

MINES AND MINERALS BILL, 2022

MEMORANDUM

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

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

The individual clauses of the Bill are hereunder outlined.

PART I

PRELIMINARY

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

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

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

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

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

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

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

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

Under **clause 6** [*Strategic minerals*] it is proposed that the Minister should have power, after consultation with the Mining Affairs Board, to declare any mineral to be a “strategic mineral”. The declaration means that any proposed miner of the strategic

mineral must enter into a prior agreement with the State which, among other things, may require any or all of the following: a commitment to invest at least US\$1 000 000; the formation of a company or other special investment vehicle in which the State has an interest; and other undertakings relating to environmental protection and corporate social responsibility. The form of title under which a strategic mineral may be exploited shall be a mining lease or special grant.

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

PART II

ESTABLISHMENT AND FUNCTIONS OF MINING AFFAIRS BOARD

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

Clause 9 [*Filling of vacancies*] provides for the filling of vacancies on the Mining Affairs Board.

Clause 10 [*Remuneration of members of Board*] provides for the remuneration of the members of the Mining Affairs Board.

Clause 11 [*Procedure of Board*] provides for the procedure of the Mining Affairs Board. Among other things it regulates the frequency of meetings of the Board by requiring that the Board to meet at least once every two months. It will fix its quorum at seven out of its 13 members.

Clause 12 [*Powers of Board in relation to applications*] provides for the general powers the Mining Affairs Board may exercise in relation to applications that are made to it under the Bill. The clause gives the Mining Affairs Board the power to examine on oath persons appearing before it. In addition to general investigative powers, the Mining Affairs Board is empowered to extend periods within which applications are to be made or documents are to be submitted to the Board. The Board will also be able to refer questions of law to the Supreme Court for decision.

Clause 13 [*Penalties for perjury, contempt and obstruction*] makes persons giving evidence before the Board liable to prosecution for perjury if they make false statements on oath. The clause also imposes a criminal penalty upon any person convicted of obstructing any agent authorised by the Board to examine a mining location or other area of ground subject to investigation by the Board. The Board also has power to summon persons to appear before it and to compel them to bring relevant documents, on pain of prosecution for failure to do so.

Clause 14 [*Board may hold virtual meetings and hearings*] empowers the Board to hold virtual meetings and hearings under specified conditions.

Subject to certain requirements to guard against abuse, the Minister will be empowered by **Clause 15** [*Minister may give policy directions to Board*] to issue general policy directions to the Mining Affairs Board.

PART III

MINING CADASTRE REGISTRY

The office of the Mining Cadastre Registry and the Mining Cadastre Register for recording all current mining rights and titles will be established under **Part III** of the Bill. The Permanent Secretary in the Ministry will be the Mining Cadastre Registrar, but a Deputy Mining Cadastre Registrar (preferably having IT qualifications) will do the administrative work of the Mining Cadastre Registry on behalf of the Secretary/Registrar (**clauses 16 and 17**).

Clause 18 [*Access to Mining Cadastre Register*] provides for open access to the Mining Cadastre Register. Holders of mining title may obtain authenticated copies of the same by application submitted together with the prescribed fee to the Mining Cadastre Registrar. Holders of title may also authorise other interested persons to obtain from the Registrar authenticated copies of any mining title of the holder. In addition, persons who are not the title holders but who can demonstrate to the Registrar that they have any legal interest in a mining title may, without the authority of the title holder, obtain from the Registrar authenticated copies of any mining title of the holder.

All certificates of registration and other mining rights (such as, for instance, the registration of claims, mining leases and special grants, and the mining locations relating thereto) will be given provisionally by the Provincial Mining Directors in the Mining Provinces where those mining rights will be exercised, but subject to confirmation by the Mining Cadastre Registrar before being finally and speedily entered in the Mining Cadastre Register. The Mining Cadastre Register is the final and definitive record of the existence, scope and extent of all mining rights and titles, and no provincial register can be in conflict with it (**clauses 19 and 20**). To strengthen the reliability and transparency of the Register, entries in it must reflect the beneficial ownership of every mining right or title, for which purpose **clause 19** [*Entries in Mining Cadastre Register to be conclusive proof of mining right or title; rectification of Mining Cadastre Register*] bestows powers on the Registrar to ensure that the names of beneficial owners are disclosed and recorded in the Register. That clause also allows the Mining Cadastre Registrar or any interested person to rectify any entry in the Mining Cadastre Register in accordance with the transparent procedure set forth in the **Fourth Schedule**.

PART IV

STAKING AGENTS

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

Clause 21 [*Register of staking agents*] establishes the Register of Staking Agents, which is to be maintained by the Secretary.

Clause 22 [*Work of staking agents*] defines the activity for which a person must be registered as a staking agent in order to engage in that activity lawfully (namely, virtual or physical pegging or demarcation of a mining location in accordance with this Bill); persons doing the work of a staking agent without being registered as such are liable to be served with a civil penalty order by the PMD responsible for the area where the illegal work taking place. Staking agents who make false returns or declarations to the PMD are similarly liable for civil default proceedings.

Clause 23 [*Application for registration as staking agent*] provides for the qualifications for registration as a staking agent and the procedure for applying for registration as such (applicants must be Zimbabwean citizens or permanent residents over the age of 18). Furthermore they must have the prescribed experience or qualifications as a staking agent or must have been previously registered as approved prospectors. Applications are processed in the first instance by the PMD of the mining province in which the staking agent proposes to operate. The PMD transmits applications upwards to the Secretary for final approval. Rejected applicants can appeal to the Secretary and ultimately to the Administrative Court.

Clause 24 [*Expiry and renewal of registration*] provides for the expiry and renewal of registration as a staking agent. Registration as a staking agent is valid for 5 years.

Clause 25 [*Cancellation or suspension of registration*] provides for the cancellation or suspension of a person's registration as a staking agent in specified circumstances (conviction of criminal offence or other conduct on the part of the staking agent that renders him or her unfit to remain registered as such). Notice of the proposed cancellation or suspension of registration as a staking agent will be given to the affected person to enable him or her to be heard on the matter. Persons lawfully working as approved prospectors at the commencement of this Bill must, within 6 months of the date of the enactment of regulations prescribing any re-orientation course or test of competence as a staking agent, comply with such requirements or risk de-registration as a staking agent.

Clause 26 [*Effect of expiry, cancellation or suspension of registration*] provides for the consequences of the expiry, cancellation or suspension of registration as a staking agent: any persons aggrieved by the cancellation or suspension of registration may seek a review of such action from the Administrative Court.

Clause 27 [*Duplicate certificate of registration as staking agent*] enables a staking agent to obtain a duplicate copy of his or her certificate of registration in certain circumstances.

PART V

ACQUISITION AND REGISTRATION OF MINING RIGHTS

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

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

Clause 28 [*Interpretation in Part V*] provides for the interpretation of key words and phrases used in this Part of the Bill; of particular note is the definition of “area under cultivation”, of which we will have more to say in connection with **clauses 37** and **38**.

Clause 29 [*Issue of exclusive prospecting licences*] describes the procedure for obtaining an exclusive prospecting licence (EPL) from a PMD. Each EPL is valid only for 12 months, within which time the holder must have staked not more than 40 contiguous hectares of claims or blocks of claims within the area for which the licence was issued, namely the mining province. After the staking of the claims or blocks the EPL holder exercises his or her rights within the staked area to the exclusion of other prospectors. Further claims can only be staked under a new EPL. Only citizens or permanent residents of Zimbabwe aged over 18 years (or companies, partnerships, syndicates or joint ventures controlled by such citizens or permanent residents) qualify to obtain EPLs, unless the applicant, being a foreigner, exhibits proof satisfactory to the PMD that he, she or it intends to operate on a larger scale than a small scale miner (that is to say, the applicant intends to register an ordinary mining lease over his or her discovery). Applications for EPLs are processed purely at the PMD level in the mining province where the prospector intends to operate. Rejected applicants can appeal to the Secretary and ultimately to the Administrative Court.

Clause 30 [*Cancellation or suspension of exclusive prospecting licences*] empowers the PMD to cancel or suspend an EPL for breaches of the EPL or for conduct rendering the holder unfit to retain it. The holder is first given an opportunity to respond to the PMD’s allegations. If the cancellation or suspension proceeds and the holder is aggrieved, the latter may appeal to the Secretary, and ultimately to the Administrative Court.

Clause 31 [*Prohibition against sale or transfer of exclusive prospecting licences*] prohibits (under threat of criminal punishment for noncompliance) the sale or transfer of an EPL to another person.

Sub-Part B: Prospecting: Rights and Restrictions

Clause 32 [*Land open to prospecting*] opens up nearly the whole country to prospecting, subject to the limitations contained in **clause 35**.

Clause 33 [*Rights of prospecting and pegging conferred by exclusive prospecting licences*] particularises the rights of prospecting and pegging bestowed upon the holder of an EPL. The rights are exercised in stages, the first being the right to prospect and search for minerals on all land open to prospecting within the mining province to which the EPL relates, and the second being the right to identify a single area not exceeding 40 hectares within which the prospector may prospect exclusively and peg up to 40 claims or four blocks of claims. The actual pegging and other acts of demarcation on the ground and on a map can only be done by a staking agent on behalf of the prospector, unless the latter is also registered as a staking agent. A licensee will not be allowed to remove minerals from the land on which they are found, except for the purposes of assay.

Clause 34 [*Surface rights of holder of exclusive prospecting licences*] sets forth the surface rights of holders of EPLs. Such holders (“prospectors”) will have the following rights when engaged in prospecting: (1) the right of taking water on private or public land from land not closed to prospecting (without interference with the domestic use of restricted public water by the occupier of the affected land, and subject to payment of an agreed rate for the taking); (2) the right, after posting a prospecting notice, to take and use dead wood or timber for firewood in connection with prospecting operations within the limits of the mining location; and (3) the right to erect temporary accommodation for himself or herself and his or her employees, and to put up temporary buildings and install machinery for the purposes of his or her work within the limits of the mining

location. The precise exercise of these rights are negotiable with the occupier of the affected land, but if the negotiations are fruitless, the prospector may refer the dispute to the PMD. The PMD thereupon convenes a meeting of the disputants and decides the dispute after hearing them. An aggrieved disputant may appeal to the Secretary, and ultimately to the Administrative Court.

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

Clause 35 [*Ground not open to prospecting*] sets forth what ground is not open to prospecting for minerals, namely the following: (1) within 450 metres of the site of an actual or projected principal homestead on any alienated or partially alienated land or occupied land within Communal Lands, except with the consent in writing of the holder or occupier of such land; (2) within 90 meters of permanent housing for farm employees or of other buildings or farm improvements of a specified value, or of any permanent cattle dip or spray race; (2) within 15 meters of any land under cultivation; (3) within 9 meters of any other permanent farm building except upon payment of agreed compensation; (4) upon any other mining location; (5) within the surveyed limits of any city, town, township or village, or upon a belt 50 meters wide outside such limits; (6) upon any licensed aerodrome or emergency landing ground or aerodrome of the State; (7) upon any rifle range of the State, or any railway reserve or any cemetery; (8) within any holding of land or Communal land not exceeding 100 hectares, except with the consent of the owner, holder or occupier thereof; and (9) upon any Communal Land occupied as a village without the written consent of the RDC having jurisdiction over it. In the case of item (8), if consent is unreasonably withheld, the prospector may refer the matter to the PMD for adjudication, and ultimately to the Mining Affairs Board and Administrative Court. Subclause (4) seeks to prevent "self-dealing" on the part of landholders; that is to say, if a landholder refuses to allow a miner or prospector to exercise any of his or her rights over any ground forming part of the landholder's land, the landholder is forbidden to obtain any mining right or title in his or her name over that ground for a period of 10 years, unless he or she earlier obtains the written leave of the earlier mentioned miner or prospector to do so.

Clause 36 [*Disputes as to whether land is open to prospecting*] provides for the resolution of disputes as to whether or not land is open to prospecting. The pattern of dispute resolution at the level of the PMD broadly follows the pattern described in

relation to **clause 34** above. A further appeal lies to the Administrative Court which can uphold the PMD's decision on the matter or substitute its own decision; alternatively, if the Court cannot resolve the dispute on the papers before it, it can refer the matter back to the PMD for a report (on the basis of which the Court may make a final decision), or, where the Court finds that malice, bias or corruption tainted the PMD's decision, it may refer the matter to the Secretary for a report (on the basis of which the Court may make a final decision).

Clauses 37 [*Registration of arable and pastoral land against prospecting and pegging*] and **38** [*Disputes about registering or extending the duration of schemes reserving arable and pastoral land against prospecting and pegging*] enable individual farmers and Rural District Councils on behalf of groups of small farmers and pastoralists by application to the PMD to register (on land otherwise open to prospecting and mining) not more than 100 hectares or up half their land (whichever is the smaller hectareage) which is not yet under cultivation for the purpose of cultivating it in the near future (within 2 years, renewable for another 2 years) or, the case of an application made by an RDC, for the purpose of temporarily reserving it for the grazing of livestock. This clause is a continuation and extension of section 33 of the existing Act ("Registration of arable land") in the interests of enabling beneficiaries of the Land Reform to fully utilise their land, without, at the same time, prejudicing mining development for the national good. Applications for registering land for cultivation or pasturage which are initially accepted by the PMD and notified on his or her notice board may be objected to by miners and prospectors, whereupon the PMD must hold a meeting of interested parties, at the conclusion of which the PMD notifies to the parties whether or not to recommend the final registration of the scheme. The recommendation of the PMD becomes final and binding if no party takes any objection to it within 7 days, but if within that period any party objects to the recommendation, the PMD shall refer the recommendation, together with the objection, to the Mining Affairs Board through the Secretary. The MAB then decides whether to accept or reject the recommendation. A person aggrieved by the MAB's still has the option to seek a review of the MAB's decision from the Administrative Court.

Clause 39 [*Roads and railways may be included in location under certain conditions*] allows roads and railways to be included within the limits of a mining location under certain specified conditions, but otherwise prohibits the encroachment of mining operations or the erection of pegs or beacons upon any road, nor within 15 metres of the middle of any road, upon any railway track, nor within 45 metres of any railway track, or the impediment of the use of a road, railway track, pipeline, aqueduct, borehole, dam, reservoir or occupied building without the owner thereof. There are further prohibitions against carrying on prospecting or other mining or development operations within specified limits of electric power lines, transformers, electricity substations, electrical equipment or buildings used for the transmission or distribution of electricity. Land reserved for the taking of road-making materials, and soil erosion works are likewise protected from encroachment by mining or prospecting. Under the existing Act these prohibited activities are a criminal offence punished by a fine under section 392(d). However it is proposed that the more prompt and effective way of dealing with infringements of this sort is to empower the responsible PMDs to serve civil penalty orders upon the offending party. The issue of this kind of unlawful encroachment and interference is fully dealt with under **clauses 40** [*Encroachment on or interference with roads and railways by mining activities prohibited*] and **41** [*Encroachment on or interference with certain works and installations by mining activities prohibited*].

It is convenient at this point to explain the **civil penalty regime** in more detail, for it will apply to the majority of infringements in this Bill committed by miners. Where default is made in complying with any provision of the Bill or of regulations made under this Act for which a civil penalty is specified to be leviable, the Provincial

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

Clause 42 [*Reservations against prospecting and pegging*] empowers the PMD on his or her own initiative or on the instruction of the Secretary prompted by the Minister, to reserve any area open to prospecting within his or her area of jurisdiction against prospecting and pegging. The reservation may be for a specified period and may be withdrawn in part or in whole earlier than specified (by the PMD if originally made at his or her initiative or by the PS at the Minister's behest). Reservations against prospecting on the PMD's initiative must be notified to the Minister through the PS, and the Minister may reverse or confirm the PMD's decision. All reservations against prospecting and withdrawals thereof must be gazetted.

Clause 43 [*Reservation of timber on application by landholders and RDCs*] extends to RDCs the power of an individual landholder under section 36 of the existing Act to reserve against cutting or taking indigenous wood or timber on his or her land, to the extent of half such indigenous wood or timber. Under **clause 44** [*Disputes over reservation of timber under section 43*] disputes about the equal division of indigenous wood and timber pursuant to a reservation under clause 41 may be referred to the PMD, whose decision may, at the instance of an aggrieved party, further be reviewed by the Administrative Court.

Clause 45 [*Reservation of timber on instruction of Minister*] empowers the Minister to direct a PMD to reserve all indigenous wood and timber in any area, whereupon the rights of any miner or prospector in that area to take or cut such wood or timber are terminated for the duration of the reservation (but prospecting and mining may continue in the reserved area, and only such wood or timber as interferes with such prospecting or mining may be cut).

Clause 46 [*Notice of intention to prospect*] imposes a duty on every prospector to give notice of his or her intention to exercise prospecting rights to certain persons affected thereby (to the local authority in the case of town lands, to the occupier or holder of alienated or partially alienated land, to the Forestry Commission in the case of demarcated forests, to the holder of land declared to be a protected private forest, and to the RDC of a communal land, whichever is affected by the proposed prospecting).

The notice must be re-issued by the prospector after 120 days if, not having pegged or registered any mining title within that period, the prospector still wishes to do so. (In the case of a notice given by the holder of an exclusive exploration licence or special grant, the notice shall be valid as long as the licence or grant is valid). The PMD may, where he or she becomes aware of a prospector's neglect of this duty, enforce this duty by means of a civil penalty order. Also, if the prospector neglects this duty and is discovered to have done so by any complainant the prospector should have notified, the pegging of any location and the registration of it is rendered void if the complainant lodges an objection with the PMD within 120 days of the date of pegging of the location (otherwise the pegging and registration becomes valid after the lapse of that interval despite the prospector's neglect of the duty to give notice under this clause). This clause is an improvement on section 38 of the existing Act, in terms of which the pegging of a mining location "shall not be deemed to be invalid by virtue only of a failure to give notice" to affected persons; instead a criminal sanction is applied, which is difficult and time-consuming to prosecute, and whose non-compliance may seriously infringe the rights of landholders.

Clause 47 [*Hours of pegging and posting notices; manner in which notices to be posted*] specifies the hours of pegging and posting notices and the manner in which they must be posted. Persons who contravene any of the provisions of this clause are liable to be served by the PMD with the appropriate civil penalty.

Under **Clause 48** [*Prospecting notices*] if a prospector wishes to drill and excavate on any particular ground open to prospecting, he or she is entitled to post a "prospecting notice" in the prescribed form and manner. The prospector must then notify the landholder or other person entitled to be notified of the fact and particulars of the posting of the prospecting notice. The posting of the prospecting notice entitles the prospector for a period of not more than 90 days to prospect, drill and excavate on all ground open to prospecting falling within a radius of 300 metres from the point where the prospecting notice is posted. Only one prospecting notice may be posted at a time, and any previous prospecting notice must be abandoned, either through the lapse of the 90-day period or in the prescribed manner.

Sub-Part C: Discovery and pegging

Clause 49 [*Discovery of minerals or precious stones*] describes what a prospector must do upon the making of a discovery of a deposit of precious metals or stones or base minerals. A peg marked "DP" must be erected on the spot and, in the case of a base mineral discovery, the DP notice bestows on the prospector the right to drill and excavate upon ground open to prospecting any area within a radius of 900 metres of the prospecting notice. Any default by the prospector in complying with this clause renders him or her liable to a civil penalty.

Clause 50 [*Pegging of precious metal, precious stones or base mineral claims*] requires that the outer limit of a claim or group of claims, whether of precious metals claims, precious stones claims or base minerals, claims, be pegged in a regular polygon shape (square, rhombus, lozenge, etc). It is not necessary to peg the inner limits of a group of two or more contiguous claims unless any of its constituent claims are sold or ceded to another person, in which event the sold or ceded claim must be demarcated. However, no fraction of a claim (claims must be 1 hectare in extent, though a single registered claim may be less) may be sold or ceded. This clause prescribes in detail how the claims or groups of claims are to be pegged.

Clause 51 [*Registration notices*] requires that within 90 days from the posting of a prospecting notice, a prospector who has made a discovery of minerals must peg a claim or block and post adjacent to the discovery notice a registration notice (the failure to do which shall be taken to signify the abandonment of all rights acquired by the posting of the prospecting notice).

Sub-Part D: Registration of claims and sites

Clause 52 [*Registration of claims or group of contiguous claims*] provides that within 31 days of the date of posting a registration notice marking a mining location and on payment of the prescribed fee, the holder of the mining location must obtain a certificate of provisional registration of the location by complying with certain formalities and submitting specified documents to the PMD. Failure to do so will be taken to mean that the holder has abandoned his or her claims. Final registration of the location is secured when the documentation for the provisional registration of the location is transmitted to the Mining cadastre Registrar and the Mining cadastre Registrar confirms that the particulars of the location have been entered in the Mining cadastre Register. The holder of a mining location whose final registration is refused by the the Mining cadastre Registrar has recourse to the Administrative Court. A further review lies to the High Court at the instance of the party aggrieved by the Administrative Court's decision.

Clause 53 [*Registration of mining location by section 118 (2)(b) special mining lease applicants*] provides for the case of a prospector who is a foreigner and who obtained an exclusive prospecting licence on the basis that he or she would apply for a mining lease instead of registering a claim or block of claims. In such a case, instead of applying for provisional and final registration of a mining location the foreign prospector who has made a discovery and posted the requisite notices must apply to the Mining Affairs Board for a special mining lease.

Clause 54 [*Evidence and priority of mining rights; principle of 'first come first served'; impeachment of title*] provides for the settlement of disputes between miners concerning the existence, scope, extent, duration and content of all mining rights ("holder or claimant in contestation"). Subclause (5) enables the Mining Cadastre Registrar or any holder or claimant in contestation to rectify any entry in the Mining Cadastre Register in accordance with the transparent procedure set forth in the **Third Schedule**.

Clause 55 [*Registration of dependent mine service sites*] provides for the registration of "dependent mine service sites", that is to say, sites attached to mining locations for the purposes of building lodgings for miners and their workers and for the erection of mills or other mining machinery. Such sites must not exceed hectares (under the existing Act the ceiling for such sites is 40 hectares, which is now felt to sterilise too much ground against mining proper). However, a miner may on special application to the PMD peg a site in excess of 20 hectares (but not exceeding 40 hectares) if he or she can show compelling good cause to the PMD for doing so. The miner may also on special application to the PMD peg a site that is not adjacent to his or her mining location for good cause shown to the PMD. The PMD will usually grant (on a provisional basis) the application of the miner to peg a site if the miner produces proof to the PMD in the form of an affidavit by the occupier of the affected land to the effect that the occupier has no objection to the registration of the site. Even then the PMD may have reasons for not granting provisional registration, or for granting it subject to conditions (provisional registration is not always automatic because ground registered as a site may needlessly be sterilised against mining and prospecting by other interested parties). In any event, even where the occupier of the affected consents, the registration of every site is provisional until it is confirmed by the Mining Cadastre Registrar.

If the occupier of the affected land refuses consent to the miner to register a site, the miner must swear by affidavit that the occupier was duly notified of the proposal to register a site, and must lodge with the PMD, together with that affidavit, a memorandum justifying the registration of the site. The PMD then serves copies of these documents on the occupier of the land under cover of an invitation to the miner and occupier to attend a meeting at a specified time and venue where the PMD will

try to resolve the issue (other interested parties, such as other prospectors and miners operating in or around the area of the proposed site, are also invited to attend by a notice posted on the notice-board of the PMD's office). After the meeting the PMD may provisionally approve or reject the registration of the site. The PMD will write a report to that effect to the Mining Cadastre Registrar seeking final approval for the PMD's decision. Where no meeting is held because the occupier of the affected land supports the miner's request for the registration of a site on his or her land, the PMD must still transmit the particulars of the provisional registration of the site to the Mining Cadastre Registrar for final registration. Rejected applicants or interested persons aggrieved by the decision of the Mining Cadastre Registrar may seek a review of such decision from the Administrative Court.

Clause 56 [*Registration of independent mine service sites*] provides for the registration of "independent mine service sites", that is to say, sites not attached to mining locations, but which are set up to serve mining locations by offering the following facilities for their benefit: (a) a custom milling plant; or (b) a plant for the milling, leaching, sampling, concentrating, reducing, assaying, transporting or dealing in ores, metals or minerals on a scale deemed by the PMD to be significant; or (c) a plant for the beneficiation of minerals from multiple mining locations; or (d) a location whereon heavy plant, machinery and equipment primarily or exclusively for use in mining may be operated for the benefit of mining locations in the vicinity or more remote mining locations. An applicant for an independent mine service site must apply for registration of the site to the appropriate PMD, and the site in question must one (i) in respect of which a miner who has the right to register a site on it in terms of section 52 has ceded that right in writing to the applicant; or (ii) over which a land holder (including the State) has granted a lease or a servitude to the applicant, or given written authority to the applicant to register primary mine service site; or (iii) that is open to prospecting and of which the applicant is the owner, in the case of private land.

Clause 57 [*Dependent mine service sites to be attached to location; changes in status of landholding where independent mine service site located*] is self-explanatory.

Clause 58 [*Cancellation of certificate of registration*] empowers a PMD to cancel the registration of sites or blocks of claims, giving an opportunity for the holder to object. If an objection is lodged with the PMD, the PMD will hold a hearing on the objection of the kind described in the second paragraph of the commentary on **clause 34** above. A further appeal is allowed to an aggrieved holder to the Minister and ultimately the Administrative Court.

Clause 59 [*Excess areas pegged*] is self-explanatory.

Clause 60 [*Lost certificates of registration*] enables the holder of the certificate of registration or of special registration to obtain a duplicate copy of his or her certificate of registration in certain circumstances.

Clause 61 [*Address to be given to PMD*] is self-explanatory.

Clause 62 [*Obligations of joint holders of mining locations*] restricts the joint holding of a mining location to no more than 6 (corporate or individual) holders. Joint holding of locations is the source of frequent disputes among the joint holders with respect to their respective rights and obligations. To minimise these, this clause provides that on registration of a jointly held mining location or the variation of the holding thereof, the joint holders must submit to the PMD a document specifying clearly and unambiguously the method by which any joint member and the accredited agent shall be removed or substituted to the satisfaction of the PMD, (in the case where the application or interpretation of such document comes into question the PMD shall in the case of the removal or substitution of a joint member, be entitled to require a court order to be produced bearing on the question of such removal or substitution).

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

Clause 63 [*Cancellation of certificate of registration without abandonment*] is self-explanatory.

PART VI

PROSPECTING AND PEGGING ON GROUND RESERVED AGAINST PROSPECTING AND PEGGING

This Part permits applications to be made by miners deemed capable of paying the compensation required (for acquisition or damages) to the Mining Affairs Board for prospecting and pegging claims in areas previously reserved against such activities (namely, land within [500 yards] of a farm homestead, land under cultivation and occupied blocks held under individual title not exceeding [200 acres]): if the application is granted, mining activity is permissible up to a perimeter of [50 yards] from the homestead.

PART VII

EXCLUSIVE EXPLORATION LICENCE

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

- Applicants for an exclusive exploration licence will have to be told of any objections lodged against the applications, so that they can answer them (see the new **clause 83** (“Application for exclusive exploration licence”)(4)).
- The Mining Affairs Board will be able to recommend the issue of a licence without having to hold a hearing if no objections have been lodged (**clause 84** (“Hearing of application by Board”) (proviso)).
- Before a licence is issued, the applicant will have to give the Board a copy of the environmental impact assessment report which is required in terms of the Environmental Management Act.
- The Minister, not the President, will issue licences. The Minister will be obliged to follow the Board’s recommendations regarding the issue of a licence unless he or she considers it is not in the national interest to do so.
- An applicant will have a right of appeal to the Administrative Court against the Board’s refusal to recommend the issue of a licence (**clause 104**); no such appeal is allowed at present (section 89(3) of the existing Act). Similarly, if the Minister declines to follow the Board’s recommendation to issue a licence the aggrieved applicant will have a right of appeal (**clause 104**)).
- The Board, rather than the Minister, will have power to decide whether or not to revoke an exclusive exploration licence, and persons aggrieved by the revocation of a licence will have a right of appeal to the Minister and ultimately the Administrative Court (**clause 104**).

Under the **clause 83**, an application for an exclusive exploration licence will have to be accompanied by a prospectus and report required for the purposes of the Environmental Management Act [*Chapter 20:27*], and anyone aggrieved by a refusal of

a licence will have a right of appeal first to the Minister and then to the Administrative Court. Under the new section 23 the Minister will have power to cancel a licence and, once again, an aggrieved licensee will be entitled to appeal to the Administrative Court.

The rights conferred by an exclusive exploration licence are set out in **clauses 90** (“Rights of licensee regarding exploration and pegging”), **91** (“Right of licensee to take water”), **92** (“Right of licensee to erect and remove temporary buildings and structures”) and **93** (“Right of licensee to take wood and timber”). A licensee will have an exclusive right to prospect for all minerals within his or her grid and to peg up to 100 claims, but these rights will be exercisable only by approved staking agents.

PART VIII

PEGGING OF UNDERGROUND EXTENSIONS

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

PART IX

MINING LEASES

Under this Part a miner of four or more contiguous blocks (called a “ordinary lease applicant”) must apply to the Mining Affairs Board to consolidate the titles of his or her various mining locations into one mining lease. A foreigner of large-scale domestic miner (called a “special lease applicant”) who has not previously registered any bloc of claims or who wishes to claim mining rights by virtue of an exclusive exploration licence may apply to the Mining Affairs Board where he or she can prove that his or her financial status is adequate, and that mining operations on a substantial scale will be carried out in the long term. The advantages of a mining lease are that title is indefeasible: only the perimeter beacons have to be maintained and they are surveyed by a land surveyor. Land surveyors’ diagrams need not be lodged in support of the application, but only a provisional plan may accompany the application, and the survey plan will be required following provisional approval of the application. This reduces the likelihood of heavy costs being incurred for abortive land surveys.

Clause 120 [*Interpretation in Part IX*] provides for the interpretation of words and phrases used in connection with mining leases under this Part.

Clause 121 [*Application for mining lease*] sets forth the preliminary requirements to initiate an application procedure for an ordinary or a special mining lease.

Clause 122 [*Form and contents of mining leases, duration of leases, mining rights of lessees, etc*] provides, among other things, for the exclusive mining rights of a lessee within the vertical limits of the mining lease.

Clause 123 [*Processing of ordinary mining lease applications*] provides for the processing of “ordinary mining lease applications” for mining leases (as defined above) and for the terms and conditions of such leases if granted.

Clause 124 [*Reservation of ground against prospecting and pegging in respect of special mining application, and termination of reservation*] provides for the reservation of the ground subject to an application for a special mining lease against mining or prospecting until the application is determined.

Clause 125 [*Processing of special mining applications*] and **clause 126** [*Issuance of special mining lease and standard terms and conditions; registration of same; reviews, etc*] provide for the processing of “special mining applications” for mining leases (as defined above) and for the terms and conditions of such leases if granted.

Clause 127 [*Recording of mining leases in Mining Cadastre Register and appropriate provincial registers*] is self-explanatory.

Clause 128 [*Limitation on second or subsequent applications following refusal or withdrawal of application*] is self-explanatory.

Clause 129 [*Beaconing of mining lease area*] provides for the beaconing of a mining lease area within a specified period.

Clause 130 [*Cancellation of certificates of registration*] provides that upon the issue of a mining lease the certificates of registration in respect of all mining locations situated within the area covered by the lease shall be deemed to have been cancelled.

Clause 131 [*No impeachment of title to mining leases*] provides that when a mining lease has been issued it will not be competent for any person to dispute the title of the lease holder to any of the ground covered by the lease on certain specific grounds.

Clause 132 [*Programmes to be submitted by lessees*] provides that every lessee must submit to the PMD a written programme showing, with such particulars and annual fee as may be prescribed, the development which the lessee intends to undertake in regard to the mining lease during the next twelve-month period.

Clause 133 [*Increase of area of mining lease*] provides that a lessee may lodge an application to the Mining Affairs Board for the inclusion of an additional contiguous area of ground which is open to pegging in his or her mining lease.

Clause 134 [*Abandonment of whole or portion of mining lease and transfer of mining lease*] provides that a lessee may lodge with the PMD an application for the abandonment of the whole or of a portion of his or her mining lease.

Clause 135 [*Failure to comply with terms and conditions of mining lease*] provides for the procedure to be followed after investigation where the Mining Affairs Board is satisfied that a lessee has failed to comply with any material terms or conditions of his or her mining lease.

Clause 136 [*Approval of transfer of mining lease*] prohibits the transfer of a mining lease to another holder except under certain conditions. The proposed transferee of the lease must be approved in advance by the Mining Affairs Board otherwise the special lease may be cancelled if the original lessee is unwilling to continue to exercise his or her rights under the mining lease.

PART X

RIGHTS OF CLAIM HOLDERS AND LANDHOLDERS

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

the scheme so approved becomes binding on both parties and on any successor in title to the mining location.

Clause 138 [*Conversion as between primary and secondary minerals and as between sites and mining locations*] provides for the conditions under which holders of mining locations may switch the nature of their mining title between primary and secondary minerals and as between sites and mining locations.

Clause 139 [*Dependent mine service sites: mining rights*] provides for the circumstances under which mining rights may be exercised within dependent mine service sites established under **clause 53** (“Registration of dependent mine service sites”).

Clause 140 [*Mining rights*] sets forth the mining rights of every holder of a registered block of claims.

Clause 141 [*Surface rights of miners*] sets forth the surface rights that every holder of a registered block of claims may exercise in connection with and in support of his or her mining rights.

Clause 142 [*Right of landholder to graze stock upon or cultivate the surface of mining location*] and **Clause 143** [*Exercise of rights under scheme upon approval*] set forth the scope of a landholder’s right to graze stock upon or cultivate the surface of mining location. Such rights are exercisable in regard to the cultivation of or pasturing upon the whole or any part of the surface of any registered mining location under a scheme approved by the PMD to benefit occupiers of any land on which a registered mining location is situated, or a rural district council or containing a registered mining location.

Clause 146 [*Termination of scheme by miner*], **clause 147** [*Termination of scheme by consent*], **clause 148** [*PMD may cancel scheme*] and **clause 150** [*Termination of scheme on forfeiture or abandonment of location*] set forth the circumstances under which a miner, landholder or PMD may terminate a scheme approved under **clauses 142** and **143**, or under which the scheme may be terminated upon the forfeiture or abandonment of a mining location.

Clause 151 [*Scheme to bind successors in title*] provides that an approved cultivation scheme shall be binding of successors in title to the mining location, and on any person to whom land, other than Communal Land, covered by the scheme is transferred and on any occupier thereof, and on any person becoming entitled in terms of the Communal Land Act to cultivate any Communal Land covered by the scheme.

Under **Clause 152** [*Inspection certificates and payments to landholders during period of agreement*] a miner is not disqualified from obtaining an inspection certificate to maintain his or her mining title simply by virtue of not exercising his or her mining rights on an area covered by a cultivation scheme approved under this Part. Conversely, a landholder benefiting from a cultivation scheme cannot claim payments from the provincial EROHS trust fund in compensation for the loss or inability to cultivate any part of his or her land.

Clause 153 [*Payments from provincial EROHS trust fund to landholders affected by mining*] provides that payment to landholders affected by mining will be made in accordance with this clause from the amount remitted to a RDC by the trustees of the appropriate provincial EROHS Trust Fund in terms of **clause 185(e)**.

PART XI

PRESERVATION OF MINING RIGHTS

The existing Act [*Chapter 21:05*] provided for the preservation of mining title in the following circumstances: through adequately working or developing the mining claim; on declaration of capital expenditure of at a specified amount per annum per

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

Clause 154 [*Interpretation in Part XI*] contains definitions of words and phrases in connection with this Part.

Clause 155 [*Pre-inspection requirements and first and subsequent inspection certificates*] regulates the first entry into mining operations and their subsequent continuance. No later than 30 days after the final registration of a mining block, mining lease or special grant, the holder thereof must submit (in addition to the prescribed fee and address for service) to the PMD the following (the failure to submit any of which shall be taken by the PMD to constitute abandonment of the block or lease): a work plan for the next 12 months; a copy of the statutory environmental impact assessment report (EIA); in the case of a large-scale miner (a mining lessee or special grantee) a social responsibility certificate from a registered PVO recognised by the Ministry as being qualified to issue such certificates. The latter certificate is a new feature designed to ensure minimum friction and harmonious relations between the large-scale miner concerned (a mining lessee or special grantee) and the community in or near which the miner will operate. The social responsibility certification by a PVO having credentials in any relevant social science (sociology, political science, social work and welfare, community relations etc) will grade the miner’s intentions and practices by reference to the miner’s social sensitivity on such issues as: (a) the depth of engagement with the community(s) in the immediate vicinity of the mining location (including regular consultation with the community on issues of concern to them in relation to the impact of the mining operations of the miner); (b) sensitivity to cultural heritage, including respect for culturally significant sites in the immediate vicinity of the mining location; (c) sensitivity generally to the cultural values and norms of the community in the vicinity of the mining location; (d) the extent to which the mining operations economically and socially benefit the community in the immediate vicinity of the mining location; and (e) the implementation of fair and safe labour practices. The work plan shall be judged by the PMD entirely on its own merits (with the assistance of a mine surveyor, mining engineer and geologist) without recourse to the elaborate (and often inappropriate) statutory specifications contained in the existing Act. Twelve months after passing the pre-inspection requirements the miner must obtain a first inspection certificate based on the work he or she has done in the interval and on his or her compliance with the EIA and social responsibility obligations. Lack of full compliance with respect to the miner’s social responsibility obligations does not automatically disqualify the miner from a first inspection certificate so long as the miner undertakes to rectify matters by the time he or she applies for a second inspection certificate in the following year. A first inspection certificate will protect the block or the mining lease from forfeiture for a period of 12 months from the date of registration of the block or the date of issue of the mining lease. Subsequent inspection certificates shall have the same effect if the miner concerned qualifies to obtain them.

Clause 156 [*Complaints by RDC or EMA of alleged breaches by miners of social responsibility and environmental obligations; Minister’s power to intervene in environmental emergencies*] provides that, in the absence of any requirement for social responsibility certification of a small-scale miner, such a miner may be held to certain environmental and social responsibility obligations on the basis of any formal

complaint to the PMD against him or her by the EMA or any member of the RDC in which such miner conducts his or her mining operations (complaints to the PMD of environmental irresponsibility on the part of mining lessees and special grantees may also be made by the EMA and RDC). The miner against whom a complaint is made under this clause has an opportunity to respond to the same to the PMD. Additionally, in an environmental emergency, the Minister may, on his or her own motion, stop any mining operations upon due notice being given to the miner.

Clause 157 [*Unutilised dumps*] speaks to the question of unutilised dumps on registered mining locations. It is not in the national economic interest for there to be dumps situated on registered mining locations which are not being worked by the holder of the registered mining location, who in some instances are unwilling to allow the dump to be worked under tribute. It is considered that were such a dump is economically viable, it is in the national interest that such a dump be worked either by the holder of the registered mining location, or by some other person under tribute. To this end, this clause empowers the Minister, after investigation by the Mining Affairs Board as to the economic viability of the dump, and if the Minister considers it to be in the public interest to do so, to direct the holder of a registered mining location concerned to work the dump himself or herself or to tribute it so that it can be worked by someone else within such reasonable period as the Minister may specify.

Clause 158 [*Retention licences*] permits in exceptional circumstances a miner to keep his or her mining title in circumstances where he or she has failed to develop or work, or adequately to develop or work, the block or mining lease or special grant concerned by the time that an inspection certificate falls due. The matter of the exceptional circumstances preventing the utilisation of the mining title will be investigated by the Mining Affairs Board, which may recommend the issuance by the Minister of a retention licence to the miner concerned.

Clause 159 [*Appeals under Part XI*] entitles any person aggrieved by any decision of the PMD, Board or Minister under this Part to appeal, successively, to the Board, Minister and ultimately the Administrative Court.

PART XII

CONTROL OF SITING OF WORKS ON MINING LOCATIONS

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

Clause 160 [*Interpretation in Part XII*] interprets what is meant by an “owner or occupier of land”; the phrase includes a rural district council, where a Communal Land is involved, and the Minister responsible for the administration of any State Land.

Under **Clause 161** [*Approved plan required prior to erection of certain works*] a miner is compelled to submit to the PMD plans of the surface works that are proposed. The land owner or occupier on which the works are to be sited must also be notified.

Under **Clause 162** [*Procedure on receipt of plan and approval of plan*] the land owner or occupier and any other interested parties may object to the plan, in which event the PMD must hold a hearing on the matter. An appeal to the Secretary may be made against the PMD’s decision, and an appeal to the Administrative Court may be made against the Secretary’s decision.

Clause 163 [*Amendment of plan*] provides that any amendment of a plan must be dealt with in the same way as the lodging of an original plan (of course, any objection must be limited to the amendment alone).

Clause 164 [*When works may be erected or constructed without approved plan*] permits a miner, at any time before a plan has been approved under **clause 160**, erect or construct upon such location or property certain temporary works such as housing for not more than 32 employees, or temporary roads not more than 4 metres in width without an artificial surface (but such works are liable to removal if ultimately the plan submitted for the permanent works is rejected).

Clause 165 [*PMD may order removal of unauthorised works*] this clause imposes civil and criminal penalties upon miners who erect or construct any works on a registered mining location in contravention of this Part or of any condition attached to an approved siting plan. It further empowers the PMD to authorise any person affected by such contravention to remove the offending works and recover the cost of such removal from the offending miner. A miner may also be ordered to discontinue a temporary road constructed by him or her or to alter the course thereof at the direction of the PMD prompted by a request of an affected owner or occupier of land to that effect.

PART XIII

ROYALTY

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

By the terms of **Clause 166** [*Royalty*] an owner of a mining location must pay royalty on all minerals and mineral-bearing products won from such location and disposed of during any month at such rate to be fixed under **clause 167**. To encourage local value addition, a full rebate of royalty is granted for minerals and mineral-bearing products used wholly within Zimbabwe. A further encouragement to local value addition is stipulated in that minerals or mineral-bearing products disposed of to or received for treatment by an approved beneficiation plant will also qualify for rebate of duty to a prescribed extent. Approved beneficiation plants must undertake the degree of beneficiation for which they were approved, otherwise they must pay for any deficit in beneficiation by way of a refund of rebated royalty.

Clause 167 [*Fixing of royalty*] specifies that royalties are fixed annually in each fiscal year by the Finance Act, taking into account the recommendations of the Minister responsible for Mines and other relevant considerations.

Clause 168 [*Meaning of "property"*] makes exceptions to the general rule that each mining location is a unit for royalty purposes. Thus the owner of two or more blocks of claims, whether contiguous or not, is treated as being the owner of a single "property" for royalty purposes if the output from the blocks of claims is treated at the same milling or reduction plant. Chrome claims worked by the same person in the same mining province are also treated as one "property" for the same purposes.

Clause 169 [*Beneficiation plant*] makes further provision for encouraging value addition of minerals and mineral-bearing products by enabling local bank assay departments, factories, refineries, smelters or treatment plants to be declared (with the approval of the Minister) approved beneficiation plants for specified minerals. Approved beneficiation plants must achieve a specified degree of beneficiation of the minerals, for which they will be entitled to the corresponding level of rebate of royalty. Approved status may be withdrawn from beneficiation plants which fail to operate for any period of more than 3 months within a calendar year, or whose beneficiation operations are not carried out to the expected level. Owners of approved beneficiation plants must make monthly returns of all minerals and mineral-bearing products disposed of to or received for treatment by the plant. Under sub-clause (3) provides for cases where mining dumps within a block of claims may be treated as "properties" separate from such blocks for royalty purposes.

Clause 170 [*Exemption of royalty in certain circumstances*] provides for exemption from royalty in certain circumstances (specific exemptions are provided for the extraction and treatment of ore for experimental purposes, and for the value addition of diamonds and training of personnel in diamond cutting, polishing, grading, etc).

Under **Clause 171** [*Acquisition or removal of ore, etc., to be declared*] no person may acquire or remove from the mining location from which it was derived any ore, tailings, slimes, concentrates, residues or other mineral-bearing product, without first promptly declaring such acquisition or removal to the PMD and making the required statutory return in relation thereto. The clause imposes civil and criminal penalties upon offenders and defaulters against this provision.

Clause 172 [*Monthly returns and payment of royalty*] obliges a miner to submit to the Commissioner of ZIMRA together with his or her royalty payment a monthly return of the output and disposal of minerals (other than precious stones) from his or her mine and a separate monthly return (if applicable) concerning the quantity and disposal of precious stones in the previous month. The clause imposes civil and criminal penalties upon offenders and defaulters against this provision.

Clause 173 [*Inspection of books and records, etc.*] empowers the Commissioner of ZIMRA to inspect all books and records, reports and other documents relating to the acquisition, disposal or removal of any mineral or mineral-bearing product as may be needed for the purpose authenticating any return, details, solemn declaration, certificate or document rendered in connection with the payment of royalties.

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

Clause 175 [*Remission of royalty*] empowers the President to remit in whole or in part royalty payments for a specified period as an inducement to the commencement or continuation of mining operations, or the processing or refining within Zimbabwe of minerals or mineral-bearing products, or the development of any export market. Such remission may be backdated by up to 4 years.

PART XIV

PAYMENTS TO LOCAL AUTHORITIES

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

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

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

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

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

PART XV

PROVINCIAL ENVIRONMENTAL, REHABILITATION AND OCCUPATIONAL HEALTH AND SAFETY TRUST FUNDS

This Part provides for the establishment in each Mining Province of an environmental rehabilitation and occupational health and safety (EROHS) trust fund to enable adverse environmental impacts resulting from mining operations in a province to be mitigated or repaired during mining operations and when they come to an end. The funds will also contribute towards meeting the cost of securing the health and safety of miners and the surrounding community

Clause 180 [*Interpretation in Part XV*] provides for the definitions of key words and phrases used in this Part.

Clause 181 [*Establishment and vesting of Provincial EROHS Funds*] provides for the establishment a provincial EROHS trust fund in each mining province. Contributions by miners to the provincial EROHS trust fund are deemed to be public moneys in respect of the vesting of which in the trust fund of which the State (acting through the Secretary and PMD concerned) is deemed to be the settler. There shall be two trustees

for each provincial EROHS trust fund, one appointed by the PMD on the instructions of the Secretary, and the other one elected by contributing miners in accordance with this Part.

Clause 182 [*Objects of provincial EROHS trust fund*] sets forth the objects for which the provincial EROHS trust funds are established. All miners qualify for assistance from the fund to help meet the costs of environmental reparation and occupational safeguarding connected with their mining operations.

Clause 183 [*Application of provincial EROHS trust fund*] provides that, not more than 2.5 per centum of the revenue of a provincial EROHS trust fund in any financial year may be expended upon salaries, allowances, audit expenses and other expenses of the fund.

Clause 184 [*Moneys of Provincial EROHS trust fund*] sets forth the composition of the moneys of the fund from such sources as Parliamentary appropriations, contributions from and surcharges upon miners, contributions from RDCs and so on.

Clause 185 [*Contributions to Fund and roll of contributors*] fixes the contributions to the Provincial EROHS trust fund of the various classes of miners operating within the province covered by the fund. Every Rural District Council within the mining district covered by a EROHS trust fund may, in return for the right to participate in and vote at a meeting of stakeholders of the fund make an annual contribution to the fund in the prescribed amount and manner.

Clause 186 [*Specific surcharges; temporary suspension of payments from EROHS funds*] provides for the power of the EROHS trustees to compel any miner responsible for any accident causing significant environmental damage or any significant injury or loss of life, to reimburse the EROHS trust fund (by way of a surcharge or series of surcharges on the statutory contributions of the miner to the Fund) for the cost the fund incurs remediating such accident. In exceptional cases, provision is made for the Minister (at the request of the trustees) to suspend payments from the EROHS trust fund for up to 12 months.

Clause 187 [*PMD may order mining environmental and occupational safety works*] provides that the PMD may, after due process, order a miner to undertake any specified mining environmental or occupational safety works, for which the miner may receive a partial reimbursement from the EROHS trust fund.

Clause 188 [*Holding of provincial EROHS trust fund*] provides that all moneys received on behalf of the provincial EROHS fund will be paid into a banking account and no money shall be withdrawn therefrom except by means of drafts signed by both trustees, or in the absence of either trustee, by a trustee and the PMD. Surplus moneys of the fund may be invested in government-issued securities or in such other manner, as the trustees with the approval of the Secretary through the PMD, may determine.

Clause 189 [*Annual programmes of provincial EROHS trust funds; financial year of EROHS trust funds*] provides that on or before such date prior to the beginning of the financial year as the trustees and the PMD may agree, the trustees must cause to be prepared, and submit to the PMD an environmental rehabilitation and occupational health and safety programme which will make provision during the financial year for certain expenditures from the Fund.

Clause 190 [*Manner of making disbursements from EROHS trust fund*] provides for the maximum extent of disbursements from the Fund towards helping miners to meet their EIA obligations, and also provides for disbursements in the event of emergencies of an environmental character or of character that impact the safety or health of any significant number of mining workers on a significant scale.

Clause 191 [*Accounts and audit of EROHS trust funds*] provides for the audit and accounts of the provincial EROHS trust funds.

Clause 192 [*Governance of provincial EROHS trust fund*] provides for the election of one trustee of each of the provincial EROHS trust funds by the contributors to the funds. The votes of the contributors are weighted according to the size of their contributions, without, however, unduly impinging upon the rights and interests of small-scale miners.

In line with our commitments under the Paris Agreement to cap national carbon emissions, **clause 193** [*Measurement of carbon footprint of mining and reimbursement of costs of same*] makes provision for measuring carbon footprint of mining and reimbursement of costs of same from the provincial EROHS trust funds.

PART XVI

ABANDONMENT AND FORFEITURE

Clause 197 [*Abandonment of unregistered locations*] deals with the abandonment of mining locations not yet registered. The holder of such a location may abandon it at any time, subject to him or her posting a notice of abandonment on the location. The abandoned location cannot be relocated (i.e. registered in the name of another person) until the lapse of seven clear days from the date of abandonment.

Clause 198 [*Abandonment of registered blocks or sites*] provides that the holder of a registered mining location can only abandon it after applying for and obtaining from the PMD a certificate of abandonment. Partial abandonment of a location is possible if the remainder not abandoned is re-beaconed in the prescribed manner. Registered mining locations that are subject to a hypothecation or option registered in terms of Part XVII (“Registration of Transfers, Hypothecations, Options, Tribute Agreements and Conditions Governing Mining on Reserved Ground”) cannot be abandoned except with the consent of the holder of the hypothecation or option.

Clause 198 [*Forfeiture of registered blocks and sites*] provides for the PMD to declare the forfeiture of registered blocks in respect of which the holder has failed to obtain an inspection certificate under **clause 153** or a retention licence under **clause 156**. Provision is also made for the PMD to declare the forfeiture of registered sites attached to mining locations, if no site rent has been paid for the site for three consecutive months. The clause makes reference to other clauses of this Bill where the PMD is under a statutory duty to declare the forfeiture of mining locations in certain other contexts.

Clause 199 [*Forfeiture of mining lease*] provides that a mining lessee who fails to timeously submit a development programme to the Mining Affairs Board under **clause 132** (“Programmes to be submitted by lessees”) is liable to have his or her mining lease forfeited. The mining lease is also liable to forfeiture if it is not being worked according to its development plan or if the lessee fails to obtain an inspection certificate under Part XI (“Preservation of Mining Rights”). The special procedure of forfeiture under this clause specifies that the Mining Affairs Board must serve upon the lessee notice of the proposed forfeiture to enable him or her to take the required remedial action, on failure to do which the Board will direct the PMD to declare the mining lease to be forfeited.

Clause 201 [*Forfeiture of mining locations*] provides for the forfeiture of a registered mining location if the holder thereof fails to comply with a directive by the Minister under **clause 154** (“Unutilised dumps”) to exploit or tribute unutilised mining dumps on the location.

Clause 201 [*Locations belonging to estate of deceased persons: special conditions as to forfeiture*] allows any person interested in a mining location belonging to the estate of any deceased person, minor, mentally incompetent person or insolvent to notify the PMD of that fact, whereupon the PMD may not initiate forfeiture proceedings against the location for failure to obtain an inspection certificate or to pay any charges due in respect of that location under this Bill, for a period of 30 days from the time when the

estate of the deceased person, minor, mentally incompetent person or insolvent was officially registered. An absolute minimum period of six months is allowed for a mining location belonging to such an estate to come into compliance with this Bill without being forfeited.

Clause 202 [*Removal of buildings and machinery, and beacons, from abandoned, forfeited or cancelled location*] allows a former holder of a mining location which has been abandoned, forfeited or cancelled a period of three months within which to remove from the location any machinery or buildings belonging to him or her. Likewise, the former owner is obliged to remove all pegs and beacons appertaining to an abandoned, forfeited or cancelled location. If the PMD or his or her agent undertakes the removal, destruction or other disposal of buildings, machinery, beacons or pegs, the cost of such work may be recovered from a former holder if the latter fails to do the work, having been given an opportunity to do so at his or her own expense.

Clause 203 [*Open workings to be protected on abandonment, forfeiture or cancellation of location*] provides that on or before the abandonment, forfeiture or cancellation of a registered mining location, or no later than 30 days after the PMD has posted on his or her public notice board a notice of forfeiture, abandonment or cancellation of a registered mining location, the holder of the location must fill in all shafts, open surface workings and excavations or otherwise so deal with them as permanently to ensure the safety of persons and stock. The holder of the mining location is then required to lodge with the PMD a prescribed certificate certifying that all dangerous workings have been properly protected and the method used for such necessary protection. In the absence of dangerous workings requiring protection, a prescribed certificate to this effect must be suitably furnished. Notification of receipt of the prescribed form of certificate is served on any affected owners or occupiers of land in or about the location by the PMD to afford the owners or occupiers an opportunity of submitting objections to the issue of quittance in favour of such holder. The effect of issuing a quittance certificate to the holder is that the holder is thereby relieved from any further responsibility for the abandoned, forfeited or cancelled mining location.

Clause 204 [*Removal of or interference with protective works prohibited*] forbids anyone (except in the exercise of valid mining rights, or with the permission of the PMD) remove or interfere with any fencing or other protective works erected or constructed under **clause 203**. The clause imposes civil and criminal penalties upon offenders and defaulters against this provision.

Clause 205 [*Recording of abandonments and forfeitures and Appeals under Part XVI*] provides for any abandonment or forfeiture of a mining location to be recorded in the Mining Cadastre Register. It also entitles any person aggrieved by any decision of the PMD, Board or Minister under this Part to appeal to the Minister and ultimately the Administrative Court.

Clause 206 [*Relocation of abandoned, forfeited or cancelled locations and reinstatement of forfeited locations*] provides for the advertisement by the PMD of lists of mining locations, to enable them to be relocated (that is to say, have the mining locations and the mining rights attached to them re-assigned to some other person who meets the requirements for exercising them under the Act).

Under **Clause 207** [*Mine plans to be lodged on abandonment or closing down*] the miner of every mine which is closed down and on which development work has been done at a depth of more than 15 metres must give 60 days' notice of that fact to the PMD, giving reasons therefor. Within 31 days of the actual closing the miner must also lodge certain plans of the defunct mine with the PMD, or seek the PMD's help, through the offices of the Chief Government Mining Engineer, to draw up the required plans. The clause imposes civil and criminal penalties upon offenders and defaulters against this provision.

PART XVII

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

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

Clause 208 [*Interpretation in Part XVII*] defines a mining location is for the purposes of this Part as a mining claim, registered block of mining claims, and a mining lease, but does not include the area covered by an exclusive exploration reservation or a special grant.

Clause 209 [*Registration of transfer of mining locations and transfer duty payable*] provides that no transfer of a mining location to another person is valid unless the transfer registered with the PMD and recorded in the Mining Cadastre Register. When any mining location is sold or otherwise disposed of, notification of the transaction by which the transfer was made must be lodged with the PMD within 60 days. Thereafter any person entitled to be registered as the holder of a registered mining location, or any interest therein, shall make application to the PMD for the transfer of such location or interest, and every such application shall be in writing and signed by or on behalf of the applicant, and shall be accompanied by specified particulars. If the mining location was hypothecated or subjected to an option contract, it cannot be transferred except with the consent of the holder of the hypothecation or option, or otherwise by the order of a court or by the operation of the law relating to insolvency or deceased estates.

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

Clause 210 [*Registration of hypothecation of mining location*] provides that any holder of a registered mining location may make application to the PMD for the hypothecation of the whole or of any portion of his or her interest in such location. Such hypothecations may also be registered in virtue of a court order, or by a trustee or executor of a deceased or insolvent estate, or by the liquidator of a company.

Clause 211 [*Hypothecation in respect of loans granted by State*] provides that the Minister may instruct the Secretary to register a hypothecation of all or any of the mining locations registered in the name of any holder in favour of the State, if the State has advanced a loan or other assistance having a monetary value to such holder.

Clause 215 [*Registration of options on mining locations*] provides that any holder of a registered mining location may make application to the PMD for the registration of an option contract (whereby any holder of a registered mining location has agreed in writing to grant to any other person (the “option holder”), the option of exercising the right to purchase, or in any other manner to deal with, such location or locations at a certain future date). Such option contracts may also be registered in virtue of a court order, or by a trustee or executor of a deceased or insolvent estate, or by the liquidator of a company.

Clause 216 [*Registration of conditions governing mining rights on reserved ground*] allows any owner or occupier of land who allows mining to take place on land not open to prospecting (“reserved land”) that is owned or occupied by him or her, to embody the terms and conditions of the consent given to the miner in writing. The owner or occupier concerned may register written consent with the PMD, whereupon any breach of the terms of the consent by the miner will render the latter liable to civil and criminal penalties, and ultimately to the forfeiture of his or her mining location if he is convicted of an offence under this clause.

Clause 219 [*No sale or alienation of precious stones or strategic minerals location without approval of Minister*] prohibits the cession, assignment, sale or other alienation in any manner whatsoever of mining locations registered for, or on which the principal mineral being mined, is any precious stones or strategic mineral, unless the applicant for approval of the transfer of the mining location concerned obtains from the Minister, and produces to the PMD when making the application, a certificate granting permission for the location to be tribute.

Clause 219 [*Appeals under Part XVII*] provides for appeals by persons aggrieved by any decision of the PMD, the Mining Cadastre Registrar or the Mining Affairs Board under this Part.

PART XVIII

APPROVAL OF TRIBUTE AGREEMENTS

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

Clause 220 [*Interpretation in Part XVIII*] contains definitions of words and phrases in connection with the tributing of mining rights under this Part.

Clause 221 [*No tribute of precious stones or strategic minerals location without approval of Minister*] prohibits the tributing of mining locations registered for, or on which the principal mineral being mined, is any precious stones or strategic mineral, unless the applicant for approval of the tribute agreement obtains from the Minister, and produces to the PMD when making the application, a certificate granting permission for the location to be tribute.

Clause 222 [*Submission of tribute agreements for approval by PMD or Board*] All tribute agreements must be submitted to the relevant PMD for transmission to the Mining Affairs Board for approval, unless the tribute agreement is in a standard form approved by the Board, in which case the PMD may approve it. If the PMD refuses to approve a standard tribute agreement for any reason, the parties to it may appeal to the Board against such decisions (and a further appeal lies to the Administrative Court if a party is unhappy with the decision of the Board on appeal).

Clause 222 [*Consideration of non-standard tribute agreements by Board*] All tribute agreements that are non-standard must be submitted through the relevant PMD for transmission to the Mining Affairs Board, which must examine the tribute agreement in the light of specific considerations (such as the onus on the tributor to carry out sufficient development work to ensure the continuity of mining operations on the mine). If the Board refuses to approve a tribute agreement for any reason, the parties to it may appeal to the Minister against such decisions (and a further appeal lies to the Administrative Court if a party is unhappy with the decision of the Minister on appeal).

Clause 223 [*Records of agreements and amendments thereof*] provides for the recording of all approved tribute agreements in the Mining Cadastre Register and for the manner of their amendment after initial approval.

Clause 224 [*Penalty for acting under unapproved agreement*] prohibits, under threat of visiting civil and criminal penalties upon the defaulter, any person from exercising purported rights under an unapproved tribute agreement.

Clause 225 [*Prohibition of disposal of minerals*] empowers the appropriate PMD to prohibit the disposal of minerals from a mining location purportedly worked under

tribute, if the tribute agreement in question is unapproved or is being applied in conflict with the terms of an approved agreement. Any person who defies the PMD's order to that effect is liable to be visited with civil and criminal penalties.

PART XIX

SPECIAL GRANTS

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

Clause 226 [*Interpretation in Part XIX*] contains definitions of words and phrases used in this Part.

Clause 227 [*Special grant for mining coal, mineral oils, nuclear energy source materials, natural gases or strategic minerals*] provides that rights over certain minerals (coal, mineral oils, nuclear energy source materials, natural gases or strategic minerals) may only be acquired by means of a special grant. The right to exploit strategic minerals (which may be any mineral whatsoever that is declared to be a strategic mineral under **Clause 5**) may be acquired by means of a special grant or a mining lease, depending on the agreement between the miner and the State under **Clause 5**.

Under **Clause 228** [*Application for special grant and provisional approval thereof*] applicants for a special grant to mine coal, mineral oils, nuclear energy source materials or natural gases must apply to the Mining Affairs Board, while applicants for a special grant to mine any strategic mineral must apply to the Minister. In either case provisional approval to apparently qualifying applicants must be given (by the Chairperson of the MAB or by the Minister, as the case may be) for the application to go any further. The most important effect of provisional approval is that the PMD must reserve the area embraced by the application against prospecting and pegging in terms of section 40 ("Reservations against prospecting and pegging"). Multiple applications may be made and provisionally approved in respect of the same area sought to be covered by the special grant.

Clause 229 [*Pre-consideration procedures by PMD*] provides that, on the basis of a provisional approval for a special grant, the PMD of the area to be covered by the special grant must convene a meeting of stakeholders (including the applicant, occupiers of land and other miners) to enable them to interrogate the application for the special grant. After the meeting the PMD must compile a report to Mining Cadastre Registrar alerting him or her of any potential pitfalls concerning the application.

Clause 230 [*Consideration of application for special grant for strategic minerals*] lays down that the Minister must (as soon as possible after receiving the report of the PMD under **clause 229**, if any) consider the application for a special grant to mine any strategic mineral in the light of specified considerations. If the PMD raised any objection to the application, the applicant must be afforded an opportunity to rectify his or her application accordingly or to make a response to the PMD's report. After consideration of the application the Minister may recommend that the President grant or refuse the application.

Clause 231 [*Consideration application for special grant for coal, mineral oils, natural gases, or nuclear source energy materials*] lays down that the Board must (as soon as possible after receiving the report of the PMD under **clause 229**, if any) consider the application for a special grant to mine any coal, mineral oils, natural gases, or nuclear source energy materials in the light of specified considerations. If the PMD

raised any objection to the application, the applicant must be afforded an opportunity to rectify his or her application accordingly or to make a response to the PMD's report. After consideration of the application the Board may recommend through the Minister that the President grant or refuse the application.

After the Minister has communicated to the President his or her own recommendations on an application for a special grant to mine any strategic mineral (or communicated the Board's recommendations on an application for a special grant to mine coal, etc), the President may under **Clause 232** [*President may grant or refuse application for special grant*] refuse the application or authorise the Minister to issue a special grant on such terms and conditions as the President may fix.

Clause 233 [*Transfer, cession or assignment of special grant*] prohibits the transfer of a special grant to another holder except under certain conditions. The proposed transferee of the grant must be approved in advance by the Minister (in the case of a special grant to mine any strategic mineral) or the Board (in the case of a special grant to mine coal, etc) otherwise the special grant may be cancelled if the original grantee is unwilling to continue to exercise his or her rights under the special grant. Special grants are personal to the grantee and may only be ceded with the consent of the grantor. There is no right of transfer and such grants can only be ceded or assigned with the permission of the President.

Clause 234 [*Rate of royalty and annual fee*] provides that a special grant may make provision that is different from that made under Part XIII ("Royalty") for the payment of a special royalty on minerals won by the grantee. In addition, it empowers the President to fix a fee for the issuance of the special grant.

Clause 235 [*Amendment of area covered by special grant and other amendments*] empowers the President, on application of the grantee, to extend or reduce the area covered by his or her special grant. However any extension of the area so covered must be dealt with as if the application for the extension was an application for a new special grant under **clauses 230 or 232**.

Clause 236 [*Cancellation of special grant*] provides that the President must give not less than 12 months' notice of the cancellation of any special grant on the grounds that the grantee has contravened the terms and conditions attached to his or her special grant.

Clause 237 []

Clause 238 []

PART XX

MINING ON TOWN LANDS

Clause 239 [*Application of this Act to town lands*] provides for the application of the Bill to "prospecting for minerals and winning minerals on or under Town Lands" (as that phrase is defined in **clause 4** ("Interpretation")).

Clause 240 [*Local authorities may make by-laws on certain matters*] reserves to every local authority the responsibility for making by-laws (with the approval of the Minister responsible for mines) on any matter affecting mining on or under Town Lands within the jurisdiction of that local authority.

Clause 241 [*Consent required for pegging of sites on town lands*] requires the prior consent of a local authority responsible for Town Lands before any sites may be registered on such lands under **clause 53** ("Registration of dependent mine service sites") or **54** ("Registration of independent mine service sites") (but failing such consent the President may give consent on its behalf).

Clause 242 [*Limitation of timber rights*] restricts the exercise of the timber rights of the holder of a prospecting licence or mining location on town lands to cases where

such wood or timber interferes with prospecting or mining operations or with the erection of buildings required for such operations. Even in these cases the prior consent of the PMD is required for the exercise of those rights.

Clause 243 [*Disposal of subterranean water*] obliges every holder of any mining location situated on town lands to lead into the nearest natural water channel any water coming to the surface of the ground from the subterranean working of such location and not being used by such holder. The holder is further obliged to not pollute any natural water channel when leading water into it from subterranean mining operations. Severe criminal and civil penalties are brought to bear upon offenders against this clause.

PART XXI

ACQUISITION OF LAND BY HOLDERS OF MINING LEASES OR BY STATE

Clause 244 [*Interpretation in Part XXI*] defines what is meant by “private land” for the purpose of this Part. It also applies the provisions of the Land Acquisition Act to any land to be acquired by the State for the purpose of this Part.

Clause 245 [*Compulsory purchase or sale of private land covered by mining lease*] empowers any mining lessee whose land includes private land to seek an order from the Administrative Court to enable it to compulsorily buy either the part of such land falling within the limits of the mining lease area or the whole of such private land within and outside such limits. The latter option must be chosen by the mining lessee if, in the opinion of the owner of the land or of the mining lessee, the use of the private land for agricultural purposes will or has become untenable by reason of the mining lease operations.

Clause 246 [*Right of holder of mining lease to purchase State land*] entitles a mining lessee to purchase State land falling within the area of the mining lease. Such entitlement does not, however, extend to Gazetted land, or to State land whose alienation is restricted by the Constitution or any law; neither does it extend to State land subjected to an agricultural lease under which the State land lessee can exercise a purchase option.

Clause 247 [*Compulsory purchase of land not covered by mining lease*] empowers an owner of private property to make an application to the Mining Affairs Board to compel a miner other than a mining lessee to buy out his or her property, where the miner’s operations are on such a scale as to substantially affect the owner’s use and enjoyment of his or her property.

Under **Clause 248** [*Compulsory purchase of land covered by mining locations*] the owner of private land (or of a long lease from the State) may apply through the Minister for the compulsory purchase of the land (or for the resumption by the State of the leasehold) if he or she considers that the presence of any one or more mining locations on the land renders it unsuitable for agriculture or other purposes for which it was intended to be used (the owner must not, however, have an interest in any of the mining locations concerned, nor may an application under this section be made less than two years after the registration of any mining location).

Clause 249 [*Cost of survey to be borne by holder of mining location*] provides that the cost of any survey of land purchased by the holder of a mining location shall be borne by the holder.

PART XXII

EXPROPRIATION OF MINING LOCATIONS NOT BEING WORKED OR DEVELOPED

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

Clause 250 [*Interpretation in Part XXII*] contains definitions of words and phrases used in this Part.

Clause 251 [*Report that mining location not being adequately worked*] encourages any person (who may for this purpose be called a “whistleblower”) to report to the PMD his or her belief that a registered mining location is not being worked or developed at all or being worked or developed very inadequately. In token of good faith the whistleblower must submit together with his or her report a deposit equivalent to the maximum amount fixed for level 6. On receipt of such a report and deposit, the PMD must engage the Government mining engineer to make a report on the matter. The PMD may also, on his or her own initiative may engage the Chief Government mining engineer to make a report if the PMD believes that the mining location is being underworked. On the basis of that report the PMD may refer the matter to the Mining Affairs Board for further action.

Clause 252 [*Procedure of Board shall on receipt of Government mining engineer’s report*] provides that after the Board receives a report on the matter from the PMD it shall make its own investigation into the mining activities on the mining location which is alleged to be underworked. On the basis of such investigation it may then call upon the registered holder of such location to show cause why such location should not be expropriated.

Clause 253 [*Recommendation for order of expropriation*] requires the Board to satisfy itself as to certain points before arriving at the conclusion that a particular location should be expropriated, such as that the failure to develop or work or adequately to develop or work such location is due to causes beyond the control of the holder, which he or she has made every effort to overcome.

Clause 254 [*Order of expropriation*] If the Board is finally resolved that a registered mining location should be expropriated for under use, it may recommend that the President should expropriate it. The President, on receipt of the Board’s report and recommendation, has the discretion to require the Board to make a further investigation into the matter and to afford the registered holder a further opportunity of making representations to the President through the Board. If, in any event, the President is of the opinion that the mining location concerned is unworked or underworked, the President may make a provisional order of expropriation followed by (if there is no appeal against the provisional order) the final order of expropriation and cause it to be published in the *Gazette*.

Clause 255 [*Transfer of expropriated location; Part XI not to apply in certain respects*] provides to the formal transfer to the Minister of an expropriated location, in respect of which the Minister is not obliged to apply for obtain any inspection certificate as required by Part XI. No compensation is payable for the expropriated location except that payable under the following clause.

Clause 256 [*Sale or disposal of expropriated location*] provides for the disposal of the expropriated location by sale conducted through the Board (but the Minister may transfer it to a specific person by private treaty on the recommendation of the Board). The purchase price of any expropriated location will be paid by the Board to the holder from whom such location was expropriated less any costs incurred by the Board in connection with such location and its sale.

Clause 257 [*Forfeiture of expropriated location*] provides that if an expropriated location has not been sold or transferred within 12 months of the date when it was transferred to the Minister (or within a shorter period if the Board is of the opinion that the location contains no economic deposit of any mineral), the PMD must declare the location to be forfeited even where it is protected by a current from forfeiture by a current inspection or protection certificate.

Clause 258 [*Applicability of Part XXII*] reiterates that mining locations may be expropriated under this Part even if there is in force in relation to that location an inspection certificate protecting it from forfeiture.

PART XXIII

ADMINISTRATION

Sub-Part A: Administration of Ministry and Act

Clause 263 [*Administration of Ministry*] bestows general authority upon the Permanent Secretary of the Ministry of Mines to supervise and regulate the effectual implementation of the Act by the PMDs and other officers of the Public Service appointed for the purpose of this Act. In that capacity the Permanent Secretary may at his or her discretion assume the functions of any PMD to correct any error of the administration or in the implementation generally of this Act. Under this clause the Minister may also delegate any of his or her powers vested in him or her by the Act to the Permanent Secretary.

Clause 264 [*Powers of Minister with respect to Mining Provinces etc*] provides that there shall be 8 mining provinces in Zimbabwe which will follow the boundaries of the 8 non-metropolitan provinces listed in section 267 of the Constitution. Within such mining provinces the Minister may by Statutory Instrument declare any mining district which may encompass one or more administrative districts within the province. This clause also contains provisions for determining under which jurisdiction of a PMD a holder of mining title shall fall if his or her mining title straddles two or more mining province.

Clause 265 [*Appointment of officers*] provides for the appointment of specific office-holders for the purposes of the Act, whose offices are public offices and form part of the Public Service.

Under **Clause 266** [*Delegation of PMD's powers etc*] any PMD, acting PMD or assistant PMD may, with the Secretary's consent, delegate to any other officer his or her powers and duties, and may administer oaths for any purpose for which an oath may be required under this Act.

Clause 267 [*Disabilities of officials*] prohibits officials employed in the Ministry from having any involvement with mining for gain, except under very stringent conditions to ensure that conflicts of interests do not arise. It is a very grave offence for officials to act in breach of the trust they bear to the public to carry out their duties impartially.

Under **Clause 268** [*Prohibition of use of patented metallurgical process, etc*] no official of the Ministry of Mines may use (within 10 years of his or her leaving the service of the Ministry), for his or her personal reward or gain or for that of any other person, patented metallurgical processes, prototype plants, machines or other inventions produced with public funds for the service of the State. Severe criminal sanctions are brought to bear upon offenders against this clause.

Under **Clause 269** [*Indemnity of officials; protection against false imputation of dishonesty, bad faith, etc on the part of officials*] PMDs and other officials of the Ministry of Mines are indemnified for acts done in good faith by them in the exercise of their statutory functions. PMDs and other officials who, in the course of doing their duties, suffer false allegations of corruption, bias, malice, conflict of interest or bad faith, are given a special personal action for damages against the false accusers. The Ministry may institute action on their behalfs in such cases.

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

Under **Clause 270** [*PMD's powers when encroachment alleged*] a PMD has the discretion, on the application of any person interested in a mining location, to authorise a

surveyor or other officer to enter upon any adjacent mining location to discover whether there has been any encroachment by the latter upon the mining location in which the applicant is interested.

Under **Clause 271** [*PMD's may grant interdicts*] a PMD has power at his or her discretion to grant interdicts (binding injunctions or prohibitions) at the instance of any aggrieved person legally interested in any mining location against any other person who disturbs the first-mentioned person's enjoyment of his or her mining rights.

Clause 272 [*When PMD may permit working of locations under interdict*] allows mining locations interdicted by the PMD to be worked where the holder can show that such working is needed to prevent damage or serious material loss to the location.

Clause 273 [*PMD may authorise certain works*] entitles the holder of any mining location to apply to the PMD for an order to do certain works (such as sinking boreholes, building roads and erecting electric power lines and fencing) on land adjacent to the location or on another mining location that are needed for the more advantageous working of the location. The holder of the adjacent land or a local authority may likewise apply to the PMD to do similar works on the mining location. The PMD must afford all affected parties a hearing before he grants or refuses the application. The application for order will not be granted unless the PMD is satisfied that the use and working of any land or mining location belonging to any person other than the applicant will not be materially impeded, interfered with or obstructed by any act or thing done pursuant to such order.

Clause 274 [*Claim holders must point out boundaries of their locations*] pits holders of mining locations under a general obligation to the PMD point out all notices, beacons, pegs or other landmarks defining or purporting to define in terms of this Act the boundaries of any mining location registered in his or her name or belonging to him or her.

In order to secure the recovery all amounts due and payable in respect of civil penalties, licences, royalties, fines, transfer duties or any other fees payable on or in connection with any mining location, **Clause 275** [*PMD may sue for and have hypothec for amounts due*] creates in favour of the PMD a statutory hypothec over a mining location and all buildings, machinery or plant thereon which are the property of the holder of the location. This means that the property in question can be attached and sold to recover the moneys due.

Clause 272 provides for appeals by way of review to the Administrative Court for decisions made by the PMD under **clauses 266 and 269**.

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

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

Clause 275 [*Functions, mandates and powers of Departments*] sets forth the functions, mandates and powers of the three statuted Departments.

Clause 276 [*Directors and staff of Departments*] provides for the appointment of each of the Directors of the Department of Geological Survey, the Department of Mining Engineering and the Department of Metallurgy, together with their staff, all of whose offices are public offices and form part of the Public Service.

Clause 277 [*Charges, levies and fees*] empowers each Director, subject to any directions of the Minister given after consultation with the Minister, to charge and levy prescribed fees for the services rendered by their Departments.

In **Clause 278** [*Minister may give policy directions to Directors of Departments*] the Minister may, through the Permanent Secretary, give policy directions to the Directors of the Departments.

Clause 279 [*Intellectual property rights of Departments*] reserves to each Department any intellectual property rights over any data, etc., generated by the Department concerned in the fulfilment of its functions.

Under **Clause 280** [*Regulatory powers of the Minister*] the Minister may, in consultation with the Director concerned, make regulations for each Department in order to give better effect to the objects and purposes of this Sub-Part.

PART XXIV

OFFENCES AND PENALTIES

Clause 283 [*Protection of open workings by prospectors*] obliges prospectors and holders of exclusive prospecting licences, exclusive exploration licences and special grants to protect any dangerous open workings to a standard prescribed in the mining regulations. Exemplary criminal and civil penalties are brought to bear upon offenders against this clause.

Under **Clause 284** [*Duties of absentee staking agent or prospector*] staking agents and prospectors who absent themselves for more than 24 hours from any area covered by their exclusive prospecting licences, exclusive exploration licences and special grants for prospecting must appoint someone suitable to be in charge of the area and any employees thereon, and give such a person proof of such appointment which can be exhibited to the holder of the land covered by the mining right. Suitable criminal and civil sanctions are provided for the breach of this duty.

Clause 285 [*Illegal pegging*] prohibits certain acts of illegal pegging. Exemplary criminal and civil penalties are brought to bear upon offenders against this clause.

Clause 286 [*Illegal cutting of wood*] prohibits the cutting, felling, removal or use of any indigenous wood or timber for any other purpose than those authorised by specific provisions of this Bill. Exemplary criminal and civil penalties are brought to bear upon offenders against this clause.

Clause 287 [*Interference with fences*] prohibits interference with fences on the part of holders of exclusive prospecting licences, exclusive exploration licences and special grants, and also on the part of holders or occupiers of land adjacent to mining locations. Exemplary criminal and civil penalties are brought to bear upon offenders against this clause.

Clause 288 [*Beacons and pegs to be maintained in good order*] obliges the holder of a mining location (including the holder of a defunct or forfeited mining location for which the holder has not yet received a quittance certificate), to erect or to keep in proper order and in their proper positions his or her notices, pegs, beacons or trenches of such location. Exemplary criminal and civil penalties are brought to bear upon offenders against this clause.

Clause 289 [*Position of beacons and pegs may not be altered*] forbids (on threat of prosecution) any person from in any way altering, destroying or falsifying any peg, notice, beacon or landmark designating or intended to designate the position, boundary, name or other particular of any mining location, reef or deposit or designating the name of the discoverer or holder thereof.

Clause 295 prohibits, except with the special permission of the Chief Government Mining Engineer, the exercise of mining rights beneath certain spots or locations.

Clause 296 punishes as fraud the practice of “salting”, that is, the process of adding a valuable mineral or metal, especially gold or silver, to a site or a sample to change the value of the site or the sample with intent to deceive potential buyers of a mine.

Clause 299 [*Eviction of illegal occupiers*] replaces a corresponding section in the existing Act that deals with the problem of illegal occupiers of mining locations by the use of purely administrative means (notice of eviction by the mining commissioner with the opportunity to appeal against the same to the Minister). The new Constitution

stipulates in section 74 that “No person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances”. This section on eviction of illegal occupiers is aligned to the Constitution. However, mere trespassers not dwelling on the location may be summarily evicted by the police.

Clause 301 [*False declarations and certificates*] makes it an offence against section 180 (“Deliberately supplying false information to public authority”) of the Criminal Law Code to make any false declaration, supply any false certificate or render any false return for any purpose under the Bill.

Clause 302 puts the holder of a mining location to which a dam or reservoir is attached under a statutory obligation leave such dam or reservoir intact, together with the water it contains.

Clause 307 [*Geological survey*] specifies the powers of the Director of Geological Survey to enter upon any land for the purpose of carrying out prospecting or exploration work on behalf of the State or a geological survey of Zimbabwe.

Clause 306 [*Obstruction of officials*] prohibits and penalises certain acts of obstruction of officials carrying out their duties under this Bill.

Clause 309 [*Discovery of precious stones to be notified*] puts everyone under the obligation of notifying the PMD of the discovery of precious stones and of the location of the discovery within 10 days of the discovery.

PART XXV

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

Clause 310 provides that, where claims for compensation arising under this Act are submitted to the Administrative Court in terms of the Land Acquisition Act, the claims are to be framed in accordance with the procedures applicable to that court, specifically in regard to the nature of the loss or deprivation of rights, the compensation sought and details of expenses incurred.

Clause 311 provides that the President may at any time, for the utilisation of any mining location for a purpose beneficial to the public generally, or to any section thereof, acquire either the whole or any portion of such mining location, or limit the rights enjoyed by the owner thereof under this Act. For that purpose the Minister may appoint an investigator with powers of access to the location concerned to ascertain the amount of compensation that may be payable.

In **Clause 312**, if a PMD has grounds to believe that a miner is using wasteful mining methods or metallurgical processes, the PMD is empowered by this clause to inspect the mining location and report his or her findings to the Mining Affairs Board (MAB). On the basis of these findings the MAB may then institute its own inquiry, affording the miner the opportunity to make representations as to why his or her mining rights ought not to be cancelled. If the inquiry concludes that the miner is responsible as alleged, the MAB will request the miner to remedy the situation within a specified time or allow the miner to show cause why his or her certificate of registered mining location should not be cancelled. If the miner in either case fails to satisfy the MAB, the MAB will provisionally cancel the miner’s certificate of registered mining location and notify the miner accordingly.

Clause 313 empowers the Minister to cancel mining rights if, after due investigations, the Minister is satisfied that the miner has failed to declare an output within a reasonable time after commencing mining operations, or that the miner has falsified a return regarding various provisions of Gold Trade Act, the Precious Stones Trade Act, or the Minerals Marketing Corporation of Zimbabwe Act. Cancellation of a miner’s rights under the new section will result in the forfeiture of the mining location concerned, where it is registered in the miners’ name, or in termination of any tribute agreement between the miner and the registered holder of the mining location.

Clause 314 affords any holder of a registered mining location (“the applicant”) the opportunity to apply to the Mining Affairs Board (MAB) for the compulsory purchase by and transfer to the applicant of a registered mining location held by another person, on the grounds that the applicant needs it for the better working of the applicant’s own mining location. The applicant must first have tried to buy out the other holder and been refused. On receipt of the application the MAB notifies all interested parties of a hearing on the matter, and if it is satisfied (among other things) that the application is in the national interest, it may recommend to the Minister that the other holder must sell his or her location to the applicant for a sum of compensation agreed between them or fixed by arbitration in default of agreement. The Minister refers the recommendation to the President, who may thereupon approve or reject the making by the Minister of an order authorising the PMD to provisionally effect the necessary transfer until it is confirmed by the Mining Cadastre Registrar. The order cannot, however, be executed until the agreed or arbitrated compensation has been paid by the applicant or the applicant has given adequate security for such payment.

Clause 315 provides for appeals by way of review to the Administrative Court for decisions made by the Minister or the Board (as the case may be) under **clauses 254, 312, 313 and 314**.

PART XXVI

MISCELLANEOUS

Clause 316 requires every miner of a registered mining location to submit annually to the Director of Geological Survey specified geological information.

Clause 317 provides for the payment annually in advance to the PMD of site rent at the prescribed rate.

Clause 318 provides that land surveyors carrying out surface surveys on the Act are subject to the same duties and liabilities as are provided under the Land Survey Act [*Chapter 20:12*].

Clause 319 allows the Minister of Mines to establish and maintain one or more institutions for technical education and the training of personnel leading to the award of diplomas, certificates and other qualifications relevant to the mining industry. The foundational document setting out the powers and activities of each such institution will be in the form of a charter granted by the President by proclamation in the *Gazette*, similar to the one already granted to the Zimbabwe School of Mines in 1994.

Clause 320 provides that for the benefit of farmers needing limestone for their farming operations, the Minister may, on application by any such farmer, reserve any part of the land of such farmer against prospecting or mining. The mining of limestone in good faith for use in farming operations will not be treated as “mining” for the duration of such reservation.

Clause 321 empowers the Minister to establish advisory boards for each Mining Province on a standing or *ad hoc* basis to advise the Minister generally on mining affairs in the province or in connection with any particular matter affecting the mining industry in that province.

Clause 322 [*How acts ordered by PMD to be performed*] clarifies how effect is to be given to a PMD’s lawful orders where this is not elsewhere specified in Act. The Police Service is obligated to render the PMD and his authorised delegate all necessary assistance in executing the PMD’s orders.

Clause 323 [*Regulations*] empowers the Minister to make regulations with respect to anything which, under this Bill the Minister is empowered or permitted to prescribe by regulations. Especially noteworthy is the power to make regulations concerned with the health and safety of mining employees, for the enforcement of which the Minister may order a mine to be temporarily or permanently closed.

MINES AND MINERAL BILL, 2023

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BILL

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

ENACTED by the Parliament and the President of Zimbabwe.

PART I

PRELIMINARY

1 Short title and commencement

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

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

15 (2) Part III (“Mining Cadastre Registry”) of this Act shall apply in every respect as if it were fully operational on and after date of commencement of this Act, except that the operation of **section 19** (“Entries in Mining Cadastre Register”) (1) and (2) shall be deferred until such date as the President by notice in the *Gazette* declares that the
20 Mining Cadastre Registry has achieved an operational standard capable of enabling the entries in the Mining Cadastre Register to be deemed to be the definitive and exclusive record of every mining right and title under this Act.

H.B. 10, 2022.]

