housing and other infrastructure required in connection with mining or treatment operations;
- (e) transport facilities including roads, airstrips and ports;
- (f) any other purpose ancillary to mining or treatment operations or to any of the preceding purposes which may be approved by the Minister.

69. RIGHTS CONFERRED BY A LEASE FOR MINING PURPOSES.

(1) A lease for mining authorizes the holder, in accordance with the *Mining (Safety) Act 1977* and any conditions to which it may be subject, to—

- (a) enter and occupy the land over which it was granted; and
- (b) develop that land and undertake such works as may be necessary or expedient; and
- (c) take and divert water situated on or flowing through such land and use it in accordance with the *Water Resources Act 1982*; and
- (d) do all other things necessary or expedient,

to achieve the purposes for which the lease for mining purposes was granted.

(2) Subject to this Act, the holder of a lease for mining purposes is entitled, for the purposes for which the lease for mining purposes was granted, to the exclusive occupancy of the land over which the lease for mining purposes was granted.

70. APPLICATION FOR A LEASE FOR MINING PURPOSES.

An application for the grant of a lease for mining purposes—

- (a) shall be on the prescribed form and shall have attached either—
 - (i) a schedule on the prescribed form describing the corners of the boundary of the required tenement area in latitude and longitude and a sketch map showing the boundary of the area and such other natural features as will allow the area to be correctly located; or

- (ii) a survey as required under Section 97; and
- (b) shall be accompanied by—
 - (i) the applicant's proposals; and
 - (ii) a statutory declaration that the area of land over which the application is made has been marked out in accordance with Section 96; and
- (c) shall be lodged in triplicate with the prescribed application fee; and
- (d) shall be lodged in accordance with the procedures specified in Division VI.1.

71. APPROVED PROPOSALS FOR A LEASE FOR MINING PURPOSES.

In assessing an application for the grant of a lease for mining purposes, the Board shall consider whether the proposals submitted by the applicant are appropriate and may request the applicant to provide further information or to amend the application or the proposals submitted by him.

72. VARIATION OF APPROVED PROPOSALS.

(1) The holder of a lease for mining purposes may at any time apply to the Minister in writing for a variation of the approved proposals.

(2) An application under Subsection (1) shall specify the basis on which the variation is sought.

- (3) The Minister, after considering a recommendation of the Board, may—
 - (a) require the applicant to provide further information or to amend any revised proposals submitted with the application for variation; or
 - (b) approve the variation which approval shall be on the prescribed form and—
 - (i) shall be substituted for the previously approved proposals; and
 - (ii) may include such other conditions as the Minister considers necessary; or
 - (c) refuse the variation.

73. EXTENSION OF TERM OF LEASE FOR MINING PURPOSES.

(1) The Minister may, on the application by the holder of a lease for mining purposes and after considering a recommendation from the Board, extend the term of the lease for mining purposes—

- (a) to coincide with any extension of the term of the special mining lease or mining lease in relation to which the lease for mining purposes was granted; or

- (b) for a period equal to the remaining term of any other special mining lease or mining lease referred to in the proposals for the lease for mining purposes; or
 - (c) where there is no related lease, for a term not exceeding 10 years.
- (2) An application for extension of the term of a lease for mining purposes—
- (a) shall be on the prescribed form; and
 - (b) shall be lodged in triplicate with the prescribed application fee; and
 - (c) shall be lodged in accordance with the procedures specified in Division VI.1.

74. REPORTING REQUIREMENTS FOR A LEASE FOR MINING PURPOSES.

The holder of a lease for mining purposes shall lodge with the Director such reports as the Director may from time to time require.

Subdivision B. – Application over Existing Tenements.

75. LEASE FOR MINING PURPOSES MAY BE GRANTED OVER LAND THE SUBJECT OF AN EXISTING EXPLORATION LICENCE AND VICE VERSA.

(1) A lease for mining purposes may be granted over the land or part of the land over which there is an existing exploration licence.

(2) A person may make application under Division VI.1 for an exploration licence over land which is the subject of a lease for mining purposes and may be granted such exploration licence over such portion of the land as is below the depth to which the lease for mining purposes was granted.

76. EFFECT OF A LEASE FOR MINING PURPOSES ON AN EXPLORATION LICENCE AND VICE VERSA.

(1) The effect of the grant of a lease for mining purposes over land or part of land over which there is an exploration licence is to excise from the exploration licence the natural surface of that land and such portion of the land lying beneath it to the depth to which the lease for mining purposes was granted.

(2) Where a lease for mining purposes has been granted over an exploration licence or *vice versa* the exploration licence shall have full force and effect below the depth to which the lease for mining purposes was granted.

(3) After consultation between the holders of the respective tenements the holder of an exploration licence may enter on and occupy the land over which there is a lease for mining purposes for the purpose of exploring (and, where the holder of an exploration licence converts his tenement to a mining lease or special mining lease, mining) the land below the depth to which the lease for mining purposes was

granted, but he shall not unreasonably interfere with the operations of the holder of the lease for mining purposes.

(4) On the surrender, cancellation or expiry of a lease for mining purposes, the lease for mining purposes shall cease to have effect and—

- (a) any land excised from an exploration licence under Subsection (1) shall revert to that exploration licence; or
- (b) where another tenement has been granted over all or part of the land the subject of the lease for mining purposes that part of the land that would otherwise have reasonably been included in the other tenement but for the existence of the lease for mining purposes shall be amalgamated with the land the subject of that other tenement.

77. REGISTRAR TO NOTIFY HOLDER OF EXPLORATION LICENCE OF APPLICATION FOR LEASE FOR MINING PURPOSES IN CERTAIN CIRCUMSTANCES.

Where an application for the grant or extension of the term of a lease for mining purposes is registered in respect of land that is the subject of an exploration licence, the Registrar shall, where the applicant is not the holder of the exploration licence, immediately notify the holder of the exploration licence of the application and supply him with a copy of the application and the proposals as provided for in Section 106.

78. HOLDER OF EXPLORATION LICENCE MAY OBJECT TO APPLICATION FOR A LEASE FOR MINING PURPOSES, ETC.

(1) The holder of an exploration licence, may, within 30 days of receiving notification under Section 77 of an application, lodge a written objection to the application on the prescribed form with the Registrar.

(2) On receipt of any objection under Subsection (1), the Registrar shall forward it to the Board.

(3) The Board shall recommend to the Minister that he refuse or defer any application for the grant of a lease for mining purposes where operations on the land the subject of the application will be of material detriment to—

- (a) the exploration programme of; or
- (b) any mining operations or operations ancillary to mining proposed to be established by,

the holder of the exploration licence.

79. OBJECTOR TO BE GIVEN NOTICE OF MEETING OF BOARD TO CONSIDER APPLICATION.

The Registrar shall give to the holder of an exploration licence, who lodges an objection under Section 78(1) to an application, notification of the date and place of

the meeting of the Board at which the application is to be considered and the holder of the exploration licence may attend for the purpose of supporting his objection.

Division 6.

Mining Easement.

Subdivision A. – General.

80. GRANT OF A MINING EASEMENT.

(1) The Minister may, on the application of any person and after considering a recommendation from the Board, grant to that person a mining easement.

(2) A mining easement—

- (a) shall be on the prescribed form; and
- (b) shall specify the purposes under Section 83 for which it is granted; and
- (c) shall require that as a condition of the mining easement the holder complies with the approved proposals; and
- (d) may include such other conditions as the Minister determines.

81. TERM OF MINING EASEMENT.

The term of a mining easement shall be identical to the term of the tenement in relation to which the mining easement was granted and the term of a mining easement may be extended under Section 88.

82. AREA OF A MINING EASEMENT.

The area of land over which a mining easement may be granted will be that sufficient for the purpose or purposes for which it was granted and shall be in a rectangular or polygonal shape.

83. PURPOSES FOR WHICH A MINING EASEMENT MAY BE GRANTED.

A mining easement may be granted in connection with mining or treatment or ancillary operations conducted by the applicant for the mining easement or some other person for the purpose of constructing and operating one or more of the following facilities:—

- (a) a road;
- (b) a tramway or railway;
- (c) an aerial ropeway;
- (d) a power transmission line;
- (e) a pipeline;
- (f) a conveyor system;

- (g) a bridge or tunnel;
- (h) a waterway;
- (i) any other facility ancillary to mining or treatment or ancillary operations in connection with any of the preceding purposes which may be approved by the Minister.

84. RIGHTS CONFERRED BY MINING EASEMENT.

(1) A mining easement authorizes the holder, in accordance with the *Mining (Safety) Act 1977* and any conditions to which the mining easement may be subject, to—

- (a) enter and occupy the land over which it was granted; and
- (b) develop that land and undertake such works as may be necessary or expedient; and
- (c) take and divert water situated on or flowing through such land and use it in accordance with the *Water Resources Act 1982*; and
- (d) do all other things necessary or expedient,

to achieve the purposes for which the mining easement was granted.

(2) Subject to this Act, the holder of a mining easement is entitled for the purposes for which the mining easement was granted to exclusive occupancy of the land over which the mining easement was granted.

85. APPLICATION FOR A MINING EASEMENT.

An application for the grant of a mining easement—

- (a) shall be on the prescribed form and shall have attached either—
 - (i) a schedule on the prescribed form describing the corners of the boundary of the required tenement area in latitude and longitude, and a sketch map showing the boundary of the area and such other natural features as will allow the area to be correctly located; or
 - (ii) a survey as required under Section 97; and
- (b) shall be accompanied by—
 - (i) the applicant's proposals; and
 - (ii) a statutory declaration that the area of land over which the application is made has been marked out in accordance with Section 96; and
- (c) shall be lodged in triplicate with the prescribed application fee; and
- (d) shall be lodged in accordance with the procedures specified in Division VI.1.

86. APPROVED PROPOSALS FOR A MINING EASEMENT.

In assessing an application for the grant of a mining easement, the Board shall consider whether the proposals submitted by the applicant are appropriate, and may request the applicant to provide further information or to amend the application or the proposals submitted by him.

87. VARIATION OF APPROVED PROPOSALS.

(1) The holder of a mining easement may at any time apply to the Minister in writing for a variation of the approved proposals.

