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THE MINING ACT

No. 12 of 2016

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**SECOND SCHEDULE— CRITERIA FOR
DETERMINING SMALL
SCALE PROSPECTING
AND MINING
OPERATIONS**

AN ACT of Parliament to give effect to Articles 60, 62 (1)(f), 66 (2), 69 and 71 of the Constitution in so far as they apply to minerals; provide for prospecting, mining, processing, refining, treatment, transport and any dealings in minerals and for related purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY PROVISIONS

1. This Act may be cited as the Mining Act, 2016.

Short title.

2. (1) This Act shall apply to the minerals specified in the First Schedule.

Scope of the Act

(2) The Cabinet Secretary may from time to time, by notice in the Gazette, amend the First Schedule to this Act.

3. Save to the extent provided for in this Act, this Act shall not apply to matters relating to petroleum and hydrocarbon gases.

Act not to apply to petroleum and hydrocarbon gases.

4. In this Act, unless the context otherwise requires—

Interpretation.

“application” includes—

- (a) an application for the grant, renewal, transfer, assignment or surrender of a mineral right; or
- (b) an application for the grant or renewal of a mineral dealer’s licence or a diamond dealer’s licence;

“arm’s-length value” means the purchase price under an immediate sale transaction in an open market where the purchase price for the sale –

- (a) is not influenced by any special relationship or other arrangement between the parties to the transaction, other than the immediate sale itself; and
- (b) is not affected by any non-commercial or other considerations; and specifically excludes any barter, swap, exchange, or transfer price arrangements or any restricted transaction that is associated with special financial, commercial or other considerations;

“artisanal mining” means traditional and customary mining operations using traditional or customary ways and means;

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“artisanal mining permit” means a permit issued under section 95;

“banker” includes a manager, cashier or any other officer acting in that capacity of a company engaged in the business of banking within Kenya and in compliance with the provisions of the Banking Act;

“block or cadastral unit” means a pseudo-quadrilateral formed by two meridians of longitude and two parallels of latitude of the Cadastral Graticule spaced fifteen seconds apart; Cap.488.

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for mining;

“community” means—

- (a) a group of people living around an exploration and mining operations area; or
- (b) a group of people who may be displaced from land intended for exploration and mining operations;

“Community Development Agreement” means an agreement entered into between a large-scale mining licence holder and a community;

“construction minerals” includes stones, gravel, sands, soils, clay, volcanic ash, volcanic cinder and any other minerals used for the construction of buildings, roads, dams, aerodromes and landscaping or similar works, and such other minerals as the Cabinet Secretary may from time to time declare to be construction minerals, by notice published in the Gazette;

“company” has the meaning assigned to it under the Companies Act;

“Corporation” means the National Mining Corporation established in section 22;

“Council of County Governors” means the Council of County Governors established under section 19 of the Intergovernmental Relations Act;

“day” means a calendar day;

“diamond” includes a rough and uncut diamond;

“Director of Geological Survey” means the Director of Geological Survey appointed under section 18;

“Director of Mines” mean the Director of Mines appointed under section 18;

No. 2 of 2012.

“geologist” means a person who is registered as geologist in accordance with the Geologists’ Registration Act,1993;

“environment” has the meaning assigned to it under the Environmental Management and Coordination Act,1999;

“environmental impact assessment licence” means an environmental impact assessment licence granted under the Environmental Management and Coordination Act,1999;

“excavation” means a trench, pit, shaft, dredging, brine pumping or other work which is related to operations under a mineral right;

No. 10 of 1993.

“financial difficulty” in respect of a company or other body corporate, means that the company or body corporate—

No.8 of 1999.