2 Rights to minerals vested in President

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

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

(1) Rights to minerals, mineral oils, natural gases and nuclear energy source materials can be acquired in the manner hereinafter in this Act set out, and in such manner only. 10

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

4 Interpretation

(1) In this Act— 15

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

“agricultural land” has the meaning given to it by section 72(1) of the Constitution; 20

“alienated or partially alienated land”, means—

- (a) private land; and
- (b) occupied Communal Land; and
- (c) land held by any person under any enactment or agreement whereby such person is entitled to obtain from the State title thereto on the fulfilment by him or her of the conditions prescribed by such enactment or agreement; and 25
- (d) land held by the holder of an offer letter, securitised A2 permit, land settlement lease or land settlement permit; 30

“alluvial deposit” means—

- (a) in relation to precious stones, any deposit, either non-coherent or consolidated, of any geological age, which has been formed by the agency of water or wind;
- (b) in relation to any other mineral, any accumulation of sand, gravel or clay deposited by surface-water containing valuable minerals; 35

“approved beneficiation plant” means a bank assay department, factory, refinery, smelter or treatment plant which has been declared to be an approved beneficiation plant in terms of **section 170** (“Beneficiation plant”);

“approved cultivation scheme” means a scheme approved by the PMD under **section 141** (“Right of landholder to graze stock upon or cultivate the surface of mining location”); 40

“aqueduct” means any artificial work, appliance or structure, other than a pipeline, for the conveyance of water, wherever situated;

“arbitration” means arbitration in terms of the Arbitration Act [*Chapter 7:15*] (No. 6 of 1996); 45

“base minerals” means all minerals and mineral substances, other than nuclear energy source material, precious metals, precious stones, mineral oils,

- natural gases and coal, and includes all such slimes, concentrates, slags, tailings and residues as are valuable and contain base minerals;
- “beneficial owner” means a person who enjoys the benefits of ownership though the property’s title is in another name (“the nominee”);
- 5 “block” means claim or group of adjoining claims which may be registered in terms of this Act under one certificate of registration and which shall not in any case exceed ten hectares;
- “Board” means the Mining Affairs Board established under Part II (“Establishment and Functions of Mining Affairs Board”);
- 10 “Chamber of Mines of Zimbabwe” means the Chamber of Mines of Zimbabwe incorporated in terms of the Chamber of Mines of Zimbabwe Incorporation (Private) Act [*Chapter 21:02*];
- “civil penalty” means a penalty governed by the provisions of the First Schedule;
- 15 “claim” means a pegged area of land not exceeding one hectare in extent, within which a person has a right under this Act to carry out mining operations;
- “coal” means anthracite, bituminous coal, brown coal, oil shale and lignite;
- “course of a reef” means a line on the surface marking the intersection of the centre of a reef with such surface and, in cases where the whole or any portion of a reef is situated below the surface of the ground, the course of such reef shall be ascertained by projecting vertically to the surface the various points at which the centre of such reef approaches nearest to the surface, when the various points thus obtained shall be deemed to constitute the course of such reef;
- 20 “dam” means any works permitting of the artificial storage or accumulation of water, together with the water and all land submerged at high flood-level;
- 25 “defunct register” means the defunct register of the PMD referred to in **section 19** (“Provincial mining registers”) (1)(a);
- “disposal”, in relation to any mineral or mineral-bearing product, means the sale, donation or other alienation of such mineral or mineral-bearing product:
- 30
- Provided that, where any mineral or mineral-bearing product is disposed of under an agreement in terms of which delivery of the mineral or mineral-bearing product is to be effected—
- (a) at some future date; or
- 35 style="padding-left: 80px;">(b) over a period of time;
- the mineral or mineral-bearing product, as the case may be, shall be deemed to have been disposed of on the dispatch thereof or on the dispatch of each consignment thereof, as the case may be;
- 40 “document” includes a document in electronic form (provided that any person required to avail it must do so in an unencrypted and machine readable form);
- “dump” means any aggregate of rock fragments or tailings which contain valuable minerals and have been accumulated by mining on a mining location;
- 45 “eluvial deposit” means a residual concentration of minerals in the immediate vicinity of the outcrop of the vein or lode from which it is derived;
- “exclusive exploration reservation” means the area in respect of which an exclusive exploration licence has been applied for and issued in terms of Part VII (“Exclusive Exploration Licence”);

- “exclusive prospecting licence” means an exclusive prospecting licence issued in terms of **section 28** (“Issue of exclusive prospecting licences”);
- “final register” means the final register of the PMD referred to in **section 19** (“Provincial mining registers”)(1)(b);
- “Gazetted land” means State land which is defined as ‘Gazetted land’ in section 2(1) of the Gazetted Land (Consequential Provisions) Act [*Chapter 20:28*] (No. 8 of 2006); 5
- “global positioning system” means a satellite-based navigation system for ascertaining the location of a point on the ground;
- “holder”, in relation to a registered mining location, means the person in whose name such location is registered **in the Mining Cadastre Register** and, in the case of a deceased person or of a company in liquidation, or of any person under a legal disability, means the executor, administrator, liquidator, trustee, tutor, curator or other person who has the administration or control of the property of the person in whose name such location is registered; 10 15
- “holding”, in relation to alienated or partially alienated land, means the whole area of land which is held by the owner, occupier, lessee or holder, under one title or one agreement with the State:
- Provided that if the holder of a holding has leased any portion thereof to any other person under an agreement of lease which is registered in the Deeds Registry, such portion shall be deemed to be a separate holding; 20
- “inspector of mines” means an inspector of mines appointed in terms of section 265 (“Appointment of officers”); 25
- “land settlement lease” means a “99-year lease” or “lease with a purchase option” as defined in section 2 of the Land Commission Act [*Chapter 20:22*], and includes any long lease over agricultural land;
- “land settlement permit” (or “permit”) has the same meaning as “permit” given by section 2 of the Land Commission Act [*Chapter 20:22*], and includes a securitised A2 permit; 30
- “landholder” or “holder” (in relation to land) means the owner or person or persons in whose name or names the title to any land is registered, granted or held, as the case may be, and, in the case of a deceased person or of a company in liquidation, or of any person under a legal disability, means the executor, administrator, liquidator, trustee, tutor, curator or other person who has the administration or control of the property of the person in whose name such land is registered, granted or held; 35
- “land surveyor” means a land surveyor duly admitted to practise in Zimbabwe and, at the time of the performance by him or her of any acts under this Act in such capacity, entitled so to practise in Zimbabwe; 40
- “legal owner”, in relation to a mining title, means the person registered as the owner of it in the Mining Cadastre Register who, subject to section 19 (“Entries in Mining Cadastre Register to be conclusive proof of mining right or title; rectification of Mining Cadastre Register; ascertainment of beneficial ownership”) (1)(b), may be a nominee for the beneficial owner; 45
- “mentally incompetent person” means a person who is mentally disordered or intellectually handicapped, as defined in section 2 of the Mental Health Act [*Chapter 15:12*] or any other law that may be substituted for the same; 50
- “mine” includes any place, excavation or working whereon, wherein or whereby any operation in connection with mining purposes is carried on;

- “mine surveyor” means a person who possesses, at the time of the performance by him or her of any acts under this Act required or permitted to be performed by a mine surveyor, such qualifications as may from time to time be prescribed;
- 5 “miner” means the person actually carrying on the work of mining on any mining location, whether he or she is the holder or the lessee or assignee of the rights of such holder;
- “mineral” means —
- 10 (a) any substance occurring naturally in or on the earth, which has been formed by or subjected to a geological process; and
- (b) any substance declared to be a mineral in terms of subsection (3) (a), to the extent of such declaration;
- but does not include —
- 15 (i) except for the purposes of Part XIX (“Special Grants”), mineral oils and natural gases; or
- (ii) any substance declared not to be a mineral in terms of subsection (3)(b), to the extent of such declaration;
- “Mining Cadastre Register” means the Mining Cadastre Register established by **section 16** (“Mining Cadastre Register”) (1);
- 20 “Mining Cadastre Registrar” means the head of the Mining Cadastre Registry referred to in **section 15** (“Establishment Mining Cadastre Registry; Mining Cadastre Registrar and Deputy Mining Cadastre Registrar”)(2);
- “Mining Cadastre Registry” means the office established by **section 15** (“Establishment Mining Cadastre Registry; Mining Cadastre Registrar and Deputy Mining Cadastre Registrar”)(1);
- 25 “mining lease” means a mining lease issued under Part IX (“Mining Leases”) or the area covered by such a mining lease, as the context may require;
- “mining location” means a defined area of ground over which there are mining rights, or rights in connection with mining, that have been acquired under this Act or under any previous law relating to mines and minerals, and includes the area covered by —
- 30 (a) a claim or block of claims; and
- (b) a mining lease; and
- (c) a special grant; and
- 35 but does not include an exclusive exploration reservation;
- “mining operations” means (subject to the limitations of the mining right by virtue of which they are conducted), operations carried out for or in connection with the development of a mining location, including —
- 40 (a) the sinking of shafts;
- (b) the installation of machinery, equipment, implements, utensils and other articles required for the extraction, production, processing, milling, smelting, beneficiation, storing, handling, delivery, transportation, sale or disposal of minerals;
- (c) the construction and erection of —
- 45 (i) facilities or the production, treatment, storage, gathering and conveyance of minerals;
- (ii) offices, residential units, schools, hospitals, nursing homes or clinics for use by persons employed in or in connection with mining operations or by their families;

- (d) the construction of roads in or to the mining location;
- (e) environmental protection works and activities and any other activity incidental to mining operations;
- “mining province” means, subject to **section 264** (“Powers of Minister with respect to mining provinces and mining districts”), a non-metropolitan province; 5
- “mining purposes” means the purpose of obtaining or extracting any mineral by any mode or method or any purpose directly or indirectly connected therewith or incidental thereto;
- “mining right” means a right evidenced by a mining title to prospect or explore for, obtain, extract or produce any mineral, or do any other thing that the mining title gives the holder thereof the right to do; 10
- “mining title” means a claim, block of claims, mining lease or special grant and (depending on the context) includes any document evidencing a mining right that is precedent to obtaining any of the foregoing titles, such as an exclusive prospecting licence or exclusive exploration licence; 15
- “Minister” means the Minister of Mines and Mining Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- “notice”, “notify”, “notified” or “notification”, in connection with the giving of notice of anything under this Act, has meaning given to it in **section 5** (“Manner of giving notices and serving documents under this Act”); 20
- “nuclear energy source material” means uranium or thorium or any other substance containing one or both of such elements in such concentrations as may be prescribed; 25
- “occupied Communal Land”, means any portion of Communal Land occupied by virtue of a consent or permit referred to in paragraph (c) of the definition of “title”;
- “occupier”, in relation to land, means the person lawfully and actually using or possessing any land under or by virtue of any title; 30
- “offer letter” means a letter or permit issued by the Minister responsible for land resettlement that offers to allocate land that will be subject to a securitised 2 permit or land settlement lease to the person to whom the letter is addressed (unless the context otherwise requires, “offer letter” shall be deemed to be synonymous with “A2 permit”); 35
- “ore” means all forms of minerals or mineral aggregates which in the abstract are of economic value;
- “output” means —
- (a) in respect of precious stones, precious stones which have been recovered from any mining location; 40
- (b) in respect of any other mineral, ore which has been mined and reduced to a saleable form or which is in a saleable form on being mined;
- “owner”, as applied to land, means the owner of private land, that is to say, the person registered as such in terms of the Deeds Registries Act [*Chapter 20:05*], and includes the duly authorised representative of any such owner; 45
- “peg” —
- (a) when used as a verb means to demarcate, in accordance with this Act, a claim, block, location or other area;
- (b) when used as a noun, means a peg, beacon, or mark which demarcates the boundaries of a claim, block, location or other area; 50

- “placer deposit” means any form of mineral deposit which does not fall within the definitions of “reef”, “dump”, “alluvial deposit”, “eluvial deposit” or “rubble deposit”;
- 5 “point of departure” means any point at which the course of a reef crosses a boundary of a mining location;
- “precious metals” means gold, silver, platinum and platinoid metals in an unmanufactured state, and includes all such slimes, concentrates, slags, tailings, residues and amalgams as are valuable and contain such precious metals;
- 10 “precious stones” means rough or uncut diamonds or emeralds or any substances which may, in terms of subsection (2), be declared to be precious stones for the purposes of this Act;
- “primary purposes” means domestic purposes and the support of animal life and, in relation specifically to the use of water, has the meaning given to that phrase by section 2 of the Water Act, 1998;
- 15 “private land” means any land the ownership of which has by law, grant or title deed become vested in any person, and includes any land held by any person under any enactment or agreement whereby such person is entitled to obtain from the State title thereto on the fulfilment by him or her of the conditions prescribed by such enactment or agreement;
- 20 “restricted public water” means water—
- (a) from any water body or underground source located on land held by a landholder; and
 - (b) which the landholder is entitled to use for his or her primary purposes under the Water Act [*Chapter 20:24*] (No. 31 of 1998);
- 25 “prospector” means the holder of an exclusive prospecting licence issued in terms of **section 28** (“Issue of exclusive prospecting licences”), whether or not the prospector is also an approved staking agent;
- “Provincial Mining Director” or “PMD” means the Provincial Mining Director of the mining province within which the land or claims concerned, as the context may require, are situated;
- 30 “provisional register” means the provisional register of the PMD referred to in section 19 (“Provincial mining registers”)(1)(a);
- “public water” means water from any water body or underground source located on State land or any portion thereof not occupied by a landholder;
- 35 “quarry” means any place, excavation or working, other than a mining location, where any substance other than a mineral is obtained or extracted by means of quarrying operations;
- “rare earth mineral” (also “rare-earth metal”, “rare-earth oxide” or “lanthanide”) means a base mineral that is any one of seventeen heavy metals of the lanthanide series of elements, including cerium, yttrium, lanthanum, scandium and neodymium;
- 40 “reef” means any form of ore deposit contained within defined boundaries occurring in the earth’s crust that has been deposited in the enclosing country rocks, and includes a true fissure vein, contact vein, segregated vein, gash vein, bedded vein or metalliferous banket, and all such deposits as conform generically to the foregoing classification and any bed of any mineral, such as ironstone or limestone, but does not include alluvial deposits, eluvial deposits, placer deposits, rubble deposits or coal;
- 50 “Register of Staking Agents” means the register established in terms of section 20 (“Register of staking agents”);

- “registered” means registered under any provision of this Act;
- “representative”, in relation to a prospector, means an agent appointed by the prospector;
- “rubble deposit” means any natural deposit of rock fragments accumulated at or near the surface of the ground; 5
- “Secretary” means the Secretary of the Ministry for which the Minister is responsible;
- “securitised A2 permit” means an A2 permit incorporating the security features prescribed by the Minister responsible for land resettlement, that is issued to a future lessee of a 99-year lease of agricultural land upon fulfilment of the conditions prescribed by or under the permit; 10
- “small scale miner” means a Zimbabwean citizen or permanent resident who—
- (a) is the holder of one registered mining location of not more than forty (40) hectares in extent, or of two or more registered mining locations which in aggregate do not exceed forty (40) hectares in extent; and 15
 - (b) does not, on his or her registered mining location or any of his or her registered mining locations, as the case may be—
 - (i) employ at any time more than fifty (50) persons (including contractors) for periods (whether continuous or not) exceeding six months in any year; and 20
 - (ii) does not produce more than 1 200 tonnes of ore a year;
- “special grant” means a special grant issued under Part XIX (“Special Grants”);
- “specified”, in relation to a mineral or mineral-bearing product, means specified in a notice made in terms of section 170 (“Beneficiation plant”); 25
- “staking agent” means a person registered as such under Part IV (“Staking Agents”);
- “State land” means land the ownership of which is vested in the President, excluding Communal Land:
- Provided that, for the purposes of sections 32 (“Land open to prospecting”) and 35 (“Ground not open to prospecting”), State land shall not include any land which is private land; 30
- “stockpile”, in relation to a stockpile of minerals, means any stock or store of such minerals declared to be such under subsection (4)(a);
- “strategic mineral” means a mineral as defined in section 6 (“Strategic minerals”) (1) that is declared by the Minister to be such in terms of section 6(2), or is deemed to be such in terms of section 6(9); 35
- “strike” means a horizontal line drawn at right angles to the dip of a reef;
- “syndicate” means group of individuals or bodies corporate combined to promote a common interest; 40
- “title”, in relation to—
- (a) alienated land that is private land, means a title deed or deed of grant;
 - (b) partially alienated land, means an offer letter, a land settlement lease, a land resettlement permit or a lease of Gazetted land or other State land with or without a purchase option; 45
 - (c) occupied Communal Land means—

- (i) the consent (verbal or written) to occupy any portions of such land granted to persons qualified in terms of section 8 of the Communal Lands Act [*Chapter 22:04*] to occupy such land for agricultural or residential purposes; or
- 5 (ii) a permit to occupy any portion of Communal Land issued in terms of section 9 of the Communal Lands Act [*Chapter 22:04*];
- (d) a mining right, means title that confers a real right (that is to say a property right) on the holder of such mining right
- 10 “town lands” means any land falling within—
- (a) the area in terms of the Urban Councils Act [*Chapter 29:15*] of any municipality or town or any local government area for which a local board has been established; or
- 15 (b) any other area declared by the President, by statutory instrument, to be town lands for the purposes of this Act;
- “water body” means any natural or artificial body of water such as a lake, pond, dam, brook, stream, river, canal or water channel;
- “well” means a shaft sunk for the express purpose of abstracting water and which is being used for the abstraction of water.
- 20 (2) The Minister may, by notice in a statutory instrument, declare any substance to be precious stones for the purposes of this Act.
- (3) The Minister may, by notice in a statutory instrument, declare that—
- (a) any naturally-occurring substance, which is obtained or extracted by mining or quarrying or by similar methods, shall be a mineral for the purposes of all or any of this Act;
- 25 (b) any substance referred to in paragraph (a) of the definition of “mineral” in subsection (1) shall not be a mineral for the purposes of all or any of this Act;
- and may in like manner amend or revoke any such declaration.
- 30 (4) The Minister may, by notice in a statutory instrument, declare that—
- (a) any storage for longer than a prescribed period in any one or more places or premises managed or controlled by the same person of a specified mineral of a prescribed amount that has been mined or extracted shall, regardless of whether or not it has been beneficiated to any extent, be deemed to be a stockpile of that mineral for the purposes of this Act;
- 35 (b) amend or revoke any declaration made under paragraph (a).

5 Manner of giving notices and serving documents under this Act

- (1) In this section—
- 40 “document”, in relation to the service of a document other than a notice, means an affidavit, memorandum or other document required to be served for any purpose under this Act;
- “messenger” means any person acting on behalf of a notifier in terms of subsection (2)(a) or (3)(a), or a courier referred to in subsection (2)(b) or (3)(b), or an employee or agent of the Mining Cadastre Registrar or the PMD referred to in subsection (5)(a);
- 45 “private actor” means a prospector, miner, landholder or other individual or person not employed in or acting in an official capacity on behalf of the Ministry who exercises rights conferred by or performs duties imposed upon him or her by this Act, or who is otherwise affected by this Act;

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

(2) Unless any provision of this Act specifies the way in which notice of anything is to be given, references in this Act to the giving of notice to or notifying a person of anything, means giving notice or notifying in any one of the following ways— 5

(a) by hand delivery to the person being notified or to a responsible person at the residential address or place of business of the person being notified (such delivery must to be evidenced by an affidavit sworn and dated not later than 48 hours after such delivery, by the notifier or his or her messenger, to the effect that delivery was made by hand at the specified time and date, and at the specified address); or 10

(b) by delivery to the address of the person being notified through a commercial courier service (such delivery to be evidenced by a receipt or other proof of delivery by the courier service); or 15

(c) by delivery through electronic mail or other electronic means to the electronic address of the person being notified, which electronic address has been furnished to the PMD under section 152 (“Pre-inspection requirements and first and subsequent inspection certificates”)(2)(d), and which electronic notification shall be evidenced by— 20

(i) an acknowledgement (by the same means by which the notification was sent and on the same day or no later than midday on the following day) of receipt from the recipient; or

(ii) confirmation (made or obtained on the same day or no later than midday on the following day) by the electronic mail server that the communication was sent and arrived at its destination; or 25

(iii) written acknowledgment by the recipient that he or she has received it;

(otherwise the burden of proof that any electronic communication was sent and arrived at its destination shall rest with the sender of the communication); 30

(d) in the case where a notice is required to be served on anyone but his or her whereabouts cannot be ascertained after diligent inquiry or the service is rendered impossible by wilful conduct of the person to be notified, notice shall be deemed validly served if, no later than 48 hours before the expiry of the statutory period for the giving of the notice— 35

(i) the notifier (the Mining Cadastre Registrar, the PMD, or other official of the Ministry) or the messenger on behalf of the notifier deposes to that fact in an affidavit and such affidavit is filed for record at the office of the notifier; and 40

(ii) where the notifier is—

A. the Mining Cadastre Registrar, the notice is posted on the electronic notice board of the website of the Mining Cadastre Registry; or

B. the PMD, the notice is posted on the public notice board at the PMD’s office for a period of at least seven (7) days. 45

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

(a) by hand delivery to the person being served or to a responsible person at the residential address or place of business of the person being served 50

(such delivery must to be evidenced by an affidavit sworn and dated not later than 48 hours after such delivery, by the server or his or her messenger to the effect that delivery was made by hand at the specified time and date, and at the specified address); or

- 5 (b) by delivery to the address of the person being served through a commercial courier service (such delivery to be evidenced by a receipt or other proof of delivery by the courier service); or
- 10 (c) by delivery through electronic mail or other electronic means to the electronic address of the person being served, which electronic address has been registered with the PMD under section 152 (“Pre-inspection requirements and first and subsequent inspection certificates”)(2)(d), and which electronic service shall be evidenced by—
 - 15 (i) an acknowledgement (by the same means by which the notification was sent and on the same day or no later than midday on the following day) of receipt from the recipient; or
 - (ii) confirmation (made or obtained on the same day or no later than midday on the following day) by the electronic mail server that the communication was sent and arrived at its destination; or
 - 20 (iii) written acknowledgment by the recipient that he or she has received it;

(otherwise the burden of proof that any electronic communication was sent and arrived at its destination shall rest with the sender of the communication);
- 25 (d) in the case where a document is required to be served on anyone but his or her whereabouts cannot be ascertained after diligent inquiry or the service is rendered impossible by wilful conduct of the person to be notified, the document shall be deemed validly served if, no later than 48 hours before the expiry of the statutory period for the giving of the document—
 - 30 (i) the server (the Mining Cadastre Registrar, the PMD, or other official of the Ministry) or the messenger on behalf of the server deposes to that fact in an affidavit and such affidavit is filed for record at the office of the server; and
 - (ii) where the server is—
 - 35 A. the Mining Cadastre Registrar, the document is posted on electronic notice board of the website of the Mining Cadastre Registry; or
 - B. the PMD, the document is posted on the public notice board at the PMD’s office for a period of at least seven (7) days or, if that is not feasible due its size or any other reason, a notice is posted on the public notice board at the PMD’s office for a period of at least seven (7) days to the effect that the document may be inspected or uplifted at the office of the PMD during normal working hours.

45 (4) If the notifier or servor of any notices or documents under subsection (2) or (3) is the Mining Cadastre Registrar, the PMD, or other official of the Ministry, proof of service of the documents shall be filed without delay at the Mining Cadastre Registry, the PMD’s office or the registry of the Ministry, as the case may be, and retained for not less than three years.

50 (5) Subsections (2) and (3) apply to private actors serving notices or delivering documents under this Act to each other, subject to the following modifications—

- (a) private actors may serve any notices or deliver any documents under this Act to each other using the Mining Cadastre Registrar or the PMD as the intermediary (whoever is appropriate in the context of the service or delivery), in which event an employee or agent of the Mining Cadastre Registrar or the PMD will, for the prescribed fee, effect service or delivery by hand (which service or delivery must be evidenced by an affidavit sworn and dated not later than 48 hours after such service or delivery, by the such agent or employee, that service or delivery was made by hand at the specified time, and at the specified address); 5
- (b) in the case where a notice or document is required to be served on anyone but his or her whereabouts cannot be ascertained after diligent inquiry or the service is rendered impossible by wilful conduct of the person to be notified, the notice or document shall be deemed validly served if, no later than 48 hours before the expiry of the statutory period for the giving of the notice or document, the notifying private actor, or his or her messenger— 10
- (i) deposes to that fact in an affidavit and such affidavit is filed for record (for the prescribed fee, if any) at the office of the PMD or at the Mining Cadastre Registry, whichever is appropriate in the context of the notification; and 20
- (ii) causes the notice to be posted—
- A. on electronic notice board of the website of the Mining Cadastre Registry; or
- B. on public notice board at the PMD’s office for a period of at least seven (7) days; 25
- whichever is appropriate in the context of the notification.
- (6) The failure to swear an affidavit as required by subsection (2)(a), (3) (a), or (5)(a), or to retain proof of service as required by subsection (4), shall not invalidate any notice or service of a document if a court is satisfied from other evidence that service of the notice or document in question was effected. 30

6 Strategic minerals

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

be specified in the agreement referred to in paragraph (b), a sum equivalent to at least one hundred million United States dollars (or such lesser or greater sum as the Minister may prescribe generally or in relation to a specific declaration of a strategic mineral);

5 and

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

10 (i) the formation of a company or other special investment vehicle in the name of which the special mining lease or special grant shall be held, and in which the State has a defined interest or stake; and

15 (ii) special conditions as may be agreed with respect to the exploration, exploitation, marketing or beneficiation of the strategic mineral and safeguards for the sake of environmental protection, and the stakeholder-ship, if any, to be given to the community of the area in which the strategic mineral is to be mined.

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

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

(a) at the same time or at any time after the designation of the strategic mineral, cause the defined area to which the order relates to be reserved against prospecting and pegging in terms of section 40 (“Reservations against prospecting and pegging”); and

30 (b) invite bids (in accordance with the provisions of the Zimbabwe Investment and Development Agency Act, 2019 (No. 10 of 2019) relating to public private partnerships) from potential investors interested in mining the strategic mineral.

(7) The designation of a mineral as a strategic mineral does not operate so as
35 to prohibit the exploration for that mineral if such exploration is done independently of its exploitation, or is not done as a preliminary step to its exploitation.

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

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

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

PART II

ESTABLISHMENT AND FUNCTIONS OF MINING AFFAIRS BOARD

7 Establishment and functions of Mining Affairs Board

(1) There is hereby established a Board to be known as the Mining Affairs Board which shall exercise and perform the powers, functions and duties conferred and imposed upon it by this Act and by any other enactment. 5

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

8 Constitution of Board

(1) The Board shall consist of thirteen members chaired by the Secretary (or in his or her absence, the Acting Secretary) of the Ministry responsible for mines, of whom— 10

(a) six shall be employees of the Ministry responsible for this Act whose seniority shall not be less than that of a principal director and who shall be appointed by the Minister on the recommendation of Secretary; 15

(b) six other members appointed by the Minister, of whom—

(i) one shall be appointed by the Minister from a panel of at least three names submitted by the Chamber of Mines of Zimbabwe; and

(ii) one shall be appointed by the Minister from a panel of at least three names submitted by an association which, in the Minister's opinion, represents the interests of small-scale miners in Zimbabwe; and 20

(iii) one shall be appointed by the Minister from a panel of at least three names submitted by an association which, in the Minister's opinion, represents a substantial number of large-scale farmers in Zimbabwe; and 25

(iv) one shall be appointed by the Minister from a panel of at least three names submitted by an association which, in the Minister's opinion, represents a substantial number of small-scale farmers in Zimbabwe; and

(v) one shall be appointed by the Minister from a panel of at least three names submitted by the Institute of Chartered Accountants of Zimbabwe, incorporated by the Chartered Accountants Act [*Chapter 27:02*], who is practising in Zimbabwe as a public auditor or public accountant; and 30

(vi) one shall be appointed for his or her experience or professional qualifications in any profession or calling considered by the Minister to be of assistance to the Board. 35

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

(3) A member appointed in terms of— 40

(a) subsection (1)(a) shall hold office for an indefinite period and may be replaced whenever he or she ceases to be an employee of the Ministry or for any reason ceases to be a member of the Board;

(b) subsection (1)(b) shall hold office for such a period not exceeding two years as may be fixed by the Minister on appointment, and shall be eligible for reappointment for one additional term. 45

(4) Each member—

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

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

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

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

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

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

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

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

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

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

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

9 Filling of vacancies

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

- (a) if his or her estate is sequestrated or assigned; or
- (b) if he or she (even if represented by an alternate) is absent from three consecutive meetings of the Board without the permission of the Board;
- 45 or
- (c) if he or she gives one month's notice in writing to the Minister of his or her intention to resign office and his or her resignation is accepted by the Minister; or

- (d) if he or she is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the functions of a member; or
- (e) if he or she is convicted of an offence and sentenced to imprisonment therefor without the option of a fine, whether such sentence is suspended or not.

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

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

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10 Remuneration of members of Board

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

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11 Procedure of Board

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

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

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(2) Seven members of the Board shall form a quorum at any meeting thereof.

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

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

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

(5) At all meetings of the Board the chairperson or, in his or her absence, such member as the members present shall elect, shall act as chairperson.

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

12 Powers of Board in relation to applications

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

- (a) to require any area of ground or mining location which is the subject matter of an application or an investigation to or by the Board to be examined by such person or persons as the Board may appoint for the purpose;
- (b) to summon any applicant, the holder of any mining location, any landholder or any person having an interest in or knowledge of any matter before the Board to appear before the Board to give any evidence or explanations which the Board may require;
- (c) to require the production of books, plans, accounts and other documents relating to any application or matter before the Board;
- (d) to extend the period within which any application is to be made or document or information is to be submitted to the Board, where the

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Board is satisfied that the extension will not unduly prejudice any other person;

- (e) to examine persons appearing before it on oath, which oath the chairperson of the Board is hereby empowered to administer;
- 5 (f) to make applications to the Supreme Court referring questions of law for the decision of the Court.

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

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

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

13 Penalties for perjury, contempt and obstruction

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

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

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

14 Board may hold virtual meetings and hearings

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

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

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

- (a) prevent unreasonable delay;
- (b) save costs; 5
- (c) be convenient;

(3) The chairperson may, in order to ensure a fair and just consideration or hearing of any matter, application or appeal, make the giving of evidence at a virtual meeting or virtual hearing subject to such conditions as he or she, on the advice of any member of the Attorney-General’s Office seconded to the Ministry, deems necessary: 10

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

15 Minister may give policy directions to Board

(1) Subject to subsection (2), the Minister may give the Board such general directions relating to the policy the Board is to observe in the exercise of its functions as the Minister considers to be necessary in the national interest, which policy directions must— 15

- (a) not be inconsistent with any provision of this Act; and
- (b) be issued in good faith, apply prospectively and not retrospectively, and be of general applicability; in particular the policy directions— 20
 - (i) must not be issued in relation to any particular application or appeal pending before the Board and must not apply so as to influence or direct the Board on the outcome of any particular application, appeal or other matter that is being considered by the Board immediately before the directions are issued; or 25
 - (ii) must not prejudice the application of the rules of natural justice by the Board in the exercise of its quasi-judicial functions;
- (c) clearly delimit the scope of their application and must otherwise not be vague or ambiguous in their terms; and 30
- (d) clearly express the national interest at stake; and
- (e) be clear (whether expressly or by necessary implication) that they apply or are in force for a fixed or indefinite period, or that they expire on the happening of any event.

(2) Before giving the Board any policy direction, the Minister shall inform the Board, in writing, of the proposed direction and the Board shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal. 35

(3) The Board shall take all necessary steps to comply with any direction given to it in terms of subsection (1). 40

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

PART III

MINING CADASTRE REGISTRY

16 Establishment Mining Cadastre Registry; appointment of Mining Cadastre Registrar, Deputy Mining Cadastre Registrar, assistants and examiners or compliance officers

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

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

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

(4) The Deputy Mining Cadastre Registrar shall be assisted by such other employees in the Ministry specially designated by the Mining Cadastre Registrar as are necessary to assist the Deputy Mining Cadastre Registrar in discharging the functions of his or her office.

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

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

17 Mining Cadastre Register

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

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

(a) the name of every holder of a mining right or title or other right, title or interest in connection therewith, and the nature, location, extent and scope of that right, title or interest; and

(b) the date of the registration of every mining right or title or other registrable right, title or interest in connection therewith; and

(c) particulars of any renewal, transfer, cancellation, revocation, suspension, termination, surrender, forfeiture or abandonment of every right mining or title or other registrable right, title or interest in connection therewith; and

(d) such other particulars as may be prescribed or as the Mining Cadastre Registrar may deem necessary.

(3) Notwithstanding subsection (2), regulations in terms of section 312 (“Regulations”) may provide for different registers to be kept in respect of different

mining rights or titles or other registrable rights, titles or interests in connection therewith, or for the Register to be divided into different parts for the registration of such different mining rights or titles or other registrable rights, titles or interests in connection therewith.

18 Access to Mining Cadastre Register 5

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

(2) Any person who is the holder of a mining right or title wishing to obtain an authenticated material copy thereof in replacement for one that has been lost damaged or destroyed may, on payment of the prescribed fee, obtain such copy duly authenticated by the Mining Cadastre Registrar during normal working hours at the head office of the Mining Cadastre Registry. 10

(3) Any person, with the written consent of the holder of the mining right or title concerned, and on payment of the prescribed fee, may obtain an authenticated material copy of the mining right or title concerned, duly authenticated by the Mining Cadastre Registrar during normal working hours at the head office of the Mining Cadastre Registry. 15

(4) Any person, without the consent of the holder of the mining right or title concerned, and on payment of the prescribed fee, may, if he or she can demonstrate to the Mining Cadastre Registrar that he or she is the holder of any legal right or interest in such mining right or title, obtain an authenticated material copy of the mining right or title concerned, duly authenticated by the Mining Cadastre Registrar during normal working hours at the head office of the Mining Cadastre Registry. 20

(5) The Mining Cadastre Registrar shall also create and maintain an electronic notice board for the posting of any statutory notices and other information in connection with the functions of the Mining Cadastre Registry. 25

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

(1) Every entry in the Mining Cadastre Register of a mining right or title shall be deemed— 30

- (a) to be the definitive and exclusive record of such right or title; and
- (b) insofar as the name of the person holding or owning such mining right or title is concerned, to reflect that such person is the beneficial owner of such mining right or title (unless, on the face of such entry, the legal owner is recorded to be the nominee for the beneficial owner, whose name and relevant particulars must also be recorded in such entry); 35

and in the event of any inconsistency between such entry and any other record of such right or title kept in terms of this Act or otherwise, the entry in the Mining Cadastre Register shall prevail as proof of the mining right or title or any particular thereof). 40

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

- (a) a copy of mining right or title registered in the Mining Cadastre Register; or
- (b) a certificate issued by the Mining Cadastre Registrar of the contents of any entry in the mining Cadastre Registry; 45

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

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

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

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

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

- (a) the Mining Cadastre Registrar has the right (notwithstanding anything to the contrary in this Act or any other law) to demand as a condition for the registration of the right or title concerned, that any person to be registered as the owner of the title in question must make a sworn declaration to the effect that such person is the beneficial owner of the right of title or, if not, to disclose the name or names and relevant particulars of the beneficial owner or owners concerned;
- (b) that is registered in the Mining Cadastre Register, the Mining Cadastre Registrar may, if he or she has reasonable grounds for believing that—
 - (i) ownership or control of any mining claim or any block of claims has been transferred to any person who is not a Zimbabwean citizen or permanent resident; or
 - (ii) ownership or control of any exclusive exploration license, mining lease or special grant has been transferred in contravention of section 96, 139 or 228, as the case may be;

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

(5) If any person pursuant to subsection (4)(b)—

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

Provided that—

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

20 Provincial mining registers

(1) Each Provincial Mining Director must keep a provincial mining register, being a register of mining locations, sites, forfeitures, cancellations, abandonments, hypothecations, tribute agreements, options and any other right or interest required to be registered in terms of this Act by the PMD within his or her area of jurisdiction, which register shall be divided between the following three parts— 5

- (a) a provisional registration part (the “provisional register”) under which all relevant particulars of the provisional registration of any right, interest or other thing required to be registered provisionally under this Act, shall be kept for a period of at least six years; and 10
- (b) a final registration part (the “final register”) under which all relevant particulars of the final registration of any right, interest or other thing required to be registered under this Act, shall be recorded and maintained for as long as the registration of the right, interest or other thing concerned is in force; and 15
- (c) a defunct registration part (the “defunct register”) in which shall be recorded for a period of at least six years all the relevant particulars of any right, interest or other thing (previously recorded in the final registration part) which has been revoked, terminated, abandoned, surrendered, forfeited or whose registration has been cancelled or for any other reason is no longer in force. 20

(2) The production in any legal proceedings of any part of a register referred to in subsection (1) or of any entry therein, whether in the original or by means of a copy thereof authenticated as a true copy by the Provincial Mining Director having custody of the same, shall be *prima facie* evidence of any facts stated therein. 25

(3) Any inconsistency between a provincial mining register and the Mining Cadastre Register shall (without prejudice to the right of the Mining Cadastre Registrar to make any rectification of the Mining Cadastre Register to take into account any conflicting entry in a provincial mining register) be resolved in favour of the Mining Cadastre Register, and on the discovery of any such inconsistency the PMD shall without delay correct the corresponding entry in his or her provincial mining register. 30

PART IV

STAKING AGENTS

21 Register of staking agents

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

- (2) There shall be entered in the Register of Staking Agents—
- (a) the name of every staking agent registered as such in terms of **section 23** (“Application for registration as staking agent”)(3)(a)(ii); and 40
- (b) the mining province for which the staking agent is registered in terms of section 23(3)(a)(ii):

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

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

22 Work of staking agents

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

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

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

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

- (a) purporting to be or doing the work of a staking agent without being registered as such under this Part; or
- (b) being employed or contracted by a staking agent, doing the work of such agent without his or her authority or without the staking agent's direct supervision or guidance;

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

- (c) directs the defaulter—
 - (i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for **level 4**; and
 - (ii) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her)—
 - A. cease doing the work of a staking agent or commence the steps needed to be taken under this Part to secure registration as a staking agent; or
 - B. cease doing the work of a staking agent of which the defaulter is an employee or contractor, without the authority of his or her employer or without his or her direct supervision or guidance;
- (d) subjects the defaulter to either or both of the following penalties, as may be appropriate—
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
 - (ii) if he or she fails to comply with paragraph (a)(ii) A or B, to pay a default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

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

- (a) shall, on the first occasion upon which he or she is discovered to have done so, be liable to be served with a **civil penalty** order at the instance of the PMD through whom the application was made, which order—
 - (i) shall direct the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for **level 4**; and 5
 - (ii) shall subject the defaulter, he or she fails to pay the default fine specified in paragraph (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 10
- (b) on any subsequent such occasion have his or her registration as a staking agent cancelled under section 25 (“Cancellation or suspension of registration”).

(5) No person shall sell or transfer to any other person a certificate of registration as a staking agent. 15

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

23 Application for registration as staking agent 20

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

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

- and
- (d) is otherwise a fit and proper person to be registered as a staking agent.
- (2) A person who wishes to be registered as a staking agent shall— 45
- (a) make application in writing to a Provincial Mining Director in the prescribed form; and
 - (b) submit therewith such photographs of himself or herself as may be prescribed; and

- (c) pay at the time of making such application the prescribed fee; and
- (d) provide such other information as the Provincial Mining Director may require.

(3) On receipt of an application, the Provincial Mining Director may—

5 (a) if he or she is satisfied as to the matters referred to in subsection (1), provisionally grant the application, in which case he or she shall—

10 (i) provisionally register the applicant as a candidate staking agent for a period of thirty days (or such lesser period within which confirmation of registration is granted or refused in terms of subparagraph (ii)A); and

(ii) without delay transmit relevant particulars of the candidate staking agent to the Secretary, whereupon the Secretary may—

A. if he or she is satisfied that no good cause to the contrary exists, grant the application, in which case he or she shall—

15 I. register the applicant as a staking agent; and

II. issue to him or her a numbered certificate of registration as a staking agent which shall be in the prescribed form;

or

20 B. remit the application to the PMD for further investigation, report and recommendation within a specified period (at the completion of which the Secretary shall make a decision on the application in accordance with subparagraph A or C): or

25 C. refuse the application, in which case the applicant shall be notified of the refusal and the reasons for it, and be informed of his or right of appeal under subsection (4);

or

(b) if he or she is not satisfied as mentioned in paragraph (a), refuse to grant the application, in which case the PMD shall—

30 (i) notify the applicant accordingly in writing, giving grounds for the refusal and informing the applicant of his or her right to appeal to the Secretary under subsection (4); and

(ii) if the applicant lodges an appeal, without delay transmit the appeal together with relevant particulars of the applicant to the Secretary.

35 (4) A candidate staking agent who wishes to appeal against the refusal of the Secretary to register him or her as a staking agent under subsection (3)(a)(ii)C, or an applicant who wishes to appeal against the refusal of the PMD to grant provisional registration as a candidate staking agent under subsection (3)(b) must—

40 (a) in either case lodge an appeal in writing with the Provincial Mining Director concerned, and copy it to the Secretary, no later than two working days after the applicant has received notice of such refusal; and

(b) incorporate in the appeal representations addressing the grounds of the PMD's or Secretary's refusal or otherwise justifying why the registration of the applicant as a staking agent ought to be granted;

45 and thereupon the Provincial Mining Director shall, without delay, transmit the appeal to the Secretary together with (in the case of an appeal against refusal of provisional registration) the grounds upon which the PMD refused to provisionally register the applicant as a candidate staking agent under subsection (3)(b)(i).

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

- (a) if he or she is satisfied that no good cause to the contrary exists, confirm or approve the registration of the staking agent, in which case the Secretary shall promptly instruct the PMD to issue to the staking agent a numbered certificate of registration as a staking agent which shall be in the prescribed form; or 5
- (b) if he or she is not satisfied as mentioned in subparagraph (a), refuse to confirm or approve the registration of the staking agent, in which case the Secretary shall promptly instruct the PMD to notify the applicant accordingly in writing, giving grounds for the refusal and informing the applicant through the PMD of his or her right to appeal or further appeal under subsection (6)(b). 10

(6) Any person who is aggrieved by a decision of the Secretary under subsection (5)(b), may seek a review by the Administrative Court of such decision within twenty-one days after the date of its notification to the candidate staking agent or applicant (as the case may be), whereupon the court may— 15

- (a) dismiss the appeal by upholding the decision of the Secretary; or
- (b) refer the decision back to the Secretary for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the Secretary to investigate the matter further) on any one or more of the following grounds— 20
 - (i) allowing extraneous or irrelevant considerations to affect the decision, or 25
 - (ii) failure to take into account relevant considerations in arriving at the decision, or
 - (iii) any material mistake of fact or law that tainted the decision; or
 - (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision: 30

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

(7) An applicant whose appeal in terms of subsection (5)(b) has been dismissed by the Secretary or, having appealed to the Administrative Court, whose appeal has been dismissed by that court, may not make a fresh application in terms of subsection (2) until after the expiry of a period of five years from the date on which his or her appeal was dismissed or such lesser period as the Secretary or the Court may specify when dismissing the appeal. 35

24 Expiry and renewal of registration 40

(1) Subject to **sections 25 and 26**, the registration of a person as a staking agent shall be valid for a period of five years from the date of registration and then it shall automatically expire unless, prior to the expiry of such period, the registration is renewed for a further period of five years.

(2) A staking agent who wishes to renew his or her registration as such shall, not later than two months before his or her registration is due to expire— 45

- (a) make written application to a PMD on the prescribed form; and
- (b) pay at the time of making such application the prescribed fee; and
- (c) submit therewith his or her certificate of registration as a staking agent.

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

25 Cancellation or suspension of registration

- (1) If a staking agent—
- 15 (a) is convicted of a criminal offence, whether under this Act or otherwise; or
- (b) has, in the exercise of any rights under this Act, conducted himself or herself in a manner;

which, in the opinion of the PMD or the Secretary, renders it necessary to suspend or cancel his or her registration as a staking agent, the PMD with the leave of the Secretary, 20 or at the direction of the Secretary, shall—

- (c) suspend his or her registration for a specified period which shall expire before the date on which that registration is in any event due to expire in terms of section 24(1); or
- (d) cancel his or her registration;
- 25 as the case may be.

(2) Before acting in terms of subsection (1) the PMD shall notify the staking agent concerned that action in terms of that subsection is being considered, informing him or her of the grounds therefor, and give him or her an opportunity to make written representations in connection therewith within twenty-one days of the date of such 30 notification.

(3) The cancellation or suspension of the registration of a person as a staking agent in terms of this section shall be in addition to any other penalty which may be imposed under this Act or any other law for any act or omission on the part of the staking agent that prompted the cancellation or suspension of his or her registration as 35 such.

(4) The PMD or the Secretary through the PMD shall give written notice to the staking agent concerned of the cancellation or suspension of his or her registration in terms of this section and the period of suspension.

40 (5) The Secretary shall cancel the registration of a staking agent referred to in section 23(1)(c)(iv) if the staking agent, being registered in terms of the proviso to that provision, fails to comply with any prescribed requirements within a period of six months from the date of their being prescribed, or to obtain any qualification in accordance with those requirements.

26 Effect of expiry, cancellation or suspension of registration

45 (1) A person whose registration as a staking agent has expired in terms of **section 24** or has been cancelled or suspended in terms of **section 25** shall forthwith surrender to a PMD his or her certificate of registration as a staking agent.

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

(3) Until the period of suspension has expired a person whose registration as a staking agent has been suspended in terms of **section 25** shall be deemed not to be registered as such. 5

(4) A person whose registration as a staking agent has been cancelled in terms of **section 25** may not make a fresh application in terms of **section 23** for registration as a staking agent until after the expiry of a period of five years from the date on which his or her registration was cancelled or such lesser period as the Secretary may specify when directing the cancellation. 10

(5) A person aggrieved by the cancellation or suspension of his or her registration as a staking agent may seek a review by the Administrative Court of such decision (which, for the purposes of this section, shall be the decision of the Secretary), and **section 23(6)** shall apply to such review. 15

27 Duplicate certificate of registration as staking agent

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

(2) On making an application referred to in subsection (1) the staking agent shall— 20

- (a) pay the prescribed fee; and
- (b) furnish a solemn declaration in a form to be approved by the PMD which shall state—
 - (i) the name of the holder of the certificate; and
 - (ii) the number of the certificate; and 25
 - (iii) that the certificate has been lost or destroyed; and
- (c) submit such photographs as he or she would be required to submit if he or she were making an application in terms of section 23.

(3) On receipt of an application complying with this section the PMD shall forward the application and the solemn declaration to the Secretary who shall, if he or she is satisfied that no good cause to the contrary exists, promptly instruct the PMD to issue a duplicate copy of the certificate endorsed as such and forward it to the applicant. 30

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

PART V 35

ACQUISITION AND REGISTRATION OF MINING RIGHTS

Sub-Part A: Exclusive Prospecting Licences

28 Interpretation in Part V

In this Part—

“appellant” means any prospector, miner, owner, occupier or other person appealing or seeking a review of a decision under this Part; 40

“land under cultivation”, for the purposes of section 35 (“Ground not open to prospecting”), means—

- (a) land which has been *bona fide* cleared or ploughed or prepared for the growing of farm crops; 45

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

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

15 “order” means an order made under **section 68** (“Applications and reviews”) (2);

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

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

“permanent improvements”, for the purposes of **section 35** (“Ground not open to prospecting”) does not include fences of any description, aqueducts, pipelines, wells, boreholes, dams or reservoirs;

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

30 “reserved land” means land upon which a prospector is prohibited in terms of section 42 (“Reservations against prospecting and pegging”) from exercising any of his or her rights under his or her exclusive prospecting licence without the consent in writing of the owner or holder of the land.

29 Issue of exclusive prospecting licences

(1) Subject to this section, a PMD may issue to an applicant, on payment of the prescribed fee, an exclusive prospecting licence authorising the holder or his or her representative to exercise the rights conferred by section 33 (“Rights of prospecting and pegging conferred by exclusive prospecting licences”) within any area open to prospecting within the mining province for which the PMD is responsible:

Provided that the exclusive prospecting licence is valid only for a single area identified by the applicant in terms of section 33 (“Rights of prospecting and pegging conferred by exclusive prospecting licences”) (1)(b).

40 (2) Every exclusive prospecting licence—

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

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

- 45 (a) an individual unless he or she is of or over the age of 18 years and is a citizen or permanent resident of Zimbabwe ordinarily resident in Zimbabwe; or

- (b) a company or other business entity unless it is incorporated under the Companies and Other Business Entities Act [*Chapter 24:31*], the majority of whose members are citizens or permanent residents of Zimbabwe ordinarily resident in Zimbabwe; or
- (c) a partnership, syndicate or joint venture unless— 5
 - (i) it is made up of not more than 20 individuals, the majority of whom are citizens of Zimbabwe ordinarily resident in Zimbabwe; or
 - (ii) it is made up of two or more companies referred to in paragraph (b), not exceeding 20 such companies; or
 - (iii) it is made up of any combination of individuals qualified under paragraph (a) and companies not exceeding altogether 20 such individuals and companies, the majority of whose members or partners are citizens of Zimbabwe ordinarily resident in Zimbabwe; 10
- or
- (d) the following— 15
 - (i) an individual who is not a Zimbabwean citizen or permanent resident of Zimbabwe ordinarily resident in Zimbabwe; or
 - (ii) a foreign company as defined in the Companies and Other Business Entities Act [*Chapter 24:31*], unless it has been issued with a certificate under that Act authorising it to establish a place of business in Zimbabwe and the majority of its members are not citizens or permanent residents of Zimbabwe resident in Zimbabwe; 20
 - or
 - (iii) a company, private business corporation, partnership, syndicate, joint venture or other business entity the majority of whose members are not citizens of Zimbabwe; 25

unless the applicant, to the satisfaction of the PMD, intends and qualifies to apply for a mining lease in terms of section 121 (“Application for mining lease”)(2)(b).

- (4) The PMD may refuse to issue an exclusive prospecting licence to an applicant if— 30
- (a) the applicant or his or her representative has contravened any term or condition of an exclusive prospecting licence that was previously issued to the applicant; or
 - (b) the applicant has been convicted of an offence under this Act; or
 - (c) the applicant is not, in the PMD’s opinion, a fit and proper person to hold an exclusive prospecting licence: 35

Provided that—

- (i) the PMD shall inform the applicant, promptly and in writing, of the reasons for the refusal under paragraph (a), (b) or (c) and invite the applicant to submit, within such time, not being less than forty-eight hours or more than seven working days (as the PMD may fix) from the date of the notification of the refusal, any representations in person or in writing that the applicant wishes to make in the matter (on the basis of which representations the PMD may reverse his or her previous refusal and issue the exclusive prospecting licence); and 40
- (ii) if— 45
 - A. no representations as mentioned in proviso (i) are made timeously, the applicant shall be deemed to have

abandoned his or her application for the exclusive prospecting licence; or

- B. the representations mentioned in proviso (i) are made timeously but the PMD notifies his or her rejection of them in writing to the applicant, the applicant may within forty-eight hours of receiving notification of the rejection lodge an appeal in accordance with subsection (5).

5

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

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

15

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

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

- (a) dismiss the appeal by upholding the decision of the PMD; or
- (b) refer the decision back to the PMD for reconsideration within a specified period (whether with or without directions on how the decision is to be reconsidered, including a direction to the PMD to investigate the matter further and make a further report and recommendations) on any one or more of the following grounds—
- (i) allowing extraneous or irrelevant considerations to affect the decision, or
- (ii) failure to take into account relevant considerations in arriving at the decision, or
- (iii) any material mistake of fact or law that tainted the decision;

25

30

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

35

or

- (c) uphold the appeal and direct the PMD to issue the exclusive prospecting licence if the Secretary finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision, and that there is no other impediment to the applicant being issued with the exclusive prospecting licence:

40

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

or

- (d) in an exceptional case, overturn the decision of the PMD and substitute the Secretary's own decision on the basis of the overriding national interest (in which case the Secretary shall direct the PMD to issue the exclusive prospecting licence to the applicant).

45

(7) Any applicant who is aggrieved by a decision of the Secretary under subsection (6), may seek a review of such decision by the Administrative Court within twenty-one days after the date of its notification to the applicant, whereupon the court

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may do any of the things the Secretary is empowered to do under subsection (6) other than paragraph (d) of that subsection.

(8) An applicant whose appeal in terms of subsection (6) has been dismissed by the Secretary and not upheld if taken on further appeal to the Administrative Court, may not make a fresh application for an exclusive prospecting licence until after the expiry of a period of twelve months from the date on which his or her appeal was dismissed by the Secretary (or such lesser period as the Secretary may specify when dismissing the appeal), or from the date of the dismissal of the appeal by the Administrative Court, as the case may be. 5

(9) The PMD shall— 10

(a) without delay enter in his or her provisional register the particulars of every applicant for an exclusive prospecting licence who is not disqualified to receive one in terms of subsection (3) or (4); and

(b) not issue an exclusive prospecting licence until he or she, having transmitted— 15

(i) the particulars of the application to the Mining Cadastre Registrar; or

(ii) an appeal in terms of subsection (5), which resulted in the applicant winning the appeal;

has received notification from the Registrar—

A. that the particulars of the exclusive prospecting licence are in order and have been entered in the Mining Cadastre Register with effect from a specified date: 20

Provided that if the Registrar indicates that any particulars are not in order by reason of some remediable defect in them, and the PMD is unable, with or without the cooperation of the applicant (as the case may require) to rectify them, the PMD shall reject the application for the exclusive prospecting licence, giving the applicant the reasons therefor and informing him or her of the right of appeal under subsection (5); and 25 30

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

Provided that if the Registrar refuses for specified reasons to authorise the issuance of the exclusive prospecting licence, the PMD shall reject the application for the exclusive prospecting licence, and inform the applicant of those reasons and of his or her right of appeal under subsection (5); 35

and

(c) record the fact and date of issuance of the exclusive prospecting licence in his or her final register (and, in the case of an exclusive prospecting licence issued to a person referred to in section 29(3)(d), endorse on the licence and against the appropriate entry in the register the words “Subject to section 53”). 40

(10) Subsections (5), (6), (7) and (8) apply to a person wishing to pursue an appeal after being informed by the PMD under subsection (9) A or B of his or her right to appeal. 45

30 Cancellation or suspension of exclusive prospecting licences

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

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

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

15 (3) During the notice period referred to in subsection (2), the exclusive prospecting licence shall be suspended pending the PMD's decision on its cancellation.

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

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

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

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

(6) On receiving an appeal under subsection (5) the Secretary shall promptly, and in any event not more than 30 days after receiving it, do any of the things the Secretary is empowered under to do under section 29(6) as if the reference there to the
35 issuance of an exclusive prospecting licence were a reference to the cancellation or suspension of an exclusive prospecting licence.

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

(8) The PMD shall—

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

- (b) without delay transmit the particulars of every cancellation or suspension of an exclusive prospecting licence to the Mining Cadastre Registrar; and
 - (c) having received confirmation from the Mining Cadastre Registrar of the receipt of the particulars referred to in paragraph (b), record the fact and date of—
 - (i) the cancellation of the exclusive prospecting licence in his or her final register and transfer all the entries relating to the exclusive prospecting licence from the final register to the defunct register; or
 - (ii) the suspension of the exclusive prospecting licence in his or her final register;
- as soon as possible after the lapse of the date referred to in paragraph (a).

31 Prohibition against sale or transfer of exclusive prospecting licences

- (1) No person shall sell or transfer an exclusive prospecting licence to any other person.
- (2) Any sale or transfer of an exclusive prospecting licence shall be void and the parties to it shall be guilty of an offence and liable to fine not exceeding level six or to imprisonment for a period not exceeding six months, or both.

Sub-Part B: Prospecting: Rights and Restrictions

32 Land open to prospecting

Subject to the provisions and limitations contained in section 35 (“Ground not open to prospecting”), the following land is open to prospecting—

- (a) all State land and Communal land;
- (b) all private land in the title to which there has been reserved to the Government of Zimbabwe the right to all minerals or the power to make grants of the right to prospect for minerals;
- (c) all land held by any person under any enactment or agreement whereby such person is entitled to obtain from the State title thereto on the fulfilment by him or her of the conditions prescribed by such enactment or agreement.

33 Rights of prospecting and pegging conferred by exclusive prospecting licences

- (1) An exclusive prospecting licence shall confer upon the prospector, subject to this Act, the following successive rights—
 - (a) in the first stage, the right to prospect and search for minerals, mineral oils and natural gases on all land open to prospecting within the mining province to which the exclusive prospecting licence relates:

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

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

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

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

34 Surface rights of holder of exclusive prospecting licences

(1) In this section—

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

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

15 (2) The holder of an exclusive prospecting licence, hereinafter in this section called the prospector, shall, when bona fide employed in the pursuit of any of the rights conferred by **section 33**, the onus of proof whereof shall lie on him or her, be entitled to the following rights—

20 (a) subject to the Water Act [*Chapter 20:24*] (No. 31 of 1998), the right to take restricted public water or public water from land not closed to prospecting in terms of **section 35** (“Ground not open to prospecting” or **42** (“Reservation of land against prospecting”)), subject to the following conditions—

25 (i) such right may only be exercised so far as the taking of the water does not interfere with the use of it for primary purposes by the owner, holder or occupier of the land; and

30 (ii) in relation to the taking of **restricted public water**, on payment to the occupier (or, where there is no occupier, the owner or holder of the land in question), of such amount for the taking of the water at a rate agreed to by the prospector and the occupier, landholder or owner or (subject to subsection (4)(a)), in default of such agreement, on payment of such tariff rate as may be prescribed;

35 (iii) in relation to the taking of public water, on payment to the responsible authority for the State Land in question or to the authority managing the public water in question, of such amount for the taking of the water at a rate agreed to by the prospector and the authority concerned, or at the rate prescribed for the use of public water in the area in question, as the case may be;

and

40 (b) after having posted his or her prospecting notice—

45 (i) subject to the Forest Act [*Chapter 19:05*] and to such conditions as may be prescribed, the right to take and use for firewood in connection with his or her prospecting operations within the limits of his or her location any dead indigenous wood or timber found within those limits on land which is neither Communal Land nor land in regard to which a reservation has been made under **section 42** or **43**, which right is to be exercised—

50 A. by an agreement with the owner, landholder or occupier of the affected land regulating the area and period within which such wood or timber may be taken, the quantity and kinds of such wood or timber to be taken, the price to be paid for such

wood or timber and any other conditions relating to such wood or timber; or

B. in default of such agreement, on payment in advance to the owner, landholder or occupier of such tariff rate as may be prescribed for the right to take and use for firewood in terms of this subparagraph; 5

(ii) the right by the use of his or her own labour or by the labour of his or her employees or with his or her own transport to conduct all or any of the following operations in pursuance of the exercise of his or her rights under subparagraph (i)— 10

A. the cutting of such wood or timber;

B. the transporting of such wood or timber;

C. the burning therefrom of any charcoal;

(but if the holder of an exclusive prospecting licence manifests an intention not to do any of these things by the use of his or her own labour or that of his or her employees, or not to use his or her own transport for the purpose referred to in subparagraph B, then the holder or occupier of the land on which such wood or timber is situated shall have the first option of carrying out such cutting or transporting or burning or all such operations, as the case may be, on such terms and conditions as may be mutually agreed upon, including, in the absence of a prescribed tariff rate, the payment of the occupier for those services); 15 20

(iii) subject to this section, the right to erect within the limits of his or her location any temporary accommodation for himself or herself and his or her employees and any temporary buildings or machinery for the purposes of his or her work: 25

Provided that this subparagraph shall not be deemed to confer any right, title or interest in the land upon which such accommodation, buildings or machinery may have been erected; 30

and

(c) the right to remove, within ten days or such longer period as may be determined by the PMD after the expiration of his or her prospecting notice, any accommodation, buildings or machinery which may have been erected under paragraph (b)(iii). 35

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

(4) In the following cases, namely where— 40

(a) no agreement is reached between the prospector and the owner, landholder or occupier of the land in the circumstances referred in subsection (2) (a)(ii) or (2)(b)(i) and where the tariff there referred to is not prescribed, the prospector may, no earlier than fourteen days after he or she initiated negotiations with the owner, holder or occupier of the land in question, refer the matter to the PMD to decide at what rate any **restricted public water** or public water or any dead indigenous wood or timber proposed to be taken in terms of subsection (2)(a)(ii) or (2)(b)(i) should be paid for; or 45

- 5 (b) an occupier of alienated or partially alienated land to whom notice has been given in terms of subsection (3) objects to the site chosen for such accommodation by the prospector and agreement between the occupier and the prospector on any such objection is not reached, the occupier may, within seven days of receipt of the notice or such longer period as may be determined by the PMD, refer the matter to the PMD to decide where the employees of the prospector should be accommodated;

whereupon subsections (5) shall apply to the referral.

- (5) In the case referred to—
- 10 (a) in subsection (4)(a), the prospector must furnish to the PMD proof in the form of an affidavit sworn by him or her that, at least fourteen days before the referral of the dispute to the PMD, the prospector had initiated negotiations with the owner, landholder or occupier of the land in the circumstances referred in subsection (2)(a)(ii) or (2)(b)(i) or (ii), and had failed to reach an agreement on the rate to be paid for the taking of any **restricted public water** or public water or any dead indigenous wood or timber proposed to be taken in terms of subsection (3)(2)(ii) or (2)(b) (i) or (ii) (the best rate offered by the prospector must be stated in the affidavit);
- 15 (b) in subsection (4)(b), the occupier must furnish to the PMD an affidavit sworn by him or her stating that the occupier has within the last seven days received notice from the prospector that the prospector has accommodated his or her employees at a specified site within his or her location on alienated or partially alienated land occupied by the occupier (the reasons why the specified site for the accommodation of the employees is unacceptable to the occupier must be stated in the affidavit).
- 20
- 25

- (6) Within a reasonable period from the receipt of an affidavit referred to in subsection (5)(a) or (b) the PMD must serve one copy of the affidavit of the prospector on the owner, landholder or occupier, or one copy of the affidavit of the occupier on the prospector, as the case may be, together with an invitation to both the parties to attend a meeting to be presided over by the PMD (giving particulars of its time and venue) to enable the parties to make oral and written representations at that meeting on the question that prompted the prospector or occupier to refer the dispute to the PMD:
- 30

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

- (7) The following provisions apply to every referral—
- (a) if either party fails to attend at the meeting referred to in subsection (6), the PMD will generally decide the dispute in favour of the party who is present, unless doing so, given the specific facts and circumstances of the case, would be contrary to this Act or result in injustice;
- 40 (b) the applicable rules set out in the Third Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD at the referral;
- 45 (c) in the case of a referral under subsection (4)(a) the occupier bears the burden of showing on a balance of probabilities the existence and extent of any interference with the use of water for primary purposes by the occupier that would be caused by any taking of water by the prospector;
- 50 (d) in the case of a referral under subsection (4)(b) the burden of showing on a balance of probabilities that that the employees in question can reasonably be accommodated at an alternative site rests with the occupier;

- (e) at the conclusion of the referral meeting PMD may, in the presence of the parties (if any) at the meeting announce his or her decision verbally and confirm it in writing within twenty-four hours:

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

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

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

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

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

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

- (a) dismiss the appeal by upholding the decision of the PMD; or
- (b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the PMD to investigate the matter further and make a report and recommendations) on any one or more of the following grounds—
- (i) allowing extraneous or irrelevant considerations to affect the decision; or
- (ii) failure to take into account relevant considerations in arriving at the decision; or
- (iii) any material mistake of fact or law that tainted the decision;
- (the Secretary shall, upon receiving the report or recommendations resulting from the PMD's reconsideration, make a decision in accordance with paragraph (a) or (c));
- or
- (c) uphold the appeal and substitute any other decision for that of the PMD, if the Secretary finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

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

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

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

35 Ground not open to prospecting

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

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

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

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

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

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

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

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

(vi) upon any land under cultivation or within 15 (fifteen) metres thereof;

35 (vii) within nine metres of any other permanent *bona fide* farm building, except on payment to the owner or holder of such land of such compensation as may be fixed by agreement or, failing agreement, by referral by both or either of the parties to the Magistrates Court having jurisdiction over the area in which the land concerned is located (in which event the Magistrates Court is deemed to have jurisdiction in the matter even if the amount of compensation claimed or awarded exceeds the amount of the court’s civil monetary jurisdiction prescribed by or under section 11 of the Magistrates Court Act [*Chapter 7:10*]);

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(b) upon any mining location, other than one in respect of which he or she may have acquired the exclusive right of prospecting under such licence or special grant or exclusive exploration order;

45 (c) within the surveyed limits of any city, town, township or village, or upon a belt 50 (fifty) metres in width outside such limits;

(d) upon any site which is on town lands, but outside the surveyed limits of any city, town, township or village situated thereon, and has been surveyed and set aside for any specific purpose;

50 (e) upon any licensed aerodrome or any emergency landing ground or aerodrome of the State;

- (f) upon any rifle range of the State, any railway reserve or any cemetery;
- (g) except with the consent in writing—
 - (i) of the owner or holder of such land or of some person duly authorized thereto by the owner or landholder, upon any holding of alienated or partially alienated land which does not exceed one hundred (100) hectares in extent and which is held by such owner or landholder under one separate title: 5

Provided that if such owner or landholder has one or more holdings which are contiguous and the total area of such contiguous holdings exceeds one hundred (100) hectares this paragraph shall not apply to such holdings; or 10

- (ii) in the case of a portion of Communal Land which does not exceed one hundred (100) hectares in extent, of the occupier of such portion:

Provided that—

- A. where any consent in terms of this paragraph is unreasonably withheld the prospector may refer the matter to the PMD to decide whether the consent is unreasonably withheld, whereupon subsection (4) shall apply to the referral; 15
- B. consent is deemed to be unreasonably withheld for the purposes of this paragraph if the owner, land holder or occupier demands any payment for the exercise within his or her holding of the prospector’s rights, other than for payment for water and timber in accordance with **section 34** (“Surface rights of holder of exclusive prospecting licences”); 20 25

- (h) upon any Communal Land occupied as a village without the written consent of the rural district council established for the area concerned.

(2) Where a site intended for a principal homestead has been registered by the landholder under subsection (1)(a)(ii)— 30

- (a) the landholder shall as soon as may be after such registration erect a peg marking the centre of the site and bearing an inscription stating the purpose of such peg, and shall maintain such peg and maintain such inscription in legible form;
- (b) the landholder shall not, if such principal homestead has not been erected within the period of three years mentioned in the proviso to that subparagraph, be entitled again to register such site or any portion thereof until a period of not less than twelve months has elapsed from the date upon which such site again became open to prospecting. 35

(3) If a landholder fails to comply with any provisions of subsection (2)(a) **within a period of thirty days after the registration of the site of the intended homestead**, the PMD may cancel the registration of the site to which such failure relates, **and the landholder may not again register the site or portion thereof until a period of not less than twelve months has elapsed from the date upon which such site again became open to prospecting.** 40 45

(4) If a landholder (or rural district council in the case of subsection (1)(h)) withholds consent to a person seeking to exercise any of his or her rights under any exclusive prospecting licence, exclusive exploration licence or any special grant to carry out prospecting operations by virtue of subsection (1)(a), (g) or (h), the landholder or rural district council concerned may not in its own name or for its benefit (whether as 50

beneficial owner or nominee, or directly or indirectly through any third party) obtain any mining right or title over the ground in respect of which consent was withheld for a period of ten years from the date of such refusal, unless the landholder or rural district council earlier obtains the written leave of the person to whom it refused consent (or

5 the lawful successor or representative of such person), and proof of such leave shall be required to be submitted before any mining right or title is registered in its name or for its benefit.

(5) In connection with a referral mentioned in **proviso A to subsection (1)(g)**—

- 10 (a) the prospector must furnish to the PMD proof in the form of an affidavit sworn by him or her that, at least seven days before the referral of the dispute to the PMD, the prospector had initiated negotiations with the owner, holder or occupier of the land to access it for the exercise of the prospector’s rights; and
- 15 (b) within a reasonable period from the receipt of an affidavit referred to in paragraph (a) the PMD must serve one copy of the affidavit of the prospector on the owner, landholder or occupier, together with an invitation to both the parties to attend a meeting to be presided over by the PMD (giving particulars of its time and venue) at which the parties can make oral and written representations on the question that prompted
- 20 the prospector to refer the dispute to the PMD:

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

- 25 (c) if either party fails to attend the meeting referred to in paragraph (b), the PMD will generally decide the dispute in favour of the party who is present, unless doing so, given the specific facts and circumstances of the case, would be contrary to this Act or result in injustice;
- 30 (d) the applicable rules set out in the Second Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD at the referral;
- (e) the owner, landholder or occupier bears the burden of showing on a balance of probabilities why the prospector should not exercise his or her rights within the holding or in any part of the holding that is open to prospecting; in particular, where the owner, landholder or occupier—
- 35 (i) **seeks to deny to the prospector all access in his or her holding, the landholder must in addition proffer weighty and compelling reasons for doing so (for which purpose it is to be presumed that the national interest is served by ascertaining through prospecting the extent of the mineral resources of Zimbabwe, and that this question is not directly pertinent to the speculated future conflict between the use of the land concerned for mining and agricultural purposes);**
- 40 (ii) **does not seek to deny to the prospector all access in his or her holding, but only to certain parts of it that are otherwise open to prospecting, then he or she must proffer weighty and compelling reasons for doing so (for which purpose the presumption referred to in subparagraph (i) also applies);**
- 45 (f) **if** that the owner, landholder or occupier fails **to proffer the weighty and compelling reasons** referred to in paragraph (e), then the prospector may exercise his or her rights in any part of the holding concerned not including any ground not open to prospecting in terms of subsection (1)(a) to (f);
- 50 (g) at the conclusion of the referral meeting PMD may, in the presence of the parties (if any) at the meeting announce his or her decision verbally and confirm it in writing within twenty-four hours:

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

(6) A prospector, owner, landholder or occupier aggrieved by the PMD's decision under subsection (5) may appeal to the Board against it, and if so, must—

- (a) lodge (together with the prescribed fee, if any) an appeal in writing with the Provincial Mining Director concerned, and copy it to the Secretary, no later than two working days after the prospector, owner, landholder or occupier has received notification decision under the proviso to subsection (4)(g); and 10
- (b) incorporate in the appeal grounds justifying why the PMD's decision should be set aside and what decision ought to be substituted for it, and thereupon the Provincial Mining Director shall, without delay, transmit the appeal to the Secretary together with the written decision of the PMD on the referral; in this connection— 15
 - (i) where the appellant is the owner, landholder or occupier who seeks to deny to the prospector all access in his or her holding, the appellant ought to give indications of where in the holding concerned the prospector may exercise his or her rights in the event that the appellant is found by the Board not to have the proffered weighty and compelling reasons referred to in subsection (4)(e); 20
 - (ii) in the absence of the aforementioned indications, if the Board does not uphold the appeal, the Board must affirm that the prospector may exercise his or her rights in any part of the holding concerned not including any ground not open to prospecting in terms of subsection 35(1)(a) to (f). 25

(7) The effect of lodging an appeal under subsection (6) shall be to suspend the decision appealed against until the appeal is determined by the Board. 30

(8) Upon receiving an appeal in terms of subsection (6) the Secretary shall promptly (and in any event no later than the next meeting of the Board after receiving it) refer the appeal together with its supporting documentation to the Board, which, after considering it, may— 35

- (a) dismiss the appeal by upholding the decision of the PMD if the owner, landholder or occupier fails to discharge the burden of showing on a balance of probabilities why the prospector should not exercise his or her rights within the holding or in any part of the holding, bearing in mind the presumption referred to in subsection (4)(e); 40
- (b) where the issue for appeal concerns the manner or precise location of exercise of the prospector's rights—
 - (i) dismiss the appeal by upholding the decision of the PMD, or uphold the appeal by adopting the appellant's indications referred to in subsection (6)(b)(i); or 45
 - (ii) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the PMD to investigate the matter further and make a report and recommendations) on any one or more of the following grounds— 50
 - A. allowing extraneous or irrelevant considerations to affect the decision; or

- B. failure to take into account relevant considerations in arriving at the decision; or
- C. any material mistake of fact or law that tainted the decision; or
- 5 D. gross but unwilful irregularity in the proceedings or the decision;

(the Secretary shall, upon receiving the report or recommendations resulting from the PMD's reconsideration, promptly refer the report or recommendation to the Board which, after considering the same may make a decision in accordance with subparagraph (i) or paragraph (c) or (d));

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

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

- or
- (d) dismiss or uphold the appeal and, where necessary, substitute the Board's own decision, on the basis of any policy directive previously communicated to the Board by the Minister setting forth the overriding national interest as it affects cases of a like nature to the one being considered by the Board.

(9) Any prospector, owner, landholder or occupier who is aggrieved by a decision of the Board under subsection (8)(a), (c) or (d), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the appellant, whereupon the court may do any of the things the Board is empowered to do under subsection (4)(a), (b), (c) or (d), except that with reference to a case decided in accordance with subsection (4)(d) the Court shall satisfy itself that the policy directive there referred to—

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

(10) The taking of a decision on review under subsection (9) shall not suspend the decision sought to be reviewed until the review is determined by the Administrative Court.

36 Disputes as to whether land is open to prospecting

(1) This section applies to disputes about access by prospectors to any land referred to in **section 35(1)**, other than land referred to in paragraph (g) of that provision.

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

(a) the referring party must furnish to the PMD proof in the form of an affidavit sworn by him or her that, at least seven days before the referral of the dispute to the PMD, he or she had initiated negotiations with landholder or prospector (as the case may be) to attempt to resolve the issue of whether or not the land in question is open to prospecting; 5

(b) within a reasonable period from the receipt of an affidavit referred to in paragraph (a) the PMD must serve one copy of the affidavit of the referring party on the other party, together with an invitation to both the parties to attend a meeting to be presided over by the PMD (giving particulars of its time and venue) at which the parties can make oral and written representations on the question that prompted the referring party to refer the dispute to the PMD; 10

Provided that in such invitation or at the meeting the PMD may restrict the parties to submitting written representations only, before or no later than 48 hours after the conclusion of the meeting; 15

(c) if either party fails to attend the meeting referred to in paragraph (b), the PMD will generally decide the dispute in favour of the party who is present, unless doing so, given the specific facts and circumstances of the case, would be contrary to this Act or result in injustice;

(d) the applicable rules set out in the Third Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD at the referral; 20

(e) the owner, landholder or occupier bears the burden of showing on a balance of probabilities that any land is not open to prospecting;

(f) at the conclusion of the referral meeting PMD may, in the presence of the parties (if any) at the meeting announce his or her decision verbally and confirm it in writing within twenty-four hours; 25

Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the referral meeting and give notice of his or her decision, and the reasons for it, to the prospector and the owner, landholder or occupier, and post a copy of the decision and the reasons for it on the public notice board of the Director’s office. 30

(3) A prospector, owner, landholder or occupier aggrieved by the PMD’s decision under subsection (1)(f), may appeal to Administrative Court, whereupon it may —

(a) dismiss the appeal by upholding the decision of the PMD or substitute the PMD’s decision by its own finding on whether or not the ground in issue is open to prospecting; or 35

(b) direct the PMD to investigate the matter further and make a report and recommendations to the Court on the basis that —

(i) in arriving at the original decision the PMD— 40

A. allowed extraneous or irrelevant considerations to affect the decision; or

B. failed to take into account relevant considerations; or

C. made any material mistake of fact or law that tainted the decision; or 45

(ii) there exists a substantive factual dispute that cannot be resolved by the Administrative Court;

(the Court shall, upon receiving the report or recommendations resulting from the PMD’s investigation, make a decision in accordance with paragraph (a));

(c) if it finds that there is a reasonable suspicion that PMD (or any person involved together with the PMD in making or contributing to the decision), 50

was influenced by interest in the cause, bias, malice or corruption, direct the Secretary to investigate the matter further and make a report and recommendations to the Court addressing allegations, on the basis of which report the Administrative Court may make a decision in accordance with paragraph (a) or (b).

37 Registration of arable and pastoral land against prospecting and pegging

(1) In this section and section 38—

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

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

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

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

“reservable area” means the maximum area that may be reserved against prospecting and pegging by the registration of the whole or any part of it under this section as land deemed to be land under cultivation for the purposes of **section 35 (“Ground not open to prospecting”)**;

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

(2) Every—

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

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

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

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

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

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

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

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

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

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

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(3) Any arable land which, at the date of the application mentioned in subsection (2), is not open to prospecting and pegging by virtue of **section 35** (“Ground not open to prospecting”)1)(a), shall be deducted from the area of reservable land which may be registered in terms of this section.

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

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(5) Subject to section 38 (“Disputes about registering or extending the duration of schemes reserving arable and pastoral land against prospecting and pegging”), upon receipt of the plan and the certificate referred to in subsection (4), the PMD shall, if he or she is satisfied as to the title of the applicant and that the plan is satisfactory, post a notice for seven days on the notice board of the PMD’s office notifying interested persons that—

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

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(6) Upon the registration (by virtue of subsection (5)(c) or section 38(3)(b)) of any land by the PMD under this section, the land so registered shall, during the period of registration, be deemed to be land under cultivation for the purposes of section 35 (“Ground not open to prospecting”).

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(7) The person in whose favour a scheme has been registered under this section or section 38 (or, in the case of a RDC, the person referred to in the definition of “applicant” in subsection (1)) shall beacon the area or areas so registered in such manner as the PMD may direct, and shall maintain the beacons in proper order and condition.

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

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

(10) The PMD may, subject to section 38, on application, extend the period of registration of a scheme for any period not exceeding three years, for which purposes

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the PMD shall post a notice for seven days on the notice board of the PMD's office notifying interested persons that—

- (a) it is proposed to extend the period of registration of scheme registered under subsection (5) or section 38(3)(b); and
- 5 (b) if any prospector or miner wishes to make any objection thereto, he or she must, within the seven-day notice period, lodge an objection in the form of an affidavit with the PMD specifying his or her name and address, the nature of his or her interest in the matter and the particulars of his or her objection to the extension of the scheme; and
- 10 (c) if no valid objection is made within the seven-day notice period the scheme shall be deemed to have been extended for the period specified in the notice with effect from the end of the notice period.

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

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

38 Disputes about registering or extending the duration of schemes reserving arable and pastoral land against prospecting and pegging

- (1) If any person who is aggrieved by—
 - (a) any proposed scheme notified by the PMD in terms of section 37(5); or
 - (b) the decision of the PMD to refuse to register a scheme in terms of section 37(5); or
 - 35 (c) the decision of the PMD to grant or refuse to grant any extension of time of a scheme reserving arable or pastoral land against prospecting or pegging in terms of section 37(10);

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

- 40 (i) section 37(5)(b) or 37(10)(b), must serve one copy of the affidavit on the applicant, together with an invitation to both the parties to attend at the meeting to be presided over by the PMD (giving particulars of its time and venue) to enable the parties to make oral and written representations at that meeting on the question that prompted the prospector or miner to object to the proposed scheme; or
- 45 (ii) section 37(11), post a copy of it on the notice board of his or her office together with an invitation to any interested persons to attend at the meeting to be presided over by the PMD (giving particulars of its time and venue) to enable the parties to make oral and written representations at that meeting on the question whether the proposed scheme ought to be registered or whether the existing scheme ought to be extended, as the case may be;
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Provided that in such invitation or at the meeting the PMD may restrict the parties to submitting written representations only, before the meeting or no later than 48 hours after the conclusion of the meeting.

(3) The following provisions apply to every meeting for the consideration of an objection— 5

(a) the object of the hearing is to enable the PMD to make a recommendation to the Board to register or not register a scheme, or to extend or not extend the registration of a scheme, and, in the case of a recommendation to register or extend the registration of a scheme, to register it or extend its registration subject to any specified amendments; 10

(b) if any objector fails to attend at the meeting he or she shall be deemed to have abandoned his or her objection, and if there is no other objector, the scheme shall—

(i) if the objection was made in terms of section 37(5)(b) or 37(10)(b), be deemed to have been registered or extended from the date of the termination of the hearing without the need for the PMD to make any recommendations to the Board; 15

(ii) if the objection was made in terms of section 37(11), not be registered or extended, as the case may be, without the need for the PMD to make recommendations to that effect to the Board; 20

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

(d) the landholder or occupier bears the burden of showing on a balance of probabilities why the scheme should be registered or extended; 25

(e) at the conclusion of the meeting PMD may, in the presence of the parties (if any) at the meeting announce any of the following recommendations to the Board, namely that in response to any objection made in terms of section 37(5)(b), 37(10)(b) or section 37(11), the PMD recommends the Board to— 30

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

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

(iii) not approve the registration or extension by the PMD of a scheme: 35

Provided that the PMD may defer making a recommendation by no more than 48 hours after the conclusion of the meeting and in any event must give notice of his or her recommendation, and the reasons for it, to every objector and interested party, and post a copy of the recommendation and the reasons for it on the public notice board of the PMD’s office. 40

(4) If within seven days of the posting notice of any recommendation in terms of the proviso to subsection (3)(e) any objector or other interested party who attended the meeting referred to in subsection (3) notifies the PMD in writing that he or she is opposed to the proposed recommendation for specified reasons, the PMD shall, without delay, transmit to the Secretary the recommendation, together with the reasons for it, and the reasons against it given by the objector or other interested party in terms of this subsection. 45

Provided that if no objector or other interested party timeously notifies the PMD of his or her opposition to the proposed recommendation, the scheme shall be registered or extended, or not registered or extended, in accordance with the recommendation of 50

the PMD (without the need for the PMD to transmit the recommendations to the Board) with effect from the end of the seven-day notice period.

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

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

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

- (i) notify the applicant and any objector or interested party who attended the meeting referred to in subsection (3) of the Board's decision; and
- (ii) take the necessary action in accordance with the Board's decision.

(6) If any applicant, objector or interested party who attended the meeting referred to in subsection (3) is aggrieved by a decision of the Board under subsection (5), he or she may appeal to the Administrative Court within seven days after the date of its notification to the applicant, objector or party, whereupon the court may—

- (a) decide the issue in favour of the Board; or
- (b) refer the decision back to the Board for reconsideration (whether with or without directions on how the decision is to be or she reconsidered) on any one or more of the following grounds—
 - (i) allowing extraneous or irrelevant considerations to affect the decision;
 - (ii) failure to take into account relevant considerations in arriving at the decision;
 - (iii) any material mistake of fact or law that tainted the decision;
 - (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;
 - (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

Provided that the Court shall not make a finding on this ground without affording the Board or the PMD an opportunity to respond to such finding;

- (c) where there is a substantive factual dispute that cannot be resolved by the Court on the evidence before it, refer the matter to the Board with a direction for it to investigate the matter further and make a report and recommendations to the Court (on the basis of which the Court shall make its decision under paragraph (a) or (b)).

(7) The lodging an appeal under subsection (6) shall not suspend the decision appealed against until the appeal is determined by the Court.

39 Roads and railways may be included in location under certain conditions

(1) In this section and section 40—

“road” includes any area of land reserved for road purposes under Part III of the Roads Act [*Chapter 13:18*] (No. 6 of 2001) and any restricted road declared under Part IX of that Act.

(2) Subject to this section and *section 296* (“Mining permitted under certain objects on certain conditions”), a prospector or the holder of a mining lease or special grant may include in his or her location any road, railway track, electric power line, aqueduct, pipeline, occupied dwelling, well, borehole, dam, reservoir or works designed to prevent soil erosion or any land reserved for the taking of road-making materials under *section 44* of the Roads Act [*Chapter 13:18*]. 5

40 Encroachment on or interference with roads and railways by mining activities prohibited 10

(1) Any person who carries on prospecting or other mining or development operations upon any, road, or within fifteen metres of the middle of any road, commits a criminal offence and a civil default. and on prosecution and conviction for the offence shall be liable to a fine not exceeding level eight or to imprisonment for a period not exceeding three years or to both (in the case of a corporate offender, every one of its officers is liable to the penalty of imprisonment, and to the fine in equal shares if the corporate offender fails to pay it). 15

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

- (a) directs the defaulter—
 - (i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level six; and 25
 - (ii) to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her, cease prospecting or other mining or development operations upon any road, or within fifteen metres of the middle of any road;
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate— 30
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 35
 - (ii) if he or she fails to comply with paragraph (a)(ii), to pay a default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 40

(3) Any person who carries on prospecting or other mining or development operations or erects any building for the purposes of a mining location upon any railway track, or within forty-five metres of any railway track, commits an offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level eight or to imprisonment for a period not exceeding three years or to both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine in equal shares if the corporate defaulter fails to pay it). 45

(4) The PMD for the mining province wherein a civil default as described in subsection (3) happened may (additionally or alternatively to prosecution for the offence under subsection (3)) serve upon the defaulter a civil penalty order which— 50

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

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

(6) Any person who hinders or impedes the use of any road or railway track by mining operations commits a criminal offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine in equal shares if the corporate defaulter fails to pay it);

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

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

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

both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine in equal shares if the corporate defaulter fails to pay it).

(9) The PMD for the mining province wherein a civil default as described in subsection (8) happened may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which— 5

- (a) directs the defaulter to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her);
- (b) subjects the defaulter (if he or she fails to comply with paragraph (a)) to pay a default fine of the maximum amount fixed for level three for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 10

(10) Nothing in this section shall be deemed in any way to prejudice the right of any person to recover from a prospector or the holder of a mining location damages for any injury which he or she may prove to have been sustained by him or her in consequence of any act or thing done by such prospector or holder even though such prospector or holder has complied with this section. 15

41 Encroachment on or interference with certain works and installations by mining activities prohibited 20

(1) Any person who—

- (a) carries on prospecting or other mining or development operations within—
 - (i) twenty-five metres of any pipeline constructed of asbestos pipes exceeding thirty centimetres in diameter or five metres of any other pipeline; or 25
 - (ii) within ten metres of any occupied dwelling, or within thirty metres of any aqueduct, well or borehole, or within ninety metres of any dam or reservoir, without the consent of the owner of such work;
- (b) impairs or interferes with any occupied dwelling, aqueduct, well or borehole, dam or reservoir, without the consent of the owner of such work; 30

commits an offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine in equal shares if the corporate defaulter fails to pay it). 35

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

- (a) directs the defaulter to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her); 40
- (b) subjects the defaulter (if he or she fails to comply with paragraph (a)) to pay a default fine of the maximum amount fixed for level five for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 45

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

- (a) within ten metres of the centre line of an electric power line carrying 33kV or less; or
- (b) within twenty-five metres of the centre line of an electric power line carrying more than 33kV but not more than 132kV; or
- 5 (c) within forty metres of the centre line of any electric power line carrying more than 132kV; or
- (d) within ten metres of a pole mounted transformer or ground mounted transformer with a capacity of less than 300kVA; or
- 10 (e) within twenty-five metres of any other transformer or electricity substation or electrical equipment or building used for the transmission or distribution of electricity;

commits an offence and a civil default, and on prosecution and conviction for the offence shall be liable to a fine not exceeding level eight or to imprisonment for a period not exceeding three years or to both (in the case of a corporate defaulter, every one of its
15 officers is liable to the penalty of imprisonment, and to the fine in equal shares if the corporate defaulter fails to pay it).

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

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

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

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

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

- 45 (a) directing the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) do or commence doing what is requisite to restore or maintain the anti-erosion works concerned; and
- (b) advising the defaulter that failure to comply satisfactorily with paragraph (a) within a specified time (not exceeding seven days) will render him
50 or her liable to pay a default fine of the maximum amount fixed for level

four for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(7) Nothing in this section shall be deemed in any way to prejudice the right of any person to recover from a prospector or the holder of a mining location damages for any injury which he or she may prove to have been sustained by him or her in consequence of any act or thing done by such prospector or holder even though such prospector or holder has complied with this section. 5

42 Reservations against prospecting and pegging

(1) The PMD may, and, if so instructed by the Secretary on the authority of the Minister, shall, reserve by notice posted at his or her office any area against prospecting and pegging, and all rights possessed by a prospector shall cease and may not be exercised within such area as from the date and hour of the posting of such notice or such later hour or later date and hour as may be specified in such notice: 10

Provided that the holder of a mining location, other than an exclusive exploration reservation, within any such area shall retain and may exercise all rights lawfully held by him or her which existed at the date and hour as from which such notice takes effect in terms of this subsection. 15

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

Provided that nothing in this subsection shall be construed so as to prohibit the earlier withdrawal of the reservation in terms of this section. 20

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

(4) If the Minister does not approve of such reservation, the Secretary shall instruct the PMD to withdraw such reservation, and the PMD shall forthwith comply with such instruction by posting a notice of withdrawal at his or her office. 25

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

(6) Where a reservation has been made on the instructions of the Secretary or the Minister has approved of a reservation mentioned in subsection (3), such reservation shall be advertised by notice in the *Gazette* as soon as possible (and in any event no later than 21 days) after posting notice of the same under subsection (1). 30

(7) Where the PMD has made a reservation mentioned in subsection (3), he or she may before the approval thereof by the Minister, by notice posted at his or her office, withdraw such reservation and, where a reservation has been made on the instructions of the Secretary with the authority of the Minister or where a reservation referred to in subsection (3) has been approved by the Minister, he or she shall, if so instructed by the Secretary on the authority of the Minister, in like manner withdraw such reservation. 35 40

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

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

(10) The beaconing and demarcation of any area reserved under this section shall be carried out in such manner as the PMD may direct. 45

43 Reservation of timber on application by landholders and RDCs

(1) In this section and section 44—

“appellant” means any prospector, miner or applicant seeking a review of a decision under section 44(2);

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

(2) Every—

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

15 (b) rural district council acting on behalf of and with the consent of a group of holders or occupiers of contiguous plots of land in Communal Land or in resettlement areas whose combined holdings do not exceed 200 hectares, may apply for and shall be granted by the PMD a reservation against the cutting or taking by prospectors or miners of fifty per centum of such indigenous wood or timber as is existing on their combined holdings at
20 the time of the application for the reservation.

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

(4) Any indigenous wood or timber within any area described in section 35 (“Ground not open to prospecting”)(1)(a)) shall be part of and be included in any timber
25 reservation granted to such landholder.

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

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

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

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

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

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

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

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

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

(8) If any dispute arises as to the equal division of wood or timber under this section, the applicant, prospector or miner may refer the matter to the PMD, whereupon section 44 shall apply to such referral.

44 Disputes over reservation of timber under section 43

(1) In connection with a referral mentioned in **section 43(8)**— 5

(a) the referring party must furnish to the PMD proof in the form of an affidavit sworn by him or her that, at least seven days before the referral of the dispute to the PMD, he or she had initiated negotiations with RDC, landholder, prospector or miner (as the case may be) on the issue of the equal division of wood or timber under section 43; 10

(b) within a reasonable period from the receipt of an affidavit referred to in paragraph (a) the PMD must serve one copy of the affidavit of the prospector or miner on the RDC or landholder or one copy of the affidavit of the RDC or landholder on the prospector or miner (as the case may be), together with an invitation to both the parties to attend at the meeting to be presided over by the PMD (giving particulars of its time and venue) to enable the parties to make oral and written representations at that meeting on the question that prompted the prospector to refer the dispute to the PMD; 15

Provided that in such invitation or at the meeting the PMD may restrict the parties to submitting written representations only, before or no later than 48 hours after the conclusion of the meeting; 20

(c) if either party fails to attend at the meeting referred to in paragraph (b), the PMD will generally decide the dispute in favour of the party who is present, unless doing so, given the specific facts and circumstances of the case, would be contrary to this Act or result in injustice; 25

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

(e) at the conclusion of the referral meeting PMD may, in the presence of the parties (if any) at the meeting announce his or her decision verbally and confirm it in writing within twenty-four hours : 30

Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the referral meeting and give notice of his or her decision, and the reasons for it, to the prospector or miner and the applicant, and post a copy of the decision and the reasons for it on the public notice board of the PMD’s office. 35

(2) Any prospector, miner, landholder who or RDC which is aggrieved by a decision of the PMD under subsection (1), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the appellant: 40

Provided the taking of a decision on review under this subsection shall suspend the decision sought to be reviewed until the review is determined by the Administrative Court.

(3) Upon review the Administrative Court may—

(a) decide the issue in favour of the PMD; or 45

(b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—

(i) allowing extraneous or irrelevant considerations to affect the decision; 50

- (ii) failure to take into account relevant considerations in arriving at the decision;
- (iii) any material mistake of fact or law that tainted the decision;
- (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision;
- (v) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;
- (c) where there is a substantive factual despite that cannot be resolved by the Court on the evidence before it, refer the matter to the appropriate PMD with a direction to the PMD to investigate the matter further and make a report and recommendations to the Court (on the basis of which the Court shall make its decision under paragraph (a) or (b)).

(4) An appellant who is aggrieved by the Administrative Court's decision under subsection (3)(a), may, within twenty-one days after the Administrative Court's decision, refer the matter for review by the High Court, whereupon it may—

- (a) uphold the decision of the Administrative Court; or
- (b) overturn the decision of the Administrative Court on any one or more of the following grounds—
 - (i) allowing extraneous or irrelevant considerations to affect the decision; or
 - (ii) failure to take into account relevant considerations in arriving at the decision; or
 - (iii) any material mistake of fact or law that tainted the decision; or
 - (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;
- or
- (c) where there is a substantive factual despite that cannot be resolved by the High Court on the evidence before it, or where the matter had previously been referred by the Administrative Court to the PMD for investigation and report but the High Court is not satisfied with the report for any reason, refer the matter to the appropriate PMD with a direction to the PMD to investigate the matter further and make a further report and recommendations to the High Court (on the basis of which the High Court shall make a decisions under paragraph (a) or (b)).

45 Reservation of timber on instruction of Minister

(1) The PMD may, when authorised thereto by the Minister, reserve by notice posted at his or her office all indigenous wood and timber or any specified indigenous wood or timber on any area, and all rights conferred by this Act upon any holder of a prospecting licence or special grant or upon any holder of a mining location to cut or take such wood or timber shall cease and may not be exercised within such area as from the date and hour of the posting of the reservation notice, but any such reservation of wood or timber shall not restrict prospecting or pegging within such area or the cutting of wood or timber which interferes with prospecting or mining operations.