(2) An application under Subsection (1) shall specify the basis on which the variation is sought.

(3) The Minister, after considering a recommendation of the Board, may—

- (a) require the applicant to provide further information or to amend any revised proposals submitted with the variation; or
- (b) approve the variation which approval shall be on the prescribed form and—
 - (i) shall be substituted for the previously approved proposals; and
 - (ii) may include such other conditions as the Minister considers necessary; or
- (c) refuse the variation.

88. EXTENSION OF TERM OF MINING EASEMENT.

(1) The Minister may, on the application by the holder of a mining easement and after considering a recommendation from the Board, either—

- (a) extend the term of the mining easement to coincide with the extension of the term of the special mining lease or mining lease in relation to which the mining easement was granted; or
- (b) extend the term of the mining easement for a period equal to the remaining term of any other special mining lease or mining lease or lease for mining purposes referred to in the proposals for the mining easement.

(2) An application for extension of the term of a mining easement—

- (a) shall be on the prescribed form; and
- (b) shall be lodged in triplicate with the prescribed application fee; and
- (c) shall be lodged in accordance with the procedures specified in Division VI.1.

89. REPORTING REQUIREMENTS FOR A MINING EASEMENT.

The holder of a mining easement shall lodge with the Director such reports as the Director may from time to time require.

*Subdivision B. – Application over Existing Tenement.***90. MINING EASEMENT MAY BE GRANTED OVER LAND THE SUBJECT OF AN EXISTING TENEMENT AND VICE VERSA.**

(1) A mining easement may be granted over the land or part of the land over which there is an existing tenement.

(2) Another tenement may be applied for over land over which there is a mining easement and may be granted over all or such portion of such land as the Minister considers will not be of material detriment to the operations of the holder of the mining easement.

(3) In this Subdivision, “**primary tenement**” means the tenement over which a mining easement may be granted under this section.

91. DUTY OF MINISTER IN GRANTING MINING EASEMENT OVER LAND OVER WHICH THERE IS AN EXISTING TENEMENT.

(1) Where the Minister intends to grant a mining easement over land over which there is a primary tenement, the Minister shall, wherever practicable, endeavour so to grant the mining easement that it can properly be used and enjoyed without the need to excise from the land over which the primary tenement was granted the land over which the mining easement is granted.

(2) Where—

- (a) a mining easement is granted over land over which there is a primary tenement; and
- (b) the Minister is not able to grant the mining easement in accordance with Subsection (1),

the Minister shall, after considering a recommendation of the Board, excise from the land over which the primary tenement was granted such portion to such depth as is reasonably necessary for the proper use and enjoyment of the mining easement.

92. EFFECT OF MINING EASEMENT ON PRIMARY TENEMENT.

(1) A primary tenement shall continue in full force and effect subject only to any excision made under Section 91.

(2) The holder of a primary tenement (whether or not there has been an excision under Section 91) may enter on and occupy the surface of the land over which there is a mining easement for the purpose of exercising the rights conferred by that primary tenement, but shall not unreasonably interfere with the operations of the holder of the mining easement.

(3) On the surrender, cancellation or expiry of the mining easement, the mining easement shall cease to have effect and—

- (a) any land excised from a primary tenement under Section 91 shall revert to that primary tenement; or
- (b) where another tenement has been granted over all or part of the land the subject of the mining easement that part of the land that would otherwise have reasonably been included in the other tenement but for the existence of the mining easement shall be amalgamated with the land the subject of that other tenement.

93. REGISTRAR TO NOTIFY HOLDER OF TENEMENT OF APPLICATION FOR MINING EASEMENT IN CERTAIN CIRCUMSTANCES.

Where an application for the grant or extension of the term of a mining easement is registered in respect of land which is the subject of another tenement, the Registrar shall, where the applicant is not the holder of that tenement, immediately notify the holder of the other tenement of the application and supply him with a copy of the application and the proposals as provided for in Section 106.

94. HOLDER OF TENEMENT MAY OBJECT TO APPLICATION FOR A MINING EASEMENT, ETC.

(1) The holder of another tenement may, within 30 days of receiving notification under Section 93 of an application, lodge a written objection to the application on the prescribed form with the Registrar.

(2) On receipt of any objection under Subsection (1), the Registrar shall forward it to the Board.

(3) The Board shall recommend to the Minister that he refuse or defer any application for the grant of a mining easement where operations on the land the subject of the application will be of material detriment to the operations of the holder of the other tenement.

95. OBJECTOR TO BE GIVEN NOTICE OF MEETING OF BOARD TO CONSIDER APPLICATION.

The Registrar shall give to the holder of another tenement, who lodges an objection under Section 94(1) to an application, notification of the date and place of the meeting of the Board at which the application is to be considered and the holder may attend for the purpose of supporting his objection.

PART VI. – PROVISIONS GENERALLY APPLICABLE TO TENEMENTS.***Division 1.******Application for the Grant and Extension of Term of a Tenement.*****96. MARKING OUT OF A TENEMENT.**

(1) An applicant for the grant of a tenement (other than an exploration licence) shall, before making his application–

- (a) mark out each corner of the land over which the tenement is sought by erecting a distinctively coloured hardwood, metal or concrete post standing at least 1.2m above the surface or such survey marks as are permitted under the survey directions; and
- (b) either–
 - (i) clear lines along the boundaries of the land or place distinctively coloured hardwood, metal or concrete markers at sufficiently close spacing to indicate clearly the boundaries of the land; or
 - (ii) to the satisfaction of the Director, comply substantially with the requirements of Paragraphs (a) and (b)(i) to the extent that the land has been sufficiently identified to be located in the field.

(2) Until such time as the application for the grant of the tenement has been determined, the applicant shall maintain the posts and markers or cleared lines established in accordance with Subsection (1).

(3) The holder of a tenement shall maintain posts and markers or cleared lines established in accordance with Subsection (1) during the term of the tenement.

(4) The Director may, at any time, grant to a person not otherwise authorized under this Act the right on the prescribed form to enter land for the purposes of marking out, and maintaining posts or markers or cleared lines as required under this section.

(5) A person carrying out any work as required or authorized by this section shall not interfere unreasonably with the activities undertaken on the land over which the tenement is sought.

97. SURVEY.

(1) Prior to the grant of a tenement (other than an exploration licence) the boundary of the land the subject of an application shall be surveyed as provided for in Subsection (3).

(2) The Director may, at any time, grant to a person not otherwise authorized under this Act the right on the prescribed form to enter land for the purposes of surveying a tenement as required under this section.

(3) A survey of the land the subject of an application shall–

- (a) be made by a registered surveyor or under the direction of a registered surveyor; and
- (b) be at the cost of the applicant; and
- (c) conform to any class of survey permitted under the survey directions; and
- (d) include a schedule on the prescribed form describing the corners of the boundary of the land in latitude and longitude.

(4) A copy of the survey made under this section shall be lodged with the Registrar either—

- (a) at the time of lodgement of an application under this Division; or
- (b) subject to Subsection (6), at any time thereafter.

(5) Where a survey is lodged under Subsection (4) the Registrar shall immediately register the survey and—

- (a) where the survey confirms that all the land the subject of the application is available for the purposes for which the application was made, cause a copy of the survey schedule to be published in the National Gazette; or
- (b) where only part of the land is available—
 - (i) prepare a schedule of the land that is available for the tenement on the prescribed form in substitution of the schedule submitted with the survey; and
 - (ii) cause a copy of the revised schedule to be published in the National Gazette; and
 - (iii) send a copy of the revised schedule to the applicant.

(6) Where, at the time of lodgement of an application, a survey is not available, the application shall nevertheless be dealt with under this Division, and if the Head of State acting on advice, or the Minister, as the case may be, is prepared to grant the tenement subject to the survey confirming the availability of a substantial portion of the land applied for, the Minister shall give to the applicant 90 days notice to lodge a survey which shall be dealt with by the Registrar under Subsection (5).

(7) Where, in a case to which Subsection (6) applies, the applicant lodges a survey and the land is available for the purposes for which the application was made, the Head of State acting on advice, or the Minister, as the case may be, shall grant the application.

(8) Where the applicant fails to lodge a survey under this section or the survey reveals that none of the land the subject of the application is available for the purposes for which the application was made, the application shall be refused.

(9) Where there is a dispute as to the location of a boundary of a tenement, the Registrar shall arrange for the disputed boundary to be surveyed and the costs shall

be met by the party or parties claiming a location of the boundary different from that surveyed.

(10) Where the Registrar considers that any party may default on the payment for a survey under Subsection (9), he may, prior to arranging the survey, require each party to lodge a bond sufficient to cover the cost of the survey.

(11) A person carrying out a survey under this section shall not interfere unreasonably with the activities undertaken on the land the subject of the survey.

98. LODGING OF APPLICATIONS FOR GRANT AND EXTENSION.

(1) An application for the grant of a tenement shall be lodged with the Registrar, at his office in the National Capital District, by the applicant in person, or by his agent.

(2) An application for an extension of the term of a tenement shall be lodged with the Registrar, at his office in the National Capital District, by the applicant in person, or by his agent, or by mail.

99. TIME OF LODGEMENT OF APPLICATION FOR EXTENSION.

An applicant, who lodges an application for an extension of the term of a tenement less than 90 days prior to the date of expiry of the tenement, shall pay a late fee equal and additional to the fee prescribed for the application.

100. PRIORITY OF APPLICATIONS.

(1) Subject to this section and to Section 101, where two or more applications are made for the grant of a tenement over the same land or any part of the same land, the applicant who first lodges an application with the Registrar has the right in priority over every other applicant to have his application considered and determined.

(2) Subject to Subsection (3), where the Registrar is satisfied that two or more applicants for the grant of a tenement over the same land or any part thereof were present in his office at the same time for the purpose of lodging applications for that tenement, then notwithstanding the order in which he receives the applications, priority shall be determined by ballot conducted by the Registrar in the presence of the applicants.

(3) The procedure specified in Subsection (2) is only applicable in respect of applications which meet the requirements of Section 101.