- (a) is in liquidation;
- (b) is the subject of a subsisting court order for its winding up or dissolution; or
- (c) has made a composition or arrangement with its creditors which remains in effect;

“first-come, first-served” means the policy of considering and approving applications based on the order of receiving the applications;

“geology” means the scientific and research aspects of the solid earth and its processes;

“geological report” means a report made by a geologist;

“gross value” means the arm’s-length value of minerals or mineral products at the point of sale within Kenya, without any discounts, commissions or deductions;

“groundwater” has the meaning assigned to it under the Water Act;

“holder” , in respect of a mineral right ,a licence or permit under this Act, means –

- (a) a person to whom a mineral right is granted; or

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(b) the person to whom a mineral right is transferred or assigned;

“inspector of mines” means a public officer who has been appointed in accordance with section 196;

“land” has the meaning assigned to it in Article 260 of the Constitution;

“large scale operation” means a prospecting or mining operation that is a large scale operation in accordance with this Act;

No.8 of 2002.

“licence area” means the area or areas of land covered by a prospecting licence, a retention licence or a mining licence under this Act;

“liquidator” has the meaning assigned to it under the Companies Act;

“maritime zones” has the meaning assigned to it under the Maritime Zones Act;

“member” means a member of the Board appointed under section 25;

“mine” —

(a) when used as a noun, includes an excavation or system of excavations made for the purpose of, or in connection with, the extraction of minerals or mineral products, and includes an open-cast pit, quarry and any area where a mineral is won by dredging brine pumping, evaporation or other means; and

(b) when used as a verb, means the carrying out of a mining operation and includes tailing;

“mines support” means—

No.17 of 2015

(a) contract mining services which include top soil and waste removal, drilling and blasting, excavating and haulage of ore to plant on turnkey basis;

Cap. 371.

(b) assay laboratory services;

(c) drilling and blasting services;

(d) mineral exploration services for a holder of a mineral right;

- (e) contract mining services for small scale and artisanal mining, which include mining and processing of ore reclamation re-vegetation and management of mining operations;
- (f) any other services specifically and exclusively related to mining, which the Cabinet Secretary considers necessary for the effective and sustainable development of the mining industry;

“mineral dealer” means any entity or person licenced to carry out mineral dealings;

“mineral dealings” means –

- (a) buying minerals;
- (b) selling minerals;
- (c) bartering minerals;
- (d) depositing or receiving minerals as a pledge or security; or
- (e) cutting, polishing, processing, refining and treating minerals;

“mineral dealer’s permit” means a permit issued in accordance with section 164;

“mineral deposit” means a mass of naturally occurring minerals of economic value;

“mine waste and tailings” means the residue of mining operations that includes gravel, sand, slime, or other substances that are discarded in the course of mining operations;

“mineral” means a geological substance whether in solid, liquid or gaseous form occurring naturally in or on the earth, in or under water, in mine waste or tailing and includes the minerals specified in the First Schedule but does not include petroleum, hydrocarbon gases or groundwater;

“mineral agreement” means a mineral agreement entered into in accordance with section 117;

“mineral product” for the purposes of royalty a product of mining operations, the product of extraction in mining operations of a metal or a precious mineral from a

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mineral and the product of beneficiation in mining operations of a mineral, but excluding waste and tailings;

“mineral right” means –

- (a) a prospecting licence;
- (b) a retention licence;
- (c) a mining licence;
- (d) a prospecting permit;
- (e) a mining permit; or
- (f) an artisanal permit;

“Mineral Rights Board” means the Board established under section 30;

“mining area” means an area or areas of land that are covered by a mining licence;

“mining bond” means an obligatory payment or cash deposit that may be required of a mineral right holder as guarantee for the due implementation of an approved mining programme;

“mining permit” means a permit granted in accordance with this Act, which authorises the holder to carry out small scale mining operations;

“mining licence” means a licence relating to large scale operations which authorises the holder to carry out mining operations;

“mining operations” means an operation carried out in connection with a mine-

- (a) to win a mineral from where it occurs;
- (b) to extract metal or precious mineral from a mineral so won, or to beneficiate a mineral so won; or
- (c) to dispose of a mine waste or tailings resulting from winning, extraction or benefaction;

“National Land Commission” means the National Land Commission established under Article 67 of the Constitution;

“permit area” means the area covered by a prospecting permit or a mining permit;

“petroleum” has the meaning assigned to it under the Petroleum (Exploration and Production) Act;

“precious minerals” means the minerals specified in Part B of the First Schedule;