(2) The beaconing and demarcation of any area reserved under subsection (1) shall be carried out in such manner as the PMD may direct.

(3) The PMD may, under the same conditions and in the same manner, withdraw any reservation made under subsection (1).

46 Notice of intention to prospect

(1) This section shall apply to—

- (a) town lands;
- (b) alienated or partially alienated land the boundaries of which are fenced or clearly marked by beacons and cut lines or consist of rivers, roads or railway lines; 5
- (c) any area of land declared under the Forest Act [Chapter 19:05] to be demarcated forest or protected private forest;
- (d) communal land.

(2) Every prospector shall, before exercising any of his or her rights as such on any land to which this section applies, give notice of his or her intention to do so to whichever of the following persons as in his or her case is appropriate— 10

- (a) if the land is a portion of town lands, he or she shall give notice addressed to the local authority concerned;
- (b) if the land is occupied alienated or partially alienated land, he or she shall give notice to the occupier of the land; 15
- (c) if the land is unoccupied alienated or partially alienated land, he or she shall give notice to the landholder at his or her ordinary postal address;
- (d) if the land has been declared a demarcated forest, he or she shall give notice to the chief executive officer of the Forestry Commission established under the Forest Act [Chapter 19:05]; 20
- (e) if the land has been declared a protected private forest, he or she shall give notice to the holder of such land at his or her ordinary postal address or, if such land is unoccupied, to the PMD;
- (f) if the land is in Communal Land, he or she shall give notice to any rural district council established for the area concerned; 25

and shall state in such notice his or her permanent postal address.

(3) In every notice given in terms of subsection (2) there shall, in addition, be stated the name and address of the person who will be in charge of prospecting operations on the land concerned. 30

(4) A notice which has been duly given in terms of this section by the holder of an exclusive prospecting licence shall be valid for a period of one hundred and twenty days from the date on which it was delivered or posted, as the case may be, and, if such holder has not pegged and registered a block on the land concerned within that period, he or she shall give fresh notice in terms of this section before continuing to exercise his or her rights under the exclusive prospecting licence. 35

(5) A notice which has been duly given in terms of this section by the holder of an exclusive exploration licence or a special grant to carry out prospecting operations shall be valid for the period of validity of that licence or special grant.

(6) Notwithstanding subsections (4) and (5), in the event of any change in the particulars notified in terms of subsection (3), the holder shall forthwith give notice of that change and subsection (2) shall apply with necessary changes to the giving of that notice. 40

(7) Any prospector who has begun exercising any of his or her rights on any land to which this section applies without giving the notice required by this section, commits a civil default and shall be liable to be served with a civil penalty order by the PMD for the mining province wherein the civil default took place, which civil penalty order— 45

- (a) shall direct the defaulter—

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

(8) The imposition of a civil penalty order under subsection (7) does not prejudice to the right of any complainant who should have been notified by the prospector to object in terms of subsection (9)(a) or to recover from the prospector damages for any injury which he or she may prove to have sustained in consequence of any act or thing done by such prospector.

(9) Where a mining location has been pegged by a person who has failed to give any notice required by this section (hereinafter called “the defaulter”)—

- (a) such pegging of the location shall be invalid and not confer any rights whatsoever if any person required to have been notified thereof lodges with the PMD an objection in writing to the pegging of the location no later than 120 days from the date when the pegging of the location began (whereupon the pegs must be removed and any registration of the location cancelled, but the defaulter may thereafter give the notice required by this section);
- (b) such pegging of the location shall be deemed to be valid if no objection as mentioned in paragraph (a) is lodged with the PMD.

47 Hours of pegging and posting notices; manner in which notices to be posted

(1) No person shall peg any mining location, which term includes the posting of a prospecting, discovery or registration notice, between six o’clock in the afternoon and six o’clock in the morning.

(2) The pegging of any locations during the period prohibited by subsection (1) shall not confer any rights whatsoever on any person.

(3) No pegging shall be deemed to be illegal by reason of being done on a Sunday or public holiday.

(4) If a prospecting, discovery or registration notice is posted on a notice board, such board shall be fixed on a peg.

(5) All notices shall be distinctly and legibly written, printed or painted, and no paper or other material which is liable to be washed off, and no writing liable to be rendered illegible by rain or exposure shall, except for purely temporary purposes, be deemed a proper marking.

(6) Any person who—

- (a) contravenes subsection (1) commits a civil default and shall be liable to be served with a civil penalty order by the PMD for the mining province wherein the civil default took place, which civil penalty order—
 - (i) shall direct the defaulter—

- A. to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for **level 4**; and
- B. to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her, remove the unlawful pegs, prospecting, discovery or registration notice and not re-peg the location or repost the notices until after the lapse of ninety-six hours, at which time the re-pegging and reposting shall be done between the hours of six o'clock in the morning and six o'clock in the afternoon);
- (ii) shall subject the defaulter to either of both of the following penalties, as may be appropriate—
 - A. if he or she fails to pay the default fine specified in subparagraph (i)A (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
 - B. if he or she fails to comply with subparagraph (i) to pay a default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.
- (b) contravenes subsection (4) or (5) commits a civil default and shall be liable to be served with a civil penalty order by the PMD for the mining province wherein the civil default took place, which civil penalty order—
 - (i) shall direct the defaulter—
 - A. to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for **level 4** (whether for the contravention of either subsection (4) or (5) exclusively, or of both concurrently); and
 - B. to immediately cease the contravention by taking the needed remedial action;
 - (ii) shall subject the defaulter to either of both of the following penalties, as may be appropriate—
 - A. if he or she fails to pay the default fine specified in subparagraph (i)A (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
 - B. if he or she fails to comply with subparagraph (i) to pay a default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

48 Prospecting notices

(1) Subject to this Act, any holder of a prospecting licence may and, if he wishes to drill or excavate, whether at the surface or underground, shall post a notice to be called a “prospecting notice” on ground open to prospecting.

(2) Such notice shall—

- (a) in so far as material be in the prescribed form, and all the particulars required by such form shall be duly filled in;
- (b) be carried on a peg erected in a conspicuous and accessible place.

(3) On posting a prospecting notice the holder of the prospecting licence under which it is posted shall immediately forward to—

- (a) the PMD; and
- (b) whichever authority or person would be entitled in terms of section 46 (“Notice of intention to prospect”) to be given notice of intention to prospect on the land affected by the prospecting notice;

5 a certified copy of the prospecting notice, together with a plan based on a map issued under the authority of the State and of a scale of not less than 1:25 000 sufficiently identifying the point where such notice has been posted and the area covered thereby.

(4) No person shall post a second prospecting notice by virtue of any licence until such time as notice of abandonment has been posted on the ground previously located
 10 in the manner provided in section 194 (“Abandonment of unregistered locations”) or until the prospecting notice previously posted under the same licence has lapsed.

(5) The posting of a prospecting notice in terms of subsection (1) shall confer upon the holder of the prospecting licence under which it is posted the exclusive right of prospecting, including the right to drill and excavate, whether at the surface or
 15 underground, for a period of ninety days each of twenty-four hours from the time of such posting on all ground which is open to prospecting at the time of the posting of such notice within an area described by a radius of three hundred metres from the point where the prospecting notice has been posted:

Provided that on the posting of a registration notice in terms of **section 51**
 20 (“Registration notices”) all such rights outside the area of the block pegged shall lapse.

(6) Any holder or an exclusive prospecting licence or person purporting to act by virtue of such licence who—

(a) being required to post a prospecting notice in terms of subsection (1), fails to do so, commits a civil default and shall be liable to be served with a
 25 civil penalty order by the PMD for the mining province wherein the civil default took place, which civil penalty order—

(i) shall direct the defaulter—

A. to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a
 30 default fine of the maximum amount fixed for **level 4**; and

B. to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her, to post a prospecting notice in terms of subsection (1));

(ii) shall subject the defaulter to either of both of the following penalties, as may be appropriate—

A. if he or she fails to pay the default fine specified in subparagraph (i)A (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay
 40 the original default fine;

B. if he or she fails to comply with subparagraph (i)B, to pay a default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was
 45 served;

(b) contravenes subsection (4), commits a civil default and shall be liable to be served with a civil penalty order by the PMD for the mining province wherein the civil default took place, which civil penalty order—

- (i) shall direct the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for **level 4**; and
- (ii) shall subject the defaulter, if he or she fails to pay the default fine specified in paragraph (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine. 5

Sub-Part C: Discovery and pegging

49 Discovery of minerals or precious stones 10

(1) If the holder of an exclusive prospecting licence, after posting his or her prospecting notice, by the work of himself or herself or his or her agents, discovers within the area covered by such notice any ore or deposit of precious metals or precious stones, he or she shall mark the point of such discovery by a peg marked “DP”.

(2) If the holder of an exclusive prospecting licence, after the posting of his or her prospecting notice, in like manner discovers within the area covered by such notice any ore or deposit of any base mineral, he or she shall mark the point of such discovery by a peg marked “DP” and indicate upon a notice to be styled a “discovery notice” in the prescribed form, posted at the spot where his or her prospecting notice is posted, the position of the DP peg, the nature of the base mineral he or she has discovered and the date and time of the discovery, and thereupon for the remainder of the period of ninety days mentioned in section 48 (“Prospecting notices”) he or she shall be entitled to the sole and exclusive right of prospecting, including the right to drill and excavate, whether at the surface or underground, upon all ground open to prospecting within an area described by a radius of nine hundred (900) metres from his or her prospecting notice. 15
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(3) The intersection of a reef by a borehole shall be deemed to constitute a discovery within the meaning of this section.

(4) Any person who contravenes subsection (1) or (2) commits a civil default and shall be liable to be served with a civil penalty order by the PMD for the mining province wherein the civil default took place, which civil penalty order— 30

- (a) shall direct the defaulter—
 - (i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for **level 4**; and 35
 - (ii) to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her, mark the point of his or her discovery with a “DP” peg);
- (b) shall subject the defaulter to either of both of the following penalties, as may be appropriate— 40
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 45
 - (ii) if he or she fails to comply with paragraph (a)(ii) to pay a default fine of the maximum amount fixed for level 4 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

50 Pegging of precious metal, precious stones or base mineral claims

(1) The outer limits of a claim or a group of contiguous claims of precious metal, precious stones or base mineral claims shall, if possible, be pegged in regular polygon form (square, rhombus, rectangle, lozenge shape, parallelogram), and may be
5 pegged in irregular form only if it is not possible to peg it in regular form.

(2) The inner limits of a group of two or more contiguous claims of precious metal or precious stones claims need not be marked, but if any part of such group is to be sold, ceded or otherwise alienated to another person, any such part must (if possible) be pegged in any regular polygon such that—

- 10 (a) the area sold, ceded or otherwise alienated must not be a fraction of a hectare, unless it consists of only one claim; and
- (b) the area sold, ceded or otherwise alienated must consist of—
- 15 (i) at least one undivided hectare if the area concerned consists of only two claims;
- (ii) two or more contiguous and undivided hectares, if the area concerned consists of more than two claims.

(3) As to the outer limits of a claim or contiguous claims of precious metal , precious stones or base mineral claims—

- 20 (a) the pegger shall demarcate the four corners of the outer limits by pegs to be known as “corner pegs”, marked A, B, C and D respectively;
- (b) the point marked “DP” shall lie within the boundaries of the claim or groups of claim thus established, and no ground not open to prospecting, except as otherwise provided in section 39 (“Roads and railways may be included in location under certain conditions”) shall be included within
25 such boundaries.

(4) A claim or a group of contiguous claims, in irregular form, of precious metal, precious stones or base minerals claims shall be so pegged as to fulfil all the following conditions—

- 30 (a) it shall be bounded on not more than two sides by ground open to prospecting; and
- (b) its area shall not exceed the maximum area of a regular group of claims, that is 40 hectares; and
- (c) the boundary lines shall be straight lines, and the position of all points at which they intersect shall be established by corner pegs lettered in
35 consecutive alphabetical order commencing with the letter A.

(5) For the purpose of recording the boundaries of a pegged claim or group of claims, location or other area, the position of pegs and beacons, and other relevant marks or features shall be determined by means of a prescribed global positioning system.

40 (6) Every peg mentioned in this section shall bear on it, in addition to the distinguishing letter, the number of the licence under which the block was pegged and the name of the holder of the licence.

(7) Any holder of a prospecting licence who contravenes subsection (1), (2), (3), (4) or (6) commits a civil default and shall be liable to be served with a civil penalty order by the PMD for the mining province wherein the civil default took place, which
45 civil penalty order—

- (a) shall direct the defaulter—

- (i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for **level 4**; and
- (ii) to immediately cease the contravention, that is to say, within forty-eight hours after the civil penalty is served on him or her, do any of the following as may be directed in the order—
 - A. comply with subsection (1); or
 - B. comply with subsection (2) where any part of a group of two or more contiguous claims of precious metal or precious stones claims is to be sold, ceded or otherwise alienated to another person; or
 - C. comply with subsection (3); or
 - D. comply with subsection (4); or
 - E. comply with subsection (6);
- (b) shall subject the defaulter to either of both of the following penalties, as may be appropriate—
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
 - (ii) if he or she fails to comply with paragraph (a)(ii)A, B, C, D or E, deem that the failure by the defaulter to take the requested remedial action within the specified time (or any extension of that time not exceeding seven working days requested by the defaulter and granted by the PMD) constitutes an abandonment of all rights acquired by the defaulter by virtue of the posting of his or her exclusive prospecting notice.

51 Registration notices

(1) Within the period of 90 days each of twenty-four hours from the posting of the prospecting notice, the holder of the exclusive prospecting licence who has discovered within the area covered by such notice any ore or deposit of precious metals or precious stones or any ore or deposit of any base mineral may peg a claim or a group of contiguous claims (not exceeding 40 hectares), and thereafter, within the said period, post upon such block a notice, to be styled a “registration notice”, in like manner to the posting of the prospecting notice, and such registration notice shall be posted adjacent to the point marked “DP”, and the block so pegged shall include such registration notice and the point marked “DP”.

(2) Failure to peg off such block, and thereafter to post such registration notice within the period mentioned in subsection (1), shall be deemed to constitute an abandonment of all rights acquired by the posting of such prospecting notice.

(3) A registration notice shall, so far as material, be in the form prescribed, and particulars required by such form shall be duly filled in.

Sub-Part D: Registration of claims and mine service sites

52 Registration of claims or group of contiguous claims

(1) Subject to **section 53** (“Registration of mining location by special mining lease applicants”), the holder of any mining location upon which a registration notice has been posted must, on application to the PMD within a period of thirty-one days

after the date of posting such registration notice, and on payment of the prescribed fee, obtain a certificate of provisional registration under this section.

(2) On every such application the applicant shall lodge the following with the PMD—

- 5 (a) the exclusive prospecting licence and the power of attorney or other document, if any, under and by virtue of which the block was located; and
- (b) a copy of the prospecting notice; and
- (c) in the case of a base mineral block, a copy of the discovery notice; and
- 10 (d) a copy of the registration notice; and
- (e) a plan in triplicate based on a map issued under the authority of the State and of a scale of not less than 1:50 000, sufficiently identifying—
 - (i) the position of the claim or group of claims to be registered ; and
 - 15 (ii) the position and lettering of the pegs, including the peg marked “DP”; and
 - (iii) the position of the prospecting notice; and
 - (iv) the coordinates as determined by a prescribed global positioning system of all the foregoing positions, pegs and notices;
 and
- 20 (d) a certificate under his or her hand stating that the said copies of such notices are true copies and that all facts stated therein are true and correct; and
- 25 (e) if the block is pegged on ground for which the consent of the owner or holder of the ground is required, the written consent of the owner or landholder or some person duly authorised thereto by the owner or landholder.

(3) If the PMD is satisfied that the application and its supporting documentation under subsection (2) are in order, the PMD shall—

- 30 (a) return to the applicant one copy of the plan lodged with the provisional registered number of the claim or group of claims endorsed thereon; and
- (b) send notification of such provisional registration and one copy of the plan lodged with the registered number of the claim or group of claims endorsed thereon to whichever authority or person would be entitled in terms of section 46 (“Notice of intention to prospect”) to be given notice of intention to prospect on the land on which the claim or group of claims is pegged; and
- 35 (c) retain a copy of the plan; and
- (d) enter in the provisional register the particulars of the provisional registration.

40 (4) If the PMD is not satisfied that the application and its supporting documentation under subsection (2) are in order because of any substantive defect in the application which the applicant is unable to remedy at all or within a reasonable period, the PMD shall (after notifying the Mining Cadastre Registrar of his or her proposed decision and being given leave by the Registrar to proceed accordingly) notify the applicant that provisional registration is refused, giving the reasons therefor
 45 (such refusal shall be deemed to be a rejection of the final registration of the mining location by the Mining Cadastre Registrar in terms of proviso (i) to subsection (6)):

(5) If the holder of any location fails to apply for a certificate of provisional registration in the manner prescribed within the period of thirty-one days, he or she shall be deemed to have abandoned such claim or group of claims:
 50

Provided that if such holder makes application within the said period to the PMD for an extension of the period and furnishes any reason for such extension which to the PMD seems good and sufficient, the PMD may extend the said period for a further period not exceeding thirty- one days.

(6) The registration by the PMD in terms of the preceding subsections of a mining location under a single mining title, that is to say — 5

- (a) a single claim as a mining location in the name of a holder of a mining title;
- (b) of two or more contiguous claims (not exceeding 40 hectares in total) in the name of a single holder of the location; 10

shall be regarded as final when the following steps are concluded, namely: when—

- (c) the particulars of the registration including the number assigned to the mining location by the PMD are communicated to the Mining Cadastre Registrar; and
- (d) the Mining Cadastre Registrar confirms in writing to the PMD that the particulars have been entered in the Mining Cadastre Register; 15

whereupon the PMD shall, after entering in his or her final register the particulars of the registration and the final number assigned by the Mining Cadastre Registrar to that mining location, notify the holder of the location accordingly:

Provided that the Mining Cadastre Registrar may — 20

- (i) reject the registration of the mining location concerned, giving reasons in writing to the PMD, whereupon the PMD shall notify the applicant of the rejection and the reasons thereof and the applicant shall have 30 days from such notification to appeal to the Administrative Court against such rejection; or 25
- (ii) seek further information or request an adjustment to information submitted by the applicant, in which event the PMD must promptly notify the applicant of the request, and the applicant may either—
 - A. comply with the request of the Mining Cadastre Registrar; or
 - B. appeal to the Administrative Court against such request within 30 days of its notification to the applicant. 30

(7) No holder of a provisional registration under this section may exercise his or her rights in connection with such holding until he or she has received a final registration in relation the mining location.

(8) Upon an appeal in terms of proviso (i) or (ii) to subsection (6) the Administrative Court may — 35

- (a) decide the issue in favour of the Mining Cadastre Registrar; or
- (b) refer the decision back to the Mining Cadastre Registrar for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds— 40
 - (i) allowing extraneous or irrelevant considerations to affect the decision,
 - (ii) failure to take into account relevant considerations in arriving at the decision;
 - (iii) any material mistake of fact or law that tainted the decision; 45
 - (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
 - (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

Provided that the Court shall not make a finding on this ground without affording the Mining Cadastre Registrar an opportunity to respond to such finding;

5 (c) where there is a substantive factual despite that cannot be resolved by the Court on the evidence before it, refer the matter to the Mining Cadastre Registrar with a direction to the Register to investigate the matter further and make a report and recommendations to the Court (on the basis of which the Court shall make its decision under paragraph (a) or (b)).

10 (9) A person who is aggrieved by the Administrative Court's decision under subsection (8)(a), may, within twenty-one days after the Administrative Court's decision, refer the matter for review by the High Court, whereupon it may—

15 (a) uphold the decision of the Administrative Court; or

(b) overturn the decision of the Administrative Court and (if the party seeking review is the applicant for final registration of a mining location) refer the application for the final registration of the mining location back to the Mining Cadastre Registrar (with or without directions on how to proceed with the application) on any one or more of the following grounds—

20 (i) allowing extraneous or irrelevant considerations to affect the decision; or

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

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

(iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;

30 (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

or

35 (c) where there is a substantive factual despite that cannot be resolved by the High Court on the evidence before it, or where the matter had previously been referred by the Administrative Court to the Mining Cadastre Registrar for investigation and report but the High Court is not satisfied with the report for any reason, refer the matter to the Mining Cadastre Registrar with a direction to the Registrar to investigate the matter further and make a further report and recommendations to the Court (on the basis of which report the Court may then proceed in terms of paragraph (a) or (b)).

45 (10) A holder of a location under provisional registration who, for a period of not less than 90 days from the date when he or she lodged the application under section (1), has not received confirmation that his or her application has been finally accepted or rejected, may make an application under the Administrative Justice Act [*Chapter 10:28*] (No. 12 of 2004) for an order compelling the Mining Cadastre Registrar to accept or reject the final registration of the mining location or give the applicant reasons for the rejection of the same.

53 Registration of mining location by special mining lease applicants

The holder of any mining location who posts a registration notice thereon pursuant to the exercise of rights under an exclusive prospecting licence obtained by virtue of **section 28(3)(d)**, must, within a period of thirty-one days after the date of posting such registration notice, make an application under **section 118(2)(b)**, for a special **mining lease**. 5

54 Evidence and priority of mining rights; principle of ‘first come first served’; impeachment of title

(1) For the purposes of this section—

“holder or claimant in contestation” means a person (and every successor to his or her title) in whose name or on whose behalf a mining location, reef or deposit was registered, or who claims the right to such registration by operation of law or otherwise, but whose title thereto is disputed in whole or in part by another holder or claimant in contestation; 10

“acquisition of title”, for the purposes of subsection (3), means the registration of the relevant mining right in accordance with section 52 (“Registration of claims or group of contiguous claims”), Part VII (“Exclusive Exploration Licence”), Part IX (“Mining Leases”) or Part XIX (“Special Grants”). 15

(2) The definitive point of reference for the existence, scope, extent, duration and content of all mining rights is the Mining Cadastre Register; accordingly, if there is any dispute as to the existence, scope, extent, duration and content of any mining right— 20

(a) the record of that right as it appears in the Mining Cadastre Register shall be presumed to be the correct and definitive record over —

(i) the record of that right in any register of a PMD; or 25

(ii) the record of that right in any certificate of title or other purported document of like character in the possession of any holder in contestation; or

(iii) any pegging on the location by a holder in contestation;

or 30

(b) before that right is registered in the Mining Cadastre Register, the record of that right in a provisional or other register of the PMD shall be presumed to be the correct record as against any record or pegging referred to in paragraph (a) (ii) or (iii).

(3) Priority of acquisition of title to any mining location, reef or deposit, if such title has been duly maintained, shall in every case determine the rights as between holder or claimant in contestation of mining locations, reefs or deposits as aforesaid, and in all cases of dispute the rule shall be followed that, in the event of the rights of any subsequent holder in contestation conflicting with the rights of a prior holder in contestation, then, to the extent to which such rights conflict, the rights of any subsequent holder in contestation shall be subordinated to those of the prior holder in contestation, and all certificates of registration shall be deemed to be issued subject to the foregoing conditions. 35 40

(4) When a mining location has been registered for a period of two years in the Mining Cadastre Register, it shall not be competent for any person to dispute the title in respect of such location on the ground that the pegging of such location was invalid or illegal or that this Act was not complied with prior to the issue of the certificate of registration. 45

(5) A timeously notified dispute of title shall be dealt with by way of an application for the rectification of an entry in the Mining Cadastre Register brought

in terms of **section 19** (“Entries in Mining Cadastre Register to be conclusive proof of mining right or title; rectification of Mining Cadastre Register; ascertainment of beneficial owner”).

55 Registration of dependent mine service sites

- 5 (1) In this section—
 “temporary beacon” means a non-permanent object or mark on the ground
 defining or indicating a corner of a piece of land proposed for a site;
 “in the vicinity of a location”, in relation to a site, means that any part of the
 outer boundary of a site shares a common boundary with any part of the
 10 outer boundary of a mining location;
 “property” means two or more blocks of claims, whether contiguous or
 otherwise, owned by one person, from which the ore is being treated at
 the same milling or reduction plant, or which are under the control of one
 registered mine manager;
 15 “transmit”, in relation to the transmission any document, includes scanning or
 digitising the document and transmitting it by any electronic means;
 “site” includes two or more sites where these are applied for in the same
 application and in relation to the same mining location or property.

20 (2) Before making an application to the PMD for the registration of a site in
 accordance with subsection (3), the holder of a registered mining location wishing to
 establish the co-ordinates of the proposed site (in or off the vicinity of his or her mining
 location) may enter upon land open to prospecting to mark the corners of the site in
 question with temporary beacons.

25 (3) Upon application made to the Provincial Mining Director having jurisdiction
 over the registered mining location to which the application relates, the holder of a
 registered mining location may—

- 30 (a) peg on any ground open to prospecting in the vicinity of such location
 a site or sites not exceeding twenty hectares for the purpose of erecting
 thereon residences for himself or herself or his or her employees, for a
 mill or other machinery required for the efficient working of his or her
 location, or for tailings or waste rock dumps, for a slimes or return water
 dam or dams, or for any other legitimate object connected with and
 necessary for the purposes of his or her location: or
 35 (b) peg on any ground open to prospecting not in the vicinity of such location
 a site or sites not exceeding twenty hectares for the purposes referred to
 in paragraph (a), furnishing in or together with the application a summary
 of the reasons why it is not possible or desirable to peg a site or sites in
 the vicinity of the mining location:

40 Provided that if in either case ((a) or (b)) the holder of the
 registered mining location requires more than twenty hectares for the
 site or sites applied for, the holder shall in his or her application give a
 summary of the reasons why the additional hectarage is required.

45 (4) The application referred to in subsection (3) shall be writing and in the
 form (if any) prescribed, and shall be accompanied by the prescribed registration fee
 a sketch plan based on a map issued under the authority of the State and of a scale of
 not less than 1: 50 000 identifying the position of the area applied for, specifying the
 extent of such area and indicating the co-ordinates of the temporary beacons of the site
 or sites in question;

(5) The application referred to in subsection (3) shall be processed as follows—

- (a) the Provincial Mining Director may provisionally permit the applicant to peg the site or sites applied for under subsection (3)(a) upon production of proof in the form of an affidavit sworn by the occupier of the affected land that the occupier agrees to such pegging:
- Provided that if— 5
- (i) the site or sites in question exceed in total twenty hectares, the Provincial Mining Director must additionally be satisfied that the reasons given by the applicant referred to in the proviso to subsection (3) are justified, otherwise the Director may condition the grant of provisional permission upon the applicant producing to the Director a new sketch plan showing the area of the site or sites as reduced in extent to the maximum permissible area of twenty hectares or any lesser area; 10
 - (ii) the Provincial Mining Director— 15
 - A. refuses provisional registration under this paragraph for any reason, or
 - B. conditions the grant of provisional permission in the manner referred to in proviso (i);

the Director must notify the applicant and occupier of his or her reasons for so refusing provisional registration or, as the case may be, conditioning the grant of provisional permission in the manner referred to in proviso (i), and must invite by such notice the applicant and the occupier to lodge a written objection (not exceeding 2000 words) to such refusal or conditioning within 48 hours of the notification by the Director of such refusal or conditioning; 25
- (b) the Provincial Mining Director may provisionally permit the applicant to peg the site or sites applied for under subsection (3)(b) upon production of proof in the form of an affidavit sworn by the occupier of the affected land that the occupier agrees to such pegging, and upon being satisfied that the reasons given by the applicant for not pegging the site or sites in the vicinity of his or her mining location are justified: 30
- Provided that if—
- (i) the site or sites in question exceed in total twenty hectares, the Provincial Mining Director must additionally be satisfied that the reasons given by the applicant referred to in the proviso to subsection (3) are justified, otherwise the Director may condition the grant of provisional permission upon the applicant producing to the Director a new sketch plan showing the area of the site or sites as reduced in extent to the maximum permissible area of twenty hectares or any lesser area; 35 40
 - (ii) the Provincial Mining Director—
 - A. refuses provisional registration under this paragraph for any reason, or 45
 - B. conditions the grant of provisional permission in the manner referred to in proviso (i);

the Director must notify the applicant and occupier of his or her reasons for so refusing provisional registration or, as the case may be, conditioning the grant of provisional permission in the manner referred to in proviso (i), and must invite by such notice 50

the applicant and the occupier to lodge a written objection (not exceeding 2000 words) to such refusal or conditioning within 48 hours of the notification by the Director of such refusal or conditioning;

- 5 (c) in the absence of the agreement of the occupier of the affected land as required by paragraph (a) or (b)—
- (i) the applicant must, together with his or her application, furnish—
- A. proof in the form of an affidavit sworn by him or her that he or she has notified or attempted to notify (in any of the ways contemplated by section 5) the occupier of the affected land of the application; and
- B. three copies of a written memorandum (not exceeding 2000 words) of the reasons why the pegging in question is necessary for the efficient working of his or her mining location (and if the sites or sites concerned are not in the vicinity of the location or in either case exceed twenty hectares, additional reasons must be given in the memorandum justifying such pegging in those cases); and
- 10
- (ii) the Provincial Mining Director upon receiving the copies of the memorandum must—
- A. serve one copy of the memorandum on the occupier of the land affected, together with a written notice (a copy of which must be simultaneously served on the applicant) of a meeting to be held before the Director at the time and venue notified (not being more than seven working days after the service of the notice), at which meeting the Director shall receive oral and written representations on the application for the pegging of the site or sites in question, and decide whether to provisionally grant or refuse the application; and
- B. post one copy of the memorandum on the public notice board of the Director's office on the same day as the copy of the memorandum is served on the occupier under paragraph A, together with an invitation to interested persons (that is to say existing or potential small-scale or other miners or other interested persons within the area of the jurisdiction of the PMD) to attend at the meeting referred to in that paragraph (giving particulars of its time and venue) to enable them to make oral and written representations at that meeting on the question whether to grant or refuse provisional registration for the site or sites concerned:
- 15
- 20
- 25
- 30
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- 40

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

- 45 (6) In amplification or clarification of the provisions of subsection (5) the following provisions are pertinent—
- (a) if the holder of the registered mining location in the case of an application referred to in subsection (5)(a) or (b) lodges timeously with the Provincial Mining Director the written objection referred to in proviso (ii) to that subsection, and the Director then accepts the objection to be justified,

the Director shall proceed as if he or she had not invited the holder to lodge such objection, and no record of it is required to be made in the provisional register;

- (b) if the holder of the registered mining location in the case of an application referred to in subsection (5)(a) or (b) fails to lodge timeously with the Provincial Mining Director the written objection referred to in proviso (ii) to that subsection, it shall be taken that the holder has abandoned the application to register the site or sites applied for, but the holder is not prevented from making a fresh application under subsection (5)(a) or (b); 5
- (c) if the holder of the registered mining location or the occupier of the affected land fail to attend at the meeting referred to in subsection (5)(c) (ii), the Director may proceed in the absence of either or both to grant or refuse the application for the registration of the site or sites applied for and, if the application is granted make the relevant recommendations in accordance with subsection (8); 10 15
- (d) the applicable rules set out in the Third Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD at the meeting referred to in subsection (5) (c) (ii);
- (e) at the conclusion of the meeting referred to in subsection (5)(c)(ii) the PMD may, in the presence of the parties (if any) at the meeting— 20
 - (i) provisionally approve the application of the holder of the mining location or property concerned without amendment (in effect, recommend that the Mining Cadastre Registrar finally registers the site without amendment); or
 - (ii) provisionally approve the application of the holder of the mining location or property concerned subject to a defined reduction in the area of the site originally applied for (in effect, recommend that the Mining Cadastre Registrar finally registers the site subject to the amendment); or 25
 - (iii) provisionally reject the application of the holder of the mining location or property concerned (either on the merits of the application or because the PMD is for any reason unable to make a decision on the basis of the evidence presented to him or her): 30

Provided that the PMD may defer making a decision under this paragraph by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it, to the applicant and the occupier, and post a copy of the decision and the reasons for it on the public notice board of the Director’s office; 35

- (f) as soon as possible after the conclusion of the meeting referred to in subsection (5)(c)(ii) the PMD shall make a written summary of the proceedings of the meeting in the form of a report to the Mining Cadastre Registrar together with his or her recommendation to the Mining Cadastre Registrar to give or refuse final approval for the registration of the site (but if the PMD provisionally rejected the application otherwise than on its merits, the PMD must expressly request the Mining Cadastre Registrar to make the appropriate decision on the basis of any additional information that may be made available to the Mining Cadastre Registrar): 40 45

Provided that if any recommendation is adverse to the applicant the PMD must avail a copy of the report incorporating the recommendation to the applicant concerned to afford an opportunity no later than 48 hours after such report is availed to him or her to make a written response to the same not exceeding two thousand words, which response shall be annexed to the report of the PMD that is transmitted in terms of subsection (8). 50

(7) If the Provincial Mining Director has provisionally granted the application of the holder of the registered mining location to register a site in terms of subsection (5) (a) or (b) or subsection (6)(e) (i) or (ii), the holder—

- 5 (a) may peg the site or sites in question without, however, engaging in any works not strictly relevant to the pegging itself, until final approval for the registration of the site or sites in question is granted under this section; and
- 10 (b) in pegging a site, must ensure that the position of all the points of intersection of the boundary lines, which shall be straight lines, shall be established by pegs, lettered in consecutive alphabetical order commencing with the letter A, and bear the word “site” and the registered number of the mining location in respect of which such site is pegged, and must ensure that no ground not open to prospecting shall be included within such boundaries:

15 Provided that in no case shall the distance between two adjacent pegs on the same boundary line exceed three hundred metres.

(8) No site or sites shall be finally registered under this section until the following steps are completed—

- 20 (a) the Provincial Mining Director shall, in the case of an application of the type referred to in subsection (5)(a) or (b) where the site or sites do not exceed twenty hectares in extent, transmit all the following particulars of the provisional registration to the Mining Cadastre Registrar within seven working days of the provisional registration—
 - 25 (i) a map to the scale of at least 1: 50 000 showing the co-ordinates of the temporary beacons of the site or sites in question; and
 - (ii) a copy of the occupier’s affidavit; and
 - (iii) the provisional registration number assigned to the site or sites;
- 30 (b) the Provincial Mining Director, in the case of an application of the type referred to in subsection (5)(a) or (b) where the site or sites exceed twenty hectares in extent, transmit all the particulars of the provisional registration referred to paragraph (a) (i) to (iii), to the Mining Cadastre Registrar within seven working days of the provisional registration, together with the reasons furnished to the Director by the applicant justifying the excess hectarage;
- 35 (c) the Provincial Mining Director, in the case of an application of the type referred to in subsection (5)(a) or (b) where the Director has refused provisional registration or refused it because the applicant objected to the conditions for its registration, transmit all the following particulars to the Mining Cadastre Registrar within seven working days of the conclusion of the meeting referred to in subsection (5)(c)(ii)A—
 - 40 (i) all the documentation supporting the application referred to paragraph (a) (i) to (iii); and
 - (ii) the notice of the PMD’s decision referred to in subsection (6)(e); and
 - 45 (iii) the report to the Mining Cadastre Registrar referred to in subsection (6)(f); and
 - (iv) if, as a result of the meeting referred to in subsection (5)(c)(ii)A. the PMD provisionally approved the application, the provisional registration number assigned to the site or sites;
- (d) the Provincial Mining Director, in the case of an application of the type referred to in subsection (5)(c) where the occupier has withheld his or her

- consent to the pegging of the site in question, transmit all the following particulars to the Mining Cadastre Registrar within seven working days of the conclusion of the meeting referred to in subsection (5)(c)(ii)A —
- (i) all the documentation supporting the application referred to paragraph (a) (i) to (iii); and 5
 - (ii) the notice of the 's decision referred to in subsection (6)(e); and
 - (iii) the report to the Mining Cadastre Registrar referred to in subsection (6)(f); and
 - (iv) if, as a result of the meeting referred to in subsection (5)(c)(ii)A, the PMD provisionally approved the application, the provisional registration number assigned to the site or sites; 10
- (e) upon transmission of the particulars referred to in paragraph (a), (b), (c) or (d), the Mining Cadastre Registrar may, if he or she is of the opinion that the transmitted particulars are —
- (i) in order, consider whether to accept or reject the final registration of the site or sites in question, that is to say — 15
 - A. if the Mining Cadastre Registrar accepts the final registration of the site or sites, enter the relevant particulars concerning the site or sites in the Mining Cadastre Register and confirm in writing to the PMD that the site or sites have been finally registered, subject to subsection (9); 20
 - B. if Mining Cadastre Registrar rejects the final registration of the site, transmit the reasons for such rejection to the PMD concerned, subject to subsection (11); 25
 - (ii) not in order or incomplete or inadequate^{3/4}
 - A. request through the PMD further information or request an adjustment to the particulars transmitted by the PMD (which adjustment may include a reduction in the area of the site or sites applied for), before making a decision in accordance with subparagraph (i); and 30
 - B. upon satisfactory compliance with such request, proceed in accordance with paragraph (i)A;
- (f) upon receiving from the Mining Cadastre Registrar —
- (i) confirmation of the final registration of a site or sites in accordance with paragraph (e)(i)A, the PMD shall notify the applicant for the site or sites to apply for a certificate of registration under subsection (9); or 35
 - (ii) rejection of the final registration of a site or sites in accordance with paragraph (e)(i)B, the PMD shall notify the applicant for the site or sites of the Mining Cadastre Registrar's reasons for the rejection of the application; or 40
 - (iii) a request for further information or a request for an adjustment of the particulars transmitted by the PMD, the PMD shall —
 - A. if he or she is able to comply with the request without the need to involve the applicant, transmit the information or effect the adjustment and transmit it to the Mining Cadastre Registrar forthwith; or 45
 - B. if he or she is not so able as contemplated in subparagraph A, communicate the request to the applicant forthwith: 50

Provided that if, within 14 days of being notified of such request, the applicant fails to comply with the request, the applicant shall be deemed to have abandoned the application for the site.

(9) Upon receiving from the PMD notice of the final registration of the site, the applicant for the site must apply to the PMD for a certificate of final registration in the manner prescribed and on payment of the prescribed fee, no later than 31 days of the receipt of such notice or no later than any extension of that period not exceeding a further 30 days that the PMD may grant for any good and sufficient reason shown to the PMD (and if such applicant fails to apply for a final certificate of registration within such period or extended period, the applicant shall be deemed to have abandoned such site).

(10) The PMD shall enter in his or her —

- (a) final register the fact that a final certificate of registration has been issued; or
- (b) defunct register the fact that the site applied for has been abandoned due to the operation of the proviso to subsection (8)(f) (iii) B or of subsection (9);

and shall forthwith notify the Mining Cadastre Registrar of such registration or abandonment, as the case may be.

(11) Any person who is aggrieved by a decision of the Mining Cadastre Registrar under this section, that is to say any holder of a registered mining location or property who applied for the registration of a site, or other existing or potential small-scale or other miner having a demonstrable interest in the issue of such registration, or any occupier of any land affected by such registration, may seek a review of such decision by the Administrative Court within 30 days of the decision of the Registrar being communicated to the PMD.

(12) Upon a review of the Mining Cadastre Registrar's decision the Administrative Court may —

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

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

- (c) if the application for review is made at the instance of an aggrieved occupier of any land affected by such registration —
 - (i) refer the decision back to the Mining Cadastre Registrar as provided in paragraph (b); or

- (ii) prohibit or cancel the pegging or registration of the site; or
- (iii) order that a lesser area should be pegged or registered; or
- (iv) impose restrictions on the use to which the site may be put; or
- (v) give such other order or direction in the matter as the Court considers just. 5

(13) Upon application made to the PMD the holder of registered mining location may—

- (a) amend the certificate of registration of a block or site;
- (b) obtain a fresh certificate of a site, specifying another mining location in the vicinity as the location for which the site has been registered; 10

whereupon the provisions of this section may shall (except for an application to amend involving the correction of a mere clerical error) apply in the same way as an original application for a site:

Provided that if the effect of an amendment sought by the holder of the location is to reduce the area of a site, the occupier of the affected land shall be deemed for the purposes of subsection (a) and (b) to have consented thereto. 15

56 Registration of independent mine service sites

(1) In this section words that are defined in section 55 (1) shall bear the same meaning when used in this section; additionally—

“cedant” means the miner or landholder referred to in subsection (2)(c) (i) or (ii) 20

“custom milling plant” means any plant for the processing or extraction of gold or gold bullion that is not operated exclusively for the benefit of an operator who mines the gold;

“independent mine service site” or “independent site” means a site for any one or more of the following purposes— 25

- (a) a custom milling plant; or
- (b) a plant for the milling, leaching, sampling, concentrating, reducing, assaying, transporting or dealing in ores, metals or minerals on a scale deemed by the PMD to be significant; or 30
- (c) a plant for the beneficiation of minerals from multiple mining locations; or
- (d) a location whereon heavy plant, machinery and equipment primarily or exclusively for use in mining may be operated for the benefit of mining locations in the vicinity or more remote mining locations; 35

“written authority”, for the purpose of subsection (2)(a)(ii), means a document or affidavit by the land holder permitting the use of his or her land or part thereof described in the document or affidavit to be registered as an independent site in the name of the applicant.

(2) Any person (“applicant”) who— 40

- (a) wishes to establish an independent mine service site on any land—
 - (i) in respect of which a miner has registered a site on it in terms of section 55 (“Registration of dependent mine service sites”) and has ceded that site in writing to the applicant; or
 - (ii) over which a land holder (including the State) has granted a lease or a servitude to the applicant, or given written authority to the applicant to register an independent mine service site; or 45

(iii) open to prospecting of which the applicant is the owner, in the case of private land;

(b) otherwise complies with the conditions for registration as an independent mine service site in terms of paragraph 2 of the Fifth Schedule;

5 may apply to the PMD for the registration of an independent mine service site.

(3) The application referred to in subsection (2) shall be in writing and in the form (if any) prescribed, and shall be accompanied by the prescribed registration fee together with proof satisfactory to the PMD of the cession, lease, servitude or title of, over, or to the land referred to in subsection (2)(a) to be used for the site, and a sketch
10 plan based on a map issued under the authority of the State and of a scale of not less than 1: 50 000 identifying the position of the area applied for, specifying the extent of such area and indicating the co-ordinates of the of the site or sites in question:

15 Provided that if the applicant requires more than twenty hectares for the site or sites applied for, the applicant shall in his or her application give a summary of the reasons why the additional hectarage is required.

(4) The Provincial Mining Director may provisionally permit the applicant to peg the independent site or sites applied for under subsection (5):

Provided that if—

20 (a) the site or sites in question exceed in total twenty hectares, the Provincial Mining Director must additionally be satisfied that the reasons given by the applicant referred to in the proviso to subsection (3) are justified, otherwise the Director may condition the grant of provisional permission upon the applicant producing to the Director a new sketch plan showing the area of the site or sites as reduced in extent to the maximum permissible area of twenty hectares or any lesser area; or

25 (b) the Provincial Mining Director—
(i) refuses provisional registration under this paragraph for any reason, or
30 (ii) conditions the grant of provisional permission in the manner referred to in proviso (a);

35 the Director must notify the applicant and (unless the applicant is the owner of the land in question) the cadant of his or her reasons for so refusing provisional registration or, as the case may be, conditioning the grant of provisional permission in the manner referred to in proviso (i), and must invite by such notice the applicant to lodge a written objection (not exceeding 2 000 words) to such refusal or conditioning within 48 hours of the notification by the Director of such refusal or conditioning;

(5) In amplification or clarification of the provisions of subsection (4) the following provisions are pertinent—

40 (a) if the applicant, in the case of an application referred to in proviso (a) or (b) to subsection (4) or (b), lodges timeously with the Provincial Mining Director the written objection referred to in proviso (b)(ii) to that subsection, and the Director then accepts the objection to be justified, the Director shall proceed as if he or she had not invited the holder to lodge such objection, and no record of it is required to be made in the provisional register;

45 (b) if the applicant, in the case of an application referred to in proviso (a) or (b) to subsection (4) or (b) fails to lodge timeously with the Provincial Mining Director the written objection referred to in proviso (b)(ii) to that subsection, it shall be taken that the applicant has abandoned the

application to register the independent site or sites applied for, but the applicant is not prevented from making a fresh application under subsection (2).

(6) If the Provincial Mining Director has provisionally granted the application to register an independent site in terms of subsection (4), the applicant— 5

- (a) may peg the site or sites in question without, however, engaging in any works not strictly relevant to the pegging itself, until final approval for the registration of the site or sites in question is granted under this section; and
- (b) in pegging a site, must ensure that the position of all the points of intersection of the boundary lines, which shall be straight lines, shall be established by pegs, lettered in consecutive alphabetical order commencing with the letter A, and bear the words “independent site”, and must ensure that no ground not open to prospecting shall be included within such boundaries: 10 15

Provided that in no case shall the distance between two adjacent pegs on the same boundary line exceed three hundred metres.

(7) No site or sites shall be finally registered under this section until the following steps are completed—

- (a) the Provincial Mining Director, in the case of an application for a site or sites that do not exceed twenty hectares in extent, transmit all the following particulars of the provisional registration to the Mining Cadastre Registrar within seven working days of the provisional registration— 20
 - (i) a map to the scale of at least 1: 50 000 showing the co-ordinates of the temporary beacons of the site or sites in question; and 25
 - (ii) proof of the cession, lease, servitude or title of, over, or to the land referred to in subsection (2)(a) (i) or (ii); and
 - (iii) the provisional registration number assigned to the site or sites;
- (b) the Provincial Mining Director, in the case of an application referred to in proviso (a) or (b) to subsection (4) where the site or sites exceed twenty hectares in extent, transmit all the particulars of the provisional registration referred to paragraph (a) (i) to (iii), to the Mining Cadastre Registrar within seven working days of the provisional registration, together with the reasons furnished to the Director by the applicant justifying the excess hectarage; 30 35
- (c) the Provincial Mining Director, in the case of an application of the type referred to in proviso (a) or (b) to subsection (4) where the Director has refused provisional registration or refused it because the applicant objected to the conditions for its registration, transmit all the following particulars to the Mining Cadastre Registrar within seven working days of such refusal or conditioning— 40
 - (i) all the documentation supporting the application referred to paragraph (a) (i) to (iii); and
 - (ii) the reasons for the PMD’s refusal of the application or the reasons for the conditions to it proposed by the PMD; 45
- (d) upon transmission of the particulars referred to in paragraph (a), (b) or (c), the Mining Cadastre Registrar may, if he or she is of the opinion that the transmitted particulars are—
 - (i) in order, consider whether to accept or reject the final registration of the independent site or sites in question, that is to say— 50

- 5
- A. if the Mining Cadastre Registrar accepts the final registration of the site or sites, enter the relevant particulars concerning the site or sites in the Mining Cadastre Register and confirm in writing to the PMD concerned that the site or sites have been finally registered, subject to subsection (9);
 - B. if the Mining Cadastre Registrar rejects the final registration of the site, transmit the reasons for such rejection to the PMD concerned, subject to subsection (10);
- 10
- (ii) not in order or incomplete or inadequate—
 - A. request further information or request an adjustment to the particulars transmitted by the PMD (which adjustment may include a reduction in the area of the site or sites applied for), before making a decision in accordance with subparagraph (i); and
 - 15 B. upon satisfactory compliance with such request, proceed in accordance with paragraph (i);
 - (e) upon receiving from the Mining Cadastre Registrar—
 - 20 (i) confirmation of the final registration of an independent site or sites in accordance with paragraph (d)(i)A, the PMD concerned shall notify the applicant for the site or sites to apply for a certificate of registration under subsection (8):

Provided that the issuance of the certificate is subject to the special conditions specified in the Fifth Schedule;

- 25
- (ii) rejection of the final registration of an independent site or sites in accordance with paragraph (d)(i)B, the PMD concerned shall notify the applicant for the site or sites, of the Mining Cadastre Registrar's reasons for the rejection of the application; and
 - (iii) a request for further information or a request for an adjustment of the particulars transmitted by the PMD concerned, the PMD shall—
 - 30 A. if he or she is able to comply with the request without the need to involve the applicant, transmit the information or effect the adjustment and transmit it to the Mining Cadastre Registrar forthwith; or
 - 35 B. if he or she is not so able as contemplated in subparagraph A, communicate the request to the applicant forthwith:

40

Provided that if, within 14 days of being notified of such request, the applicant fails to comply with the request, or no later than any extension of that period not exceeding a further period of 14 days that the PMD may grant for any good or sufficient reason, the applicant shall be deemed to have abandoned the application for the site;

45

(8) Upon receiving from the PMD notice of the final registration of the site, the applicant for the site must apply to the PMD for a certificate of final registration in the manner prescribed and on payment of the prescribed fee, no later than 31 days of the receipt of such notice or no later than any extension of that period not exceeding a further 30 days that the PMD may grant for any good and sufficient reason (and if such applicant fails to apply for a final certificate of registration within such period or extended period, the applicant shall be deemed to have abandoned such site).

(9) The PMD shall enter in his or her register the fact that—

- (a) a final certificate of registration has been issued; or
- (b) the site applied for has been abandoned due to the operation of subsection (8);

and shall forthwith notify the Mining Cadastre Registrar of such registration or abandonment, as the case may be. 5

(10) Any person who is aggrieved by a decision of the Mining Cadastre Registrar under this section, that is to say any applicant who applied for the registration of an independent site, or an existing or potential small-scale or other miner having a demonstrable interest in the issue of such registration, registration, may seek a review of such decision by the Administrative Court within 30 days of the decision of the Registrar being communicated to the PMD. 10

(11) Upon a review of the Mining Cadastre Registrar’s decision the Administrative Court may—

- (a) uphold the decision of the Mining Cadastre Registrar; or
- (b) refer the decision back to the Mining Cadastre Registrar for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—
 - (i) allowing extraneous or irrelevant considerations to affect the decision; or
 - (ii) failure to take into account relevant considerations in arriving at the decision; or 20
 - (iii) any material mistake of fact or law that tainted the decision; or
 - (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision; or
 - (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision. 25

(12) Upon application made to the PMD the holder of registered independent may—

- (a) amend the certificate of registration of the site ;
- (b) obtain a fresh certificate of the site, specifying another cedant as the holder of the land on which the site has been registered; 30

whereupon the provisions of this section may apply in the same way as an original application for a site:

Provided that if the effect of an amendment sought by the applicant is to reduce the area of a site, the cedant of the affected land shall be deemed for the purposes of subsection (a) and (b) to have consented thereto. 35

57 Dependent mine service sites to be attached to location; changes in status of landholding where independent mine service site located

(1) Every site which is registered with the PMD in terms of **section 55** (“Registration of dependent mine service sites”) shall be deemed to be inalienably attached to the location in respect of which it was pegged, and every transfer, hypothecation, option, abandonment, forfeiture or cancellation affecting such location shall act as a transfer, hypothecation, option, abandonment, forfeiture or cancellation affecting any site attached to such location, and no separate sale, lease, hypothecation or option purporting to affect any site apart from the mining location to which it is attached shall be valid. 40
45

(2) Any order of court affecting any mining location shall be deemed to affect similarly any dependent site attached to such location.

(3) At any time prior to the hypothecation, giving of an option or lease, abandonment, forfeiture or cancellation of a mining location the holder thereof may apply to the PMD for the cancellation of the registration of any dependent site attached thereto, and, on filing with the PMD the certificate of registration of such site, and on
 5 payment of the fee prescribed in section 56, for the simultaneous re-registration thereof under a fresh registered number as attached to any other mining location registered in his or her name in the same vicinity, and upon such re-registration such other mining location shall, for the purposes of subsection (1), be deemed to be the location in respect of which the site was pegged.

10 (4) Notwithstanding any other law, an independent mine service site shall not be affected by any change in the holding of the land upon which such site is located, except to the extent expressly contemplated by the cession, lease, servitude or authority by virtue of which the independent site was established.

58 Cancellation of certificate of registration

15 (1) Subject to subsection (2), the PMD may, notwithstanding **section 54** (“Evidence and priority of mining rights; principle of ‘first come first served; impeachment of title’”)(4), at any time cancel a certificate of registration issued in respect of a claim or group of claims or site if he or she is satisfied that—

- 20 (a) at the time when such claim or group of claims or site was pegged it was situated on ground reserved against prospecting and pegging under **section 35** (“Ground not open to prospecting”) or **42** (“Reservations against prospecting and pegging”) or on ground not open to pegging in terms of subsection (3) of **section 194** (“Abandonment of unregistered locations”); or
- 25 (b) provisions of this Act relating to the method of pegging a claim or group of claims or site were not substantially complied with in respect of such claim or group of claims or site.

(2) At least thirty days before cancelling a certificate of registration the PMD under subsection (1) shall give notice to the holder of the claim or group of claims
 30 or site of his or her intention to cancel such certificate and of the grounds for such cancellation and of the proposed date of such cancellation, and shall at the same time inform the holder that he or she may, at any time before that date, appeal in terms of this section.

(3) If before the end of the period of notice referred to in subsection (2) the
 35 holder of the claim or group of claims or site objects to the cancellation the holder must furnish the two copies of a written objection (not exceeding 2000 words) of the reasons why the cancellation should not be made, and where—

- 40 (a) the holder of the claim or group of claims or site concerned lodges timeously with the PMD the written objection and the PMD acknowledges in writing to the holder that the objection is justified, the PMD shall desist from cancelling the certificate of registration concerned; or
- 45 (b) the holder of the claim or group of claims or site concerned fails to lodge timeously with the PMD the written objection, the PMD is entitled to assume that the holder has consented to the cancellation and shall forthwith transmit his or her recommendation to cancel the certificate on these grounds to the to the Mining Cadastre Registrar; or
- 50 (c) the holder of the claim or group of claims or site concerned lodges timeously with the PMD the written objection, the PMD shall forthwith transmit the objection to the Mining Cadastre Registrar together with his or her recommendations thereon.

(4) Upon receiving of the recommendations, objection or both referred to in subsection (3) (b) or (c) the Mining Cadastre Registrar shall consider whether to cancel or not to cancel registration, that is to say—

- (a) if he or she accepts the PMD’s recommendation to cancel the registration, make the appropriate entry in the Register cancelling the registration; 5
- (b) if he or she rejects the PMD’s recommendation to cancel the registration, transmit the reasons for such rejection to the PMD concerned,

for which purpose the Mining Cadastre Registrar may request further information from the PMD before re making a decision

(5) Upon receiving from the Mining Cadastre Registrar confirmation of the cancellation of registration, the PMD concerned shall notify the holder and post a notice of the cancellation on the notice board whereon notices of forfeiture are posted at the PMD’s office: 10

Provided that the holder concerned may, within 14 days of being notified of such cancellation, appeal to the Minister against such cancellation, for which purpose the appellant must— 15

- (a) lodge (together with the prescribed fee, if any) the appeal with the PMD in writing for onward transmission to the Mining Cadastre Registrar; and
- (b) incorporate in the appeal grounds justifying why the Mining Cadastre Registrar’s decision should be set aside and what decision ought to be substituted for it; 20

and thereupon the Mining Cadastre Registrar shall, without delay, transmit the appeal to the Minister together with the written decision of the Mining Cadastre Registrar on the subject-matter of the appeal.

(6) Upon receiving an appeal, the Minister may — 25

- (a) dismiss the appeal by upholding the decision of the Mining Cadastre Registrar; or
- (b) refer the decision back to the Mining Cadastre Registrar for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the Registrar to investigate the matter further and make a report and recommendations) on any one or more of the following grounds— 30
 - (i) allowing extraneous or irrelevant considerations to affect the decision, or
 - (ii) failure to take into account relevant considerations in arriving at the decision, or 35
 - (iii) any material mistake of fact or law that tainted the decision; or
 - (iv) gross but unwilful irregularity in the proceedings or the decision;

(the Minister shall, upon receiving the report or recommendations resulting from the Registrar’s reconsideration, make a decision in accordance with paragraph (a) or (c); or 40

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

Provided that the Minister shall not make a finding on this ground without affording the Mining Cadastre Registrar an opportunity to respond to the proposed finding. 45

(7) Any person aggrieved by a decision of the Minister under subsection (6)(a) or (c), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the appellant, whereupon the Court may do any of the things the Minister is empowered to do under subsection (6) (a). (b) or (c).

5 (8) The taking of a decision on appeal or review under subsection (3) or (7) shall not suspend the decision concerned until it is determined under this section.

59 Excess areas pegged

(1) If at any time the PMD has reason to believe that the number of claims **or areas** in any block exceeds the number registered in such block, he or she may cause
10 the boundaries of such block to be surveyed by a mining surveyor or land surveyor.

(2) If the number of claims in such block is found on such survey to exceed the number registered as aforesaid, the holder thereof shall be liable to pay to the PMD the cost of such survey, in addition to any amount which he or she may be liable to pay under this section.

15 (3) If at any time after the registration thereof it is found that the number of claims in a block pegged and registered under one prospecting licence or other authority exceeds the number of claims registered in such block, the PMD shall notify the holder thereof.

(4) The holder referred to in subsection (3) shall, within thirty-one days of a date
20 to be fixed by the PMD in such notice, forward to the PMD a certificate of registration of such block, together with a prescribed fee for each claim or portion of a claim in excess of the number of claims originally registered in such block.

(5) Upon receipt of the certificate of registration and the prescribed fee, the PMD shall register such excess claims as part of the original block and shall endorse
25 upon the certificate of registration of such block the number of the excess claims so registered and the date of registration:

Provided that if the addition of the excess claims will result in the bloc concerned exceeding ten contiguous claims, the claim or so many of the claims as will cause that result must be registered as a separate block;

30 Provided further that if the number of contiguous blocs registered as result of applying the foregoing proviso exceeds three such blocs, the holder must within 60 days of being notified of that fact apply for an ordinary mining lease under Part IV.

(6) Notwithstanding subsections (1) and (3) the PMD may authorise the holder
35 of any group of contiguous mining locations, after a survey thereof has been made by a land or mine surveyor, to adjust the beacons of blocks within the outside boundaries of such group of mining locations, and thereupon fees in respect of excess claims shall only be payable on the excess claims existing after the adjustment of the internal beacons of the mining locations within the area:

40 Provided that no additional ground outside the boundary of the area originally pegged shall be included in any adjustment of beacons, nor shall the total area originally pegged be reduced.

(7) The powers of the PMD under this section can be exercised in the first instance by the Mining Cadastre Registrar on notice to the PMD concerned.

45 (8) Where the powers under this section are exercised in the first instance by the PMD, the PMD shall—

(a) before taking any action under this section, transmit a report to the Mining Cadastre Registrar stating all the relevant facts and shall proceed on the

basis of that report unless the Mining Cadastre Registrar earlier notifies any objection, in which event the PMD shall proceed in accordance with any direction the Mining Cadastre Registrar may give him or her;

- (b) after having taken any action under this section the PMD shall make the appropriate adjustments in his or her register and simultaneously notify the Mining Cadastre Registrar accordingly in order to allow the Cadastre Registrar to make the appropriate adjustments in the Mining Cadastre Register. 5

(9) Nothing in this section shall be deemed to relieve any person from liability under this Act to any penalty prescribed for the wilful pegging of a mining location of a larger size than he or she is entitled to or purports to peg. 10

60 Lost certificates of registration

(1) Subject to this section, if the holder of the certificate of registration or of special registration last issued in respect of any mining location has lost or mislaid such certificate, or such certificate has been destroyed he or she may, thirty days after publication in the *Gazette*, in a prescribed form, of notice of his or her intention to do so, apply to the PMD for a duplicate copy thereof. 15

(2) Such holder shall furnish the PMD with his or her application to the PMD, (together with proof of the publication in the *Gazette* referred to in subsection (1)) a solemn declaration which, shall state— 20

- (a) the fact and if known to the holder, the circumstances of the loss or destruction of the certificate or that the same has been mislaid; and
- (b) that he or she has not delivered or pledged the certificate to any person either as security for money advanced to or owing by him or her or otherwise; and 25
- (c) that he or she is of right entitled to the mining location mentioned in the certificate of which a duplicate is required; and
- (d) in the case where there are two or more joint holders of the certificate, the names of all the joint holders on the certificate.

(3) On receipt of such application and such solemn declaration the PMD shall, if he or she is satisfied that no good reason to the contrary exists, transmit the particulars of the same to the Cadastre Registrar without delay and if the Mining Cadastre Registrar makes no objection thereto within seven working days, issue a duplicate copy of such certificate to the applicant on payment of the prescribed fee. 30

(4) A duplicate copy of a certificate issued in terms of this section shall supersede and take the place of the original. 35

61 Address to be given to PMD

(1) Every holder of a mining location on registration of such location in his or her name at the office of the PMD and every lessee and assignee of such holder shall furnish such PMD with an address within Zimbabwe at which all notices, orders or other processes shall be served by the PMD or other officer duly appointed for the purposes of this Act, and any such holder, lessee or assignee may at any time change such address by registering at the office of such PMD any other address within Zimbabwe. 40

(2) Service of any such notice, order or other process at such registered address shall be deemed to have the same effect as personal service. 45

(3) In default of any address being registered as by this section required, the posting in the office of the PMD of any such notice, order or other process shall be deemed to have the same effect as personal service.

(4) The PMD shall without delay communicate to the Mining Cadastre Registrar the particulars of any address and any change thereof required to be furnished under this section.

5 (5) Nothing in this section contained shall be construed so as to preclude the High Court from giving such directions with regard to service as to it seem proper or expedient.

62 Obligations of joint holders of mining locations

(1) No more than six persons shall be registered as the joint holders of a mining location that is to say—

10 (a) any combination of companies, cooperatives, private business corporations or individuals not exceeding six may jointly hold a mining location:

15 Provided that a trust shall not be regarded as a person distinct from the settlor of the trust for the purposes of this paragraph, and any rights or obligations attaching to the trustee or trustees of the trust as a holder of a mining location shall be regarded as the rights and obligations of the settlor of the trust regardless of the terms of the trust deed;

(b) a partnership shall not be treated as a single person for the purposes of this section but no partnership shall be registered as the holder of a mining location if it exceeds six partners;

20 (c) no syndicate or joint venture or other combinations of persons by whatever name called (in this paragraph called an “association”) of which—

25 (i) a company or a cooperative or a private business corporation (hereafter in this paragraph called a “corporate person”) is a member shall be treated as a single person, but each such company, cooperative or private business corporation shall be treated as a separate holder of the mining location, and accordingly no such association may exceed six members;

30 (ii) one or more corporate persons and one or more individuals are members, shall be treated as a single person but each corporate member and each individual member shall be treated as a separate holder of the mining location, and accordingly no such association may exceed six members;

35 (iii) one or more partnerships are members shall be treated as a single person, but each partnership and each of its partners shall be jointly and severally liable for the purposes of this section, and no such partnership or combination of partnerships may be the holder of a mining location if the combined number of partners exceeds partners.

(2) When two or more persons are registered as the joint holders of a mining location, each and every such person--

40 (a) shall be jointly and severally responsible for every obligation and liability attaching to the registered holder of such location;

(b) no such joint registration shall be registered except upon production of the following documents—

45 (i) a document giving the name address and particulars of the agent referred to in subsection (3);

50 (ii) a document specifying clearly and unambiguously the method by which any joint member and the accredited agent shall be removed or substituted to the satisfaction of the PMD (in a case where the application or interpretation of such document involves the question of the removal or substitution of a joint member, the PMD shall be

entitled to require a court order to be produced to him or her bearing on the question of such removal or substitution).

(3) Every partnership or corporate person which is the holder of a mining location whether alone or jointly with others, shall at the time of registration register at the office of the PMD the name of an accredited agent residing in Zimbabwe, and such agent shall, when registered, be personally responsible under this Act for all matters, acts and omissions in connection with such location in the same manner as if such location were registered in his or her name as his or her own property: 5

Provided that—

- (a) for the avoidance of doubt it is declared that this subsection does not bestow on the agent any greater mandate than is allowed by the common law of agency; 10
- (b) an association referred to in paragraph (2)(c) shall be treated as a single partnership or corporate person for the purposes of this subsection;

(4) If such partnership or corporate person at any time revokes the registration of any such accredited agent, it shall register some other person as its accredited agent under subsection (3). 15

(5) A registered accredited agent may at any time resign his or her appointment as such by giving notice in writing to the PMD, but such resignation shall not take effect until the expiration of forty-eight hours after the receipt of such notice by the PMD. 20

(6) Where a registered accredited agent has resigned, the partnership or corporate person concerned shall, within forty-eight hours after receipt of notice from the PMD of the fact of such resignation, register some other person as its accredited agent.

(7) Subsections (3), (4) and (6) shall apply to every partnership or corporate person which is working a mining location under tribute or option: 25

Provided that the time of registration shall be within two weeks of the start of such working.

(8) Nothing in this section shall be taken in any way to relieve a corporate person or the members of a partnership of any liability incurred or any duty imposed under this Act in regard to any mining location held by such corporate person or such partnership. 30

63 Cancellation of certificate of registration without abandonment

(1) On application by the holder of any registered mining location, and on the production of the certificate of its registration, the Mining Cadastre Registrar may, at his or her discretion, authorize a PMD to cancel such certificate of registration of such location without abandonment or forfeiture of such location, and cause to be issued to the said holder at one and the same time a fresh certificate or certificates of registration of the whole or any portion or portions of such location which have been previously beaoned off within such location in the manner prescribed in this Act, assigning to such certificate or certificates fresh registered numbers. 35 40

(2) The said holder shall pay to the PMD the prescribed fee for each such fresh certificate.

(3) Within a period of seven days from the date of issue of such fresh certificate or certificates, or within such period as the PMD may fix, the holder of such location shall remove all the beacons of the original mining location not used for the beaconing of the new portion or portions, and on the beacons of the new portion or portions shall 45

replace the registered number originally assigned to such location by the new registered number assigned to such portion or portions.

PART VI

PROSPECTING AND PEGGING ON GROUND RESERVED AGAINST PROSPECTING AND PEGGING

5 **64 Interpretation in Part VI**

In this Part—

“lands Minister” means the Minister responsible for the Land Commission Act [Chapter]

10 “order” means an order made under section 72 (“Applications and reviews”) by consent of the parties or by the Administrative Court or the Supreme Court;

“owner” —

15 (a) in relation to State land, means the Minister responsible for the administration of such land;

 (b) in relation to alienated or partially alienated land means the holder of an offer letter, 99 year lease or permit in relation to that land, issued by the lands Minister;

 (c) in relation to any other land means private land;

20 “reserved ground” means land upon which a prospector is prohibited in terms of section 35(1) (a) and (g) from exercising any of his or her rights under his or her prospecting licence without the consent in writing of the owner of the land, but does not include that portion of such land which lies within two hundred and twenty-five metres of the site of the principal homestead mentioned in paragraph (a)(i) of that subsection.

25 **65 Application for authority to prospect on reserved ground**

(1) Any person may make a written application to the Board for authority to prospect on reserved ground after having failed to obtain the necessary consent thereto under section 35.

(2) The applicant shall furnish to the Board—

30 (a) full details of that portion of the reserved ground on which authority to prospect is sought, together with a plan thereof prepared by a mine or land surveyor; and

 (b) the reasons why he or she thinks that such reserved ground may warrant the granting of the authority; and

35 (c) full information as to his or her financial status; and

 (d) any other information relative to the application which may be required of him or her by the Board.

(3) On receipt of the application by the Board—

40 (a) the chairperson of the Board may issue a direction to the PMD to reserve the ground to which the application relates against prospecting and pegging in terms of section 42 (“Reservations against prospecting and pegging”), and the PMD shall, without obtaining the authority of the Minister, forthwith reserve such ground accordingly;

 (b) the Board may refuse the application or approve it provisionally.

45 **66 Procedure on provisional approval**

(1) If the Board provisionally approves such application it shall—

- (a) unless the chairperson of the Board has issued a direction to the PMD under section 65 (3)(a) itself issue such a direction, and the PMD shall comply therewith; and
- (b) after the PMD has reserved the ground in accordance with a direction given under section 64(3)(a) or paragraph (a), notify the owner and the occupier, if any, of the reserved ground, of the application and require them to inform the Board in writing within thirty days of such notification whether they object to the grant of the application. 5

(2) Notification in terms of subsection (1)(b) shall be given in any of the ways specified in section 5 (“Manner of giving notices and serving documents under this Act”) to the owner and the occupier, if any. 10

67 Grant or refusal of application

(1) If an owner or occupier of reserved ground informs the Board that he or she has objections to the grant of the application, the Board shall, on a day fixed by it and notified to the applicant and the objector, hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the application. 15

- (2) The Board shall proceed with the consideration of the application if—
 - (a) no notification of objection to the grant of the application has been received from the owner or the occupier; or
 - (b) the whereabouts of the owner or occupier are unknown to the Board after diligent inquiry, and after publication of the application in the *Gazette* for two consecutive weeks. 20

68 Board’s powers in regard to application for authority to prospect

(1) The Board may, after holding a hearing in terms of subsection 67 (1) or considering the application in terms of subsection (2) of that section— 25

- (a) grant authority to the applicant to prospect on such ground in such manner and by such means and for such period as shall be specified by the Board in such authority, if the Board is satisfied—
 - (i) that the applicant’s financial status is such that he or she will be able to pay any sum which may become payable by him or her under section 77 (“Compensation”) or 79 (“Compulsory acquisition of land by holder of an authority or order”) as a result of the exercise of his rights under such authority; and 30
 - (ii) that minerals are likely to occur within the area to which the application relates; and 35
 - (iii) that little or no interference with the rights of the owner or occupier of the ground will result from such prospecting; or
- (b) refuse the application.

- (2) Before granting any such authority, the Board—
 - (a) shall consult the Environment Management Agency; 40
 - (b) may, and, if so required by the owner or the occupier of any of the reserved ground, shall, require the applicant to furnish a guarantee satisfactory to the Board for the payment of the sum mentioned in subsection (1)(a)(i).

(3) The Board may attach to an authority such conditions as it may think fit.

69 Extension and amendment of authority granted under section 68 45

(1) The holder of an authority granted under **section 68** may, at any time before the expiry of the period for which the authority was granted, make written application to the Board—

- (a) for an extension of the period for which the authority was granted;
- (b) for the amendment of the authority in respect of the manner in or means by which the prospecting operations are to be carried out.

5 (2) On receipt of such application the Board shall notify the owner and the occupier, if any, of the reserved ground of such application and require them to inform the Board in writing within thirty days of such notification whether they object to the grant of the application, and section 66 (“Procedure on provisional approval”)(2) shall apply, with necessary changes, in respect of such notification.

10 (3) Sections 67 and 68 shall apply, with necessary changes, in respect of such application.

(4) The holder of an authority in respect of which an extension of the period has been granted under this section may, in like manner and subject to the like conditions, from time to time apply for and be granted an extension or amendment of the authority.

70 Board may authorize more extensive prospecting operations

15 (1) Where, on the written application of the holder of an authority granted under section 68 (“Board’s powers in regard to application for authority to prospect”) made before the date on which the reservation in respect of the reserved ground is withdrawn by the PMD under section 78 (“Withdrawal of reservation”), the Board is satisfied that, having regard to the results of the prospecting operations carried out on the reserved
20 ground under the authority, such a course is justified, it may, after consultation with the owner and the occupier, if any, of such ground, grant authority for the conduct of such more extensive prospecting operations on such ground as shall be specified by the Board and in such manner and by such means and during such period as the Board may specify.

25 (2) Section 68(2) shall apply, with necessary changes, in respect of such authority.

(3) The Board may attach to an authority such conditions as it may think fit.

(4) It shall be a condition of every authority granted under this section and of every extension thereof that the holder of the authority shall conduct prospecting
30 operations progressively inwards from the perimeter of the reserved ground in such manner as the Board shall specify in the authority, but the Board may grant exemption from such a condition if it is satisfied that the proper prospecting of the area would be unduly impeded thereby.

71 Extension and amendment of authority granted under section 70

35 (1) The holder of an authority granted under section 70 may, at any time before the expiry of the period for which the authority was granted, make written application to the Board—

- (a) for an extension of the period for which the authority was granted;
- (b) for the amendment of the authority in respect of the manner in or means
40 by which the prospecting operations are to be carried out.

(2) The Board may, after consultation with the owner and the occupier, if any, of the reserved ground, refuse such application or grant it subject to such conditions and for such period as it may think fit.

45 (3) Section 68(2) shall apply, with necessary changes, in respect of such authority.

(4) The holder of an authority in respect of which an extension of the period has been granted under this section may, in like manner and subject to the like conditions, from time to time apply for and be granted an extension or amendment of the authority.

72 Applications and reviews

(1) The holder of an authority granted under section 68 or 70 may, at any time before the date on which the reservation in respect of the reserved ground is withdrawn by the PMD under section 78, in writing request the Board to recommend to the Administrative Court that an order be made by that Court authorizing the acquisition by him or her of mining title in such form and to or in respect of so much of the reserved ground as shall be specified in such request. 5
10

(2) On receipt of the request, the Board shall—

- (a) if it is not satisfied that, having regard to the results of prospecting operations carried out under the authority, a deposit of minerals exists which is economic or likely to prove economic, refuse the request; or
- (b) if it is so satisfied, refer the matter to the Administrative Court, together with its recommendation that mining title be granted, as to the form of such title, the area to be covered by such title and the conditions to be attached to such title, and as to any other matter which to it may seem relevant: 15

Provided that where the owner and the occupier, if any, of the reserved ground have agreed in writing that the Board should itself issue the order and such agreement has been lodged with the Board, the Board shall not refer the matter to the Administrative Court and may itself issue an order for the grant of mining title in such form as it may determine and subject to such terms and conditions as may have been agreed upon by the parties and notified to the Board and such additional terms and conditions as the Board may determine. 20
25

(3) Where a matter has been referred to the Administrative Court under subsection (2)(b), the Court shall, on a day fixed by it and notified in writing by any of the means specified in its rules to the person seeking the order and the owner and the occupier, if any, of the reserved ground concerned, hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the order. 30

(4) Subject to subsection (3), the Administrative Court may grant or refuse to grant an order.

(5) The Administrative Court shall not grant an order—

- (a) unless it is satisfied that the national interest would be better served by the ground in respect of which the order is sought being used for mining purposes than by its being used for agricultural purposes; 35
- (b) unless, if the owner or occupier of the reserved ground concerned has so required, the person seeking the order has furnished a guarantee satisfactory to the Court for the payment of any sum which may become payable by him or her under the provisions of this Part by way of compensation or in respect of the acquisition by him or her of the reserved ground or of the holding of which the reserved ground forms a part. 40

(6) The Administrative Court may, in granting an order, attach thereto such conditions as to it may seem necessary or desirable, and shall attach a condition as to the period within which the rights under the order may be exercised. 45

(7) The registrar of the Administrative Court shall, in any manner prescribed by its rules, send a copy of the order to the owner and the occupier, if any, of the reserved ground to which the order relates, to the person in whose favour it is made, to the PMD and to the Board. 50

(8) There shall be no appeal against the grant or refusal by the Board of an application for an authority under section 68 or 70 or for the extension or amendment of an authority under section 69 or 71 or the refusal of the Board to recommend a request for an order under subsection (1) or (2).

5 (9) Any person who is aggrieved by a decision of the Administrative Court on a matter referred to it under this section may, within thirty days of such decision, seek a review of the Administrative Court's decision by the Supreme Court.

(10) Upon an appeal of the Administrative Court's decision the Supreme Court may—

- 10 (a) uphold the decision of the Administrative Court; or
- (b) refer the decision back to the Administrative Court for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—
- 15 (i) allowing extraneous or irrelevant considerations to affect the decision;
- (ii) failure to take into account relevant considerations in arriving at the decision;
- (iii) any material mistake of fact or law that tainted the decision;
- (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision;
- 20 (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;
- (c) if the application for review is made at the instance of an aggrieved owner or occupier of any land affected by such registration—
- 25 (i) refer the decision back to the Administrative Court as provided in paragraph (b); or
- (ii) prohibit or cancel the pegging or registration of the site; or
- (iii) order that a lesser area should be pegged or registered; or
- (iv) impose restrictions on the use to which the site may be put; or
- 30 (v) give such other order or direction in the matter as the Court considers just.

73 Authority or order may not be ceded; registration thereof

(1) The holder of an authority granted under this Part or of an order shall without delay register it in the Mining Cadastre Registry on payment of the prescribed fee (whereupon the Mining Cadastre Registrar shall notify the appropriate PMD to enable the latter to make the appropriate adjustment in his or her final register).

35

(2) The rights granted under an authority granted under this Part or an order shall be personal to the holder thereof who may not cede or assign any such rights to any other person:

40 Provided that the rights granted under an order may be ceded or assigned with the permission in writing of the owner of the reserved ground or on the authority of the Administrative Court.

74 Rights of holders of authorities and orders

(1) The person to whom an authority is granted under this Part shall, subject to the terms and conditions of such authority and in terms of this Act, and notwithstanding the reservation of the ground on a direction given under this Part, have the sole and exclusive right of prospecting on the reserved ground to which such authority relates.

45

(2) The person in whose favour an order is made shall, subject to the terms and conditions of such order and in terms of this Act, and notwithstanding the reservation of the ground on a direction given under this Part, have the sole and exclusive right of pegging and registering mining locations on or acquiring mining leases in respect of the reserved ground to which such order relates. 5

75 Revocation of authority or order

(1) If the person to whom an authority has been granted under this Part or the holder of an order fails to comply with any of the terms and conditions attached to such authority or order, as the case may be, the owner or occupier of the affected land may apply to the PMD under section 263 (“PMD may grant interdicts”) for an interdict in terms of that section as if the owner or occupier is a person legally interested in the mining location concerned. 10

(2) Where a person to whom such authority has been granted fails to comply with the terms and conditions thereof, the Board may, in addition, revoke the authority.

(3) Where the holder of an order fails to comply with the terms and conditions thereof, the Administrative Court may, in addition, revoke the order and may direct the Board to declare any mining location registered by virtue of such order and held by such holder to be forfeited, and the shall, whether or not such mining location is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part XI, comply with such direction. 15
20

76 Approval of transfer of mining location subjected to authority or order

(1) A mining location which has been registered on reserved ground under an order may not, as long as the ground remains reserved be transferred except to a person approved of by the Board, after consultation with the owner and the occupier, if any, of such reserved ground. 25

(2) The Board shall not approve of the transfer of such a mining location to any person unless he or she has furnished a guarantee satisfactory to the Board for the payment of such sum as is mentioned in section 72 (“Applications and reviews”) (5) (b) and the Board is satisfied that the holder of such location has paid all compensation and other moneys payable by him in terms of the order by virtue of which the location was pegged and registered or in terms of this Part. 30

(3) The terms and conditions of every order which relates to mining on reserved ground shall be binding on any person to whom a mining location registered under such order is transferred and on any miner thereof.

(4) Without derogating from section 75 (“Revocation of authority or order”) (1), if any person referred to in subsection (3) fails to comply with any such terms or conditions, the Board may forthwith direct the PMD to declare such mining location forfeited, and the PMD shall, whether or not such mining location is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part XI (“Preservation of Mining Rights”), comply with such direction. 35
40

77 Compensation under Part VI

Any owner or occupier of reserved ground who is injuriously affected by the exercise of any rights under an authority or order granted under this Part or by any mining operation on any mining location registered under such order shall be entitled to recover compensation from the person to whom the authority was granted or in whose favour the order was made or the holder of the mining location, as the case may be, in such amount as may be agreed upon or, failing such agreement, as shall be determined by the Administrative Court. 45

78 Withdrawal of reservation

The Board shall, if it is satisfied that the reservation of any ground made under section 42 (“Reservations against prospecting and pegging”) in consequence of a direction given under section 65 (“Application for authority to prospect on reserved ground”)(3)(a) or section 66 (“Procedure on provisional approval”)(1)(a) is no longer
5 necessary, direct the PMD to withdraw such reservation, and the PMD shall comply with such direction.

79 Compulsory acquisition of land by holder of an authority or order

(1) Where an authority has been granted under this Part in respect of reserved ground mentioned in section 35(1)(a) (i) or (ii) or an order has been granted in respect
10 of any reserved ground, the owner of such reserved ground may, subject to this section, apply to the High Court for an order compelling the holder of such authority or order, as the case may be, to acquire by purchase, exchange or otherwise the whole or a portion of the holding of which such reserved ground forms a part.

(2) At least thirty days before making such application, the owner of the reserved
15 ground shall by any of the means specified in section 5 (“Manner of giving notices and serving documents under this Act”) give notice in writing to the holder of the authority or order, as the case may be, of his or her intention to make such application.

(3) Notwithstanding section 81 (“Relinquishment of rights under an authority or order”), the holder of an authority or order, as the case may be, to whom notice has
20 been given under subsection (2), may not after the expiry of a period of twenty-one days from the date of the receipt by him or her of such notice and until the High Court has disposed of the application or the application has been withdrawn, relinquish his or her rights under such authority or order, as the case may be.

(4) On an application made under this section, the High Court may refuse the
25 order applied for or may grant it if the Court is satisfied that—

- (a) the holder of the authority or order, as the case may be, is not precluded by the provisions of the Constitution or any enactment from owning such land or receiving any other form of title over or in respect of such land; and
- 30 (b) the exercise by the holder of the authority or order, as the case may be, of the rights granted thereunder has resulted or is likely to result in such interference with the rights of the owner or occupier of the reserved ground as will render such ground or the holding of which such ground forms a part unsuitable, as far as such owner or occupier is concerned, for the
35 purpose for which it was being used or was *bona fide* intended to be used immediately before the date of the making of the application to that Court and where such application is for an order compelling the acquisition of the whole of the holding or a portion thereof by an exchange of land, or partly by an exchange of land and partly by some other means, and the
40 land required to be given in exchange for such holding or portion thereof is State land, the Court may make its order conditional upon such land being made available by the President for the purposes of such exchange.

(5) In deciding whether to grant or refuse the order applied for, the Court shall
45 have regard to the stage which the prospecting operations of the holder of the authority or order, as the case may be, have reached at the time of the application and the extent to which minerals are present on the land and the economic possibilities of such minerals.

(6) If the High Court grants the order it shall determine the price to be paid or other consideration to be given for the reserved ground, having regard to the matters set out in section 80 (“Factors to be considered in fixing price”).

(7) The costs of both parties to an application under this section shall be borne by the holder of the authority or order, as the case may be:

Provided that the High Court may make such order as to costs as to it seems just if the Court is of the opinion—

- (a) that the applicant has unreasonably refused a fair offer for the acquisition of the holding concerned or portion thereof by such holder; or 5
- (b) that the application is vexatious or frivolous.

(8) Where the owner of the reserved ground and the holder of the authority or order, as the case may be, have agreed in writing, the application mentioned in subsection (1) may be made to the Administrative Court, and in that event subsections (2) to (7) shall apply, with necessary changes, to and in respect of any such application. 10

(9) Any person who is aggrieved by the decision of the Administrative Court on an application made to it under subsection (8) may appeal against that decision to the Supreme Court.

80 Factors to be considered in fixing price 15

Where a Court grants an order under section 79 (“Compulsory acquisition of land by holder of an authority or order”) it shall, in determining the price to be paid or other consideration to be given for the land by the holder of the authority or order, as the case may be, make due allowance for—

- (a) the value of any improvements on and development of the land; 20
- (b) the possible loss of profits over the period of three years next succeeding the date of the application for such order;
- (c) the depreciation, if any, in the value of that portion of the holding which is not the subject of such order;
- (d) the expense or loss, other than loss of profits, caused to the owner by the grant of the authority or order; 25
- (e) any other loss directly or indirectly caused by the grant of the authority or order or the exercise of any right granted thereunder;

but no account shall be taken of any minerals which have been or may be discovered on such land. 30

81 Relinquishment of rights under an authority or order

(1) Save as otherwise provided in section 79 (“Compulsory acquisition of land by holder of an authority or order”), the holder of an authority or order granted under this Part may at any time give notice in writing to the owner or occupier of the reserved ground to which such authority or order, as the case may be, relates of his or her intention to relinquish his or her rights under such authority or order, as the case may be, and shall lodge a copy of such notice with the Board. 35

(2) The rights of such holder under the authority or order, as the case may be, shall cease with effect from the time and date of the lodging of such notice with the Board. 40

(3) Nothing in this section contained shall affect the right of the owner or the occupier, if any, of the reserved ground to claim compensation from the holder of the authority or order, as the case may be, in respect of damage arising from anything done by the holder before the date of such relinquishment.

82 Board’s authority required for acquisition of mining title in certain circumstances 45

(1) Where the Board has made a recommendation under section 72 (“Applications and reviews”) (1), it shall not be competent, except with the authority of

the Board, for any person other than the person at whose request that recommendation was made to peg and register a mining location or to be granted a mining lease on or in respect of the whole or any portion of the ground to which such recommendation relates, within a period of seven years from the date of such recommendation.

5 (2) The Board may, in granting such authority, attach thereto such conditions as it thinks fit, including a condition as to the reimbursement of the person at whose request the recommendation was made in respect of any expenditure incurred by him or her in connection with or arising out of operations conducted by him or her on the reserved ground concerned and as to the payment to him or her of such reward for any
10 discovery made by him or her as the Board considers just.

83 Applications of sections 79 and 80 to partially alienated land

(1) Subject to this section, sections 79 (“Compulsory acquisition of land by holder of an authority or order”) and 80 (“Factors to be considered in fixing price”) shall apply to land referred to paragraph (b) of the definition of owner in this Part.

15 (2) For the purposes of this section, in section 79—

(a) the reference in subsection (1) to the owner of reserved ground is a reference to the holder of alienated or partially alienated land:

Provided that such holder shall first seek the consent of the lands Ministry to apply to the High Court for the order there mentioned, which consent shall
20 not be unreasonably withheld.

(b) the nature of the title which the holder may compel the authority holder to acquire is the offer letter, lease or permit, as the case may be, held by the holder, suitably amended to permit the holder of the authority to exercise mining rights in relation to any part of the land to which the offer letter,
25 lease or permit relates:

Provided that if the authority holder at any time abandons any rights under the authority or the rights thereunder are forfeited or cancelled, the rights shall revert automatically to the lands Ministry without any compensation being payable to the authority holder;

30 (c) it shall be presumed for the purposes of section 79(4)(a) that the holder of the authority or order is not precluded by the Constitution or any enactment from holding such land under an offer letter, lease or permit if the lands Ministry has given consent thereto under the proviso to paragraph (a).

(3) For the purposes of this section, in section 80, the High Court SHALL, in
35 determining the price to be paid or other consideration to be given for the land by the holder of the authority or order, as the case may be, make due allowance for the factors referred to in paragraphs (a), (b), (C), (d), (e) and in addition the Court shall order the reimbursement to the holder of not more than three preceding years’ worth of rentals paid in respect of the holding of the land under the offer letter, lease or permit.

40 (4) Any rentals that were previously payable to the lands Ministry in respect of the holding of land under an offer letter, lease or permit that is required by this section to be acquired and transferred to the holder of an order or authority shall continue to be payable by that holder to the lands Ministry.

PART VII

45 EXCLUSIVE EXPLORATION LICENCE

84 Interpretation in Part VII

In this Part—

“application” means an application made under section 85(1) for an exclusive exploration licence, and “applicant” shall be construed accordingly;

“licensee” means the person in whose favour an exclusive exploration licence has been issued;

“programme” means the programme of operations mentioned in section 97 (“Programmes of work to be submitted by licensee”); 5

“reservation” means the area embraced by an exclusive exploration licence.

85 Application for EEL

(1) Any person may apply to the Board, in writing, for an exclusive exploration licence over a defined area in Zimbabwe, including an area reserved under section 42 (“Reservations against prospecting and pegging”). 10

(2) An applicant shall—

(a) pay the prescribed application fee to the Mining Cadastre Registrar; and

(b) furnish the Board with such information as to—

(i) his or her financial status; and 15

(ii) the minerals which he or she wishes to explore; and

(iii) the nature and extent of the exploration operations he or she intends to carry out within the exclusive exploration reservation and any measures to mitigate any environmental damage (hereinafter called “the prospectus”, a copy of which must be served on the Director General of the Environmental Management Agency) ; and 20

(iv) any other matter as may be prescribed.

(3) On receipt of an application the Board shall—

(a) publish, at the applicant’s expense, a notice in the *Gazette* and in a newspaper circulating in the area concerned, giving details of the application and inviting objections to it to be lodged within 21 days from date of such publication; and 25

(b) if in any application authorisation is sought to explore on any registered block within the proposed exclusive exploration reservation, give written notice to every registered holder of the block. 30

(4) The Board shall without delay inform the applicant of the essence of any objections lodged in response to a notice published in terms of subsection (3)(a).

(5) The chairperson of the Board may provisionally approve an application before it is considered by the Board and, if he or she does so, he or she shall issue a direction to the PMD to reserve the area embraced by the application against prospecting and pegging in terms of section 42 (“Reservations against prospecting and pegging”), and the PMD, without obtaining the authority of the Minister, shall forthwith reserve such area accordingly. 35

(6) A reservation under subsection (5) shall simultaneously be recorded in the Mining Cadastre Register. 40

86 Hearing of application by Board

On a date, at a time and place notified in writing to—

(a) the applicant; and

(b) any person who lodged objections in response to the notice published in terms of section 85(3)(a); 45

the Board shall hear such evidence and arguments as those persons may wish to lay before it regarding the grant or refusal of the application:

Provided that if no such objections have been lodged, the Board shall consider the merits of the application before making recommendations.

87 Board's recommendation regarding application

(1) If, after considering an application, the Board is satisfied that—

- 5 (a) the applicant is a fit and proper person and has the resources to undertake operations under an exclusive exploration licence; and
- (b) it would not be against the national interest to issue the applicant with the exclusive exploration licence sought;

10 the Board may, subject to this Part, recommend to the Minister the issue of an exclusive exploration licence to the applicant over such area and subject to such terms and conditions as the Board may recommend.