(4) The applicant not accorded priority under a ballot under Subsection (2), or where there are more than one such applicant, each of the respective applicants in the order of priority determined by the ballot, has the right in priority over every person (other than an applicant who has priority over him by virtue of the ballot) to have his application considered and determined—

(a) where the prior application for the grant of a tenement is refused; or

- (b) over any land not included within the tenement granted as a result of the prior application.

(5) Where applications to which Subsection (1) applies are made by persons associated with each other, only one such application may be submitted for ballot under Subsection (2) and where, on request by the Registrar, those persons do not select one application, the Registrar shall select the application which he first receives.

(6) Where, subsequent to a ballot under Subsection (2), the Registrar ascertains that the successful applicant was an associated person of a person whose application was also considered in the ballot, the Registrar shall—

- (a) refuse that application; or
- (b) where a tenement has already been granted, cancel the grant.

101. PRELIMINARY EXAMINATION OF APPLICATIONS FOR GRANT OR EXTENSION.

The Registrar shall, at the time of the lodging of an application for the grant or extension of the term of a tenement, verify to his reasonable satisfaction the following matters in the presence of the applicant or his agent:—

- (a) that a substantial portion of the land over which the application is made is available for the grant of that type of tenement to the applicant under this Act;
- (b) that the application is on the prescribed form and has been completed by inclusion of all the required particulars;
- (c) that the application form has been lodged in triplicate and signed by or on behalf of the applicant;
- (d) that the documents required under this Act to accompany an application for the grant or extension of the term of that class of tenement in relation to which the application is made have been lodged;
- (e) that the application fee and any late fee due under Section 99 have been included.

102. DUTIES OF REGISTRAR WHERE PRELIMINARY EXAMINATION SHOWS THAT REQUIREMENTS HAVE NOT BEEN MET.

Where, following a preliminary examination of the matters referred to in Section 101, the Registrar is not satisfied that all such matters have been verified, the Registrar shall—

- (a) not accept nor register the application; and
- (b) immediately return all documents to the applicant or his agent.

103. DUTIES OF REGISTRAR WHERE PRELIMINARY EXAMINATION SHOWS THAT REQUIREMENTS HAVE BEEN MET.

Where, following a preliminary examination of the matters referred to in Section 101, the Registrar is satisfied that all such matters have been verified, the Registrar shall—

- (a) immediately—
 - (i) accept and register the application; and
 - (ii) note the registered number on the application form; and
 - (iii) note the date and time when the application was accepted and registered; and
 - (iv) sign the application form; and
 - (v) give one copy of the application form back to the applicant; and
- (b) subject to Section 7(3) as soon as possible thereafter—
 - (i) give one copy of the application form each to such officers of the Department as the Director has determined will be responsible for the administration and technical assessment of applications; and
 - (ii)²⁵ in the case of an application for the grant of a tenement in relation to a Mining Project, give written notice to the Company of the receipt of the application; and
 - (iii) report in writing to the Board.

103A. THE COMPANY MAY REQUIRE FURTHER INFORMATION.

²⁶(1) At any time after receipt by the Company of a notice under Section 103(b)(ii), the Company may request the applicant to provide to the Company, or to allow the Company access to, such information concerning the application and the proposals for development as the Company may reasonably require for the purpose of determining whether it will exercise the Option under the Option Agreement in respect of the Mining Project to which the application relates.

(2) On receipt of a request under Subsection (1), the applicant shall provide to the Company or allow the Company access to the information requested within such reasonable period as the Company may specify in its request on the condition that the Company—

- (a) pays the reasonable costs of the applicant incurred in providing or allowing the Company access to the information requested; and
- (b) subject to Subsection (3), keeps the information confidential on such terms and conditions as the applicant may reasonably require.

²⁵ Section 103(b)(ii) repealed and replaced by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

²⁶ Section 103A inserted by the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

(3) The Company shall be permitted to disclose the information referred to in Subsection (2) to—

- (a) such of its employees, officers or agents whose duties in connection with the exercise of the Option require the disclosure of the information; and
- (b) any adviser or other expert retained in connection with a proposal by the Company to exercise the Option,

who undertake to keep the information confidential on such terms and conditions as the applicant may reasonably require.

(4) A person who discloses the information referred to in Subsection (2) in contravention of the terms and conditions required by the applicant in accordance with Subsection (2)(b) or (3), is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding four years, or both.

104. REPORTS ON APPLICATION TO BOARD.

Each of the officers to whom the Registrar has given a copy of the application under Section 103(b)(i) shall, as soon as practicable, give a report thereon to the Board.

105. TIME FOR OBJECTIONS AND HEARINGS.

(1) An application for the grant or extension of the term of a tenement shall come before a Warden for hearing.

(2) Within seven days of the acceptance and registration of an application under Section 103(a) the Registrar shall—

- (a) confer with the Chief Warden; and
- (b) thereafter fix a date, being not less than 30 days after the date on which the application was registered, as the date before which objections to the application may be made; and
- (c) fix dates and places for the hearing, such dates being no earlier than seven days and no later than 14 days after the date fixed for objections under Paragraph (b); and
- (d) endorse the dates for objections and hearings, and the places for hearings on the application; and
- (e) notify the applicant in writing of the dates and places.

106. NOTICE OF APPLICATIONS.

The Registrar shall, as soon as practicable after his compliance with Section 105(2)—

- (a) send a copy of the application to the Provincial Government or Provincial Governments in whose province or provinces is situated the land in relation to which the application is made; and
- (b) cause a copy of the application to be published in the National Gazette; and
- (c) in the case of an application for an alluvial mining lease, a lease for mining purposes, or a mining easement, where the applicant is not the holder of the tenement send a copy of the application to the holder of a tenement on which the application may encroach; and
- (d) send or deliver to each District Office and Sub-District Office nearest to the area in relation to which the application is made a copy of the application; and
- (e) advertise a copy of the application in a newspaper published in and circulating throughout the country; and
- (f) keep a copy of the application continuously posted at the headquarters of the Department, until the application is determined.

107. OBJECTIONS.

(1) Any person may object to the grant or extension of the term of a tenement by lodging with the Registrar a written objection before the date fixed by the Registrar under Section 105(2)(b).

(2) On receipt of an objection under Subsection (1), the Registrar shall give a copy thereof to—

- (a) the applicant; and
- (b) the Executive Officer of the Board; and
- (c) keep a copy of the objection continuously posted at the headquarters of the Department, until the application in respect of which the objection was lodged is determined.

108. CONDUCT OF WARDEN'S HEARING.

(1) The Warden shall attend at the places and on the dates fixed by the Registrar under Section 105(2) and shall conduct a hearing in accordance with the procedures specified in Subsection (2) and such other procedures as will afford a fair hearing to the applicant, the landholders present at the hearing and such other persons as the Warden considers will be affected by the applicant's programme or proposals.

(2) The Warden shall—

- (a) satisfy himself as to the identity of the persons present at the hearing and that they are persons affected by the applicant's programme or proposals; and

- (b) allow the applicant to explain his programme for exploration or his proposals for conducting operations ancillary to mining or mining on the land the subject of the application; and
- (c) record and assess the views of any landholders present at the hearing concerning the conduct of exploration, operations ancillary to mining or mining on their land; and
- (d) record and assess the views of such other persons whom the Warden considers to be affected by the applicant's programme or proposals.

(3) The Warden may adjourn the hearing from time to time and from place to place on such conditions as to costs or otherwise as he thinks fit.

109. WARDEN TO SUBMIT REPORT ON HEARING TO THE BOARD.

The Warden shall, within 14 days after a hearing, submit a written report on the hearing to the Executive Officer of the Board.

110. MINING ADVISORY BOARD RECOMMENDATION.

(1) The Board shall consider each application for the grant or extension of the term of a tenement and for this purpose shall review and consider the reports submitted under—

- (a) Section 103(b)(ii); and
- (b) Section 104; and
- (c) Section 109,

and any report submitted by a Provincial Government advised of the application under Section 106(a).

(2) The Board shall also consider any objections—

- (a) in the case of an application for the grant or extension of the term of—
 - (i) an alluvial mining lease—received under Section 62(1); or
 - (ii) a lease for mining purposes—received under Section 78(1); or
 - (iii) a mining easement—received under Section 94(1); and
- (b) received under Section 107.

(3) The Board shall also consider—

- (a) in the case of an application for the grant or extension of the term of an exploration licence—the programme submitted under Section 24; or
- (b) in the case of an application for the grant of—
 - (i) a special mining lease—the proposals submitted under Section 35;
 - (ii) a mining lease—the proposals submitted under Section 42;

- (iii) an alluvial mining lease—the proposals submitted under Section 52;
- (iv) a lease for mining purposes—the proposals submitted under Section 70;
- (v) a mining easement—the proposals submitted under Section 85.

(4) Unless otherwise provided for in this Act, the Board may, after the consideration required under Subsections (1), (2) and (3)—

- (a) recommend the grant or extension of the term of the tenement; or
- (b) recommend the refusal of the application; or
- (c) defer further consideration of the application and request the applicant to amend the application or to provide further information or revised programmes or proposals as provided for in Sections 26, 43, 53, 71 and 86 within a reasonable time specified by the Board.

(5) Where the Board defers consideration under Subsection (4)(c), the Executive Officer of the Board shall give to the applicant written notification of the requirement of the Board for further information or for a revision of the applicant's programmes or proposals and of the time specified by the Board within which such further information or revised programme or proposals shall be provided.

(6) Where an applicant fails to provide further information or a revised programme or proposals required under this section within the specified time, the Board may recommend refusal of the application.

111. DUTIES OF THE REGISTRAR UPON GRANT AND EXTENSION OF THE TERM OF A TENEMENT.

(1) Upon the grant or extension of the term of a tenement under this Act, the Registrar shall—

- (a) advise the applicant of the Minister's decision; and
- (b) require the applicant to submit the prescribed rent within 30 days; and
- (c) in the case of the grant of a tenement, require the applicant to lodge within 30 days the prescribed security, if any, in the manner required by Section 150; and
- (d) cause a notice of the grant or extension of the term of a tenement to be published in the National Gazette.