“precious stones” means the minerals specified in Part C of the First Schedule;

“Principal Secretary” means the Principal Secretary in the State Department for the time being responsible for mining;

“programme for mining operations” in respect of a mining licence means –

- (a) a programme of an intended mining operation prepared by the holder of the licence and approved by the Director of Mines on the grant or renewal of the licence; or
- (b) where the programme is amended pursuant to this Act, means the programme as so amended;

“programme for prospecting operations” means a programme of intended prospecting operations prepared by the applicant for a prospecting licence and approved by the Cabinet Secretary on the grant or renewal of the licence, and where the programme is amended pursuant to this Act, means the programme as so amended;

“prospecting area” means the area or areas of land covered by a prospecting permit or licence; Cap.308.

“prospecting licence” means a licence relating to large scale operations which authorises the holder to carry out prospecting operations;

“prospecting operations” means operations carried out offshore and on land to search for and define the extent of a mineral deposit and to determine its economic value;

“prospecting permit” means a permit relating to small scale operations which authorises its holder to carry out prospecting operations;

“public officer” has the meaning assigned to it under Article 260 of the Constitution;

“Public Service Commission” means the Public Service Commission established under Article 233(1) of the Constitution;

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“radioactive mineral” means a mineral that contains by weight at least one-twentieth of one per cent (0.05 %) of uranium or thorium or any combination thereof, including, but not limited to, monazite sand and other ores containing thorium, carnotite, and pitchblende;

“reconnaissance” means the operations and works to carry out the non-intrusive search for mineral resources by geophysical surveys, geochemical surveys, photo geological surveys or other remote sensing techniques and surface geology in connection therewith, but excludes drilling and excavations;

“reconnaissance area” means an area that is subject to a reconnaissance licence;

“reconnaissance licence” means a licence granted under section 61 of this Act;

“register” means the register of mineral rights established under this Act;

“retention area” means the area or areas of land covered by a retention licence;

“retention licence” means a retention licence granted under this Act;

“small scale operation” means a prospecting or mining operation as described by the Second Schedule to this Act;

“strategic minerals” means minerals declared to be strategic minerals under this Act;

“transfer” includes to assign or trade;

“unwrought precious metal” means precious metal in any form whatsoever, which is not manufactured or made up into an article of industry or of the arts, and includes amalgam, slimes, slags, precious metal concentrates, pots, battery chips, sweepings from reduction works and scrapings and by-products of unrefined precious metal and precious metal which has been smelted into the form of bullion but does not include ore *in situ*; and

“water resource” has the meaning assigned to it under the Water Act, 2002.

5. The Cabinet Secretary, the Principal Secretary and any person administering this Act shall be guided by the

No. 8 of 2002.

Guiding principles.

values and principles enshrined in the Constitution and in particular Articles 10, 66 (2), 201 (c) and (d), and 232 of the Constitution and the principles of leadership and integrity set out under Chapter Six of the Constitution.

PART II—OWNERSHIP OF MINERALS

6. (1) Every mineral—

- (a) in its natural state in, under or upon land in Kenya;
- (b) in or under a lake, river, stream, or water courses in Kenya;
- (c) in the exclusive economic zone and an area covered by the territorial sea or continental shelf,

is the property of the Republic and is vested in the national government in trust for the people of Kenya.

(2) Subsection (1) applies despite any right or ownership of or by any person in relation to any land in, on or under which any minerals are found.

(3) The national government's control over minerals vested in it shall be exercised in accordance with the provisions of this Act.

(4) For the purpose of this Act, the surface of the Earth shall be deemed to be divided in accordance with the co-ordinates represented in the official maps of Kenya held at the Survey of Kenya at a scale of 1: 50,000—

- (a) by the meridian of Greenwich and by meridians that are at a distance from that meridian of 15 or a multiple of 15 seconds of longitude;
- (b) by the equator and by parallels of latitude that are at a distance from the equator of 15 or a multiple of 15 seconds of latitude, into sections ("geometric sections") each of which is bounded;
- (c) by portions of those 2 meridians that are at a distance from each other of 15 seconds of longitude; and
- (d) by portions of 2 of those parallels of latitude that are at a distance from each other of 15 seconds of latitude.