(2) Terms and conditions recommended by the Board under subsection (1) may include conditions requiring the applicant—

- 15 (a) to furnish guarantees to the Minister's satisfaction that his or her obligations under the licence will be discharged;
- (b) to abandon a portion of the exclusive exploration reservation within such period as may be specified in the licence.

(3) If the Board is not satisfied that an applicant meets the requirements of subsection (1), it shall reject the application and shall notify the applicant accordingly.

20 (4) Where the Board has rejected the application of an exclusive exploration licence, any reservation made in terms of section 85(5) shall be deemed to have been withdrawn by the PMD with effect from the date of rejection.

88 Issue of EEL

25 (1) Where the Board recommends the issue of an exclusive exploration licence, the Board shall submit the application to the Minister without delay, together with all relevant supporting documents and the Board's written report and recommendation.

30 (2) On receipt of documents and other material in terms of subsection (1), the Minister shall submit them to the President, who may decline the application in the national interest or authorise the issue of an exclusive exploration licence in terms of the Board's recommendation or on such amended terms and conditions as the President may consider appropriate.

(3) Where the President has authorised the issue of an exclusive exploration licence, the Minister shall—

- 35 (a) on receipt of proof of payment of the prescribed issuance fee; and
- (b) on being notified that a copy of the prospectus, and if appropriate, the EIA which he or he is required to submit to the Director General of the Environmental Management Agency in terms of XI of the Environmental Management Act [*Chapter 20:27*] has been submitted:

40 without delay, make an order in favour of the applicant which shall be in accordance with the terms and conditions fixed by the President and which shall specify the date from which the rights granted thereunder may be exercised and the date upon which the exercise of those rights shall cease.

(4) Every order—

- 45 (a) shall be published in the *Gazette* and a copy of such order shall be sent to the applicant, to the Board and to the PMD of the mining province in which the reservation is situated; and

- (b) be entered in the Mining Cadastre Register and in the appropriate register of the PMD concerned.

(5) Where an order is made any reservation of the ground made in accordance with a direction given under section 85(5) shall be deemed to have been withdrawn by the PMD in all respects as if he or she had posted a notice of such withdrawal under that section at six o'clock in the morning on the day specified in the order as being the date from which the rights granted thereunder may be exercised. 5

89 Form and duration of EEL

- (1) An exclusive exploration licence shall specify —
- (a) the area of the exclusive exploration reservation; and 10
 - (b) the minerals for which the licensee may prospect; and
 - (c) the period of validity of the licence; and
 - (d) the conditions under which the licence is issued.

(2) Subject to section 90 (“Conditions for renewal of EEL”) an exclusive exploration licence shall not be issued for more than three years, but the President, may extend it for two further periods not exceeding three years each. 15

(3) The holder of an exclusive exploration licence wishing to renew that licence under section 90 shall lodge an application therefor as if it was an original application, and sections 85 and 88 shall apply thereto:

Provided that if the application is lodged no later than six months before the expiry of the exclusive exploration licence the holder will be entitled to exercise all the rights under the original exclusive exploration licence up to the date when the President authorises or refuses to authorise the issuance of the new exclusive exploration licence even though the original exclusive exploration licence had expired. 20

(4) The Minister shall ensure that, as soon as practicable after he or she has issued an exclusive exploration licence — 25

- (a) the licence is published in the *Gazette* at the expense of the licensee; and
- (b) a copy of the licence is sent to the licensee, the Board, the Mining Cadastre Registrar and the PMD concerned.

90 Conditions for renewal of EEL 30

On an application for renewal of an exclusive exploration licence (in addition to the considerations that the Board must take into account when considering an original application), the applicant must—

- (a) surrender not less than fifty *per centum* of the area of the original exclusive exploration licence and furnish the Board with a map showing the coordinates of the remaining area covered by the EEL together with a written abandonment report, that is to say a report giving reasons why the area concerned is being surrendered, and a summary of the exploration work and other work undertaken in relation to that area that led to such decision; and 35 40
- (b) undertake to surrender at the end of each period of 12 months during the subsistence of the renewed EEL a further fifty *per centum* of the area of the renewed EEL and furnish to the Board no later than three months after the end of each such period a map showing the coordinates of the remaining area covered by the EEL together with an abandonment report as described in paragraph (a); 45

and upon any failure to comply with this section, the Board shall (in the case of a failure to comply with paragraph (a)) reject the application or (in the case of a failure to comply with paragraph (b)), cancel the EEL.

91 Limitation of area of reservation

(1) Subject to subsection (5), no reservation shall exceed sixty-five thousand hectares irrespective of the nature of the mineral being sought.

(2) Notwithstanding subsection (1), no exclusive exploration licence shall be granted in respect of an area which is less than four thousand hectares.

(3) A reservation may exceed the maximum area specified in subsection (1), if the Board, having due regard to—

- (a) the particular suitability of the applicant and his or her financial and operational capacity to fulfill the obligations under and within the period of the exclusive exploration licence recommended by the Board in relation to the minerals specified therein; and
- (b) the geographical situation of the area and the nature and extent of previous and current prospecting and mining activity therein; and
- (c) the absence of and the need for geological mapping, geophysical and geochemical investigations and other relative geological detail in respect of the area;

recommends that the reservation should exceed the said maximum area.

(4) An exclusive exploration licence may require a licensee—

- (a) to furnish guarantees to the Minister to his or her satisfaction that the obligations of the holder under the exclusive exploration licence will be discharged;
- (b) to abandon a portion or portions of the reservation within such period or periods as are specified in the exclusive exploration licence.

(5) Nothing contained in this section shall be deemed to prohibit the fixing of additional terms and conditions under an exclusive exploration licence.

92 Rights of licensee regarding exploration and pegging

(1) Subject to such terms and conditions as may be prescribed in the exclusive exploration licence, an exclusive exploration licence may authorise the licensee to prospect on all registered base mineral blocks or specified registered base mineral blocks that are not being worked for two years or more when the licensee applied for the EEL, even if in respect of which there is in force an inspection certificate on the date of the lodging of the application for the licence.

(2) Subject to this section and to the terms and conditions of his or her exclusive exploration licence, a licensee—

- (a) shall have the exclusive right of exploration and pegging with a view to being issued with a registering mining locations within the exclusive exploration reservation; and
- (b) may be issued with a special grant in respect of coal, mineral oils, nuclear energy sources or natural gases within the exclusive exploration reservation;

and no other person may prospect, peg or register a mining location therein, or be issued with such a special grant:

(3) Where under an exclusive prospecting licence issued before the date of commencement of an exclusive exploration licence, a prospector is entitled to prospect and peg within an area situated in the exclusive exploration reservation, the licensee shall not explore or peg within that area except with the prospector's consent, which consent shall not be unreasonably withheld.

(4) The Minister, on the recommendation of the Board and with the consent of the licensee, which consent shall not be unreasonably withheld, may authorise any person to peg and register a mining location within an exclusive exploration reservation for a mineral other than a mineral for which the licensee is authorised to explore:

Provided that—

- (a) no person shall peg and register more than three mining locations under such an authority;
- (b) the licensee shall retain his or her right to explore over any mining location pegged and registered under such an authority.

(5) The rights set out in subsections (1) and (2) shall be exercised only by an approved staking agent and where such licensee is not an approved staking agent they shall be exercised only through an approved staking agent whom the licensee has appointed in writing to be his or her representative.

(6) Except as otherwise provided in this Act, the issue of an exclusive exploration licence shall not affect the rights of the holder of a mining location within the exclusive exploration reservation.

(7) Any—

- (a) holder of a registered mining location who, except in the *bona fide* exercise of his or her rights, hinders or obstructs a licensee in the exercise of any rights to explore the mining location;
- (b) licensee who unlawfully hinders or obstructs the holder of a registered mining location in the exercise of his or her rights;

shall be guilty of an offence and liable to a fine not exceeding level 6 or, in default of payment, to imprisonment for a period not exceeding twelve months.

93 Right of licensee to take water

Subject to this Act and the Water Act [Chapter 20:24] and to the terms and conditions of the licence, a licensee shall, when *bona fide* exercising any of the rights conferred by his or her exclusive exploration licence, have the right to take for primary purposes, any water from land in the exclusive exploration reservation which is not closed to prospecting in terms of section 35 or 42, but only in so far as such taking does not interfere with the use of the water for primary purposes by the owner or occupier of the land.

94 Right of licensee to erect and remove temporary buildings and structures

(1) Subject to this section and to the terms and conditions of the licence, a licensee shall, when *bona fide* exercising the rights conferred by his or her exclusive exploration licence, have the right—

- (a) to erect, on land in the exclusive exploration reservation which is open to prospecting, temporary accommodation for himself or herself and for his or her employees, and temporary buildings or machinery for the purposes of their work;

Provided that this paragraph shall not confer any right, title or interest in the land upon which any such accommodation, buildings or machinery have been erected;

- (b) to remove, within three months or such longer period as may be determined by the PMD after the expiration or revocation of the licence, any accommodation, buildings or machinery which have been erected under paragraph (a).

(2) A licensee who accommodates employees on occupied land situated within his or her exclusive exploration reservation for longer than seven days shall forthwith give the occupier of the land written notice of that fact, describing the site of the accommodation.

5 (3) If—

(a) an occupier of land to whom notice has been given in terms of subsection (2) objects to the site chosen to accommodate the licensee’s employees; and

10 (b) the occupier and the licensee are unable to reach agreement on any such objection;

the licensee may, within seven days after receiving the notice or after such longer period as the PMD may allow, refer the matter to the PMD in the following way—

15 (c) by transmitting to the PMD a duplicate notice of referral in any of the ways specified in section 5 (“Manner of giving notices and serving documents under this Act”);

(d) by furnishing to the PMD a duplicate written memorandum (not exceeding 2 000 words) giving the reasons why the employees in question ought to be accommodated in the area chosen by the licensee.

20 (4) Upon receipt by the PMD of the documentation referred to in subsection (3) (a) and (b) the PMD must serve one copy of the memorandum of the licensee on the occupier of the land affected, together with a written notice (a copy of which must be simultaneously served on the licensee) of a meeting to be held before the PMD at the time and venue notified (not being more than seven working days after the service of the notice), at which meeting the PMD shall receive oral and written representations
25 on the question where to accommodate the employees in question.

(5) If —

30 (a) the licensee or both the licensee and the occupier concerned fail to attend at the meeting the PMD shall deem that the licensee waived his or her right to accommodate his or her employees on the land in question;

(b) the occupier of the affected land fails to attend the meeting, the PMD may proceed to consider the merits of the reference and make such decision on the matter as he or she deems just and fair;

35 (6) At the meeting the PMD shall follow the applicable rules set out in the Third Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”).

(7) At the conclusion of the meeting the PMD may make any of the following decisions (which decisions shall be reduced to writing and communicated to the parties without delay together with reasons therefor)—

40 (a) make a decision in accordance with the request of the licensee embodied in his or her memorandum; or

(b) make a decision in accordance with the suggestion if any of the occupier of the land on the question where to accommodate the employees of the licensee;

(c) make his or her own decision on the same question; or

45 (d) dismiss the referral and forbid the employees of the licensee to be accommodated in the land in question;

Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and

the reasons for it, to the licensee and the occupier in any of the ways contemplated by section 5, and post a copy of the decision and the reasons for it on the public notice board of the Director’s office.

(8) Any person aggrieved by the decision of PMD in terms of subsection (7) may appeal against the decision to the Administrative Court. 5

(9) Upon an appeal the Administrative Court may —

- (a) uphold the decision of the PMD; or
- (b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds— 10

- (i) allowing extraneous or irrelevant considerations to affect the decision,
- (ii) failure to take into account relevant considerations in arriving at the decision,
- (iii) any material mistake of fact or law that tainted the decision; 15
- (iv) gross irregularity in the proceedings of the PMD .

(c) if the court finds after affording the PMD opportunity to respond, that there was interest in the cause, bias, malice or corruption on the part of PMD, substitute its own decision on the matter for that of the PMD.

95 Right of licensee to take wood and timber 20

(1) Subject to this section and the Forestry Act [*Chapter 19:05*] and to the terms and conditions of the licence, a licensee shall, when *bona fide* exercising the rights conferred by his or her exclusive exploration licence, have the right to take and use, for firewood or for any purposes connected with exploration operations, any indigenous wood or timber from land in the exclusive exploration reservation which is open to prospecting and which is neither Communal Land nor land in regard to which a reservation has been made in terms of section 43 (“Reservation of timber on application by landholders and RDCs”) or 45 (“Reservation of timber on instruction of Minister”). 25

(2) Before taking indigenous wood or timber from alienated or partially alienated land in terms of subsection (1), a licensee shall give written notice— 30

- (a) if the land is occupied, to the occupier of the land,
- (b) if the land is unoccupied, to the owner;

and thereafter the licensee and the occupier or owner may agree as to the area and period within which wood or timber may be taken, the quantity and kinds of wood or timber to be taken , the price to be paid for it and any other terms and conditions relating to the taking of wood or timber; 35

(3) A licensee shall not permit any person other than a employee to cut , transport, burn any or wood or timber in terms of subsection (1) without first giving the occupier, if any , of the land on which the the wood or timber is situated the right to do so on terms and conditions mutually agreed upon. 40

(4) If the occupier and the licensee are unable to reach agreement on the matters referred to in subsection (2) and (3) within 14 days of the giving of the notice referred to in subsection(2) the licensee may (if the licensee wishes to exercise any rights in terms of this section) refer the matter to the PMD— 45

- (a) by transmitting to the PMD a duplicate notice of referral in any of the ways specified in section 5; and

(b) by furnishing to the PMD a duplicate written memorandum (not exceeding 2000 words) giving the reasons why he or she should exercise the rights as specified in the notice referred to in subsection (2);

(5) Upon receipt by the PMD of the documentation referred to in subsection (4)
 5 (a) and (b) the PMD must serve one copy of the memorandum of the licensee on the occupier of the land affected, together with a written notice (a copy of which must be simultaneously served on the licensee) of a meeting to be held before the PMD at the time and venue notified (not being more than seven working days after the service of the notice), at which meeting the PMD shall receive oral and written representations on
 10 the question whether and to what extent the licensee should exercise the rights specified in the notice referred to in subsection (2)

(6) If —

(a) the licensee or both the licensee and the occupier concerned fail to attend at the meeting the PMD shall deem that the licensee has waived his or
 15 her rights specified in the notice referred to in subsection (2);

(b) the occupier of the affected land fails to attend the meeting, the PMD may proceed to consider the merits of the reference and make such decision on the matter as he or she deems just and fair:

20 Provided that the PMD shall not award to the licensee any rights in excess of those sought by the licensee made in a notice in terms of subsection (2).

(7) At the meeting the PMD shall follow the applicable rules set out in the Third Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”).

25 (8) At the conclusion of the meeting the PMD may, make any of the following decisions (which decision must be reduced to writing and communicated to the parties without delay together with the reasons therefor)—

(a) make a decision in accordance with the request of the licensee embodied in his or her memorandum; or

30 (b) make a decision in accordance with the suggestion, if any, of the occupier of the land on the question whether and to what extent and subject to what conditions the licensee should exercise the rights specified in the notice referred to in subsection (2);

(c) make his or her own decision on the same question (subject to the proviso to subsection (5)(b)); or

35 (d) dismiss the referral and forbid the licensee to exercise any rights under this section:

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

(9) Any person aggrieved by the decision of PMD in terms of subsection (7) may appeal against the decision to the Administrative Court.

(10) Upon an appeal the Administrative Court may —

45 (a) uphold the decision of the PMD; or

(b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—

- (i) allowing extraneous or irrelevant considerations to affect the decision,
- (ii) failure to take into account relevant considerations in arriving at the decision,
- (iii) any material mistake of fact or law that tainted the decision; 5
- (iv) gross irregularity in the proceedings of the PMD .

if the court finds after affording the PMD opportunity to respond (in writing ,in person or through his or her legal representative), that there was interest in the cause, bias, malice or corruption on the part of PMD, substitute its own decision on the matter for that of the PMD: 10

Provided that if the decision of the Administrative Court is in favour of the licensee, it shall award greater rights than what the licensee sought in a notice referred in subsection (2).

96 Prohibition against sale, transfer, cession and assignment of EEL

(1) The rights and obligations granted under an exclusive exploration licence shall be personal to the licensee, who may not, except with the Minister’s written permission given in terms of subsection (2), sell, cede, assign or transfer any of those rights to any other person. 15

(2) The Minister may, on the recommendation of the Board and on such terms and conditions as the Board may recommend, which conditions the Minister may vary, permit a licensee to sell, cede, assign or transfer any of his or her rights and obligations to another person subject to payment of a prescribed fee. 20

(3) Any sale, transfer, cession or assignment of an exclusive exploration in contravention of this section shall be invalid and the Minister shall on receiving proof of any such transaction direct the Board to cancel the licence, and the Mining Cadastre Registrar and the PMD concerned shall make the appropriate adjustments to their registers. 25

97 Programmes of work to be submitted by licensee

(1) At least once every six months from the commencement of an exclusive exploration licence, the licensee shall submit to the Board for its approval a programme of the exploration operations which will be carried out in the exclusive exploration reservation during the next six months. 30

(2) Programmes submitted in terms of subsection (1) shall contain particulars of the licensee’s exploration operations during the period in question, and the estimated cost of those operations. 35

(3) The Board shall without delay consider every programme submitted to it in terms of subsection (1), and—

- (a) if satisfied that the programme makes provision for the proper exploration of the reservation and that the estimated expenditure is consistent with the programme, the Board shall approve it; 40
- (b) if not so satisfied, the Board shall reject the programme.

(4) If a licensee fails to submit a programme in terms of subsection (1), or if a programme submitted does not satisfy the Board it shall by written notice require the licensee to submit a programme or an amended programme, as the case may be, within such period, being not more than thirty days, as the Board shall specify in the notice.

(5) If at the end of the period specified in the notice in terms of this subsection (4), the licensee has not submitted a programme satisfactory to the Board or furnished 45

compelling reasons to the Board why such programme cannot be timeously submitted, the Board shall inform the Minister and the Minister shall revoke the licence, whereupon and the Cadastre Registrar and the PMD concerned shall make the appropriate adjustments to their registers.

5 **98 Licensee to carry out work in accordance with programme, and to report thereon**

(1) A licensee shall carry out every programme of exploration operations approved by the Board under section 97 within the period covered by the programme, and within thirty days after the expiry of the period shall submit for the approval of the Board a written report on the work that was carried out during that period, including
10 particulars of the expenditure incurred in the carrying out of the work.

(2) The report referred to in subsection (1) shall include any information of a geological nature, including logs and assay results of drill cores from surface diamond drill holes, and reports on any geological, geochemical and geophysical work, obtained
15 by the licensee in the course of his or her exploration (which information the PMD shall communicate to the Director of Geological Survey.)

(3) In addition to the reports referred to in subsection (1), a licensee shall submit to the Board such further reports as the Board may reasonably require in order to satisfy itself that the terms and conditions of the exclusive exploration licence are
20 being complied with.

(4) If a licensee fails to submit a report in terms of subsection (1) or (2), or submits a report for the purpose of either of those subsections that is inadequate or incomplete or, incorrect in any material particular the Board shall notify him or her, in writing, that no report has been received or that the report is inadequate or incomplete
25 or, incorrect or false in any material particular, as the case may be.

(5) If a licensee fails to satisfy the Board that there are good reasons for the delay in reporting under subsection (1) or (2) (which delay must be rectified by submitting, no later than the notification period in terms of subsection (3), an adequate or incomplete or, incorrect or false report) or if a licensee fails to make good any inadequate or
30 incomplete or, incorrect or false particular within the notification period, the Board must recommend to the Minister that the exclusive exploration licence be revoked.

(6) Where the Board has recommended in terms of subsection (4) that a licence be revoked, the Minister must either revoke the licence where revocation is recommended;

35 **99 Fees payable by licensee**

(1) For each year or part thereof during which an exclusive exploration licence subsists, the licensee shall pay the Cadastre Registrar a fee, calculated in the prescribed manner by reference to the area of the exclusive exploration reservation (but excluding
40 any area surrendered by the licensee on or before the date of payment of the fee), the minerals for which the licensee may explore and the duration of the licence.

(2) The fee referred to in subsection (1) shall be paid at such times as may be prescribed.

100 Failure to comply conditions attaching to licence

If, after due investigation, the Board is satisfied that a licensee has failed to comply with a material term or condition of his or her exclusive exploration licence—

45 (a) the Board shall notify the licensee of that fact, in writing, and call upon the licensee to remedy the failure within a reasonable period specified by the Board in the notification; and

- (b) if the Board is not satisfied that the failure has been adequately remedied within the period specified in terms of paragraph (a), the Board shall inform the Minister, and the Minister shall without delay revoke the licence:

Provided that before making such a recommendation, the Board shall afford the licensee an adequate opportunity to make representations in the matter within seven days of such notification. 5

101 Amendment of EEL

(1) A licensee may—

- (a) apply to the Board for the inclusion of an additional area in his or her exclusive exploration reservation: 10

Provided that such an application shall not be made before the licensee’s first programme has been approved in terms of section 97 (“Programmes of work to be submitted by licensee”);

- (b) at any time apply to the Board for the inclusion of an additional mineral in his or her exclusive exploration licence. 15

(2) In making an application in terms of subsection (1), the licensee shall state why the additional area or additional mineral should be included in the exclusive exploration licence, and if it is as a result of a discovery of an unlicensed mineral, or the additional discovery of a licensed mineral, he or she shall furnish full particulars of the nature of the mineral so discovered and the circumstances of its discovery. 20

(3) Sections 87, 88, 89 and 90 shall apply, with any necessary changes, to an application in terms of subsection (1).

(4) Where an exclusive exploration licence is amended in terms of this section, the licensee shall— 25

- (a) pay the Mining Cadastre Registrar a prescribed amendment fee; and
- (b) submit, within such period as the Board may specify, an amended programme of operations to be carried out in the exclusive exploration reservation as so amended, and thereafter sections 98 and 100 shall apply with any necessary changes. 30

102 Abandonment of exclusive exploration reservation

(1) This section does not apply to the surrender by the licensee of any area of the EEL in terms of section 90 (“Conditions for renewal of EEL”) (if such surrender does not result in the area of the reservation to be retained by him or her being divided into separate portions or being less than the minimum area specified in section 90) but in that event, notice of such surrender must be made in writing to the Board without delay. 35

(2) At any time before the Board has approved the second programme mentioned in section 101, the licensee may, subject to subsection (3), by written notice to the Board abandon the whole or a portion of his or her exclusive exploration reservation. 40

(3) A licensee shall not be entitled—

- (a) to give more than one notice in terms of subsection (2); or
- (b) to give notice in terms of subsection (2) in respect of such portions of the exclusive exploration reservation as would result in the area of the reservation to be retained by him or her being divided into separate portions or being less than the minimum area specified in section 93. 45

(4) On receipt of a notice given under subsection (2), the Board shall inform the Minister thereof, and he or she shall—

- (a) in the case of the abandonment of the whole reservation, revoke the licence; or
- 5 (b) in the case of the abandonment of a portion of the reservation, amend the order accordingly if the Board so recommends.

(5) At any time after the Board has approved the second programme mentioned in section 101, the licensee may make a written application to the Board to abandon the whole or a portion (but only if it results in the area of the reservation to be retained by him or her being divided into separate portions or being less than the minimum area specified in section 93) of his or her exclusive exploration reservation.

(6) If, on an application made under subsection (5), the licensee satisfies the Board that—

- 15 (a) he or she has carefully explored the area authorised in his or her exclusive exploration licence or that portion which he or she desires to abandon, as the case may be; and
- (b) an economic deposit of any mineral for which he or she is authorised to explore under the licence is unlikely to be discovered in the area authorised in his or her exclusive exploration licence or that portion which he or she desires to abandon, as the case may be; and
- 20 (c) he or she has complied with all the terms and conditions of his or her licence; and
- (d) he or she has duly carried out the programme last approved by the Board under section 101;

25 the Board may recommend to the Minister that the licence be revoked or amended, as the case may be, and the Minister may revoke or amend the licence accordingly.

(7) If on an application under subsection (5), the Board is not satisfied as to any matter mentioned in subsection (6), it shall refuse the application, and such refusal shall be final.

30 (8) Where an order is revoked or amended by the Board under this Part, the Board shall publish notice thereof in the *Gazette* and the ground shall become open to prospecting and pegging in terms of this Act on the day following the date of such publication.

35 (9) After having taken any action under this section the Board shall notify the PMD and Cadastre Registrar to make the appropriate adjustments in their registers.

103 Plans and reports to be lodged by licensee following expiry or revocation of EEL

(1) Not later than three months after the expiry or revocation of an exclusive exploration licence, the person who was the licensee shall lodge with the Board in triplicate a final report, including plans and other relevant information, with respect to—

- (a) exploration work carried out by the licensee on any mining location within the area authorised in his or her exclusive exploration licence during the currency of the licence; and
- 45 (b) exploration work carried out by the licensee in any area within the area authorised in his or her exclusive exploration licence which has not been registered as a mining location.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

104 Protection of dangerous workings and other environmental rehabilitation

(1) Section 201 (“Open workings to be protected on abandonment, forfeiture or cancellation of location”) shall apply, with any necessary changes, to a licensee or former licensee in respect of shafts, open surface workings and excavations made by him or her in the area authorised in his or her exclusive exploration licence, and for this purpose the date on which the licence expired or was revoked shall be regarded as the date of abandonment of the reservation. 5

(2) In addition to subsection (1) the licensee or former licensee shall carry out on a continuous basis all restorative and other environmental remedial works which it has undertaken in its prospectus and environmental impact assessment to do, and in any event undertake and complete these works no later than three months after the abandonment of the reservation. 10

(3) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment. 15

105 Challenge to validity of EEL, when barred

After twelve months have elapsed since the date of publication in the *Gazette* of a licence, or an amendment of a licence, it shall not be competent for any person to allege that any of the provisions of this Act were not complied with in regard to the issue of the licence or the effecting of the amendment, as the case may be. 20

106 Appeals under Part VII

(1) Any—

(a) applicant who is aggrieved by the Board’s refusal to recommend the issue of an exclusive exploration licence to him or her in terms of **section 87** (“Board’s recommendation regarding application”) or by any term or condition which the Board has recommended should be attached to such a licence to be issued to him or her; or 25

(b) licensee or former licensee who is aggrieved by the amendment or revocation of his or her exclusive exploration licence in terms of this Part; 30

may appeal to the Minister against the decision, for which purpose the appellant must—

(c) lodge (together with the prescribed fee, if any) the appeal in writing with the Secretary, no later than two working days after the appellant has received notification decision to be appealed against; and

(d) incorporate in the appeal grounds justifying why the Board’s decision should be set aside and what decision ought to be substituted for it; 35

and thereupon the Secretary shall, without delay, transmit the appeal to the Minister together with the written decision of the Board on the subject-matter of the appeal.

(2) Upon receiving an appeal, the Minister may —

(a) dismiss the appeal by upholding the decision of the Board; or 40

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

(i) allowing extraneous or irrelevant considerations to affect the decision, or 45

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

(iii) any material mistake of fact or law that tainted the decision; or
 (iv) gross but unwilful irregularity in the proceedings or the decision;
 (the Minister shall, upon receiving the report or recommendations resulting from the Board's reconsideration, make a decision in accordance with paragraph (a), (c) or (d);

5 or

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

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

or

15 (d) dismiss or uphold the appeal and, where necessary, substitute his or her own decision, on the basis of any policy directive previously communicated to the Board by the Minister setting forth the overriding national interest as it affects cases of a like nature to the one being considered by the Board.

(3) Any person aggrieved by a decision of the Minister under subsection (2) (a), (c) or (d), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the appellant, whereupon the court may do any of the things the Minister is empowered to do under subsection (2) (a), (c) or (d), except that with reference to a case decided in accordance with subsection (2)(d) the Court shall satisfy itself that the policy directive there referred to—

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

(4) The taking of a decision on review under subsection (3) shall not suspend the decision sought to be reviewed until the review is determined by the Administrative Court.

107 Exemptions

35 (1) If a licensee satisfies the Board that his or her operations have been or are likely to be restricted or curtailed by abnormal circumstances beyond his control, the Minister may, on the recommendation of the Board, give such directions as he or she considers appropriate for the relief of the licensee from the provisions of this Part.

(2) Directions given in terms of subsection (1) may include provision for—

- 40 (a) where the whole or a portion of the area authorised in the licensee's exclusive exploration licence is abandoned, reserving the area so abandoned against prospecting and pegging pending a return to circumstances permitting normal operations, and granting the licensee a first option in respect of the ground so reserved in respect of any fresh application in terms of this Part on the return of such circumstances;
- 45 (b) the suspension for an appropriate period of the licensee's obligations under this Part and the extension of the exclusive exploration licence for a similar period.

(3) To the extent that any direction given in terms of subsection (1) is inconsistent with any other provision of this Act, the direction shall prevail.

(4) The Minister, on the recommendation of the Board, may at any time amend or revoke a direction given in terms of subsection (1).

(5) Where a direction given has the effect of lengthening the period of the licence in terms of subsection (1), the Minister shall publish notice of it in the *Gazette*: 5

Provided that despite anything in this section no direction or combination of directions shall be given the effect of which is to lengthen the period of a licence to more than double the period of the licence.

PART VIII 10

PEGGING OF UNDERGROUND EXTENSIONS

108 Interpretation in Part VIII

In this Part—

“authorised holder” means a holder in whose favour an order has been made; 15

“holder”, in relation to an underground extension block, means the person in whose name such block is from time to time registered;

“order” means an order issued under this Part authorizing a holder of a registered mining location to peg and register an underground extension;

“owner”, in relation to State land, means the Minister responsible for the administration of such land; 20

“reserved ground” means land upon which a prospector is prohibited in terms of section 35 (“Ground not open to prospecting”) (1) (a), (c), (d), (e), (f) or (g) or section 42 (“Reservations against prospecting and pegging”) from exercising any of his or her rights under his prospecting licence; 25

“underground extension block” means a block which has been pegged and registered under an order.

109 Application for order

(1) If the holder of a registered mining location, other than a site, has reason to believe that a deposit of any mineral occurs underground beneath reserved ground, he or she may make written application to the Board for an order authorizing him or her to peg and register an underground extension block or blocks contiguous to such location. 30

(2) The applicant shall furnish to the Board—

(a) full details of the reserved ground; and 35

(b) the reasons why he or she considers that such reserved ground warrants the granting of the authority; and

(c) the depth from the surface of the ground at which he or she wishes to be authorised to mine such reef; and

(d) full information as to his or her financial status; and 40

(e) any other information required of him or her by the Board.

(3) On receipt of the application by the Board—

(a) the chairperson of the Board may, if the application relates to reserved ground referred to in section 35(1) (a) or (g) issue a direction to the PMD to reserve the ground to which the application relates against prospecting 45

and pegging in terms of section 38 and the PMD shall, without obtaining the authority of the Minister, forthwith reserve such ground accordingly;

- (b) the Board may refuse the application or approve it provisionally.

110 Procedure on provisional approval

- 5 (1) If the Board provisionally approves such application it shall—
 - (a) unless the chairperson of the Board has issued a direction to the PMD under section 109 (“Application for order”) (3)(a) itself issue such a direction, and the PMD shall comply therewith; and
 - 10 (b) after the PMD has reserved the ground in accordance with a direction given under section 109 (3)(a) or paragraph (a), notify the owner and the occupier, if any, of the reserved ground, of the application and require them to lodge, within thirty days of such notification, or such longer period not exceeding sixty days as the Board may, on application made within the period of thirty days, approve, their objections, if any, to the grant of the application.
- 15 (2) Notification in terms of subsection (1)(a) shall be given by posting a registered letter to the owner and the occupier, if any.

111 Grant or refusal of application

- 20 (1) If an owner or occupier of reserved ground lodges objections to the grant of the application, the Board shall on a day fixed by it and notified to the applicant and the objector hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the application.
- 25 (2) If no objection has been received or if no notification was given in terms of section 110 (“Procedure on provisional approval”)(1)(b) owing to the whereabouts of the owner and the occupier, if any, being unknown to the Board, after due inquiry, the Board shall proceed with the consideration of the application.
- 30 (3) After holding a hearing in terms of subsection (1) or considering the application in terms of subsection (2), the Board may refuse the application or, subject to section 112 (“Board to be satisfied on certain points”), grant it, in whole or in part, subject to such terms and conditions as it may fix, including a condition as to the period within which the rights under the order may be exercised.
- (4) If the owner or the occupier of the reserved ground is aggrieved by the grant of the application, he may, within twenty-one days after the Board’s decision, appeal to the Minister in writing against that decision, setting out the grounds of his appeal.
- 35 (5) On any such appeal the Minister may revise or alter the decision of the Board and may revoke the grant of the application or amend the terms and conditions fixed by the Board, and the Minister’s decision shall be final and without appeal.

112 Board to be satisfied on certain points

- The Board shall not grant an order unless it is satisfied—
- 40 (a) that there is reason to believe that the deposit occurs beneath the reserved ground; and
 - (b) that conditions permit of the mining of such reef below the surface without disturbing or detracting from the use or value of the reserved ground; and
 - 45 (c) that the mining of such reef will be carried out without in any way interfering with the rights of the landowner in the reserved ground or causing any foreseeable loss or damage to such landowner; and

- (d) that the financial status of the applicant is such that he will be able to pay any compensation payable under section 118 (“Compensation under Part VIII”).

113 Publication of order

(1) If no appeal is made to the Minister within the prescribed time or, if an appeal is made, on receipt of the Minister’s decision thereon, the Board shall make an order consistent with the terms and conditions fixed by it or the Minister, as the case may be, authorising the applicant to peg and register an underground extension block on the reserved ground. 5

(2) Every order shall be published in the *Gazette* and a copy of the order shall be sent to the applicant and to the PMD of the district in which the reserved ground is situated and to the owner or the occupier of the reserved ground affected by such order. 10

114 Rights of applicant; order may not be ceded

(1) An authorised holder shall, subject to the terms and conditions of the order and in terms of this Act, have the sole and exclusive right of pegging and registering an underground extension block or blocks on the reserved ground: 15

Provided that such authorised holder need not post a prospecting notice or DP peg in terms of this Act.

(2) The rights granted under an order shall be personal to the authorised holder who may not cede or assign any such rights to any other person. 20

115 Approval of transfer of underground extension block

(1) An underground extension block may not be transferred except to a person approved of by the Board.

(2) The Board shall not approve of the transfer of an underground extension block to any person unless it is satisfied that his or her financial status is such that he or she will be able to pay any compensation payable under section 118 and that the existing holder of the block has paid all compensation payable by him or her in terms of that section. 25

116 Forfeiture of underground extension block

(1) The terms and conditions attached to an order shall be binding on every registered holder of an underground extension block. 30

(2) If the holder of an underground extension block fails to comply with such terms and conditions, he shall be guilty of an offence and liable to a fine not exceeding level 6 or, in default of payment, to imprisonment for a period not exceeding twelve months. 35

(3) In addition the Board may direct the PMD to declare the underground extension block to be forfeited and the PMD shall, whether or not such block is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part XI (“Preservation of Mining Rights”), comply with such direction.

117 Indicatory beacons; surface rights abrogated; secondary reefs 40

(1) Notwithstanding anything to the contrary contained in this Act, the PMD may authorise the authorised holder to demarcate his or her underground extension block by indicatory beacons posted off the reserved ground in accordance with regulations.

(2) The holder of an underground extension block may not exercise in respect of such block any of the surface rights mentioned in section 143 (“Surface rights of miners”). 45

(3) The holder of an underground extension block who discovers a secondary reef therein shall notify the Board of such discovery, whereupon the Board may authorise such holder on such terms and conditions as it thinks fit to impose to mine such secondary reef.

5 (4) Such holder shall upon such authorisation register the secondary reef with the PMD in terms of this Act, but shall not post a DP peg or secondary reef registration notice or Q and R pegs.

118 Compensation under Part VIII

10 Any owner or occupier of reserved ground who is injuriously affected by any mining operations carried on any underground extension block shall be entitled to recover compensation from the holder of such block in such amount as may be agreed or, failing agreement, as shall be determined by the Administrative Court.

119 Conversion of underground extension block

15 (1) If the surface of an underground extension block ceases to be reserved ground, the holder of such block shall immediately notify the PMD of the fact, and if the PMD is, after due inquiry, satisfied that such ground is no longer reserved ground, he shall direct such holder to beacon the block in terms of this Act and, if such block has been pegged in irregular form, to erect pegs in terms of 50 (“Pegging of precious metal, precious stones or base mineral claims”) (4).

20 (2) As soon as the holder has complied with the directions of the PMD under subsection (1) the block shall cease to be an underground extension block and shall no longer be held subject to the order under which it was pegged and registered.

PART IX

MINING LEASES

25 120 Interpretation in Part IX

In this Part—

“application” means an application under section 121 (1), (2) or (2) for an ordinary or special mining lease;

30 “applicant”, without qualification, means an ordinary mining lease applicant or special mining lease applicant;

“lessee”, without qualification, means the holder of an ordinary mining lease or a special mining lease;

“ordinary mining lease applicant” means an applicant for a mining lease in the circumstances referred to in section 121(1);

35 “special mining lease applicant” means an applicant for a mining lease in the circumstances referred to in section 121(2);

121 Application for mining lease: preliminary requirements

(1) A person who seeks the registration of—

- 40 (a) four or more contiguous blocks; or
 (b) one or more claims or blocks which, if, registered would result in a person being the holder of four or more contiguous blocks;

shall be deemed to be applying for an ordinary mining lease in respect of the area covered by those blocks:

- (2) The following holders of mining locations namely—
- (a) every such holder whose holding on the date of commencement of this Act consists of four contiguous blocks of claims and any one or more additional and contiguous claims, must make application for an ordinary mining lease under this Part: 5

Provided that every such holder shall have 90 days from such date to lodge an ordinary mining lease application under this section;

- (b) every such holder whose holding, after the date of commencement of this Act—
 - (i) at any time exceeds the maximum holding (that is to say exceeds four contiguous blocks of claims) beyond which the mining locations must be held under title of an ordinary mining lease, must make an application for an ordinary mining lease under this Part within 90 days of his or her; 10
 - (ii) consists of four contiguous blocks of claims but wishes at any time after that date to register one or more additional and contiguous claims to such block of claims, must make an application for a ordinary mining lease comprising the additional claims or blocks under this Part instead of registering the additional claim or block separately; or 15
- (c) every such holder who is not a Zimbabwean small scale miner, whether or not his or her holding after the date of commencement of this Act exceeds the maximum holding (that is to say exceeds four contiguous blocks of claims) beyond which the mining locations must be held under title of an ordinary mining lease, must make application for an ordinary mining lease in respect of his or her claim or contiguous blocks of claims (however few or many such claims or blocs are) under this Part: 20

Provided that only one mining lease shall be issued in respect of any single combination of claims or blocks of claims that are contiguous.

- (3) A holder of one or more mining locations person who is in breach of the requirement to register an ordinary mining lease in terms of subsection (2)(a), (b) or (c) commits a civil default, for which the PMD for the mining province wherein a civil default is committed shall serve upon the defaulter a civil penalty order which— 30

- (a) directs the defaulter—
 - (i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for **level 4**; and 35
 - (ii) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) commence the process of applying for an ordinary mining lease under this Part— 40
- (b) subjects the defaulter to either or both of the following penalties, as may be appropriate—
 - (i) if he or she fails to pay the default fine specified in paragraph (a)(i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 45
 - (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 50

- (4) A person—

- (a) who wishes to carry out mining operations, or any other operations for mining purposes upon a defined area within an area reserved under section 42 (“Reservations against prospecting and pegging”) against prospecting or pegging in the following circumstances—
- 5 (i) under authority to prospect on reserved ground granted in favour of that person; or
- (ii) pursuant to an exclusive exploration licence issued to that person; or
- (iii) pursuant to special grants held by that person;
- 10 must apply in writing to the PMD for a special mining lease in respect of that defined area; or
- (b) who wishes to register one or claims of a block of claims, whether or not exceeding 40 hectares in extent, pursuant to rights conferred by an exclusive prospecting licence, must apply in writing to the PMD for a special mining lease in the following circumstances, namely where —
- 15 (i) he or she is not a citizen of Zimbabwe, or is a company, private business corporation, partnership, syndicate, joint venture or other business entity the majority of whose members are not citizens of Zimbabwe; and
- 20 (ii) he or she does not intend to operate as a small-scale miner, in that he or she is able to satisfy the PMD that—
- A. he or she intends , within the first year of operation—
- I. to employ at any time more than 50 persons (including contractors) for periods (whether continuous or not) exceeding six months in any year; and
- 25 style="padding-left: 4em;">II. to produce more than 1200 tonnes of ore a year;
- or
- B. before commencing mining operations or within the first year of commencing such operations, he or she will invest not less than one hundred thousand United States dollars or its equivalent in any foreign currency.
- 30

(5) No application for an ordinary mining lease shall may be made except by or in the name of, and no special mining lease shall be issued except to

- 35 (a) to an individual, unless he or she is a citizen of Zimbabwe; or
- (b) to a partnership consisting of a majority of whose partners who are citizens or permanent residents of Zimbabwe; or
- (c) to a private company the majority of whose members are citizens or permanent residents of Zimbabwe; or
- (d) a public company incorporated in Zimbabwe:

40 Provided that an ordinary mining lease may be issued to two or more persons jointly if each of them is qualified under this section to be issued with the lease.

(6) No application for a special mining lease shall may be made except by or in the name of, and no special mining lease shall be issued except to, a private company, a public company, a foreign company registered in Zimbabwe or a locally incorporated subsidiary of a foreign company:

45

Provided that a special mining lease may be issued to two or more persons jointly if each of them is qualified under this section to be issued with the lease:

(7) Where mining lease is issued to two or more persons jointly, their obligations under the lease shall be joint and several.

122 Form and contents of mining leases, duration of leases, mining rights of lessees, etc

- (1) A mining lease shall be in the form prescribed and shall contain special conditions if any imposed by the Board or the Minister (as the case may be), and in addition be subject to the following standard conditions — 5
- (a) the mining lessee must, before commencing operations comply with the section 155 (“Pre-inspection requirements and first and subsequent inspection certificates”), and must have special regard for its environmental and social responsibilities undertaken pursuant to that section; and
 - (b) the mining lessee’s programme of mining operations must ensure the efficient, timely and beneficial use of the mineral resources concerned; and 10
 - (c) the mining lessee must, to the fullest extent possible, procure and use local goods and services and employ of Zimbabwean citizens; and
 - (d) promptly notify the PMD upon becoming aware of— 15
 - (i) any accident or incident resulting from or connected with its mining operations having an adverse impact of the health or safety of its employees or other persons, or on the health of the environment; and
 - (ii) any material breach of its lease; 20
 - (e) in the case of a special mining lease, the lessee must provide and maintain a prescribed security deposit to secure funding for the fulfilment of obligations of all or any kind under the lease, including obligations of all or any kind under the lease that may arise in the future.
- (2) Upon issuance of a mining lease, the holder of the mining lease shall be deemed to have signed it and to have agreed to be subject to its terms and conditions. 25
- (3) Subject to section 155 (“Pre-inspection requirements and first and subsequent inspection certificates”) —
- (a) an ordinary mining lease shall be issued for an indefinite period;
 - (b) a special mining lease shall not be issued for a period exceeding twenty-five years, but provision may be made for its renewal by the Minister on notice to the Board and with the President’s approval for periods not exceeding ten years, having regard to the life of the mine concerned and the circumstances then prevailing. 30
- (4) Every lessee shall have the exclusive right of mining, within the vertical limits of the mining lease — 35
- (a) any ore or deposit of a mineral which he or she is authorised to mine by the terms and conditions of the lease; and
 - (b) any ore or deposit of any other mineral, except energy minerals, precious stones and declared strategic minerals, which may be discovered within the mining lease, after he or she has notified the PMD of the discovery. 40

123 Processing of ordinary mining lease applications

- (1) An ordinary mining lease applicant shall at the first instance make application to the PMD having jurisdiction over the area in which the mining lease is to be located by following the steps below — 45
- (a) peg on any ground open to prospecting the boundaries of the proposed mining lease area (in the case of a section 121(2)(b) special mining lease applicant, such area shall not exceed the area permitted to be pegged under an exclusive prospecting licence); and

- (b) make a written application to the PMD in the form (if any) prescribed, accompanied by—
- (i) a sketch plan based on a map issued under the authority of the State and of a scale of not less than 1: 50 000 identifying the position of the area applied for, specifying the extent of such area and indicating the co-ordinates of the temporary beacons of the site or sites in question;
 - (ii) a report on the anticipated impact of mining operations on the environment and any measures to be taken to assess, prevent or minimise such impact, including proposals for—
 - A. the prevention or treatment of pollution; and
 - B. the treatment and disposal of waste; and
 - C. the protection of rivers and other sources of water; and
 - D. the reclamation and rehabilitation of land disturbed by mining operations; and
 - E. monitoring the effect of mining operations on the environment;
 and
 - (iii) particulars of the minerals which are being mined or are to be mined in the area applied for and other information specified in Part I of the Sixth Schedule; and
 - (iv) a plan for the development and operation of the proposed mine that includes all the elements specified in Part II of the Sixth Schedule; and
 - (v) a list of all the registered mining locations of which he or she is the sole or joint holder and which are situated within the area applied for, and the certificates of registration of such locations; and
 - (vi) the name and address of each owner and the occupier, if any, of the land to which the application relates; and
 - (vii) any other information which might reasonably affect the grant or refusal of the application or which relates to the applicant's ability to perform his or her obligations under a special mining lease, including in particular any agreement entered into under section 6 ("Strategic minerals") to exploit any strategic mineral under the title of a special mining lease;
- (c) any other information relevant to the application which the PMD or the Board may require;
- (d) the following affidavits—
- (i) an affidavit sworn by the occupier of the affected land that the occupier agrees to such pegging; or
 - (ii) in the absence of affidavits referred to in subparagraph (i) by every one of the affected occupiers, an affidavit sworn by the special mining lease applicant that the special mining lease applicant has served notice (in any of the ways specified in section 5 on any affected occupier of the land, to the effect that the special mining lease applicant proposes to register a mining lease that includes land open to prospecting belonging to or being held by any occupier of such land:

Provided that this paragraph (paragraph (e)) does not apply to an applicant for an ordinary mining lease referred to in section 121 (2) (a) or (c) if no additional area is sought to be included in the proposed ordinary mining lease area.

(2) Except in a case referred to in the proviso to section (1)(e), the PMD shall withhold approval for the provisional registration of the ordinary mining lease unless every occupier of land within that area has furnished the affidavit referred to in section (1)(e)(i).

- (3) On receipt of an ordinary mining application under subsection (1)— 5
- (a) if the Provincial Mining Director withholds provisional registration under subsection (2), the PMD must notify the applicant and every non consenting occupier of a meeting to be held before the PMD at the time and venue notified (not being more than seven working days after the service of the notice), at which meeting the PMD shall receive oral and written representations on the application for the provisional registration of the ordinary mining lease area; 10
 - (b) post one copy on the public notice board of the PMD's office of an invitation to interested persons (that is to say existing or potential small-scale or other miners or other interested persons within or adjacent to the area affected by the proposed ordinary mining lease area) to attend at the meeting to be held before the PMD at the time and venue notified (which if a meeting is to be held for the purposes of paragraph (a) shall be the same meeting as the one referred to in this paragraph) to enable them to make oral and written representations at that meeting on the question whether to grant or refuse provisional registration for the proposed ordinary mining lease area: 15 20

Provided that in such invitation or at the meeting the PMD may restrict such interested persons to submitting written representations only before or no later than 48 hours after the conclusion of the meeting. 25

(4) In amplification or clarification of the provisions of subsection (3) the following provisions are pertinent—

- (a) the only objections by an owner, occupier or other interested person that the PMD can entertain are—
 - (i) that the ground which is the subject of the proposed mining lease is not on the date of reservation of the ground open to prospecting and pegging; or 30
 - (ii) any allegation that the title of the ordinary mining lease applicant to any of the mining locations to which the application relates is defective on the ground that the pegging of such locations was invalid or illegal or that this Act was not complied with prior to the issuance of the certificate of registration in respect of such locations; 35
- (b) the PMD may provisionally approve the application in respect of the whole of the area applied for or, having regard to the dispersal of the mineral deposits within the area, to the extent of the ground necessary for the mining operations mentioned in subsection (3)(b)(iii) and to any other factor which the PMD may deem to be relevant; 40
- (c) if the PMD has provisionally granted the application of the ordinary mining lease applicant, the applicant may peg the site or sites in question in accordance with subsection (8) without, however, engaging in any works not strictly relevant to the pegging itself, until final approval for the registration of the mining lease is granted under this Part; 45
- (d) if the ordinary mining lease applicant or the occupier of the affected land fail to attend at the meeting referred to in subsection (3)(b), the PMD may proceed in the absence of either or both to grant or refuse the application for the provisional registration of the lease applied for and, if the application is granted make the relevant recommendations in accordance with subsection (5); 50

- (e) at the meeting referred to in subsection (3) the PMD shall follow the applicable rules set out in the Third Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”);
- (f) at the conclusion of the meeting referred to in subsection (3) the PMD may, in the presence of the parties (if any) at the meeting—
 - (i) provisionally approve the application of the ordinary mining lease applicant without amendment that is to say, in respect of the whole of the area applied for; or
 - (ii) provisionally approve the application of the ordinary mining lease applicant subject to a defined reduction in the area of the site originally applied for; or
 - (iii) provisionally reject the application of the ordinary mining lease applicant (either on the merits of the application or because the PMD is for any reason unable to make a decision on the basis of the evidence presented to him or her); or

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

- (g) as soon as possible after the conclusion of the meeting referred to in subsection (3) the PMD shall make a written summary of the proceedings of the meeting in the form of a report to the Board together with his or her recommendation to the Board to give final approval to his or her decision referred to in paragraph (e), and in so doing may suggest to the Board any conditions subject to which final registration may be made (but if the PMD provisionally rejected the application otherwise than on its merits, the PMD must expressly request the Board to make the appropriate decision on the basis of any additional information that may be made available to the Board);

Provided that if any recommendation is adverse to the ordinary mining lease applicant, the PMD must avail a copy of the report incorporating the recommendation to the applicant concerned to afford an opportunity no later than 48 hours after such report is availed to him or her to make a written response to the same not exceeding two thousand words which response shall be annexed to the report of the PMD that is transmitted in terms of this paragraph.

(5) No ordinary mining lease shall be finally registered under this section until the following steps are completed—

- (a) the Provincial Mining Director, shall transmit all the following particulars of the provisional registration to the Board within seven working days of the provisional registration—
 - (i) a map to the scale of at least 1: 50 000 showing the co-ordinates of the temporary beacons of the site or sites in question; and
 - (ii) all copies of the occupiers’ affidavits if any; and
 - (iii) the notice of the PMD’s decision referred to in subsection (4)(f); and
 - (iv) the report to the Board referred to in subsection (4)(g); and
 - (v) if, as a result of the meeting referred to in subsection (4), the PMD provisionally approved the application, the provisional registration number assigned to the ordinary mining lease;

- (b) upon transmission of the particulars referred to in paragraph (a) the Board (subject to subsection (6) may, if it is of the opinion that the transmitted particulars are—
 - (i) in order, consider whether to accept or reject the final registration of the ordinary mining lease in question, that is to say—
 - A. if the Board accepts the final registration of the ordinary mining lease in question, subject to any conditions it may impose (including an amendment of the area of the ordinary mining lease originally applied for), in which event section 127 (“Submission of amended plan”) shall apply to such amendment), it shall issue to the applicant an ordinary mining lease and enter the relevant particulars concerning the lease in the Mining Cadastre Register and confirm in writing to the PMD concerned that the ordinary mining lease has been finally issued and registered, subject to subsection (12);
 - B. if Board rejects the final registration of the ordinary mining lease, transmit the reasons for such rejection to the PMD concerned, subject to subsection (13);
 - (ii) not in order or incomplete or inadequate—
 - A. request further information or request an adjustment to the particulars transmitted by the PMD (which adjustment may include a reduction in the area of the site or sites applied for), before making a decision in accordance with subparagraph (i); and
 - B. upon satisfactory compliance with such request, proceed in accordance with paragraph (i);
- (c) upon receiving from the secretary of the Board—
 - (i) confirmation of the final registration of the ordinary mining lease in accordance with paragraph (e)(i)A, the PMD concerned shall notify the ordinary mining lease applicant to apply for a certificate of registration of the ordinary mining lease under subsection (8); or
 - (ii) notice of rejection of the final registration of the ordinary mining lease in accordance with paragraph (e)(i)B, the PMD concerned shall notify the ordinary mining lease applicant of the Board’s reasons for the rejection of the application; or
 - (iii) a request for further information or a request for an adjustment of the particulars transmitted by the PMD concerned (which adjustment may include a reduction in the area of the site or sites applied for), the PMD shall—
 - A. if he or she is able to comply with the request without the need to involve the non-primary applicant, transmit the information or effect the adjustment and transmit it to the Board forthwith; or
 - B. if he or she is not so able as contemplated in subparagraph A, communicate the request to the ordinary mining lease applicant forthwith:
 - Provided that if—
 - I. within 14 days of being notified of such request, the ordinary mining lease applicant

fails to comply with the request, the ordinary mining lease applicant shall be deemed to have abandoned the application for the lease; or

II. in the case of an adjustment of the application to reduce the area of the ordinary mining lease area applied for, the applicant is not deemed to have abandoned the application in terms of proviso I, the applicant shall within that 14-day period mentioned (or such extension of that period not exceeding 30 days as the PMD, on notice to the Board, may approve at the request of the applicant) submit to the Board an amended sketch plan showing the reduced area;

(iv) notice of any additional conditions which the Board wishes to attach to the ordinary mining lease, the PMD shall communicate the conditions to the ordinary mining lease applicant forthwith:

Provided that if, within 14 days of being notified of such conditions, the ordinary mining lease applicant—

A. signifies its assent to those conditions through the PMD, the Board shall without delay proceed in terms of paragraph (b)(i)(A),

B. fails to make any written response to the proposed conditions or refuses assent to the condition without giving reasons therefor, the ordinary mining lease applicant shall be deemed to have abandoned the application;

C. refuses assent to any of the conditions, giving reasons for such refusal, the PMD shall transmit particulars of the same to the Board, whereupon it may uphold, withdraw or vary the conditions, and the applicant within 14 days of being notified thereof may signify his or her assent to those conditions through the PMD (in which event the Board shall without delay proceed in terms of paragraph (b)(i)(A)) or if within that period the applicant rejects or fails to respond to the Board's decision on the conditions, the applicant shall (unless it has earlier lodged a notice of appeal under -----) be deemed to have abandoned the application.

(6) In considering an application under subsection (5) the Board shall not approve an application unless it is satisfied—

(a) that the applicant's financial status is such that he or she will be able to meet any payment which may become due by him or her under the provisions of section 241 ("Compulsory purchase or sale of private land covered by mining lease"); and

(b) that mining operations on a substantial scale are likely to be conducted for a considerable period within the area applied for; and

(c) that no ground not open to prospecting, save as provided in section 35 ("Ground not open to prospecting") is included in the area to which such approval would relate.

(7) Upon receiving from the PMD notice of the final registration of the ordinary mining lease, the applicant must apply to the PMD for a certificate of final registration

in the manner prescribed and on payment of the prescribed fee, no later than 31 days of the receipt of such notice or no later than any extension of that period not exceeding a further 30 days that the PMD may grant for any good and sufficient reason shown to the PMD (and if such applicant fails to apply for a final certificate of registration within such period or extended period, the applicant shall be deemed to have abandoned the ordinary mining lease). 5

(8) The PMD shall enter in his or her register the fact that—

- (a) a final certificate of registration of the ordinary mining lease has been issued; or
- (b) the ordinary mining lease applied for has been abandoned due to the operation of subsection (7); 10

and shall forthwith notify the Mining Cadastre Registrar of such registration or abandonment, as the case may be, whereupon the Mining Cadastre Registrar shall—

- (c) make the appropriate entries in the Mining Cadastre Register and as soon as possible; and 15
- (d) send a copy of the lease to the lessee if the ordinary mining lease applied for has not been abandoned.

(9) Any person who is aggrieved by a decision of the Board under this section, that is to say any ordinary mining lease applicant, or other existing or potential small-scale or other miner having a demonstrable interest in the issue of such registration, or any occupier of any land affected by such registration, may seek a review of such decision by the Administrative Court. 20

(10) Upon a review of the Board’s decision the Administrative Court may—

- (a) uphold the decision of the Board; or
- (b) refer the decision back to the Board for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds— 25
 - (i) allowing extraneous or irrelevant considerations to affect the decision; or
 - (ii) failure to take into account relevant considerations in arriving at the decision; or 30
 - (iii) any material mistake of fact or law that tainted the decision; or
 - (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision; or
 - (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision; or 35
- (c) If the application for review is made at the instance of an aggrieved occupier of any land affected by such registration—
 - (i) refer the decision back to the Board as provided in paragraph (b); or 40
 - (ii) order that a lesser area should be registered because it is satisfied that the area to be excised is not ground open to prospecting; or
 - (iii) give such other order or direction in the matter as the court considers just.

(11) Upon application made to the PMD by the holder of registered ordinary mining lease, the PMD may— 45

- (a) amend the certificate of registration of the ordinary mining lease;
- (b) obtain a fresh certificate in respect of the ordinary mining lease;

whereupon if the amendment is material or the new certificate sought alters the boundaries of the ordinary mining lease or contains any other material alteration the provisions of this section shall apply in the same way as an original ordinary mining lease application:

- 5 Provided that if the effect of an amendment sought by the holder of the mining lease is to reduce the area of the ordinary mining lease, such amendment shall not be deemed to be a material change.

124 Reservation of ground against prospecting and pegging in respect of special mining lease application, and termination of reservation

10 (1) Where a special mining lease application is made for a mining lease over land which is not registered as a mining location in the name of the special mining lease applicant, the PMD shall, shall without delay, reserve the ground against prospecting and pegging in terms of **section 42**.

15 (2) The owner or occupier of land shall, in respect of the ground not so registered in the name of the special mining lease applicant and reserved under subsection (1) and which was open to prospecting at the time such reservation was made, during the period of the reservation, have the same rights in all respects as if the ground not so registered formed part of a mining location registered in the name of the special mining lease applicant.

- 20 (3) Where the PMD has reserved ground under subsection (1) and—
- (a) the application is withdrawn or is deemed to have been withdrawn or abandoned under this Part, or has been refused, the PMD shall forthwith withdraw the reservation;
 - 25 (b) the application has been provisionally approved in respect of a portion of the area applied for, the PMD shall forthwith withdraw the reservation in respect of the portion not approved;
 - (c) the application has been approved in respect of the whole or a portion of an area applied for, the PMD shall forthwith withdraw the reservation—
 - 30 (i) after the mining lease has been issued; or
 - (ii) after the application has been withdrawn or is deemed to be withdrawn or abandoned under under this Part;

as the case may be.

125 Processing of special mining lease applications

35 (1) A special mining lease applicant shall at the first instance make application to the PMD having jurisdiction over the area in which the mining lease is to be located by following the steps below—

- 40 (a) peg on any ground open to prospecting the boundaries of the proposed mining lease area (in the case of a section 121(2)(b) special mining lease applicant, such area shall not exceed the area permitted to be pegged under an exclusive prospecting licence); and
- (b) make a written application to the PMD in the form (if any) prescribed, accompanied by—
 - 45 (i) a sketch plan based on a map issued under the authority of the State and of a scale of not less than 1: 50 000 identifying the position of the area applied for, specifying the extent of such area and indicating the co-ordinates of the temporary beacons of the site or sites in question;

- (ii) a report on the anticipated impact of mining operations on the environment and any measures to be taken to assess, prevent or minimise such impact, including proposals for—
 - A. the prevention or treatment of pollution; and
 - B. the treatment and disposal of waste; and 5
 - C. the protection of rivers and other sources of water; and
 - D. the reclamation and rehabilitation of land disturbed by mining operations; and
 - E. monitoring the effect of mining operations on the environment; and 10
- (iii) particulars of the minerals which are being mined or are to be mined in the area applied for and other information specified in Part I of the Sixth Schedule; and
- (iv) a plan for the development and operation of the proposed mine that includes all the elements specified in Part II of the Sixth Schedule; and 15
- (v) a list of all the registered mining locations of which he is the sole or joint holder and which are situated within the area applied for, and the certificates of registration of such locations; and
- (vi) the name and address of each owner and the occupier, if any, of the land to which the application relates; and 20
- (vii) any other information which might reasonably affect the grant or refusal of the application or which relates to the applicant’s ability to perform his or her obligations under a special mining lease, including in particular any agreement entered into under section 6 (“Strategic minerals”) to exploit any strategic mineral under the title of a special mining lease; 25
- (d) any other information relevant to the application which the PMD or the Board may require;
- (e) the following affidavits— 30
 - (i) an affidavit sworn by the occupier of the affected land that the occupier agrees to such pegging; or
 - (ii) in the absence of affidavits referred to in subparagraph (i) by every one of the affected occupiers, an affidavit sworn by the special mining lease applicant that the special mining lease applicant has served notice (in any of the ways specified in section 5 on any affected occupier of the land, to the effect that the special mining lease applicant proposes to register a mining lease that includes land open to prospecting belonging to or being held by any occupier of such land: 35
- (2) The PMD shall withhold approval for the provisional registration of the special mining lease unless every occupier of land within that area has furnished the affidavit referred to in subsection (1)(e)(i). 40
- (3) On receipt of a special mining lease application under subsection (1)—
 - (a) if the Provincial Mining Director withholds provisional registration under subsection (2), the PMD must notify the applicant and every non-consenting occupier of a meeting to be held before the PMD at the time and venue notified (not being more than seven working days after the service of the notice), at which meeting the PMD shall receive oral and written representations on the application for the provisionally registration of the special mining lease area. 45

- 5 (b) post one copy on the public notice board of the PMD’s office of an invitation to interested persons (that is to say existing or potential small-scale or other miners or other interested persons within or adjacent to the area affected by the proposed special mining lease area) to attend at the meeting to be held before the PMD at the time and venue notified (which if a meeting is to be held for the purposes of paragraph (a) shall be the same meeting as the one referred to in this paragraph) to enable them to make oral and written representations at that meeting on the question whether to grant or refuse provisional registration for the proposed special mining lease area:
- 10

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

- 15 (4) In amplification or clarification of the provisions of subsection (3) the following provisions are pertinent—

- (a) the only objection by an owner, occupier or other interested person that the PMD can entertain is that the ground which is the subject of the proposed mining lease is not on the date of reservation of the ground open to prospecting and pegging;
- 20 (b) the PMD may approve the application in respect of the whole of the area applied for or, having regard to the dispersal of the mineral deposits within the area, to the extent of the ground necessary for the mining operations and to any other factor which the PMD may deem to be relevant, may approve the application in respect of a portion of the area applied for.
- 25 (c) if the PMD has provisionally granted the application of the special mining lease applicant, the applicant may peg the site or sites in question in accordance with subsection (8) without, however, engaging in any works not strictly relevant to the pegging itself, until final approval for the registration of the mining lease is granted under this Part;
- 30 (d) if the special mining lease applicant or the occupier of the affected land fail to attend at the meeting referred to in subsection (3)(b), the PMD may proceed in the absence of either or both to grant or refuse the application for the provisional registration of the lease applied for and, if the application is granted make the relevant recommendations in accordance with subsection (5);
- 35 (e) at the meeting referred to in subsection (3) the PMD shall follow the applicable rules set out in the Third Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”);
- 40 (f) at the conclusion of the meeting referred to in subsection (3) the PMD may, in the presence of the parties (if any) at the meeting—
- (i) provisionally approve the application of the special mining lease applicant without amendment that is to say, in respect of the whole of the area applied for; or
- 45 (ii) provisionally approve the application of the special mining lease applicant subject to a defined reduction in the area of the site originally applied for; or
- (iii) provisionally reject the application of the special mining lease applicant (either on the merits of the application or because the PMD is for any reason unable to make a decision on the basis of the evidence presented to him or her); or
- 50

Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice

of his or her decision, and the reasons for it, to the lease applicant and the occupier in any of the ways contemplated by section 5, and post a copy of the decision and the reasons for it on the public notice board of the PMD's office;

- (g) as soon as possible after the conclusion of the meeting referred to in subsection (3) the PMD shall make a written summary of the proceedings of the meeting in the form of a report to the Board together with his or her recommendation to the Board to give final approval to his or her decision referred to in paragraph (e), and in so doing may suggest to the Board any conditions subject to which final registration may be made (but if the PMD provisionally rejected the application otherwise than on its merits, the PMD must expressly request the Board to make the appropriate decision on the basis of any additional information that may be made available to the Board):

Provided that if any recommendation is adverse to the special mining lease applicant, the PMD must avail a copy of the report incorporating the recommendation to the applicant concerned to afford him or her an opportunity no later than 48 hours after such report is availed to him or her to make a written response to the same not exceeding two thousand words which response shall be annexed to the report of the PMD that is transmitted in terms of this paragraph.

(5) No special mining lease shall be finally registered under [this section] [section....] until the following steps are completed—

- (a) the Provincial Mining Director shall transmit all the following particulars of the provisional registration to the Board within seven working days of the provisional registration—
 - (i) a map to the scale of at least 1: 50 000 showing the co-ordinates of the temporary beacons of the site or sites in question; and
 - (ii) all copies of the occupiers' affidavits if any; and
 - (iii) the notice of the PMD's decision referred to in subsection (4)(f); and
 - (iv) the report to the Board referred to in subsection (4)(g); and
 - (v) if, as a result of the meeting referred to in subsection (4), the PMD provisionally approved the application, the provisional registration number assigned to the special mining lease;
- (b) upon transmission of the particulars referred to in paragraph (a) the Board (subject to subsection (6)) may, if it is of the opinion that the transmitted particulars are—
 - (i) in order, consider whether to recommend that the Minister accept or reject the final registration of the special mining lease in question;
 - (ii) not in order or incomplete or inadequate—
 - A. request further information or request an adjustment to the particulars transmitted by the PMD (which adjustment may include a reduction in the area of the special mining lease applied for), before making a decision in accordance with subparagraph (i); and
 - B. upon satisfactory compliance with such request, proceed in accordance with paragraph (i);
- (c) upon receiving from the secretary of the Board a request for further information or a request for an adjustment of the particulars transmitted

by the PMD concerned (including an adjustment of the area applied for), the PMD shall—

- (i) if he or she is able to comply with the request without the need to involve the special mining lease applicant, transmit the information or effect the adjustment and transmit it to the Board forthwith; or
- (ii) if he or she is not so able as contemplated in subparagraph A, communicate the request to the special mining lease applicant forthwith:

Provided that if—

- I. within 14 days of being notified of such request, the special mining lease applicant fails to comply with the request, the special mining lease applicant shall be deemed to have abandoned the application for the lease; or
- II. in the case of an adjustment of the application to reduce the area of the special mining lease area applied for, the applicant is not deemed to have abandoned the application in terms of proviso I, the applicant shall within that 14-day period mentioned (or such extension of that period not exceeding 30 days as the PMD, on notice to the Board, may approve at the request of the applicant) submit to the Board an amended sketch plan showing the reduced area.

(6) In considering an application under subsection (5) the Board shall not approve an application unless it is satisfied—

- (a) the area to which the application relates contains a mineral or group of minerals which may profitably be mined and sold or otherwise disposed of; and
- (b) the applicant's mining development plan takes proper account of environmental and safety factors; and
- (c) the applicant's programme of mining operations will ensure the efficient, timely and beneficial use of the mineral resources concerned; and
- (d) the applicant's proposals for the procurement and use of local goods and services and the employment of Zimbabwean citizens are satisfactory; and
- (e) the applicant is able and willing to comply with the terms and conditions of any special mining lease that may be granted to him or her, including in particular any prior agreement entered into under section 6 ("Strategic minerals") to exploit any strategic mineral under the title of a special mining lease:

Provided where the mineral for which the special mining lease is sought is not a strategic mineral, the Board may (given the importance of the mineral and the potential magnitude of its occurrence in the proposed special mining lease area) recommend to the Minister that the mineral be declared a strategic mineral, whether generally or in relation to the proposed special mining lease area, and that the final approval of the application for the special mining lease be conditioned upon such a declaration and the conclusion between the Minister and the applicant of a prior agreement under section 6;

- (f) the applicant possesses or can obtain the technical and financial resources required to develop and operate the proposed mine; and
- (g) that the applicant's financial status is such that he or she will be able to meet any payment which may become due by him or her under the

provisions of section 241 (“Compulsory purchase or sale of private land covered by mining lease”); and

- (h) that mining operations on a substantial scale are likely to be conducted for a considerable period within the area applied for; and
- (i) that no ground not open to prospecting, save as provided in section 35 (“Ground not open to prospecting”) is included in the area to which such approval would relate; and 5
- (j) that the construction of the proposed mine will commence within a reasonable period; and
- (k) it would be in the national interest for the applicant to be granted a special mining lease. 10

(7) For the purpose of subsection (6), the Board shall have regard to –

- (a) the nature and size of the mineral deposits within the area over which the applicant seeks a special mining lease; and
- (b) the estimated life and economic viability of the proposed mine or mines; and 15
- (c) the extent of the investment that will be made in the proposed mine or mines; and
- (d) the proposed method of extraction, mining and treatment of ore from the proposed mine or mines; and 20
- (e) any other relevant circumstance that the Board considers is desirable or relevant to have regard for in the interests of the development of Zimbabwe’s mineral resources.

(8) The Board shall not–

- (a) refuse an application on the ground that it is not satisfied as to any matter referred to in subsection (6) or (7); or 25
- (b) recommend that the application be granted in respect of only part of the area sought for;

unless the Board has notified the applicant of its objection and reasons therefor, and has given the applicant a reasonable opportunity to modify his or her mining plan or make representations or otherwise to remove the ground on which the proposed recommendation is based. 30

126 Issuance of special mining lease, registration of same; reviews, etc

(1) Having considered an application for a special mining lease under section 123, the Board shall without delay forward the application to the Minister together with its recommendations thereon and— 35

- (a) copies of all objections lodged in respect of the application and copies of the determinations made in respect of the objections; and
- (b) the PMD’s report on the application.

(2) The Minister, having considered the documents forwarded to him or her in terms of subsection (1), may— 40

- (a) issue a special mining lease in accordance with the Board’s recommendations; or
- (b) issue a special mining lease on such other terms and conditions as the Minister thinks fit (giving reasons to the Board where such terms and conditions depart from the Board’s recommendations); 45
- (c) refuse to issue a special mining lease, giving reasons to the Board for such refusal.

(3) Upon the issuance of a special mining lease the Mining Cadastre Registrar shall cause copies of the lease and the plan to be sent to the Board and the appropriate PMD for final registration under subsections (6) and (7).

(4) Upon receiving from the Mining Cadastre Registrar—

- 5 (a) confirmation of the issuance of the special mining lease, the PMD concerned shall notify the special mining lease applicant to apply for a certificate of registration of the special mining lease under subsection (7); or
- 10 (b) notice of rejection of the final registration of the special mining lease, the PMD concerned shall notify the applicant of the Minister's reasons for the rejection of the application.

(5) Upon receiving from the PMD notice of the confirmation of the issuance of the special mining lease, the special mining lease applicant must apply to the PMD for a certificate of final registration in the manner prescribed and on payment of the prescribed fee, no later than thirty-one days of the receipt of such notice or no later than any extension of that period not exceeding a further thirty days that the PMD may grant for any good and sufficient reason shown to the PMD (and if such special mining lease applicant fails to apply for a final certificate of registration within such period or extended period, the special mining lease applicant shall be deemed to have abandoned the special mining lease).

(6) The PMD shall enter in his or her register the fact that—

- (a) a final certificate of registration of the special mining lease has been issued; or
- 25 (b) the mining lease applied for has been abandoned due to the operation of subsection (7);

and shall forthwith notify the Mining Cadastre Registrar of such registration or abandonment, as the case may be, whereupon the Mining Cadastre Registrar shall—

- (c) make the appropriate entries in the Mining Cadastre Register and as soon as possible; and
- 30 (d) send a copy of the lease to the lessee if the special mining lease applied for has not been abandoned.

(7) Any person who is aggrieved by a decision of the Minister under this section, that is to say any special mining lease applicant, or any existing or potential small-scale or other miner having a demonstrable interest in the issue of such registration, or any occupier of any land affected by such registration, may seek a review of such decision by the Administrative Court.

(8) Upon a review of the Minister's decision the Administrative Court may—

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

- (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;
 - (c) if the application for review is made at the instance of an aggrieved occupier of any land affected by such registration—
 - (i) refer the decision back to the Minister as provided in paragraph (b); 5
or
 - (ii) order that a lesser area should be registered because it is satisfied that the area to be excised is not ground open to prospecting; or
 - (iii) give such other order or direction in the matter as the court considers just. 10
- (9) Upon application made to the PMD by the holder of registered special mining lease, the PMD may—
- (a) amend the certificate of registration of the special mining lease;
 - (b) obtain a fresh certificate in respect of the special mining lease;
- whereupon if the amendment is material or the new certificate sought alters the boundaries of the special mining lease or contains any other material alteration the provisions of this section shall apply in the same way as an original special mining lease application: 15
- Provided that if the effect of an amendment sought by the holder of the special mining lease is to reduce the area of the mining lease, such amendment shall not be deemed to be a material change. 20
- (10) For the avoidance of doubt it is declared that it shall be considered a material amendment if the mining lease holder wishes to increase the area of the special mining lease by adding a contiguous area in his or her mining lease.
- 127 Recording of mining leases in Mining Cadastre Register and appropriate provincial registers** 25
- (1) The Mining Cadastre Registrar shall assign a number to each mining lease and shall cause that number and the particulars of each lease to be recorded in the Mining Cadastre Register distinctly and separately from the other entries in that Register.
- (2) The PMD shall in his or her final register record distinctly and separately 30
from the other entries in that register every mining lease whose area is located in his or her mining province, assigning to each such lease the number assigned to it in the Mining Cadastre Register.
- 128 Limitation on second or subsequent applications following refusal or withdrawal of application** 35
- Where under this Part an application has been refused or has been abandoned or is deemed to have been abandoned, the applicant may not make a second or subsequent application in respect of the same area until twelve months have elapsed from the date of the refusal or withdrawal or the date on which the application is deemed to have been abandoned, as the case may be. 40
- 129 Beaconing of mining lease area**
- (1) Subject to this section, within a period of two months from the date of issue of a mining lease or such longer period as the PMD may allow, the lease holder shall—
- (a) erect beacons of concrete or solid mason work at all points of intersection 45
of the boundary lines of the area covered by the lease and at all points of

intersection of such boundary lines by the boundary lines of any piece of land in respect of which an approved diagram or general plan is filed on record in the office of the Surveyor-General; and

- 5 (b) if any boundary is more than three hundred metres in length, erect intermediate beacons so that no beacon shall be more than three hundred metres from the next adjoining beacon on either side.

(2) All beacons mentioned in subsection (1)(a) shall be erected under the supervision of, and in the position determined by, a land surveyor and may be so erected at the time the area concerned is surveyed for the purposes of preparing the plan mentioned in section 122(1)(b)(i) or proviso II to section 122(5)(c)(iii)B, 124(1) 10 (b)(i) or proviso II to section 124(5)(c)(iii)B, as the case may be.

(3) The beacons referred to in subsection (1) shall be lettered in consecutive alphabetical order in a clockwise direction commencing with the letter A but omitting the letters Y and Z, and if there are more beacons than twenty-four the letters and figures A2, B2 and so on shall be used in respect of the beacons up to forty-eight and 15 thereafter the letters and figures A3, B3 and so on shall be used

(4) Every beacon mentioned in this section shall bear on it, in addition to the distinguishing letter, the words "Mining Lease" followed by the number assigned to such lease by the Board.

20 (5) The distinguishing letter and the particulars mentioned in subsection (4) shall be engraved upon the beacon or otherwise affixed thereto in such permanent manner and in such position as the PMD may approve.

(6) The prescribed conditions applicable to beacons generally shall apply, with necessary changes, apply to and in respect of all such beacons.

25 **130 Cancellation of certificates of registration**

Upon the issue of a mining lease the certificates of registration in respect of all mining locations situated within the area covered by the lease shall be deemed to have been cancelled:

30 Provided that any site attached to any such mining location shall be deemed to be attached to the lease, and section 40 shall apply, with any necessary changes, to or in respect of such a site.

131 No impeachment of title to mining leases

35 When a mining lease has been issued it shall not be competent for any person to dispute the title of the lease holder to any of the ground covered by the lease on the following grounds—

- 40 (a) that the pegging of any of the mining locations which were included in the area covered by such lease or of any secondary reef which was registered in respect of any such location was invalid or illegal or that provisions of this Act or of any other enactment were not complied with prior to the issue of the certificate of registration of any such location or reef;
- (b) that any ground not open to prospecting was included in the area covered by the lease;
- (c) that provisions of this Act were not complied with in respect of such lease prior to the issue thereof.

45 **132 Programmes to be submitted by lessees**

(1) In this section—

"development" includes mining activity, mineral production, expenditure and any other work or activity undertaken in or in regard to a mining lease;

“development programme” means the “plan of work” required to be submitted in terms section 155 (“Pre-inspection requirements and first and subsequent inspection certificates”) (2)(a), attended with the special conditions and having the additional features prescribed by this section.

(2) Within the time specified in section 155 (“Pre-inspection requirements and first and subsequent inspection certificates”), a lessee shall submit to the PMD a written programme showing the development which he or she intends to undertake in regard to the mining lease during the next twelve-month period. 5

(3) The development programme shall include or be accompanied by a report of any information of a geological nature, including logs and assay results of drill cores from surface diamond drill holes, and reports on any geological, geochemical and geophysical work, obtained by the lessee in the course of his or her operations. 10

(4) The PMD shall communicate the information referred to in subsection (3) to the Director of Geological Survey as soon as he or she receives the report.

133 Increase of area of mining lease 15

(1) A lessee may lodge an application to the Board for the inclusion of an additional contiguous area of ground which is open to pegging in his or her mining lease.

(2) Section 122 (in the case where the lessee holds an ordinary mining lease), or sections 123 and 124 (in the case where the lessee holds a special mining lease) shall apply, with any necessary changes (such as substituting references to a “lease” by references to an “amendment of a lease”), in respect of an application under subsection (1). 20

134 Abandonment of whole or portion of mining lease and transfer of mining lease 25

(1) A lessee may apply in writing to the PMD for the abandonment of the whole or of a portion of his or her mining lease:

Provided that it shall not be competent for a lessee so to apply if—

- (a) the mining lease is the subject of a hypothecation or option registered under Part XVII; or 30
- (b) in the case of the abandonment of a portion of the mining lease the abandonment would result in the area of the lease being divided into separate portions.

(2) An applicant under subsection (1) shall submit with the application—

- (a) in the case of the abandonment of a portion of the mining lease, three copies of a plan showing the area which he or she wishes to abandon; and 35
- (b) in the case of the total abandonment of a mining lease, a copy of his or her mining lease; and
- (c) in either case ((a) or (b)), in respect of each mine (if any) affected by the abandonment a plan or plans complying with the following conditions (or if the conditions are prescribed, in accordance with the prescribed conditions)— 40
 - (i) where development work has been executed to a vertical or incline depth of more than one hundred metres on the dip, the plan or plans shall be prepared by a mine surveyor; 45
 - (ii) where development work has been executed to a vertical or incline depth of not more than one hundred metres on the dip, the plan or

plans shall be prepared by a mine surveyor or otherwise shall be based on tape and compass survey;

(iii) the plan or plans shall show details of all work done on the mine, together with such further particulars as the PMD may require;

5 (iv) plans prepared by a mine surveyor shall be drawn to any recognized scale; other plans shall be drawn to a scale of 1:250 or 1:500.

(d) in either case ((a) or (b)), an affidavit sworn by the lessee that—

10 (i) the mining lease is not the subject of a hypothecation or option registered under Part XVII, or, if it is, that the application is made with the consent of the holder of the hypothecation or option:

Provided that in the latter case the written consent holder of such hypothecation or option shall be lodged with the PMD together with the affidavit;

15 (ii) giving reasons why the abandonment of the whole portion or portions in question is being sought.

and upon receipt of all the foregoing documentation to the satisfaction of the PMD the PMD shall provisionally approve the application.

(3) On receipt of the documentation in terms of subsection (2) the PMD shall—

20 (a) post on the notice board of his or her Office notice of the application to abandon the whole or portion or portions of the lease area specified in the notice;

(b) transmit copies of all of the documentation to the Board.

(4) Upon transmission of the particulars referred to in subsection (2) the Board shall, unless it finds compelling reasons to do otherwise, finally approve —

25 (a) the abandonment of a portion or portions of the mining lease, whereupon it shall amend the original and the copies of the mining lease accordingly, retaining one copy of the same to enable the Mining Cadastre Registrar to make the appropriate entry in the Mining Cadastre Register, and sending a copy each to the PMD (to enable him or her to make the appropriate entry in his or her final register); or

30 (b) the total abandonment of the mining lease, whereupon it shall cancel the mining lease and without delay and inform the Mining Cadastre Registrar, the PMD and the applicant accordingly.

35 (5) Upon the amendment of a mining lease being finally approved under this section, the lessee shall demarcate the new area of the lease in the manner prescribed or as the PMD may direct.

135 Failure to comply with terms and conditions of mining lease

(1) If the Board, after due investigation, is satisfied that a lessee has failed to comply with any material terms or conditions of his or her mining lease—

40 (a) the Board shall notify the lessee of that fact, in writing, and call upon the lessee to remedy the failure within a reasonable period specified by the Board in the notification; and

45 (b) if the Board is not satisfied that the failure has been adequately remedied within the period specified in terms of paragraph (a), the Board may, in the case of an ordinary mining lease, cancel it and , or, in the case of a special mining lease, recommend its cancellation to the Minister together with the forfeiture of the prescribed security deposit referred to in 122 (1)(e).

(4) Where a lease is cancelled under this section, the Board shall inform the Mining Cadastre Registrar to make the appropriate entry of cancellation in the Mining Cadastre Register, and Mining Cadastre Registrar shall in turn inform the PMD accordingly.

(5) A holder of a mining lease that is cancelled under this section may seek a review of such decision by the Administrative Court, and section 125 (7) and (8) shall, with necessary changes, apply to such review. 5

136 Approval of transfer of mining lease

(1) In this section—

“transfer” in relation to a mining lease means the transfer of the sole or majority ownership of the mining lease or of any interest in the mining lease that is equivalent to sole or majority ownership; 10

(2) No transfer of a mining lease may occur except in accordance with this section and if no application made in accordance with this section for the approval of such transfer within six months of the date of the agreement or transaction by which such transfer is purported to be concluded between the transferor and the transferee, it shall be deemed that the transferor has abandoned the mining lease. 15

(3) A mining lease may not be transferred except to a person approved of by the Board, in accordance with this section.

(4) The mining lessee wishing to transfer the mining lease (hereafter in this section referred to as the “transferor”) shall in the first instance make written application in the form (if any) prescribed, to the PMD having jurisdiction in the area in which the mining lease area is located, which form must be accompanied by— 20

(a) the following affidavits—

(i) the affidavit by the transferor stating his or her reasons for wishing to transfer the mining lease to the transferee and the consideration paid or payable for such transfer; 25

(ii) the affidavit by the person to whom the lease is to be transferred (hereafter in this section referred to as the “transferee”) giving full particulars of his or her name and address, and in the case of a company particulars of the date of incorporation and registration and the names of the directors of the body corporate together with relevant particulars of the financial status of the transferee and his or her readiness to assume all the obligations of the transferor under the mining lease; 30 35

(b) a written statement by the transferor stating whether the transferor is willing to continue holding the mining lease in its name or to abandon it in case where the application for the transfer is rejected under this section or the transferee fails to obtain a new certificate of registration under paragraph.... 40

(5) On receipt of the affidavits the PMD shall post a copy of a notice on the notice board of his or her office giving relevant particulars of the proposed transfer and in such notice invite representations on the proposed transfer in writing to be made to the PMD within 14 days of the posting.

(6) Having received representations, if any, the PMD shall transmit— 45

(a) the copies of the affidavits referred to in subsection (4);

(b) copies of any representations made by a interested party in response to a notice referred to in subsection (5);

- (c) a report by the PMD in which he or she shall state whether he recommends, does not recommend or makes no recommendation as to the proposed transfer together with reasons therefor:

5 Provided that if any recommendation is adverse to the transferor the PMD must avail a copy of the report incorporating the recommendation to the transferor concerned to afford an opportunity no later than 48hrs after such report is availed to him or her to make a written response to the same not exceeding two thousand words which response shall be annexed to the report of the PMD that is transmitted in terms of this paragraph.

10 (7) Upon transmission of the particulars referred to in subsection (7) the Board may, if it's of the opinion that the transmitted particulars are—

- (a) in order, consider whether to accept or reject the transfer of the mining lease in question, that is to say—
 - 15 (i) if the Board accepts the transfer of the mining lease in question, enter the relevant particulars concerning the mining lease in the Cadastre Register and confirm in writing to the PMD concerned that the mining lease has been transferred, subject to subsection (12);
 - (ii) if Board rejects the transfer of the mining lease, transmit the reasons for such rejection to the PMD concerned, subject to subsection (13);
- 20 (b) not in order or incomplete or inadequate—
 - (i) request further information or request an adjustment to the particulars transmitted by the PMD before making a decision in accordance with subparagraph (i); and
 - 25 (ii) upon satisfactory compliance with such request, proceed in accordance with paragraph (i);

(8) Upon receiving from the secretary of the Board—

- 30 (a) confirmation of the transfer of the mining lease in accordance with subsection (7)(a)(i), the PMD concerned shall notify the transferor to apply for a new certificate of registration of the mining lease in the name of the transferee;
- (b) notice of rejection of the transfer of the mining lease in accordance (8)(a)(i), the PMD concerned shall notify the transferor of the Board's reasons for the rejection of the application; and
- 35 (c) request for further information or a request for an adjustment of the particulars transmitted by the PMD concerned, the PMD shall—
 - (i) if he or she is able to comply with the request without the need to involve the transferee, transmit the information or effect the adjustment and transmit it to the Board forthwith; or
 - 40 (ii) if he or she is not so able as contemplated in subparagraph A, communicate the request to the transferee forthwith;

45 Provided that if, within 14 days of being notified of such request, the transferee fails to comply with the request the transferee shall be deemed to have abandoned the proposed transfer of the mining lease and the mining lease shall remain in the name of the transferor or be deemed to be abandoned in accordance with the transferor's statement under subsection... ;

(9) In considering an application under subsection (5)(a) the Board shall not approve an application unless it is satisfied—

- 50 (a) that the transferee's financial status is such that he or she will be able to meet any payment which may become due by him or her under the provisions of section [344]; and

- (b) that mining operations on a substantial scale are likely to be conducted for a considerable period within the area applied for; and
- (10) The PMD shall enter in his or her register the fact that—
 - (a) a certificate of registration in the name of the transferee has been issued; or 5
 - (b) the mining lease applied for has been abandoned due to the operation of subsection (8);

and shall forthwith notify the Mining Cadastre Registrar of such registration or abandonment, as the case may be, whereupon the Mining Cadastre Registrar shall make the appropriate entries in the register and as soon as possible. 10

(11) Any person aggrieved by the refusal of the Board to approve a transfer of a mining lease may appeal within 14 days of such refusal to the Minister and the Minister may overturn any such decision on the following grounds—

- (a) interest in the cause, bas malice or corruption on the part of any person who is a party to the decision; 15
- (b) gross irregularity in the proceedings or the decision of the Board;
- (c) in exceptional cases, the overriding of the national interest

PART X

RIGHTS OF CLAIM HOLDERS AND LANDHOLDERS

140 Conversion as between primary and secondary minerals and as between sites and mining locations 20

(1) The holder of a mining location may, if he or she proves to the satisfaction of the PMD that a secondary mineral occurs in such block in such amount as to exceed in value the amount of the primary mineral contained therein, apply for the conversion of the location or any part thereof into the name of the secondary mineral mined therein, (that is to say what was previously the secondary mineral in that block or part thereof becomes the primary mineral by which the block or part thereof is denominated) 25

(2) The PMD may, if it appears to him or her that any secondary mineral discovered in any mining location occurs in such quantity in such location as to exceed in value the primary mineral or that such location includes any ground which formerly formed part of a location registered for a secondary mineral, call upon the holder to show cause why the location should not be redenominated by the name of the secondary mineral mined therein, and if the holder of such location fails to show such cause to the satisfaction of the PMD, the holder shall forthwith make an application under subsection(1). 30
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(3) The holder of a mining location may apply for the conversion of the whole or any portion of such location into a site. Such holder shall peg such site in terms of section forty-seven and the PMD shall, if satisfied that the area pegged is not in excess of the holder's requirements for a site, issue a certificate of registration in terms of section forty-eight. If the whole location is not registered as a site, the holder shall abandon that portion of the location which is not so registered. 40

(4) The holder of a registered site may apply to the PMD for the conversion of the whole or any portion of such site into a mining location. If the PMD approves the application, the holder of the site shall forthwith relocate and re-register such site or portion thereof in such manner as in this Act is prescribed for the appropriate class of mineral, and thereafter it shall be held as a mining location in respect of the mineral for which it has been registered. If the whole site is not registered as a mining location 45

the holder shall abandon that portion of the site which is not so re-registered or may re-register such portion as a site.

5 (5) An application for a conversion referred to in subsection (1), (2), (3), (4), (5) and (6) shall be made to the Provincial Mining Director having jurisdiction over the mining location to which the application relates.