(2) Where the applicant fails to comply with Subsection (1)(b) or (c), the Minister may cancel the grant or extension of the term of the tenement.

(3) Where the applicant complies with Subsection (1)(b) and (c), the Registrar shall issue to the applicant a title document to the tenement on the prescribed form.

112. DATE OF EXTENSION OF TERM.

(1) Where, prior to the expiry of a tenement, the holder has applied for an extension of the term of the tenement under this Division, the tenement shall continue in force over that portion of the land covered by the application until the determination of the application.

(2) The further period for which the term of a tenement is extended shall be deemed to have commenced on the day following the date on which the tenement would, but for the provisions of Subsection (1), have expired.

Division 2.***Registration and Dealings.*****113. REGISTER OF TENEMENTS.**

(1) The Registrar shall establish and maintain a Register, to be known as the Register of Tenements.

(2) The Register shall contain details of all registered applications for tenements and all details of their subsequent grant or refusal and of such other particulars as may be prescribed in relation to those tenements.

(3) The Register shall be received by all courts as *prima facie* evidence of all matters required or authorized by this Act to be entered in the Register.

114. REGISTRATION.

(1) All instruments requiring registration shall be lodged with the Registrar in the manner specified in this Act or prescribed and shall be accompanied by the prescribed fee.

(2) Subject to this Division, the time and date of lodgement with the Registrar shall be deemed to be the time and date at which registration was effected.

115. PROVISIONAL REGISTRATION.

(1) Where the Registrar is of the opinion that a document lodged for registration is erroneous or defective, he may reject the lodgement, but, except in the case of an application as provided for under Section 101, where he is of the opinion that the error or defect can be corrected, he shall—

- (a) cause the time and date of lodgement and particulars of the instrument to be entered in the Register and place the word “provisional” next to the entry; and
- (b) by written notice to the person who lodged the instrument, direct that person to ensure that the error or defect is corrected before a date specified in the notice.

(2) Where a direction under Subsection (1)(b)—

- (a) is complied with on or before the date specified in the notice—the instrument shall be deemed to have been registered at the time and date at which the instrument was originally lodged and the Registrar shall delete the word “provisional” from the Register; and
- (b) is not complied with on or before the date specified in the notice—the Registrar shall delete the entry from the Register entirely.

116. INTEREST IN TENEMENT TO BE CREATED IN WRITING.

A legal or equitable interest in an existing or future tenement is not capable of being created, assigned, or dealt with, whether directly or indirectly, except by a written instrument signed by the person creating, assigning or otherwise dealing with the interest, or by his duly authorized agent.

117. DEALING IN TENEMENTS.

Subject to this Act, a legal or equitable interest in a tenement may be sold, transferred, mortgaged, charged or otherwise encumbered, transmitted, seized under a warrant or writ of execution, or otherwise disposed of or made the subject of any other dealing.

118. TRANSFER OF A TENEMENT TO BE APPROVED AND REGISTERED.

(1) An application for approval of a transfer shall be in writing and shall be submitted with an instrument of transfer on the prescribed form to the Registrar, who shall submit the application to the Board for its consideration.

(2) The Minister may, on the recommendation of the Board—

- (a) approve; or
- (b) refuse to approve,

an application under Subsection (1) and any approval may be subject to such conditions as the Minister considers necessary in the circumstances.

(3) Where the Minister approves a transfer under Subsection (2)(a), the Registrar shall register the instrument of transfer.

(4) An instrument of transfer of a tenement does not convey a legal or equitable interest in the tenement unless and until it has been—

- (a) approved by the Minister under Subsection (2)(a); and
- (b) registered under Subsection (3).

119. INSTRUMENTS, OTHER THAN TRANSFERS TO BE APPROVED AND REGISTERED.

(1) This section applies to—

- (a) an instrument by which a legal or equitable interest in an existing or future tenement is or may be created, assigned, or otherwise dealt with,

whether directly or indirectly, which is not an instrument of transfer to which Section 118 applies; and

(b) a tribute agreement.

(2) No—

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

(b) tribute agreement is valid,

unless and until the instrument has been—

(c) approved by the Minister under Subsection (4)(a); and

(d) registered under Subsection (5).

(3) An application for approval of an instrument to which this section applies shall be submitted, together with the instrument, to the Registrar, who shall submit the application to the Board for its consideration.

(4) The Minister may, after considering the recommendation of the Board—

(a) approve; or

(b) refuse to approve,

an application under Subsection (3), and any approval may be subject to such conditions as the Minister considers necessary in the circumstances.

(5) Where the Minister approves an application under Subsection (4)(a), the Registrar shall register the instrument.

(6) Where the Minister has approved an instrument under this section, any subsequent transfer of the tenement under Section 118 effected by the instrument shall be deemed to have been approved by the Minister and shall be registered by the Registrar, provided that—

(a) the transfer is made in accordance with the provisions of the instrument; and

(b) there has been substantial compliance with the conditions of the tenement to which the transfer relates.

120. EFFECT OF REGISTRATION.

(1) Except in the case of fraud, the registered holder of a tenement shall have priority over any other person in respect of that tenement subject only to—

(a) an encumbrance or other interest which is notified on the Register; and

(b) conditions contained in the grant of the tenement or imposed in respect of the tenement by this Act.

(2) Except in the case of fraud—

- (a) no informality or irregularity in the application for or in the proceedings previous to the grant or extension of term of a tenement shall affect the title of the registered holder of the tenement; and
- (b) no person dealing with a registered holder of a tenement—
 - (i) needs to inquire into the circumstances under which the registered holder or any previous registered holder became registered; and
 - (ii) shall be affected by notice of any unregistered interest and the knowledge that any such unregistered interest is in existence shall not of itself be imputed as fraud.

(3) A grant of a freehold or leasehold estate in land shall not affect in any way any existing tenement acquired or continued in existence under this Act.

121. APPROVAL, ETC., OF MINISTER, ETC., NOT TO GIVE AN INSTRUMENT ANY EFFECT OUTSIDE THIS DIVISION.

The Minister, or a person under the direction or authority of the Minister, is not concerned with the effect in law of an instrument lodged under this Division, and the approval of such an instrument does not give it any force, effect or validity that it would not have had if this Division had not been enacted.

122. RIGHTS, ETC., CONFERRED BY THIS ACT ONLY EXERCISABLE BY HOLDER, ETC.

The—

- (a) rights conferred by this Act in relation to a tenement are only exercisable by the holder of the tenement; and
- (b) obligations imposed by this Act in relation to a tenement are only enforceable against the holder of the tenement,

except in so far as is otherwise provided for in this Act.

123. INSTRUMENTS MADE IN CONTEMPLATION OF APPROVAL.

Where—

- (a) an instrument is required to be registered under this Act; and
- (b) the instrument is subject to the approval of the Minister, whether expressly pursuant to this Act or by the agreement of the parties,

nothing in this Division prevents or affects the validity of an agreement made in contemplation of a dealing to which this section applies where the instrument evidencing the agreement expressly provides that registration under this Act shall be effected or such approval obtained, as the case may be, as a condition of the coming into force of the provisions of that instrument which require such registration or approval.

124. DEVOLUTION.

(1) Where, upon application in writing, the Registrar is satisfied that the rights of the holder of a tenement have devolved by operation of law to another person, the Registrar shall, on payment of the prescribed fee, enter the name of that other person to whom the tenement has devolved in the Register as the holder of the tenement.

(2) Upon an entry in the Register under Subsection (1), the person whose name is entered has the same rights and is subject to the same obligations in respect of the tenement as if he were the person to whom the tenement was originally granted.

125. RECTIFICATION OF THE REGISTER.

(1) Where the Registrar or another person discovers that there has been—

- (a) an omission of an entry from the Register or the rejection of an instrument presented for registration; or
- (b) an entry made in the Register without sufficient cause; or
- (c) an entry wrongly existing in the Register; or
- (d) an error or defect in an entry in the Register,

the Registrar or that other person may make an application to the Director for rectification of the Register.

(2) On receipt of an application under Subsection (1), the Director may—

- (a) make an investigation into the matter; and
- (b) direct the Registrar to rectify the Register in any matter which the Director considers requires rectification.

(3) A person may appeal to the National Court against a direction or decision or to seek a decision by the Director under Subsection (2), and the National Court may make such order as it considers necessary to settle the matter.

(4) The Registrar shall give effect to an order of the National Court under Subsection (3).

126. EFFECT OF MORTGAGE.

(1) A mortgage shall have effect as a security only for the sum of money or the discharge of the liability intended to be secured by it and shall not take effect as an assignment.

(2) A mortgagor shall be entitled to redeem the property the subject of the mortgage at any time before its sale by the mortgagee on tender of the money or discharge of the liability secured by the mortgage.

(3) Subject to Subsections (1) and (2), a mortgage may contain such covenants and powers as are agreed between the parties.

Division 3.

Caveats.

127. LODGING OF CAVEATS.

(1) A person claiming an interest in a tenement may lodge with the Registrar a caveat forbidding the registration of a transfer or other instrument affecting the tenement or interest.

(2) A caveat lodged under Subsection (1) shall—

- (a) be on the prescribed form; and
- (b) give an address within the country for the service of notices and proceedings in relation to the caveat; and
- (c) otherwise contain the prescribed particulars; and
- (d) be accompanied by the prescribed fee.

128. DUTIES OF REGISTRAR ON LODGING OF A CAVEAT.

On the lodging of a caveat under Section 127(1) the Registrar shall—

- (a) enter a memorandum of the caveat in the Register; and
- (b) send by registered post to the holder of the tenement affected by the caveat, notice that the caveat has been lodged.

129. DURATION AND EFFECT OF A CAVEAT.

(1) A caveat shall lapse and cease to have effect upon—

- (a) any order of the National Court for its removal; or
- (b) its withdrawal by the caveator or his agent; or
- (c) the expiry of a period of 14 days after notification, that application has been made for the registration of a transfer or other instrument affecting the subject matter of the caveat, has been sent by the Registrar by registered post to the caveator at the address for service given in the caveat, unless within that period the National Court otherwise orders.