(5) For purposes of this Act—

Ownership of minerals.

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- (a) a geometric section that is wholly within Kenya constitutes a block; and
- (b) where only part of a geometric section is within Kenya, that part constitutes a block.

(6) Despite the provisions of subsection (5), fractions of blocks as may be prescribed shall be acceptable in the case of permits granted for small-scale and artisanal mining operations.

7. (1) Nothing in this Act shall prevent any person from taking, subject to such conditions as may be prescribed from time to time by the Cabinet Secretary, soil, clay iron, salt or soda from any land, except land within the area of a mineral right, from which it has been the custom of the member of the community to which that person belongs to take the same.

Saving for custom.

(2) The Cabinet Secretary may, by notice in the Gazette, and with the advice of the Mineral Rights Board, prescribe materials of customary usage.

8. (1) The State has a right of pre-emption of all strategic minerals raised, won or obtained within the territory of Kenya before they are sold.

Right of pre-emption.

(2) The Cabinet Secretary may make Regulations to provide for the exploration, mining, processing and export of strategic minerals and strategic mineral deposits.

9. (1) A person who discovers any minerals, for which there is no apparent holder of a mineral right or on any area of land which is not held by that person under a mineral right that confers rights on the holder to conduct prospecting or mining operations for minerals, shall report the discovery to the Cabinet Secretary.

Discovery of minerals.

(2) The Cabinet Secretary shall, immediately upon receipt of a report under subsection (1) issue to the person an acknowledgement in writing of the receipt of the report.

(3) Subject to sub-section (1), a person who reports the discovery of any mineral shall be granted the first right of refusal to apply for a mineral right over the area of discovery.

PART III—GENERAL PRINCIPLES

10. A person shall not search for, prospect or mine any mineral, mineral deposit or tailings in Kenya unless

Restrictions on the acquisition of mineral rights.

that person has been granted a permit or licence in accordance this Act.

11. (1) A mineral right may be granted to or be held by a person who –

Acquisition of rights in minerals.

- (a) is of sound mind;
- (b) has attained the age of eighteen years;
- (c) is an undischarged bankrupt;
- (d) has the required technical capacity, expertise, experience and financial resources, however this shall not be a requirement for artisanal and small scale mining operations wholly owned by Kenyans; and
- (e) is not otherwise disqualified under any written law.

(2) A mineral right may be granted to or be held by a company which –

- (a) is registered and established in Kenya;
- (b) has not commenced voluntary winding up pursuant to the Companies Act;
- (c) is not subject to winding up by a court pursuant to the Companies Act; or
- (d) is not in liquidation.

No. 17 of 2015

(3) Subject to sub-section (2), the directors of the company shall be required to demonstrate the required technical capacity, expertise, experience and financial capacity.

(4) The provisions of subsections (1) (d) and (3) shall not apply to artisanal miners.

(5) In this section the word “established” means that the company is-

- (a) operating in the registered office subject to the provisions of the Companies Act; and
- (b) in operation within Kenya.

PART IV – ADMINISTRATION

12. (1) The Cabinet Secretary shall be responsible for the general administration of this Act.

General powers of the Cabinet Secretary.

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(2) In the administration of this Act, the Cabinet Secretary shall respect and uphold the principles and values enshrined in Article 201 (c) and (d); and Article 69 (1) (a) and (h) of the Constitution .

(3) Unless otherwise provided for in this Act, the Cabinet Secretary shall make Regulations to prescribe the procedure for—

- (a) consideration of the applications made under this Act; and
- (b) negotiation, grant, revocation, suspension or renewal of mineral rights.

13. (1) The Cabinet Secretary shall upon recommendation of the Mineral Rights Board, by notice in the Gazette, designate any area of land to be an area reserved exclusively for small scale mining operations.

Cabinet Secretary may declare areas reserved for small-scale operations.

(2) The Cabinet Secretary may designate an area to be an area reserved exclusively for small scale and artisanal mining operations, if—

- (a) designating the area would not be incompatible with the continued enjoyment of an existing mineral right; or
- (b) written consent has been given by an authority, agency, the Cabinet Secretary or other person required to do so under this Act.