(6) An application referred to in subsection (5) shall be in writing and in the form (if any) prescribed, and shall be accompanied by a sketch plan based on a map issued under the authority of the State and of a scale of not less than 1: 50 000 identifying the mining location or the site affected by the conversion.

10 (7) The application referred to in subsection (4) shall be processed as follows—

(a) the Provincial Mining Director may provisionally permit or direct as the case may be the applicant to convert the mining location in accordance with subsections (1), (2), (3), (4), (5) and (6);

15 Provided that if the Provincial Mining Director refuses provisional registration under this paragraph for any reason, or the Director must notify the applicant of his or her reasons for so refusing provisional registration and must invite by such notice the applicant to lodge a written objection (not exceeding 2000 words) to such refusal within 48 hours of the notification by the Director of such refusal;

20 (b) the Provincial Mining Director may provisionally permit the applicant to convert a registered block of claims in accordance with subsections (1), (2), (3), (4), (5) and (6);

25 (c) the Provincial Mining Director upon receiving the application for conversion must post one copy of the memorandum, if any, on the public notice board of the Director's office together with an invitation to interested persons (that is to say existing or potential small-scale or other miners or other interested persons within the area of the jurisdiction of the PMD) to attend at the meeting referred to in that paragraph (giving particulars of its time and venue) to enable them to make oral and written representations at that meeting on the question whether to grant or refuse provisional registration for the conversion concerned;

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

35 (8) In amplification or clarification of the provisions of subsection (7) the following provisions are pertinent—

40 (a) if the applicant lodges timeously with the Provincial Mining Director the written objection referred to in proviso (ii) to that subsection, and the Director then accepts the objection to be justified, the Director shall proceed as if he or she had not invited the applicant to lodge such objection, and no record of it is required to be made in the provisional register;

45 (b) if the applicant fails to lodge timeously with the Provincial Mining Director the written objection referred to in proviso (ii) to that subsection, it shall be taken that the holder has abandoned the application, but the holder is not prevented from making a fresh application under subsection (7)(a) or (b);

50 (c) if the applicant or the occupier of the affected land fails to attend at the meeting referred to in subsection (7)(c)(ii), the Director may proceed in the absence of either or both to grant or refuse the application and, if the application is granted make the relevant recommendations in accordance with subsection (10);

- (d) at the meeting referred to in subsection (7)(c)(ii) the PMD shall follow the applicable rules set out in the Second Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”);
- (e) at the conclusion of the meeting referred to in subsection (7)(c)(ii) the PMD may, in the presence of the parties (if any) at the meeting—
 - (i) provisionally approve the application of the holder of the block of claims concerned without amendment; or
 - (ii) provisionally approve the application of the applicant subject to a defined reduction in the area of block of claims or site originally applied for.; or
 - (iii) provisionally reject the application of the applicant concerned (either on the merits of the application or because the is for any reason unable to make a decision on the basis of the evidence presented to him or her); or

Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it, to the applicant any affected occupier in any of the ways contemplated by section 34, and post a copy of the decision and the reasons for it on the public notice board of the Director’s office;

- (g) as soon as possible after the conclusion of the meeting referred to in subsection (7)(c)(ii) the PMD shall make a written summary of the proceedings of the meeting in the form of a report to the Cadastre Registrar together with his or her recommendation to the Cadastre Registrar to give final approval to his or her decision referred to in paragraph (f) (but if the PMD provisionally reject the application otherwise than on its merits, the PMD must expressly request the Cadastre Registrar to make the appropriate decision on the basis of any additional information that may be made available to the Cadastre Registrar):

Provided that if any recommendation is adverse to the applicant the PMD must avail a copy of the report incorporating the recommendation to the non-primary applicant concerned to afford an opportunity no later than 48hrs after such report is availed to him or her to make a written response to the same not exceeding two thousand words which response shall be annexed to the report of the PMD that is transmitted in terms of subsection.....

(9) No conversion shall be finally registered under this section until the following steps are completed—

- (a) the Provincial Mining Director, in the case of an application of the type referred to in subsection (7)(a) or (b) where the Director has refused provisional registration or refused it because the applicant objected to the conditions for its registration, transmit all the following particulars to the Cadastre Registrar within seven working days of the conclusion of the meeting referred to in subsection (7)(c)(ii)A—
 - (i) all the documentation supporting the application referred to paragraph (a) (i) to (iii); and
 - (ii) the notice of the ’s decision referred to in subsection (8)(f); and
 - (iii) the report to the Mining Cadastre Registrar referred to in subsection (8)(g); and
 - (iv) if, as a result of the meeting referred to in subsection (7)(c)(ii)A the PMD provisionally approved the application, the provisional registration number assigned to the converted blocks or sites;

- (11) The PMD shall enter in his or her register the fact that—
 - (a) a final certificate of registration has been issued; or
 - (b) the site applied for has been abandoned due to the operation of subsection (11);

and shall forthwith notify the Mining Cadastre Registrar of such registration or abandonment, as the case may be. 5

(12) Any person who is aggrieved by a decision of the Mining Cadastre Registrar under this section, that is to say any holder of a registered mining location or property who applied for the registration of a site, or other existing or potential small-scale or other miner having a demonstrable interest in the issue of such registration, or any occupier of any land affected by such registration, may seek a review of such decision by the Administrative Court. 10

(13) Upon a review of the Cadastre Registrar’s decision the Administrative Court may—

- (a) uphold the decision of the Cadastre Registrar; or 15
- (b) refer the decision back to the Mining Cadastra Registrar for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—
 - (i) allowing extraneous or irrelevant considerations to affect the decision, 20
 - (ii) failure to take into account relevant considerations in arriving at the decision,
 - (iii) any material mistake of fact or law that tainted the decision;
 - (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision; 25
 - (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
- (c) if the application for review is made at the instance of an aggrieved occupier of any land affected by such registration—
 - (i) refer the decision back to the Mining Cadastre Registrar as provided in paragraph (b); or 30
 - (ii) prohibit or cancel the pegging or registration of the site; or
 - (iii) order that a lesser area should be pegged or registered; or
 - (iv) impose restrictions on the use to which he site may be put; or
 - (v) give such other order or direction in the matter as the court considers just. 35

(14) Upon application made to the PMD the holder of registered mining location may—

- (a) amend the certificate of registration of a site or sites;
- (b) obtain a fresh certificate of a site, specifying another mining location in the vicinity as the location for which the site has been registered; 40

whereupon the provisions of this section may apply in the same way as an original application for a site:

Provided that if the effect of an amendment sought by the holder of the location is to reduce the area of a site, the occupier of the affected land shall be deemed for the purposes of subsection (a) and (b) to have consented thereto. 45

(15) Where any conversion is effected under this section the holder shall pay to the PMD in respect of the new certificate of registration the fee that would have been payable under Part III if such certificate of registration had been an original certificate of registration.

5 **141 Dependent mine service sites: mining rights**

(1) Subject to this section, the holder of a registered dependent mining service site shall in respect of any minerals which may exist within the vertical limits of his or her site, possess, but only within such limits, the same rights as are possessed by the holder of a registered block of claims in respect of minerals within the vertical limits of his block, but such rights shall be inseparably connected with and shall not be alienated in any way from such site.

(2) the holder of a registered site wishing to exercise his or her rights under subsection (1) without converting the site or any part of it into a mining location as provided in section 175, shall before commencing mining operations thereon, apply to the PMD to exercise such rights and submit together with such application—

- (a) a copy of the certificate of registration for the site; and
- (b) a memorandum not exceeding 2000 words, explaining why the holder wishes to exercise such rights without making the conversion as aforesaid and briefly setting out how the holder proposes to carry on the projected mining operations on the site, with particular reference to how the health and safety of the workers, if any resident on the site is to be safeguarded; and
- (c) a map issued under the authority of the State and of a scale of not less than 1: 50 000 showing the site and identifying the location of the proposed mining operations; and
- (d) an affidavit deposed by the applicant stating that he or she has notified the owner or occupier of the land on which the site is located of the applicant's intention to conduct mining operations on the site.

(3) The application referred to in subsection (2) shall be processed as follows—

- (a) the Provincial Mining Director may provisionally permit the applicant to exercise the right referred to in subsection (1):

Provided that if the Provincial Mining Director refuses provisional registration under this paragraph for any reason, or the Director must notify the applicant of his or her reasons for so refusing provisional registration and must invite by such notice the applicant to lodge a written objection (not exceeding 2000 words) to such refusal within 48 hours of the notification by the Director of such refusal;

Provided further that if the Provincial Mining Director has provisionally granted registration under this paragraph, the application of the holder may not engage in any works other than those strictly preparatory to the commencement of the mining works;

- (b) the Provincial Mining Director upon receiving the application must post one copy of the memorandum referred to in and one copy if any of the memorandum referred to in....., on the public notice board of the Director's office together with an invitation to interested persons (that is to say the owner or occupier of the affected land, existing or potential small-scale or other miners or other interested persons within the area of the jurisdiction of the PMD) to attend at a meeting referred to in that paragraph (giving particulars of its time and venue) to enable them to make oral and written representations at that meeting on the question whether to grant or refuse the application:

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

(4) In amplification or clarification of the provisions of subsection (7) the following provisions are pertinent— 5

- (a) if the applicant lodges timeously with the Provincial Mining Director the written objection referred to in proviso (ii) to that subsection, and the Director then accepts the objection to be justified, the Director shall proceed as if he or she had not invited the applicant to lodge such objection, and no record of it is required to be made in the provisional register; 10
- (b) if the applicant fails to lodge timeously with the Provincial Mining Director the written objection referred to in proviso (ii) to that subsection, it shall be taken that the holder has abandoned the application, but the holder is not prevented from making a fresh application under subsection (7)(a) or (b); 15
- (c) if the applicant or the occupier of the affected land fails to attend at the meeting referred to in subsection (7)(c)(ii), the Director may proceed in the absence of either or both to grant or refuse the application and, if the application is granted make the relevant recommendations in accordance with subsection (10); 20
- (d) at the meeting referred to in subsection (7)(c)(ii) the PMD shall follow the PMD shall follow the applicable rules set out in the Second Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”); 25
- (e) at the conclusion of the meeting referred to in subsection (7)(c)(ii) the PMD may, in the presence of the parties (if any) at the meeting—
 - (i) provisionally approve the application of the holder of the site concerned without amendment; or
 - (ii) provisionally require the holder of the site to convert it or part of it into a mining location in accordance with section 173; or 30
 - (iii) provisionally reject the application of the applicant concerned (either on the merits of the application or because the is for any reason unable to make a decision on the basis of the evidence presented to him or her); or 35

Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it, to the applicant any affected occupier in any of the ways contemplated by section 34, and post a copy of the decision and the reasons for it on the public notice board of the Director’s office; 40

- (g) as soon as possible after the conclusion of the meeting referred to in subsection (7)(c)(ii) the PMD shall make a written summary of the proceedings of the meeting in the form of a report to the Cadastre Registrar together with his or her recommendation to the Cadastre Registrar to give final approval to his or her decision referred to in paragraph (f) (but if the PMD provisionally reject the application otherwise than on its merits, the PMD must expressly request the Cadastre Registrar to make the appropriate decision on the basis of any additional information that may be made available to the Cadastre Registrar); 45

Provided that if any recommendation is adverse to the applicant the PMD must avail a copy of the report incorporating the recommendation 50

to the non-primary applicant concerned to afford an opportunity no later than 48hrs after such report is availed to him or her to make a written response to the same not exceeding two thousand words which response shall be annexed to the report of the PMD that is transmitted in terms of subsection.....

5

Provided further that if within 48 hours after such report is available which contains a recommendation for a holder to convert his or her site or part of into a mining location in accordance with section 173, the holder signifies in writing to the PMD that he or she accepts such recommendation, the PMD shall terminate proceedings under this section to enable the holder to make the appropriate application under that section.

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(5)No application for the exercise of rights under subsection (1) shall be finally registered under this section until the following steps are completed—

(a) the Provincial Mining Director, in the case of an application of the type referred to in subsection (7)(a) or (b) where the Director has refused provisional registration or refused it because the applicant objected to the conditions for its registration, transmit all the following particulars to the Mining Cadastre Registrar within seven working days of the conclusion of the meeting referred to in subsection (7)(c)(ii)A—

15

(i) all the documentation supporting the application referred to paragraph (a) (i) to (iii); and

20

(ii) the notice of the 's decision referred to in subsection (8)(f); and

(iii) the report to the Cadastre Registrar referred to in subsection (8)(g); and

(iv) if, as a result of the meeting referred to in subsection (7)(c)(ii)A the PMD provisionally approved the application, the provisional registration number assigned to the converted blocks or sites;

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(b) upon transmission of the particulars referred to in paragraph (a), (b), (c) or (d), the Cadastre Registrar may, if he or she is of the opinion that the transmitted particulars are—

30

(i) in order, consider whether to accept or reject the final registration of the block or sites in question, that is to say—

A. if the Mining Cadastre Registrar accepts the final registration of the block or site, amend or enter the relevant particulars concerning the block or site in the Cadastre Register and confirm in writing to the PMD concerned that the block or site have been finally registered, subject to subsection (12);

35

B. if Mining Cadastre Registrar rejects the final registration or amendment of the block or site, transmit the reasons for such rejection to the PMD concerned, subject to subsection (13);

40

(ii) not in order or incomplete or inadequate—

A. request further information or request an adjustment to the particulars transmitted by the PMD (which adjustment may include a reduction in the area of the block or site applied for), before making a decision in accordance with subparagraph (i); and

45

B. upon satisfactory compliance with such request, proceed in accordance with paragraph (i);

(c) upon receiving from the Mining Cadastre Registrar—

(i) confirmation of the final registration of the conversation of the block

- or site in accordance with paragraph (e)(i)A, the PMD concerned shall notify the applicant for the site or sites to apply for a certificate of registration under subsection (12);
- (ii) rejection of the final registration of the block or site in accordance with paragraph (e)(i)B, the concerned PMD shall notify the applicant for the block or site of the Cadastre Registrar’s reasons for the rejection of the application; and 5
 - (iii) a request for further information or a request for an adjustment of the particulars transmitted by the PMD concerned, the shall—
 - A. if he or she is able to comply with the request without the need to involve the applicant, transmit the information or effect the adjustment and transmit it to the Cadastre Registrar forthwith; or 10
 - B. if he or she is not so able as contemplated in subparagraph A, communicate the request to the applicant forthwith: 15

Provided that if, within 14 days of being notified of such request, the applicant fails to comply with the request, the applicant shall be deemed to have abandoned the application for the site;
- (6) Upon receiving from the notice of the final registration of the site, the applicant for the site must apply to the for a certificate of final registration in the manner prescribed and on payment of the prescribed fee, no later than 31 days of the receipt of such notice or no later than any extension of that period not exceeding a further 30 days that the PMD may grant for any good and sufficient reason shown to the PMD (and if such applicant fails to apply for a final certificate of registration within such period or extended period, the applicant shall be deemed to have abandoned such site). 20 25
- (7) The PMD shall enter in his or her register the fact that—
- (a) a final certificate of registration has been issued; or
 - (b) the site applied for has been abandoned due to the operation of subsection (11); 30
- and shall forthwith notify the Mining Cadastre Registrar of such registration or abandonment, as the case may be.
- (8) Any person who is aggrieved by a decision of the Cadastre Registrar under this section, that is to say any holder of a registered mining location or property who applied for the registration of a site, or other existing or potential small-scale or other miner having a demonstrable interest in the issue of such registration, or any occupier of any land affected by such registration, may seek a review of such decision by the Administrative Court. 35
- (9) Upon a review of the Mining Cadastre Registrar’s decision the Administrative Court may— 40
- (a) uphold the decision of the Cadastre Registrar; or
 - (b) refer the decision back to the Mining Cadastre Registrar for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—
 - (i) allowing extraneous or irrelevant considerations to affect the decision, 45
 - (ii) failure to take into account relevant considerations in arriving at the decision,
 - (iii) any material mistake of fact or law that tainted the decision;

- (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision;
 - (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
- 5 (c) if the application for review is made at the instance of an aggrieved occupier of any land affected by such registration—
- (i) refer the decision back to the Mining Cadastre Registrar as provided in paragraph (b); or
 - (ii) prohibit or cancel the pegging or registration of the site; or
 - 10 (iii) order that a lesser area should be pegged or registered; or
 - (iv) impose restrictions on the use to which he site may be put; or
 - (v) give such other order or direction in the matter as the court considers just.

- 15 (10) Upon application made to the PMD the holder of registered mining location may—
- (a) amend the certificate of registration of a site or sites;
 - (b) obtain a fresh certificate of a site, specifying another mining location in the vicinity as the location for which the site has been registered;

20 whereupon the provisions of this section may apply in the same way as an original application for a site:

Provided that if the effect of an amendment sought by the holder of the location is to reduce the area of a site, the occupier of the affected land shall be deemed for the purposes of subsection (a) and (b) to have consented thereto.

25 (11) Where any conversion is effected under this section the holder shall pay to the PMD in respect of the new certificate of registration the fee that would have been payable under Part III if such certificate of registration had been an original certificate of registration.

142 Mining rights

- (1) In this section and section 141 (“Surface rights of miners”)—
- 30 “mining location” means such a location, whether held as a claim, block of claims or a mining lease, wherein a primary mineral is, under the terms of the mining title over the location, being mined ;
- 35 “primary mineral” means the single mineral or set of defined minerals which are the minerals predominantly being mined at the mining location or were intended to be predominantly mined at the location concerned at the time the mining title to the location was obtained;
- 40 “registration” in connection with a conversion of a mining location in terms of section 173, means re-registration of a converted block of mineral claims or the amendment of a mining lease reflecting the conversion from a primary to a secondary mineral or to or from a site ;
- “secondary mineral” means the single mineral or set of defined minerals which are discovered after, or are being mined together, with the primary mineral.
- (2) Subject this Act, every holder of a registered block of claims shall possess the following mining rights—
- 45 (a) the exclusive right of mining any ore or deposit of the primary mineral in respect of which the mining location is registered which occurs within the vertical limits of his or her mining location; and

- (b) the exclusive right within the vertical limits of his or her mining location of prospecting for any ore or deposit of any mineral other than the primary mineral, and if any such ore or deposit of a secondary mineral is discovered within such location, the holder thereof shall, subject to this section, notify the PMD of such discovery and shall, subject to this Act, thereafter have the right of mining such secondary mineral within the vertical limits of his or her location: 5

Provided that nothing in this paragraph contained shall confer any rights to mine any coal or mineral oil or natural gas.

- (2) The holder of a mining location who discovers any ore or deposit of any secondary mineral shall— 10

- (a) within a period of thirty-one days from the date of the discovery submit a discovery notice in the prescribed form (together with a registration certificate in relation to the location), which discovery notice must disclose the following particulars—
- (i) the nature of the secondary mineral; 15
 - (ii) whether or not the holder considers that the secondary mineral occurs in such amount as to exceed in value the amount of the primary mineral, and if so an estimate of that value;
 - (iii) whether or not the holder intends to exploit the secondary mineral;
 - (iv) if he or she does not intend to exploit the secondary mineral, how the holder proposes to dispose of the secondary mineral if he or she mines any of it in the course of mining the primary mineral; 20
 - (v) if he or she intends to exploit the secondary mineral, whether and at what time the holder proposes to convert the mining location in terms of section 173: (Civil penalty) 25

Provided that if such holder makes application within the said period to the PMD for an extension of the period and furnishes any reason for such extension which to the PMD seems good and sufficient, the PMD may extend the said period for a further period not exceeding thirty- one days; 30

- (b) if the PMD having received a discovery notice under paragraph (a) is satisfied that the information furnished in the discovery notice is well founded on the basis of the information available to the holder and the PMD at the time of the lodging of the notice, the PMD shall without delay transmit a copy of the discovery notice to the Mining Cadastre Registrar and the Director of Geological Survey. 35

- (3) No conversion of a mining location in terms of section 138 (“Conversion as between primary and secondary minerals and as between sites and mining locations”) may be made at the instance of the holder of the block unless the holder first complies with this section 40

143 Surface rights of miners

- (1) For the purposes of subsection (2)(e)—
 “property” means two or more blocks of claims, whether contiguous or otherwise, owned by one person, from which the ore is being treated at the same milling or reduction plant or which are under the control of one registered mine manager. 45

- (2) Every miner of a registered mining location shall have and possess the following respective surface rights—

5 (a) the right, subject to any existing rights, to the use of any surface within the boundaries thereof for all necessary mining purposes of his or her location; and as against the holder of an exclusive prospecting licence or of any other mining location the right, except as in section 262 (“PMD may authorise certain works”) provided, to the use of all surface within such boundaries;

10 (b) the right to use, free of charge, soil, waste rock or indigenous grass situated within his or her location for all necessary mining purposes of such location;

(c) the right to sell or otherwise dispose of waste rock recovered by him or her from his or her location in the course of *bona fide* mining operations:

15 Provided that as from the date on which the rights of the miner to carry on the work of mining on the location cease, the rights of the miner to sell or otherwise dispose of such waste rock shall cease and any agreement for the sale or other disposition of such waste rock shall be of no further force or effect;

20 (d) the same right of taking water for primary purposes and of taking indigenous wood or timber as is possessed by the holder of an exclusive prospecting licence:

Provided that—

25 (i) section 34 (“Surface rights of holder of exclusive prospecting licences”) applies in the case of any dispute between the miner and the owner or occupier of the land affected by such taking;

(ii) nothing in this paragraph shall be construed so as to permit a miner to use any wood or timber taken by him or her for firewood elsewhere than on his location or, where his or her location is a block forming part of a property, on that property.

30 **144 Right of landholder to graze stock upon or cultivate the surface of mining location**

(1) For the purposes of this section and sections 140, 141 and 142—

“landholding parties” means—

35 (a) in relation to land, other than Communal Land, to which an approved cultivation scheme or proposed scheme relates—

(i) the owner; and

(ii) where the occupier of the land is not the owner thereof, the occupier of that land;

(b) in relation to Communal Land to which an approved cultivation scheme or proposed scheme relates, any rural district council within the area of which that Communal Land is situated;

40 “mining parties” means—

(a) the holder of; and

(b) where the miner of the registered mining location is not the holder thereof, the miner of; and

45 (c) the holder of a hypothecation or option registered under this Act over;

the registered mining location to which an approved cultivation scheme or proposed scheme relates.

(2) Subject to this section, the owner or the occupier of land on which a registered mining location is situated shall retain the right to graze stock upon or

cultivate the surface of such location in so far as such grazing or cultivation does not interfere with the proper working of the location for mining purposes.

(3) Subject to subsection (4), the occupier of any land on which a registered mining location is situated, or a rural district council or containing a registered mining location, may lodge with the PMD a written scheme, together with three copies thereof, in regard to the cultivation of the whole or any part of the surface of any registered mining location by such occupier or by persons—

- (a) entitled to reside in Communal Land within the area of such rural district council,; or
- (b) belonging to a group of five or more land permit holders within the area of such rural district council:

(4) Not later than thirty days before lodging a scheme under subsection (3), the occupier or rural district council, as the case may be, shall give notice of his or its desire to lodge the scheme, together with a copy of the scheme, to—

- (a) each of the mining parties affected thereby; and
- (b) where notice is being given by the occupier and he is not the owner of the land, the owner of the land;

Provided that, if a scheme has been agreed to by all the landholding and mining parties and the agreement of each such party has been endorsed on the scheme and signed by him or her, this subsection shall not apply and the scheme may forthwith be lodged under subsection (5).

(5) On receipt of a scheme under subsection (3), the PMD must be satisfied that—

- (a) subsection (4) has been complied with or does not apply; and
- (b) the scheme does not provide for the cultivation of land for the purpose of planting or establishing orchards, tree plantations or other permanent crops; and
- (c) the period of the scheme is clearly stated in the scheme and terminates on a date specified therein; and
- (d) the scheme specifies the basis on which the compensation shall be calculated in the event of termination of the scheme under section 141 (“Termination of scheme by miner”); and
- (e) the registered mining location concerned is being held for *bona fide* mining purposes; and
- (f) the scheme is satisfactory in all respects and is not designed or likely to hinder or prevent the future exploitation of the mineral resources of the mining location.

(6) If the PMD is not satisfied as to any of the matters referred to in subsection (5), he or she shall refuse to approve the scheme and may submit to the landholding and mining parties affected by the scheme such amendments to the scheme as he or she may deem fit and require them to state within a specified period—

- (a) in the case of a landholding party, whether or not he or she agrees to the amendments;
- (b) in the case of a mining party, any objections he or she may have to the amendments.

(7) If the landholding parties agree to the amendments submitted to them by the PMD under subsection (6), the PMD may, after considering any objections to the amendments stated by the mining parties, amend the scheme accordingly and approve the scheme as amended.

(8) Where the PMD has approved a scheme he or she shall—

- (a) endorse its approval on the scheme and on the copies thereof and record the scheme in his or her register; and
- (b) retain the original copy of the scheme; and
- (c) send a copy of the scheme to each of the parties to the scheme

(9) If the PMD receives any objections to a scheme under subsection (5)(b), or any landholding party does not agree to the amendments submitted to them by the PMD under subsection (6), the Provincial Mining Director must—

- (a) serve on every landholding party and mining party concerned a written notice of a meeting to be held before the Director at the time and venue notified (not being more than seven working days after the service of the notice), at which meeting the Director shall receive oral and written representations on the proposed scheme, and decide whether or not to approve the scheme, or approve it subject to alterations or conditions:

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

- (b) post one copy of the scheme and notice of the meeting in connection with it on the public notice board of the Director’s office:

(10) The following provisions are pertinent to a meeting convened by the PMD in terms of subsection (9)—

- (a) if either the landholding parties or the mining parties fail to attend at the meeting referred to in subsection (9)(a), the Director may assume that the absent party has abandoned the application for the scheme, or has dropped his or her objections to it, as the case may be
- (b) the applicable rules set out in the Second Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD at the meeting;
- (c) at the conclusion of the meeting the PMD may, in the presence of the parties (if any) at the meeting—
 - (i) approve the scheme without amendment; or
 - (ii) approve the scheme subject to a defined reduction in the area of the site originally applied for; or
 - (iii) reject the scheme:

Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it, to the parties, and post a copy of the decision and the reasons for it on the public notice board of the Director’s office;

- (d) as soon as possible after the conclusion of the meeting, the PMD shall make a written summary of the proceedings of the meeting in the form of a report to the Cadastre Registrar.

(11) Any landholding party or mining party who is aggrieved by a decision of the PMD under this section, may seek a review of such decision by the Administrative Court.

(12) Upon a review of the PMD’s decision the Administrative Court may—

- (a) uphold the decision of the PMD; or
- (b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—

- (i) allowing extraneous or irrelevant considerations to affect the decision,
- (ii) failure to take into account relevant considerations in arriving at the decision,
- (iii) any material mistake of fact or law that tainted the decision; 5
- (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision;
- (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.

145 Exercise of rights under scheme upon approval 10

- (1) Upon approval of a scheme by the PMD under section 142—
 - (a) in the case of land other than Communal Land, the occupier shall be entitled, subject to the provisions of the scheme, to exercise the rights conferred on him or her by the scheme, and
 - (b) in the case of Communal Land, persons entitled in terms of the Communal Land Act [*Chapter 20:04*] to cultivate the land concerned shall be entitled, subject to the provisions of the scheme, to exercise the rights conferred on them by the scheme; and 15
 - (c) the scheme shall be binding on the holder of the registered mining location concerned and on the miner, if any, thereof; and 20
 - (d) any rights of cultivation conferred by section 139(2) in respect of the land to which the scheme relates shall be suspended for the duration of the scheme.

(2) Upon the approval of a scheme by the PMD under section 142 the PMD shall forthwith, without obtaining the authority of the Minister, reserve the ground covered by the scheme against prospecting and pegging under section [35] or the period of the scheme. 25

(3) Upon the termination of a scheme, whether by effluxion of time or otherwise, the PMD shall by notice posted at his office withdraw the reservation

146 Termination of scheme by miner 30

(1) Subject to this section, the miner of the registered mining location concerned or, if the location is not being mined, the holder thereof may at any time during the currency of an approved cultivation scheme terminate the scheme by giving written notice of termination to each of the landholding parties, either in in any of the ways contemplated by section 5 (“Manner of giving notices”): 35

Provided that, if the miner is not the holder of the registered mining location, no notice of termination may be given unless the holder has agreed thereto and his or her agreement has been endorsed thereon and signed by him or her.

(2) The notice of termination of a scheme shall specify the date on which the termination is to take effect which shall be a date not less than two months from the date of the giving of the notice of termination to the landholding parties: 40

Provided that, if notice has to be given to two or more landholding parties and is not given to them on the same day, the date so specified shall be not less than two months from the date of the last giving of such notice.

- (3) Where notice of termination of a scheme has been given under this section— 45
 - (a) the miner or, if there is no miner, the holder of the registered mining location shall on or before resumption of the land concerned pay to—

- (i) in the case of land other than Communal Land, the occupier or, if there is no occupier, the owner of the land;
- (ii) in the case of Communal Land, any rural district council established for the area concerned, for distribution to the persons entitled in terms of the Communal Land Act [*Chapter 20:04*] to cultivate the land;

such compensation as may be mutually agreed upon or, failing agreement, by the PMD on the basis specified in the scheme under section 139 (“Right of landholder to graze stock upon or cultivate the surface of mining location”)(3)(d), or by the Administrative Court on appeal from the determination of the PMD under subsection (5);

- (b) the scheme shall cease to be of effect and the miner or holder, as the case may be, may resume possession of the land to which the scheme related—
 - (i) on the date specified for that purpose in the notice of termination; or
 - (ii) where the compensation referred to in paragraph (a) has not been paid before the date referred to in subparagraph (i), as soon as that compensation has been paid.

(4) Notwithstanding subsection (3), no person shall be disturbed in his or her cultivation of land under a scheme terminated under this section until he or she has had time to reap at the proper season any annual crops sown before the date of receipt of the notice of termination by—

- (a) in the case of land other than Communal Land, the occupier of the land;
- (b) in the case of Communal Land, the rural district council, if any, established for the area concerned.

(5) For the purpose of fixing any compensation payable under this section the PMD shall, on failure of the parties to reach a settlement by the time the notice of termination of a scheme takes effect under subsection (2), the PMD must—

- (a) serve on the miner and the disputing landholding party concerned a written notice of a meeting to be held before the PMD at the time and venue notified (not being more than seven working days after the service of the notice), at which meeting the PMD shall attempt to fix, on the basis specified in the scheme under section 139 (“Right of landholder to graze stock upon or cultivate the surface of mining location”)(3)(d), the amount of compensation to be paid to the landholding party or parties concerned

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

and

- (b) post one copy of the scheme and notice of the meeting in connection with it on the public notice board of the Director’s office:

(6) Section 139 (10) applies to a meeting under subsection (5) except that at the conclusion of the meeting the PMD may—

- (a) in the presence of the parties (if any) at the meeting fix the compensation payable to the landholding party or parties concerned; or
- (b) defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it, to the parties, and notify the parties in any of the ways specified in section 5(2)(a), (b) or (c).

(11) Any landholding party or mining party who is dissatisfied with the determination of compensation by the PMD, may seek a review of such decision by the Administrative Court and section 139(12) shall apply to such review.

147 Termination of scheme by consent

(1) An approved cultivation scheme may at any time be terminated, either as to the whole or a part of the area covered thereby, by the mutual consent of the landholding and mining parties affected by the scheme. 5

(2) The parties involved in such termination shall forthwith inform the PMD of the termination.

(3) If it comes to the notice of the PMD that any person has fails to comply with subsection (2), the PMD shall serve on him or her a **category 1 civil penalty order** 10

148 PMD may cancel scheme

(1) Where the owner or occupier of any land, other than Communal Land, to which an approved cultivation scheme relates has in the opinion of the PMD failed adequately to exercise his or her rights under the scheme, the PMD may call upon him or her to show cause why the scheme should not be cancelled and, if the owner or occupier fails to show such cause to the satisfaction of the PMD, the PMD may cancel the scheme. 15

(2) Where the persons entitled in terms of the Communal Land Act [*Chapter 20:04*] to cultivate Communal Land to which an approved cultivation scheme relates have in the opinion of the PMD failed adequately to exercise their rights under the scheme, the PMD may call upon any rural district council established for the area concerned to show cause why the scheme should not be cancelled, and, if the rural district council fails to show such cause to the satisfaction of the PMD, the PMD may cancel the scheme. 20 25

149 Resumption of rights by miner

On the expiry of the period of an approved cultivation scheme or on the termination of a scheme under section 142 or the cancellation of a scheme under section 143, the miner or, if there is no miner, the holder of the registered mining location concerned may exercise his or her full rights in respect of the registered mining location or part thereof, as the case may be, without payment to any person for or in respect of anything done in the exercise of any rights under the scheme. 30

150 Termination of scheme on forfeiture or abandonment of location

(1) Subject to [272] (“Relocation of abandoned, forfeited or cancelled locations and reinstatement of forfeited locations”) (3), if title to a mining location to which an approved cultivation scheme relates is extinguished by forfeiture or abandonment or in any other manner before the period of the scheme expires, the scheme shall be deemed to have been terminated and Part V (“Prospecting and Pegging on Ground Reserved against Prospecting and Pegging”) shall thereafter apply to or in respect of so much of the land covered by the scheme as comes within the definition of “land under cultivation” contained in section 27 (“Interpretation in Part V”). 35 40

(2) Where a portion of a mining location to which an approved cultivation scheme relates is abandoned before the period of the scheme expires, the scheme shall be deemed to have been terminated in respect of that portion of the location which has been abandoned and Part V shall apply to so much of the abandoned portion as comes within the definition of “land under cultivation” contained in section 27 (“Interpretation in Part V”)(1). 45

151 Scheme to bind successors in title

Unless an approved cultivation scheme is terminated or deemed to have been terminated or is cancelled before the expiry of the period thereof, the scheme and sections 141 to 145 shall for the period of the scheme apply to or in respect of and be binding on—

- (a) any person to whom the mining location to which the scheme relates is transferred and on any miner thereof; and
- (b) any person to whom land, other than Communal Land, covered by the scheme is transferred and on any occupier thereof; and
- (c) any person becoming entitled in terms of the Communal Land Act [*Chapter 20:04*] to cultivate any Communal Land covered by the scheme:

Provided that, where a scheme has been terminated under section 142 (“Termination of scheme by consent”) as to part only of the area covered thereby, this section shall apply in relation to the remainder of the area.

152 Inspection certificates and payments to landholders during period of agreement

During the currency of an approved cultivation scheme—

- (a) any inspection certificate falling due in respect of the registered mining location to which the scheme relates shall, notwithstanding anything contained in Part XI (“Preservation of Mining Rights”), be obtainable, without any work having been executed for the purpose, on payment of the fee referred to in section 141 (“Pre-inspection requirements and first and subsequent inspection certificates”)(9)(e); and
- (b) no landholder shall be entitled to any payment under section 151 (“Payments from provincial EROHS trust fund to landholders affected by mining”) in respect of such location which would otherwise be due for the period of the scheme.

153 Payments from provincial EROHS trust fund to landholders affected by mining

(1) In this section—

“affected by mining”, in relation to a landholder so affected, means that, on account of mining operations, whether past or present, on the registered mining location concerned, the landholder is denied the use of the surface of the location or a substantial portion thereof;

(2) Payment to landholders affected by mining shall be made in accordance with this section from the amount remitted to a RDC by the trustees of the appropriate provincial EROHS Trust Fund in terms of **section 185** (“Objects of provincial EROHS trust fund”) (e)

(3) In every financial year the RDC concerned shall determine whether the amount so received is sufficient to make any meaningful disbursement to landholders under this section, and if in its opinion the amount so received is not sufficient for that purpose, it shall defer making any payments to landholders under this section and aggregate the amount so received in the current financial year with the amount received in the following and every subsequent financial year until, in its opinion, meaningful payments can be made:

Provided that no more than three consecutive deferrals may be made before landholders receive payments under this section.

(4) Payments shall be distributed equally to landholders, regardless of the size of their holdings and the degree of impact caused by mining to their farming operations.

(5) No deductions from payments to landholders may be made under this section except for—

- (a) an amount not exceeding two comma five *per centum* of the total amount available for distribution to landholders in the financial year of the RDC concerned, which withheld amount shall be carried over to the next financial year and aggregated to the amount received in that financial year from the trustees of the appropriate provincial EROHS Fund in terms of section ----; and 5
- (b) an amount that may be retained by the RDC concerned for its expenses incurred in connection with administering payments under this section, which retention shall not exceed two comma five *per centum* of the total amount available for distribution to landholders in the financial year concerned, minus the amount referred to in paragraph (a); 10

(6) Subject to any regulations made under this Act—

- (a) every landholder shall, on application to the RDC in which his or her land is located, apply to the Chief Executive Officer of the RDC in writing or on the prescribed form and within such period as may be prescribed and on furnishing such evidence as may be required to substantiate his or her claim, be entitled to receive a payment under this section; 15
- (b) every Chief may, on behalf of those inhabitants of the Communal Land under the Chief's jurisdiction who are landholders affected by mining, and on furnishing such evidence as may be required to substantiate their claims, apply to the Chief Executive Officer of the RDC in writing or on the prescribed form and within such period as may be prescribed claiming payments for such landholders in accordance with this section, 20

for any period falling within the year ending on the previous 31st December during which a registered mining location was situated in any part of their land 25

Provided that if in terms of subsection (3) the RDC will make no payments in respect of that financial year, the claim for payment is extinguished and cannot be aggregated to any claim for payment made in the next or any future financial year. 30

(7) On receipt of an application under subsection (3) the Chief Executive Officer may send particulars of the application to the PMD for verification.

(8) Notwithstanding anything contained in this section, a landholder shall not be entitled to receive the payments referred to in subsection (2) if he or his spouse or any child of either of them holds any direct or indirect pecuniary interest in the mining location concerned, other than the payments referred to in this section or in section [two hundred and thirty-two]. 35

(9) For the purposes of subsection (8), a person shall not be regarded as holding a pecuniary interest in a mining location solely by reason of his or her ownership of shares in a public company unless— 40

- (a) his shareholding is such that he has: or
- (b) where any other person referred to in subsection (8) owns shares in the same company, their combined shareholding is such that they have;

a controlling interest in the company.

PART XI 45

PRESERVATION OF MINING RIGHTS

154 Interpretation in Part XI

In this Part—

“certificate of extra work” means a certificate issued in terms of section 213;

“development work” has the meaning given to it by section 208;

“protection certificate” means a certificate granted in terms of section 221B;

5 “statutory environmental impact assessment report” or “EIA” means an environmental impact assessment report which an applicant is required by Part XI of the Environmental Management Act [*Chapter 20:27*] to submit to the Director-General of the Environmental Management Agency before commencing mining operations;

“work” includes—

- 10 (a) development work;
- (b) the production of minerals;
- (c) capital expenditure, other than—
- 15 (i) expenditure incurred in acquiring a mining location; or
- (ii) expenditure incurred in the exercise of rights of rights under an exclusive exploration licence;
- (d) any other work, expenditure or development in connection with a mining location or mining lease that may be prescribed for the purpose of this definition.

20 **155 Pre-inspection requirements and first and subsequent inspection certificates**

(1) In this section—

“compelling reasons”, in relation to reasons which may excuse an applicant for an inspection certificate from strict compliance with his or her work plan, includes—

- 25 (a) general market conditions prevailing in respect of, or any other circumstances relating to a mineral that are such as to discourage the production of such mineral; or
- (b) any temporary incapacity on the part of the applicant which is not due to any fault on the part of the applicant and which is remediable within a reasonable time;

30 “objective criteria”, in relation to the criteria used by a PVO for the purpose of subsection 2(c) means criteria that in the opinion of the Minister (after consultation with the ministries responsible for the environment and social welfare), strike a reasonable balance between on the one hand, the national interest in developing mineral resources for the benefit of the people of Zimbabwe, and on the other hand satisfying the reasonable and legitimate concerns of a community affected by mining operations.

40 (2) No later than thirty days after the final registration of a mining block, mining lease or special grant, the holder thereof shall submit to the PMD the following (the failure to submit any of which shall be taken by the PMD to constitute abandonment of the block, lease or grant)—

- (a) a plan of work to be done in the next twelve months in connection with the block, mining lease or special grant concerned (hereinafter called a “work plan”);
- 45 (b) a copy of the statutory environmental impact assessment report which in addition to other relevant information must contain the following particulars—
- (i) written information on the extent of any quittance work or other work that will be required in terms of section 269 upon the cessation of mining operations in the block or mining lease concerned; and
- 50

- (ii) particulars of any provision that the applicant has made or will make for meeting the cost of the work referred to in subparagraph (i), and for meeting the cost of any other work required to protect or restore the environment; and
 - (iii) particulars of the kind mentioned in paragraph (c) bearing on the social responsibility of the miner; 5
 - (c) with respect to the part of the EIA of a mining leaseholder or special grantee bearing on social responsibility, a social responsibility certificate from a registered PVO recognised by the Ministry as being qualified to issue such certificates, certifying that the holder of the lease will be (from the undertakings expressed in that part of the EIA) a socially responsible actor by reference to objective criteria (used by the PVO and accepted as such by the Ministry), including— 10
 - (i) the up-to-date payment of all development levies due to the local authority in question; 15
 - (ii) the depth of engagement with the community(s) in the immediate vicinity of the mining location (including regular consultation with the community on issues of concern to them in relation to the impact of the mining operations of the miner);
 - (iii) sensitivity to cultural heritage, including respect for culturally significant sites in the immediate vicinity of the mining location; 20
 - (iv) sensitivity generally to the cultural values and norms of the community in the vicinity of the mining location;
 - (v) the extent to which the mining operations economically and socially benefit the community in the immediate vicinity of the mining location; 25
 - (vi) the implementation of fair and safe labour practices;

and

 - (d) an address for mutual service of documents between the applicant and PMD, and in particular an electronic mail address, if the applicant has one; and 30
 - (e) a prescribed fee.
- (3) The PMD shall, in consultation with a mine surveyor, mining engineer and geologist, within 14 working days of receiving a work plan (which period may be extended with the consent of the holder, or if no such consent is given, or no response is given to the holder after 14 days, the work plan shall be deemed to have been approved without amendment) consider the adequacy of the work plan submitted to him or her (that is to say, judge the adequacy of the plan against such standards of best practice as may be prescribed) and may— 35
- (a) reject the work plan and require the holder to resubmit a new work plan that takes into account the objections of the PMD to the original work plan ;or 40
 - (b) require any specific amendment of the work plan;
- and if the holder fails within 7 working days (or such further period not exceeding an additional 7 working days as the PMD may allow for good cause shown) to comply with paragraph (a) or (b), he shall be deemed to have abandoned the block or lease to which the plan relates. 45
- (4) Except as otherwise provided in this Act, the holder of any block of claims or of any mining lease or as special grant shall, within a period of twelve months from the date of registration of such block or the issue of such mining lease, as the case may be— 50

- (a) apply in writing to the PMD for and obtain a first inspection certificate therefor in respect of work executed upon such block, mining lease or area of the special grant; and
- 5 (b) attach to such application an affidavit stating what work has been done in connection with the block, mining lease or area of the special grant concerned;
- (c) attach to such application—
- (i) a separate affidavit stating the extent to which the applicant has complied with his or her EIA;
- 10 (ii) in the case of an applicant who is a mining leaseholder or special grantee, a social responsibility certificate from a PVO referred to in subsection (2)(c), certifying the extent to which the applicant has lived up to his or her expressed undertakings under subsections 2 (c);
- 15 Provided that —
- (a) if the PVO issues an unqualified certificate that is to say if in its opinion the applicant has substantially lived up to his or her undertakings, the applicant shall pay half the prescribed amount of the inspection certificate fee; or
- 20 (b) if the PVO issues a qualified certificate, that is to say if in its opinion the applicant has not substantially lived up to his or her undertakings, but the PVO is satisfied that it will do so in the foreseeable future, the applicant shall pay double the contribution to the EROHS fund due from he or her under the relevant section (but shall not be entitled to the additional vote by virtue of such payment)...
- 25 (c) if the PVO refuses to issue any certificate, the PMD may, after considering the reasons given by the PVO for its refusal and taking into account the circumstances of the particular case—
- 30 (i) refuse to issue an inspection certificate to the applicant for the reasons that the PVO refused to issue it with a qualified or unqualified social responsibility certificate; or
- (ii) issue the applicant with a first inspection certificate on the conditions that the applicant—
- 35 A. pays treble the contribution due to EROHS trust fund from him or her under Part XV (“Provincial Environmental, Rehabilitation and Occupational Health and Safety Trust Funds”)- (without being entitled to the additional votes by virtue of such payment); and
- 40 B. undertakes that he or she will endeavour to secure social responsibility certification by the time that he or she applies for second inspection certificate;
- 45 (5) In considering whether to issue a first inspection certificate, the PMD shall—
- (a) satisfy himself or herself as to the truth of any material statement in the affidavit, and if not so satisfied, the PMD shall cancel the registration of the block or in the case of mining lease recommend to the Mining Affairs Board for cancellation of the lease; and

- (b) if the PMD is satisfied as to the truth of the affidavit referred to in paragraph (a), the PMD have particular regard of the extent to which the holder has adhered to his or her work plan of work referred to in subsection (1)(a), and if the holder has not so adhered to the full extent required, the holder must furnish to the PMD compelling reasons in writing explaining why full adherence was not achieved, and must do any one or more of the following—
 - (i) undertake in writing to make good any defaults in compliance with the work plan no later than 6 months from the date of issuance of the first inspection certificate; or
 - (ii) seek an amendment in writing of specific parts of the work plan and fully comply with the work plan as amended no later than 6 months from the date of issuance of the first inspection certificate; or
 - (iii) suspend the operation of the work plan for not more than 6 months.

(6) A certificate issued in terms of subsection (4) shall protect the block or the mining lease from forfeiture for a period of twelve months from the date of registration of the block or the date of issue of the mining lease, as the case may be (in the case of a special grant, such certificate is presumptive proof for the purpose of section 236 (“Cancellation of special grant”) that the grantee is in compliance with the terms and conditions attached to his or her special grant).

(7) At least 30 days before the end of each period of 12 months from the date of issuance of a current inspection certificate, the holder of a block or mining lease must submit to the PMD the following (the failure to submit any of which shall render the block or lease liable to forfeiture)—

- (a) an application in writing to the PMD for an inspection certificate in respect of work executed on such block or mining lease; and
- (b) an affidavit stating what work has been done in connection with the block or mining lease concerned in the previous 12 months; and
- (c) a plan of work to be done in the next twelve months in connection with the block or mining lease concerned (hereinafter called a “work plan”);
- (d) any changes to or replacement of the statutory environmental impact assessment report referred to in subsection (1) (b); and
- (e) a prescribed fee.

(8) Subsection (2) shall apply with respect to the work plan.

(9) In considering whether to issue an inspection certificate, the PMD shall apply the provisions of subsection (3), and any reference to a work plan in that subsection shall be taken as reference to a work plan submitted for the previous 12 months

(10) Subsection (5) applies to every certificate of inspection issued after the first certificate.

(11) A work plan shall be binding upon every person who has from the applicant for the inspection certificate an option or a tribute which has been approved in terms of Part XVIII, and the fact that such option or tribute holder has not executed the work required to be done under the work plan, or such of the work under such plan as has been apportioned to such holder, shall not excuse the applicant from compliance with such plan

(12) The PMD may before issuing any inspection certificate under this section, himself or herself or through an inspector of mines or any other official of the Ministry of Mines, inspect any mining location for the purpose of ascertaining the accuracy of any information furnished to him or her by affidavit or in a work plan.

(13) The PMD shall give at least 24 hours notice to the holder of the block or mining lease concerned of such inspection, and such holder shall if so required by the PMD be present at such inspection and afford all facilities and information necessary for the inspection.

5 **156 Complaints by RDC or EMA of alleged breaches by miners of social responsibility and environmental obligations; Minister’s power to intervene in environmental emergencies**

(1) With respect to the social responsibility obligations of a small-scale miner, if at any time between—

- 10 (a) pre-inspection and the application for the first inspection certificate; or
 (b) the issuance of the first inspection certificate and the second inspection certificate, or between the issuance of any subsequent inspection certificate and the application for the next one;

the PMD receives any affidavit from a member of the RDC within whose jurisdiction the small scale miner operates to the effect that—

- 15 (c) the miner has not, during the period since pre-inspection (or during the currency of the existing inspection certificate, as the case may be), paid the development levies due from him or her to the RDC; or
 20 (d) the miner is not socially responsible by reference to any one or more of the criteria mentioned in subsection (2)(c), and specifying in what particular ways the applicant has offended against such criteria,;

the PMD may, after notifying the miner of the affidavit and its contents, require such small-scale miner to lodge at the office of the PMD, a memorandum not exceeding two thousand words responding to the affidavit and, on the basis of that response the PMD may notify the miner in writing that he or she will not qualify to receive a first inspection certificate (or any subsequent inspection certificate, as the case may be) unless, by the time of the application for—

- 25 (e) the first inspection certificate, he or she undertakes in writing to remedy any defaults or complaints complained of no later than the date when he or she applies for the second inspection certificate; or
 30 (f) the next inspection certificate on expiry of the current inspection certificate, he or she undertakes in writing to remedy any defaults or complaints herein mentioned no later than the date of expiry of that next inspection certificate.

35 (2) With respect to the environmental obligations of a small-scale miner, mining lessee or holder of a special grant, if at any time between—

- (a) pre-inspection and the application for the first inspection certificate; or
 (b) the issuance of the first inspection certificate and the second inspection certificate, or between the issuance of any subsequent inspection certificate and the application for the next one;
 40

the PMD receives any affidavit from a member of the RDC within whose jurisdiction the miner operates, or from an official of the Environmental Management Agency, to the effect that—

- 45 (c) the miner has, during the since pre-inspection (or during the currency of the existing inspection certificate, as the case may be), failed to comply to a significant degree with any of the environmental obligations assumed by the miner in his or her EIA ; or
 (b) the miner is responsible for any specified action or omission resulting in significant environmental degradation, destruction, contamination or

other harm to the health or well-being of people, animals or the physical environment;

the PMD may, after notifying the miner of the affidavit and its contents, require such miner to lodge at the office of the PMD, a memorandum not exceeding two thousand words responding to the affidavit and, on the basis of that response the PMD may notify the miner in writing that he or she will not qualify to receive a first inspection certificate unless, by the time of the application for— 5

- (e) the first inspection certificate, he or she undertakes in writing to remedy any defaults or complaints complained of no later than the date when he or she applies for the second inspection certificate; or 10
- (f) the next inspection certificate on expiry of the current inspection certificate, he or she undertakes in writing to remedy any defaults or complaints herein mentioned no later than the date of expiry of that next inspection certificate.

(3) If at any time referred to in subsection (2) (a) or (b) the Minister believes on reasonable grounds (upon a report from the PMD having jurisdiction over the province concerned or from evidence obtained from any other source that the Minister considers to be credible) that a miner is in default with respect to his or her environmental obligations referred to in subsection (2)(a) or is responsible for any damage to the environment referred to in subsection (2)(b), and that as a result significant environmental degradation, destruction, contamination or other service harm to the health of people, animals or the physical environment, has happened or is threatened, the Minister may by a written order to the miner concerned, which order shall be communicated through the PMD, stop the miner immediately from engaging in any mining operations for a specified period not exceeding 60 days from the date of issuance of the order. 15 20 25

(4) Within the period during which mining operations are stopped, the miner concerned shall have the right to show cause to the PMD why the operations should recommence, whereupon the PMD may recommend to the Minister that the mining operations in question should be recommenced subject to the fulfilment of such conditions as the PMD may recommend, or that they should be permanently stopped, in which event the inspection certificate relating thereto shall not be renewed or be immediately withdrawn, as may be appropriate. 30

157 Unutilized dumps

(1) Where the Minister has cause to believe that any dump on any registered mining location appears to be unutilized, the Minister may direct the Board to investigate— 35

- (a) whether or not the dump is economically viable; and
- (b) whether the dump is in fact unutilized and, if so, the reasons therefor.

(2) In making an investigation in terms of subsection (1), the Board shall take into account— 40

- (a) the length of time that the dump has not been worked; and
- (b) the reasons, if any, given by the holder of the registered mining location concerned as to why the dump has not been worked; and
- (c) the intentions of the holder of the registered mining location concerned in regard to the future working of the dump; and 45
- (d) any other relevant factors bearing on the matter.

(3) At the conclusion of the investigation carried out in terms of subsection (2), the Board shall submit a report to the Minister advising whether or not it considers the

dump to be unutilised, and whether or not the dump is economically viable, and shall forward a copy thereof to the holder of the registered mining location concerned.

(4) A holder of a registered mining location may, upon receipt of a copy of a report in terms of subsection (3) submit his or her comments thereon to the Minister for consideration.

(5) Where the Board reports that it considers the dump to be unutilized and that it is economically viable, the Minister may, if he considers it to be in the public interest to do so, direct the holder of the registered mining location concerned to work the dump himself or herself or to tribute it so that it can be worked by someone else, within such reasonable period as the Minister may specify.

158 Retention licences

(1) If the holder of a registered block or mining lease fails, or has reason to believe that he or she is likely to fail, to develop or work, or adequately to develop or work, such block or mining lease or special grant by the time that an inspection certificate falls due, he or she may nevertheless, on payment of the prescribed fee, be given such certificate if he or she obtains a retention licence in accordance with this section.

(2) A holder of a block or the lessee of a mining lease may, at any time before an inspection certificate falls due, apply to the Board, through the PMD, for a retention licence under subsection (1), and if the Board is satisfied that—

- (a) the failure to develop or work, or adequately to develop or work such block or mining lease, is due to circumstances beyond the control of the holder and that he or she has made every effort to overcome them; or
- (b) it is the holder's declared intention to start or continue developing or working the block or mining lease within a period of six months on a scale satisfactory to the Board; or
- (c) general market conditions prevailing in respect of or any other circumstances relating to any mineral are such as to discourage the production of such mineral, and such market conditions or circumstances, as the case may be, have prevailed for a period of at least two years immediately preceding the date of the application; or
- (d) there is reasonable cause for the delay in developing or working the block or mining lease or for not adequately developing or working such block or mining lease; or
- (e) the block forms part of a series of not more than ten blocks contiguous to a main block being worked by the holder and is essential to the proper working of such main block;

the Board may recommend to the Minister, in writing, that he or she should issue a retention licence to the holder or lessee, and may recommend the period for which the licence should be issued and any terms and conditions that should attach to it.

(3) Upon receipt of a recommendation from the Board under subsection (2), the Minister may in his or her discretion issue a retention licence to the holder or lessee concerned for the period and subject to the conditions recommended by the Board:

Provided that, if the Minister refuses to issue a licence, or issues one for a different period or subject to different terms and conditions from those recommended by the Board, he or she shall inform the Board, in writing, of his or her reasons for doing so and the Board shall inform the holder or lessee accordingly.

(4) A retention licence issued under this section shall specify the period for which and the terms and conditions subject to which it is issued.

- (5) The effect of a retention licence is that the holder of the licence—
- (a) is granted protection against forfeiture of the block or lease to which the licence relates during the period of validity of the licence; and
 - (b) must be issued with an inspection certificate at any time it falls due during the period of validity of the licence. 5

(6) The holder of a retention licence may apply in accordance with this section for the issuance of a new retention licence no later than thirty days before the expiry of the current one, but no more than three consecutive retention licences may be issued.

(7) The Minister shall ensure that copies of every retention licence issued under this section are sent to the Board and the PMD, and those copies shall be open to inspection by members of the public, free of charge, at all reasonable times during normal business hours. 10

- (8) If—
- (a) an application for a retention licence under this section is refused, the PMD, on being notified of the refusal, shall declare the registered block or mining lease concerned to be forfeited in terms of **section 198 (“Forfeiture of registered blocks”) (5); or** 15
 - (b) despite the issuance of a retention licence, the PMD has reason to believe that a registered block or mining lease is being held for any purpose other than *bona fide* mining purposes, he or she may report the matter to the Board, which in turn may recommend to the Minister in writing that he or she cancel the retention licence concerned, and upon such cancellation (if any) being notified by the Board to the PMD, the PMD shall declare such block or lease to be forfeited in terms of **section 198 (“Forfeiture of registered blocks”) (5).** 20 25

159 Appeals under Part XI

- (1) Any person who is aggrieved by a PMD’s—
- (a) refusal to issue an inspection certificate or an extra work certificate; or
 - (b) assessment of work done for the purposes of this Part;

may appeal to the Board against the refusal or assessment, for which purpose the appellant must— 30

- (c) lodge (together with the prescribed fee, if any) the appeal in writing with the Provincial Mining Director concerned, and copy it to the Secretary, no later than two working days after the person has received notification decision to be appealed against; and 35
- (d) incorporate in the appeal grounds justifying why the PMD’s decision should be set aside and what decision ought to be substituted for it, and thereupon the Provincial Mining Director shall, without delay, transmit the appeal to the Secretary together with the written decision of the PMD on the referral; in this connection. 40

(2) The effect of lodging an appeal under subsection (1) shall be to suspend the decision appealed against until the appeal is determined by the Board.

(3) Upon receiving an appeal, the Secretary shall promptly (and in any event no later than the next meeting of the Board after receiving it) refer the appeal together with its supporting documentation to the Board, which, after considering it, may — 45

- (a) dismiss the appeal by upholding the decision of the PMD; or
- (b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a

direction to the PMD to investigate the matter further and make a report and recommendations) on any one or more of the following grounds—

- (i) allowing extraneous or irrelevant considerations to affect the decision, or
- 5 (ii) failure to take into account relevant considerations in arriving at the decision, or
- (iii) any material mistake of fact or law that tainted the decision; or
- (iv) gross but unwilful irregularity in the proceedings or the decision;

(the Secretary shall, upon receiving the report or recommendations resulting from the PMD's reconsideration, promptly refer the report or recommendation to the Board which, after considering the same it may make a decision in accordance with paragraph (a) or (b);

or

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

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

or

- (d) dismiss or uphold the appeal and, where necessary, substitute the Board's own decision, on the basis of any policy directive previously communicated to the Board by the Minister setting forth the overriding national *interest* as it affects cases of a like nature **to the one being considered by the Board.**

(4) Any person aggrieved by a decision of the Board under subsection (3)(a), (c) or (d), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the appellant, whereupon the court may do any of the things the Board is empowered to do under subsection (4) (a), (c) or (d), except that with reference to a case decided in accordance with subsection (4)(d) the Court shall satisfy itself that the policy directive there referred to—

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

(5) The taking of a decision on review under subsection (4) shall not suspend the decision sought to be reviewed until the review is determined by the Administrative Court.

(6) Any person who is aggrieved by the Board's refusal to recommend to the Minister the issue of a retention licence under section 155 ("Retention licences") may, within thirty days after being notified of the decision or refusal, appeal against it to the Minister, who upon considering it may—

- (a) dismiss the appeal by upholding the decision of the Board; or
- (b) refer the decision back to the Board for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a

- direction to the Board to investigate the matter further and make a report and recommendations) on any one or more of the following grounds—
- (i) allowing extraneous or irrelevant considerations to affect the decision, or
 - (ii) failure to take into account relevant considerations in arriving at the decision, or 5
 - (iii) any material mistake of fact or law that tainted the decision; or
 - (iv) gross but unwilful irregularity in the proceedings or the decision;
- (the Minister shall, upon receiving the report or recommendations resulting from the Board’s reconsideration, make a decision in accordance with paragraph (a) or (c); 10
- or
- (c) uphold the appeal and substitute any other decision for that of the Board, if the Minister finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision: 15
 - Provided that the Minister shall not make a finding on this ground without affording the Board an opportunity to respond to the proposed finding;
- or
- (d) dismiss or uphold the appeal and, where necessary, substitute the Minister’s own decision, on the basis of any policy directive previously communicated to the Board by the Minister setting forth the overriding national *interest* as it affects cases of a like nature **to the one being considered by the Board.** 20
- (7) Any person aggrieved by a decision of the Minister under subsection (6) (a), (c) or (d), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the appellant, whereupon the court may do any of the things the Minister is empowered to do under subsection (6) (a), (c) or (d) (as if references to the Board were references to the Minister), except that with reference to a case decided in accordance with subsection (6)(d) the Court shall satisfy itself that the policy directive there referred to— 25
- (a) is not inconsistent with this Act; and
 - (b) was issued in good faith before the case was referred to the PMD, and is of general applicability; and
 - (c) clearly delimits the scope of its application and is otherwise not vague or ambiguous in its terms; and 30
 - (d) clearly expresses the national interest at stake; and
 - (e) can reasonably be applied to the case in question and has not been applied in a discriminatory or selective way
- (8) The noting of an appeal under subsection (6) or (7) shall suspend the forfeiture of the block or mining lease or the cancellation of the special grant until the decision of the Minister or the Administrative Court, as the case may be, has been given. 40

PART XII

CONTROL OF SITING OF WORKS ON MINING LOCATIONS 45

160 Interpretation in Part XII

In this Part, any reference to the owner or occupier of land shall be construed, in relation to—

- (a) Communal Land, as a reference to any rural district council established for the area concerned;
- (b) State land, as a reference to the Minister responsible for the administration of the land concerned.

5 **161 Approved plan required prior to erection of certain works**

(1) Subject to **section 163** (“When works may be erected or constructed without approved plan”), no miner of a registered mining location shall erect or construct upon his or her mining location any of the following works—

- 10 (a) machinery or plant used for the treatment of ores, concentrates, tailings, slimes or other residues;
- (b) dumps;
- (c) dams for the storage of waste water or slimes;
- (d) any block of housing units for his or her employees;
- (e) buildings of a permanent nature;
- 15 (f) sewage disposal works;
- (g) recreation grounds;
- (h) roads;

unless and until the miner has lodged with the PMD a plan showing the position of such works and such plan has been approved under this Part.

20 (2) Before erecting or constructing any works mentioned in subsection (1), the miner of any registered mining location shall—

- (a) lodge with the PMD for his or her approval a plan in triplicate showing the position of the boundaries of the location and of the proposed site of such works or of the areas within which such works are to be situated;
- 25 (b) furnish to the PMD the name and address of any owner and occupier, if any, of the land concerned and particulars of all mining locations which are contiguous to the mining location to which the plan relates.

(3) Such plan shall, in addition to the particulars mentioned in subsection (2) (a), indicate the position of the workings of such location, the position of any works erected or constructed under **section 163** (“When works may be erected or constructed without approved plan”) and the position of any rivers, hills and other natural features, and shall be prepared in such a manner as to indicate as clearly as possible the position of the proposed site and to conform to the requirements of the PMD as to manner of preparation.

35 (4) The miner shall, at the same time, furnish a copy of such plan to each such owner and occupier, if any, of land.

162 Procedure on receipt of plan and approval of plan

(1) On receipt of the plan referred to in section 159, the PMD shall forthwith—

- 40 (a) notify—
 - (i) every owner and occupier, if any, of land concerned; and
 - (ii) every holder of a contiguous mining location;

of the receipt of the plan and require them to lodge, within twenty-one days after the date of such notification, their objections, if any, to the approval of the plan or to any works which may have been erected or constructed under section 163; and

- 45 (b) consult the provincial planning officer of the Department of Physical Planning, the regional mining engineer, the provincial water engineer

and the Environment Management Agency and, where it is proposed to construct a road, the regional agricultural extension officer of the Department of Agricultural Technical and Extension Services.

(2) If any objections have been lodged under subsection (1), the PMD shall, on a day fixed by him or her and notified to the miner who submitted the plan and the objectors, hear such evidence and arguments as those persons may wish to lay before him or her in regard to the approval or otherwise of the plan or the siting of any works which have been erected or constructed under section 163. 5

(3) If no objection has been received or if no notification was given under subsection (1) owing to the whereabouts of the owner or the occupier or the holder of a contiguous mining location not being known to the PMD after due inquiry, the PMD shall proceed to consider the matter without a hearing. 10

(4) The applicable rules set out in the Second Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD at a hearing in terms of subsection (2). 15

(5) After holding a hearing in terms of subsection (2) or considering the matter in terms of subsection (3), the PMD may—

- (a) approve the plan; or
- (b) approve the plan with such amendments and subject to such conditions as he or she may deem necessary; or 20
- (c) refuse to approve the plan:

Provided that the PMD shall not uphold any objection or require any amendment or impose any condition if the mining operations of the miner who lodged the plan are likely to be affected adversely and materially thereby.

(6) In arriving at a decision for the purposes of subsection (5), the PMD shall take into account the views, if any, expressed by the provincial planning officer of the Department of Physical Planning, the regional mining engineer, the provincial water engineer, the the Environment Management Agency or the regional agricultural extension officer of the Department of Agricultural Technical and Extension Services: 25

Provided that, if he or she considers it necessary for the fair decision of the application, he or she shall give the applicant an opportunity of making representations in relation to such views, either at the hearing in terms of subsection (2) or otherwise. 30

(7) If the PMD—

- (a) approves a plan under this section the PMD shall return one copy of the plan to the miner concerned with such approval endorsed thereon and send one copy similarly endorsed to the landholder and to the occupier of the land, if any, concerned and shall retain the other copy similarly endorsed for purposes of record; or 35
- (b) does not so approve of the siting of any works which may have been erected or constructed under section 163, such works shall thereupon be deemed to have been erected or constructed in contravention of this Part and section 164 (“PMD may order removal of unauthorized works”) shall apply thereto. 40

(8) If any person (“the appellant”) is aggrieved by the decision of the PMD he or she may appeal against the decision to the Secretary, for which purpose the appellant must— 45

- (a) lodge an appeal to the Secretary in writing with the Provincial Mining Director concerned, and copy it to the Secretary, no later than two working days after the appellant has received notification of such decision; and

- (b) incorporate in the appeal representations addressing the grounds of the PMD's refusal or otherwise justifying why the applicant should be issued with an exclusive prospecting licence;

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

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

- (a) dismiss the appeal by upholding the decision of the PMD; or
- 10 (b) refer the decision back to the PMD for reconsideration within a specified period (whether with or without directions on how the decision is to be reconsidered, including a direction to the PMD to investigate the matter further and make a further report and recommendations) on any one or more of the following grounds—
 - 15 (i) allowing extraneous or irrelevant considerations to affect the decision, or
 - (ii) failure to take into account relevant considerations in arriving at the decision, or
 - (iii) any material mistake of fact or law that tainted the decision;

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

20 or

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

25 Provided that the Secretary shall not make a finding on this ground without affording the PMD an opportunity to respond to such finding;

or

- (d) in an exceptional case, overturn the decision of the PMD and substitute the Secretary's own decision on the basis of the overriding national interest (in which case the Secretary shall give the PMD directions on what to do.

35 (10) Any person who is aggrieved by a decision of the Secretary under subsection (9), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the person, whereupon the court may do any of the things the Secretary is empowered to do under subsection (9) other than paragraph (d) of that subsection.

(11) A plan approved under this section, and any amendment of it approved under section 161 ("Amendment of plan"), shall be binding upon any holder or miner of the mining location concerned and upon any owner or occupier of the land.

40 **163 Amendment of plan**

At any time after a plan has been approved under section 160, the miner of the mining location to which the plan relates, or the owner or occupier of the land concerned, may apply to the PMD for an amendment of the plan, and this Part shall apply, with necessary changes, in respect thereof as if such application were a plan submitted to the PMD under section 158 ("Approved plan required prior to erection of certain works").

164 When works may be erected or constructed without approved plan

(1) For the purposes of subsection (2)—

“property” means two or more blocks of claims, whether contiguous or otherwise, owned by one person, from which the ore is being treated at the same milling or reduction plant, or which are under the control of one registered mine manager. 5

(2) Notwithstanding anything contained in **section 158** (“Approved plan required prior to erection of certain works”), the miner of any registered mining location or property may, subject to **section 161** (“Procedure on receipt of plan and approval of plan”) (7) (b), at any time before a plan has been approved under section 161, erect or construct upon such location or property all or any of the following works— 10

- (a) dumps other than tailings;
- (b) residences to house not more than thirty-two persons employed in mining operations;
- (c) roads not exceeding four metres in width which have no artificial surface such as gravel, stone or similar material: 15

Provided that—

- (i) nothing in this paragraph contained shall be construed so as to permit the construction of a road if there is in existence any other suitable road which serves the same purpose;
- (ii) no such road may be constructed unless and until the siting thereof has been approved by— 20
 - (a) in the case of Communal Land, any rural district council established for the area concerned;
 - (b) in any other case, the conservation and extension officer of the district. 25

(3) For the removal of doubt it is hereby declared that a miner mentioned in subsection (2) may prior to the erection or construction of any of the works mentioned in that subsection lodge with the PMD for his or her approval in respect of such works the plan referred to in section 159 (“Approved plan required prior to erection of certain works”)(2)(a). 30

165 PMD may order removal of unauthorized works; re-siting of existing roads

(1) Any miner who erects or constructs any works on a registered mining location in contravention of this Part or of any condition attached to the approval of a plan under section 160 (“*Procedure on receipt of plan and approval of plan*”), **commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding twelve months or to both (in the case of a corporate offender, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it).** 40

(2) If a civil default as described in subsection (2) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)— 45
 - (i) pay to the PMD a default fine of the maximum amount fixed for **level 4**; and
 - (ii) to remove such works or to discontinue the use thereof.

- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
 - (ii) if he or she fails to comply with paragraph (a)(ii), to pay a default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(2) If a miner continues in defiance of a civil penalty order for a period of more than seven days after it is served on him or her, the PMD may authorize the owner or occupier of the land concerned or the holder or miner of a contiguous mining location to remove such works, and if such owner, occupier, holder or miner does so he or she shall be entitled to recover the cost of such removal from the holder or miner to whom the civil penalty order was served.

(3) Where any road in respect of which a plan has not been approved under section 161 has been constructed upon a registered mining location, the PMD may, on the application of the owner or occupier of the land concerned, order the holder or miner of the mining location concerned to discontinue the use of such road or to alter the course thereof within such period as the PMD may specify.

(4) If the holder or miner referred to in subsection (3) fails to comply with such order within the period specified therein, the PMD may serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
 - (i) pay to the PMD a default fine of the maximum amount fixed for **level 4**; and
 - (ii) to discontinue the use of the road concerned or to alter the course thereof;
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
 - (ii) if he or she fails to comply with paragraph (a)(ii), to pay a default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

PART XIII

ROYALTY

166 Royalty

(1) Subject to this Part, the miner of a registered mining location shall pay royalty on all minerals or mineral-bearing products won from such location which have been disposed of by him or her or on his or her behalf, whether within or outside Zimbabwe, during any month, at such rate per unit of mass as may be fixed in terms of section 169 (“Fixing of royalty”).

(2) Where a registered mining location forms part of a property mentioned in section 170 (“Meaning of “property””) royalty shall be paid in terms of subsection (1) on the total of all minerals or mineral-bearing products won from such property.

(3) Where the royalty assessed in respect of minerals or mineral-bearing products disposed of in any one month— 5

- (a) does not exceed two United States hundred dollars, there shall be a full rebate of such royalty;
- (b) exceeds two hundred United States dollars but does not exceed three hundred United States dollars, the royalty payable shall be three times the amount by which the assessed royalty exceeds two hundred United States dollars. 10

(4) There shall be a full rebate of royalty in respect of all minerals or mineral-bearing products used wholly within Zimbabwe.

(5) There shall be a rebate of royalty in respect of any mineral or mineral-bearing product which is— 15

- (a) disposed of to or received for treatment by an approved beneficiation plant; and
- (b) specified in relation to that approved beneficiation plant;

at the rate specified by the Minister in terms of **section 170** (“Beneficiation plant”) in respect of that approved beneficiation plant: 20

Provided that where the degree of beneficiation specified in the application made in terms of section 170(1) relating to the approved beneficiation plant is not carried out in relation to any mineral or mineral-bearing product in respect of which a rebate referred to in this subsection has been earned, the owner of such mineral or mineral-bearing product shall, on the disposal thereof, pay royalty in the amount of the rebate to the PMD within whose mining province the registered mining location from which the mineral or mineral-bearing product was won is situated. 25

167 Fixing of royalty

(1) The rate of royalty payable in terms of section 168 (“Royalty”) shall be fixed for the financial year in question by the House of Assembly in the Schedule to Chapter VII of the Finance Act [*Chapter 23:04*], for which purpose the Minister responsible for finance shall have due regard for— 30

- (a) any recommendations made by the Minister responsible for this Act, for the purpose of which recommendations the Minister responsible for this Act may take into account representations made to him or her by the Chamber of Mines and other bodies the Minister considers to be representative of small-, medium- and large-scale miners; and 35
- (b) the prices at which minerals or mineral-bearing products were sold during the period of three years immediately preceding the 1st July in the year in which the rate is fixed; and 40
- (c) any other matter which the Minister responsible for finance deems relevant.

(2) In fixing the rate of royalty payable in terms of subsection (1) the House of Assembly may fix different rates of royalty in respect of different minerals and mineral-bearing products.

168 Meaning of “property” 45

(1) For the purpose of calculating royalty on any mineral or mineral-bearing product, other than chrome, when ore from two or more blocks of claims, whether

contiguous or otherwise, owned or held under a tribute agreement by the same person is treated at the same milling or reduction plant, then such blocks of claims shall be deemed to be one property.

5 (2) For the purpose of calculating royalty on chrome, all blocks owned or held under a tribute agreement and worked by the same person in any one mining district shall be deemed to be one property.

(3) Notwithstanding anything to the contrary contained in section 168 (“Royalty”), a dump shall be deemed to be a separate property if—

- 10 (a) the right to work the dump is held by a person other than the miner working the block on which it is situated; or
- (b) the dump is worked by a person other than the miner working the block on which it is situated; or
- 15 (c) the reduction plant for the treatment of the dump is entirely separate from that in or at which the ore extracted from the block on which the dump is situated is being treated; or
- 20 (d) the person who has disposed of the right to work the dump or block on which the dump is situated has no interest in the working of the reduction plant for the treatment of the dump or of the ore extracted from the block on which the dump is situated, as the case may be, or the extraction from such dump or block, other than the payment, rental or royalty specified in the agreement under which the right to work the dump or block is given.

169 Beneficiation plant

25 (1) The Minister may, upon the application by the owner thereof, by statutory instrument, declare any bank assay department, factory, refinery, smelter or treatment plant which is situated in Zimbabwe to be an approved beneficiation plant in relation to a mineral or mineral-bearing product to be specified in the notice.

30 (2) In a declaration made in terms of subsection (1) the Minister shall specify the rate of rebate of royalty which shall apply in respect of any specified mineral or mineral-bearing product treated at the approved beneficiation plant referred to in the declaration.

(3) A person making an application referred to in subsection (1) shall specify the degree of beneficiation which it is proposed to carry out at the bank assay department, factory, refinery, smelter or treatment plant, as the case may be.

35 (4) The Minister may, by statutory instrument, withdraw a declaration made in terms of subsection (1) in respect of any approved beneficiation plant—

- (a) where the approved beneficiation plant is not operated as such for any period which exceeds, or aggregate of periods which exceed, three months in any one year; or
- 40 (b) where the degree of beneficiation carried out at the approved beneficiation plant is reduced below that specified in the application made in terms of subsection (1) relating to that plant.

45 (5) The owner of an approved beneficiation plant shall, not later than the tenth day of each month, render a return in the form prescribed of all minerals and mineral-bearing products disposed of to or received for treatment by the beneficiation plant in the preceding month to the PMD within whose mining district the registered mining location from which the minerals or mineral-bearing products were won is situated.

170 Exemption of royalty in certain circumstances

(1) If any miner—

- (a) desires to extract or treat ore from his or her location for experimental or similar purposes, he or she may apply to the Secretary for permission to treat or deal with the mineral or mineral-bearing product obtained from his location for a limited period or up to a limited amount, and the Secretary may permit such treatment or dealing without payment of royalty under such terms and conditions as may by the Secretary be deemed expedient Part VI; 5
- (b) of diamonds or other precious stones—
 - (i) enters into written agreement with the Minister whereunder the miner undertakes— 10
 - A. to train or fund the training (whether locally or abroad or both) of a specified number of Zimbabwean citizens, annually or over a specified period, In the cutting, polishing, grading, valuation and beneficiation of diamonds and precious stones, and in all aspects of the diamond or jewellery trade generally; and 15
 - B. to establish or help to establish any one or a combination of the following: a significant local jewellery fabrication plant; one or more local jewellery retail outlets; or a local laboratory for the certification of cut and polished diamonds or precious stones in Zimbabwe; 20
 - and
 - (ii) satisfies the Minister that he or she has the resources and plans and to comply with his or her undertakings referred to in subparagraph (i) within a specified period; 25

the Minister may, with the approval of the Minister responsible for finance, waive the payment of royalty, export tax and all fees and commissions charged by the Minerals Marketing Corporation of Zimbabwe on the export of rough diamonds or other unbeneficiated precious stones up to a limit of 10 000 carats of rough diamonds or precious stones per month. 25

(2) Where a miner of diamonds or other precious stones is in default of any undertaking made in a written agreement in terms of subsection (1)(b), the miner shall (after having been put on not less than 30 and not more than 90 days' written notice by the Minister to rectify the default or to take the specified steps to rectify the default within that period, and having failed to rectify the default or to take the specified steps) pay royalty on— 30

- (a) the amount due for any diamonds disposed of from the relevant date of the agreement to the final date for the rectification of the specified default; 35
- (b) thereafter in the amount fixed by the Finance Act in respect of the disposal of the diamonds after the final date referred to in paragraph (a).

171 Acquisition or removal of ore, etc., to be declared 40

(1) If any person acquires or removes from the mining location from which it was derived any ore, tailings, slimes, concentrates, residues or other mineral-bearing product he or she shall immediately (**and in any event not later than fourteen days after such acquisition or removal**)—

- (a) declare such acquisition or removal to the PMD; 45
- (b) render to the PMD such returns thereof as may be prescribed.

(2) Any person who contravenes subsection (1) **commits an offence and a civil default and on prosecution and conviction for the offence shall be liable to a**

fine not exceeding **level 5** or to imprisonment for a period not exceeding six months or to both (in the case of a corporate offender, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate offender fails to pay it).

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

- (a) directs the defaulter—
 - 10 (i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for **level 3**; and
 - (ii) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) render to the PMD such returns as prescribed in relation to the removal of the ore, tailings, slimes, concentrates, residues or other mineral-bearing product; and
- 15 (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
 - 20 (i) if he or fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 3** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; and
 - (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for **level 3** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

25 (3) Additionally, any person who renders a false return for the purposes of subsection (1)(b) or (3)(a)(ii) shall, if he or she is a miner, be liable to the cancellation of his or her mining rights under section 306 (“Cancellation of mining rights for breach of this Act or other laws”) and prosecution under section 296 (“False declarations and certificates”).

30 **172 Monthly returns and payment of royalty**

- (1) A miner shall, not later than the tenth day of each month—
 - (a) render to the Commissioner-General of the Zimbabwe Revenue Authority, or an officer of the Authority appointed for the purpose by the Commissioner-General, a return in the prescribed form showing—
 - 35 (i) in respect of minerals, other than precious stones, or mineral-bearing products won from his or her mining location—
 - A. the output; and
 - B. full details of the disposal thereof by him or her or on his or her behalf;
 - 40 (ii) in respect of precious stones won from his or her mining location, such details relating thereto and to the disposal thereof during the preceding month and the quantity thereof held by him or her at the end of the preceding month as may be prescribed;
 - and
 - 45 (b) furnish the Commissioner-General or officer with such affidavits, certificates and documents relating to any matter referred to in paragraph (a) as the Commissioner-General or officer may require; and
 - (c) submit to the Commissioner-General or officer the royalty payable by him or her in terms of section 168 (“Royalty”) in respect of the preceding

month or the provisional amount of royalty assessed in terms of subsection (2).

(2) Where it is impracticable for any reason to calculate before the tenth day of any month the royalty payable in respect of the preceding month the Commissioner-General or officer may assess a provisional amount of royalty which shall be payable. 5

(3) When the correct amount of royalty is assessed the miner shall—

(a) be entitled to a refund of any sum paid by him or her in terms of subsection (2) which exceeds the correct amount of royalty payable in terms of section 168; or

(b) pay to the Commissioner-General or officer such sum as represents the difference between the correct amount of royalty payable in terms of section 168 and the amount paid in terms of subsection (2). 10

(4) Any miner who contravenes subsection (1) **commits an offence and a civil default and on prosecution and conviction for the offence shall be** liable to a fine not exceeding **level 5** or to imprisonment for a period not exceeding six months or to both (in the case of a corporate offender, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate offender fails to pay it). 15

(5) The PMD for the mining province wherein a civil default as described in subsection (4) is committed shall (additionally or alternatively to prosecution for the offence under subsection (4)) at the written request of the Commissioner-General of the Zimbabwe Revenue Authority, or an officer of the Authority appointed for the purpose by the Commissioner-General, serve upon the defaulter a civil penalty order which— 20

(a) directs the defaulter—

(i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for **level 3**; and 25

(ii) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) do either or both of the following—

A. render the return referred to in subsection (1) (a)(ii), if he or she has failed to render such return; 30

B. submit to the Commissioner-General or officer authorised by him or her the royalty payable by him or her in terms of section 168 (“Royalty”) in respect of the preceding month or the provisional amount of royalty assessed in terms of subsection (2), if he or she has failed to do so; 35

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

(i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 3** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; and 40

(ii) if he or she fails to comply with paragraph (a) (ii) A or B, to pay a default fine of the maximum amount fixed for **level 3** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 45

(6) Additionally, any miner convicted for a contravention of subsection (1) shall be liable to the cancellation of his or her mining rights under section 306 (“Cancellation of mining rights for breach of this Act or other laws”).

173 Inspection of books and records, etc.

(1) The Commissioner-General of the Zimbabwe Revenue Authority or any person duly authorised by him or her shall at all reasonable times have access for the purpose of inspection to all books and records, reports and other documents relating to the acquisition, disposal or removal of any mineral or mineral-bearing product as may be necessary for the purpose of ascertaining or verifying any return, details, solemn declaration, certificate or document rendered under this Part.

(2) Any person who refuses access to the Commissioner-General of the Zimbabwe Revenue Authority or any person duly authorized by him or her for the purposes of subsection (1), or who in any way hinders or obstructs the Commissioner-General or his or her authorised agent in carrying out their duties under subsection (1), shall be guilty of the offence referred to in section 306 (“Obstruction of officials”) as if the Commissioner-General or his or her authorised agent were the PMD there mentioned.

174 Prohibition of disposal of minerals when royalty or returns, etc., have not been lodged

(1) If the miner of a registered mining location fails to pay any royalty due in respect of such location the Commissioner-General of the Zimbabwe Revenue Authority, or an officer of the Authority appointed for the purpose by the Commissioner-General, may issue an order prohibiting the disposal of any minerals or mineral-bearing products from such location or from any other location which is being worked by the miner, whether or not the miner has failed to pay any royalty due in respect of the other location, until all outstanding royalty has been paid or until an arrangement has been made which is acceptable to the Commissioner-General or officer for the payment of such royalty.

(2) If the Commissioner-General or officer has reason to believe that minerals or mineral-bearing products have been produced or disposed of from any registered mining location and he or she has not received in respect thereof the return, details, solemn declarations, certificates and documents referred to in section 174 (“Monthly returns and payment of royalty”), he or she may issue an order prohibiting the disposal of any minerals or mineral-bearing products from that location until the return, details, solemn declarations, certificates and documents have been rendered and any royalty due in respect of such disposal has been paid or until an arrangement has been made which is acceptable to the Commissioner-General or officer for the payment of such royalty.

(3) A miner who fails to observe an order issued in terms of subsection (1) or (2) and any person who, knowing of such order, receives any minerals from the location referred to in the order contrary to the terms thereof, **commits an offence and a civil default and on prosecution and conviction for the offence shall be** liable to a fine not exceeding **level 6** or to imprisonment for a period not exceeding twelve months or to both (in the case of a corporate offender, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate offender fails to pay it).

(4) The PMD for the mining province wherein a civil default as described in subsection (4) is committed shall (additionally or alternatively to prosecution for the offence under subsection (4)) at the written request of the Commissioner-General of the Zimbabwe Revenue Authority, or an officer of the Authority appointed for the purpose by the Commissioner-General, serve upon the defaulter a civil penalty order which—

(a) directs the defaulter—

(i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for **level 4**; and

- (ii) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) do either or both of the following —
 - A. cease the disposal of any minerals or mineral-bearing products from any location that is the subject of an order referred to in subsection (1) or (2), or from any other location which is being worked by the miner, whether or not the miner has failed to pay any royalty due in respect of the other location, until all outstanding royalty has been paid or until an arrangement has been made which is acceptable to the Commissioner-General or officer for the payment of such royalty;
 - B. submit to the Commissioner-General or officer authorised by him or her the return, details, solemn declarations, certificates and documents referred to in section 174 (“Monthly returns and payment of royalty”), in terms of subsection (2);
 - (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
 - (i) if he or fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; and
 - (ii) if he or she fails to comply with paragraph (a) (ii) A or B, to pay a default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.
- (6) Additionally, any miner convicted for a contravention of subsection (1) or (2) shall be liable to the cancellation of his or her mining rights under section 306 (“Cancellation of mining rights for breach of this Act or other laws”).

175 Remission of royalty

The President may remit, in whole or in part, the royalty payable on—

- (a) any mineral or mineral-bearing product or class thereof; or
- (b) any mineral or mineral-bearing product won from any specified registered mining location or property mentioned in section 170 (“Meaning of “property””);

for such period as he or she may determine whenever he deems it expedient to do so as an inducement to—

- (i) the commencement or continuation of mining operations; or
- (ii) the processing or refining within Zimbabwe of minerals or mineral-bearing products; or
- (iii) the development of any export market;

176 Orders prohibiting stockpiling of minerals affected by section 4(4) declaration

(1) Subject to subsection (3), at any time after the Minister has, in relation to any mineral, made a declaration in terms of section 4(4) (a), a PMD or any person authorised in that behalf by the Minister or the PMD, may, by notice in writing served upon any person holding any stockpile of the mineral concerned order such person to reduce, within such time as Minister or PMD shall specify, the quantity of any mineral which such person owns, possesses or controls to the quantity fixed by the notice.

5 (2) Any person who fails, without just cause, to comply with a notice served upon him or her in terms of subsection (1) shall thereupon become liable to pay royalty on the stockpile as if it had been disposed of by sale on the last day for compliance with the notice at the price it would have fetched on that day by reference to a reputable metals exchange.

(3) Any person proposing to stockpile any mineral affected by a declaration made in terms of section 4(4) (a) may by application in writing made to the Minister setting forth—

- 10 (a) good and sufficient reasons for stockpiling the mineral; and
- (b) the site, premises or place at which the mineral will be stockpiled, the extent to which it will be stockpiled and for how long;

obtain from the Minister a permit authorising the stockpiling of the mineral concerned, and the Minister may, if he or she issues it, may attach to it any conditions that the Minister may think fit.

15 (4) No later than ten days after—

- (a) the issuance of an notice under subsection (1) to any person aggrieved thereby; or
- (b) notice is given to any person aggrieved thereby that the Minister has refused an application for a permit under subsection (3);

20 the aggrieved person may appeal against such notice or refusal to the Administrative Court.

(5) Until the appeal is determined the noting of an appeal in terms of subsection (4) shall —

- 25 (a) not suspend the notice issued under section 271;
- (b) not permit the appellant—
 - (i) to accumulate a stockpile of the mineral; or
 - (ii) to disperse or dispose of any part of an existing stockpile of the mineral

30 for which a permit had been sought under subsection (3) except to the extent expressly authorised by the Minister in writing.

(6) Upon an appeal the Administrative Court may—

- 35 (a) decide the issue in favour of the Minister; or
- (b) refer the decision back to the Minister for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—
 - (i) allowing extraneous or irrelevant considerations to affect the decision,
 - (ii) failure to take into account relevant considerations in arriving at the decision;
 - 40 (iii) any material mistake of fact or law that tainted the decision;
 - (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
 - (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

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

PART XIV

PAYMENTS TO LOCAL AUTHORITIES

176 Interpretation and application of Part XIV

- (1) in this Part—
- “gross value of mineral production”, for the purposes of section 177(3)(c) – 5
- (a) includes such part of such production as is benefited by the miner in the quarter concerned;
 - (b) the market value thereof at end of the quarter concerned as determined by reference to a reputable metals exchange;
- “standard tariff” means the standard tariff of maximum local government rates, taxes, fees, levies and other charges chargeable upon miners that is prescribed in terms of section 182 (1). 10
- “subvention” means a sum payable by miners for the purposes of section 180 (1).

(2) Sections 180 and 182 do not apply in respect of any local authority that has adopted the standard tariff, unless the Minister is of the opinion, based upon a report of the PMD concerned, that the environmental, social or other impacts of the mining operations conducted by miners in the local authority concerned, or the value of the output of the resulting from such operations, is of such a scale or magnitude as to justify the payment of subventions also. 15 20

177 Miners to make certain payments to local authorities

(1) The Minister, acting with the approval of the Minister responsible for finance and after consultation with the Minister responsible for local government and any organization which the Minister considers represents mining interests, may by statutory instrument, require any miner of a registered mining location, or any class of such miners, to pay a subvention, that is to say a specified sum at specified intervals to any local authority within whose area the registered mining location is situated. 25

(2) For the purposes of subsection (1), a dump shall be deemed to be a separate mining location if—

- (a) the right to work the dump is held by a person other than the miner working the mining location on which it is situated; or 30
- (b) the dump is worked by a person other than the miner working the mining location on which it is situated;

and the person working the dump or holding the right to work it shall be deemed to be the miner of the dump. 35

- (3) The Minister may —
- (a) specify a subvention as a lump sum or as a percentage of the value of the output of the mining location concerned, or in such other manner as the Minister may think appropriate.
 - (b) make the local authority’s entitlement to a subvention dependent upon the local authority — 40
 - (i) adopting the standard tariff, if such a tariff has been prescribed; or
 - (ii) mitigating or eliminating any specified local government rates, taxes, fees, levies and other charges chargeable upon miners of registered mining locations within the area of the local authority concerned; 45
 - (c) instead of fixing a subvention in relation to local authorities individually, the Minister may fix (after consultation with the Minister responsible for

5 Finance and the Minister responsible for Local Government), a uniform subvention payable by all miners to the local authority in which they operate of 0,01% of the gross value of the mineral production at the end of every quarter year (which quarterly subvention shall be paid to any local authority concerned no later than fourteen days of the end of the quarter year);

(4) Every miner to whom a notice in terms of subsection (1) applies shall make the subventions required by the notice, and in the event of his or her default any sums unpaid shall be a debt due to the local authority concerned, and may be recovered by the local authority from the miner by proceedings in a competent court.