(2) No transfer or other instrument affecting a tenement the subject of a caveat shall be registered while the caveat remains in force.

(3) When a caveat lapses and ceases to have effect under this section, the Registrar shall enter in the Register a memorandum of that fact.

Division 4.
Consolidation.

130. APPLICATION OF THIS DIVISION.

This Division applies to the consolidation of existing tenements of the same type (in this Division referred to as “**the existing tenements**”) into one or more tenements of that type (in this Division referred to as “**the consolidated tenement**”).

131. GRANT OF A CONSOLIDATED TENEMENT.

(1) The Minister may, on the application by the holder of two or more adjoining tenements of the same type and after considering a recommendation from the Board, grant to the applicant one or more consolidated tenements of that type.

(2) A consolidated tenement—

(a) shall be on the prescribed form; and

(b) shall contain such conditions as were attached to the existing tenements, provided that where the conditions attached to existing tenements were not the same, the conditions attaching to the consolidated tenement shall be such of the conditions attaching to the existing tenements as the Minister determines on the advice of the Board; and

(c) may contain such other conditions as the Minister may determine.

(3) The Minister may grant a consolidated tenement under Subsection (1) without a Warden’s hearing.

132. TERM OF A CONSOLIDATED TENEMENT.

The term of a consolidated tenement shall be either—

(a) where the unexpired terms of the existing tenements at the date of grant of the consolidated tenement are the same—that unexpired term; or

(b) where the unexpired terms of the existing tenements at the date of grant of the consolidated tenement are not the same—the shorter or shortest of the unexpired terms.

133. AREA OF A CONSOLIDATED TENEMENT.

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

134. EFFECT OF CONSOLIDATION.

(1) Upon the grant of a consolidated tenement, every right, title and interest conferred by the existing tenements in respect of the whole of the land being consolidated ceases and terminates absolutely.

(2) Where an existing tenement is consolidated any interest in that tenement shall be deemed to be an equivalent interest in the consolidated tenement.

(3) Where an existing tenement is consolidated, the liability of the holder of that existing tenement—

- (a) to pay rent, fee, royalty, penalty or other money or any other account, that is payable; or
- (b) to perform any obligation required to be performed; or
- (c) for any act done or default made,

on or before the date of grant of the consolidated tenement, is not affected.

135. APPLICATION FOR CONSOLIDATION.

An application for the grant of a consolidated tenement—

- (a) shall be on the prescribed form and shall have attached a schedule on the prescribed form describing the corners of the boundary of the area to be consolidated in latitude and longitude, and a sketch map showing the boundary of the area and such other natural features as will allow the area to be correctly located; and
- (b) shall be accompanied by—
 - (i) in the case of a consolidation of exploration licences—the applicant's programme for the consolidated exploration licence or licences; or
 - (ii) in the case of a consolidation of any other type of tenements—the applicant's proposals for the consolidated tenement or tenements; and
- (c) shall be lodged in triplicate with the prescribed application fee; and
- (d) shall be lodged in accordance with the procedures specified in Division VI.1.

136. PROVISIONS RELATING TO TENEMENTS TO APPLY TO CONSOLIDATED TENEMENTS.

Subject to the foregoing provisions of this Division, the provisions of this Act applicable to tenements of the type held prior to consolidation shall also apply to the consolidated tenements of the same type.

Division 5.***Surrender.*****137. HOLDER MAY SURRENDER TENEMENT.**

Subject to this Act, the holder of a tenement may apply to the Registrar on the prescribed form to surrender the tenement in whole or in part.

138. APPLICATION FOR PARTIAL SURRENDER.

An application for partial surrender shall have attached—

- (a) in the case of an exploration licence—
 - (i) a schedule on the prescribed form describing the corners of the boundary of the area of land to be retained in latitude and longitude and complying with the requirements of Section 22; and
 - (ii) a sketch map showing the boundary of the area of land to be retained with respect to latitude and longitude; and
- (b) in the case of any other tenement—
 - (i) a survey of the area of land to be retained as required under Section 97; and
 - (ii) a statutory declaration that the area of land to be retained has been marked out in accordance with Section 96.

139. DUTIES OF REGISTRAR, ETC., ON SURRENDER.

(1) The Registrar shall, as soon as practicable after the application for surrender has been lodged under Section 137, satisfy himself that the holder has complied with any conditions of the tenement which relate to the cessation of exploration and mining operations, restoration of the land and surrender and immediately thereafter—

- (a) register the surrender in the Register; and
- (b) certify the registration of surrender on the application as prescribed; and
- (c) in the case of a partial surrender, endorse the surrender on the title document as prescribed; and
- (d) cause a notice of the registered surrender to be published in the National Gazette; and
- (e) keep a copy of the registered surrender continuously posted at the headquarters of the Department for a period of 30 days; and
- (f) send a copy of the registered surrender to the applicant.

(2) In the case of the surrender of the whole of a tenement and on the completion of the requirements of Subsection (1) the Registrar shall, after deducting from the security—

- (a) any fee, rent, royalty, compensation, penalty or other money or any other account that is payable on or before the date of surrender; and
- (b) any costs incurred by the Department in ensuring that any other liabilities are met,

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

140. LIABILITIES OF HOLDER ON SURRENDER.

Where the holder of a tenement surrenders it, the liability of the holder—

- (a) to pay rent, fee, royalty, penalty or other money or any other account, that is payable; or
- (b) to perform any obligation required to be performed; or
- (c) for any act done or default made,

on or before the date of surrender, is not affected.

141. RIGHTS OF HOLDER ON SURRENDER.

Notwithstanding anything to the contrary in this Act, where a tenement is surrendered in whole or in part, every right, title and interest held under the tenement in respect of the whole of the land or that part of the land which is being surrendered, as the case may be, absolutely ceases and terminates on the date the surrender is registered.

Division 6.

Cancellation and Expiry of a Tenement.

142. CANCELLATION OF A TENEMENT.

(1) Where the holder of a tenement breaches—

- (a) a provision of this Act; or
- (b) a condition on which the tenement was granted,

the Director may, by written notice, require the holder of the tenement, within the time specified in the notice, to show cause why the tenement should not be cancelled.

(2) Where the holder of a tenement on whom notice has been served under Subsection (1) fails, in the opinion of the Minister after receiving a recommendation from the Board, to show cause in accordance with the notice, the Minister may cancel the tenement.

(3) In a case where a mining development contract has been entered into by the holder of the tenement, the tenement shall not be cancelled unless the mining development contract has been terminated.

143. DUTIES OF REGISTRAR, ETC., ON CANCELLATION.

(1) The Registrar shall, immediately after the Minister has cancelled a tenement under Section 142(2)–

- (a) register the cancellation in the Register; and
- (b) cause notice of the registration of the cancellation on the prescribed form to be published in the National Gazette; and
- (c) keep a copy of the notice of the registration of the cancellation to be continuously posted at the headquarters of the Department for a period of 30 days; and
- (d) send a copy of the registered cancellation to the former holder of the tenement.

(2) On the completion of the requirements of Subsection (1), the Registrar shall, after deducting from the security–

- (a) any fee, rent, royalty, compensation, penalty or other money or any other account that is payable on or before the date of cancellation; and
- (b) any costs incurred by the Department in ensuring that any other liabilities are met,

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

144. DUTIES OF REGISTRAR, ETC., ON EXPIRY.

(1) The Registrar shall, immediately after the expiry of a tenement register the expiry in the Register.

(2) After registering the expiry in accordance with Subsection (1) the Registrar shall, after deducting from the security–

- (a) any fee, rent, royalty, compensation, penalty or other money or any other account, that is payable on or before the date of expiry; and
- (b) any costs incurred by the Department in ensuring that any other liabilities are met,

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

145. RIGHTS AND LIABILITIES OF THE HOLDER UPON CANCELLATION OR EXPIRY.

On the cancellation or expiry of a tenement–

- (a) all rights conferred by or enjoyed under the tenement shall cease as from the date of cancellation or expiry; and
- (b) a liability incurred before cancellation or expiry is not affected.

Division 7.
Fees, Rents and Royalties.

146. FEES.

Fees in respect of all matters shall be as prescribed.

147. RENTS.

In respect of each tenement the prescribed rent shall be paid annually in advance from the date of grant, except as provided for in Section 111(1)(b).

148. ROYALTIES.

²⁷Royalties for mine products shall be paid in accordance with the provisions of this Act.

149. FEES, RENT, ETC., NOT REFUNDABLE.

The fees and rents payable under this Division shall not be refunded.

Division 8.
General Provisions.

150. SECURITY.

(1) A person to whom a tenement has been granted shall, within 30 days of being notified of the grant by the Registrar, lodge with the Registrar a security for compliance with his obligations under this Act.

(2) Failure to lodge a security under Subsection (1) constitutes a breach of a provision of this Act for the purpose, *inter alia*, of Section 142(1)(a).

(3) A security under Subsection (1)–

(a) shall be the prescribed sum; and

(b) may, subject to the approval of the Director, be–

(i) by bank guarantee; or

(ii) by insurance company bond; or

(iii) by cash deposit; or

(iv) partly by cash deposit and partly by such other method as the Director allows; or

(v) by such other method as the Director allows.

(4) The Director may, on the expiry, surrender or cancellation of a tenement and on the application in writing by the person who was the tenement holder

²⁷ Section 148 amended by No 49 of 2000.

accompanied by evidence satisfactory to the Director showing cause why a security should be discharged, discharge, wholly or in part, a security lodged under this section.

151. CONFLICTING BOUNDARY DESCRIPTIONS.

(1) Where, in the case of the boundaries of an exploration licence, there is a conflict between the boundaries—

- (a) as shown on the sketch plan; and
- (b) plotted by reference to latitude and longitude descriptions,

the boundaries plotted by reference to latitude and longitude shall prevail and shall be deemed to be the boundaries.

(2) Where, in the case of the boundaries of an application for a tenement other than an exploration licence, there is a conflict between—

- (a) the boundaries described in the schedule; and
- (b) the boundaries as shown on the sketch plan; and
- (c) the boundaries marked out on the ground,

the boundaries marked out on the ground shall prevail until survey, and, after survey, the boundaries established by the survey shall prevail.