(3) This section does not affect the right of an owner or a lawful occupier of the area covered by the mining permit to undertake non-mining operations or activities in any area to which it applies.

14. (1) The Cabinet Secretary shall, in a manner as may be prescribed in Regulations, designate any area of land to be an area reserved for applications by tender for large scale operations.

Cabinet Secretary may declare areas reserved for tendering.

(2) The Cabinet Secretary may designate any area of land to be an area reserved for applications by tender for large scale operations, if—

- (a) designating the area would not be incompatible with the continued enjoyment of an existing mineral right; and

- (b) written consent has been given by an authority, agency, the Cabinet Secretary or any other person required to do so under this Act.

15. The Cabinet Secretary shall upon recommendation of the Mineral Rights Board, by notice in the Gazette, exclude such areas as may be specified in the notice to be areas excluded from the operations under a mineral right or in which such operations are restricted, if-

Cabinet Secretary may restrict or exclude areas from operations.

- (a) designating the area would not be incompatible with the continued enjoyment of an existing mineral right; or
- (b) written consent has been given by an authority, agency, the Cabinet Secretary or any other person required to do so under any written law.

16. (1) The Cabinet Secretary shall advise and seek the approval of the Cabinet to declare certain minerals or mineral deposits to be strategic minerals or strategic mineral deposits.

Strategic Minerals.

(2) All radioactive minerals are strategic minerals.

(3) The Cabinet Secretary may, with the advice of the Mineral Rights Board, prescribe the manner for dealing with the discovery, exploration, mining, processing and export of strategic minerals and strategic mineral deposits.

17. (1) There is established—

Access to service.

- (a) the Directorate of Mines; and
- (b) the Directorate of Geological Survey.

(2) Each directorate shall be headed by a director.

(3) The Cabinet Secretary shall ensure reasonable access to the services of the directorates established under subsection (1) in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the services offered.

(4) The Cabinet Secretary may establish such other directorates as may be necessary.

18. (1) A director shall be competitively recruited and appointed by the Public Service Commission.

Appointment of Directors.

(2) In appointing a director, the Public Service Commission shall take into consideration the relevant qualification and nature of functions the director is required to undertake.

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(3) Without prejudice to subsection (2), a person is qualified to be appointed as a director, if that person –

- (a) is a citizen of Kenya;
- (b) holds a degree in mining or geology, as the case may be, from a university recognized in Kenya;
- (c) has had at least ten years proven experience at management level; and
- (d) meets the requirements of Chapter Six of the Constitution.

(4) A Director shall hold office for a term of three years, which may be renewed once.

19. (1) A director may be removed from office by the Public Service Commission, in accordance with the terms and conditions of service, for—

Removal of a director from office.

- (a) inability to perform the functions of the office due to physical or mental incapacity;
- (b) gross misconduct;
- (c) incompetence or neglect of duty;
- (d) violation of the Constitution or any other written law; or
- (e) any other ground that would justify removal from office under the terms and conditions of service.

(2) A director shall not be removed from office, unless he or she has been given—

- (a) sufficient notice of the intended removal from office; and
- (b) an opportunity to respond to the grounds for his or her intended removal from office.

20. (1) The Director of Mines shall, through the Principal Secretary, be responsible to the Cabinet Secretary for —

Functions of the Director of Mines.

- (a) the day to day operation of the Directorate of Mines;
- (b) promoting the effective and efficient management and the development of mineral resources, and the mining sector;