178 Remission or exemption from liability to make subventions

(1) The Minister, acting with the approval of the Minister responsible for finance and after consultation with the Minister responsible for local government and any organization which the Minister considers represents mining interests, may remit, in whole or in part, the subventions payable—

- (a) by any miner or class thereof; or
- (b) in respect of any mineral or mineral-bearing product or class thereof;

for such period as the Minister may determine, whenever he considers it expedient to do so as an inducement to—

- (i) the commencement or continuation of mining operations; or
- (ii) the development of any export market;

and the Minister shall cause any such remission to be notified in writing to every miner and local authority concerned.

(2) On application being made by a miner who wishes to extract ore from his or her mining location for experimental or similar purposes, the Secretary may permit the miner, subject to such terms and conditions as the Secretary may fix, to extract the ore without paying any subventions in respect of it.

(3) The Secretary shall ensure that the local authority concerned is notified in writing of any permission granted by him or her in terms of subsection (2).

179 Local authorities' standard tariff of rates, taxes, fees, levies and other charges liable to be paid by miners

(1) The Minister, acting with the approval of the Minister responsible for finance and after consultation with the Minister responsible for local government and any organization which the Minister considers represents mining interests and the interests of local authorities, may by statutory instrument prescribe a standard tariff of maximum local government rates, taxes, fees, levies and other charges chargeable upon miners of registered mining locations by any local authority within whose area the registered mining locations are situated.

(2) Every local authority that adopts the standard tariff (or any variation of the standard tariff in which any of the levels of rates, taxes, fees, levies and other charges chargeable upon miners is less than the maximum prescribed by the standard tariff) shall, upon notification of its adoption to the Minister, be entitled to be paid with effect from a date no later than three months after the adoption of the tariff, a prescribed share of the royalties payable and collected in respect of any minerals mined within the area of the local authority concerned that shall be fixed in the Schedule to Chapter VII of the Finance Act [*Chapter 23:04*].

(3) Upon the date of promulgation of the standard tariff, even if the local authority concerned has not adopted the standard tariff, a miner holding a mining

location within the area of the local authority shall be deemed to be in compliance with—

- (a) section 152 (“Pre-inspection requirements and first and subsequent inspection certificates”)(2)(c)(i) if the miner swears by affidavit submitted to a PMD for the purposes of that provision that he or she has paid or tendered the payment of the maximum amount of the development levy prescribed by the standard tariff for that local authority (without prejudice to the right of the local authority to sue for the recovery of any excess development levy due from the miner); and 5
- (b) section 209 (“Registration of transfer of mining locations and transfer duty payable”) (8)(b) if (instead of producing the certificate from the rural district council there mentioned) the miner swears by affidavit submitted to a PMD that he or she has paid or tendered the payment of the amount (calculated by reference to the maximum amount for those or similar charges prescribed by the standard tariff) of all charges payable to the council in respect of the location during the period of five years immediately preceding the date of application for the transfer of the mining location in terms of that provision (without prejudice to the right of the local authority to sue for the recovery of any amount in excess of the charges so paid or tendered that are due from the miner). 10 15 20

PART XV

PROVINCIAL ENVIRONMENTAL, REHABILITATION AND OCCUPATIONAL HEALTH AND SAFETY TRUST FUNDS

180 Interpretation in Part XV

- (1) in this Part— 25
 - “environment” has the meaning given to it in section 2 of the Environmental Management Act [*Chapter 320:27*];
 - “environmental rehabilitation and occupational health and safety trust fund” or “EROHS trust fund” means one of the funds established in terms of section 184(1); 30
 - “mining environmental and occupational safety works” include, but are not limited to—
 - (a) works and measures to prevent or mitigate occupational health hazards faced by mining workers;
 - (b) works to prevent, mitigate or remediate nuisances that inhibit or preclude the use and enjoyment of their land by occupiers adjoining the mining location, or by communities in the vicinity of a mining location; 35
 - (c) works and alternative strategies to minimise habitat destruction at or around a mining location, such as the adoption of more energy efficient methods in substitution for the cutting and burning of timber or the production of charcoal; and 40
 - (d) works to prevent the erosion of topsoil and the siltation of watercourses and water bodies, including tree-planting, grassing, and sediment control and 45
 - (e) works to prevent, mitigate or remediate contamination of soil, groundwater and surface water by mining waste, effluent and chemicals emitted in the course of mining operations, such as—
 - (i) the construction and maintenance of segregated surface water drains and effluent drains, and works for the safe storage or 50

- treatment of contaminated water within a mining location, or for the safe discharge of treated water from a mining location into natural or artificial water bodies;
- 5 (ii) the safe sequestration of oils and other hazardous liquids so that they do not contaminate water bodies, groundwater or the soil;
 - (iii) the protection of watercourse, water bodies, groundwater and soil from pollution by mercury, lead, cadmium, arsenic, chromium, thallium and other heavy metals;
 - 10 (iv) recycling works for the capture and treatment of waste water;
 - (v) the sitting away from watercourses and water bodies of ore processing and vehicle and equipment washing operations;
 - (vi) works to secure against breaches of tailings ponds and dams;
 - 15 (f) land reclamation works, backfilling, and other works to prevent the destruction of productive grazing land and croplands in the immediate vicinity of the mining location;
 - (g) works to prevent or mitigate air pollution from smelting or other mining operations;
 - 20 (h) waste management works and strategies to avoid or mitigate waste, debris and litter through the re-use, recycling or safe disposal of mining waste and other waste generated at the mining location, including the contracting of waste carriers to safely dispose of waste away from water courses, water bodies, areas of cultivable land and grazing land;
 - 25 (i) works to prevent, minimise or mitigate the emission of greenhouse gases from mining operations;
- “greenhouse gas” means any one of the following—
- (a) carbon dioxide (CO₂),
 - (b) methane (CH₄),
 - 30 (c) nitrous oxide (N₂O),
 - (d) hydrofluorocarbons (HFC_s),
 - (e) perfluorocarbons (PFC_s),
 - (f) sulphur hexafluoride (SF₆);
 - 35 (g) any other gas that contributes to climate change which prescribed for the purpose of this definition.

181 Establishment and vesting of Provincial EROHS Trust Funds

(1) For the purpose of this Part there shall be established in each mining province, a trust fund to be known as the Provincial EROHS trust fund.

40 (2) Contributions to every Provincial EROHS trust fund and other moneys referred to in section 187—

- (a) are, subject to this Part, deemed to be public moneys; and
 - (b) are settled by the State as represented by the appropriate PMD in the Provincial EROHS trust fund of the province in which the contributions were raised (and in that representative capacity the PMD shall act in accordance with any instructions of the Secretary).
- 45

(3) Subject to this Part, the administration of each fund shall be vested in two persons as trustees of the fund, one of whom (who may be employed in the Ministry)

shall be appointed by the PMD on the instructions of the Secretary and the other (the “elected trustee”) shall be elected by contributing miners in accordance with this Part:

Provided that in the first year of operation of the fund, the PMD shall invite nominations from nay group or groups of miners that the PMD considers to be representatives of miners in his or her mining district to act as the elected trustee for that year, and the person appointed by the PMD for that purpose shall serve as elected trustee until he or she is re-elected or replaced in terms of section.... 5

182 Objects of provincial EROHS trust fund

The objects of each provincial EROHS Fund shall be—

- (a) to make grants to miners for the purpose of **section 193** (“Manner of making disbursements from EROHS trust fund”)(a); 10
- (b) to make grants to any small scale miner or group of small-scale miners, or their appointed contractors, for any purpose in connection with the achievement of the objects specified in paragraph (b), (c) or (d), or to hire or engage contractors for that purpose on behalf of any small scale miner or group of small scale miners; and 15
- (c) with respect to the expenses of environmental protection and rehabilitation, the following—
 - (i) any quittance work or other work that will be required in terms of **section 203** (“Open workings to be protected on abandonment, forfeiture or cancellation of location”) upon the cessation of mining operations by any small-scale miner in the mining district concerned; and 20
 - (ii) any other work required, whether under this Act or any other enactment, to protect or restore the environment from the consequences of the miner’s mining operations, including— 25
 - A. tailing and waste dump breaches and contamination;
 - B. chemical spillage or acid mine drainage.
- (c) the carrying out of mining environmental and occupational safety works ordered by the PMD in terms of **section 190** (“PMD may order mining environmental and occupational safety works”); 30
- (d) with respect to the occupational health and safety of the mining employees, the safeguarding of the occupational health and safety of mining employees on a continuous basis, including—
 - (i) the prevention of and coping with mine entrapments and inundations; and 35
 - (ii) preventing and coping with closed mine risks, including chemical leaks, water contamination and mine collapse; and
 - (iii) the prevention and coping with mine fires and explosions.
- (e) to contribute towards the compensation of owners or occupiers of land who are detrimentally affected by mining activities. 40

183 Application of provincial EROHS trust fund

Each provincial EROHS trust fund shall be applied to—

- (a) the objects referred to in **section 185**; and
- (b) meeting any salaries, allowances, audit expenses and other expenses of the fund: 45

Provided that expenditure for this purpose shall not exceed 2.5 per centum of the revenue of the fund in any financial year.

184 Moneys of Provincial EROHS trust fund

Each provincial EROHS trust fund shall consist of—

- 5 (a) moneys appropriated by Parliament representing at least half of the amounts collected by way of civil penalties in the mining province concerned; and
- (b) any other moneys appropriated for the purpose of the trust fund by Act of Parliament; and
- 10 (c) such moneys as are raised by contributions and general surcharges imposed in terms of **section 188** (“Contributions to Fund and roll of contributors”); and
- (d) such moneys as may be raised by the specific surcharges referred to in . . . and any donations to the fund accepted by the trustees with the approval of the PMD; and
- 15 (e) such moneys as are raised by contributions from RDC’s in terms of section; and
- (f) any other moneys to which the Fund may be lawfully entitled.

185 Contributions to Fund and roll of contributors

(1) Every miner operating in the mining district for which the fund is established shall pay the following contributions to the fund —

- 20 (a) in the case of every small-scale miner, an amount equivalent to 10 United States Dollars payable at the time he or she submits his or her work plan in terms of section, and another amount equivalent to 10 United States dollars at the time he or she attains his her first inspection certificate in terms of section ;
- 25 (b) in the case of a large-scale miner (other than the holder of a special grant), twice the amount of the contribution of small-scale miners; and
- (c) in the case of a miner who is the holder of a special grant, thrice the amount of the contribution of small-scale miners; and
- 30 (d) for every year after the year in which a first inspection certificate is obtained, the contribution shall escalate by an amount equivalent to ten United States dollars (in the case of a small-scale miner) or twenty United States Dollars (in the case of a large-scale miner), or thirty United States Dollars (in the case of the holder of a special grant), payable at the time when the miner obtained the second and every subsequent inspection certificate:

Provided that—

- 40 (i) contributions shall cease to escalate when the annual level of contribution reaches the equivalent of one hundred United States Dollars in the case of a small-scale miner or two hundred United States Dollars in the case of a large-scale miner, or miner or three hundred United States Dollars in the case of a miner who holds a special grant;
- 45 (ii) contributors who are fully up to date with their annual payments in terms of paragraph (a), (b), (c), or (d) shall, after having obtained their first inspection certificate, be entitled to participate in and vote at the annual meeting of stakeholders of the fund referred to in section 180 to the extent specified in section 180 (2)(b);
- 50 (iii) contributors who in any year double or treble their annual payments in terms of paragraph (a), (b), (c), or (d), shall be entitled to exercise twice or thrice the number of votes (as the case may be) to which

they are entitled in terms of section 180 (2)(b) in the year in which they double their contributions;

(2) Any increase in the amount of contribution and of the escalation referred to in subsection (1) must be approved in advance by a meeting of contributing miners.

(3) Every Rural District Council within the mining district covered by a EROHS trust fund may, in return for the right to participate in and vote at a meeting of stakeholders of the fund referred to in section 180, make an annual contribution to the fund in the amount and in the manner as follows, that is to say it has the option through the CEO of the RDC—

- (a) to pay on behalf of the RDC as a whole, the equivalent of 100 dollars for one vote or 200 dollars for 2 votes or 300 United States dollars for three votes in which event the RDC shall be represented at the meeting by a member of the RDC chosen by resolution of the RDC to represent it at the meeting, or in the absence of such resolution to be represented by the CEO of the RDC at the meeting; or
- (b) to pay in respect of each member of the RDC a sum equivalent to 50 United States Dollars, thereby entitling any member of the RDC to attend and vote at the meeting referred to section 180:

Provided that if the RDC chooses this option—

- (i) it must pay for every member of the RDC without exception, whether the member exercises his or her right to vote or not; and
- (ii) each vote of every member of the RDC voting in person or by proxy at any meeting referred to in... shall count for only half a vote.

(4) If an RDC exercises neither of the options referred to in subsection (3) it shall have a right (through its CEO or any member of the RDC appointed by resolution of the RDC) to be an observer at a meeting referred to, that is to say it shall have no vote at the meeting and may only participate at the deliberation of the meeting only at the invitation of the chairperson of the meeting

(5) In order to meet any unforeseen emergency of an environmental character or of character that impacts the safety or health of any significant number of mining workers on a significant scale, the trustees of the fund on their own motion or at the direction of the PMD may, in the year in which the emergency occurs, levy a surcharge on the ordinary contribution payable by miners not exceeding twice the level so payable:

Provided that any such surcharge must be ratified or approved by a meeting of contributing miners convened in terms of section...and if not so ratified or approved, the surcharge must be reimbursed to the contributing miners by a discount from the ordinary contributions at shall rate as shall be determined by the trustees so however that the surcharge must be fully reimbursed no later than 10 years after the year in which it was levied.

(6) The trustees shall together with the notice inviting all contributors to the EROHS fund to attend the annual meeting of contributors referred to in section 180(1), post on the notice board of the PMD's office a roll of fully-paid up contributors entitled to attend thereat and the number of votes which such contributor may cast.

an invitation to all contributing miners each year, and in any event not later than fourteen days before the annual meeting of contributors referred to in section 180,

186 Specific surcharges; temporary suspension of payments from EROHS funds

(1) In the event of any accident causing significant environmental damage or any significant injury or loss of life, that is found by a mining inspector to have been due

to the wilful or grossly negligent disregard of any prescribed mining safety measures, the Provincial EROHS trust fund shall attribute the whole (or such proportion as the mining inspector determines to be attributable to the fault of the miner concerned) of the cost of remediating such accident to the miner at fault, who shall be liable to repay such cost by way of a surcharge to the miners annual contribution (which charge may be staggered in equal instalments over a period of not more than five years).

(2) If the miner referred to in subsection (1) fails in any year to pay the surcharge or ceases mining operations before the full amount due from him or her by way of surcharges is fully paid, the miner or former miner as the case may be, shall thereupon become liable for the full amount of outstanding surcharges together with interest at the prescribed rate.

(3) The trustees of the EROHS fund to which the surcharges referred to in subsection (2) are due, shall have standing to sue for the amount referred to in subsection (2) in any court of competent jurisdiction and the court shall award the cost of such action against such miner or former miner if he or she is found liable for the amount due.

(4) If due to circumstances beyond the control of the trustees of a Provincial EROHS trust fund, the Fund is unable to make in full any payments it is required to make under this Part, the trustees may, through the PMD, request the Minister to suspend payments from the Fund for a period not exceeding twelve months (and not more than one such request may be made and implemented in any period of three years); whereupon if the Minister is satisfied that such a course of action is required to restore the financial soundness of the Fund, he or she shall suspend payments from the Fund for a specified period not exceeding twelve months

(5) The PMD shall promptly give notice of the suspension referred to in subsection (4) on the notice board of the PMD's office and by any other means that the PMD sees fit.

(6) The effect of a suspension referred to in subsection (4) is that—

- (a) miners are not thereby excused from making the contributions to the Provincial EROHS trust fund that are due from them, and will be subject to the penalties provided for noncompliance in that respect;
- (b) the expense of any mining environmental and occupational safety works required to be undertaken by any miner during the period of suspension shall be fully borne by such miner and no claim for recovery of any part of such expenses may be made from the Provincial EROHS trust fund after such suspension terminates.

187 PMD may order mining environmental and occupational safety works

(1) If at any time the PMD, upon an affidavit sworn by or on behalf and in the name of any of following persons, namely—

- (a) the Environmental Management Authority; or
- (b) the owner or the occupier of any land in the vicinity of the mining location; or
- (c) the local authority within which the mining location is situated;

that despite anything contained in the miner's EIA, a specified miner is responsible for specified imminent or actual harm to the environment, or to the safety, health or wellbeing of his or her workers or that of occupiers of land in the vicinity of the mining location, the PMD shall, after notifying the miner of the affidavit and its contents, require such miner to lodge at the office of the PMD, a memorandum not exceeding two

thousand words responding to the affidavit and, on the basis of that response the PMD may, or if no response is made by the miner), the PMD shall (no later than twenty-one from the date of receipt of the affidavit)—

- (d) serve the swearer of the affidavit and the miner with a written notice of a meeting to be held before the PMD at the time and venue notified (not being more than seven working days after the service of the notice), at which meeting the PMD shall receive oral and written representations on the on the issue of whether the PMD ought to order the miner to undertake any specified mining environmental and occupational safety works to head off, mitigate or remediate the imminent or actual harm of which the swearer of the affidavit complained; and
- (e) post one copy of the memorandum on the public notice board of the director's office on the same day as the notice of the meeting served on the holder copy of the memorandum, together with an invitation to interested persons (that is to say occupiers of land and other miners in the vicinity of the mining location concerned) to attend at the meeting referred to in that paragraph (giving particulars of its time and venue) to enable them to make oral and written representations at that meeting on the question whether the PMD ought to order the miner who is the subject of the complaint to undertake any specified mining environmental or occupational safety works:

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

(2) In amplification or clarification of the provisions of subsection (1) the following provisions are pertinent—

- (a) if either party (the swearer of the affidavit or the miner complained of) fails to attend at the meeting referred to in subsection (1), the PMD will generally decide the dispute in favour of the party who is present, unless doing so, given the specific facts and circumstances of the case (and after taking into account the representations of any interest party present at the meeting), would be contrary to this Act or result in injustice;
- (b) at the meeting—
 - (i) if the complainant has established a prima case that his or her complaint is justified, the miner complained of shall —
 - A. bear the burden of showing on a balance of probabilities that there is no imminent or actual harm to the environment ,or to the safety, health or wellbeing of his or her workers or that of occupiers of land in the vicinity of the mining location (as the case may) or that if such harm exists or is threatened, the miner is not responsible for it; and
 - B. if he or she admits responsibility or cannot show that he or she was not responsible for it, bear the burden of showing on a balance of probabilities that the imminent or actual harm complained of was not due to any wilful noncompliance with his or her EIA, or that the harm could not reasonably have been foreseen, or that the miner has acted with reasonable diligence to prevent, mitigate or remediate the harm (for which purposes the PMD may rely on the report of a mining inspector made before or immediately after the meeting):

Provided that the effect of the miner discharging his her burden under this subparagraph shall not be to excuse the miner from being served with a order to carry out specified

mining environmental or occupational safety works, but such miner shall be entitled to the partial reimbursement of his or her expenditure in carrying it out, as provided in section-----

- 5 C. bear the burden of suggesting any specified mining environmental or occupational safety works that is alternative to the one suggested by the PMD or the complainant;
- (ii) the applicable rules set out in the Second Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD;
- 10 (e) at the conclusion of the meeting the PMD shall—
- (i) proceed to order or refrain from ordering the miner to undertake any specified mining environmental or occupational safety works;
- (ii) may defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it, to the swearer of the affidavit or the miner complained of, and post a copy of the decision and the reasons for it on the public notice wherein forfeitures are posted;
- 15 (iii) where the decision is to order the miner complained of to undertake any specified mining environmental or occupational safety works, the PMD shall as soon as possible after the conclusion of the meeting—
- 20 A. make a written summary of the proceedings of the meeting in the form of a report to the Mining Cadastre Registrar; and
- B. issue to the miner (and serve to the complainant a copy thereof) a written order specifying what specified mining environmental or occupational safety works the miner must undertake within a specified period:
- 25

Provided that the PMD, if the case reasonably admit of an alternative, afford the miner a reasonable period within which to specify any alternative mining environmental or occupational safety works, and any alternative timeframe for their completion, and the PMD in writing to the miner may concur to such alternative.

30 (3) Nothing in this section contained shall be deemed in any way to prejudice the right of any person thereafter to recover from the miner complained of damages for any injury which he may prove to have been sustained by him in consequence of any act or thing done by the applicant pursuant to any such order by any PMD.

(4) A miner who undertakes mining environmental or occupational safety works in compliance with an order of the PMD made under this section shall be entitled to be reimbursed for such works from the EROHS trust fund to the extent permitted under **section 190** (“Manner of making disbursements from EROHS trust fund”).

(5) Any person who is aggrieved by any order made by the PMD under this section or by the refusal of the PMD to make such an order may, within ten days thereof, appeal against such order or such refusal, as the case may be, to the Administrative Court.

188 Holding of provincial EROHS trust fund

(1) All moneys received on behalf of the provincial EROHS trust fund shall be paid into a banking account and no money shall be withdrawn therefrom except by means of drafts signed by both trustees, or in the absence of either trustee, by a trustee and the PMD.

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(2) Any part of the EROHS trust fund not immediately required may be invested in government-issued securities or in such other manner, as the trustees with the approval of the Secretary through the PMD, may determine

189 Annual programmes of provincial EROHS trust funds; financial year of EROHS trust funds

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(1) On or before such date prior to the beginning of the financial year as the trustees and the PMD may agree, the trustees shall cause to be prepared, and submit to the PMD an environmental rehabilitation and occupational health and safety programme which shall make provision during the financial year for the fund for—

- (a) the estimated amount of grants to be paid in that year to miners or their appointed contractors, for any purpose in connection with the achievement of the objects specified in paragraph....., or to hire or engage contractors for that purpose on behalf of any miner or group of miners; and 10
- (b) an amount to be reserved to meet any unforeseen contingency not of an emergency character expressed in paragraph (c), were for instance the amount for which provision was made under paragraph (a) was underestimated 15
- (c) an amount to be reserved to meet any unforeseen emergency of an environmental character or of character that impacts the safety or health of any significant number of mining workers on a significant scale; and 20
- (d) an amount constituting one per centum of the estimated revenues of the fund for the financial year to which the programme relates to be paid as a lump sum to each RDC for onward disbursement by the RDC concerned to owners and occupiers of land within the RDC who are adversely affected by the mining operations. 25

(2) The financial year of each EROHS fund shall be the period of twelve months ending on the 31st December in each year.

190 Manner of making disbursements from EROHS trust fund

No grant or disbursement shall be made from the fund except as follows—

- (a) every miner seeking a grant from the fund shall furnish evidence to the trustees, in the form of invoices, receipts or other documentary evidence of the expenditure that the miner has incurred in the previous period of 12 months on environmental works made in compliance with his or her environmental plan submitted in terms of section...., whereupon, the trustees shall authorise a disbursement to the miner of — 30
 - (i) one quarter of such expenditure if it was incurred during the period of validity of the first inspection certificate of the miner, or \$500 United States dollars, whichever is the lesser figure; 35
 - (ii) one third of such expenditure if it was incurred during the period of validity of the second inspection certificate of the miner, or \$1000 United States dollars, whichever is the lesser figure; 40
 - (iii) one half of such expenditure if it was incurred during the period of validity of the third and subsequent inspection certificate of the miner, or \$1 500 United States dollars, whichever is the lesser figure.
- (b) where in the opinion of the trustees there has occurred an emergency of an environmental character or of character that impacts the safety or health of any significant number of mining workers on a significant scale, it shall make a disbursement from the amount reserved in the annual program for such emergencies, subject to recovery of any such amount in terms of section.... 45

191 Accounts and audit of EROHS trust funds

(1) The trustees shall cause proper books of accounts of the Fund to be kept, together with adequate financial and other records in relation thereto, and, within three months after the end of the financial year to which the accounts relate, shall submit the accounts to internal auditors of the Ministry for audit.

(2) The internal auditors of the Ministry shall when auditing the books and records of the Provincial EROHS fund accounts of the fund, who shall have all the powers conferred upon the Auditor-General by section 81 of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009) as though the assets of the Fund were public moneys or State property.

(3) The internal auditors of the Ministry referred to in this section may be paid an allowance from the provincial EROHS fund of such an amount as shall be fixed by the Secretary from time to time by circular.

192 Governance of provincial EROHS trust fund

(1) no later than 30 days after each financial year of the provincial EROHS fund, the trustees shall post on the notice board of the PMD’s office an invitation to all contributing miners to attend at a meeting at the notifies time and venue at which—

(a) the statement of accounts and auditor’s report for the previous financial year shall be presented for the information of the miners participating at the meeting.

(b) the draft programme for the work for the next financial year shall be submitted to the miners participating at the meeting who may make a non-binding vote to approve or not approve it:

Provided that in the vote by the miners is not to approve the programme, the trustees shall have the discretion to accommodate any views expressed by the miners on the plan and may revise the plan accordingly.

(c) to elect or re-elect the elected trustee;

(d) to put to a binding vote any proposal to increase the annual contribution of miners to the fund or to increase or reduce the specified monetary limits on disbursement from the fund referred to in section 178(a)(i), (ii) and (iii):

Provided that a vote for these purpose must be put separately to each of the groups of miners participating at the meeting, that is to say, to the group consisting of small-scale miners, to the group consisting of large-scale miners, and to the group (if any) consisting of miners who hold special grants, and a majority of votes for the proposal is required in every group in order for the proposal to be carried (and the quorum for each group at the meeting shall be 5 per centum of the contributing miners in each of the classes of miners concerned);

(e) to put a a binding vote any proposal to ratify any general surcharge imposed in terms of section 174 (4);

(f) to place on the agenda for discussion any matter of concern to the miners in respect to the fund;

(g) to allow any miner to put to the meeting for discussion any matter of concern with respect to the fund.

(2) At a meeting referred to in subsection (1),—

- (a) the chairperson shall be the appointed trustee;
- (b) each contributing miner participating at the meeting shall, in the case of a small-scale miner, have one vote, the case of a large-scale miner have two votes, the case of a miner holding a special grant, three votes, in the case of an RDC referred to in section 174(3)(a), one, two or three votes, as the case may be, and in the case of an RDC member referred to in section 174(3)(b), half a vote for each member of the RDC voting in person or by proxy at the meeting; 5
- (c) the quorum at the meeting shall be 5 *per centum* of the contributing miners in the mining district concerned; 10
- (d) contributing miners may vote by proxy if they produce to the chairperson a proxy document to that effect duly signed or authenticated by the contributing miner concerned;
- (e) the elected trustee shall be deemed to have been re-elected unless another candidate is elected by an absolute majority of those present after successive ballots in which the candidate with the least votes is eliminated until one of two candidates obtains an absolute majority. 15

(3) If no meeting occurs because of lack of a quorum than it shall be conclusively presumed that—

- (a) the draft programme referred to in subsection (1)(b) has been approved without qualification; 20
- (b) that the elected trustee has been re-elected;
- (c) that any proposal referred to in subsection (1)(d) or (e) has been approved;

193 Measurement of carbon footprint of mining and reimbursement of costs of same 25

(1) The Minister may require small-scale miners, mining lessees and holders of special grants to report to him or her such information as may be prescribed about emissions of greenhouse gases from activities for which the lessee or holder is responsible.

(2) For the purposes of this section greenhouse gas emissions, reductions of such emissions and removals of greenhouse gas from the atmosphere shall be measured or calculated in tonnes of carbon dioxide equivalent. 30

(3) A “tonne of carbon dioxide equivalent” means one metric tonne of carbon dioxide or an amount of any other greenhouse gas with an equivalent global warming potential (calculated consistently with international carbon reporting practice). 35

(4) The trustees of each provincial EROHS fund shall, on application by the miner concerned, reimburse from the fund the full cost of measuring greenhouse gas emission for which small-scale miners are responsible in the province concerned, and up to half the cost incurred for that purpose by mining lessees and holders of special grants in the province concerned. 40

PART XIV
ABANDONMENT AND FORFEITURE

194 Abandonment of unregistered locations

(1) The holder of any mining location with respect to which no certificate of registration has yet been obtained may at any time abandon such location. 45

(2) Prior to such abandonment, the holder shall remove all beacons, if any, from such location, and shall post on a peg on the location a notice stating the fact and date of such abandonment.

(3) No person shall make any relocation upon any unregistered mining location abandoned or deemed to be abandoned under the provisions of this Act until after the expiration of seven clear days from and exclusive of the date on which such location was abandoned or deemed to be abandoned.

5 **195 Abandonment of registered blocks or sites**

(1) Subject to subsection (4), the holder of a registered block or site may abandon such block or site, or any portion of such block or site, by applying in writing to the PMD for and obtaining a certificate of abandonment.

10 (2) Such certificate of abandonment shall be deemed to constitute valid and sufficient proof of such abandonment.

(3) If such holder abandons a portion only of such block or site, he or she shall re-beacon the remainder of such block or site in such manner as may be prescribed.

15 (4) The registration under Part XVII (“Registration of Transfers, Hypothecations, Options, Tribute Agreements and Conditions Governing Mining on Reserved Ground”) of a hypothecation or option over any mining location shall, during the period for which such hypothecation or option continues to be of force and effect, be a bar to the abandonment of the whole or portion of such mining location, unless the holder of such hypothecation or option consents in writing thereto, which consent shall be lodged with the PMD together with the application for abandonment.

20 **196 Forfeiture of registered blocks and sites**

(1) In accordance with this section, the PMD shall cause to be forfeited a registered block of claims in respect of which the holder has failed to apply for or obtain an inspection certificate within the period prescribed in **section 153 (“Pre-inspection requirements and first and subsequent inspection certificates”)** shall, unless the holder thereof has obtained a retention licence in respect of the block under **section 156 (“Retention licences”)**.

(2) The PMD shall post a notice on the notice board of his or her office notifying that the holder is in default of compliance with **section 153**, and that the block concerned shall be deemed to have been forfeited on the thirtieth day from the day of such posting.

30 (3) If at any time the monthly rent of any registered mining site has remained due and unpaid for a period of three months or more, such site shall be liable to forfeiture:

35 Provided that in the case of a site attached to a mining lease, the PMD shall notify the lease holder that payment of the site rent is so in arrear and if such rent is not paid within thirty days of such notification, the PMD may declare the site to be forfeited.

40 (4) The person who at the date of the declaration of forfeiture was the holder of a block or site which has been declared forfeited in terms of subsection (2) owing to his or her failure to obtain the necessary inspection certificate or to pay site rent therefor in terms of subsection (3) may, on payment of the prescribed fee, apply to the PMD for the revocation of such declaration of forfeiture.

(5) If—

45 (a) the application is made in writing together with the prescribed fee under subsection (4) is made within twenty-one days of the date of the posting in terms of subsection (2) of the notice of forfeiture relating to such mining location; and

- (b) at the date specified by the PMD, the applicant complies with **section 153** or initiates the process for obtaining a retention licence in accordance with **section 156**;

whereupon if the applicant obtains an inspection certificate or retention licence as the case may be, the PMD shall revoke the declaration of forfeiture by posting a notice to that effect on his or her notice board, and upon such revocation such mining location shall be regarded for all purposes as if no forfeiture thereof had been declared and any approved cultivation or pasturage scheme which relates to such mining location shall not be affected by such forfeiture. 5

(6) In addition to the cases where the PMD declares a mining location to be forfeited under subsection (1), the PMD may, subject to **section 199** (“**Forfeiture of mining leases**”), declare any mining location that is liable to forfeiture under this Act to be forfeited by posting such a notice as is mentioned in subsection (2): 10

Provided that nothing in this subsection shall be construed as affecting in any way the PMD’s duty to declare a location to be forfeited under— 15

- (a) **section 73** (“Revocation of authority or order”); or
- (b) **section 74** (“Approval of transfer of mining location subjected to authority or order”); or
- (c) **section 113** (“Forfeiture of underground extension block”); or
- (d) **section 155** (“Retention licences”); or 20
- (e) **section 216** (“Registration of conditions governing mining rights on reserved ground”)
- (f) **section 257** (“Forfeiture of expropriated location”).

197 Forfeiture of mining lease

- (1) If a lessee of a mining lease— 25
 - (a) fails to submit a development programme in terms of **section 132** (“Programmes to be submitted by lessees”) within the time prescribed in that section for its submission; or
 - (b) when called upon to do so by the Board, fails to explain to the satisfaction of the Board any discrepancy between a development programme submitted in terms of section 132 and any return or other document submitted in terms of this Act; or 30
 - (c) fails to obtain an inspection certificate within the period prescribed in Part XI (“Preservation of Mining Rights”) for the obtaining of such certificate;

the Board may serve a notice on the lessee informing him or her that if he or she does not rectify the failure within such period, being not less than thirty days, as may be specified in the notice, the mining lease will be liable to forfeiture. 35

(2) If, within the period specified in a notice referred to in subsection (1), or within any extension of that period granted by the Board, the lessee has not rectified the failure that prompted the Board to serve the notice, the Board may direct the mining PMD to declare the mining lease to be forfeited, and the PMD shall without delay comply with the direction by posting the notice of forfeiture on the notice board of his or her office. 40

198 Forfeiture of mining locations

(1) If a holder of a registered mining location fails to comply with a directive given by the Minister in terms of **section 154** (“Unutilised dumps”)(5), the Minister may order in writing that the registered mining location on which the dump concerned is situated be forfeited, unless the holder thereof satisfies the Minister that he or she took all reasonable and practicable steps to comply with the directive either by working the dump himself or by tributing it to someone else but was unable to do so.

(2) An order in terms of subsection (1) shall not take effect until a period of thirty days has expired after the holder of the registered mining location concerned has been notified in writing of the order.

(3) On expiry of the period referred to in subsection (2) the Minister shall direct the PMD to post the appropriate notice of forfeiture on the notice board of his or her office.

199 Locations belonging to estate of deceased persons, etc.: special conditions as to forfeiture

(1) Any registered mining location belonging, and which is notified in writing to the PMD by any person interested as belonging, to the estate or registered in the name of any deceased person, minor, mentally incompetent person or insolvent shall not, after the date of the receipt of such notification by the PMD, be liable to forfeiture by reason of failure to take out any certificate within the prescribed period, or to pay licence moneys, rents, dues, fees or fines until after the expiration of a period of thirty days from the issue of letters of administration to the executor or executors of such deceased person, or, in the case of the estate of any minor, mentally incompetent person or insolvent, from the date of appointment of a curator or trustee of such estate.

(2) It shall be competent for any executor, curator or trustee within the aforesaid period of thirty days, according to the circumstances of the case, either to take out any certificate required as aforesaid or make the necessary payments in respect of licence moneys, dues, fees or fines, and to retain such location as aforesaid as an asset in such estate:

Provided that—

- (i) if the issue of such letters of administration or the appointment of such curator or trustee has been made outside Zimbabwe, the above period of thirty days shall be reckoned from the date of the official recognition in Zimbabwe of such letters of administration or appointment, as the case may be;
- (ii) in all cases after the expiration of six months from the date of the aforesaid notification to the PMD, the provisions of this section shall cease to apply to such location unless the High Court otherwise directs.

200 Removal of buildings and machinery, and beacons, from abandoned, forfeited or cancelled location

(1) Subject to **section 271** (“PMD may sue for and have hypothec for amounts due”), the former holder of any mining location which has been abandoned, forfeited or cancelled—

- (a) may, within a period of three months from the date of such abandonment, forfeiture or cancellation, remove any buildings or machinery belonging to him or her:

Provided that the PMD may, if he or she is satisfied that it is necessary to do so, extend the period within which the buildings or machinery may be removed by a further period not exceeding three months;

- (b) shall, without delay, remove all pegs and beacons appertaining to such location or the part abandoned: 5

and any buildings or machinery belonging to the former holder of any mining location that are not removed within the period referred to in paragraph (b) or any extension thereof shall be forfeited to the State and become liable to deal with in accordance with subsection (2). 10

Provided that—

- (i) if such location or any part of it is repegged by any other person as a fresh mining location, the holder of such fresh mining location shall not be liable for any damage done to such buildings or machinery in the due and proper exercise of his or her rights as such holder; 15
- (ii) the owner or the occupier of the land on which such buildings or machinery are situated shall not be liable for any damage done to such buildings or machinery in the due and proper exercise of his or her rights as owner or occupier of the land.

(2) Whenever any mining location or part of such location has been abandoned, or whenever any mining location has been duly forfeited according to law, and the former holder has not removed any buildings or machinery belonging to him or her within the time allowed under subsection (1), or all pegs and beacons appertaining to such location or the part abandoned, it shall be lawful for any PMD, claim inspector or other person duly authorized thereto by the PMD— 20

- (a) at any time after the period referred to in subsection (1)(a), to remove, destroy or otherwise dispose of all buildings or machinery belonging to him or her; 25
- (b) at any time after the date of such abandonment or forfeiture, and on the failure of the former holder to do so upon not less than seven days' written notice to him or her, to remove, destroy or otherwise dispose of all the beacons, pegs and boundary marks of such location, or of so much as has been abandoned: 30

Provided that no such removal or destruction may be carried out until a quitance certificate has been issued in terms of **section 203** (“Open workings to be protected on abandonment, forfeiture or cancellation of location”) in respect of such mining location or part thereof. 35

(3) The PMD may recover the costs of any removal, destruction or other disposal (being a disposal other than a sale in which the costs of the same were fully met from the proceeds thereof) from the former holder thereof by action in any court of competent jurisdiction. 40

201 Open workings to be protected on abandonment, forfeiture or cancellation of location

(1) In this section— 45

“director” means any person who controls or governs the company or is a member of a body or group of persons which controls or governs the company or, where there is no such body or group, is a member of the company;

“holder” includes the person who was the holder of an abandoned, forfeited or cancelled mining location before its abandonment, forfeiture or cancellation;

5 “occupier”, in relation to Communal Land, means any rural district council established for the area concerned;

“owner”, in relation to State land, means the Minister responsible for the administration of such land;

“quittance work” means any work required for proper compliance with subsection (2).

10 (2) On or before the abandonment, forfeiture or cancellation of a registered mining location or not later than thirty days after the posting by the PMD of the notice mentioned in section 272 [“Relocation of abandoned, forfeited or cancelled locations and reinstatement of forfeited locations”], the holder of such location shall fill in all shafts, open surface workings and excavations or otherwise so deal with them as permanently
15 to ensure the safety of persons and stock:

Provided that the PMD may in circumstances which he or she may deem exceptional extend such period of thirty days.

(3) A holder who fails to comply with subsection (2) **commits a criminal offence and a civil default and on prosecution and conviction for the offence shall**
20 **be** liable to a fine not exceeding **level 8** or to imprisonment for a period not exceeding three years or to both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it).

(4) If a civil default as described in subsection (3) is committed, the PMD
25 may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

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

30 (i) pay to the PMD a default fine of the maximum amount fixed for level six; and

(ii) commence filling in all shafts, open surface workings and excavations or otherwise so deal with them as permanently to ensure the safety of persons and stock, so that no later than fourteen days after the civil penalty order is served the task is completed to the satisfaction
35 of the PMD;

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

(i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;

(ii) if he or she fails to comply with paragraph (a) (ii), either by—

45 A. failing to commence the ordered works; or

B. failing to complete them to the satisfaction of the PMD on the fourteenth day after the civil penalty order is served;

to pay a default fine of the maximum amount fixed for level

six for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(5) The manner in which shafts, open surface workings and excavations shall be dealt with for the purposes of subsection (2) or (4) shall be prescribed by regulation, and compliance with such regulations shall be sufficient compliance with that subsection. 5

(6) When such shafts, open workings or excavations have been filled in or suitably enclosed and protected, the holder shall, not later than seven days after the completion of such work, send to the PMD a certificate in the form prescribed by regulation (hereinafter called a “compliance certificate”) stating the nature of the work which has been done for the purposes of subsection (2) or (4), and if there are no shafts, open surface workings or other excavations on the mining location which require quittance work, the holder shall, not later than seven days after the posting of the notice mentioned in section 272 [“Relocation of abandoned, forfeited or cancelled locations and reinstatement of forfeited locations”] by the PMD, send to the PMD a certificate to that effect: 10 15

(7) In addition to the compliance certificate, the holder shall send to the PMD the written consent of the occupier or, if there is no occupier, the owner of the land upon which the relevant mining location was situated to the issue of a quittance certificate in terms of this section: 20

Provided that, if the holder has not been able to obtain such written consent, he or she shall send instead to the PMD a written statement to that effect.

(8) If written consent to the issue of a quittance certificate is lodged in terms of subsection (7), the PMD shall issue a quittance certificate relieving the holder from any further responsibility in terms of subsection (2) or (4). 25

(9) If written consent to the issue of a quittance certificate is not lodged in terms of subsection (7), the PMD shall—

(a) post a notice on the public notice board at the PMD’s office for a period of at least seven (7) days notifying all interested persons and that a quittance certificate relieving such holder from any further responsibility under subsection (2) will be granted to such holder unless a written objection giving full details of all unprotected or insufficiently protected shafts, open surface workings or excavations is lodged by or on behalf any person demonstrating an interest in the matter; and 30

(b) on the same day that the PMD posts the notice referred to in paragraph (a), notify the occupier of the land or, if there is no occupier, the owner of the land upon which the relevant mining location was situated. that the PMD has received a compliance certificate and that a quittance certificate relieving such holder from any further responsibility under subsection (2) or (4) will be granted to such holder unless a written objection giving full details of all unprotected or insufficiently protected shafts, open surface workings or excavations is lodged by or on behalf of such owner or occupier within thirty days of the date of the posting of the notice referred to in paragraph (a). 35 40

(10) If the whereabouts of the owner or the occupier of any land are unknown to the PMD after due inquiry or if no objection is lodged with the PMD within the prescribed period, the PMD shall issue a quittance certificate relieving the holder from any further responsibility under subsection (2) or (4). 45

(12) If an objection is received to the issue of a quittance certificate, the PMD shall notify the person who lodged such objection and the holder of the time when a person appointed by the PMD will inspect the abandoned or forfeited mining location, and the objector may attend at such inspection and point out to the inspector in what respect he or she considers the quittance work to be insufficient.

(13) If the PMD is satisfied from the report of the inspector that the quittance work is adequate, the PMD shall issue a quittance certificate relieving the holder from any further responsibility under subsection (2) or (4).

(14) If the PMD is not satisfied in terms of subsection (13), the PMD shall give written notice to the holder of what additional work is necessary and shall order the holder to perform such work within a time specified by the PMD.

(15) A holder who fails to comply with the order of the PMD given under subsection (14) within the specified time **commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be** liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding three years or to both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it).

(16) If a civil default as described in subsection (15) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
 - (i) pay to the PMD a default fine of the maximum amount fixed for **level 6**; and
 - (ii) commence performing the necessary additional work specified by the PMD in his or her original order (plus any additional work that has since become necessary on account of the defaulter's delay), so that no later than fourteen days after the civil penalty order is served the task is completed to the satisfaction of the PMD;
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
 - (ii) if he or she fails to comply with paragraph (a) (ii), either by—
 - A. failing to commence the necessary additional work; or
 - B. failing to complete them to the satisfaction of the PMD on the fourteenth day after the civil penalty order is served;
 to pay a default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(17) When the holder has complied with any order made by the PMD in terms of this subsection (14) or (16), the PMD shall issue to such holder a quittance certificate relieving such holder from any further responsibility under subsection (2).

(18) A copy of every quittance certificate issued in terms of this section shall be sent by the PMD to the relevant owner or occupier of land.

- (19) If any holder—
- (a) fails to furnish a certificate or written statement in terms of subsection (6) or (7), the holder shall be guilty of an offence and liable to fine not exceeding **level 5**, or to imprisonment for a period not exceeding **six months**, or both or 5
 - (b) makes any false statement in such certificate or written statement, the holder shall be guilty of an offence liable to a fine not exceeding **level 8** or to imprisonment for a period not exceeding three years or to both.

(20) On the conviction of any person for a contravention of subsection (3) or (19), the court may order the forfeiture of any prospecting licence or licences held by such convicted person and thereupon such licence or licences shall be forfeited and no new licence shall be issued to such person until he or she has proved to the satisfaction of the Secretary that the shafts, workings or excavations in respect of which he was so convicted have been properly filled in, fenced or otherwise dealt with in accordance with those sections. 15

(21) Where, in the case of a registered mining location formerly held by a company, the company has been dissolved before the issue of a quittance certificate in terms of this section in respect of that registered mining location, every person who was a director of the company—

- (a) at the time of the abandonment, forfeiture or cancellation of the registered mining location or at any time thereafter; or 20
- (b) where the dissolution of the company occurred before the forfeiture or cancellation of the registered mining location, at the commencement of the winding up of the company or, in the event of a dissolution not preceded by a winding up, at its dissolution; 25

shall upon the dissolution of the company be deemed to be a holder of the registered mining location for the purposes of this section.

202 Removal of or interference with protective works prohibited

(1) Except in the exercise of any right acquired under this Act or with the permission in writing of the PMD and subject to such conditions as the PMD may attach to such permission, no person shall remove or interfere with any fencing or other works erected or constructed under **section 203** (“Open workings to be protected on abandonment, forfeiture or cancellation of location”) for the protection of mine workings. 30

(2) Any person who contravenes subsection (1) **commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be** liable to a fine not exceeding **level 6** or to imprisonment for a period not exceeding twelve months or to both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it). 35

(3) If any person is convicted of an offence under subsection (2), the court may, in addition to any other penalty imposed by it, order such person to restore such fencing or other works or otherwise so to deal with them as permanently to ensure the safety of persons or stock. 40

(4) If a civil default as described in subsection (2) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which— 45

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

- (i) pay to the PMD a default fine of the maximum amount fixed for **level 4**; and
- (ii) restore such fencing or other works or otherwise so to deal with them as permanently to ensure the safety of persons or stock so that no later than fourteen days after the civil penalty order is served the task is completed to the satisfaction of the PMD;
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
 - (ii) if he or she fails to comply with paragraph (a)(ii), either by—
 - A. failing to commence the necessary restoration work; or
 - B. failing to complete them to the satisfaction of the PMD on the fourteenth day after the civil penalty order is served;
 to pay a default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

203 Recording of abandonments and forfeitures; appeals under Part XVI

- (1) Whenever the PMD—
 - (a) issues a certificate of abandonment in terms of **section 197** (“Abandonment of registered blocks or sites”); or
 - (b) makes a declaration of forfeiture in terms of **section 198** (“Forfeiture of registered blocks and sites”); or
 - (c) receives notice from the Board of the forfeiture of a mining lease under **section 199** (“Forfeiture of mining lease”); or
 - (d) receives notice from the Minister of the forfeiture of a mining location under **section 200** (“Forfeiture of mining locations”),

the PMD shall without delay make the appropriate deletions and entries in his or her provisional register and transmit the relevant particulars of the abandonment or forfeiture to the Mining Cadastre Registrar.

- (2) Upon receiving the particulars of the forfeiture from the PMD, the Mining Cadastre Registrar shall, if satisfied that the documentation transmitted under subsection (1) is in order, make the appropriate deletions and entries in the Mining Cadastre Register and promptly notify the PMD accordingly, whereupon the PMD shall make the corresponding deletions and entries in his or her final register:

Provided that—

- (i) if no appeal is made in terms of subsection (3) or (5) in relation to the decision concerned, the date on which a abandonment or forfeiture shall be deemed to have taken effect shall be (as the case may be) the date on which the PMD issues the certificate of abandonment under **section 197 (1)**, or the expiry of the period from dating from the posting of a forfeiture notice provided under **section 198 (2)**, or the expiry of the period of the notice issued by the Board that is referred to in **section 199 (1)** or the expiry of the period of the period for compliance with the Minister’s order referred to in **section 200 (2)**;

- (ii) if an appeal is made in terms of subsection (3) or (5) in relation to the decision concerned—
 - A. any forfeiture remains in effect until the appeal is abandoned or determined; but
 - B. the Mining Cadastre Registrar shall not make the appropriate deletions and sentries in the Mining Cadastre Register until the appeal is determined or abandoned, in which event the date on which an abandonment of a registered mining location or forfeiture shall be deemed to have taken effect shall be the date when the appropriate deletions and sentries in the Mining Cadastre Register are made after the appeal is determined or abandoned. 5
10

(3) Any person aggrieved by a refusal by the PMD to issue the certificate of abandonment under section 197 (1), or by a forfeiture under this Part (other than a forfeiture resulting from an order of the Minister issued under section 200) may, no later than 30 days from the notification of such refusal or declaration of such forfeiture appeal to the Minister against such refusal or declaration, and on receiving the appeal, the Minister may — 15

- (a) uphold the decision of the PMD or the Board, as the case may be; or
- (b) refer the decision back to the PMD or the Board as the case may be for re-consideration; (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds— 20
 - (i) allowing extraneous or irrelevant considerations to affect the decision;
 - (ii) failure to take into account relevant considerations in arriving at the decision; 25
 - (iii) any material mistake of fact or law that tainted the decision;
 - (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision;
 - (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision. 30

(4) Any person who is aggrieved by a decision of the Minister under subsection (3), may seek a review of such decision by the Administrative Court within twenty-one days after the date of its notification to the person, whereupon the court may do any of the things the Minister is empowered to do under subsection (5). 35

(5) Any person aggrieved by a forfeiture resulting from an order of the Minister issued under section 200) may, no later than 30 days from the date when such forfeiture takes effect, appeal to the Administrative Court against such refusal or declaration, and on receiving the appeal, the Court may —

- (a) uphold the decision of the Minister; or 40
- (b) refer the decision back to the Minister for re-consideration; (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds^¾
 - (i) allowing extraneous or irrelevant considerations to affect the decision; 45
 - (ii) failure to take into account relevant considerations in arriving at the decision;
 - (iii) any material mistake of fact or law that tainted the decision;

- (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision;
- (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.

5 **204 Relocation of abandoned, forfeited or cancelled locations and re-instatement of forfeited locations**

(1) Lists of registered mining locations which have been abandoned or forfeited in terms of this Part or in terms of—

- (a) **section 73** (“Revocation of authority or order”); or
- 10 (b) **section 74** (“Approval of transfer of mining location subjected to authority or order”); or
- (c) **section 113** (“Forfeiture of underground extension block”); or
- (d) **section 155** (“Retention licences”); or
- (e) **section 257** (“Forfeiture of expropriated location”);

15 shall from time to time be posted on a board to be exhibited in some conspicuous way outside the office of the PMD, and any such location may be relocated (that is to say, have the mining location and the mining rights attached to it re-assigned to some other person who meets the requirements for exercising them under the Act) after the expiration of thirty-five clear days from and exclusive of the date of the posting of the notice relating thereto, unless the declaration of forfeiture is revoked in terms of this section or in the said notice it is upon instruction of the Secretary otherwise provided.

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205 Mine plans to be lodged on abandonment or closing down

(1) This section shall not apply to any mine upon which no development work has been done at a depth of more than fifteen metres.

25 (2) If the miner of any mine on which mining operations are being carried out intends to close down such mine or substantially reduce mining operations, he or she shall, not less than sixty days before such closing, down or such substantial reduction of mining operations, give written notice to the PMD of such intention.

30 (3) A notice given in terms of subsection (2) shall state the reasons why the miner intends to close down the mine or substantially reduce mining operations.

(4) The PMD shall, as soon as practicable after receiving a notice given in terms of subsection (1), forward it to the Minister, together with his or her comments thereon.

35 (5) Within thirty-one days of the date of closing down a mine or substantially reducing mining operations, the miner shall lodge with the PMD in respect of each mine a plan or plans which shall comply with the following conditions—

- (a) where development work has been executed to a vertical or incline depth of more than one hundred metres on the dip, the plan or plans shall be prepared by a mine surveyor;
- 40 (b) where development work has been executed to a vertical or incline depth of not more than one hundred metres on the dip, the plan or plans shall be prepared by a mine surveyor or otherwise shall be based on tape and compass survey;
- (c) the plan or plans shall show details of all work done on the mine, together with such further particulars as the PMD may require;
- 45 (d) plans prepared by a mine surveyor shall be drawn to any recognized scale; other plans shall be drawn to a scale of 1:250 or 1:500;

Provided that with effect from the promulgation of the regulations made under **section 316** (“Regulations”)(2)(e) the plans to be lodged in terms of this paragraph shall comply with the said regulations and not with the aforesaid conditions.

(6) If the miner of any mine shows to the satisfaction of the Chief Government Mining Engineer that he or she is unable to prepare or cause to be prepared the plans required under subsection (3), the Chief Government Mining Engineer shall cause such plans to be prepared by a Government mining engineer. 5

(7) The miner of any mine who—

(a) fails to furnish such notice or to lodge such plans as are prescribed; or 10

(b) wilfully refuses to produce such plans or to allow them to be examined or copied by the inspector of mines or any other officer duly authorized thereto by the Minister; or

(c) conceals any part of the workings of the mine from a Government mining engineer who has been instructed to prepare the plans under subsection (6); or 15

(d) knowingly produces or transmits an imperfect or inaccurate plan;

commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding twelve months or to both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it). 20

(8) If a civil default as described in subsection (7) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which— 25

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

(i) pay to the PMD a default fine of the maximum amount fixed for **level 4**; and

(ii) do any one or more of the following as may specified in the civil penalty order no later than seventy-two hours after the civil penalty order is served to the satisfaction of the PMD— 30

A. lodge such plans as are specified in the order; or

B. produce such plans such plans as are specified in the order or allow them to be examined or copied by the inspector of mines or any other officer duly authorized thereto by the Minister; or 35

C. disclose all or any part of the workings of the mine to a Government mining engineer who has been instructed to prepare the plans under subsection (6); or

D. produce and transmit a new plan for any previous plan specified to be imperfect or inaccurate in any respect; 40

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

(i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 45

- (ii) if he or she fails to comply with paragraph (a) (ii) A, B, C or D, to pay a default fine of the maximum amount fixed for **level 4** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

5

PART XVII

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

206 Interpretation in and application of Part XVII

In this Part—

10 “mining location” does not include an exclusive exploration reservation or, a special grant;

“option contract” means a contract whereby any holder of a registered mining location or locations has agreed in writing to grant to any other person (the “option holder”), the option of exercising the right to purchase, or 15 in any other manner to deal with, such location or locations at a certain future date;

“pertinent particulars”, with reference to the registration by the PMD and the Mining Cadastre Registrar of the particulars of a transfer of a mining location, means the names of the parties to the transfer, the name and 20 registered number of the mining location, the nature and amount of the stipulated consideration, if any, and the extent of the interest transferred.

(2) To avoid doubt, **section 209** (“Registration of transfer of mining locations and transfer duty payable”) does not apply any transfer of a mining lease or a special grant (for which section 138 (“Approval of transfer of mining lease”) and section 233 25 (“Transfer, cession or assignment of special grant”) are applicable).

207 Registration of transfer of mining locations and transfer duty payable

(1) No transfer of any registered mining location or any interest therein pursuant to any sale or other alienation of the location in any manner whatsoever, shall be valid unless it has been registered in accordance with this section:

30 Provided that the registration under this Part of a hypothecation or option over any mining location shall during the period for which such hypothecation or option continues to be of force, shall be a bar to the transfer of the whole or portion of such mining location, unless—

35 (a) the holder of such hypothecation or option consents in writing thereto, which consent shall be lodged with the PMD together with the application and other documentation referred to in subsection (7); or

(b) the transfer is effected in the circumstances referred to in subsection (7) (h).

40 (2) When any registered mining location or any interest therein is sold or otherwise alienated in any manner whatsoever, the seller or person who so alienates shall notify the PMD of the transaction within sixty days of the date of such transaction, and shall inform him or her of the name of the person to whom such location or interest is sold or otherwise alienated and of the amount of the valuable consideration, if any, agreed upon, and the date of the transaction.

45 (3) When any registered mining location or any interest therein has been sold or otherwise alienated, whether before or after the date of commencement of this Act, in any manner whatsoever for valuable consideration, transfer duty at the rate fixed by Parliament shall be paid by the purchaser, which term shall include any person

becoming entitled to such location or interest therein by way of sale, exchange or other like transaction.

(4) If the holder of a registered mining location has granted to any person the right to purchase such location, and if the said right to purchase becomes vested in some other person by cession or assignment of the said right, then upon the exercise of the said right to purchase any sums paid for any such cession or assignment shall be deemed to form part of the consideration in the sale or alienation of such mining location. 5

(5) The transfer duty payable in terms of subsection (3) shall be calculated on the cash value of the consideration. If the consideration consists partly of cash and partly of shares in a company already formed or to be formed, which is to acquire such location, the cash value of such shares shall be deemed to be their nominal value; if the consideration of any portion thereof consists of anything other than cash or such shares, then the duty shall be payable on the true cash value thereof, to be assessed by the parties concerned to the satisfaction of the PMD. If the payment of the consideration or any portion thereof is contingent upon the happening of some future event, the purchaser shall give security to the satisfaction of the PMD that he will pay transfer duty at the rate fixed as aforesaid on such consideration or such portion thereof if and when such consideration becomes payable. 10 15

(6) The transfer duty payable in terms of subsection (3) shall be paid within six months from the date of the sale or other alienation of the mining location, as the case may be: 20

Provided that—

- (i) such period may be extended by the Secretary on cause shown, but in any such case from and after the expiration of such period of six months and until payment or deposit of the amount of such duty, interest thereon at the rate of twelve *per centum* per annum shall be payable and paid by the purchaser; 25
- (ii) if the payment of the consideration or any portion thereof is contingent upon the happening of some future event, the period of six months provided for by this subsection shall, in respect of the transfer duty on such consideration or such portion thereof, be calculated as from the happening of such event. 30

(7) Subject to this Act, any person entitled to be registered as the holder of a registered mining location, or any interest therein, shall make application to the PMD for the transfer of such location or interest, and every such application shall be in writing and signed by or on behalf of the applicant, and shall be accompanied by the following particulars— 35

- (a) the last issued certificate of registration or of special registration of the location, or the holder's copy of the mining lease, as the case may be; 40
- (b) certificates by the transferor and transferee in the prescribed form;
- (c) a duplicate original, grosse or notarially certified copy of any and every existing written agreement affecting or bearing upon the sale, alienation, exchange or transfer;
- (d) in the event of there being no such existing written agreement, certificates by the transferor and transferee to that effect; 45
- (e) the original or a notarially certified copy of any power of attorney which may be required to authorize an agent to act on behalf of any party to the transfer; if the original power is lodged with the PMD and the applicant does not wish the PMD to retain it, he shall furnish with it a copy which the 50

PMD shall compare with the original, certify to be a true copy and retain;

- 5 (f) if such application is in respect of the transfer of any mining location registered for precious stones or any interest therein, a certificate from the Secretary that the Minister has granted the permission required under **section 219** (“No tribute, sale or alienation of precious stones location without approval of Minister”) in respect of such transfer;
- 10 (g) if such application relates to a mining location over which an hypothecation or option has been registered in terms of **section 211 or 212**, an affidavit by the holder of the hypothecation or option that he or she consents to the transfer or that the hypothecation or option has been cancelled, as the case may be;
- (h) if such application is made—
 - 15 (i) in virtue of the execution of the judgment of any competent court by the officer appointed by law or by that court; or
 - (ii) by the trustee of an insolvent estate or by such an assignee as is described in Part VIII of the Insolvency Act [*Chapter 6:04*]; or
 - (iii) by an executor administering and distributing an estate under the Administration of Estates Act [*Chapter 6:01*]; or
 - 20 (iv) by the liquidator of a company which is being wound up by or under the supervision of the High Court:
 - an affidavit to that effect by the officer, trustee, executor or liquidator, as the case may be.

25 (All certificates or affidavits lodged in terms of paragraphs (a) to (f) shall be filed in the office of the PMD for a period of at least six years from lodgement under this subsection).

30 (8) The PMD shall without delay set in motion the process for the registration of a transfer in accordance with this subsection and subsection (9) on receipt of such application and other documents and of the transfer duty (or, if no such duty is or may in the future be payable or the whole of such duty has been remitted under subsection (10), of the prescribed fee), and if on the date on which the application and supporting documentation is received —

- (a) the PMD is satisfied that on the date on which the application and supporting documentation is received—
 - 35 (i) the mining location in question is not liable to forfeiture or under attachment; and
 - (ii) all duties, fees, royalties, rents or other moneys due and payable to the PMD under this Act in respect of the mining location to be transferred have been paid;
 - 40 (iii) where security is required under subsection (5), such security has been given to the satisfaction of the PMD;

and
- (b) there is produced to the PMD a certificate (in the case where the mining location is situated in the area of a rural council), issued by the rural council concerned, stating that all charges payable to the council in respect of the location during the period of five years immediately preceding the date of issue of the certificate have been paid or are, in the opinion of the council, irrecoverable;

45
50 Provided that no such certificate shall be valid for the purposes of this paragraph for a longer period than three months from the date of issue thereof;

- (c) all requirements imposed by or under the Exchange Control Act [Chapter 22:05] have, where the transferee is not a permanent resident of Zimbabwe, been complied with (for the purpose of which a certificate to that effect must have been produced to the PMD by the Reserve Bank of Zimbabwe); 5
- (d) the other provisions of this Act have been complied with;
- provisionally register the transfer by entering in his or her provisional register the pertinent particulars of the transfer.
- (9) The PMD shall without delay after provisional registration of the transfer transmit the particulars of the provisional transfer to the Mining Cadastre Registrar, and upon receiving notification from the Registrar— 10
- (a) that the particulars of the transfer are in order and have been entered [under an assigned reference number] in the Mining Cadastre Register with effect from a specified date:
- Provided that if the Registrar indicates that any particulars 15
are not in order by reason of some remediable defect in them, and the PMD is unable, with or without the cooperation of either the transferor or transferee (or both) to rectify them, the PMD shall reject the transfer, giving the transferor or transferee (or both) the reasons therefor and informing them of the right of appeal under **section [221 (4)]**; 20
- and
- (b) authorising the PMD to approve the transfer, the effective date of which shall be the date of the entry of the pertinent particulars relating to it in the Mining Cadastre Register;
- whereupon the PMD shall record the fact and date of the approval of the transfer in his or her final register and notify the parties to it in writing accordingly; 25
- (10) Where the location transferred is a mining lease, the PMD shall endorse on the holder's copy of the mining lease the fact of transfer, the date of registration thereof and the name of the transferee and shall transmit to the Board the particulars of such transfer; 30
- (11) The PMD shall also, on receipt of the prescribed fee, issue to the transferee a certificate of registration in the form prescribed and such certificate shall record the interest of the transferee, whether whole or otherwise, in such block.
- (12) If it is proved to the satisfaction of the Minister that a transfer applied for is merely for the purpose of carrying out the reconstruction of any company holding a mining location, or the amalgamation of two or more companies holding locations, the duty to be paid in respect of such transfer shall be one-half of the rate aforesaid. 35
- (13) If in any transfer from one company to another registered by the PMD under this section, it is shown to the satisfaction of the Minister that at the date of the sale or other alienation of the mining location such mining location was acquired— 40
- (a) by a company from its wholly-owned subsidiary; or
- (b) by a wholly-owned subsidiary of a company from its parent company; or
- (c) by a wholly-owned subsidiary of a company from another wholly-owned subsidiary of the same parent company, or
- (d) by a company in which the majority shareholder is the same person who holds a majority of shares in the company which transferred the location; 45
- the Minister shall remit the whole or any part of the duty payable under this section.

(14) If when any transfer is applied for the applicant did not derive his or her rights to transfer from the holder, but there has been any intermediate agreement of sale or alienation, or some other person has previously acquired the right to obtain transfer, transfer may be made direct to the applicant:

5 Provided that if transfer duty payable on any such intermediate transaction or acquisition of rights has not been paid, such duty shall be payable by the applicant and the requirements of subsection (2) shall be met in respect of each such intermediate transaction or acquisition of rights.

10 (15) No such transfer shall be registered until each seller and purchaser, or their respective agents, has filed a certificate in accordance with the prescribed form.

208 Registration of hypothecation of mining location

15 (1) Any holder of a registered mining location may make application to the PMD for the hypothecation of the whole or of any portion of his or her interest in such location, and no such hypothecation shall be valid unless it has been registered in accordance with this section:

Provided that the registration under this Part of a prior hypothecation over the same mining location or portion thereof shall during the period for which such hypothecation continues to be of force, be a bar to the registration of the subsequent hypothecation, unless—

- 20 (a) the holder of the prior hypothecation or option consents in writing thereto, which consent shall be lodged with the PMD together with the application and other documentation referred to in subsection (2); or
- (b) the subsequent hypothecation or option is effected in the circumstances referred to in subsection (2)(e).

25 (2) Every such application as aforesaid shall be accompanied by—

- 30 (a) three duplicate original notarial copies or three notarially certified copies of the agreement between the parties to the transaction, embodying the terms upon which the hypothecation is to be effected, which notarial copies shall be endorsed by the notary before whom the same were completed to the effect that the minute or original filed in his or her protocol is stamped with revenue stamps in accordance with the fees fixed by Parliament:

35 Provided that where such notarial copies are endorsed by the notary to the effect that the hypothecation is auxiliary or collateral to or substituted for a previous hypothecation executed by the same person for the same debt or obligation and that the minute or original relating to such previous hypothecation was duly stamped in accordance with such prescribed fees, no such stamps or corresponding endorsement shall be required in respect of such subsequent hypothecation; and

- 40 (b) the original or an authenticated copy of the certificate of registration or of special registration or the holder’s copy of the mining lease, as the case may be, of the location to which the hypothecation relates; and
- 45 (c) if the mining location sought to be hypothecated is registered for precious stones or, in the case of a mining lease, the principal mineral being mined or to be mined on such location is precious stones, the written permission of the Minister required under **section 219** (“No tribute, sale or alienation of precious stones location without approval of Minister”) in respect thereof.
- 50 (d) if such application relates to a mining location over which an hypothecation or option has already been registered in terms of section 214 or 215 and is still in force, an affidavit by the holder of the hypothecation or option that

he or she consents to the registration of the hypothecation being applied for, or that the existing hypothecation or option of which the deponent is the holder has been cancelled, as the case may be.

- (e) if such application is made—
 - (i) in virtue of the execution of the judgment of any competent court by the officer appointed by law or by that court; or 5
 - (ii) by the trustee of an insolvent estate or by such an assignee as is described in Part VIII of the Insolvency Act [*Chapter 6:04*]; or
 - (iii) by an executor administering and distributing an estate under the Administration of Estates Act [*Chapter 6:01*]; or 10
 - (iv) by the liquidator of a company which is being wound up by or under the supervision of the High Court:
 - an affidavit to that effect by the officer, trustee, executor or liquidator, as the case may be.

- (3) If the PMD is satisfied that the hypothecation agreement— 15
 - (a) contains full particulars as to the date and nature of the transaction, the names of the parties concerned, the official number of the mining location to be hypothecated, the stipulated amount for which the hypothecation is to be effected and the rate *per centum* and the times at which interest, if any, is payable 20
 - (b) is not contrary to any provisions of this Act and is likely to result in the mine being mined to the best advantage;

the PMD shall, without delay, enter in his or her provisional register the pertinent particulars of the hypothecation agreement and transmit a copy of the agreement to the Mining Cadastre Registrar, upon receipt of which the Registrar shall without delay notify the PMD— 25

- (c) that the particulars of the hypothecation agreement are in order and have been entered [under an assigned reference number] in the Mining Cadastre Register with effect from a specified date:

Provided that if the Registrar indicates that any particulars are not in order by reason of some remediable defect in them, and the PMD is unable, with or without the cooperation of either or both of the parties to it to rectify them, the PMD shall reject the hypothecation agreement, giving the parties the reasons therefor and informing them of the right of appeal under section 221 (4); 30

and 35

- (d) authorising the PMD to finally approve the hypothecation agreement, the effective date of which shall be the date of the entry of the particulars relating to it in the Mining Cadastre Register;

whereupon the PMD shall record the fact and date of the final approval of the hypothecation agreement in his or her final register and notify the parties to it in writing accordingly. 40

(5) Should the hypothecation of any interest in any mining location be for the purpose of securing any issue of debentures, the fees fixed in terms of subsection (2)(a) shall only be payable on such amount of debentures as are actually issued from time to time in respect of such location. 45

- (6) For the prescribed fee (if any), upon the request of—
 - (a) either of the parties to the hypothecation registered under this section, the Registrar may issue a certificate of registration of such hypothecation

- 5 (b) the person in whose favour an hypothecation registered under this section is effected, the Registrar shall inscribe upon the deed of hypothecation an official or registered number, and shall return to the notary who prepared it one copy, file another at the Mining Cadastre Registry and issue the third copy to the person in whose favour such hypothecation is effected.

209 Hypothecation in respect of loans granted by State

(1) If out of moneys provided by Parliament the Minister has, at the request of the holder of a mining location—

- 10 (a) made a loan to such holder; or
 (b) caused work to be done on such location; or
 (c) sold to such holder mining machinery for use on such location;

15 and such holder has failed to give suitable and sufficient security for the repayment of such loan, the payment for such work or the purchase price of such machinery, the Minister may instruct the Mining Cadastre Registrar to register a hypothecation of all or any of the mining locations registered in the name of such holder in favour of the State.

(2) On receipt of such instruction the Mining Cadastre Registrar shall, in respect of every mining location to be hypothecated in terms of subsection (1), enter in the Mining Cadastre Register—

- 20 (a) the official number of such location; and
 (b) the amount of the loan, the cost of the work done or the amount of the purchase price owed by the holder, as the case may be; and
 (c) the rate per *centum* and the terms on which interest is payable; and
 (d) the fact that such location is hypothecated to the State.

25 (3) Such entries shall constitute a hypothecation of such location in favour of the State from the date on which such entries were made and for the amount stated and the interest thereon.

30 (4) The Mining Cadastre Registrar shall he PMD shall, transmit the particulars of the hypothecation referred to in subsection (2) to the PMD have jurisdiction over the mining location affected, upon receipt of which the PMD shall without delay make the appropriate entries in his or her final register and notify the Mining Cadastre Registrar accordingly.

210 Registration of options on mining locations

35 (1) Any holder of a registered mining location or locations may make application to the PMD for the for the registration of an option contract, and no such option contract shall be valid unless it has been registered in accordance with this section:

Provided that the registration under this Part of a prior option contract over any mining location shall during the period for which such option continues to be of force, be a bar to the registration of the subsequent option contract, unless—

- 40 (a) the holder of the prior option consents in writing thereto, which consent shall be lodged with the PMD together with the application and other documentation referred to in subsection (2); or
 (b) the subsequent option is effected in the circumstances referred to in subsection (2)(f).

45 (2) Every such application as aforesaid shall be accompanied by—

- (a) three duplicate original notarial copies or three notarially certified copies of the option agreement; and

- (b) three duplicate original notarial copies or three notarially certified copies of the option contract, which notarial copies shall be endorsed by the notary before whom the same were completed to the effect that the minute or original filed in his or her protocol is stamped with revenue stamps in accordance with the fees fixed by Parliament: 5

Provided that where consideration is given and received for such option and the whole consideration is not in cash, the true cash value of such consideration shall, for the purpose of determining the fees payable by the applicant, be declared by the option holder and the registered holder at the time of the application for the registration of the option; 10

- (c) the original or an authenticated copy of the certificate of registration or of special registration or the holder's copy of the mining lease, as the case may be, of the location to which the option contract relates; and

- (d) if the application is in respect of a contract relating to a mining location registered for precious stones or a mining lease on which the principal mineral being mined or to be mined is precious stones or any interest therein, a certificate from the Secretary that the Minister has granted the permission required under **section 219** ("No tribute, sale or alienation of precious stones location without approval of Minister") in respect thereof; and 15 20

- (e) if such application relates to a mining location over which an hypothecation or option has already been registered in terms of section 214 or 215 and is still in force, an affidavit by the holder of the hypothecation or option that he or she consents to the registration of the option contract being applied for, or that the existing hypothecation or option of which the deponent is the holder has been cancelled, as the case may be; and 25

- (f) if such application is made—
- (i) in virtue of the execution of the judgment of any competent court by the officer appointed by law or by that court; or
 - (ii) by the trustee of an insolvent estate or by such an assignee as is described in Part VIII of the Insolvency Act [*Chapter 6:04*]; or 30
 - (iii) by an executor administering and distributing an estate under the Administration of Estates Act [*Chapter 6:01*]; or
 - (iv) by the liquidator of a company which is being wound up by or under the supervision of the High Court: 35
- an affidavit to that effect by the officer, trustee, executor or liquidator, as the case may be.

(3) If the PMD is satisfied that the option contract—

- (a) contains full particulars as to—
- (i) the names of the parties to the contract; and 40
 - (ii) the name and registered number of the mining location or locations to which such contract relates; and
 - (iii) the date upon which the right or option conferred by such contract commences and expires;
- (b) is not contrary to any provisions of this Act and is likely to result in the mine being mined to the best advantage; 45

the PMD shall, without delay, enter in his or her provisional register the pertinent particulars of the option contract and transmit a copy of the contract to the Mining Cadastre Registrar, upon receipt of which the Registrar shall without delay notify the PMD— 50

- (c) that the particulars of the option contract are in order and have been entered [under an assigned reference number] in the Mining Cadastre Register with effect from a specified date:

5 Provided that if the Registrar indicates that any particulars are not in order by reason of some remediable defect in them, and the PMD is unable, with or without the cooperation of either or both of the parties to it to rectify them, the PMD shall reject the option contract, giving the parties the reasons therefor and informing them of the right of appeal under section 221 (4);

10 and

- (d) authorising the PMD to finally approve the option contract, the effective date of which shall be the date of the entry of the particulars relating to it in the Mining Cadastre Register;

15 whereupon the PMD shall record the fact and date of the final approval of the option contract in his or her final register and notify the parties to it in writing accordingly.

(4) Whenever an agreement registered in terms of this section contains provisions granting a tribute or any other limited right to work the mining location to the option holder, so much of such agreement as relates to the tribute or other limited right to work the mining location, hereinafter called the tribute agreement, shall, while it remains in force, be binding upon any person who acquires the ownership of such mining location or any interest therein, and it shall not be lawful for the holder of such mining location to abandon such location during the period that such tribute agreement remains in force.

(5) Whenever an agreement registered in terms of this section contains provisions granting a tribute or any other limited right to work the mining location to the option holder, the PMD shall, in addition to inscribing on the certificate of registration or of special registration or the holder's copy of the mining lease, as the case may be, of such mining location the fact of an option having been effected and the date of the registration thereof, inscribe on such certificate of registration or of special registration or copy of the mining lease, as the case may be, the fact of the existence of the agreement granting a tribute or any other limited right to work such mining location.

(6) For the prescribed fee (if any), upon the request of—

- (a) either of the parties to the option contract registered under this section, the Registrar may issue a certificate of registration of such contract;
- 35 (b) the option holder, the Registrar shall inscribe upon the option contract an official or registered number, and shall return to the notary who prepared it one copy, file another at the Mining Cadastre Registry and issue the third copy to the option holder.

4211 Registration of conditions governing mining rights on reserved ground

40 (1) In giving written consent in terms of **section 35** (“Ground not open to prospecting”)(1)(a) the President or other person giving such consent may impose terms prescribing the conditions under which mining rights on any mining location that may be pegged and registered in terms of such consent may be exercised.

45 (2) On the date of or at any time within twenty-one days of the registration of any mining location pegged under such consent as is mentioned in subsection (1), the President or other person has given the written consent (hereinafter called “the registrant”) shall (together with the prescribed fee, if any) submit three copies of the consent duly signed or authenticated by him or her and countersigned by the holder of the mining location to the PMD, who shall thereupon without delay—

- (a) register the consent in his or her provisional register; and
- (b) report such provisional registration of the consent to the Mining Cadastre Registrar and to the holder of the mining location concerned; and
- (c) retain one copy of the consent and furnish the Mining Cadastre Registrar with the other copy; and 5
- (d) return the other copy of the consent deed to the registrant with an endorsement made thereon by the PMD of the fact of such provisional registration.

(3) The PMD shall not finally register a consent until, having transmitted without delay the a copy of the consent to the Mining Cadastre Registrar, the PMD has received notification from the Registrar that the consent has been entered [under an assigned reference number] in the Mining Cadastre Register, whereupon the PMD shall record the fact and date of the entry of the consent in the Mining Cadastre Register in his or her final register and notify the parties to it in writing accordingly; 10

Provided that any failure on the part of the Mining Cadastre Registrar to make the notification to the PMD required by this section shall not affect the validity of the consent nor the application of subsections (4), (5) and (6) to enforce it. 15

(4) The terms of any written consent registered under subsection (3) (or, in the case contemplated by the proviso to subsection (2), provisionally registered under subsection (2)) shall be binding upon the holder of the registered mining location and upon any person who acquires the ownership of such mining location or any interest therein. 20

(5) No holder or any lessee or tributor or manager of the mining location shall breach any of the terms imposed in any written consent registered in terms of this section.

(6) Any person who contravenes subsection (5) **commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be** liable to a fine not exceeding **level 6** or to imprisonment for a period not exceeding twelve months or to both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it). 25

(7) The PMD for the mining province wherein a civil default as described in subsection (6) is committed may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which— 30

- (a) directs the defaulter—
 - (i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for **level 6**; and 35
 - (ii) to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her);
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate— 40
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 6** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 45
 - (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(7) After a conviction for a contravention of subsection (6) or of a civil penalty order under subsection (7) the PMD shall, upon application by the person who owns the land upon which such mining location is situated, declare the mining location in question to be forfeited.

5 (8) In any prosecution for a contravention of subsection (6) or of a civil penalty order under subsection (7), a copy of any written consent certified as correct by the PMD shall be received in evidence upon its production by the prosecutor.

212 No sale or alienation of precious stones or strategic minerals locations without approval of Minister

10 (1) Notwithstanding anything contained in this Act or any other enactment, no holder of a mining location registered for precious stones or any strategic mineral, or a mining lease on which the principal mineral being mined or to be mined is precious stones or any strategic mineral, shall cede, assign, sell or otherwise alienate in any manner whatsoever, that mining location or mining lease or any interest therein without
15 the permission of the Minister.

(2) The Minister may require the holder and such other person to furnish to him or her such information as the Minister may require for the purpose of deciding whether he or she should or should not grant his permission under this section.

213 Appeals under Part XVII

20 (1) If the PMD refuses for any reason to provisionally register —
 (a) the transfer of a mining location in terms of section 212 (8); or
 (b) an hypothecation agreement in terms of section 213 (2); or
 (c) provisionally register an option contract in terms of section 215 (3);

25 either party to the transfer, hypothecation agreement or option contract may appeal to the Registrar to reverse the PMD’s decision by lodging (together with the prescribed fee, if any) an appeal in writing through the PMD to the Registrar no later than seven days after the decision is notified in writing to the parties.

(2) In transmitting the appeal the PMD shall transmit together with it—
 (a) his or her written reasons for the decision that prompted the appeal; and
30 (b) the documentation he or she would have transmitted to the Registrar had the PMD not refused provisional registration.

(3) Upon receiving an appeal in terms of subsection (1) the Registrar shall without delay—

 (a) dismiss the appeal by upholding the decision of the PMD; or
35 (b) refer the decision back to the PMD for reconsideration within a specified period (whether with or without directions on how the decision is to be reconsidered, including a direction to the PMD to investigate the matter further and make a further report and recommendations) on any one or more of the following grounds^{3/4}

40 (i) allowing extraneous or irrelevant considerations to affect the decision; or
 (ii) failure to take into account relevant considerations in arriving at the decision; or
 (iii) any material mistake of fact or law that tainted the decision;

45 and the Registrar shall, upon receiving the report or recommendations resulting from the PMD’s reconsideration, make a decision in accordance with paragraph (a), (c) or (d);

or

- (c) uphold the appeal and direct the PMD to effect the final registration of —
 - (i) the transfer of a mining location in terms of section 212 (9) on payment of the prescribed fee; or
 - (ii) an hypothecation agreement in terms of section 213 (4) on payment of the prescribed fee; or 5
 - (iii) the option contract in terms of section 215 (3); or
 if the Registrar finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision, and that there is no other impediment to the tribute agreement being approved: 10

Provided that the Registrar shall not make a finding on this ground without affording the Board or the PMD (or whoever caused the tribute agreement to be rejected) an opportunity to respond to such finding;
- (4) If the Registrar refuses for any reason to register —
 - (a) the transfer of a mining location in terms of section 212 (); or 15
 - (b) an hypothecation agreement in terms of section 213 (); or
 - (c) an option contract in terms of section 215 ();

whether after an appeal referred to in subsection (1) or after the PMD has provisionally registered the transfer, hypothecation agreement or option contract, either party to the transfer, hypothecation agreement or option contract may seek a review of such decision by the Administrative Court within twenty-one days after the date of its notification to the party, whereupon the court may do any of the things the Registrar is empowered to do under subsection (3). 20

PART XVIII

APPROVAL OF TRIBUTE AGREEMENTS 25

214 Interpretation in Part XVIII

- (1) In this Part—
 - “grantor” means any person who has under a tribute agreement given a tributor the right to mine a mining location;
 - “mining location” does not include a special grant; 30
 - “tribute agreement” means any agreement or arrangement entered into on or after the commencement of this Act, whereunder the registered holder of a mining location gives a tribute, licence, concession, authority or other right to mine a mining location to a tributor; and which is renewed after such date, and any agreement to alter the terms of a tribute agreement which has been approved by the Board and any renewal of a tribute agreement which has been approved by the Board; 35
 - “tributor” means the person who has been granted the right to mine a mining location under a tribute agreement.

- (2) References to a party or parties to a tribute agreement for the purposes of pursuing an appeal mentioned in section 221 or 222 may be construed as references to the parties acting jointly, or to either of them acting with the written concurrence of the other. 40

215 No tribute of precious stones or strategic minerals location without approval of Minister

(1) Notwithstanding anything contained in this Act or any other enactment, no holder of a mining location registered for precious stones or any strategic mineral or a mining lease on which the principal mineral being mined or to be mined is precious stones or any strategic mineral shall tribute, that mining location or mining lease or any interest therein without the permission of the Minister.

(2) The Minister may require the holder and such other person to furnish to him or her such information as the Minister may require for the purpose of deciding whether he or she should or should not grant his permission under this section.

216 Submission of tribute agreements for approval by PMD or Board

(1) The terms of every tribute agreement shall be embodied in a notarial deed and must include the following particulars—

- (a) the names of the parties to the agreement; and
- (b) the name and registered number of the mining location or the registered number of the mining lease to which such agreement relates; and
- (c) the date upon which the rights conferred by such agreement commence and expire.

(2) The tributor (or the grantee, with the tributor's express authority in writing) shall submit the following to the PMD for examination and approval by the Board or the PMD—

- (a) four duplicate original notarial copies or four notarially certified copies of a notarial deed embodying the terms of the tribute agreement; and
- (b) the original or an authenticated copy of the certificate of registration or of special registration or the holder's copy of the mining lease, as the case may be, of the location to which the tribute agreement relates; and
- (c) if the application is in respect of a tribute agreement relating to a mining location registered for precious stones or any strategic mineral, or a mining lease on which the principal mineral being mined or to be mined is precious stones or any strategic mineral or an interest therein, a certificate from the Secretary that the Minister has granted the permission required under section 221 ("No tribute of precious stones or strategic minerals location without approval of Minister") in respect thereof; and
- (d) if the application is being submitted by the grantee under the tributor's authority, a copy of that authority signed by the tributor.

(3) The Board may authorize the PMD to approve any tribute agreement which conforms to a standard agreement drawn up and approved by the Board:

(4) If any tribute agreement submitted to the PMD conforms to such standard agreement, the PMD, on receipt of an application and documents in terms of subsection (2), shall—

- (a) register the agreement in his or her provisional register; and
- (b) report such provisional registration to the Board and to the occupier or, if there is no occupier, the owner of the land concerned; and
- (c) retain one copy of the deed and furnish the Mining Cadastre Registrar with the other copy; and
- (d) return the other copies of the deed to the applicant with an endorsement made thereon by the PMD of the fact of such provisional registration.

(5) There shall be paid by the applicant for the registration of such deed the fee fixed by Parliament.

(6) If the PMD refuses to approve an agreement or is only prepared to approve an agreement with such amendments as the parties refuse to accept, the parties may appeal to the Board to reverse the PMD's decision by lodging (together with the prescribed fee, if any) an appeal in writing through the PMD to the Board no later than seven days after the decision is notified in writing to the parties. 5

(7) Upon receiving an appeal in terms of subsection (3) the Board shall without delay—

(a) dismiss the appeal by upholding the decision of the PMD; or 10

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

(i) allowing extraneous or irrelevant considerations to affect the decision; or 15

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

(iii) any material mistake of fact or law that tainted the decision;
(and the Board shall, upon receiving the report or recommendations resulting from the PMD's reconsideration, make a decision in accordance with paragraph (a), (c) or (d) 20

or

(c) uphold the appeal and direct the PMD to approve the tribute agreement if the Board finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision, and that there is no other impediment to the tribute agreement being approved: 25

Provided that the Board shall not make a finding on this ground without affording the Board or the PMD (or whoever caused the tribute agreement to be rejected) an opportunity to respond to such finding; 30

(8) Any party who is aggrieved by a decision of the Board under subsection (7), may seek a review of such decision by the Administrative Court within twenty-one days after the date of its notification to the party, whereupon the court may do any of the things the Board is empowered to do under subsection (7). 35

217 Consideration of non-standard tribute agreements by Board

(1) If the PMD does not himself or herself approve a tribute agreement he or she shall submit the application and documents referred to in **section 222 (2)** to the Board for consideration.

(2) If upon examination of any tribute agreement which has been submitted to it by a PMD the Board is satisfied— 40

(a) that the method of fixing the tribute royalty payable to the grantor and the rate of such royalty are satisfactory and are not likely to retard the progress or expansion of the mine or bring about the early cessation of mining operations; and 45

(b) that the interests of both the grantor and the tributor are adequately safeguarded thereunder; and

- (c) that the period of such agreement is clearly defined and, if termination of the agreement by notice is provided for, that the interests of the parties to the agreement are adequately protected; and
- 5 (d) that the development work required by the agreement is reasonable in the circumstances and is not unduly burdensome or likely to cause the premature cessation of mining operations on the mine; and
- (e) that the tributor is required to carry out sufficient development work to ensure the continuity of mining operations on the mine; and
- 10 (f) that the grantor is entitled periodically and at reasonable times to inspect the mine and satisfy himself or herself that the terms of the agreement are being observed; and
- (g) that in all respects the agreement is satisfactory and likely to result in the mine being mined to the best advantage;

the Board may approve the agreement and shall—

- 15 (h) communicate its approval of the tribute agreement to the PMD through the Secretary, whereupon the PMD shall proceed in terms of section 223 (“Records of agreements”);
- (i) retain one copy of the deed and furnish the Mining Cadastre Registrar with the other copy; and
- 20 (j) return the other copies of the deed to the applicant with an endorsement made thereon by or on behalf of the Chairperson of the Board of the fact of such provisional registration.

(3) If the Board is not satisfied in terms of subsection (2), it may refuse to approve the agreement or may submit to the parties thereto such amendments as it may deem fit.

(4) If the parties agree to such amendments the Board shall make the necessary amendments to the agreement and the agreement shall have effect as so amended and approved by the Board.

(5) If the Board refuses to approve an agreement or is only prepared to approve an agreement with such amendments as the parties refuse to accept, the parties may appeal to the Minister to reverse the Board’s decision by lodging (together with the prescribed fee, if any) an appeal in writing through the Secretary of the Board no later than seven days after the decision is notified in writing to the parties

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

- (a) dismiss the appeal by upholding the decision of the Board; or
- (b) refer the decision back to the Board for reconsideration within a specified period (whether with or without directions on how the decision is to be reconsidered, including a direction to the Board to investigate the matter further and make a further report and recommendations) on any one or more of the following grounds—
 - (i) allowing extraneous or irrelevant considerations to affect the decision, or
 - (ii) failure to take into account relevant considerations in arriving at the decision, or
 - 45 (iii) any material mistake of fact or law that tainted the decision;

(and the Minister shall, upon receiving the report or recommendations resulting from the Board’s reconsideration, make a decision in accordance with paragraph (a), (c) or (d)

or

- (c) uphold the appeal and direct the Board to approve the tribute agreement if the Minister finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision, and that there is no other impediment to the tribute agreement being approved: 5

Provided that the Minister shall not make a finding on this ground without affording the Board or the PMD (or whoever caused the tribute agreement to be rejected) an opportunity to respond to such finding;

or

- (d) in an exceptional case, overturn the decision of the Board and substitute the Minister’s own decision on the basis of the overriding national interest (in which case the decision of the Minister shall be made in the form of a direction to the Board to which the applicable provisions of section 15 (*Minister may give policy directions to Board*)) shall apply. 10

(7) Any party who is aggrieved by a decision of the Minister under subsection (6), may seek a review of such decision by the Administrative Court within twenty-one days after the date of its notification to the party, whereupon the court may do any of the things the Minister is empowered to do under subsection (4) other than paragraph (d) of that subsection. 15

(8) An applicant whose appeal in terms of subsection (6) has been dismissed by the Minister and not upheld if taken on further appeal to the Administrative Court, may not enter into a tribute agreement on substantially the same terms as the one that was rejected until after the expiry of a period of twelve months from the date on which his or her appeal was dismissed by the Minister (or such lesser period as the Minister may specify when dismissing the appeal), **or from the date of the dismissal of the appeal by the Administrative Court, as the case may be.** 20

(9) If the Minister reverses or alters the Board’s decision, the Board shall approve the agreement in accordance with the Minister’s decision and shall—

- (a) endorse such approval thereon and shall inform the owner or occupier of the land concerned of such approval; and 30
- (b) communicate its approval of the tribute agreement to the PMD through the Secretary, whereupon the PMD shall proceed in terms of section 223 (“Records of agreements”).