152. REMOVAL OF MINING PLANT, ORE, TAILINGS, ETC., ON EXPIRY, ETC., OF TENEMENT.

(1) This section does not apply to a tenement the subject of a mining development contract.

(2) In this section—

“mining plant” means any building, plant, machinery, equipment, tools or other property of any kind, whether or not affixed to land;

“prescribed period” means a period of three months or such longer period as the Director may determine after a tenement expires, is surrendered or is cancelled, or any land the subject of the tenement is relinquished.

(3) When a tenement expires, is surrendered, cancelled, or any land the subject of the tenement is relinquished the person who was the holder of the tenement immediately prior to such expiry, surrender, cancellation or relinquishment may, within the prescribed period, remove from the land relating to the tenement any mining plant.

(4) Where mining plant is not removed in accordance with Subsection (3), the Director may arrange for the mining plant to be sold by public auction or public tender and removed, and the proceeds of such sale shall be retained by the State.

(5) Where, at the time a tenement expires, is surrendered, cancelled or any land the subject of the tenement is relinquished the holder of the tenement immediately prior to such expiry, surrender, cancellation or relinquishment—

- (a) leaves upon the land any tailings, other materials or mined ore; and
- (b) does not, within the prescribed period, either remove or complete treatment of the tailings, other materials or mined ore,

such tailings, other materials and mined ore shall, at the expiration of the prescribed period, become the property of the State.

(6) Nothing in this section affects a valid agreement made by the former holder of a tenement with the landholder of any land to which the tenement relates in respect of mining plant left on such land after the prescribed period, and this section shall be construed subject to such an agreement.

(7) Notwithstanding the preceding provisions of this section, no timber or other material used and applied in the construction or support of any shaft, drive, gallery, adit, terrace, race, dam or other mining work shall be removed without the consent in writing of an inspector.

153. GRATICULATION OF EARTH'S SURFACE AND CONSTITUTION OF BLOCKS AND SUB-BLOCKS.

(1) For the purposes of this Act, the surface of the Earth shall be deemed to be divided into graticular sections—

- (a) by the meridian of Greenwich and by meridians that are at a distance from that meridian of five minutes, or a multiple of five minutes, of longitude; and
- (b) by the equator and by parallels of latitude that are at a distance from the equator of five minutes or a multiple of five minutes, of latitude,

each of which is bound—

- (c) by portions of two of those meridians that are at a distance from each other of five minutes of longitude; and
- (d) by portions of two of those parallels that are at a distance from each other of five minutes of latitude.

(2) All or so much of each particular section referred to in Subsection (1) that is contained in the area of the country and the offshore area, constitutes a block.

(3) Each block shall be comprised of 25 sub-blocks each of which shall be bounded by—

- (a) portions of two meridians of longitude that are at a distance from each other of one minute of longitude; and
- (b) portions of two parallels of latitude that are at a distance from each other of one minute of latitude.

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(4) All or so much of each graticular section referred to in Subsection (3) that is contained in the area of the country and the offshore area constitutes a sub-block.

PART VII. – COMPENSATION TO LANDHOLDERS.

154. PRINCIPLES OF COMPENSATION.

(1) The holder of a tenement is liable to pay compensation, in respect of his entry or occupation of land the subject of the tenement for the purposes of exploration or mining or operations ancillary to mining, to the landholders of the land for all loss or damage suffered or foreseen to be suffered by them from the exploration or mining or ancillary operations.

(2) Subject to Subsection (4), the compensation to which landholders are entitled includes compensation for–

- (a) being deprived of the possession or use of the natural surface of the land; and
- (b) damage to the natural surface of the land; and
- (c) severance of land or any part thereof from other land held by the landholder; and
- (d) any loss or restriction of a right of way, easement or other right; and
- (e) the loss of, or damage to, improvements; and
- (f) in the case of land under cultivation, loss of earnings; and
- (g) disruption of agricultural activities on the land; and
- (h) social disruption.

(3) Where applicable, compensation shall be determined with reference to the values for economic trees published by the Valuer-General.

(4) No compensation shall be payable and no claim for compensation shall lie, whether under this Act or otherwise–

- (a) in consideration of permitting entry on to the land for exploration or mining purposes; or
- (b) in respect of the value of any mineral which is or may be on the land; or
- (c) by reference to any rent, royalty or other amount assessed in respect of the mining of the mineral,

other than as provided for in this Act.

(5) A person who pays, or agrees to pay compensation in respect of any of the matters referred to in Subsection (4), is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding five years, or both.

(6) Where any land or improvements, adjoining or in the vicinity of the land the subject of a tenement, is or are injured or depreciated in value by the exploration or mining of the tenement, the landholders of that land are entitled to compensation

for all loss or damage sustained and the amount of such compensation shall be determined as provided in this Part.

155. NO ENTRY UNTIL COMPENSATION AGREED OR DETERMINED.

The holder of a tenement shall not enter onto or occupy any land, the subject of the tenement, for the purpose of mining, until—

- (a) he has made an agreement with the landholders as to the amount, times and mode of compensation and the agreement has been registered in accordance with Section 156(6); or
- (b) compensation has been determined in accordance with this Part and the holder of the tenement has paid or tendered such compensation as is then due.

156. COMPENSATION AGREEMENTS.

(1) The amount of compensation payable by the holder of a tenement to the landholders in respect of the land the subject of the tenement to be entered upon for exploration or mining may be determined by agreement (in this section referred to as a “**compensation agreement**”).

(2) A compensation agreement shall not be valid unless the provisions of this section have been complied with.

(3) Where the holder of a tenement and the landholders propose to enter into a compensation agreement, the holder of the tenement shall, as soon as the terms of the agreement have been agreed between the parties and before the agreement has been executed, submit a copy of the proposed compensation agreement to the Chief Warden.

(4) Within 14 days of receipt of a proposed compensation agreement under Subsection (3), the Chief Warden shall give written notice to the parties that—

- (a) he is prepared to recommend to the Registrar registration of the agreement once it has been executed; or
- (b) he requests the parties to consider certain amendments specified in the notice.

(5) The parties shall consider any request by the Chief Warden under Subsection (4)(b), but are not obliged to accept the amendments specified in the notice under that subsection.

(6) Where the provisions of Subsections (3), (4) and (5) have been complied with, the parties may then execute the compensation agreement and submit it to the Registrar who shall register it.

157. DETERMINATION OF COMPENSATION BY THE WARDEN.

- (1) The—

- (a) holder of a tenement; or
- (b) landholders claiming an entitlement to compensation, including the claimants to disputed land,

may, where they are unable to agree on the amount of compensation to be paid, by notice to the Chief Warden, request a Warden to determine the amount payable.

(2) On receipt of a notice under Subsection (1), the Chief Warden shall—

- (a) fix a place or places and date or dates for conducting a determination of the amount of compensation to be paid; and
- (b) notify the holder of the tenement and the claimant of the place or places and date or dates fixed; and
- (c) at that place and on that date conduct a determination of the amount of compensation to be paid.

(3) In conducting a determination under this section the Warden shall allow the holder of the tenement and the claimant to present their evidence and arguments to him in such manner as he thinks fit, but shall at all times have regard for the principles of natural justice.

(4) The Warden shall—

- (a) make a determination on the basis of the evidence presented to him and the argument submitted to him and in accordance with the principle of compensation specified in Section 154; and
- (b) record his decision in writing; and
- (c) give a copy of his decision to the holder of the tenement and the claimant.

(5) Where the Warden considers it impracticable or inexpedient to assess the amount of compensation to be paid in full satisfaction of the loss or damage, the Warden may make a determination as to the compensation payable in respect of a part of the total claim for compensation and defer his assessment of the total claim until a later hearing.

(6) A determination in part under Subsection (5) shall meet the requirements of Section 155.

158. APPEAL FROM A WARDEN'S DETERMINATION.

A—

- (a) holder of a tenement; or
- (b) landholder claiming an entitlement to compensation,

aggrieved by a determination of the Warden under Section 157(4)(a) as to the amount of compensation to which he is entitled or which he is obliged to pay, may appeal to the National Court.

159. COMPENSATION TO BE BINDING.

Subject to appeal under Section 158 the provisions of—

- (a) a compensation agreement duly registered under Section 156; or
- (b) a Warden's determination under Section 157,

shall be—

- (c) a condition of the tenement to which it relates, the breach of which may be grounds for the cancellation of the tenement; and
- (d) binding as a contract on both the holder of the tenement and the landholders.

160. COMPENSATION IN THE CASE OF A LAND DISPUTE.

(1) Where a dispute, as defined in the *Land Disputes Settlement Act 1975* concerning the land the subject of a tenement under this Act makes agreement on compensation impracticable, the amount of compensation to be paid by the holder of the tenement shall be determined as provided for in Section 157.

(2) The amount of compensation determined under Subsection (1) shall be payable into a statutory trust established for that purpose to be held therein until the land dispute has been resolved, and thereafter such compensation shall be paid from the trust account as determined by the Warden or subject to a compensation agreement, as the case may be.

PART VIII. – MISCELLANEOUS.**161. INFORMATION.**

(1) The Director may require any person whom the Director reasonably believes to be in possession of information concerning the geology and mineral resources of the State, including geotechnical or hydrogeological information, to provide to the Director details or copies of that information.

(2) The—

(a) Minister; or

(b) Director,

may, by notice in writing, require any person to produce, or make available for inspection, any document or information in the possession or under the control of that person relating to—

(c) an instrument, or transaction pertaining to that instrument, lodged for approval or approved under Division VI.2; and

(d) any document relating to mining and exploration activities within the State; and

(e) [Omitted].

(3) A person, required under this section to provide information or make available for inspection any document or information, who refuses or fails to do so, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

162. PRESERVATION OF CORES.

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

(2) On receiving an advice under Subsection (1), the Director may request that the cores and drilling samples (or such of them as are required) be provided to the Department and the holder of the tenement shall comply with such a request at his own cost.