- (c) exercising regulatory administration and supervision over all prospecting, mining, processing, refining and treatment operations, transport and any dealings in minerals, including import and export of minerals;
- (d) ensuring compliance with conditions relating to mineral rights;
- (e) ensuring compliance with the requirements of this Act;
- (f) making any lawful orders as are necessary for the performance of the functions and duties under this Act;
- (g) reviewing, assessing and approving prospecting and mining programmes;
- (h) preparing the necessary reports required under this Act ;
- (i) facilitating access to information by the public, subject to any confidentiality restrictions;
- (j) carrying out investigations and inspections necessary to ensure compliance with the provisions of this Act;
- (k) providing advice and support to holders of mineral rights on proper and safe mining methods;
- (l) exercising regulatory administration and supervision over the use of commercial explosives in accordance with the Explosives Act;
- (m) providing advice during the negotiation of mineral agreements;
- (n) promoting co-operation among state agencies, county governments, the private sector, research bodies, non-governmental organizations and other organizations which are engaged in programmes related to mining and activities to enhance the administration and operation of this Act;
- (o) advising on the development of policy to ensure compliance with international conventions and national policies relating to the sustainable development of the mineral resources and ensure

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that mining operations take into account local and community values; and

- (p) performing such other functions as may be assigned by the Cabinet Secretary, this Act or any other written law.

(2) The Director of Mines or a duly authorized officer may, at all reasonable times, enter upon any land, licence area, permit area or mine, or any premises for the purpose of-

- (a) inspecting such area, premises or workings and examining prospecting or mining operations or the processing, refining and treatment of minerals being carried out thereat;
- (b) ascertaining whether the provisions of this Act are being complied with;
- (c) taking soil samples or specimen of rocks, ore, concentrates, tailings or minerals situated upon such area, premises or workings for the purpose of examination or assay;
- (d) examining books, accounts, vouchers, logs, journals, documents or records of any kind required to be kept under this Act, the terms and conditions of any mineral right, permit, licence or mineral agreement and taking copies of such books, accounts, vouchers, documents or records; or
- (e) obtaining such other information as deemed necessary.

(3) The Director of Mines or a duly authorised officer may, with respect to the health and safety of persons employed by a holder of a mineral right -

- (a) issue directions in writing; or
- (b) impose restrictions, including temporarily suspending any prospecting or mining operation on the holder or any person so employed.

(4) In exercising the powers under subsections (2) and (3), the Director or a duly authorised officer shall ensure that as little damage or inconvenience as possible is caused to the legitimate owner or lawful occupier of the land in respect of which the powers are exercised.

(5) A person whose land or property is damaged as a result of the exercise of the powers of the Director of Mines under subsection (1) is entitled to fair, prompt and full compensation for such damage in accordance with this Act.

21. (1) The Director of Geological Survey shall, through the Principal Secretary, be responsible to the Cabinet Secretary for —

Functions of the
Director of
Geology.

- (a) the day to day operation of the Directorate of Geological Survey;
- (b) providing geoscience expertise and data to the government on all matters related to geology and the development of minerals;
- (c) undertaking geological, geophysical, geochemical, seismological and hydro-geological surveys, investigations and mapping aimed at defining the character and distribution of rocks and superficial deposits and determining the mineral potential of Kenya;
- (d) conducting geo-environmental studies;
- (e) monitoring of seismic activities and mapping of areas of potential geohazards;
- (f) conducting geological analysis and valuations;
- (g) developing a national repository of geo-science information through the compilation, publication and dissemination of information and data concerning the geology and mineral resources of Kenya and facilitate access to this information by the general public;
- (h) promoting private sector interest and investment in mineral exploration by providing geological information and services to prospective investors;
- (i) maintaining a laboratory, library and record facilities as may be necessary for the discharge of the functions;
- (j) providing geoscience expertise in evaluations of prospecting and mining applications;
- (k) providing support to the Director of Mines in relation to exercising regulatory administration

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and supervision over all prospecting and mining operations;

- (l) undertaking audits of mineral right holders' geological sampling and assaying processes; and
- (m) performing any other function as may be assigned by the Cabinet Secretary, this Act or any other written law.

(2) In the performance of his duties, the Director of Geological Survey or a duly authorised officer may—

- (a) enter any licence or permit area;
- (b) upon informing the lawful owner or legal occupant, enter into or upon any land for the purpose of carrying out surveys;
- (c) take soil samples or specimens of rocks, concentrate, tailings or minerals from any licence or permit area for the purpose of examination or assay;
- (d) break up the surface of the land for the purpose of ascertaining the rocks or minerals within or under it; and
- (e) dig up any land and fix any post, stone, mark or object to be used in the survey of such land.