218 Records of agreements and amendments thereof

(1) The PMD shall without delay enter in his or her provisional register the particulars of every tribute agreement submitted for approval under this Part and— 35

- (a) not finally approve a tribute agreement which conforms to a standard agreement drawn up and approved by the Board until, having transmitted without delay the particulars of the tribute agreement to the Mining Cadastre Registrar, he or she has received notification from the Registrar— 40

- (i) that the particulars of the tribute agreement are in order and have been entered [under an assigned reference number] in the Mining Cadastre Register with effect from a specified date:

Provided that if the Registrar indicates that any particulars are not in order by reason of some remediable defect in them, and the PMD is unable, with or without the cooperation of either the grantor or tributor (or both) to rectify them, the PMD shall reject the tribute agreement, giving the the grantor or tributor (or both) the reasons therefor and informing them of the right of appeal under section 221 (4); and 50

- (ii) authorising the PMD to approve the tribute agreement, the effective date of which shall be the date of the entry of the particulars relating to it in the Mining Cadastre Register;

5 whereupon the PMD shall record the fact and date of the approval of the tribute agreement in his or her final register and notify the parties to it in writing accordingly;

- (b) not record in his or her final register the fact and date of the approval of a tribute agreement for which the Board must give approval under section 223, until the Board notifies him or her that—

10 (i) it has approved the tribute agreement; and

- (ii) the particulars of the tribute agreement have been entered [under an assigned reference number] in the Mining Cadastre Register with effect from a specified date;

15 whereupon the PMD shall record the fact and date of the approval of the tribute agreement in his or her final register and notify the parties to it in writing accordingly;

(2) Any tribute agreement finally registered in terms of this section shall, while it remains in force, be binding upon any person who acquires the ownership of such mining location or any interest therein, and it shall not be lawful for the holder of such mining location to abandon the whole or part of such location during the period that such agreement remains in force.

(3) If in any tribute agreement the tributor is granted the option of exercising the right to purchase or in any other manner to deal with such mining location at a certain future date, then the agreement may only be registered in terms of **section 215** (“Registration of options on mining locations”).

25 (4) Every amendment by the parties to a tribute agreement approved by the PMD under section 222 or of a tribute agreement approved by the Board under section 223 shall be dealt with in the same way as the original tribute was dealt with, so that references to a “tribute agreement” in section 222 or 223 and this section shall be construed as references to an amendment of the tribute agreement concerned.

30 (5) If an amendment is proposed to be made to an approved tribute agreement which had conformed to a standard agreement drawn up and approved by the Board, and the PMD is of the opinion that the amendment will alter the tribute agreement to such an extent that it no longer conforms to the standard agreement, the PMD shall cause the amendment to be consolidated with the principal agreement and direct the parties to proceed in accordance with section 223 as if the amended tribute agreement is a new tribute agreement.

219 Penalty for acting under unapproved agreement

40 (1) No party to a tribute agreement shall exercise any right under such agreement unless and until such agreement has been examined and approved by the Board or a PMD and the party has been notified in writing of such approval under section 223(1) (a) or (b).

45 (2) Any party who contravenes subsection (1) **commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be** liable to a fine not exceeding level six or to imprisonment for a period not exceeding twelve months or to both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it).

- (3) The PMD for the mining province wherein a civil default as described in subsection (2) happened may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—
- (a) directs the defaulter—
 - (i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 6; and 5
 - (ii) to immediately cease the contravention (that is to say, within forty-eight hours after the civil penalty is served on him or her);
 - (b) subjects the defaulter to either of both of the following penalties, as may be appropriate— 10
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 15
 - (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 20

220 Prohibition of disposal of minerals

(1) If a tributor is mining a mining location under an unapproved agreement or in conflict with the terms of an approved agreement the PMD shall issue an order prohibiting the disposal of minerals from such mining location until he or she is satisfied that the agreement has been approved under this Part or until the terms of the approved agreement are complied with. 25

(2) Any party who fails to observe such an order and any person knowing of such an order who contrary thereto receives any minerals from such mining location **commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be** liable to a fine not exceeding level six or to imprisonment for a period not exceeding twelve months or to both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it). 30

(3) The PMD for the mining province wherein a civil default as described in subsection (2) happened may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which— 35

- (a) directs the defaulter—
 - (i) to immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) pay to the PMD a default fine of the maximum amount fixed for level 6; and 40
 - (ii) to immediately comply with the order (that is to say, within forty-eight hours after the civil penalty is served on him or her);
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level six for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 45

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

5

PART XIX
SPECIAL GRANTS

221 Interpretation in Part XIX

In this Part—

- “divided special grant” means a special grant...
- 10 “grantee” means any person to whom a special grant has been issued, ceded or assigned under this Part;
- “special grant” means a special grant issued under this Part;
- “undivided special grant” means a special grant...

222 Special grant for mining coal, mineral oils, nuclear energy source materials, natural gases or strategic minerals

15

The rights to mine—

- (a) coal, mineral oils or natural gases or nuclear energy source materials, may not be acquired except in accordance with a special grant issued under this Part;
- 20 (b) strategic minerals may be acquired in accordance with a special grant issued under this Part;
- (c) the following co-existent minerals—
 - (i) coal and coal bed methane; or
 - (ii) mineral oil and natural gas;
- 25 may be acquired with a divided or undivided special grant issued under this Part.

223 Application for special grant and provisional approval thereof

(1) Any person who wishes to mine—

- (a) coal, mineral oils or natural gases or nuclear energy source materials must apply to the Board for a special grant; or
- 30 (b) a strategic mineral under the title of a special grant rather than a mining lease, must, before concluding an agreement referred to in **section 5** (“Strategic minerals”), apply to the Minister for a special grant:

35 Provided that such application may be made by virtue of an agreement (whether preparatory to the main agreement or not) whereunder the exercise of rights under the proposed special grant is expressly made contingent upon—

- (i) the grant of the application for a special grant under this Part; and
- 40 (ii) the outcome of exploration work done within a specified time in the area reserved for the grantee against prospecting and pegging.

(2) On such application the applicant shall furnish to the Board or the Minister as the case may be—

- (a) full information as to his or her financial status; and
- 45 (b) particulars of any guarantees that may be required for the performance of his or her obligations under the special grant; and

- (c) information whether the application relates to coal, mineral oils, nuclear energy source materials or natural gases or a strategic mineral; and
 - (d) where the application relates to coal, coalbed methane, mineral oils or natural gas, a statement whether the applicant proposes to exploit—
 - (i) coal and coalbed methane under an undivided special grant; or 5
 - (ii) mineral oils and natural gas under an undivided special grant; or
 - (iii) coal alone under a divided special grant for coal; or
 - (ii) coalbed methane alone under a divided special grant for coalbed methane; or
 - (iii) mineral oils alone under a divided special grant for mineral oils; or 10
 - (iv) natural gas alone under a divided special grant for natural gas; or and
 - (d) details illustrated by a sketch plan of the area to be embraced by the grant and the size of such area; and
 - (e) the nature and extent of the exploration operations he or she intends to carry out within the exclusive exploration reservation and any measures to mitigate any environmental damage (hereinafter called “the prospectus”, a copy of which must be served on the Director General of the Environmental Management Agency); and 15
 - (f) if the applicant is a company, the full names and nationality of each director and the full names by which those directors have at any time been known in any part of the world; and 20
 - (g) any further information required of him or her by the Board or the Minister as the case may be.
- (3) If the Minister or the chairperson of the Board, as the case may be, after consultation with the Mining Cadastre Registrar and the department of geological survey— 25
- (a) is satisfied that, on the face of it, the application appears to be in order, and otherwise has a good prospect of being granted, provisionally approve an application before it is considered for final approval by the Minister or the Board, whereupon the Minister or the chairperson shall issue a direction to the PMD to reserve the area embraced by the application against prospecting and pegging in terms of **section 40** (“Reservations against prospecting and pegging”), and the PMD, (without obtaining the authority of the Minister if the application relates to coal, mineral oils or natural gases or nuclear energy source materials) shall forthwith reserve such area accordingly: 30
- Provided that the applicant shall not—
- (i) carry out prospecting operations in the reserved area; or
 - (ii) carry out mining operations or any other operations for mining purposes in the reserved area 40
- until the application has been approved and the special grant issued by the President under **section 232** (“President may grant or refuse application for special grant”);
- or 45
- is not satisfied as provided in paragraph (a), refuse the application or refer it back to the applicant for clarification or amendment in specific respects (in the latter case the Minister or Chairperson shall, upon receiving the clarification or amended application, make a decision in accordance with paragraph (a) or this paragraph) 50

(4) If two or more applications for a special grant are received within thirty days of each other (or such longer or shorter period as may be prescribed by notice in the *Gazette*) in respect of the same area, or the areas subject to the applications overlap each other, the Minister or the Chairperson of the Board, as the case may be, may grant provisional approval to two or more applicants who appear to the Minister or Chairperson to qualify for provisional approval under subsection (4), even if the applications seek to mine the same resource.

(5) A reservation under subsection (3) shall simultaneously be recorded in the Mining Cadastre Register by the Mining Cadastre Registrar.

224 Pre-consideration procedures by PMD

(1) Immediately upon receipt from the Mining Cadastre Registrar of notification of a provisional approval of a special grant (and in any case no later than 7 days from receipt of such notification), the PMD shall post particulars of the proposed special grant on the public notice board of his or her office together with an invitation to interested persons (that is to say the applicant for the special grant, any occupiers of land, existing or potential small-scale or other miners or other interested persons within the area of the jurisdiction of the PMD) to attend at a meeting (giving particulars of its time and venue) to enable them to make oral and written representations at that meeting on any matter in connection with the proposed special grant:

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

(2) In amplification or clarification of the provisions of subsection (1) the following provisions are pertinent—

- (a) at the meeting the PMD shall follow the applicable rules set out in the Second Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”);
- (b) the meeting shall proceed whether or not the applicant for the special grant is present or represented;
- (c) as soon as possible after the conclusion of the meeting the PMD shall make a written summary of the proceedings of the meeting in the form of a report to the Mining Cadastre Registrar setting forth any possible objections to the final approval of the application.

(3) The Minister or the Board as the case may be shall not consider an application for final approval of a special grant before the date when the Mining Cadastre Registrar has received the report of the PMD in terms of subsection (2).

Provided that if no such report is received within thirty days of the date of the provisional approval of the application, the Minister or the Board (as the case may be) may—

- (a) on the written request of the PMD made within that period, extend the period for the holding of the meeting referred to in subsection (1) or for the making of the report, or both, by no more than 30 days; or
- (b) proceed to consider the application in terms of section 230 (“Consideration on application for special grant for strategic minerals”) or 231 (“Consideration and report by Board on application for special grant for mineral oils, natural gases, or nuclear source energy material”).

225 Consideration of application for special grant for strategic minerals

(1) Where under section 229, the Minister has received from the PMD through the Mining Cadastre Registrar any recommendation that is adverse to the applicant for a special grant for a strategic mineral, the Minister shall avail to the applicant a copy of the PMD's report incorporating the recommendation, and afford the applicant an opportunity no later than 96 hours after such report is availed to the applicant to make adjustments to the application to take into account any of the PMD's observations or to make a written response to the adverse recommendation or recommendations not exceeding two thousand words. 5

(2) If adjustments are made to the original application submitted to the Minister, the applicant shall be afforded the opportunity to withdraw the original application and submit the adjusted one to the Minister no later than five days after a report of the PMD is availed to him or her under subsection (1). 10

(3) The Minister shall (after taking into account any adjustments to the application or response of the applicant in terms of subsection (1), consider the application and shall report thereon to the President with his or her recommendation whether the application should be granted or refused. 15

(5) In considering an application the Minister shall have regard to whether—

(a) the applicant is a fit and proper person to be issued with a special grant for the strategic mineral; 20

(b) the financial status of the applicant is such that he or she will be able to comply with the terms and conditions of any special grant that may be issued to him or her;

(c) it would be in the national interest to issue the special grant.

(6) In addition to the considerations referred to in subsection (5), where two or more applications for a special grant for strategic minerals are made as described in **section 228 (4)**, and both or more than two such applications qualify for acceptance under subsection (4), the Minister must recommend to the President no more than one application as being the most suited (in the Minister's opinion) to be awarded the special grant, unless the areas subject to the applications do not overlap each other by more than fifty *per centum* of either or any of the areas applied for, in which event the Minister shall give notice to the parties— 25 30

(a) that he or she intends to recommend to the President that the overlapping area be awarded to one of the applicants, or that it be divided in a specified manner between them; and 35

(b) affording either or any of the parties the opportunity to withdraw their applications within a specified period if either or any of them objects to the proposal under paragraph (b).

(7) Where the Minister recommends that an application should be granted he or she may include in his or her report recommendations relating to— 40

(a) the minimum capital which the applicant should be required to invest in the development of the area to be covered by the special grant; and

(b) the period that should be permitted to the applicant to bring operations in the area to be covered by the special grant to the producing stage; and

(c) the minimum rate of production of the strategic mineral concerned that should be conducted by the applicant; and 45

(d) the amount of royalty that should be paid by the applicant in respect of the strategic mineral won by the applicant; and

- (e) the annual fee that should be paid by the applicant as a consideration for the issue of the special grant.

226 Consideration of application for special grant for coal, mineral oils, natural gases, or nuclear source energy materials

5 (1) Where under section 229, the Chairperson of the Board has received from the PMD through the Mining Cadastre Registrar any recommendation that is adverse to the applicant for a special grant for a coal, mineral oils, natural gases, or nuclear source energy materials, the Chairperson shall avail to the applicant a copy of the PMD's report incorporating the recommendation, and afford the applicant an opportunity no
10 later than 96 hours after such report is availed to the applicant to make adjustments to the application to take into account any of the PMD's observations or to make a written response to the adverse recommendation or recommendations not exceeding two thousand words.

15 (2) If adjustments are made to the original application submitted to the Chairperson of the Board, the applicant shall be afforded the opportunity to withdraw the original application and submit the adjusted one to the Chairperson no later than five days after a report of the PMD is availed to him or her under subsection (1).

20 (3) The Board shall consider every application for a special grant for a coal, mineral oils, natural gases, or nuclear source energy materials, and shall report thereon to the Minister with its recommendation whether the application should be granted or refused:

(4) In considering an application the Board shall have regard to whether—

- (a) the applicant is a fit and proper person to be issued with a special grant;
25 (b) the financial status of the applicant is such that he will be able to comply with the terms and conditions of any special grant that may be issued to him;
(c) it would be in the national interest to issue the special grant.

30 (5) In addition to the considerations referred to in subsection (4), where two or more applications for a special grant for coal, mineral oils, natural gases, or nuclear source energy materials are made as described in **section 228 (4)**, and both or more than two such applications qualify for acceptance under subsection (4), the Board must recommend to the Minister no more than one application as being the most suited (in the Board's opinion) to be awarded the special grant, unless the areas subject to the applications do not overlap each other by more than fifty *per centum* of either or any
35 of the areas applied for, in which event the Board shall give notice to the parties—

- (a) that it intends to recommend to the Minister that the overlapping area be awarded to one of the applicants, or that it be divided in a specified manner between them; and
40 (b) affording either or any of the parties the opportunity to withdraw their applications within a specified period if either or any of them objects to the proposal under paragraph (b).

(6) Where the Board recommends that an application shall be granted it may include in its report recommendations relating to—

- 45 (a) the minimum capital which the applicant should be required to invest in the development of the area to be covered by the special grant;
(b) the period that should be permitted to the applicant to bring operations in the area to be covered by the special grant to the producing stage;

- (c) the minimum rate of production of coal, mineral oils or natural gases or nuclear energy source material or the strategic mineral concerned that should be conducted by the applicant;
- (d) the amount of royalty that should be paid by the applicant to the Minister in respect of coal, mineral oils or natural gases, nuclear energy source material or strategic mineral won by the applicant; 5
- (e) the annual fee that should be paid by the applicant to the Minister as a consideration for the issue of the special grant.

227 President may grant or refuse application for special grant

- (1) The Minister shall— 10
 - (a) in relation to an application referred to in section 230 submit the report and his or her recommendations to the President, who may refuse the application or authorize the Minister to issue a special grant on such terms and conditions as he or she may fix and enter into the agreement referred to in section 5 (“Strategic minerals”); 15
 - (b) in relation to an application referred to in section 231 submit—
 - (i) the report and recommendations of the Board; and
 - (ii) his or her own views, if any, on the Board’s recommendations; to the President who may refuse the application or authorize the Minister to issue a special grant on such terms and conditions as the President may fix. 20

(2) Where the President has refused an application made in terms of section 230 or 231 the applicant shall not make a fresh application in terms of the appropriate section until at least three months have elapsed since the refusal of his or her last application. 25

(3) Where the President has issued a special grant, the Mining Cadastre Registrar shall instruct the PMD to reserve the area covered by the special grant against prospecting or pegging under section 35 [*Reservations against prospecting and pegging*] for a period of two years or such lesser period as may be specified in such special grant. 30

228 Transfer, cession or assignment of special grant

(1) In this section—
 “transfer” in relation to a special grant means the transfer of the sole or majority ownership of the special grant or of any interest in the special grant that is equivalent to sole or majority ownership. 35

(2) Subject to this section, the rights granted under a special grant shall be personal to the grantee, who may not cede or assign any such rights to any other person unless authorized to do so by the President.

(3) No transfer of a special grant may occur except in accordance with this section and if no application made in accordance with this section for the approval of such transfer within six months of the date of the agreement or transaction by which such transfer is purported to be concluded between the transferor and the transferee, it shall be deemed that the transferor has abandoned the special grant and the special grant shall be deemed cancelled. 40

(4) A special grant may not be transferred except to a person approved of by the Board (in the case of coal, mineral oils, nuclear energy sources or natural gases) or the Minister (in the case of strategic minerals), in accordance with this section. 45

(5) The grantee wishing to transfer the grant (hereafter in this section referred to as the “transferor”) shall in the first instance make written application (in the form (if any) prescribed), to the Mining Cadastre Registrar, which application must be accompanied by—

- 5 (a) the following affidavits—
 - (i) the affidavit by the transferor stating his or her reasons for wishing to transfer the special grant to the transferee and the consideration paid or payable for such transfer;
 - 10 (ii) the affidavit by the person to whom the special grant is to be transferred (hereafter in this section referred to as the “transferee”) giving full particulars of his or her name and address, and in the case of a company particulars of the date of incorporation and registration and the names of the directors of the body corporate together with relevant particulars of the financial status of the transferee and his or her readiness to assume all the obligations of the transferor under the special grant;
 - 15 (b) a written statement by the transferor stating whether the transferor is willing to continue holding the special grant in its name or to abandon it in the event that the application for the transfer is rejected under this section.
 - 20

(6) Having received the copies of the affidavits referred to in subsection (5), the Mining Cadastre Registrar shall compile a report to the Board or the Minister as the case may be, stating whether he or she recommends, does not recommend or makes no recommendation as to the proposed transfer together with reasons therefor:

25 Provided that if any recommendation is adverse to the transferor the Mining Cadastre Registrar must avail a copy of the report incorporating the recommendation to the transferor concerned to afford an opportunity no later than 48 hours after such report is availed to him or her to make a written response to the same not exceeding two thousand words, which response shall be annexed to the report of the Mining Cadastre Registrar that is transmitted to the Minister or the Board as the case may be.

(7) Upon transmission of the particulars referred to in subsection (5) the Board or the Minister may, if the Board or the Minister is of the opinion that the transmitted particulars are in order, consider whether to accept or reject the transfer of the special grant in question, that is to say—

- 35 (a) if the Board or the Minister accepts the transfer of the special grant in question, enter the relevant particulars concerning the transfer of the special grant in the Mining Cadastre Register and confirm in writing to the PMD concerned that the special grant has been transferred, subject to **subsection (12)**;
- 40 (b) if Board or the Minister rejects the transfer of the special grant, notify the transferor accordingly and, if necessary, notify the appropriate PMD that the special grant has been cancelled

(8) In considering an application under **subsection (7) (a)** the Board or the Minister as the case may be, shall not approve a transfer unless the Board or the Minister is satisfied—

- 45 (a) that the transferee’s financial status is such that he or she will be able to meet any payment which may become due by him or her under the provisions of [**section 344**]; and
- 50 (b) that mining operations on a substantial scale are likely to be conducted for a considerable period within the area applied for; and

- (9) The PMD shall enter in his or her final register the fact that—
- (a) a certificate of registration in the name of the transferee has been issued; or
 - (b) the special grant has been abandoned due to the operation of **subsection (6)**;

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(10) Any person aggrieved by the refusal of the Board or the Minister to approve a transfer of a special grant may appeal within fourteen (14) days of such refusal to the Minister (if the decision was made by the Board) or to the President (if the decision was made by the Minister) and the Minister or the President as the case may be, may overturn any such decision on the following grounds—

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- (a) interest in the cause, bias, malice or corruption on the part of any person who is a party to the decision;
- (b) gross irregularity in the proceedings or the decision;
- (c) in exceptional cases, the overriding of the national interest.

229 Rate of royalty and annual fee

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(1) Notwithstanding anything to the contrary contained in Part XIII (“Royalty”), provision may be made in a special grant stipulating for the payment of royalty on all coal, mineral oils or natural gases, nuclear energy source material or strategic minerals won by the grantee under his special grant at such rate as the President may fix.

(2) Provision may be made in a special grant for the payment by the grantee of such annual fee as the President may fix as consideration for the issue of the special grant.

20

230 Amendment of area covered by special grant and other amendments

(1) The President may, on application by a grantee, extend or reduce the area covered by his or her special grant or may alter the boundaries thereof:

25

Provided that if the effect of the application is to extend the area covered by his or her special grant, an application therefor must be made to the Board or the Minister in terms of **section 230 or 231** as the case may be.

(2) Every material amendment of the terms of a special grant other than one affecting the area of the covered by the special grant shall be dealt with in the same way as the original application for the special grant was dealt with, so that references to an “application” in **section 230 or 231** shall be construed as references to an amendment of the special grant.

30

231 Cancellation of special grant

(1) If a grantee contravenes the terms and conditions attached to his or her special grant, the President may cancel such grant.

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(2) No grant shall be cancelled in terms of subsection (1) unless written notice has been given to the grantee of the proposed cancellation **twelve months** before such cancellation.

(3) Instead of giving notice of cancellation under subsection (2), the President may direct the Minister to apply the provisions of section 306 (“Cancellation of mining rights for breach of this Act or other laws”)(8) in relation to the grant, in which event the President shall cancel the special grant as soon as the Minister makes a report to him or her that the grantee is in default of the terms and conditions of the special grant.

40

45

232 Recording of special grants; fee for special grant

- (1) The Mining Cadastre Registrar shall without delay record—
- 5 (a) the particulars of every special grant issued under this Part in the Mining Cadastre Register as soon as possible after its issuance (and no special grant shall be deemed to have been finally issued until such recording has been made and written notification of such recoding in writing is given to the grantee); and
- (b) the particulars of every amendment of a special grant that is approved under this Part; and
- 10 (c) the cancellation of a special grant that is effected under this Part; and
- (2) Each special grant shall be assigned an official number.
- (3) The grantee shall pay the prescribed fee in respect of the issue of a special grant or any renewal thereof.
- (4) The PMD shall without delay after being notified thereof enter—
- 15 (a) in his or her provisional register the particulars of every application for a special grant within his or her province that is made under this Part; and
- (b) in his or her final register
- (i) the particulars of every application for a special grant within his or her province that is issued by the President under this Part; and
- 20 (ii) the particulars of every amendment of a special grant within his or her province that is approved under this Part; and
- (iii) the cancellation of a special grant within his or her province that is effected under this Part.

233 Application of other provisions of this Act to special grants

- 25 (1) Where a special grant authorises the carrying out of mining operations, the provisions of this Act relating to mining leases shall apply to the special grant but only is so far as those provisions do not conflict with the terms and conditions of the special grant:

30 **Provided that no special grant may exempt the grantee from the application of Sub-Part B of Part V (“Acquisition and Registration of Mining Rights”), Part VI (“Prospecting and Pegging on Ground Reserved against Prospecting and Pegging”), Part VIII (“Pegging of Underground Extensions”), Part XI (“Preservation of Mining Rights”), Part XV (“Provincial Environmental, Rehabilitation and Occupational Health and Safety Trust Funds”) and Part XX (“Mining on Town Lands”)**

- 35 (2) Where a special grant authorises the carrying out prospecting operations, the grantee shall, subject to terms the terms and conditions of the special grant, have the following rights—
- (a) the exclusive right of prospecting within the area of the special grant on all ground which is open to prospecting on the date on which the special grant is issued, including the right to drill and excavate, whether at the surface or underground;
- 40 (b) the same surface rights within the area of the special grant as are conferred upon a prospector under **section.....**, and for that purpose the date on which the special grant is issued shall be deemed to be date of the posting of a prospecting notice by the grantee:
- 45

Provided that the grantee shall have the right of removing any accommodation, buildings or machinery which have been erected within that area within 3 months or

such longer period as may be determined by the PMD after the expiration or cancellation of the special grant.

(3) **Section 205** (“Open workings to be protected on abandonment, forfeiture or cancellation of location”) shall apply, with such changes as may be necessary, to a grantee in respect of his or her mining location registered under the special grant, and for this purpose the date of the expiration or cancellation of the special grant shall be regarded as the date of the forfeiture of such mining location. 5

(4) If a special grant was issued in relation to a strategic mineral and that strategic mineral later ceases to be such in terms of section 5 (“Strategic minerals”), the special grant is deemed by virtue of this section to be converted to a mining lease and the appropriate changes shall be made by the Cadastre Registrar to the Cadastre register. 10

(5) No later than the period for which the area covered by the special grant is reserved in favour of the grantee in terms of **section 35**, the holder of a special grant shall demarcate such grant in the manner provided in this Act for pegging and beaconing of mining locations, and any area of the special grant not so demarcated after that period that is open to prospecting and pegging shall be deemed to be no longer reserved in terms of section 35 and the PMD shall post a notice on his or her board to that effect. 15

234 Substitution of certain special grants by divided or undivided special grants 20

- (1) If at the commencement of this Act—
- (a) a holder of a special grant in which there are two co-existent minerals, is exploiting only one of those minerals, the Board shall on notice to the holder substitute without charge the existing special grant with a divided special grant for the mineral which he or she is exploiting; 25
- (b) a holder of a special grant in which there are two co-existent minerals, is exploiting both those minerals, the Board shall on notice to the holder substitute without charge the existing special grant with an undivided special grant for both minerals which he or she is exploiting;

PART XX 30
MINING ON TOWN LANDS

235 Application of Act to town lands

(1) This Part shall apply to town lands.

(2) The right to prospect for and mine and win minerals on or under any town lands shall be governed by the other Parts of this Act, except in so far as they conflict with this Part. 35

236 Local authorities may make by-laws on certain matters

The local authority having control over any town lands shall have full power and authority to make and enforce regulations and by-laws for proper and efficient sanitary arrangements, for the enclosing of all pits, excavations and dangerous surface works and for the protection of the neighbourhood within which prospecting and mining are being carried on, and shall for the above purposes have the right to enter upon and inspect all such works existing or proceeding on such lands: 40

Provided that no such regulation or by-law shall be of any force or effect until approved by the Minister and duly published in a statutory instrument. 45

237 Consent required for pegging of sites on town lands

No holder of a registered mining location shall be entitled to peg or acquire any site on any town lands under section *forty-seven* unless and until he has obtained the consent in writing of the local authority concerned or, failing the consent of such local authority, the consent of the President.

238 Limitation of timber rights

No holder of a prospecting licence or of a mining location situated on town lands shall have the right of cutting indigenous wood or timber upon such lands without the consent of the PMD, who shall only give his or her consent when such wood or timber interferes with prospecting or mining operations or the erection of buildings required for such operations.

239 Disposal of subterranean water

(1) The holder of any mining location situated on town lands shall lead into the nearest natural water channel any water issuing from or brought to the surface of the ground from the subterraneous working of such location and not being used by such holder.

(2) The holder, while complying with subsection (1), or while leading water into any other natural channel, shall not pollute the water in such channel.

(3) A holder who fails to comply with subsection (1) or (2) **commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be liable**, in the case of a contravention of—

- (a) in the case of a contravention of subsection (1), to a fine not exceeding **level 8** or to imprisonment for a period not exceeding three years; or
- (b) in the case of a contravention of subsection (2), to a fine not exceeding **level 12** or to imprisonment for a period not exceeding ten years;

or to both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it).

(4) If a civil default as described in subsection (3)(a) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
 - (i) to pay to the PMD a default fine of the maximum amount fixed for **level 8**; and
 - (ii) if the default is continuing on the day the civil penalty order is served, to immediately ensure, to the satisfaction of the PMD, that any water issuing from or brought to the surface of the ground from the subterraneous working of the mining location that is not being used by the defaulter is led into the nearest natural water channel;
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for level 8 for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; and
 - (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for level 8 for each day (not exceeding

ninety days) during which the default continues, beginning from the day the civil penalty order was served.

- (5) If a civil default as described in subsection (3)(b) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which— 5
- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
 - (i) to pay to the PMD a default fine of the maximum amount fixed for **level 12**; and
 - (ii) if the default is continuing on the day the civil penalty order is served, to immediately ensure, to the satisfaction of the PMD, that no natural water channel into which water is being led from the mining location is being polluted 10
 - (b) subjects the defaulter to either of both of the following penalties, as may be appropriate— 15
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 12** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 20
 - (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for level 12 for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.
- (6) For the avoidance of doubt it is declared that it shall be competent for a PMD to issue a single civil penalty order providing for multiple fixed and cumulative penalties upon a defaulter who commits civil defaults against both subsection (3)(a) and (b), if the defaults occur simultaneously in relation to the same set of facts. 25

PART XXI

ACQUISITION OF LAND BY HOLDERS OF MINING LEASES OR BY STATE 30

240 Interpretation in Part XXI

- (1) In this Part—
 “private land” means any land the ownership of which has by law, grant or title deed become vested in any person.
- (2) The Land Acquisition Act [*Chapter 20:10*] shall apply, with such changes as may be necessary, in respect of matters arising under this Part. 35

241 Compulsory purchase or sale of private land covered by mining lease

- (1) Subject to subsection (3), where a mining lease has been issued and the whole or a portion of the land covered by such mining lease is private land, the owner of such private land may apply to the Administrative Court for an order compelling the holder of such mining lease to purchase— 40
- (a) so much of his or her land as falls within the area of the mining lease;
 - (b) where a portion only of his or her land falls within the area of the mining lease and by reason of the presence of such mining lease or the nature of the mining operations carried out in the area of such mining lease all his or her land has become unsuitable, so far as he or she or the occupier of the land, if any, is concerned, for the agricultural purpose for which it is being used or is *bona fide* intended to be used, all such land. 45

(2) Subject to subsection (3), the holder of a mining lease may apply to the Administrative Court for an order compelling an owner of private land to sell to him or her so much of such land as falls within the area of the mining lease, and the Administrative Court may grant or refuse the order applied for.

5 (3) The Administrative Court, in deciding whether to grant or refuse an order, shall have regard to the following matters—

- (a) the extent to which the surface of the land concerned is required or likely to be required for mining operations;
- (b) the value of permanent improvements erected or constructed for mining purposes or likely so to be erected or constructed on the land concerned;
- 10 (c) the value of the land for agricultural purposes;
- (d) the interference or possible interference with the use or intended use of the land by the owner or occupier thereof of the mining operations being carried out or intended to be carried out by the holder of the mining lease;
- 15 (e) in the case of an order referred to in paragraph (b) of subsection (1)(b), whether the land concerned has become unsuitable, so far as the owner or occupier of the land, if any, is concerned, for the agricultural purpose referred to in that paragraph;
- (f) any other matter which to the Court may seem relevant.

20 (4) If the Administrative Court grants the order it shall determine the price to be paid for the land and shall in doing so make allowance for the depreciation, if any, in the value of any remaining portion of the land concerned due to the reduction in area of the land or the mining operations of the holder of the mining lease, but no deduction shall be made in respect of the appreciation, if any, in the value of such
25 remaining portion due to such mining operations.

242 Right of holder of mining lease to purchase State land

(1) Subject to subsection (2), the holder of a mining lease shall be entitled to purchase from the State any State land falling within the area of the mining lease:

30 Provided that nothing in this subsection contained shall be construed so as to constitute an encumbrance upon such land or so as to preclude the sale or other alienation thereof by the State to some other person before such holder has indicated that he or she intends to purchase such land.

35 (2) It shall not be competent for the holder of a mining lease to purchase land under subsection (1) if the land in question is Gazetted land or other land the purchase or sale of which is prohibited by the Constitution or any other law, or if such land is land held by any person under any enactment or agreement whereby such person is entitled to obtain from the President title thereto on the fulfilment by him of the conditions fixed by such enactment or agreement, as the case may be.

40 (3) If the holder of the mining lease and the President are unable to agree upon the price to be paid for the land mentioned in subsection (1), the President shall refer the matter to the Administrative Court for determination.

(4) The holder of a mining lease must purchase the land under subsection (1) within one year from the date he or she has indicated in writing to the President through the Minister that he or she intends to do so, and if—

- 45 (a) on the expiry of such period the holder has failed to do so; or
- (b) having commenced the process to do so within that period, the holder fails to obtain as specified extension of the period from the Minister to complete the purchase;

the holder is precluded from purchasing the land for another year from the date of expiry of such period or extension thereof.

243 Compulsory purchase of land not covered by mining lease

(1) For the purposes of this section—

“mining property” means a registered block or two or more such blocks, whether contiguous or otherwise, owned by one person from which the ore is being treated at the same milling or reduction plant or which are under the control of one registered mine manager. 5

(2) Where the owner of any private land on which the whole or a portion of a mining property, other than a mining lease, is situated considers that the nature and extent of the mining operations being carried out or likely to be carried out thereon fulfil the requirements in that regard for the issue of a mining lease in respect of such mining property, he or she may make application in writing to the Board, through the PMD, for a certificate to that effect. 10

(3) The Board shall, on a day fixed by it, being not less than thirty days after the date of posting such notification, and notified to the applicant and the holder of the mining property, hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the application. 15

(4) If the Board is satisfied that mining operations on a substantial scale are likely to be conducted for a considerable period on the mining property concerned it shall issue the certificate unless the holder of the mining property satisfies the Board that his or her financial status is such that he or she is unable to meet any payment for which he or she would be liable if the order mentioned in subsection (6) were granted. 20

(5) The Board may, if it considers that any application made under this section is vexatious or frivolous, order the applicant to reimburse the holder of the mining property in respect of any costs or expenses incurred by him in connection with the application in such amount as to the Board may seem just and equitable. 25

(6) No later than 21 days after the Board has notified the owner of the private land and the holder of the mining property in writing of its decision to grant or refuse the application, a person aggrieved by the decision (including a decision to refuse the application on the sole ground that the financial status of the holder is inadequate or a decision by the Board to penalise the applicant for being vexatious or frivolous), may appeal against the decision to the Administrative Court, and until the application is determined any decision to grant the application is suspended. 30

(7) Upon an appeal the Administrative Court may—

(a) uphold the decision of the Board; or 40

(b) refer the decision back to the Board for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—

(i) allowing extraneous or irrelevant considerations to affect the decision; 45

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

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

(iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision; 50

- (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

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

- 5 (c) where there is a substantive factual dispute that cannot be resolved by the Court on the evidence before it, refer the matter back to the Board, with a direction to the Board to investigate the matter further and make a report and recommendations to the Court (on the basis of which the Court shall make its decision under paragraph (a)).

10 (6) Not earlier than 21 days after the issuance of a certificate referred to in subsection (2) (or, if the decision to issue the certificate was appealed against, no later than 21 days after the appeal is determined in favour of the owner of the land), the owner of the land concerned may apply to the Administrative Court for an order compelling the holder of the mining property to purchase—

- 15 (a) so much of his or her land as falls within the area of such mining property; or

- 20 (b) where a portion only of his or her land falls within the area of the mining property and by reason of the presence of such mining property or the nature of the mining operations carried out thereon all his or her land has, so far as he or she or the occupier of the land, if any, is concerned, become unsuitable for the agricultural purpose for which it is being used or is *bona fide* intended to be used, all such land;

25 and subsections sections 245 (“Compulsory purchase or sale of private land covered by mining lease”) (3) and (4) shall apply, with such changes as may be necessary, in respect of such application.

244 Compulsory purchase of land covered by mining locations

30 (1) If the owner of any holding of private land upon which one or more registered mining locations are situated finds that by reason of the presence of such mining locations or the nature of the mining operations carried out thereon such holding has become unsuitable, so far as he or she or the occupier of the land, if any, is concerned, for the purpose for which it is being used or is *bona fide* intended to be or she used, he may apply to the Minister for the purchase by the President of such holding of land and shall inform the Minister of the price which he or she considers should be paid to him for such land:

35 Provided that it shall not be competent for any owner so to apply by reason of the presence of a registered mining location owned by him or her or in which the owner or his or her spouse or the minor child of either of them has a direct or indirect interest or of any registered mining location, other than a mining lease, which was registered within a period of two years before the making of such application.

40 (2) If the President is satisfied that—

- (a) the holding of land has, by reason of the presence thereon of the mining location or by reason of the nature of the mining operations carried out thereon, become unsuitable, so far as the applicant or the occupier, if any, of such land is concerned, for the purpose mentioned in subsection (1); and

45 (b) the price stipulated by the applicant is fair and reasonable; he or she shall purchase such holding at that price.

(3) If the President is not so satisfied as to the matter mentioned in subsection (2)

(a) or as to the price stipulated by the applicant or as to both such matters, the President shall refer such matter or matters to the Administrative Court for determination.

(4) The Administrative Court shall determine any matter referred to it under subsection (3) and shall cause a copy of such determination to be sent to the Minister and to the applicant 5

(5) If the Administrative Court finds in favour of the applicant on the matter mentioned in subsection (2)(a) or the President has not referred that matter to the Administrative Court for determination, the President shall purchase the land at the price stipulated by the applicant or, if the matter of the price to be paid for such land has been referred to the Administrative Court and the applicant agrees within thirty 10 days of the Court’s determination to accept the price determined by that Court, at the price so determined:

Provided that if the applicant does not so agree to accept the price as determined by the Administrative Court, the President shall not be bound to purchase the land.

(6) Where the President has purchased land under this section then, for the purposes of **section 245** (“Compulsory purchase or sale of private land covered by mining lease”) (1), such land shall be deemed to be private land and the President shall be deemed to be the owner thereof. 15

245 Cost of survey to be borne by holder of mining location

Where any land is purchased by the holder of a mining location under the provisions of this Part, the cost of the survey of such land for the purpose of obtaining title thereto shall be borne by such holder. 20

PART XXII

EXPROPRIATION OF MINING LOCATIONS NOT BEING WORKED OR DEVELOPED

246 Interpretation in Part XXII 25

In this Part—

“expropriated location” means a mining location which has been transferred to the Minister in terms of this Part and is registered in his or her name;

“order” means an order of expropriation made under this Part.

247 Report that mining location not being adequately worked 30

(1) If any person has reason to believe that a registered mining location is not being worked at all or is not being adequately developed or worked, he or she may report the matter in writing to the PMD and, with such report, shall lodge a deposit equivalent to the maximum amount fixed for **level 6** .

(2) On receipt of such report the PMD shall obtain from a Government mining engineer a report on the matter. 35

(3) If the PMD has reason to believe, whether in consequence of the receipt of a report mentioned in subsection (1) or otherwise, that a registered mining location is not being worked at all or is not being adequately developed or worked, he or she shall obtain a report from a Government mining engineer. 40

(4) On receipt of the report of the Government mining engineer under subsection (2) or (3), which report —

(a) gives grounds for holding that the registered mining location is not being worked at all or is not being adequately developed or worked, the PMD shall refer the matter to the Board; or 45

250 Order of expropriation

(1) Whenever the Board makes a recommendation for the making of an order of expropriation, it shall submit to the President all relevant documents and a written report setting out the grounds for its recommendation.

(2) Upon receipt of such report and recommendation the President may require the Board to make further investigations and shall afford the holder of the location an opportunity of making representations to him or her why the order should not be granted. 5

(3) If after considering all the information laid before him or her the President is of opinion that the mining location is not being worked at all or is not being adequately developed or worked, he or she may make a provisional order declaring that the mining location is expropriated. 10

(4) The Secretary shall without delay –

(a) transmit relevant particulars of the provisional order of expropriation to the PMD where the mining location is situated to enable the PMD to enter the particulars of the provisional order in his or her provisional register; and 15

(b) send one copy of the provisional order of expropriation to the holder of the certificate of registered mining location that is to be expropriated, accompanied by a written reminder to the latter of his or her right to appeal against the cancellation in terms of section 315. 20

(5) The holder of a registered mining location aggrieved by a provisional order of expropriation may within twenty-one days of the date it is sent to him or her in terms of subsection (4)(b) appeal against it in terms of section 315 (“Appeals against decisions under sections 254, 312, 313 and 314”), for which purpose it shall cite the Board as the respondent, on the basis that its recommendation to the President ought not be upheld for any specified reason. 25

(6) If no appeal against the expropriation is lodged in terms of section 315 within twenty-one days, or if the appeal is unsuccessful, the Secretary shall make the necessary entry in the Mining Cadastre Register and notify the appropriate PMD to make the corresponding entry in his or her final register. 30

(6) Every order made by the President under this section shall be published in the *Gazette* and a copy of the order shall be sent to the holder of the expropriated mining location and to the PMD of the province in which the mining location is situated and, where the expropriated mining location is a mining lease, to the Board. 35

251 Transfer of expropriated location; Part XI not to apply in certain respects

(1) Upon receipt of a copy of the final order of expropriation from the Secretary under section 254 (5), the PMD shall transfer the expropriated location to the Minister by noting that fact in his or her final register, and shall forthwith confirm the same to the Cadastre Registrar. 40

(2) No fee or duty shall be payable in respect of anything done in terms of subsection (1).

(3) Save as provided by section 329 [*Disposal of purchase price*], no compensation shall be payable to the holder of any expropriated location or to any other person in respect of an expropriated location. 45

(4) Part XI (“Preservation of mining rights”) in regard to the obtaining of inspection certificates shall not apply to an expropriated location.

252 Sale or disposal of expropriated location

(1) Subject to subsection (5), the Board may sell any expropriated location on such terms and conditions as it thinks fit:

Provided that the Minister may, on the recommendation of the Board, transfer any expropriated location to any person for no valuable consideration.

(2) The Board shall publish monthly in the *Gazette* and in such newspapers circulating in Zimbabwe as it may select a statement describing expropriated locations and calling for tenders for their purchase.

(3) The Board shall be under no obligation to accept any tender or the highest tender.

(4) In determining the purchaser the Board shall pay due regard to his or her ability to finance and conduct mining operations on the expropriated location.

(5) The purchase price of any expropriated location shall be paid by the Board to the holder from whom such location was expropriated less any costs incurred by the Board in connection with such location and its sale.

(6) The Board shall without delay notify the PMD concerned of the transfer of any expropriated location to any person under this section, and upon receipt of such notice the PMD shall register the transfer of the expropriated location in the name of the transferee in his or her final register, and shall forthwith notify the Cadastre Registrar of such transfer, whereupon the Cadastre Registrar shall make the appropriate entries in the Mining Cadastre Register and as soon as possible.

(7) An expropriated location which has been transferred to any person under this section shall be subject to Part XI in regard to the obtaining of inspection certificates, and for such purpose the date of registration by the PMD of the transfer shall be deemed to be the date of the registration of the block or the date of the issue of the mining lease, as the case may be.

253 Forfeiture of expropriated location

If an expropriated location has not been sold or transferred within twelve months of the date when it was transferred to the Minister, the Board shall, in the case of a mining lease, cancel such lease, or otherwise the PMD shall declare such expropriated location to be forfeited, whether or not it is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part XI:

Provided that if the Board is of the opinion that no economic deposit of any mineral has been found or is likely to be found thereon, such location may be so cancelled or forfeited after the expiration of such shorter period as the Board may fix.

254 Applicability of Part XXII

Nothing in this Act contained shall be construed so as to preclude the expropriation under this Part of a mining location, the last issued inspection certificate for which was obtained by payment under section 212 [Inspection certificates for base mineral blocks obtainable by payment).

PART XXIII

ADMINISTRATION

SUB-PART A: ADMINISTRATION OF MINISTRY AND ACT

255 Administration of Ministry

(1) The Secretary shall be and is hereby vested with authority generally to supervise and regulate the proper and effectual carrying out of this Act by PMDs or other officers of the Public Service duly appointed thereto, and to give all such orders, directions or instructions as may be necessary. 5

(2) The Secretary may at his or her discretion assume all or any of the powers, duties and functions by this Act vested in any PMD, and may lawfully perform all such acts and do all such things as a PMD may perform or do, and is further empowered in his or her discretion to authorize the correction of any error in the administration or in the carrying out of the provisions of this Act, or to perform any other lawful act which may be necessary to give due effect to its provisions. 10

(3) The Secretary may exercise such of the powers by this Act vested in the Minister as may be delegated to him or her by the Minister. 15

256 Powers of Minister with respect to mining provinces and mining districts

(1) In this section—

“district” and means any district boundaries are set out in Part II of the First Schedule to the Rural District Councils (Districts) Notice, 1992 (Statutory Instrument 67 of 1992), or any other law that may be substituted for the same. 20

(2) There shall in Zimbabwe be eight mining provinces which shall follow the boundaries of the eight non-metropolitan provinces listed in section 267 (1) (c) to (j) of the Constitution of Zimbabwe. 25

(3) The Minister may, from time to time, by notice in a statutory instrument, declare any area within a mining province to be a mining district, which shall follow the boundaries of one or more districts within that province and be headed by [an assistant PMD] subordinate and answerable to the PMD of the mining province concerned (and by like notice, the Minister may alter the boundaries of or abolish any such district). 30

(4) Where any mining title—

- (a) straddles the boundaries of two or more mining provinces; or
- (b) impinges on the boundaries of a metropolitan province

the Minister may, by notice in a Statutory Instrument, declare that the area covered by the mining title shall belong to a specific mining province and may, by like notice, revoke the declaration or vary it by increasing or decreasing the area or re-assigning it to any other mining province whose boundaries it straddles. 35

(5) In the absence of a notice referred to in subsection (3) the mining title in question is deemed to be under the jurisdiction of the Provincial Mining Director in whose mining province the greater part of the mining title is located. 40

257 Appointment of officers

For the purposes of this Act, there shall be—

- (a) a Chief Provincial Mining Director; and
- (b) in respect of every mining province, a PMD who shall perform the functions imposed upon him or her under this Act or any other enactment; and 45

- (c) whenever the exigencies of the mining industry so require, an acting PMD, assistant PMD or such other officer to perform the functions of a PMD; and
- (d) a Director of Geological Survey; and
- 5 (e) a Director of Metallurgy; and
- (f) a Chief Government Mining Engineer; and
- (g) Regional Mining Engineers; and
- (h) a Chief Mine Surveyor; and
- (I) Regional Mine Surveyors; and
- 10 (j) such inspectors of mines and other mining officers as may be necessary for the efficient administration of this Act;

whose offices shall be public offices and shall form part of the Public Service.

258 Delegation of PMD's powers and PMD's power to take oaths

(1) Any PMD, acting PMD or assistant PMD may, with the consent of the Secretary, delegate to any other officer any of the powers or duties by this Act vested in him or her.

(2) In all matters in which, in terms of this Act, an oath or solemn declaration is required to be made, such PMD, assistant PMD, acting PMD or any other person may and is hereby empowered to administer such oath or receive such solemn declaration.

259 Disabilities of officials

(1) Subject to this section, except on behalf of the State without personal reward or gain, no official in the Ministry responsible for mines shall directly or indirectly acquire or hold any mining location or any interest in such location, or carry on any trade or undertake any agency of any sort whatsoever, or have any share in any mining company or any mining partnership carrying on business in Zimbabwe, or in any partnership in any mining business, or be connected with any mining company as director, adviser, manager or official.

(2) An official in the Ministry responsible for mines—

- (a) may hold shares or other securities in a public company whose shares and other securities are dealt in or quoted on a securities exchange registered under the Securities and Exchange Act [*Chapter 24:25*] or on a stock exchange of good repute outside Zimbabwe;
- (b) shall not—
 - 35 (i) himself or herself (personally or through an or as an *alter ego*) own or operate any mining location, but may temporarily or otherwise hold shares, securities or other interest in or in relation to such location under the conditions described in subparagraph (ii);
 - (ii) whether as nominee or in his or her own right, hold shares, securities or any interest (whether contingent or vested) in any private company, foreign company, private business corporation, cooperative, trust, partnership, syndicate or other entity not being a public company that owns or works a mining location, whether itself or through an agent or intermediary, and whether as the holder of the mining location or as a tributor, unless—
 - 40 A. the official discloses this fact to the Permanent Secretary no later than seven days after the commencement of this Act or after acquiring such shares, securities or interest (as the
 - 45

- case may be), describing in full the circumstances of such acquisition and the nature and extent of such shares, securities or interest; and
- B. the official makes arrangements satisfactory to the Permanent Secretary to dispose of such shares, securities or other interest on, before or as soon as reasonably possible and in any case no later than the period (not exceeding 60 days) specified by the Permanent Secretary, or makes arrangements satisfactory to the Permanent Secretary to ensure that— 5
- I. he or she shall not be personally involved in any way with the management or control of the private company, foreign company, private business corporation, cooperative, trust, partnership, syndicate or other entity concerned; and 10
- II. the holding of the shares, securities or interest in question will not cause any conflict with his or her duties as an official of the Ministry: 15
- Provided that if such shares, securities or interest are held in or in relation to a mining location that is situated in a mining province of which the official is the PMD, full disclosure of that fact must be permanently displayed on the public notice board of the PMD’s office while she retains such shares, securities or interest. 20
- (3) The duty imposed by subsection (2)(b) (i) applies also to any official who at any time inherits any mining location in his her personal capacity or in whom is vested (by virtue of a prior contingent right) the personal ownership or control of a mining location. 25
- (4) Any official who—
- (a) contravenes subsection (1);
- (b) contravenes subsection (2) by contravening paragraph (b)(i) or (b)(ii); 30
- (c) having made such arrangements as are described in subsection (2)(b) (ii), breaches either or both of his or her undertakings referred to in subparagraph A or B of that provision;
- shall be guilty of an offence to a fine not exceeding **level 8** or to imprisonment for a period not exceeding three years or to both. 35
- (5) Any official who engages in any conduct for which he or she would be liable to be convicted under subsection (4) may, at any time before the institution of criminal proceedings against the official, or at any time after they have been concluded, be subjected to disciplinary proceedings for dismissal and other sanctions provided under Public Service disciplinary regulations, whether or not he or she has been convicted for such conduct. 40
- (6) In any criminal or disciplinary proceedings involving an official bound by such arrangements as are described in subsection (2)(b)(ii), the official bears the burden of proving on a balance of probabilities that his or her holding of the shares, securities or interest in question did not cause him or her to act in his or her own interest to the detriment of his or her duties as an official of the Ministry: 45

260 Prohibition of use of patented metallurgical process, etc.

(1) Subject to sections 34, 35 and 36 of the Patents Act [*Chapter 26:03*], no official in the Ministry responsibility for mines shall, within ten years of his or her leaving the service of the Ministry, use for his or her personal reward or gain or for that of any other person any metallurgical process, prototype plant, machine or other invention produced with public funds for the service of the State, in respect of which specifications relating thereto have been lodged with the Patent Office.

(2) Subsection (1) shall apply, with necessary changes, to the reproduction, refinement or simulation of any metallurgical process, prototype plant, machine or other invention referred to in that subsection.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding **level 12** or to imprisonment for a period not exceeding ten years; or to both.

261 Indemnity of officials; protection against false imputation of dishonesty, bad faith, etc on the part of officials

(1) No action for injury or wrong shall lie in any court against any PMD or other official for any act done in good faith by him or her in the exercise of the functions by this Act vested in him or her.

(2) Without prejudice to any other dialectal action that the PMD or official concerned may bring, if, in any proceedings under this Act or in any civil or criminal proceedings, in which the conduct of the PMD or other official is in issue, any person falsely and wilfully, or without having any reasonable grounds therefor, makes any allegation of corruption, bias, malice, conflict of interest or bad faith against PMD or other official discharging his or functions under this Act, the PMD or official concerned shall have a right of action against such person for damages of not less than the maximum amount specified for **level 12**

(3) In his or her sole discretion the Permanent Secretary may, at the Ministry's own expense, institute proceedings in terms of subsection (2) in any civil court of competent jurisdiction on behalf of any affected PMD or other official.

*SUB-PART B: QUASI-JUDICIAL AND OTHER POWERS OF PMDS***262 PMD's powers when encroachment alleged**

(1) Any PMD may at his or her discretion upon the application of any person claiming to be legally interested in any mining location, by writing under the hand of such PMD, authorize a surveyor or other duly appointed officer to enter upon any mining location or land adjacent to such first-mentioned mining location for the purpose of ascertaining whether the holder, owner or occupier of the mining location or land so to be entered upon is encroaching upon such first-mentioned mining location.

(2) Such surveyor or officer may thereupon enter upon the mining location or land described in such order and descend any shaft or mine, and for such purpose use the engines and machinery ordinarily employed for that purpose.

(3) Such surveyor or officer may make such plans or sections of the mining location or land entered upon and of any drives or other works therein or thereon as are necessary for the purpose aforesaid.

(4) Every such surveyor or officer shall, before entering upon such mining location or land, make a sworn declaration before such PMD that he, the said surveyor or officer, will not, except as a witness in a court of justice, without the consent in writing of the holder, owner or occupier of the mining location or land to be entered

upon, divulge or cause to be divulged, to any person whomsoever, any information obtained upon or by such entry, save only as to whether such holder, owner or occupier is encroaching upon such first-mentioned mining location.

263 PMD may grant interdicts

(1) Any person claiming to be legally interested in any mining location, or in any servitude appertaining to a mining location, or complaining that he or she has been obstructed or interfered with in the enjoyment of his rights in respect of the premises aforesaid, may make application to the PMD for an interdict in terms of this section. 5

(2) At least twenty-four hours before the making of such application the applicant shall serve or cause to be served notice thereof on all the parties interested in opposing the application, or on such persons as appear to the PMD sufficiently to represent such parties. 10

(3) If the PMD is satisfied that reasonable attempts have been made to serve notices on the parties mentioned in subsection (2) without success it shall be sufficient service of any such notice if the same is advertised in such newspaper and for such time as the PMD appoints. 15

(4) Upon such application the PMD may in the presence of such parties as aforesaid, or in the absence of any of them upon whom service of such notice is proved to his satisfaction to have been effected, hear, receive and examine evidence.

(5) The applicable rules set out in the Second Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD in connection with every such application. 20

(6) The PMD may in his or her discretion and upon such terms as he or she may consider just, by order under his hand, enjoin any person named in such order to refrain from encroaching upon, occupying, using or working such mining location or servitude as aforesaid, or from prospecting thereon or extracting or removing any mineral or other substance to which this Act applies from such mining location, or from selling or disposing of or otherwise interfering with such mining location, servitude, mineral or other substance or any share or interest therein, or from doing any act whereby the right, title or interest of such applicant in or to the same might be affected, or from obstructing or interfering with such applicant in the enjoyment of his rights in respect of the premises aforesaid. 25
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(7) Every such order shall be in force for such period as is named therein unless it is sooner discharged by the PMD making it or by the provincial Magistrates Court in his or her mining province. 35

(8) Nothing in this section contained shall be deemed to divest the High Court of the power of granting interdicts in any matter arising under this Act.

264 When PMD may permit working of locations under interdict

When any interdict has been granted by a PMD under this Act, such PMD may, upon application of any holder or holders of any registered mining location adjacent to the mining location under such injunction, who shows to the satisfaction of such PMD that the location of such holder or holders will sustain damage, or be materially depreciated in value, by reason of the non-working of the mining location under interdict, order, upon such terms and conditions as he or she thinks fit, such working of the mining location as in his or her opinion will be sufficient to prevent such damage or depreciation and the PMD shall make such order as to the cost of such working as he or she thinks just. 40
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265 PMD may authorize certain works

(1) Any holder of any mining location may apply to the PMD for an order authorizing the applicant to sink such boreholes for water on any land or any other mining location or to construct or erect upon or over any land or any other mining location such aqueducts, roads, railways, tramways, wires, electric power lines, fencing or other works as may be necessary for the more advantageous working of the mining location held by the applicant.

(2) In like manner, the owner or the occupier of any land may apply to the PMD for an order authorizing the applicant to sink such boreholes for water on any mining location or to construct or erect upon or over any mining location such aqueducts, dams, roads, fencing or other works as may be necessary for the better working of his or her land.

(3) In like manner, any local authority may apply to the PMD for an order authorizing it to construct or erect upon or over any mining location such works as may be necessary for the institution or maintenance of any public services which such local authority may lawfully institute and maintain.

(4) In like manner, the holder of any mining location may apply to the PMD for an order authorizing the applicant to use any existing private road for any lawful purpose in connection with such location.

(5) On receipt of any such application the PMD shall forthwith give notice to the holder, owner and occupier, if any, of the land or mining location on which the borehole for water is to be sunk or upon or over which such works are to be constructed or erected or on which the tunnels or boreholes are to be sunk or over which the road mentioned in subsection (4) passes, as the case may be, calling upon him or her to appear before the PMD upon a fixed day, not being a day within thirty days of such notice, and to show cause why the order applied for should not be granted:

Provided that if both the applicant and the respondent consent the period of notice may be less than thirty days.

(6) The applicable rules set out in the Second Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD in connection with every such application.

(7) On the day appointed, or on any other day to which the hearing of the matter may be adjourned, the PMD may grant an order authorizing the applicant to do all or any of the acts or things applied for, in, upon or in respect of such land or mining location:

Provided that, before making any order authorizing the applicant to construct a road, the PMD shall consult—

- (a) where any land concerned is Communal Land, any rural district council established for the area concerned;
- (b) in the case of land which is not Communal Land, the conservation and extension officer for the area concerned.

(8) No such order shall be granted unless the PMD is satisfied that the use and working of any land or mining location belonging to any person other than the applicant will not be materially impeded, interfered with or obstructed by any act or thing done pursuant to such order.

(9) The PMD granting any such order may limit such order by such terms, conditions and restrictions as appear to him to be required for the protection of the

owner, occupier or holder of such last-mentioned land or mining location, and shall include a condition requiring the holder of the mining location to maintain or contribute towards the cost of maintaining any road mentioned in subsection (4), and may at any time on due cause shown amend or cancel such order.

(10) No such order shall be deemed in any way to affect or bind any owner, occupier or holder to whom no such notice as aforesaid has been given. 5

(11) Nothing in this section contained shall be deemed in any way to prejudice the right of any person thereafter to recover from the applicant or any other person acting under any such order damages for any injury which he or she may prove to have been sustained by him or her in consequence of any act or thing done by the applicant pursuant to any such order by any PMD. 10

266 Claim holders must point out boundaries of their locations

(1) The holder of a mining location shall, when called upon by a PMD or any other person duly authorized thereto by PMD, point out all notices, beacons, pegs or other landmarks defining or purporting to define in terms of this Act the boundaries of any mining location registered in his or her name or belonging to him or her. 15

(2) Subsection (1) shall apply to any person who was the holder of an abandoned, forfeited or cancelled mining location in respect of which a quitance certificate is required and has not been issued under section 205 (“Open workings to be protected on abandonment, forfeiture or cancellation of location”). 20

(3) If the holder of the mining location fails or refuses to comply with subsection (1), the PMD may by written notice call upon him or her so to comply and at the same time warn him or her that on failure to do so within the period stated in such notice such location will become liable to forfeiture and if the address of the holder is not known the PMD shall cause a notice in the like terms to be inserted in the *Gazette*. 25

(4) If within the period mentioned in subsection (3) such holder has not so complied, the PMD may declare the mining location to be forfeited, and such forfeiture shall not relieve such holder from any other penalty to which he or she may be liable under this Act.

267 PMD may sue for and have hypothec for amounts due 30

(1) The PMD or other official duly authorized thereto by him or her, may ask, demand, sue for, recover and receive all amounts due and payable in respect of civil penalties, licences, royalties, fines, transfer duties or any other fees payable on or in connection with any mining location in his or her mining province.

(2) For any such amounts the PMD shall have a hypothec against such location and all buildings, machinery or plant thereon which are the property of the holder of the location, and against any machinery and plant thereon which are the property of a lessee of the location; such hypothec shall be preferent to any other hypothec or lien whatsoever: 35

Provided that where such royalty is payable by any person other than the holder of the mining location, the PMD shall not have a hypothec therefor against such location or such buildings, machinery or plant which are the property of such holder. 40

268 Appeals against decisions under sections 263 and 265

- (1) No later than ten days after—
 - (a) the issuance of an interdict by the PMD under section 263 (“PMD may grant interdicts”) to any person aggrieved thereby; or 45

- (b) the service of an order under section 265 (“PMD may authorize certain works”) upon any person aggrieved thereby; or
- (c) notice is given to any person aggrieved thereby that the PMD has refused an application for an interdict under section 271 or order under section 273;

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the aggrieved person may appeal against such cancellation or transfer to the Administrative Court.

(2) Until the appeal is determined the noting of an appeal in terms of subsection (1) shall —

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- (a) not suspend the interdict issued under section 271;
- (b) suspend the order made under section 273.

(3) Upon an appeal the Administrative Court may—

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- (a) decide the issue in favour of the PMD; or
- (b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds^{3/4}
 - (i) allowing extraneous or irrelevant considerations to affect the decision,
 - (ii) failure to take into account relevant considerations in arriving at the decision;
 - (iii) any material mistake of fact or law that tainted the decision;
 - (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
 - (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

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

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- (c) where there is a substantive factual dispute that cannot be resolved by the Court on the evidence before it, refer the matter back to the PMD, with a direction to the PMD to investigate the matter further and make a report and recommendations to the Court (on the basis of which the Court shall make its decision under paragraph (a)).

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(4) A person who is aggrieved by the Administrative Court’s decision under subsection (3), may, within twenty-one days after the Administrative Court’s decision, refer the matter for review by the High Court, whereupon it may—

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- (a) uphold the decision of the Administrative Court; or
- (b) overturn the decision of the Administrative Court (with or without directions on how to proceed with the application) on any one or more of the following grounds—
 - (i) allowing extraneous or irrelevant considerations to affect the decision; or
 - (ii) failure to take into account relevant considerations in arriving at the decision, or
 - (iii) any material mistake of fact or law that tainted the decision;
 - (v) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;

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- (vi) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision;
- or
- (c) where there is a substantive factual dispute that cannot be resolved by the High Court on the evidence before it, or where the matter had previously been referred by the Administrative Court to the PMD for investigation and report but the High Court is not satisfied with the report for any reason, refer the matter to the PMD with a direction to the PMD to investigate the matter further and make a further report and recommendations to the Court (on the basis of which report the Court may then proceed in terms of paragraph (a) or (b)).

SUB-PART C: SPECIALISED DEPARTMENTS OF THE MINISTRY RESPONSIBLE FOR MINES

269 Interpretation in Sub-Part C of Part XXIII

In this Sub-Part—

- “Director” means director of a Department;
- “Department” means the Department of Geological Survey, Department of Mining Engineering or Department of Metallurgy;
- “fixed date” means the date fixed in terms of subsection (2) of section *one* as the date on which this Act comes into operation;

270 Department of Geological Survey, Department of Mining Engineering and Department of Metallurgy

- (1) The following departments, namely—
 - (a) the Department of Geological Survey;
 - (b) the Department of Mining Engineering;
 - (c) the Department of Metallurgy;

in the Ministry of responsible for mines which existed before the date of commencement of this Act shall continue to operate in accordance with this Sub-Part.

271 Functions, mandates and powers of Departments

- (1) Subject to this Act, the overall function of the Department of Geological Survey shall be to create and maintain geological information about the country, and to curate, process, interpret and present such information according to user requirements in Government, the mining industry, other earth resources based sectors and the public at large, for which purpose it shall—
 - (a) systematically map the country’s rock formations and other geological structures at appropriate scales, and publish such information recorded on maps and geological reports for various uses;
 - (b) study and describe the country’s mineral resources and deposits;
 - (c) search for minerals and make such information available to Government and the public through reports, maps, assay results, and other easily accessible formats;
 - (d) provide up-to-date information on the mineral and other geological potential of Zimbabwe to the Government and the public at large,
 - (e) monitor for compliance to work programmes the exploitation of mineral exploration in various licence areas including claims, mining leases, special grants, exclusive exploration licences, and exclusive prospecting licences,

(f) be the national repository for all information on geology and mineral resources generated variously by the Geological Survey, other governmental organizations, individuals, academic institutions, mining companies, and miners.

5 (2) Subject to this Act, the overall function of the Department of Mining Engineering is to promote sustainable mining practices and management through regulation of the mining industry with a view to creating a safe and healthy mine environment, for which purpose it shall—

- (a) enforce all relevant mining legislation bearing on mine safety;
- 10 (b) monitor and control all mining activities through inspections of operations and investigation of mine accidents;
- (c) provide professional and technical advisory services to the mining industry with emphasis on assisting the development of the scale mining sector;
- 15 (d) conduct statutory competency examinations for the professional development of mine managers, mine surveyors and miners;
- (e) administer financial loans and plant hire schemes through Mining Industry Loan Fund for the benefit of the small scale mining sector;
- (f) monitor and audit mines for compliance with environmental requirements;
- 20 (g) monitor of the rate of mineral production and of mine development generally.

(3) Subject to this Act, the overall function of the Department of Metallurgy is to provide technical services to the mining, ceramic and foundry industries, for which purpose it shall—

- 25 (a) conduct research into products and processes that generate value added products from Zimbabwe's mineral resources;
- (b) operate specialised sections, namely a chemical laboratory, a section for mineral dressing (ore beneficiation), a section for fire assaying, a section on mineralogy, a section on physical metallurgy, a ceramic section and any other metallurgical science or technology section.

30 (4) The Departments shall have the power to—

- (a) enter into agreements with other similar departments at the regional and international level;
- 35 (b) do or cause to be done, with the approval of the Minister and the Minister responsible for finance, either by itself or through its agents, any of the things specified in the Fifth Schedule.

(5) Subject to subsection (1), the Minister may by notice in a statutory instrument substitute or amend the Fifth Schedule as and when he or she deems it necessary or desirable for giving effect to the purposes of this Act.

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

45 **272 Directors and staff of Departments**

(1) The operations of the Department of Geological Survey, the Department of Mining Engineering and the Department of Metallurgy shall, subject to this Act, be controlled and managed by the Director of Geological Survey, the Director of Mining

Engineering and the Director of Metallurgy respectively, whose offices shall be public offices and shall form part of the Public Service.

(2) The Directors shall be responsible for ensuring that the functions of their respective Departments and any directions of the Minister issued in terms of section eight are carried out. 5

(3) In addition to the Directors, there shall be such members of staff as are needed for the exercise of the functions of each of the Departments, whose offices shall be public offices and shall form part of the Public Service.

(4) The staff of each department shall be subject to the direction of the Director of the Department concerned, who in turn are answerable to the Secretary. 10

273 Charges, levies and fees

(1) Each Director shall have power, subject to any directions of the Minister after consultation with the Minister responsible for finance, to charge and levy such fees as will be prescribed for their services to clients of the Department concerned.

(3) Each Director shall, subject to the approval of the Minister, enter into financial arrangements with other State departments for payment in respect of specialised services provided to them by the Department concerned. 15

274 Minister may give policy directions to Directors of Departments

(1) The Minister may, through the Secretary give any Director such general directions relating to the policy the Department concerned is to observe in the exercise of its functions as the Minister considers to be necessary in the national interest. 20

(2) Subject to subsection (2), the Minister may, through the Secretary give any Director such general directions relating to the policy the Department concerned is to observe in the exercise of its functions as the Minister considers to be necessary in the national interest, which policy directions must— 25

- (a) not be inconsistent with any provision of this Act; and
- (b) be issued in good faith, apply prospectively and not retrospectively, and be of general applicability; in particular the policy directions—
 - (i) must not be issued in relation to any particular application or appeal pending before the Director and must not apply so as to influence or direct the Director on the outcome of any particular application, appeal or other matter that is being considered by the Director immediately before the directions are issued; or 30
 - (ii) must not prejudice the application of the rules of natural justice by the Director in the exercise of its quasi-judicial functions, if any; 35
- (c) clearly delimit the scope of their application and must otherwise not be vague or ambiguous in their terms; and
- (d) clearly express the national interest at stake;
- (e) must be clear (whether expressly or by necessary implication) that they apply or are in force for a fixed or indefinite period, or that they expire on the happening of any event. 40

(2) The Director concerned shall take necessary steps to comply with any direction given to him or her in terms of subsection (1).

275 Intellectual property rights of Departments

(1) In accordance with the law governing intellectual property rights, each Department shall retain intellectual property rights over any data, geological or metallurgical or mining engineering information, inventions, discoveries and improvements generated by the Department concerned in the fulfilment of its functions.

(2) Any of the things or information specified in subsection (1) that are provided to a client of the Department concerned shall not be provided to any other person without a written licence or other authority of the appropriate Director.

(3) Any publication not authored by one of the Department which uses information specified in subsection (1) must acknowledge the responsible Department as the source of the information.

276 Regulatory powers of the Minister

The Minister may, in consultation with the Director concerned, make regulations prescribing matters that by this Sub-Part are required or permitted to be prescribed or that in the opinion of the Minister are necessary or convenient to be prescribed for carrying out or giving effect to this Sub-Part.

PART XXIV
OFFENCES AND PENALTIES

277 Prospecting prohibited save in certain circumstances

(1) Subject to subsections (2) and (3), no person shall prospect or search for any mineral, mineral oil or natural gas except in the exercise of rights granted under a prospecting licence, exclusive exploration licence or special grant or unless he or she is the duly authorized representative of the holder of such prospecting licence, exclusive exploration licence or special grant and acting in the exercise of such rights.

(2) No person shall prospect or search for any mineral, mineral oil or natural gas unless he or she is a staking agent or a prospector as defined in this Act.

(3) No staking agent registered for Communal Land only in terms of section 22(5)(a) shall prospect or search for any mineral, mineral oil or natural gas elsewhere than in Communal Land.

(4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and liable to fine not exceeding **level 6**, or to imprisonment for a period not exceeding **one year**, or both.

278 Production of authority to prospect

(1) Every person prospecting or searching for any mineral, mineral oil or natural gas shall, if so requested by any official duly authorized thereto by the PMD or at the request of any police officer or of the owner or the occupier of the land on which he or she is so prospecting or searching, or of the duly authorized representative of such owner or occupier, produce his or her certificate of registration as a staking agent, his or her exclusive prospecting licence or evidence of any other authority under which he or she is prospecting.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to fine not exceeding **level 6**, or to imprisonment for a period not exceeding **one year**, or both.

279 Protection of open workings by prospectors

(1) Every person digging a prospecting trench shall throw out the earth in such manner as to form as far as possible regular ridges on either side of such trench.

(2) Every person acting under and by virtue of any exclusive prospecting licence, exclusive exploration licence or special grant shall fence or enclose the mouths of all his or her shafts and other open surface workings and excavations sufficiently to ensure the safety of persons and stock, and he or she shall maintain such fencing or other works in good and effective repair while carrying on his or her work and before abandoning any prospecting area, he or she shall fill in such shafts, workings and excavations or shall so fence or deal with them as permanently to ensure the safety of persons and stock, and shall restore any work previously erected or constructed for the protection of mine workings which he or she may have removed or interfered with, and shall notify the occupier, if any, of the land that he or she has completed the protection work required under the provisions of this subsection:

Provided that if any such shaft, working or excavation is within twenty metres of a public road or thoroughfare he or she shall not fence it, but shall fill it in.

(3) Subject to the proviso to subsection (2), the manner in which shafts, open surface workings and excavations shall be dealt with for the purposes of subsection (2) shall be prescribed by regulations and compliance with such regulations shall be sufficient compliance with that subsection.

(4) A holder who fails to comply with subsection (1) or (2) **commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be liable—**

(a) in the case of a contravention of subsection (1), to a fine not exceeding **level 5** or to imprisonment for a period not exceeding six months or to both in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it);

(b) in the case of a contravention of subsection (2), to a fine not exceeding **level 8** or to imprisonment for a period not exceeding three years or to both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it).

(5) On the conviction of any person for a contravention of subsection (2), the court may order the forfeiture of any prospecting licence or licences held by such convicted person and thereupon such licence or licences shall be forfeited and no new licence shall be issued to such person until he or she has proved to the satisfaction of the Secretary that the shafts, workings or excavations in respect of which he was so convicted have been properly filled in, fenced or otherwise dealt with in accordance with those sections.

(6) If a civil default is committed with respect to a contravention of subsection (1), the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

(a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) to take the specified remedial action to throw out the earth in such manner as to form as far as possible regular ridges on either side of such trench;

(b) subjects the defaulter to a default fine of the maximum amount fixed for **level 5** for each day not exceeding ninety days, during which the defaulter

continues to be in default (beginning on the day after the last day on which the defaulter fails to take the remedial action).

5 (7) If a civil default is committed with respect to a contravention of subsection (1), is committed for the second or any subsequent time by the same holder in relation to the same or other prospecting trench in the vicinity within any period of twelve months, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- 10 (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
- 15 (i) pay to the PMD a default fine of the maximum amount fixed for **level 5**; and
- (ii) if the default is continuing on the day the civil penalty order is served, to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) to take the specified remedial action to to throw out the earth in such manner as to form as far as possible regular ridges on either side of such trench;
- 20 (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
- (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 5** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
- 25 (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for **level 5** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

30 (8) If a civil default is committed with respect to a contravention of subsection (2), the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- 35 (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
- (i) pay to the PMD a default fine of the maximum amount fixed for **level 8**; and
- 40 (ii) commence doing the works which by that subsection are required and in respect of which the defaulter is in default, so that no later than fourteen days after the civil penalty order is served the works are completed to the satisfaction of the PMD;
- 45 (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
- (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 8** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
- (ii) if he or she fails to comply with paragraph (a) (ii), either by—
- A. failing to commence the ordered works; or
- B. failing to complete them to the satisfaction of the PMD on the fourteenth day after the civil penalty order is served;

to pay a default fine of the maximum amount fixed for **level 8** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

280 Duties of absentee staking agent or prospector

Whenever a staking agent or prospector, acting under and by virtue of— 5

- (a) an exclusive prospecting licence, proposes to be absent from the area covered by a prospecting notice; or
- (b) an exclusive exploration licence or special grant for prospecting, proposes to be absent from his or her area of operations;

for a continuous period of more than twenty-four hours and to leave any employees in such area during his or her absence, he shall appoint a suitable person to be in charge of such employees and shall provide him or her with written evidence of such appointment which he or she shall produce upon request by the owner or occupier of the land or the duly authorized representative of such owner or occupier. 10

281 Illegal pegging 15

- (1) No person shall peg any ground which is not open to prospecting.
- (2) No person shall post—
 - (a) a prospecting notice; or
 - (b) a discovery notice; or
 - (c) a registration notice, save a registration notice applicable to the pegging of— 20
 - (i) a site in terms of **section 53** [“Registration of dependent mine service sites”] or **54** [“Registration of independent mine service sites”]; or
 - (ii) a secondary reef in terms of section [170];

unless he or she is a staking agent or the holder of an exclusive prospecting licence or the duly authorized representative of such holder, and there is correctly stated in such notice the number of the exclusive prospecting licence under which such notice is to be posted. 25

- (3) No person shall peg any ground, save ground to be pegged as—
 - (a) a site in terms of **section 53** [“Registration of dependent mine service sites”] or **54** [“Registration of independent mine service sites”]; or 30
 - (b) a secondary reef in terms of section [170];

unless he or she is a staking agent or prospector as defined in this Act.

- (4) No person shall—
 - (a) post a prospecting, discovery or registration notice which is incorrect in any material particular; or 35
 - (b) peg a mining location in a manner other than that prescribed; or
 - (c) wilfully peg a larger or longer mining location than he or she is entitled to peg or purports to peg; or
 - (d) register or attempt to register a mining location under or by virtue of an exclusive prospecting licence other than the one under which it was pegged; or 40
 - (e) register or attempt to register a mining location under or by virtue of an exclusive prospecting licence of which he or she was not the lawful holder at the time of pegging. 45

(5) The PMD may refuse to register a mining location in respect of which there has been a contravention of this section.

(6) A holder who fails to comply with subsection (1), (2), (3) or (4) **commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be** liable, in the case of a contravention of—

- (a) subsection (2) or (3), or (4) (a) or (b), to a fine not exceeding **level 6** or to imprisonment for a period not exceeding one year; or
- (b) subsection (1) or (4) (c), (d) or (e), to a fine not exceeding **level 8** or to imprisonment for a period not exceeding three years or to both.

and in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it.

(7) If a civil default as described in subsection (6)(a) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
 - (i) pay to the PMD a default fine of the maximum amount fixed for **level 6**; and
 - (ii) if the default is continuing on the day the civil penalty order is served, to immediately (as the case may be)—
 - A. remove the notices referred to in subsection (2), or to have them immediately re-posted by a staking agent or the holder of an exclusive prospecting licence or the duly authorized representative of such holder, ensuring as well that there is correctly stated in such notice the number of the exclusive prospecting licence under which such notice is posted; or
 - B. remove the pegs referred to in subsection (3); or
 - C. remove any notice referred to in subsection (4)(a); or
 - D. re-peg a mining location in a manner prescribed;
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 6** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
 - (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for **level 6** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

(8) If a civil default as described in subsection (6)(b) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
 - (i) pay to the PMD a default fine of the maximum amount fixed for **level 8**; and

- (ii) if the default relates to a breach of subsection (1) or (4)(c) which is continuing on the day the civil penalty order is served, to immediately (as the case may be) remove any pegs referred to in subsection (1) or (4)(c);
- (b) cautions the defaulter that any repetition of the default for which he or she is being civilly penalised, may result in the cancellation of his or her mining rights if he or she commits any other breach of this section ; 5
- (c) subjects the defaulter to either of both of the following penalties, as may be appropriate—
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 8** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 10
 - (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for **level 8** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served. 15

282 Illegal cutting of wood

- (1) No person purporting to act under section 33 (“Surface rights of holder of exclusive prospecting licence”), 140 (“Surface rights of miners”) or 236 (“Application of other provisions of this Act to special grants”) shall cut, fell, remove or use any indigenous wood or timber for any other purpose than those therein authorized. 20
- (2) A holder who fails to comply with subsection (1) **commits a criminal offence and a civil default and on prosecution and conviction for the offence shall be liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding three years or to both (and in the case of a corporate defaulter, every one of its officers committing or authorising the offence is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it).** 25
- (3) In the case of a civil default against subsection (1), the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which— 30
 - (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
 - (i) pay to the PMD a default fine of the maximum amount fixed for **level 8**; and 35
 - (ii) if the default is continuing on the day the civil penalty order is served, to immediately (as the case may be) cease the default specified in the civil penalty order;
 - (b) cautions the defaulter that any repetition of the default for which he or she is being civilly penalised, may result in the cancellation of his or her mining rights if he or she commits any other breach of this section; 40
 - (c) subjects the defaulter to either of both of the following penalties, as may be appropriate—
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 8** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine; 45

- (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for **level 8** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

5 **283 Interference with fences**

(1) Save as provided in section 194 (“Removal of or interference with protective works prohibited”), no holder of an exclusive prospecting licence, exclusive exploration licence or special grant and no miner shall cut or in any way interfere with any fence on any land, except with the consent in writing of the owner or the occupier of such
10 land or under an order granted in terms of section 261 (“PMD may authorize certain works”).

(2) No owner or occupier of any land shall cut or in any way interfere with any fence on any mining location erected by the holder or miner of such location, except with the consent in writing of such holder or such miner or under an order granted in
15 terms of section 261 (“PMD may authorize certain works”).

(3) A holder, owner or occupier who fails to comply with subsection (1) or (2) (as the case may be) **commits a criminal offence and a civil default and** on prosecution **and conviction for the offence shall be** liable to a fine not exceeding **level 5**, or to imprisonment for a period not exceeding **six months**, or both (and in the case
20 of a corporate defaulter, every one of its officers committing or authorising the offence is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it).

(4) In the case of a civil default against subsection (1), the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve
25 upon the defaulter a civil penalty order which—

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

(i) pay to the PMD a default fine of the maximum amount fixed for **level 5**; and

(ii) if the default is continuing on the day the civil penalty order is served, to immediately cease the default specified in the civil penalty order;
30

(b) cautions the defaulter that any repetition of the default for which he or she is being civilly penalised, may result in the cancellation of his or her mining rights if he or she commits any other breach of this section;

(c) subjects the defaulter to either of both of the following penalties, as may be appropriate—
35

(i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 5** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
40

(ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for **level 5** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.
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284 Beacons and pegs to be maintained in good order

(1) The holder of any mining location who fails, in terms of this Act, to erect or to keep in proper order and in their proper positions his or her notices, pegs, beacons or trenches of such location **commits a criminal offence and a civil default and** on

prosecution **and conviction for the offence shall be** liable to a fine not exceeding **level 6** or to imprisonment for a period not exceeding one year, and in the case of a corporate offender, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it.

(2) Subsection (1) shall apply to any person who was the holder of an abandoned or forfeited mining location in respect of which a quittance certificate is required and has not been issued under section 193 (“Open workings to be protected on abandonment, forfeiture or cancellation of location”).

(3) If a civil default as described in subsection (1) is committed, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) to take the specified remedial action to erect or to keep in proper order and in their proper positions his or her notices, pegs, beacons or trenches of such location;
- (b) subjects the defaulter to a default fine of the maximum amount fixed for **level 6** for each day not exceeding ninety days, during which the defaulter continues to be in default (beginning on the day after the last day on which the defaulter fails to take the remedial action);

(4) If a civil default as described in subsection (1) is committed for the second or any subsequent time by the same holder in relation to the same mining location within any period of twelve months, the PMD may (additionally or alternatively to prosecution for the offence under that subsection) serve upon the defaulter a civil penalty order which—

- (a) directs the defaulter to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her)—
 - (i) pay to the PMD a default fine of the maximum amount fixed for **level 6**; and
 - (ii) if the default is continuing on the day the civil penalty order is served, to immediately (that is to say, within forty-eight hours after the civil penalty order is served on him or her) to take the specified remedial action to erect or to keep in proper order and in their proper positions his or her notices, pegs, beacons or trenches of such location;
- (b) subjects the defaulter to either of both of the following penalties, as may be appropriate—
 - (i) if he or she fails to pay the default fine specified in paragraph (a) (i) (“the original default fine”), to pay a further default fine of the maximum amount fixed for **level 6** for each day (not exceeding ninety days) during which the defaulter fails to pay the original default fine;
 - (ii) if he or she fails to comply with paragraph (a) (ii), to pay a default fine of the maximum amount fixed for **level 6** for each day (not exceeding ninety days) during which the default continues, beginning from the day the civil penalty order was served.

285 Position of beacons and pegs may not be altered

(1) No person shall, except as provided in this Act, deface, alter the position of, remove, pull down, injure, destroy or erect or renew in any other than its proper or original position any peg, notice, beacon or landmark designating or intended to designate the position, boundary, name or other particular of any mining location, reef or deposit or designating the name of the discoverer or holder thereof.

(2) Save as otherwise provided in this Act, if the position of any one or more of the pegs or beacons of any mining location has been altered or dealt with by the holder of such location or his or her agent so as to make it appear that any of the original ground is cut off from or any fresh ground is added to such location, or if the holder or his or her agent has consented to or condoned any such action, the PMD may, in addition to any other penalty attaching to such action, declare any ground so cut off to have ceased to be a portion of such location from the date of such action or from any later date, and no fresh ground so added shall in any case be deemed to have become a portion of such location.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding **level 7** or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment

(4) On any contravention by any person of subsection (1), the registered holder and any lessee, tributator or manager of the mining location in respect of which the contravention occurred shall be liable to prosecution and conviction for that contravention.

286 Mining permitted under certain objects on certain conditions

(1) For the purposes of this section —

“road” includes any area of land reserved for road purposes under Part III of the Roads Act [Chapter 13:12] and any restricted road declared under Part IV of that Act.

(2) Save as otherwise provided in subsection (3) the holder of a mining location shall not exercise any right to carry out mining operations in respect of such location beneath any of the following —

- (a) any road, railway or railway reserve or pipeline reserve;
- (b) any electric power line;
- (c) any aqueduct, pipeline, well or borehole;
- (d) any land within the surveyed limits of any city, town, township or village referred to in section 35 (“Ground not open to prospecting”) (1)(c);
- (e) any licensed aerodrome or any State emergency landing ground or State aerodrome;
- (f) any State rifle range;
- (g) any cemetery;
- (h) any race course, public park or playground reserved under section thirty-five;
- (i) any enclosure for cattle or other livestock belonging to members of a community settled nearby,
- (j) any building stand or machinery site;
- (k) any river, lake, dam, reservoir or irrigation work other than irrigated lands;
- (l) land under cultivation or land to which an approved cultivation scheme relates;
- (m) any other surface object which in the opinion of the Chief Government Mining Engineer requires protection and of which he or she has given written notice to the holder;

or beneath the land outside the boundaries of any such premises as aforesaid and lying within such distance of such boundaries as may be prescribed or otherwise as the PMD may specify.

(3) The Chief Government Mining Engineer or other official authorized thereto by him or her may grant permission in writing to such holder to carry out mining operations beneath any work mentioned in subsection (2) subject to such terms and conditions as may be specified by the Chief Government Mining Engineer or such other official, as the case may be: 5

Provided that no such permission shall be given until the owner of such work or other person interested therein has been given an opportunity to submit any objections which he or she may have.

(4) Nothing in this section contained shall be deemed in any way to prejudice the right of any person to recover from the holder of the mining location damages for any injury which he or she may prove to have been sustained by him or her in consequence of any act or thing done by such holder even though the permission mentioned in subsection (3) has been given. 10

(5) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding **level 7** or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment. 15

(6) On any contravention by any person of subsection (2), the registered holder and any lessee, tributator or manager of the mining location in respect of which the contravention occurred shall be liable to prosecution and conviction for that contravention. 20

287 Salting

(1) No person shall place or deposit or be accessory to the placing or depositing of any minerals in any spot or place with intent to mislead any person as to the payable nature of such spot or place.

(2) No person shall mingle or cause to be mingled with any sample of any valuable mineral any valuable mineral or substance whatsoever which will increase the value of or in way change the nature of the said ore with intent to deceive, cheat or defraud. 25

(3) Any person who contravenes subsection (1) or (2) shall be guilty of contravening section 136 (“Fraud”) of the Criminal Law Code and be liable to be punished accordingly. 30

(4) In any proceedings taken for the contravention of subsection (1), if the accused person is proved to have placed or deposited or to have been accessory to the placing or depositing of any mineral in any spot or place where the finding thereof would tend to mislead any other person as to the payable nature of such spot or place, he or she shall be deemed to have so placed or deposited such mineral in contravention of that subsection unless he or she produces satisfactory evidence to the contrary. 35

288 Theft of ore

Any person who breaks, severs or removes any mineral from any mining location, reef or deposit, or who takes, removes or conceals any mineral, slags, slimes, amalgam, residues, tailings or concentrates, the product of any mining location, reef or deposit, with intent to deprive the lawful owner or holder thereof, shall be guilty of contravening section 113 (“Theft”) of the Criminal Law Code and be liable to be punished accordingly. 40

289 Fraudulent acts 45

Any person engaged in the business of milling, leaching, sampling, concentrating, reducing, assaying, transporting or dealing in ores, metals or minerals, who keeps or uses

any false or fraudulent scales or weights for weighing such ores, metals or minerals, or who keeps or uses any false or fraudulent assay scales or weights, or enriched fluxes used for ascertaining the assay value of minerals, knowing them to be false or fraudulent, shall be guilty of contravening section 136 (“Fraud”) of the Criminal Law Code and be liable to be punished accordingly.

290 Eviction of illegal occupiers

(1) If it appears to the PMD that a registered mining location occupied by any person in reliance on mining title is being occupied otherwise than for *bona fide* mining purposes in accordance with the rights conferred on the miner thereof by **section 178** [“Surface rights of miners.”], the PMD may serve notice in writing upon the occupier to vacate the mining location within fourteen days of the service of the notice.

(2) If person, having been notified by the PMD in terms of subsection (1), fails to vacate a mining location timeously, the PMD may bring an action of ejectment against him or her in any court of a magistrate having jurisdiction in or over the mining province concerned.

(3) If the court does not order the person or persons against whom an ejectment action is brought to pay the costs of the action, the PMD may recover the costs of an action of ejectment from any holder of a mining location at whose instance or for whose benefit the PMD instituted the action.