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

163. CONFIDENTIALITY.

(1) Information disclosed under this Act to the Minister, to an officer of the Department, or to a member of the Board shall not be disclosed to any person who is not an officer or employee of the Department without the prior written approval of the person who provided that information, except—

- (a) to the extent that disclosure is authorized or required under this Act or any other law; or
- (b) to the extent the person providing the information authorized its disclosure at the time of providing the information; or
- (c) to the extent necessary for the Director to publish statistical information concerning the geology and mineral resources of the State; or
- (d) to the extent necessary for the Director to give advice to the National Executive Council, other Departments and the Central Bank on a confidential basis.

(2) An officer of the Department or member of the Board who uses, for the purpose of his personal gain, any information disclosed under this Act that comes to his knowledge in the course of, or by reason of his employment as an officer of the Department or his membership of the Board, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding four years, or both.

164. CONFLICT BETWEEN THE HOLDER OF A TENEMENT AND A LICENSEE UNDER THE OIL AND GAS ACT 1998.

(1) Where a dispute arises between—

- (a) the holder of a tenement; and
- (b) a licensee under the *Oil and Gas Act 1998*,

concerning any operations carried out or proposed to be carried out by the holder of the tenement or the licensee on the land the subject of the tenement or licence—

- (c) the holder of the tenement; or
- (d) the licensee; or
- (e) both the holder of the tenement and the licensee,

may refer the dispute to the Director for resolution.

(2) The Director shall, as soon as is practicable after a dispute has been referred to him under Subsection (1), inquire into the dispute and seek the advice of the Board.

(3) After inquiring into a dispute and seeking the advice of the Board under Subsection (2), the Director may—

- (a) make such order and such direction to—
 - (i) the holder of the tenement; or
 - (ii) the licensee; or
 - (iii) both the holder of the tenement and the licensee,

as he determines to be both just and equitable and in the public interest; and

(b) in an order under Paragraph (a), direct the payment by—

(i) the holder of the tenement; or

(ii) the licensee; or

(iii) both the holder of the tenement and the licensee,

of any costs and expenses incidental to the conduct of the inquiry.

(4) Where—

(a) the holder of a tenement; or

(b) a licensee under the *Oil and Gas Act 1998*,

fails or neglects to comply with an order or direction under Subsection (3), the Minister may cancel the tenement or the licence, as the case may be.

165. RIGHT TO ENTER LAND.

(1) The Director may, at any time, grant to an officer of the Department or a person or persons employed by the State, the right to enter any land for the purpose of carrying out geological, geotechnical or any other investigations.

(2) A right to enter land shall be on the prescribed form.

166. POLICE TO ASSIST WARDENS, ETC.

All members of the Police Force shall, when required by a Warden or any officer of the Department, act in aid of the Warden or such officer in the exercise and discharge by the Warden or such officer of his powers, functions and duties under this Act.

167. OFFENCES.

(1) A person shall not carry on exploration or mining on any land unless he is duly authorized under this Act.

(2) The Director may request a person whom he suspects is carrying on unauthorized exploration or mining to provide any information required to enable the Director to establish whether unauthorized exploration or mining is taking place.

(3) Where the Director determines that a person is carrying on unauthorized exploration or mining he may—

(a) orally or in writing direct that person to cease the exploration or mining; and

- (b) take whatever action is reasonably necessary to remove that person from the land on which the unauthorized exploration or mining is taking place.
- (4) A person who—
 - (a) carries on exploration or mining on any land without being duly authorized under this Act; or
 - (b) refuses to provide any information that he has been requested to provide relating to his entitlement to explore or mine; or
 - (c) refuses to comply with a direction under Subsection (3)(a); or
 - (d) assaults, hinders, obstructs or resists a Warden or other officer carrying out his duties as authorized by this Act; or
 - (e) when lawfully evicted or removed from land where unauthorized exploration or mining was taking place, re-enters or takes possession of such land; or
 - (f) takes or removes from the tenement of another person any mineral without the authority of that person; or
 - (g) gives false or misleading information to the Director or to an officer of the Department; or
 - (h) obstructs execution of any right conferred under this Act,

is guilty of an offence under this Act.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding four years, or both such fine and imprisonment;

Default penalty: A fine not exceeding K1,000.00.

(5) Where a person is convicted of an offence under this section, the Court may where relevant, in addition to imposing a penalty it determines, order the offender to rehabilitate the land to the satisfaction of the Director within a specified time.

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

168. GENERAL PENALTY, ETC.

(1) A person who acts in contravention of or fails to comply in any respect with a provision of this Act is guilty of an offence against this Act.

(2) A person who commits an offence against this Act for which no penalty is provided elsewhere in this Act is liable to a penalty of a fine not exceeding K3,000.00 or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment, and where the offence is a continuing one, is further liable to a default penalty of a fine not exceeding K300.00 for every day during which the offence was committed after conviction.

(3) Where a body corporate is convicted of an offence against this Act, every director and every other officer of the body corporate concerned in the management thereof is guilty of the offence if it is proved that the act or omission that constituted the offence took place with his authority, permission or consent.

169. IMMUNITY OF MINISTER AND OFFICIALS.

No liability shall attach to the Minister, a Warden or any other officer of the Department, a member of the Board, or a member of the Police Force in the exercise of a power, or in the discharge or purported discharge of a duty under this Act.

170. REGULATIONS.

(1) The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that are required or permitted, or that are necessary or convenient, for carrying out or giving effect to this Act, and in particular for prescribing—

- (a) the powers, functions and duties of the Director, the Board, the Wardens, the Registrar and of any other officer; and
- (b) the amount of and payment of fees under this Act and the manner in which they are to be paid; and
- (c) forms for the purposes of this Act and the manner in which any of these forms is to be executed; and
- (d) the manner in which land is to be marked out for the purpose of making an application for a tenement; and
- (e) the rent payable in respect of any tenement or class of tenements; and
- (f) the times at which rent shall be paid under this Act and the manner in which it is to be paid; and
- (g) the manner in which, and the terms and conditions subject to which, tenements may be surrendered; and
- (h) the conditions subject to which a tenement or any class of tenements shall be held, and the terms on which variations thereof may be applied for, and granted; and
- (i) the persons or class of persons on whom copies of applications for tenements or any other associated documents are to be served; and
- (j) provisions for the compilation of exploration and mining statistics and for that purpose provisions requiring the holder of a tenement to supply the Director with such particulars as may be prescribed; and
- (k) provisions for the furnishing of returns and records for the purposes and by the persons specified; and
- (l) any matter relating to the surveying of tenements; and

- (m) any matter relating to the registration of tenements and documents affecting tenements, and the keeping of the Register including inspection of the Register by the public; and
- (n) provisions for information to be supplied to the Director by the holder of a tenement in respect of boring for other operations for water or water obtained while boring for other purposes; and
- (o) provisions for the protection of land upon which mining operations are conducted and the rehabilitation of land disturbed by the mining operations; and
- (p) the mode of assigning, transferring, sub-letting, encumbering or otherwise dealing with tenements, the enforcement or discharge of any encumbrance over a tenement, the rights and obligations of an encumbrancer and an encumbrancee or of an assignee, transferee or sub-lessee, and the order of priority of two or more encumbrances; and
- (q) the practice and procedure of Warden's hearings; and
- (r) any other matter to effect the proper administration of this Act.

(2) The regulations may prescribe a fine for an offence against a regulation and if the offence is a continuing one, a fine for each day or part thereof during which the offence has continued after conviction.

(3) A regulation may require any matter or thing to be verified by statutory declaration.

PART IX. – REPEAL.

171. REPEAL.

The Acts specified in Schedule 1 are repealed.

PART X. – SAVING AND TRANSITIONAL PROVISIONS.**172. ACTIONS, ETC., NOT TO ABATE.**

Where, immediately before the coming into operation of this Act, any action, arbitration or proceeding, was pending, or any cause of action was pending or existed in respect of any tenement or authority granted, renewed or continued in existence under the repealed Acts, such action, arbitration or proceeding or cause of action does not abate and is not affected by the coming into operation of this Act, but it may be prosecuted, continued and enforced as if this Act had not been made.

173. SAVINGS.

(1) Nothing in this Act shall affect the provisions of the Acts and the agreements specified in Schedule 2.

(2) Notwithstanding anything in this Act, a special mining lease issued under the provisions of the repealed Acts and the provisions referred to in Subsection (1) shall continue in full force and effect as though the repealed Acts had not been repealed.

(3) Subject to the relevant agreement referred to in Subsection (1), a person may in accordance with this Act apply for a tenement in respect of part or all of the land the subject of a prospecting authority or lease granted under the repealed Acts or in accordance with that agreement.

(4) Any reservation of land made under the repealed Acts and in force immediately before the coming into operation of this Act shall, on that coming into operation, continue in full force and effect as if the repealed Acts had not been repealed.

(5) The provisions of the repealed Acts relating to royalties shall continue in force as if the repealed Acts had not been repealed until the coming into operation of the *Mining (Royalties) Act 1992* excepting that the amount equal to 5% of the amount of royalties payable under Section 107(2) of the *Mining Act (Chapter 195)* (repealed), shall—

- (a) be read as an amount equal to 20% of the amount of royalties; and
- (b) be paid in respect of a special mining lease and mining lease under this Act.

174. PROSPECTING AUTHORITY, LEASE FOR MINING PURPOSES AND SPECIAL MINING EASEMENT DEEMED TO BE CORRESPONDING TENEMENT UNDER THIS ACT.

(1) A prospecting authority, lease for mining purposes or a special mining easement granted under the repealed Acts and in force immediately before the coming into operation of this Act shall—

- (a) on that coming into operation be deemed to be an exploration licence, lease for mining purposes or mining easement respectively as if granted under this Act; and
- (b) unless sooner terminated according to law, remain in force for the unexpired period for which it was granted or renewed under the repealed Acts; and
- (c) unless inconsistent with this Act, be subject to the conditions (other than a condition restricting the scope of a prospecting authority to certain minerals) and encumbrances which were in force immediately before the coming into operation of this Act.

(2) Section 38(2) shall not apply to any mining lease granted to the holder of an exploration licence which was converted from a prospecting authority under this section.