(4) Alternatively the any holder of a mining location concerned may (in any court of a magistrate having jurisdiction in or over the mining province concerned.) himself or herself bring an action of ejectment against any person who, having been notified by the PMD in terms of subsection (1), fails to vacate the mining location timeously.

(5) An affidavit by the PMD—

- (a) affirming that a notice under subsection (1) was served on the person sought to be ejected; or
- (b) giving reasons why the notice was served;

shall be admissible in any legal proceedings on its production by the PMD or a holder of a mining location referred to in subsection (4) as *prima facie* evidence of the facts stated therein.

(6) For the purpose of this section a single notice issued under subsection (1) may refer by name to two or more persons occupying the same mining location, and single action for ejectment may be brought against those persons collectively.

(7) The ejectment of a person from a mining location in terms of this section does not prevent the return of that person to the mining location if the PMD is satisfied that the intention of the person concerned is to occupy the mining location for *bona fide* mining purposes.

(8) This section does not apply to any person illegally occupying a mining location as described in subsection (1) but who do not reside at the location as a dwelling place. Any such person shall be guilty of contravening section 132 (“Criminal trespass”) of the Criminal Law Code and may be arrested and removed by the police pending prosecution.

291 Returns to be furnished

(1) The holder of any mining location and the miner thereof and the owner of any metallurgical establishment, or his representative, shall furnish to the PMD such returns and reports of his operations thereon or therein, and such certificates or solemn declarations in respect of them, as are prescribed by or under this Act.

(2) No such holder or miner or owner or his representative shall fail to furnish such returns and reports in such forms and at such times as may be prescribed, or shall furnish false returns or shall fail to send in corrected returns after due notice that any such returns are defective.

292 False declarations and certificates

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(1) Any person who makes any declaration, supplies any certificate or renders any return in terms of this Act which he or she knows to be false or which he does not know or reasonably believe to be true in any material particular shall be guilty of an offence shall be guilty of contravening section 180 (“Deliberately supplying false information to public authority”) of the Criminal Law Code (or any section that may be substituted for the same) and be liable to be punished accordingly:

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(2) In addition to any other penalty which it may inflict, the court may order that any person who has been convicted of an offence in terms of subsection (1) shall forfeit his prospecting licence and all his or her title to or interest in any mining location to which such declaration or certificate had reference.

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(3) It shall be lawful for the Minister to prohibit the issue of a prospecting licence to any person who has been convicted of an offence in terms of subsection (1) for such period and on such terms as he or she deems fit.

293 Dams or reservoirs to be left intact

(1) On abandonment, forfeiture or cancellation of any mining location to which a dam or reservoir is attached the holder of such location shall leave such dam or reservoir intact, together with the water it contains:

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Provided that—

- (i) all machinery and appliances in connection with such dam or reservoir which can be readily removed without in any way injuring, weakening or impairing such dam or reservoir, or impairing the water it contains, may be taken away by the holder within the period of three months next succeeding such abandonment, forfeiture or cancellation;
- (ii) the owner or the occupier of the land on which such machinery or appliances are situated shall not be liable for any damage done to such machinery or appliances in the due and proper exercise of his rights as owner or occupier of the land;
- (iii) the PMD may, if he is satisfied that it is necessary to do so, extend the period within which the machinery or appliances or the machinery and appliances may be removed, by a further period not exceeding three months.

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(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding **level 7** or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

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(3) On any contravention by any person of subsection (1), the registered holder and any lessee, tributator or manager of the mining location in respect of which the contravention occurred shall be liable to prosecution and conviction for that contravention.

294 Plans and returns of mines to be confidential

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(1) In subsection (2) “tributor” shall have the meaning assigned thereto in section *two hundred and seventy-nine*.

(2) No person shall, without the permission in writing of the holder or tributor of the registered mining location concerned or the manager of the mine concerned, furnish to any person or allow any person to inspect any —

- (a) plan of any mine working or any copy thereof; or
- 5 (b) return or report or any copy thereof;

which has been taken, transmitted or rendered in terms of this Act.

(3) Subsection (3) shall not apply in respect of any plan, return or report relating to any mining location which has been abandoned, forfeited or cancelled.

295 PMD's powers of entry upon locations

10 (1) The PMD or other official duly authorized thereto by him may at all times enter upon any mining location or any premises or workings thereof or thereunder for the purpose of —

- (a) generally inspecting such location, premises or workings and examining the mining operations or the treatment of minerals performed thereon and any plans, books, registers or other documents relating thereto; or
- 15 (b) ascertaining whether provisions of this Act are being carried out; or
- (c) ascertaining whether precious stones have been discovered or are being mined, and determining the nature of such stones and whether the extent of the deposit of such stones warrants an application for a licence or permit to mine for precious stones and what measures, if any, are necessary for
- 20 the protection of any such deposit; or
- (d) ascertaining whether any nuisance exists upon such location, premises or workings; or
- (e) giving directions and taking steps to enforce any provisions of this Act or to abate or remove any nuisance; or
- 25 (f) taking samples or specimens of the rocks, strata or minerals situated upon such location for the purpose of determining the nature or the percentage of the minerals contained therein.

(2) Any person who fails, neglects or refuses to provide all reasonable facilities and assistance to the PMD or other authorized official when acting under subsection 30 (1) or to comply with any direction as aforesaid of the PMD or duly authorized official, or who commits a breach of any duty imposed on him thereunder, shall be guilty of an offence and liable to a fine not exceeding two hundred dollars or, in default of payment, to imprisonment for a period not exceeding three months, and the court may, in addition

35 to imposing such fine, order him to provide such facilities and assistance or to comply with such direction or to perform such duty, as the case may be, within such period as the court may specify, and if within the period so specified he fails to comply with such order the PMD may recover from him by way of penalty the sum of twenty dollars for each day or portion of a day he fails to comply with such order after the expiry of such period.

40 (3) The powers of entry conferred upon a PMD under subsection (1) are hereby conferred upon the Director of Metallurgy, the Chief Government Mining Engineer, the Director of Geological Survey and any Government mining engineer, inspector of mines or other officer appointed in terms of section *three hundred and forty-three*, and subsection (2) shall be read as including a reference to those officials.

45 **296 Geological survey**

(1) The Director of Geological Survey and any person duly authorized in writing by him or her may for the purpose of carrying out any prospecting or exploration work on behalf of the State or a geological survey of Zimbabwe or any part thereof —

- (a) enter at all reasonable hours upon any land with such persons, animals, vehicles, appliances, instruments and materials as are necessary for such survey;
- (b) break up the surface of any part of such land for the purpose of ascertaining the rocks, strata or minerals within or under the same; 5
- (c) take and carry away samples and specimens of the rocks, strata or minerals found therein;
- (d) fix any post, stone, mark or object to be used in the survey in any such land;
- (e) dig up any ground for the purposes of fixing any such post, stone, mark or object; 10
- (f) enter into or upon any land on which it is proposed to carry out such prospecting or exploration work, or through which it may be necessary to pass for the purposes of such survey or such work:

Provided that—

- (i) it shall not be lawful to fix any object, post, stone or mark within any walled garden, orchard or pleasure ground without the consent of the owner or the occupier thereof; 15
- (ii) reasonable notice of the intention to exercise any of the powers conferred by this subsection shall be given to the owner or the occupier of such land unless such land is unoccupied State land; 20
- (iii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this section and such owner or occupier shall be entitled to compensation for any damage sustained in the execution of the powers conferred by this subsection. 25

(2) Any prospecting or exploration work carried out in terms of subsection (1) shall be subject to the provisions of sections *thirty-one and thirty-four*, save those of paragraph (b) of subsection (1) of section *thirty-one*.

(3) No prospecting or exploration work shall be carried out on a mining location pursuant to the powers conferred by subsection (1) without prior consultation with the holder of such location. 30

(4) Any person who in any way whatsoever prevents, obstructs or impedes the exercise of any of the powers conferred by subsection (1) or who displaces, defaces or destroys any stone, post, mark or object set up and placed for the purposes of any geological survey shall be guilty of an offence and liable to a fine not exceeding one hundred dollars. 35

(5) If any dispute arises as to the amount of compensation payable under this section, the matter shall be referred to the Administrative Court for determination.

297 Obstruction of officials

- (1) No person shall— 40
 - (a) obstruct or resist any PMD or any person duly authorized in writing by any court or PMD in lawfully entering upon any mining location or land or in performing any other act authorized by this Act; or
 - (b) obstruct or resist any inspector of mines or other person in the performance of his or her duty or in the exercise of his or her powers under this Act; or 45

- (c) after being removed under the provisions of this Act from any mining location or other place, forcibly or clandestinely retake or retain or endeavour to retake or retain possession thereof or of any portion thereof; or
- 5 (d) after any decision that any complainant is entitled to use for mining purposes or to divert any water, obstruct or resist such complainant or his or her agents in such use or diversion.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to fine not exceeding **level 6**, or to imprisonment for a period not exceeding **one**
 10 **year**, or both.

298 Discovery of precious stones to be notified

(1) Any person who discovers any precious stones shall, within ten days of the date of such discovery, give notice thereof and of the place where such discovery has been made to the PMD.

15 (2) Any person who fails to comply with subsection (1) by the due date shall be guilty of an offence and liable to fine not exceeding **level 4**, or to imprisonment for a period not exceeding **three months**, or both.

PART XXV

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

299 Application of Cap. 20:10

Wherever it is provided in this Act that any matter relating to the payment of compensation shall be referred to or determined by the Administrative Court—

- 25 (a) at least two months before the claim is so referred the claimant shall, unless the other party agrees otherwise, submit to the other party a claim for compensation which complies with section 22 (“Claims for compensation: land other than agricultural land required for resettlement purposes”) (1) of the Land Acquisition Act [*Chapter 20:10*]; and
- 30 (b) that Act shall thereafter apply, with such changes as may be necessary.

300 Acquisition by President of location for public purposes

(1) Subject to this section, the President may at any time, for the utilization of any mining location for a purpose beneficial to the public generally, or to any section thereof, acquire either the whole or any portion of such mining location, or limit the
 35 rights enjoyed by the owner thereof under this Act.

(2) The Land Acquisition Act [*Chapter 20:10*] shall apply, with such changes as may be necessary, to such acquisition or limitation of rights as is referred to in subsection (1).

40 (3) For the purpose of ascertaining the amount of compensation payable to any person for an acquisition in terms of subsection (1), the Minister may direct any person employed in his or her Ministry (an “investigator”) to conduct an investigation into the nature and extent of any mining operations that have been or are being conducted on the mining location that has been or is to be acquired.

45 (4) The Minister shall furnish each investigator with a certificate signed by or on behalf of the Minister stating that he or she has been appointed as an investigator for the purpose of this section.

(5) An investigator shall, on demand by any person affected by the exercise of the investigator's powers under subsection (6), exhibit the certificate issued to him or her in terms of subsection (4).

- (6) An investigator shall have power at all reasonable times—
- (a) to enter the mining location that has been or is to be acquired; and 5
 - (b) to require any person to supply any information or to produce any book, record or document relating to any mining operations that have been or are being conducted on the mining location that has been or is to be acquired; and
 - (c) to make copies of or extracts from any book, record or document referred to in paragraph (b); 10

and shall make a written report to the Minister on the results of the investigation within such period as the Minister may direct.

(7) Any report of an investigator referred to in subsection (6) shall be admissible on its production by any person in any proceedings relating to the payment of compensation for an acquisition in terms of subsection (1), and the court concerned shall pay due regard to the contents of any report so produced. 15

(8) Any person who contravenes or fails to comply with any direction or requirement in terms of this section shall be guilty of an offence and liable to a fine not exceeding **level 7** or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment 20

301 Cancellation of mining rights for using wasteful mining methods, etc

(1) If a PMD has reason to believe that the holder of a registered mining location is using wasteful mining methods or metallurgical processes, he or she shall inspect the registered mining location forthwith and report to the Board accordingly. 25

(2) After receiving the report referred to in subsection (1), if the Board is satisfied that the holder of a registered mining location is using wasteful mining methods or metallurgical processes, the Board shall forthwith institute an inquiry into the matter and invite the holder of the registered mining location concerned to make representations to the inquiry as to why his or her certificate of registered mining location should not be cancelled for using wasteful mining methods or metallurgical processes. 30

(3) If in the light of an inquiry held in terms of subsection (2), and after due consideration of any representations made by the holder, the Board is still satisfied that the holder has actually used wasteful mining methods or metallurgical processes, the Board shall notify the holder accordingly and request him or her, within such reasonable time as the Board shall specify in the notification, to remedy the situation or to show cause why his or her certificate of registered mining location should not be cancelled. 35

(4) If within the time specified in the notification referred to in subsection (3), the holder of the registered mining location fails to remedy the situation, or to satisfy the Board that he or she has not used wasteful mining methods or metallurgical processes, the Board shall provisionally order the cancellation of his or her certificate of registered mining location. 40

- (5) The Secretary shall without delay—
- (a) transmit relevant particulars of the provisional cancellation order to the PMD where the mining location is situated to enable the PMD to enter the particulars of the provisional cancellation in his or her provisional register; and 45

- (b) send one copy of the provisional cancellation order to the holder of the certificate of registered mining location that is to be cancelled, accompanied by a written reminder to the latter of his or her right to appeal against the cancellation in terms of section 315.

5 (6) If no appeal against the cancellation is lodged in terms of section 315 within twenty-one days, or if the appeal is unsuccessful, the Secretary shall make the necessary entry in the Mining Cadastre Register and notify the appropriate PMD to make the corresponding entry in his or her final register.

302 Cancellation of mining rights for breach of this Act or other laws

- 10 (1) If the Minister has reason to believe that a miner—
- (a) has failed, within a reasonable period after commencing mining operations, to declare any output from his or her mining location, whether in terms of this Act or any other enactment; or
 - 15 (b) has knowingly rendered a false return or declaration regarding the output from his or her mining location, whether in terms of this Act or any other enactment; or
 - (c) has, in relation to his or her mining location or the output thereof, contravened—
 - (i) section 5 or 6 of the Gold Trade Act [Chapter 21:03]; or
 - 20 (ii) section 5, 6 or 14 of the Precious Stones Trade Act [Chapter 21:06]; or
 - (iii) section 42 or 50 of the Minerals Marketing Corporation of Zimbabwe Act [Chapter 21:04];

whether or not he has been convicted thereof by a court;
- 25 the Minister may do either or both of the following—
- (d) by written notice served on the miner concerned, notify the miner concerned of his or her intention to cancel his or her rights in relation to the mining location concerned, and call on the miner to show cause, within such reasonable period as may be specified in the notice, why such rights should not be cancelled;
 - 30 (e) direct any person employed in his or her Ministry (“the investigator”) to conduct an investigation into the nature and extent of any mining operations that have been conducted on the mining location concerned.
- (2) The Minister shall furnish each investigator with a certificate signed by or on behalf of the Minister stating that he or she has been appointed as an investigator for the purpose of this section.
- (3) An investigator shall, on demand by any person affected by the exercise of the investigator’s powers under subsection (6), exhibit the certificate issued to him or her in terms of subsection (4).
- 40 (4) An investigator shall have power at all reasonable times—
- (a) to enter the mining location concerned; and
 - (b) to require any person to supply any information or to produce any book, record or document relating to any mining operations conducted on the mining location concerned; and
 - 45 (c) to make copies of or extracts from any book, record or document referred to in paragraph (b);

and shall make a written report to the Minister on the results of his or her investigation within such period as the Minister may direct.

(5) If, at the expiration of the period specified in a notice given in terms of subsection (1)(i), and after considering any representations made to him or her by the miner concerned and any report made in terms of subsection (2), the Minister is satisfied on reasonable grounds that the miner—

- (a) has failed in a respect referred to in subsection (1)(a); or 5
- (b) has rendered a false return or declaration referred to in subsection (1)(b);
or
- (c) has contravened a provision referred to in subsection (1)(c);

the Minister may, by notice in writing to the miner, cancel the miner’s rights in relation to the mining location and make such order as the Minister thinks fit in regard to the disposal of any output from the mining location which is in the possession of the miner or held on the miner’s behalf by any other person. 10

(5) The Minister shall copy the order of cancellation to the PMD where the mining location concerned is situated, whereupon the PMD shall record in his or her provisional register the fact that the mining rights in relation to the mining location are provisionally cancelled. 15

(6) Where the Minister has made an order in terms of subsection (3) in regard to the disposal of any output from a mining location, that order shall be enforced in the manner specified in the order.

(7) If no appeal against the cancellation of the miner’s rights in relation to his or her mining location is lodged in terms of section 315 within twenty-one days, or if the appeal is unsuccessful, the Secretary shall notify the appropriate PMD accordingly, whereupon the following steps must ensue— 20

- (a) if the mining location concerned— 25
 - (i) is registered in the miner’s name, the PMD shall declare the mining location to be forfeited, and thereafter sections 267 [“Removal of buildings and machinery from abandoned, forfeited or cancelled location”] to 272 [“Relocation of abandoned, forfeited or cancelled locations and reinstatement of forfeited locations”] shall apply in relation thereto; 30
 - (ii) is not registered in the miner’s name, any tribute agreement between the miner and the holder of the mining location shall thereupon expire and neither the miner nor any other person shall exercise any right to mine the mining location except in accordance with the Minister’s written approval; 35
- (b) in either case (paragraph (a) (i) or (ii)) the PMD shall record the fact forfeiture of the mining location in his or her final register, and transmit the relevant particulars of the forfeiture and of the expiry of any tribute agreement to the Secretary, to enable the Secretary to make the necessary entry in the Mining Cadastre Register. 40

(8) If the President (on his or her own motion or upon a report by the Minister) has reason to believe that a grantee of a special grant—

- (a) has contravened the terms and conditions attached to his or her special grant; or 45
- (b) is in default with respect to any matter mentioned in subsection (1)(a), (b) or (c);

the President may direct the Minister to give to the grantee the notice referred to in subsection (1) (d) (as if the reference to a “mining location” were a reference to the special grant) and to appoint an investigator in terms of subsection (1)(e), in which event the President may cancel the special grant as soon as the Minister notifies the President 50

that the special grant should be cancelled because the grantee has contravened the terms and conditions attached to his or her special grant or is in default in any respect mentioned in paragraph (b) (or both).

(9) Subsections (5), (6) and (7) apply to the cancellation of a special grant as they apply to the cancellation of a miner's rights in relation to his or her mining location, except that—

- (a) an appeal against the cancellation shall lie against the Minister and not the President; and
- (b) neither the Administrative Court, in referring the decision to cancel the special grant back to the Minister in terms of section 308(3)(a), nor the High Court, in overturning in favour of the grantee the decision of the Administrative Court pursuant to section 308(4) (b), may make a direction or order that the cancellation of the special grant be reversed, but any finding by the Administrative Court or the High Court to the effect that the special grant was cancelled contrary to its terms and conditions may form the basis of a separate action for damages if the President does not reverse the cancellation of the special grant.

(10) Any person who—

- (a) contravenes or fails to comply with any order, direction or requirement in terms of this section; or
- (b) mines any mining location in contravention of subsection (7)(a)(ii);

shall be guilty of an offence and liable to a fine not exceeding **level 7** or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

303 Minister may order holder of mining location to transfer it

(1) The holder of any registered mining location may apply in writing to the Board for the issue of an order authorising the transfer to him or her of a registered mining location held by any other person, hereinafter referred to as the other location.

(2) On receipt of such application the Board shall give notice of it to the holder of such other location and any person to whom a duly approved tribute has been granted over such location or in whose favour any option or hypothecation over such location has been registered with the , and require them to lodge with the Board in writing within sixty days of the giving of such notice their objections, if any, to the grant of the application.

(3) If any person lodges any objection with the Board within such period, the Board shall, on a day fixed by it and notified to the applicant and every objector, hear such arguments and evidence as such persons may wish to lay before it in regard to the grant or refusal of the application.

(4) If no objection is lodged to the grant of the application, the Board shall proceed with the consideration of the application.

(5) If the Board is satisfied that—

- (a) it is essential for the better working of the mining location owned by the applicant that he or she should have the use of the surface of the whole or a portion of such other location and that an order under **section 357** ["**PMD may authorise certain works**"] could not lawfully be granted or, if granted, would not adequately meet the needs of the case; and
- (b) the applicant has made a reasonable offer to the holder of such other location to purchase such location which such holder has refused to accept; and

- (c) the applicant is able to pay any compensation likely to become payable if the order were granted; and
- (d) the granting of the order would be in the national interest;

it may recommend to the Minister that an order be made by him or her authorising the transfer of such other location to the applicant or, if the Board is not so satisfied, it shall refuse the application, and such refusal shall be final and without appeal. 5

(6) Where the Board recommends that the order be granted, it shall submit to the Minister the application, together with all relevant documents and its written report and recommendation in regard thereto, and the Minister shall submit such recommendation to the President, who may provisionally approve or refuse to approve the making of the order. 10

(7) Where the President has provisionally approved the making of an order, the Minister shall without delay make a provisional order authorising the transfer of such relevant location to the applicant, whereupon the Secretary shall without delay—

- (a) transmit the provisional order to the PMD where the mining location is situated to enable the PMD to enter the particulars of the provisional cancellation in his or her provisional register; and 15
- (b) send one copy of the provisional order to the applicant and another copy to the holder of the mining location that is to be transferred, accompanied by a written reminder to the latter of his or her right to appeal against the transfer in terms of section 315. 20

(8) If no appeal against the provisional order is lodged under section 315 within twenty-one days of the copy of the order being sent to the holder of the mining location, or the appeal is unsuccessful, the Minister shall forthwith make an order authorizing the PMD to effect transfer of such other location to the applicant, in terms of this section, and such order shall be valid for a period of three months unless the Minister for any reason which to him or her seems good and sufficient extends such period. 25

(9) The PMD shall send a copy of such order to the applicant, the holder of such other location and every person who lodged objections under subsection (2) and require such holder or other person to inform him or her in writing, within a period of sixty days, whether he or she intends to claim compensation. 30

(10) Any person who may be adversely affected by the exercise of the rights granted under an order shall be entitled to be paid such compensation by the person in whose favour the order has been made as may be agreed upon or, failing agreement, as may be determined by arbitration: 35

Provided that such right shall be deemed to have lapsed unless such person has informed the PMD in writing within the period of sixty days mentioned in subsection (8) of his or her intention to claim such compensation.

(11) The person in whose favour an order has been made under this section shall, before obtaining transfer of the other location, either pay to the person or persons entitled thereto the compensation mentioned in subsection (10), or furnish a guarantee satisfactory to the PMD for the payment of such compensation. 40

(12) The PMD shall, notwithstanding any bar to the registration of transfer under section 275 [“Registration of transfer of mining locations and transfer duty payable”] (7) or of section 279 [“Registration of hypothecation or option is bar to transfer”], on application made within the period of validity of the order by the person in whose favour the order has been made and on payment of the transfer duty mentioned in section 275, forthwith provisionally register transfer of such other location to such person by making the necessary entries in his or her final register: 45

Provided that the PMD shall not so register transfer unless he or she is satisfied that the compensation mentioned in subsection (10) has been paid or the guarantee mentioned in that subsection has been furnished.

5 (13) As from the date on which the holder of the other location is notified by the Board of an application made under this section and until the date on which such application is refused or, if it is granted, until the period of the validity of the order has expired, it shall not be lawful for the holder of such other location to sell, cede, assign or otherwise dispose of such location or any part thereof or interest therein, or to abandon or hypothecate such location or any part thereof or interest therein, or to
10 grant an option or tribute over such location or any part thereof or interest therein.

(14) If the person in whose favour an order is made does not, during the period of validity of the order, apply to the PMD under subsection (11) and satisfy the PMD that the compensation mentioned in subsection (10) has been paid or furnish the guarantee mentioned in that subsection, the order shall be deemed to have lapsed.

15 (13) The PMD, upon being satisfied as described in the proviso to subsection (12), shall—

- (a) transmit the particulars of the transfer to the Secretary to enable the Secretary to make the corresponding entry in the Mining Cadastre Register; and
- 20 (b) upon being notified by the Secretary that the particulars of the transfer have been entered in the Mining Cadastre Register, make the corresponding entry in his or her final register.

304 Appeals against decisions under sections 250, 301, 302 and 303

(1) No later than twenty-one days after—

- 25 (a) notification is sent of the provisional order of expropriation of a registered mining location in terms of **section 250** [“Order of expropriation”] (4) (a); or
- (b) notification is sent of the cancellation of a certificate of a registered mining location in terms of **section 301** [“Cancellation of mining rights for using wasteful mining methods, etc”] (4); or
- 30 (c) notification is sent that a miner’s rights in relation to his or her mining location have been cancelled in terms of **section 302** [“Cancellation of mining rights for breach of this Act or other laws”] (3);
- 35 (d) a provisional order of the transfer of a mining location is sent to the holder of the mining location that is to be transferred in terms of **section 303** [“Minister may order holder of mining location to transfer it”] (9);

an aggrieved person may appeal against such cancellation or transfer to the Administrative Court.

40 (2) Until the appeal is determined the noting of an appeal in terms of subsection (1) shall —

- (a) not suspend the cancellation referred to in section 301 or 302;
- (b) suspend the transfer of a mining location referred to in section 250 or 303.
- (3) Upon an appeal the Administrative Court may—
- 45 (a) decide the issue in favour of the Board or the Minister, as the case may be; or
- (b) refer the decision back to the Board or the Minister, as the case may be for reconsideration (whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—

- (i) allowing extraneous or irrelevant considerations to affect the decision,
- (ii) failure to take into account relevant considerations in arriving at the decision;
- (iii) any material mistake of fact or law that tainted the decision; 5
- (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.
- (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:
 - Provided that the Court shall not make a finding on this ground without affording the Minister or the Board, as the case may be, an opportunity to respond to such finding; 10
- (c) where there is a substantive factual despite that cannot be resolved by the Court on the evidence before it, refer the matter back to the Minister or the Board, as the case may be, with a direction to the Minister or the Board to investigate the matter further and make a report and recommendations to the Court (on the basis of which the Court shall make its decision under paragraph (a)). 15
- (4) A person who is aggrieved by the Administrative Court’s decision under subsection (3), may, within twenty-one days after the Administrative Court’s decision, refer the matter for review by the High Court, whereupon it may— 20
 - (a) uphold the decision of the Administrative Court; or
 - (b) overturn the decision of the Administrative Court (with or without directions on how to proceed with the application) on any one or more of the following grounds— 25
 - (i) allowing extraneous or irrelevant considerations to affect the decision; or
 - (ii) failure to take into account relevant considerations in arriving at the decision; or
 - (iii) any material mistake of fact or law that tainted the decision; 30
 - (v) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;
 - (vi) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision;
 - or 35
 - (c) where there is a substantive factual despite that cannot be resolved by the High Court on the evidence before it, or where the matter had previously been referred by the Administrative Court to the Minister or the Board (as the case may be) for investigation and report but the High Court is not satisfied with the report for any reason, refer the matter to the Minister or the Board (as the case may be) with a direction to the Minister or the Board to investigate the matter further and make a further report and recommendations to the Court (on the basis of which report the Court may then proceed in terms of paragraph (a) or (b)). 40

PART XXVI 45

MISCELLANEOUS

305 Submission of geological information

- (1) The miner of a registered mining location shall submit annually to the Director of Geological Survey any information of a geological nature, including logs

and assay results of drill cores from surface diamond drill holes, and reports on any geological, geochemical and geophysical work, obtained by him or her during the course of his or her prospecting or mining operations.

5 (2) The Director of Geological Survey shall not, without the consent of the holder, disclose any information submitted in terms of subsection (1) to any person, or allow any person to inspect it unless the mining location to which it relates is forfeited, abandoned, or has been cancelled:

Provided that the Minister may, after consultation with the miner, disclose such information if he or she considers it necessary in the public interest to do so.

10 (3) In addition to the information specified in subsection (1), the miner of a registered mining location shall submit to the Director of Geological Survey, if called for, any representative rock samples obtained by him or her in the course of his or her prospecting and mining operations.

306 Site rent

15 The holder of a registered mining site shall in respect of such site pay annually in advance to the PMD rent calculated at the prescribed rate.

307 Land surveyors to be subject to Cap. 20:12

20 Any land surveyor who carries out any surface survey under this Act shall have the same duties and be subject to the same liabilities as if he or she were carrying out a survey in terms of the Land Survey Act [*Chapter 20:12*].

308 Training institutions

25 (1) The Minister may provide for the establishment, equipment, maintenance, administration and operation of any institution for the technical education and training of persons leading to the award of diplomas, certificates and other qualifications relevant to the mining industry.

(2) For the purpose of establishing, equipping, maintaining, administering and operating any institution referred to in subsection (1), the Minister may—

- 30 (a) enter into agreements and execute contracts or other instruments; and
- (b) provide suitable premises, equipment and amenities for the institution; and
- (c) with the approval of the Minister responsible for finance, make grants of money to the institution; and
- (d) subject to any charter referred to in subsection (3), appoint a board of management to control, manage and administer the institution; and
- 35 (e) do all such other things as, in the Minister's opinion, are necessary or desirable for the purpose.

(3) The legal capacity, objects, autonomy and administration of an institution referred to in subsection (1) shall be provided for in a charter granted by the President by proclamation in the *Gazette*.

40 (4) All expenditure incurred by the Minister in terms of subsection (1) shall be met from moneys appropriated for the purpose by Act of Parliament.

309 Mining of limestone for agricultural operations

45 (1) If the Minister is satisfied that any owner or occupier of land needs limestone for his or her own farming purposes, the Minister may, on application by such owner or occupier, authorize the reservation in terms of section 35 [*Reservations against*

prospecting and pegging] of such area of the land of such owner or occupier as the Minister deems sufficient.

(2) Such owner or occupier may in the area so reserved search for and mine limestone solely for his or her own farming purposes, and this Act shall not apply to such owner or occupier in relation to such search and mining. 5

(3) If the Minister is satisfied that any such owner or occupier is using any limestone mined under subsection (2) or any lime derived therefrom for any purpose other than his or her own farming purposes, the Minister shall order the withdrawal of any reservation authorized in terms of subsection (1), and after such withdrawal the right of such owner or occupier to search for and mine limestone under subsection (2) shall cease. 10

310 Provincial advisory boards

(1) The Minister may establish a provincial advisory board for any mining province to advise him or her generally on mining affairs in that mining province and additionally, or alternatively, on any particular matter in connection with the mining industry in that mining province, as may be specified by the Minister. 15

(2) The Minister shall appoint the members of a provincial advisory board who shall hold office during the pleasure of the Minister on such terms and conditions as the Minister may fix.

(3) The functions and duties of a provincial advisory board shall be to advise the Minister as required in terms of subsection (1). 20

(4) All expenditure incurred by the Minister in terms of this section shall be met from moneys appropriated for the purpose by Act of Parliament.

311 How acts ordered by PMD to be performed

Whenever a PMD is empowered or required by this Act to cause any act to be performed, and the mode of performing such act is not otherwise expressly provided for, any person verbally authorized by the PMD, and in his or her presence, or any police officer authorized in writing by the PMD, may perform such act, and all police officers shall, if so required, aid and assist any PMD or person authorized as aforesaid in the performance of his or her duty under this Act. 25

312 Regulations 30

(1) The Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in the Minister’s opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without derogating from the generality of subsection (1), regulations may provide for the following matters — 35

- (a) the proper and efficient management and working of all mining locations, quarries and mining operations;
- (b) the submission to the Minister by miners and persons operating or managing quarries of programmes of their intended exploration development and mining operations, showing the estimated amount of minerals to be produced during any specified period and the estimated cost thereof, and the right of the Minister to recommend changes thereto; 40
- (c) the registration of quarries and the licensing of persons who operate or manage quarries;
- (d) the grading of mica and its examination by a Government inspector and the control of the sale, disposal or export of mica which has not been graded in accordance with such regulations; 45

- (e) in relation to the surveying of mines and quarries—
 - (i) the preparation, keeping and inspection of survey plans of mining locations and quarries, including underground workings;
 - 5 (ii) the details and particulars to be shown on such plans, the manner of their preparation and the scale and size of plans;
 - (iii) the limits of error allowable on surveys in connection with the preparation of such plans;
 - 10 (iv) the preparation of survey plans by the Chief Government Mining Engineer or a person authorized by him or her in case of failure by any person to comply with the regulations and the recovery by the Minister of the costs of survey and preparation of such plans;
- (f) the examination of mine surveyors and the fee payable in respect of such examination and the grant of certificates to successful candidates;
- (g) the inspection of books and documents relating thereto;
- 15 (h) the conditions of work, safety and health of persons employed in or about any mining location, quarry or mining operations, including—
 - (i) the regulation of works and machinery in so far as protection and safety is concerned;
 - (ii) sanitation and waste disposal;
 - 20 (iii) the proper feeding and housing of mining employees;
 - (iv) measures to ensure that no child labour is used;
 - (v) the appointment by employers of suitable persons approved by the Minister to supervise all matters relating to the welfare of mining employees and the observance of regulations affecting them;
 - 25 (vi) the safety and health of persons employed in or about any mining location, quarry or mining operations;
 - (vii) the prompt reporting of accidents, serious injuries or illnesses and deaths occurring on any mining location or quarry;
 - (viii) establishment of burial places;
- 30 (i) what works, other than those defined in this Act, may be deemed to be development work;
- (j) any forms required for the purposes of this Act;
- (k) search and inspection fees, fees for duplicate copies of certificates issued under this Act, and any other fees, charges, levies, sums, amounts or payments required or permitted to be prescribed for the purposes of this Act;
- 35 (l) the manner or procedure in regard to the hearing of any action, suit or cause arising out of this Act, other than any appeal to the Supreme Court, and (notwithstanding any statutory tariff prescribing higher minimum amounts) the fees and charges to be taken by officers and practitioners in connection therewith;
- 40 (m) the periods for which and within which the payments prescribed in **section 188** [*Payments to landowners*] may be claimed and the manner of allocation of such payments in cases where a mining location is situated partly on one holding and partly on another;
- 45 (n) the duties and responsibilities of holders, lessees or assignees of the rights of a holder, managers and other persons engaged in or about a mine or quarry;

- (o) the qualifications to be possessed by persons engaged in or about a mine or quarry in the capacity of mine manager, resident engineer or underground manager and the keeping of official registers of persons so engaged;
- (p) the examination of persons wishing to be engaged in any capacity referred to in paragraph (v) and the fees payable in respect of such examination and the grant of diplomas or certificates to successful candidates; 5
- (q) the making by the mine manager or other person in authority of special rules, not inconsistent with this Act, for the maintenance of order and discipline and the prevention of accidents at any mine or quarry, such rules to have the same force and effect as the regulations. 10

(3) Before prescribing any tariff rate for the purposes of **section 22 [Duplicate prospecting licence], 29 [Surface rights of holder of prospecting licence], 103 [Rights of concession holders] or 178 [Surface rights of miners]** in respect of indigenous wood or timber taken from [**private land**] other than Communal Land, the Minister shall consult the **members of the Mining Affairs Board referred to in section 8 (1)(b), (i), (ii), (iii) and (iv)**, and any tariff rate so prescribed shall be reviewed at intervals of not more than five years after like consultation. 15

(4) On non-compliance with any regulation made in the interests of safety or health, the Minister may order that work on any mine or any section thereof shall cease, save and in so far as work is necessary to remedy any defect complained of and any miner of such mine who, knowing of such order, fails to comply therewith, shall be guilty of an offence and liable to a fine not exceeding **level six** for every day or portion of a day during which such non-compliance continues. 20

(5) Regulations may provide for concurrent or non-concurrent **criminal offences and civil defaults** for any contravention thereof: 25

Provided that penalties for any criminal defence or civil default shall not exceed—

- (a) in the case of a regulation made in the interests of management and safety or health and sanitation, a fine or penalty not exceeding **level seven** or imprisonment for a period not exceeding two years or both such fine and such imprisonment; 30
- (b) in the case of any other regulation, a fine or penalty not exceeding **level five** or, in default of payment, imprisonment for a period not exceeding six months.

313 Repeal of Cap. 21:05; savings and transitional provisions 35

- (1) In this section—
 - “former Part VII mining lease” means a mining lease issued under Part VIII (“Mining Leases”) of the repealed Act and in force at the date of commencement of this Act;
 - “former Part XIX special grant” means a special grant issued under Part XIX (“Special Grants”) of the repealed Act and in force at the date of commencement of this Act; 40
 - “former Part XX special grant” means a special grant issued under Part XX (“Special Grants for Coal, Mineral Oils, and Natural Gases”) of the repealed Act; and in force at the date of commencement of this Act; 45
 - “former Part IX special mining lease” means a special mining lease issued under issued under Part IX (“Special Mining Leases”) and in force at the date of commencement of this Act;

(2) Subject to this section, the Mines and Minerals Act [*Chapter 21:05*] is repealed.

(3) Despite the repeal of the Mines and Minerals Act [*Chapter 21:05*]—

5 (a) every prospecting licence, mining location or other mining right whatsoever legally acquired before the date of commencement of this Act and legally held at that date, is (subject to subsection (4)) hereby confirmed, but shall from and after that date be held under and subject to this Act:

10 Provided that in the case of an exclusive prospecting order, such order shall continue in force, notwithstanding anything contained in this Act which is contrary to or inconsistent with such terms or conditions, as though the repealed Act were still in force, until the expiry of the order;

15 (b) every special reservation of any area against prospecting and pegging which was lawfully made by a PMD before the date of commencement of this Act, and which was still in force immediately before that date, shall be deemed to be a reservation made by notice by the PMD on the instructions of the Secretary under section 40;

20 (c) an agreement or transaction entered into or deemed to have been entered into under that Act, and in force immediately before the date of commencement of this Act, shall continue in force;

(d) regulations made or deemed to have been made under that Act and in force immediately before the date of commencement of this Act, shall continue in force until amended or repealed in terms of this Act and shall be deemed to have been made in terms of this Act;

25 (e) anything done, or commenced under that Act and which, immediately before the date of commencement of this Act, had or was capable of acquiring legal effect, shall be deemed, on or after that date, to have been made, done or commenced under the appropriate provision of this Act and shall continue to have or to be capable of acquiring, as the case may be, the same legal effect;

30 (f) any dispute commenced or complaint lodged under the repealed Act (other than a dispute that is the subject of ongoing judicial or arbitration proceedings) and not resolved immediately before the date of commencement of this Act shall be resolved in accordance with the appropriate mechanisms for the settlement of complaints and disputes provided by this Act:

40 Provided that, notwithstanding section 51 (“Evidence of priority of mining rights etc”) of this Act, subsections (4), (5), (6), (7) and (8) of section 177 of the repealed Act shall (unless the parties otherwise agree) continue to apply to the resolution of disputes between holders in contestation (in those provisions referred to as “peggers”) if any such dispute arose before the date of commencement of this Act;

(4) The provisions of this Act relating to —

45 (a) mining leases shall apply to every former Part VII mining lease and every former Part IX special mining lease as if such mining lease or special mining lease were a mining lease issued under Part IX (“Mining Leases”) of this Act, except in so far as any of the provisions of this Act relating thereto are substantively inconsistent with any express term or condition of the former Part VIII mining lease or the former Part IX special mining lease, as the case may be (the proof whereof shall rest with the holder of the lease concerned);

- (b) special grants shall apply to every former Part XIX special grant and every former Part XX special grant as if such special grant were a special grant issued under Part XIX (“Special Grants”) of this Act, except in so far as any of the provisions of this Act relating thereto are substantively inconsistent with any express term or condition of the former Part XIX special grant or former Part XX special grant, as the case may be (the proof whereof shall rest with the holder of the special grant concerned). 5
- (5) Subject to subsections (6), every certificate of registration of a claim or block of claims, former Part VII mining lease and every former Part IX special mining lease, former Part XIX special grant, former Part XX special grant and other mining right or title in force immediately before the date of commencement of this Act, shall (unless earlier cancelled or expired) be entered in the Mining Cadastre Register without compliance with the formalities for registration under this Act. 10
- (6) Section 19 (“Entries in Mining Cadastre Register to be conclusive proof of mining right or title; rectification of Mining Cadastre Register”) shall apply for the purpose of correcting or updating any entry in the Mining Cadastre Register created by virtue of subsection (5). 15
- (7) Until such time as the Mining Cadastre Register is declared to be fully operational under **section 1(3)**, references in this Act or the repealed Act to anything registered or required to be registered in the Mining Cadastre Register shall be construed as references to anything registered or required to be registered with the PMD or with the Mining Affairs Board or with the Secretary, as the case may be. 20

FIRST SCHEDULE (SECTION 6) 25
 CIVIL PENALTY ORDERS
 ARRANGEMENT OF PARAGRAPHS

Section

- 1. Interpretation in First Schedule.
- 2. Power of PMD to issue civil penalty orders and categories thereof. 30
- 3. Service and enforcement of civil penalties and destination of proceeds thereof.
- 4. Limitation on issuance and enforcement of civil penalty orders.
- 5. Civil penalties to be paid in foreign currency by certain defaulting miners.
- 6. When hearings on question whether to serve civil penalty orders may be held 35
- 7. Evidentiary provisions in connection with civil penalty orders.

Interpretation in First Schedule

- 1. In this Schedule, unless the context otherwise requires—
 - “citation clause”, in relation to a civil penalty order, is the part of the order in which the PMD names the defaulter and cites the provision of this Act in respect of which the default was made or is alleged, together with (if necessary) a brief statement of the facts constituting the default; 40
 - “civil penalty register” means the register referred to in paragraph ---- (“Evidentiary provisions in connection with civil penalty orders”);
 - “continuing default” means a default in complying with any statutory obligation or duty which is continuous in nature at the time it is detected and of which the remediation consists exclusively or primarily in ceasing to do the action complained of; 45

“corporate defaulter” means a defaulter which is a company, syndicate or other corporate person (and includes a partnership for the purpose of paragraph 3(3) and (6);

5 “date of issuance”, in relation to the service of a civil penalty order, means the date on which it is served in any of the ways specified in section 5 of the Act;

“defaulter” means the person on account of whose default a civil penalty order is served, and includes an alleged defaulter;

“level”, in relation to a fine, means a level on the standard scale;

10 “officer”, in relation to a corporate defaulter, means a member of its board or other governing body (by whatever name called), and if there is no such board or governing body, any employee or agent of the corporate defaulter acting on behalf of the corporate defaulter;

“standard scale” means the standard scale of fines referred to in section 280 of the Criminal Law Code the First Schedule thereto;

15 “penalty clause”, in relation to a civil penalty order, is the part of the order that fixes the penalty to be paid by the defaulter, and “fixed penalty clause” and “cumulative penalty clause” shall be construed accordingly;

“remediation clause” in relation to a civil penalty order, is the part of the order that stipulates the remedial action to be taken by the defaulter;

20 “show cause clause” in relation to a civil penalty order is the part of the order that requires the defaulter to show cause why the civil penalty order should not have been served or should be withdrawn.

Power of PMD to issue civil penalty orders and categories thereof

25 2.(1) Where default is made in complying with any provision of this Act or of any regulations or order made under this Act for which a civil penalty is specified to be leviable, the PMD may, in addition to, and without derogating from, any criminal or non-criminal penalty that may be imposed by this Act or any other law for the conduct constituting the default, serve upon the defaulter a civil penalty order of the appropriate category specified in subparagraph (2), (3), (4), (5) or (6) or any combination of such
30 orders as the provision in question may allow.

(2) A category 1 civil penalty order provides for—

35 (a) a combination of a fixed penalty and a cumulative penalty over a period not exceeding ninety days for a specified completed and irremediable default (that is to say a default in respect of which no remediation is sought by the PMD or is possible), of which—

(i) the fixed penalty shall be the maximum amount specified for level 7 (or the penalty specified in paragraph 3, as the case may be);
and

40 (ii) the cumulative penalty shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the fixed penalty under paragraph (a);

45 (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the PMD why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

50 (i) if no such cause is shown within that period the order shall be deemed to have been issued with effect from the beginning of such period;

- (ii) if within that period it is shown that the order was issued in error the PMD shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.
- (3) A category 2 civil penalty order provides for—
 - (a) a cumulative civil penalty for a specified completed but remediable default which—
 - (i) must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her);
 - (ii) upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide for a penalty of the maximum amount of level three for each day, not exceeding ninety days, during which the defaulter continues to be in default (beginning on the day after the last day on which the defaulter fails to take the remedial action);
 - (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the PMD why the order should not have been issued, that is to say, to show that the order was issued in error:
 - Provided that—
 - (i) if no such cause is shown, within that period the order shall be deemed to have been issued with effect from the beginning of such period;
 - (ii) if within that period it shown that the order was issued in error the PMD shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.
- (4) A category 3 civil penalty order provides—
 - (a) for a combination of a fixed penalty and potentially two cumulative penalties for a specified completed but partially remediable default, of which—
 - (i) the fixed penalty shall be the maximum amount specified for level five; and
 - (ii) the cumulative penalty—
 - A. relating to subparagraph (i) shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under subparagraph (i); and
 - B. relating to the taking of the specified remedial action—
 - I. shall be the maximum amount of level three for each day, not exceeding ninety days, that the defaulter fails to take the specified remedial action with effect from a specified date; and
 - II. must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order;
 - (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the PMD why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown within that period, the order shall be deemed to have been issued with effect from the beginning of such period;
- 5 (ii) if within that period it shown that the order was issued in error, the PMD shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

(5) A category 4 civil penalty order provides for—

- 10 (a) a cumulative penalty for a continuing default which—
 - (i) must be suspended conditionally upon the defaulter immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) ceasing the default;
 - 15 (ii) upon the civil penalty becoming operative because of failure to cease the default immediately, shall be the maximum amount fixed for level six for each day during which the default continues, not exceeding a period of ninety days;
- 20 (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the PMD why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- 25 (i) if no such cause is shown, within that period the order shall be deemed to have been issued with effect from the beginning of such period;
- (ii) if within that period it shown that the order was issued in error the PMD shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register/

30 (6) A category 5 civil penalty order provides for—

- 35 (a) a combination of a fixed penalty and a cumulative penalty for a specified continuing default where the time of compliance is of the essence—
 - (i) both of which penalties must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order immediately (that is, within 24 hours of the issuance of the order, or a lesser specified time specified in the order);
 - 40 (ii) which, upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide—
 - A. a fixed penalty of the maximum amount for level seven for not meeting the specified deadline; and
 - B. a cumulative penalty of the maximum amount of level three for each day, not exceeding ninety days during which the defaulter fails to pay the amount of the fixed penalty specified in —
 - 45 I. subparagraph (i); and
 - II. subparagraph A;
- (b) the suspension of the operation of the civil penalty order for a period of 24 hours from the date of its issuance to enable the alleged defaulter to show cause to the PMD why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown, within that period the order shall be deemed to have been issued with effect from the beginning of such period;
- (ii) if within that period it shown that the order was issued in error the PMD shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register. 5

Service and enforcement of civil penalties and destination of proceeds thereof

3.(1) References to the PMD serving upon a defaulter any civil penalty order in terms of this Act, are to be interpreted as requiring the PMD to serve such order (or such notice) in writing to the defaulter concerned in the manner specified in— 10

- (a) section 5(2)(a) of the Act, that is to say by hand delivery to the defaulter or his or her director, manager, secretary or accounting officer in person (or through an inspector or other person employed in the office of the PMD, or a police officer), or to a responsible individual at the place of business of the defaulter; or 15
- (b) section 5(2)(b) of the Act, that is to say by delivery through a commercial courier service to the defaulter’s place of business in the mining province concerned or his or her principal office in Zimbabwe or other place of business of the defaulter; or 20
- (c) section 5(2)(c) of the Act, that is to say by electronic mail address furnished by the defaulter to the PMD in terms of 141 (“Pre-inspection requirements and first and subsequent inspection certificates”)(2) (d); or
- (d) section 5(2)(d) of the Act, that is to say, if after diligent inquiry service of the civil penalty order by any of the foregoing means has not been made, the defaulter shall be deemed to be notified of the civil penalty order if the PMD posts a copy of it for fourteen continuous days on the notice board at his or her Office (in which event the civil penalty order shall be deemed to be served on the defaulter on the first date of such posting): 25

Provided that in this case the PMD shall also depose in an affidavit to the following facts, namely that— 30

- (i) service of the civil penalty order could not be made by any of the means referred to in subparagraphs (a), (b), (c) or (d); and
- (ii) the first date on which the copy of the civil penalty order was posted on the notice board of his or her Office; 35

and the PMD shall file such affidavit for record.

(2) The PMD shall not extend the period specified in a civil penalty order for compliance therewith except upon good cause shown to him or her by the defaulter, and any extension of time so granted (not exceeding in any case 30 days) shall be noted by the PMD in the civil penalty register. 40

(3) The PMD may, if the defaulter is a corporate defaulter—

- (a) in the same civil penalty order, name the corporate defaulter and every officer of the company, syndicate, other corporate person or partnership concerned as being so liable separately, or issue separate civil penalty orders in respect of the defaulter and each of the officers concerned; 45
- (b) choose to serve the order only upon the corporate defaulter without naming the officers if, in his or her opinion (which opinion the PMD shall note in the civil penalty register, there may be a substantial dispute of fact about the identity of the particular officer or officers who may be in default: 50

Provided that nothing in this subparagraph affects the default liability of officers of the defaulter mentioned in subparagraph (6).

(4) The PMD may, in the citation clause of a single civil penalty order, cite two or more defaults relating to different provisions of this Act if the defaults in question —

- 5 (a) occurred concurrently or within a period not exceeding six months from the first default or defaults to the last default or defaults; or
- (b) arose in connection with the same set of facts.

(5) Where in this Act the same acts or omissions are liable to both criminal and civil penalty proceedings, the PMD may serve a civil penalty order at any time before the commencement of the criminal proceedings in relation to that default, that is to say at any time before—

- (a) summons is issued to the accused person for the prosecution of the offence; or
- 15 (b) a statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or
- (c) an indictment has been served upon the accused person, where the person is to be tried before the High Court;

as the case may be, but may not serve any civil penalty order after the commencement of the criminal proceedings until after those proceedings are concluded (the criminal proceedings are deemed for this purpose to be concluded if they result in a conviction or acquittal, even if they are appealed or taken on review). (For the avoidance of doubt it is declared that the acquittal of an alleged defaulter in criminal proceedings does not excuse the defaulter from liability for civil penalty proceedings).

(6) Every officer of a corporate defaulter mentioned in the civil penalty order by name or by office, is deemed to be in default and any one of them can, on the basis of joint and several liability, be made by the PMD to pay the civil penalty in the event that the defaulter does not pay.

(7) Upon the expiry of the ninety day period within which any civil penalty order of any category must be paid or complied with, the defaulter shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both (in the case of a corporate defaulter, every one of its officer is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it).

- 35 (8) The amount of any civil penalty shall—
- (a) be payable to the PMD and shall form part of the Consolidated Revenue Fund; and
- (b) be a debt due to the State and shall be sued for in any proceedings in the name of the PMD acting for the State in any court of competent civil jurisdiction:
- 40

Provided that for this purpose, the court of the provincial magistrate for the mining province concerned shall be deemed to have jurisdiction to hear the suit even if the monetary amount sought would otherwise exceed its prescribed jurisdiction.

(9) Proceedings in a court for the recovery of a civil penalty shall be deemed to be proceedings for the recovery of a debt as if the defaulter had acknowledged the debt in writing.

- (10) If the PMD in terms of subparagraph (8)(b) desires to institute proceedings to recover the amounts of two or more civil penalties in any court of competent civil jurisdiction, the PMD may, after notice to all interested parties, bring a single action in relation to the recovery of those penalties if the orders relating to those penalties —
- (a) were all served within the period of twelve months preceding the institution of the proceedings; and 5
 - (b) were served—
 - (i) on the same defaulter; or
 - (ii) in relation to the same default or set of defaults, whether committed by the same defaulter or different defaulters; or 10
 - (iii) on two or more defaulters whose registered offices are in the same area of jurisdiction of the court before which the proceedings are instituted.

(11) Unless the PMD has earlier recovered in civil court the amount outstanding under a civil penalty order, a court convicting a person of an offence against subparagraph (7), may on its own motion or on the application of the prosecutor and in addition to any penalty which it may impose give summary judgement in favour of the PMD for the amount of any outstanding civil penalty due from the convicted defaulter. 15

Limitation on issuance and enforcement of civil penalty orders

4.(1) No civil penalty order may be issued more than twelve months from the date when the default or alleged default occurred or ceased to occur. 20

(2) A single civil penalty order may be served in respect of two or more defaults committed by the defaulter within a single period not exceeding six months, but if the aggregate of such defaults results in the defaulter becoming liable to a penalty or combined penalties in excess of the equivalent of one hundred and twenty thousand dollars, the PMD may select one or any combination of those defaults which will not result in the defaulter becoming so liable, while reserving the right to serve a second or further additional civil penalty orders in respect of the defaults not so selected if the defaulter does not comply with the first civil penalty order. 25

(3) Any amount owing under a civil penalty order is a debt owed to the State for the purposes of section 15(b) of the Prescription Act [*Chapter 8:11*]. 30

Civil penalties to be paid in foreign currency by certain defaulting miners

5.(1) A defaulter who is a primary mining lease holder or holder of a special grant shall pay any monetary penalty under a civil penalty order in United States dollars or another foreign currency at the interbank rate of exchange of the Zimbabwe dollar for the United States dollar prevailing on the day the civil penalty order is issued. 35

When hearings on question whether to serve civil penalty orders may be held

6. (1) If, in response to a show cause clause, an alleged defaulter satisfies the PMD, that it is not possible within 48 hours to demonstrate that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control, the PMD shall afford the alleged defaulter an opportunity to be heard by making oral representations before the PMD, for which purpose— 40

- (a) no later than 96 hours after the issuance of the civil penalty order, the alleged defaulter must furnish to the PMD an affidavit sworn by him or her giving reasons to show that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control; 45

(b) within a reasonable period from the receipt of an affidavit referred to in paragraph (a) the PMD—

5 (i) may serve copies of the affidavit on any person who, in the PMD’s opinion, is affected by or may be a party to the default, together with an invitation to the parties to attend at the meeting to be presided over by the PMB (giving particulars of its time and venue) to enable the parties to make oral and written representations at that meeting on the question whether the civil penalty order was issued in error to the alleged defaulter and whether it should be issued to some other miner or not issued at all:

10 (ii) post an invitation to interested persons (that is to say existing or potential small-scale or other miners or other interested persons, including occupiers of land, within the area of the jurisdiction of the PMD) to attend at the meeting referred to in subparagraph (i) (giving particulars of its time and venue) to enable them to make oral and written representations at that meeting on the question whether to grant or refuse provisional registration for the site or sites concerned:

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

(2) The following provisions apply to every hearing in connection with the issuance of a civil penalty order—

25 (a) if the alleged defaulter fails to attend at the hearing the PMD will generally decide the issue against him or her and proceed to issue the civil penalty order, unless doing so, given the specific facts and circumstances of the case, would be contrary to this Act or result in injustice;

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

(c) the alleged defaulter bears the burden of showing on a balance of probabilities that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter’s control;

35 (d) at the conclusion of the hearing PMD may—

(i) in the presence of the parties (if any) at the meeting announce his or her decision verbally whether or not to issue a civil penalty order, and if so to upon whom, and if the PMD decides to issue the civil penalty order the PMD shall do so within twenty-four hours;:

40 (ii) cancel the civil penalty order or re-issue it with effect from the date of his or her decision on the same or another defaulter, or re-issue it with effect from the date on which it was initially issued if the PMD finds that the defaulter’s objections to its issuance were baseless, vexatious or frivolous:

45 Provided that the PMD may defer making a decision by no more than 48 hours after the conclusion of the hearing and give notice of his or her decision, and the reasons for it (together with the civil penalty order, if any), to the alleged defaulter or any miner found to be liable for the civil penalty, and post a copy of the decision together with the civil penalty order, if any) and the reasons for it on the public notice board of the Director’s office.

(3) An alleged defaulter or substituted alleged defaulter who wishes to appeal against the PMD's decision in terms of subsection (2) (d) must—

- (a) lodge (together with the prescribed fee, if any) an appeal in writing with the Provincial Mining Director concerned, and copy it to the Secretary, no later than two working days after the prospector, owner or occupier has received notification decision under the proviso to subsection (2)(d); and 5
- (b) incorporate in the appeal grounds justifying why the PMD's decision should be set aside and what decision ought to be substituted for it;

and thereupon the Provincial Mining Director shall, without delay, transmit the appeal to the Secretary together with any report the PMD may wish to attach thereto justifying the grounds upon which the PMD based his or her decision. 10

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

(5) Upon receiving an appeal in terms of subsection (3) the Secretary shall promptly (and in any event no later than seven working days of receiving it)— 15

- (a) dismiss the appeal by upholding the decision of the PMD; or
- (b) refer the decision back to the PMD for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the PMD to investigate the matter further and make a further report and recommendations) on any one or more of the following grounds— 20
 - (i) allowing extraneous or irrelevant considerations to affect the decision; or
 - (ii) failure to take into account relevant considerations in arriving at the decision; or 25
 - (iii) any material mistake of fact or law that tainted the decision;

or
- (c) uphold the appeal and substitute any other decision for that of the PMD, if the Secretary finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision: 30

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

(6) Any alleged defaulter who is aggrieved by a decision of the Secretary under subparagraph (5), may seek a review of such decision by the Administrative Court within seven days after the date of its notification to the appellant, whereupon the court may do any of the things the Secretary is empowered to do under subparagraph (5): 35

Provided the taking of a decision on review under this subsection shall not suspend the decision sought to be reviewed until the review is determined by the Administrative Court. 40

Evidentiary provisions in connection with civil penalty orders

7.(1) For the purposes of this Schedule the PMD shall keep a civil penalty register wherein shall be recorded—

- (a) the date of service of every civil penalty order, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the defaulter was in default, and the date on which the civil penalty order was complied with or the penalty thereunder was recovered as the case may be; 45

- (b) if the alleged defaulter responded to the show cause clause in the civil penalty order with the result that—
- (i) the order was cancelled because it was issued in error, the fact and the date of such cancellation; or
 - 5 (ii) a hearing was held in accordance with paragraph 5, then—
 - A. a record or an adequate summary of any representations made at the hearing by way of an entry or cross-reference in, or annexure to, the register (and if recorded by way of annexure or cross-reference, the representations must be preserved for 10 a period of at least six years from the date when they were made to the PMD);
 - B. a record of the outcome of the hearing, that is to say, whether or not the civil penalty order was cancelled, and if not the date from which it was to have effect and whether a different 15 defaulter was served with it.
- (2) A copy of—
- (a) any entry in the civil penalty register, and of any annexure thereto or record cross-referenced therein, authenticated by the PMD as a true copy of the original, shall on its mere production in any civil or criminal proceedings 20 by any person, be *prima facie* proof of the contents therein; or
 - (b) any civil penalty order that has been served in terms of this Act, authenticated by the PMD as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the service of the order on the date stated therein upon the 25 defaulter named therein, and of the contents of the order.

SECOND SCHEDULE (SECTION 5 (8))

DEEMED STRATEGIC MINERALS

PART I

DEEMED DECLARATION OF STRATEGIC MINERALS

- 30 1. Diamonds
- 2. Rare Earth Minerals
- 3. Lithium
- 4. Copper
- 5. Nuclear energy source materials
- 35 6. Mineral oils
- 7. Gaseous hydrocarbons
- 8. Coal
- 9. Nickel

PART II

40 SPECIAL CONDITIONS FOR EXPLOITATION OF ANY OF THE LISTED MINERALS

- 1. With respect to diamonds the cleaning of such diamonds as are extracted in Zimbabwe shall be done in Zimbabwe (Provided that the Minister may, by general notice published in the Gazette, temporarily exempt any named miner from this condition for periods of not more than 6 months at a time but in any event for not longer 45 than 18 months)

2. With respect to diamonds not more than four named miners whose names shall be published by general notice in the Gazette shall at any time be given title, one of which shall be the Zimbabwe Consolidated Diamond Company, or its successor in title, which is hereby empowered to enter into one or more joint ventures with any other miner wishing to extract diamonds. 5

3. With respect to any of the listed strategic minerals, the miners thereof shall comply with such conditions as may be prescribed in this Schedule or by general notice in the *Gazette* concerning the nature of the benefits entitled to be received by any community immediately impacted by the mining of such minerals.

THIRD SCHEDULE (SECTIONS)

CONDUCT AND POWERS OF PMDS AT STAKEHOLDERS' MEETINGS, REFERRALS AND HEARINGS ARRANGEMENT OF PARAGRAPHS

Section

- | | |
|---|----|
| 1. Interpretation in Second Schedule. | 15 |
| 2. Application of Schedule. | |
| 3. Summary and informal nature of hearing | |
| 4. Keeping of order at hearings. | |
| 5. Venue of hearings. | |
| 6. Costs of hearings. | 20 |
| 7. Consideration of written representations. | |
| 8. Adjournment of hearing. | |
| 9. Taking of evidence at hearings | |
| 10. Appointment of secretary. | |
| 11. Penalty for contempt of PMD's hearing. | 25 |
| 12. Electronic hearings. | |
| 13. Questions of law. | |
| 14. When assistant PMD may preside at hearings. | |

Interpretation in Second Schedule

- | | |
|---|----|
| 1. In this Schedule— | 30 |
| “direct interest in the subject-matter of a hearing”, in relation to a PMD having such an interest for the purposes of paragraph 14, means that the PMD or any of his or her family members or associates has, to his or her knowledge, a financial interest in the subject matter in controversy or in a party to the proceedings, or any other interest that could be substantially affected by the outcome of the proceedings; | 35 |
| “hearing” means any stakeholders’ meeting, referral or hearing that is conducted as a quasi-judicial hearing in terms of the provisions of this Act referred to in paragraph 2. | |
| “serve, in relation to any notice or document served upon anyone for the purposes of a hearing, means served on that person in any of the ways specified in section 5 of the Act; | 40 |

Application of Second Schedule

2.(1) This Schedule applies to the conduct and powers of a PMD presiding at any stakeholders’ meeting, referral or hearing that is conducted as a quasi-judicial hearing 45

in terms of the following sections—

- (a) section 34 (“Surface rights of holder of exclusive prospecting licences”) (7);
- (b) section 36 (“Disputes as to whether land is open to prospecting”) (7);
- 5 (c) section 37 (“Registration of arable and pastoral land against prospecting and pegging”) (7);
- (d) section 38 (“Disputes about extending the duration of schemes reserving arable and pastoral land against prospecting and pegging”)(1);
- (e) section 50 (“Registration of sites”) (8) (e);
- 10 (f) section 52 (“Cancellation of certificate of registration”) (5) (d);
- (g) section 58 (“Referrals and appeals under sections 34(4), 35 (9), 37 and 39”) (1) (d);
- (h) section 89 (“Right of licensee to erect and remove temporary buildings and structures”) (6);
- 15 (i) section 90 (“Right of licensee to take wood and timber”) (6);
- (j) section 120 (“Right of licensee to take wood and timber”) (5) (e);
- (k) section 121 (“Non-primary applications referred to in Section 120”) (4) (d);
- 20 (l) section 137 (“Conversion as between primary and secondary minerals and as between sites and mining locations”) (8) (d);
- (m) section 138 (“Sites: mining rights”) (4) (d);
- (n) section 214 (“Pre-consideration procedures by PMD”) (2) (a).

Summary and informal nature of hearing

25 3.(1) The PMD hear and determine any matter at a hearing, summarily, and without any formal proceedings taken before him or her., in the simplest, speediest and cheapest manner possible,

Keeping of order at hearings

30 4. The PMD may invite any police officer or other peace officer to be in attendance for the duration of hearing to keep order at such hearing, and may order the removal from such stakeholders’ meeting, referral or hearing of any disruptive person.

Venue of hearings

35 5. A PMD may hold a hearing in any part of the mining province to which he or she is appointed, or at his or her discretion in such place outside the said mining province as may be convenient to the parties interested, and may (subject the provisions of the Act in terms of which such meeting, referral or hearing is held) adjourn such meeting, referral or hearing from time to time and from place to place as occasion may require.

Costs of hearings

40 6. Every party to a hearing shall bear the costs incurred by him or her in connection with any such hearing, including in particular the costs of legal representation and the expense of producing witnesses on his or her own behalf..

Provided that a legal practitioner shall not recover any costs exceeding the amount of the costs which he or she would have recovered had he or she instituted the proceedings in a magistrates court.

Consideration of written representations

45 7. (1) Where the PMD has requested the parties to make written representations to him or her before a hearing, the PMD may in his or her discretion restrict the parties

to the submissions they made in those representations and not allow the introduction of any additional facts, evidence or issues not contained in those representations.

(2) if a party fails to make written representations for the purpose of a hearing as requested by the PMD, that party shall be regarded as having absented itself from the hearing and be treated accordingly. 5

Adjournment of hearing

8. The PMD may adjourn a hearing only once and only in the following cases—

- (a) with the agreement of the parties concerned in the hearing, to an agreed date and venue; or
- (b) if the PMD's original invitation to the hearing indicated that the PMD would consider written representations only from the parties, the PMD may adjourn the hearing by no later than 48 hours to enable any party to submit to the PMD those written representations. 10

Taking of evidence at hearings

9. (1) The PMD shall not be bound by the strict rules of evidence, and the PMD may ascertain any relevant fact by any means which he or she thinks fit and which is not unfair or unjust to either party. 15

(2) As far as is possible, expedient or desirable, a PMD shall hear, receive and examine, and take down or record by written or audio-visual means, all evidence that is proffered at a hearing without administering oaths or summoning witnesses, and for that purpose shall not be bound by the common law rules on the admissibility of evidence, such as the hearsay rule. 20

(3) However if the PMD feels this to be necessary in any particular exceptional case or set of circumstances, the PMD—

- (a) may examine witnesses on oath, which oath he or she is hereby empowered to administer, and take down the evidence in writing to be signed by the person giving the same; and 25
- (b) has power to summon all witnesses required by the respective parties, or whom he or she may deem necessary to appear before him or her, and, in default of any such witness appearing, may, upon proof that his or her reasonable expenses have been paid or tendered to him or her, issue a warrant for his or her arrest, and may inflict upon him or her such penalties as he or she would have been liable to for disobedience to a subpoena to appear before a magistrates court. 30

(4) The service of the summons and the execution of the warrant, issued in terms of subparagraph (3), may be lawfully performed by any person appointed for that purpose by the PMD. 35

(5) Any witness who, being duly sworn, wilfully gives false evidence before such PMD on any question material to the matter at issue, knowing such evidence to be false, or not knowing or believing it to be true, shall be deemed guilty of perjury, and shall be liable to be prosecuted and punished accordingly. 40

Appointment of secretary

10. The PMD may appoint an employee of his or her Office or of the Ministry to attend the hearing as secretary to record its proceedings, to keep its papers, to summon and minute the testimony of witnesses and generally to perform such duties connected with such hearing as the PMD shall direct (and if no such appointment is made the PMD shall discharge these tasks himself or herself) 45

Penalty for contempt of PMD's hearing

11.(1) If any person wilfully insults the PMD during his or her hearings, or wilfully interrupts the proceedings of any such hearing, or on being summoned or examined as a witness before a PMD, refuses to be sworn or to answer any lawful question, such
 5 PMD may, if he or she thinks fit, impose on him or her a category 5 civil penalty.

Electronic hearings

12. (1) In addition to meeting with parties physically present, the PMD may hold a hearing partially or exclusively by the use of any means of communication by which all the parties at the hearing can hear and be heard at the same time (hereinafter referred
 10 to as an “electronic hearing”).

(2) A person who participates in an electronic meeting is taken for all purposes to have been present at the hearing.

When assistant PMD may preside at hearing

14. The PMD shall direct any one of his or her assistant PMDs to preside over a
 15 hearing only if—

- (a) the hearing overlaps with any other hearing; or
- (b) the PMD has any direct interest in the subject-matter of the hearing that may affect or appear to affect his or her objectivity:

20 Provided that the PMD must first declare such interest to the parties concerned, and may only recuse himself or herself if either or any of the parties objects in writing to him or her presiding at the hearing.

Legal fees and charges

15. (1) No statutory tariff of legal practitioners' fees and charges shall apply to any fee or charge levied by a legal practitioner for work done at or in connection with
 25 any meeting or hearing to the extent that such fee or charge is prescribed in such tariff as a minimum fee or charge.

(2) In the interests of mitigating the costs of meetings or hearings, and notwithstanding any statutory tariff of legal practitioners' fees and charges, the Minister may, in terms of section 319 [“Regulations”], and after consultation with the Minister
 30 responsible for justice, prescribe the fees and charges that legal practitioners may seek or take in connection with work done at any meeting or hearing.

FOURTH SCHEDULE (SECTION 19 (3))

PROCEDURE FOR RECTIFICATION OF ENTRIES IN MINING CADASTRE REGISTER

Application of Third Schedule

35 1. To avoid doubt, this Schedule applies only to the rectification of errors or omissions discovered after an entry in the Mining Cadastre Register has been duly recorded or amended in accordance with the appropriate provision of this Act for the recording of that entry.

Non-substantive rectification of entries in Mining Cadastre Register

40 2.(1) The Mining Cadastre Registrar (whether or not on the oral or written application of a PMD or an interested person)—

- (a) may at any time to correct any error or omission in, or update any entry in the Mining Cadastre Register; or
- (b) shall make any alteration to an entry in the Mining Cadastre Register to
 45 reflect the true nature, scope or extent of the rights and interests of any person interested in the mining title to which the entry is related.

(2) In the case of an alteration in terms of subparagraph (1)(a) which the Registrar considers does not make any material or substantive change to the rights and interests of any person interested in the mining title to which the entry is related, the Registrar shall without delay cause to be posted on the electronic notice board of the Mining Cadastre Registry a notice informing interested members of the public of the alteration (and the notice shall continue to be so posted for as continuous period of two weeks thereafter). 5

Substantive rectification of entries in Mining Cadastre Register

3. In the case of an alteration —

(a) in terms of paragraph 2(1)(a) which in the Registrar’s opinion makes any material or substantive change to the rights and interests of any person interested in the mining title to which the entry is related; or 10

(b) referred to paragraph 2 (1)(b);

the Registrar shall, before changing the entry —

(c) cause to be posted on the electronic notice board of the Mining Cadastre Registry a notice informing interested members of the public of the alteration and inviting objections or representations from any interested person on the proposed alteration (and the notice shall continue to be so posted for as continuous period of two weeks thereafter); and 15

(d) cause the notice referred to in paragraph (c) to be published in the *Gazette* for two successive week; 20

and if no objection is made in relation thereto by the seventh day after the last date on which the notice was posted and published in the *Gazette*, the Registrar may effect the proposed alteration to the entry concerned.

Objections to proposed rectification of entries in Mining Cadastre Register to be heard by Registrar or PMD 25

4.(1) If any objection to a proposed alteration is lodged timeously with the Registrar under paragraph 3, the Registrar shall determine from the nature of the entry concerned whether he or she should conduct the hearing into the objection or whether the hearing should be conducted by the PMD of the province in which the mining title relating to the entry is held 30

(2) In the former case mentioned in subparagraph (1) (where the Registrar or his or her delegate is to preside at the hearing), the Registrar shall notify every objector and every other interested person in writing that the Registrar or delegate shall at the date, time and place notified, hear such evidence and arguments as those persons may wish to lay before him or her regarding the proposed alteration or rectification of the entry in question. 35

(3) In the latter case mentioned in subparagraph (1) (where the PMD is to preside at the hearing), upon being notified of the objection by the Registrar, the PMD shall without delay post a copy of it on the notice board of his or her office together with an invitation to any interested persons to attend at the meeting to be presided over by the PMD (giving particulars of its time and venue) to enable the parties to make oral and written representations at that meeting on the question whether the mining right or title whose alteration or rectification is the subject of the proposed objection ought to be altered in the manner specified in the notice: 40 45

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

Hearing of objections to proposed rectification by Registrar

5. (1) The following provisions apply to every meeting for the consideration of an objection by the Registrar—

- 5 (a) if any objector fails to attend at the hearing he or she shall be deemed to have abandoned his or her objection, and if there is no other objector, the Registrar may proceed to make such decisions on the objection as appears to him or her to be the correct one;
- 10 (b) the applicable rules set out in the Second Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the Registrar at the hearing;
- (d) the objector bears the burden of showing on a balance of probabilities why the proposed alteration or rectification should not be made, or made subject to any specified amendments;
- 15 (e) at the conclusion of the meeting Registrar may, in the presence of the parties (if any) at the hearing announce his or her decision on the objection:

20 Provided that the Registrar may defer making a decision by no more than 48 hours after the conclusion of the hearing and in any event must give notice of his or her decision, and the reasons for it, to every objector and interested party, and post a copy of decision and the reasons for it on the on the electronic notice board of the Mining Cadastre Registry.

- 25 (2) If within seven days of the posting of the notice of any decision in terms of the proviso to subparagraph (1)(e) any objector or other interested party who attended the hearing referred to in subparagraph (1) may appeal against decision in terms of paragraph 7.

Hearing of objections to proposed rectification by PMD

6. (1) The following provisions apply to every meeting for the consideration of an objection by the PMD—

- 30 (a) the object of the hearing is to enable the PMD to make a recommendation to the Registrar to make or not the proposed alteration or rectification, or to make it subject to any specified amendments;
- (b) if any objector fails to attend at the meeting he or she shall be deemed to have abandoned his or her objection, and if there is no other objector, the PMD may proceed to make such recommendation as appears to him or her to be the correct one;
- 35 (c) the applicable rules set out in the Second Schedule (“Conduct and powers of PMDs at stakeholders’ meetings, referrals and hearings”) shall be followed by the PMD at the hearing;
- 40 (d) the objector bears the burden of showing on a balance of probabilities why the proposed alteration or rectification should not be made, or made subject to any specified amendments;
- (e) at the conclusion of the meeting PMD may, in the presence of the parties (if any) at the meeting announce the recommendation he or she is going to make to the Registrar:

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

50

(2) If within seven days of the posting notice of any recommendation in terms of the proviso to subparagraph (1)(e) any objector or other interested party who attended the meeting referred to in subparagraph (1) notifies the PMD in writing that he or she is opposed to the proposed recommendation for specified reasons, the PMD shall, without delay, transmit to the Registrar the recommendation, together with the reasons for it, and the reasons against it given by objector or other interested party in terms of this subsection. 5

(3) Upon receiving a recommendation in terms of subsection (2) the Registrar may —

- (a) accept the recommendation of the PMD, without amendment; or 10
- (b) accept the recommendation of the PMD, with any amendment (recording reasons for the amendment); or
- (c) reject the recommendation of the PMD, recording reasons for the rejection; or

whereupon the PMD shall promptly, after being notified by the Registrar’s decision — 15

- (i) notify any objector or interested party who attended the hearing referred to in subparagraph (1) of the Registrar’s decision; and
- (ii) make an entry in his or her provisional register in conformity to the Registrar’s decision.

Appeals 20

7.(1) If any —

- (a) person objects to the Registrar making any alteration in terms of paragraph 2(2), on basis that the alteration made by the Registrar is substantive he or she may appeal to the Administrative Court within seven days after the last date of its notification under that paragraph; or 25
- (b) objector or interested party who attended the hearing referred to in paragraph 5 or 6 is aggrieved by a decision of the Registrar under paragraph 5(1)(e) or 6(3), he or she may appeal to the Administrative Court within seven days after the date of its notification to the objector or party. 30

(2) Upon an appeal , the Administrative Court may —

- (a) decide the issue in favour of the Registrar; or
- (b) refer the decision back to the Registrar for reconsideration (whether with or without directions on how the decision is to be or she reconsidered) on any one or more of the following grounds— 35
 - (i) allowing extraneous or irrelevant considerations to affect the decision;
 - (ii) failure to take into account relevant considerations in arriving at the decision;
 - (iii) any material mistake of fact or law that tainted the decision; 40
 - (iv) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision;
 - (v) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

Provided that the Court shall not make a finding on this ground without affording the Registrar or the PMD an opportunity to respond to such finding; 45

5 (c) where there is a substantive factual dispute that cannot be resolved by the Court on the evidence before it, refer the matter to the Registrar with a direction for it to investigate the matter further and make a report and recommendations to the Court (on the basis of which the Court shall make its decision under paragraph (a) or (b).

(3) The lodging an appeal under subsection (6) shall suspend the decision appealed against until the appeal is determined by the court.

FIFTH SCHEDULE ()

SPECIAL CONDITIONS FOR THE CERTIFICATION OF INDEPENDENT MINE SERVICE SITES

10 *Paragraph*

1. Interpretation.
2. Additional requirements for registration of independent mine service sites.
3. Certification requirements for of independent mine service sites
4. Effect of registration and certification of custom milling plants re dealings in gold.
- 15 5. Permit to transport gold ore to custom milling plant.
6. Monthly returns by operators.
7. Inspection of books and records, etc..
8. Cancellation of certificates and permits.
9. Offences and penalties.

20 APPENDIX 1: Fees.

APPENDIX 2: Metallurgical Requirements of Custom Milling Plants.

Interpretation in Third Schedule

1. (1) In this Schedule—

- “controlling interest”, in relation to a company, means^{3/4}
- 25 (a) not less than fifty-one *per centum* of shares in the company; or
 - (b) shares entitling the holders thereof to not less than fifty-one *per centum* of the votes in the affairs of the company;

“law enforcement agencies” means the Police Force and any intelligence service maintained by the State;

30 “operator” means the operator of a custom milling plant;

“prescribed fee” means the appropriate fee prescribed in Appendix 1;

“Reserve Bank” means the Reserve Bank of Zimbabwe established by the Reserve Bank of Zimbabwe Act [*Chapter 22:10*].

35 (2) Any word or expression to which a meaning has been assigned in the Gold Trade (Gold-buying Permits for Concession Areas) Regulations, 2002 (or any law that may be substituted for the same), shall have the same meaning when used in this Schedule.

Additional requirements for registration of independent mine service sites

40 2.(1) No independent mine service site shall be registered in terms of section 53 of the Act unless—

- (a) in the case of an applicant who, at the date of commencement of these regulations, is operating a custom milling plant, the applicant is, or undertakes in writing to form within six months from the date of registration of the plant—

- (i) a company incorporated or registered in terms of the Companies Act [*Chapter 24:03*] in which—
 - A. not less than forty-nine *per centum* of shares in the company; or
 - B. shares entitling the holders thereof to not less than forty-nine *per centum* of the votes in the affairs of the company; 5
 are held by one or more Zimbabwean citizens;
 - or
 - (ii) a partnership in which a share of not less than forty-nine *per centum* of the assets, profits and liabilities of the partnership is held by one 10 or more Zimbabwean citizens;
 - or
 - (b) in the case of an applicant who, at the date of commencement of this Schedule, is not operating a custom milling plant, the applicant is^{3/4}
 - (i) a company incorporated or registered in terms of the Companies Act [*Chapter 24:03*] in which a controlling interest is held by one 15 or more historically disadvantaged persons;—
 - (ii) a partnership in which a share of not less than fifty-one *per centum* of the assets, profits and liabilities of the partnership is held by one 20 or more Zimbabwean citizens.
- (3) In addition to the documentation required by section 53 of the Act, an applicant for registration of a primary mine service site for the establishment of a custom milling plant shall—
- (a) in his or her application, disclose—
 - (i) the maximum milling capacity of the plant; and 25
 - (ii) in what respects the plant complies with the metallurgical requirements specified in the Second Schedule; and
 - (b) if he or she operates or intends to operate more than one custom milling plant, make a separate application in respect of each plant; 30
 - (c) furnish proof of prior vetting and clearance of his or her application by the law enforcement agencies.
- Certification requirements for of independent mine service sites*
- 3.(1) The PMD shall, for the purposes of section 53 (10) (f) (i) certify a independent mine service site for a period of twelve months at a time subject to— 35
- (a) in the case of a custom milling plant, the plant’s conformity with the metallurgical requirements specified in the Second Schedule; and
 - (b) compliance with the applicable operational standards prescribed in the Mining (Management and Safety) Regulations, 1990, published in statutory instrument 109 of 1990; and 40
 - (c) such other conditions relating to—
 - (i) the observance of minimum operational standards; and
 - (ii) standards of safety, health and sanitation at the plant; and
 - (iii) the keeping of records; and
 - (iv) environmental protection; 45
- as the PMD shall specify in writing to the operator.

(2) Upon certification an operator shall take such steps as are satisfactory to the PMD to notify—

- (a) the Reserve Bank; and
- (b) the rural district council within whose area of jurisdiction the primary mine service site is located;

of the location of the primary mine service site and fact that it has been certified.

(3) An operator wishing to renew the certification of his or her primary mine service site shall pay the prescribed (non-refundable) registration renewal fee to the PMD no later than fourteen days after the end of the period of twelve months for which he or she was certified, and paragraph 2 and subsections (1) and (2) of this paragraph shall apply to such application as it applied to the original application for registration under section 53 of the Act and to the original certification under this paragraph, with the additional requirement that the applicant (if he or she is operating a custom milling plant) shall obtain from the Reserve Bank written confirmation that he has substantially complied with all the requirements of the Act, the Gold Trade Act [*Chapter 21:03*] and these regulations.

(4) Any person may, on payment of the prescribed fee, inspect the register at all reasonable times at the premises of the PMD or at such other place as the PMD may direct.

Effect of registration and certification of custom milling plants re dealings in gold

4.(1) Upon registration and certification of a primary mine service site for the establishment of a custom milling plant in terms of paragraphs 2 and 3 the operator thereof shall, for all purposes of the Gold Trade (Gold-buying Permits for Concession Areas) Regulations, 2002, and the Gold Trade Act [*Chapter 21:03*] be deemed to be a gold-buying agent of the permit-holder for the concession area where his custom milling plant is located.

(2) Within forty-eight hours after coming into possession of more than 100 grams of gold, an operator of a custom milling plant shall sell or dispose of the gold to the permit-holder for the concession area where his or her custom milling plant is located or to a gold-buying agent of such permit-holder.

(3) The operator shall be solely responsible for the security of any gold that comes into his or her possession until it is sold or disposed of to a permit-holder or his agent in terms of subparagraph (2).

Permit to transport gold ore to custom milling plant

5.(1) No person shall transport gold ore for milling at a custom milling plant, and no operator of a custom milling plant may accept such ore for milling, unless the person obtains a permit for the transportation of the ore for that purpose from the PMD of the mining province within which the custom milling plant is situated.

(2) An application for a permit referred to in subparagraph (1) shall be in the form required by the PMD and be accompanied by the prescribed fee.

(3) The PMD shall issue a permit to a person who makes application therefor for a period of six months at a time, subject to such conditions as the PMD shall specify in the permit.

Monthly returns by operators

6. An operator shall, within fourteen days after the end of each month, render a return to the PMD in Form M.M.21A (“Return of mineral or mineral bearing products (beneficiation plant)”) referred to in the First Schedule to the Mining (General) Regulations, 1977 (or any other law that may be substituted for the same).

Inspection of books and records, etc.

7. The PMD or any person duly authorised by him or her shall at all reasonable times have access for the purpose of—
- (a) inspection to all books and records, reports and other documents relating to the acquisition, disposal or removal of any gold or gold ore as may be necessary for the purpose of ascertaining or verifying any return, details, certificate or document rendered under these regulations; 5
 - (b) ensuring compliance with the conditions subject to which the custom milling plant was registered and any provisions of the Act and regulations made thereunder which apply to the custom milling plant. 10

Cancellation of certificates and permits

8.(1) If the PMD is satisfied that an operator or person referred to in paragraph 6 is in breach of any condition subject to which he or she was registered and certified under the Act and this Schedule, or permitted under section 5, as the case may be, he or she may, after affording the operator or person concerned a reasonable opportunity to make representations in the matter or to remedy the breach, as may be appropriate in the circumstances, cancel the registration, certification or permit by notice in writing to the operator or person concerned, giving the reasons therefor. 15

(2) A person whose certificate of registration is or permit cancelled in terms of this paragraph may appeal to the Minister against such cancellation within thirty days of the notification thereof. 20

(3) The noting of an appeal in terms of subsection (2) shall not suspend the cancellation until the Minister’s decision on the appeal has been given.

(4) Upon an appeal in terms of subsection (2), the Minister may confirm the cancellation or set it aside. 25

Offences and penalties

9.(1) Any person who—

- (a) being the operator of a primary mine service site—
 - (i) fails to register the site in accordance with the Act;
 - (ii) contravenes paragraph 4(2); 30
 - (iii) fails to render the return required by paragraph 6;
 - (iv) knowingly accepts gold ore for milling from a person who does not have a permit to transport it for that purpose in terms of paragraph 6;
 - (v) obstructs the PMD or any person duly authorised by him or her in the performance of his duties in terms of paragraph 7; 35
- (b) transports gold ore to a custom milling plant without a permit in terms of paragraph 6;

shall be guilty of an offence and liable to a fine not exceeding level five or, in default of payment, imprisonment for a period not exceeding six months. 40

(2) Without prejudice to any other penalty provided by or under the Gold Trade Act [*Chapter 21:03*], any operator who contravenes subsection (2) of section 4 shall be guilty of an offence and liable to a fine not exceeding level five or, in default of payment, imprisonment for a period not exceeding six months.

APPENDIX 1 (PARAGRAPH 2)

FEEES

	Type of Application	Fee
5	Application for registration as operator of custom milling plant	
	Application fee.....	\$100 000
	Registration fee.....	\$100 000
	Inspection fee (s. 3 (8)).....	\$5000
	Application for permit to transport gold or to custom milling plant	
	Application fee	\$2 000
10	Permit fee.....	\$2 000

APPENDIX 2 (PARAGRAPH 2)

METALLURGICAL REQUIREMENTS OF CUSTOM MILLING PLANTS

Every custom milling plant shall conform to the following requirements as approved by the Director of Metallurgy:

- 15 1. The gravity section must be comprised of any of the following—
 - A centrifugal concentrator in series with rubber strakes; or
 - A James Table producing three products, namely, a concentrate product, a middling product and a tailings product; or
 - A copper plate in series with rubber strakes.
- 20 2. The free gold recovery unit must be equipped with an amalgam barrel having an amalgam separator and a copper plate.
3. The plant must be equipped with an amalgam retort for recycling mercury.

SIXTH SCHEDULE (SECTION)

INFORMATION AND PLAN REQUIRED IN CONNECTION WITH ORDINARY AND SPECIAL APPLICATIONS FOR A MINING LEASE

25

PART I

INFORMATION REQUIRED IN CONNECTION WITH ORDINARY AND SPECIAL APPLICATIONS FOR A MINING LEASE

- 30 1. General information to be furnished by applicant in connection with a primary or non-primary application for a mining lease—
 - (a) the nature and size of the mineral deposits within the area over which the applicant seeks a mining lease; and
 - (b) particulars of the minerals which are being mined (by the applicant or other miners) or are to be mined by the applicant in the area applied for;
 - 35 and
 - (c) the estimated life and economic viability of the proposed mine; and
 - (c) the extent of the investment that will be made in the proposed mine; and
 - (e) the proposed method of extraction, mining and treatment of ore from the proposed mine; and
 - 40 (f) any other relevant circumstance;

PART II

PLAN REQUIRED FOR PRIMARY APPLICATION FOR A MINING LEASE

2. The plan for the development and operation of the proposed mine must include—
- (a) a feasibility study relating to the development of the proposed mine; and 5
 - (b) a financing plan indicating the type and source of finance to be obtained in order to develop the proposed mine and construct the necessary infrastructure and facilities; and
 - (b) a marketing plan setting out proposals and a timetable for the beneficiation and disposal of the output of the proposed mine, together with any relevant marketing studies; and 10
 - (c) proposals for the efficient and economic exploitation of the mineral deposits to be mined, specifying the proposed method of mining and treatment of the ore and the dates on which such mining and treatment will commence; and 15
 - (d) an economic evaluation of the proposed mine, including a detailed forecast of the capital investment, operating costs and projected revenues and profits; and
 - (e) a comprehensive report, supported by documentary evidence, on the mineral deposits to be mined, including details of their extent, grade and quantity and distinguishing between proven, probable and estimated ore reserves and indicating the anticipated mining conditions; and 20
 - (f) details of any roads, railway lines, electricity supply and other infrastructure which will be required and which the applicant proposes to provide for the purposes of mining operations; and 25
 - (g) the proposed timetable for the establishment and operation of the proposed mine and the facilities associated with it; and
 - (h) details of any insurance to be taken out against liability arising from mining operations, including liability for damage to the environment and injury to persons and property; and 30
 - (i) proposals for the storage, recording and shipment of the output of the proposed mine; and
 - (j) information on the extent to which local goods and services will be utilized in the development and operation of the proposed time; and
 - (k) details of the manpower requirements of the proposed time, including the numbers of expatriate staff and any proposals for training citizens of Zimbabwe; 35

SEVENTH SCHEDULE (SECTION)

ANCILLARY POWERS OF DEPARTMENT OF GEOLOGICAL SURVEY, DEPARTMENT OF MINING ENGINEERING AND DEPARTMENT OF METALLURGY 40

1. To acquire by lease, purchase or otherwise, immovable property, and to construct buildings thereon.

2. To enter into agreements and to modify or rescind such agreements:

Provided that the Department shall not enter into agreements of suretyship or guarantee without the approval of the Minister and the Minister responsible for finance. 45

4. To accept a grant, donation or bequest of movable property, including money, made to the Department:

Provided that if a grant, donation or bequest referred to in this paragraph—

- (a) is made subject to any conditions; or
- (b) would involve additional or recurrent expenditures on the part of the Department;

5 the Department shall not accept the grant, donation or bequest without the consent of the Minister.

5. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research and to pay for the aforesaid, where
10 necessary.

6. To provide such services as the Department considers could properly be provided by the Department.

7. Generally, to do all such things as are incidental or conducive to the exercise of the functions or the performance of the duties of the Department or which are incidental
15 to the powers specified in this Schedule, or which are calculated, directly or indirectly, to enhance the value of, or develop, the services provided by the Department.