175. MINING LEASES AND CLAIMS TO BE CONVERTED TO MINING LEASES OR ALLUVIAL MINING LEASES.

(1) In this section, “**mining lease or claim**” includes the following tenements granted or continued in force under the repealed Acts:—

- (a) ordinary reef claim for gold;
- (b) ordinary reef claim for other minerals;
- (c) ordinary alluvial claim for gold;
- (d) wet alluvial claim for gold;
- (e) ordinary alluvial claim for other minerals;
- (f) ordinary river or creek claim for gold;
- (g) puddling claim;
- (h) prospecting claim for discovery of gold in reefs;
- (i) prospecting claim for discovery of alluvial gold;
- (j) extended reef claim;
- (k) extended alluvial claim;
- (l) hydraulic claim;
- (m) dredging of sluicing claim;
- (n) dredging or sluicing claim in river;
- (o) dredging or sluicing claim under ocean;
- (p) dredging or sluicing claim in lake;
- (q) dredging or sluicing lease;
- (r) gold mining lease;
- (s) mineral lease;

- (t) miner's right;
- (u) mining lease;
- (v) permit to occupy a lot for mining;
- (w) prospecting area for reef gold;
- (x) prospecting area for alluvial gold;
- (y) prospecting area for minerals other than gold or coal;
- (z) special areas,

and includes any other tenement, authority, title or holding other than a special mining lease which permits the use of land for mining, granted or otherwise existing under the repealed Acts or under any other legislation or Ordinance relating to mining previously in force in the State or in the Territory of Papua or the Territory of New Guinea.

(2) A mining lease or claim which was in force immediately before the coming into operation of this Act shall remain in force, subject to the repealed Acts and as though the repealed Acts had not been repealed, for a period of two years after that coming into operation, and shall then expire.

(3) The holder of a mining lease or claim to which Subsection (2) applies may, at any time while it is in force, make an application under this Act for a mining lease or an alluvial mining lease in respect of a single area that is constituted by all the land the subject of each mining lease or claim or two or more mining leases or claims and such mining lease or alluvial mining lease shall, subject to this Act, be granted to him.

(4) Where an application under Subsection (3) is pending immediately before the mining lease or claim held by the applicant expires under Subsection (2), that mining lease or claim continues in force subject to the repealed Acts and as though those Acts had not been repealed until the application is finally determined under this Act.

(5) Section 38(2) shall not apply to any mining lease or claim converted to a mining lease under this section.

176. ANCILLARY AREAS MAY BE CONVERTED TO LEASE FOR MINING PURPOSES.

(1) In this section, “**ancillary area**” includes the following tenements granted or continued in force under the repealed Acts:—

- (a) machine area;
- (b) area for erection of furnace;
- (c) area for stacking of tailings,

and also includes any other tenement, authority, title or holding which permits the use of land for purposes ancillary to mining granted or otherwise existing under the repealed Acts or under any other legislation or Ordinance relating to mining

previously in force in the State or in the Territory of Papua or the Territory of New Guinea, but does not include any such tenement, authority, title or holding if it is included within the definition of “mining lease or claim” under Section 175(1).

(2) An ancillary area which was in force immediately before the coming into operation of this Act shall remain in force, subject to the repealed Acts and as though these Acts had not been repealed, for a period of two years after that coming into operation and shall then expire.

(3) The holder of an ancillary area to which Subsection (2) applies may at any time while the ancillary area is in force make an application under this Act for a lease for mining purposes in respect of the land the subject of the ancillary area and such lease shall, subject to this Act, be granted to him.

(4) Where an application under Subsection (3) is pending immediately before the ancillary area held by the applicant expires under Subsection (2), that ancillary area continues in force subject to the repealed Acts and as though those Acts had not been repealed until the application is finally determined under this Act.

177. LAND AREAS CONVERTED TO TITLES UNDER THE *LAND ACT 1996*.

(1) In this section, “**land areas**” includes the following tenements granted or continued in force under the repealed Acts:—

- (a) business areas;
- (b) business licences;
- (c) residence areas,

and includes any other tenement, authority, title or holding which permits the use of land for business or residential purposes existing under the repealed Acts or under any other legislation or Ordinance relating to mining previously in force in the State or in the Territory of Papua or the Territory of New Guinea, but does not include any such tenement, authority, title or holding if it is included within the definition of “mining lease or claim” under Section 175(1) or within the definition of “ancillary area” under Section 176(1).

(2) A land area which was in force immediately before the coming into operation of this Act shall remain in force, subject to the repealed Acts, as if the repealed Acts had not been repealed, for a period of two years after that coming into operation and shall then expire.

(3) Where, within the period of two years referred to in Subsection (2), an application is made to the Minister and the Minister is satisfied that the applicant is the holder of a land area, the Minister shall issue a certificate to that effect to the Minister responsible for land matters.

(4) In a case to which Subsection (3) applies, the Minister responsible for land matters may grant under the *Land Act 1996* a fee simple or lease of the whole or such portion of the land comprising the land area as he determines, and on such terms and conditions as he determines, but he shall not grant a fee simple of such land unless in his opinion the land is substantially developed and improved.

(5) To give full effect to the objects of this Section and the powers conferred by it, the *Land Act 1996* shall be read and construed with such modifications as are necessary.

178. DISPOSAL OF APPLICATIONS PENDING UNDER THE REPEALED ACTS.

(1) Where an application for a prospecting authority or mining tenement under the repealed Acts is pending on the date of coming into operation of this Act, that application shall be deemed to be an application for the appropriate tenement under this Act and shall be dealt with under this Act.

(2) In considering any applications referred to under Subsection (1), the Director may request any additional information required under this Act before dealing with the application and the applicant shall provide such additional information.

179. MORTGAGES, OTHER ENCUMBRANCES AND AGREEMENTS.

(1) Subject to Subsection (2), where—

- (a) a tenement is granted under this Part in place of a mining tenement granted or continued under the repealed Acts; and
- (b) the mining tenement or any interest therein was, immediately prior to its expiry, the subject of a registered mortgage, other encumbrance or registered agreement,

the tenement shall be deemed to be the subject of the mortgage, other encumbrance or agreement as if the tenement had been referred to therein, and a memorandum of that mortgage, other encumbrance or agreement shall be endorsed on the title document to the tenement and noted in the Register.

(2) Where two or more mortgages, other encumbrances or agreements were registered against a mining tenement, the memorandum shall be endorsed on the title document to the tenement, and noted in the Register in the order in which they were registered immediately before the expiry of the mining tenement, and they shall have priority accordingly.

(3) The holder of a mining tenement who is empowered by this Part to apply for a tenement in substitution for that mining tenement shall, where that mining tenement is the subject of an existing mortgage, other encumbrance or agreement, immediately after lodging his application for the tenement, notify the mortgagee, encumbrancee or other party concerned of that lodging.

(4) An application for a tenement under this Act in substitution for a mining tenement held under the repealed Acts, the holding of which entitled the applicant to apply under this Part for a tenement, shall be deemed to be an interest in a tenement for the purposes of Section 127.

(5) Any mining development contract or agreement entered into between the State and the holder of a mining tenement granted under the repealed Acts shall be deemed to be a mining development contract or agreement under this Act.

180. OFFICERS.

A person holding office under the repealed Acts immediately before the coming into operation of this Act shall be deemed to have been appointed to the corresponding office under this Act.

181. CONSENTS AND COMPENSATION AGREEMENTS TO FOLLOW THE LAND.

In relation to a mining tenement, or authority or interest in land, of whatever kind, to which the repealed Acts applied—

- (a) a consent to the grant of any such tenement, authority or interest given under the repealed Acts or the provisions of any agreement or determination of compensation made in relation to any such tenement, authority or interest are deemed to follow that land and to confer such consent or to apply such provisions in relation to that land for the purposes of any application, proceeding or tenement under this Act made, or deemed to be made, under the operation of this Part; and
- (b) where Paragraph (a) applies, no further consent or agreement or determination of compensation is required to be obtained.

182. REFERENCES TO REPEALED ACTS.

A reference in any Act, regulation, rule, by-law, instrument or document to the repealed Acts, or any provision thereof, shall, unless the contrary intention appears, be read and construed as a reference to this Act, or the corresponding provision, if any, of this Act.

183. DIFFICULTIES WITH TRANSITIONAL PROVISIONS.

Where a difficulty arises in respect of the transitional provisions in this Part, the Head of State, acting on advice, may, by regulation—

- (a) make such modifications to those provisions as may appear necessary for preventing anomalies during the transition to the provisions of this Act from the provisions of the repealed Acts; and
- (b) make such incidental, consequential and supplementary provisions as may be necessary or expedient for the purpose of giving full effect to those transitional provisions,

and any such modifications or provisions made by the Head of State, acting on advice, have, and shall be deemed always to have had, the same force and effect as if they had been enacted by way of an amendment to this Part, and on publication of the Regulation in the National Gazette, this Part shall be amended accordingly.

SCHEDULE 1 – REPEALED ACTS.

Sec. 171.

Mining Act (Chapter 195)

Mining (Amendment) Act 1986.

Mining (Amendment) Act 1987.

Mining (Amendment) Act 1990

SCHEDULE 2 – ACTS AND AGREEMENTS NOT AFFECTED BY THIS ACT.
Sec.173(1).

Mining (Bougainville Copper Agreement) Act (Chapter 196).

Mining Development Act (Chapter 197).

Mining (Ok Tedi Agreement) Act (Chapter 363).

Mining (Ok Tedi Supplemental Agreement) Act (Chapter 363A).

Mining (Ok Tedi Second Supplemental Agreement) Act (Chapter 363B).

Mining (Ok Tedi Third Supplemental Agreement) Act (Chapter 363C).

Mining (Ok Tedi Fourth Supplemental Agreement) Act (Chapter 363D).

Mining (Ok Tedi Fifth Supplemental Agreement) Act (Chapter 363E).

Mining (Ok Tedi Sixth Supplemental Agreement) Act 1986.

Mining (Ok Tedi Agreement) (Amendment) Act 1986.

Mining (Ok Tedi Seventh Supplemental Agreement) Act 1986.