(3) In exercising the powers under subsection (2), the Director or a duly authorized officer shall ensure that as little damage or inconvenience as possible is caused to the legitimate owner or lawful occupier of the land in respect of which the powers are exercised.

(4) A person whose land or property is damaged as a result of the exercise of the powers of the Director of Geology under subsection (1) shall be entitled to fair, prompt and full compensation for such damage in accordance with this Act.

PART V—MINING INSTITUTIONS AND BODIES

22. (1) There is established the National Mining Corporation, which shall be the investment arm of the national government in respect of minerals.

Establishment of
National Mining
Corporation.

(2) The Corporation shall be a body corporate with perpetual succession, and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing and disposing of movable and immovable property;
- (c) borrowing money with the approval of the National Treasury in accordance with the relevant law;
- (d) entering into contracts; and
- (e) doing such other things as may be necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The initial capital for the Corporation shall be monies appropriated by Parliament for that purpose.

23. The headquarters of the Corporation shall be in Nairobi.

Headquarters of the Corporation.

24. The functions of the Corporation shall be to —

Functions of the Corporation.

- (a) engage in mineral prospecting and mining; and any other related activities;
- (b) invest on behalf of the national government;
- (c) acquire by agreement or hold interests in any undertaking, enterprise or project associated with the exploration, prospecting and mining;
- (d) acquire shares or interest in any firm, company or other body of persons, whether corporate or unincorporated which is engaged in the mining, prospecting, refining, grading, producing, cutting, processing, buying, selling or marketing of minerals; and
- (e) carry on its business, operations and activities whether as a principal agent, contractor or otherwise, and either alone or in conjunction with any other persons, firms or bodies corporate.

25. (1) The Corporation shall be managed by a Board comprising of—

Board of the corporation

- (a) a chairman, appointed by the President;
- (b) the Principal Secretary responsible for mining or a representative ;

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- (c) the Principal Secretary responsible for the National Treasury or a representative;
- (d) the Principal Secretary responsible for trade or a representative; and
- (e) three other persons, not being employees of the corporation.

(2) The Cabinet Secretary shall make Regulations to prescribe the criteria for the appointment of the members under paragraphs (a) and (e).

(3) An appointment under subsection (1) (a) and (e) shall be by name and by notice in the Gazette.

(4) The term of office for members under subsection (1) (a) and (e) shall be for a period of three years and may be renewed for one further final term.

(5) A person ceases to be a member, if he or she –

- (a) resigns, by giving written notice to the Cabinet Secretary;
- (b) is absent from three consecutive meetings of the Board without the permission of the chairperson;
- (c) is convicted of an offence and sentenced to imprisonment for a term not exceeding six months ;
- (d) is adjudged bankrupt;
- (e) is incapacitated from performing his duties as a member of the Board, by prolonged physical or mental illness.

(6) A representative member referred to under subsection (1) (b) (c) and (d) shall, when attending a meeting, be deemed for all purposes to be a member of the Board.

26. (1) There shall be a chief executive officer of the Corporation who shall be competitively recruited by the Corporation.

Chief Executive
Officer of the
Corporation.

(2) The chief executive officer shall be—

- (a) the accounting officer for the Corporation;
- (b) the secretary to the Board; and

(c) responsible for the day to day administration and management of the affairs of the Corporation.

(3) A person shall be qualified for appointment as the chief executive officer, if that person—

(a) holds a relevant degree from a university recognised in Kenya;

(b) has at least seven years management experience in a public or private institution;

(c) meets the requirements of Chapter Six of the Constitution; or

(d) has not been convicted of an offence and is not serving a term of imprisonment.

(4) The chief executive officer shall be appointed for a term of three years, which may be renewed for one further term.

(5) The chief executive officer may be removed from office in accordance with the terms and conditions set out in the contract and for violation of any written law or violation of the terms and conditions of the contract.

27. The Cabinet Secretary shall make Regulations generally for purpose of the operationalization of the Corporation.

National Mining Corporation Regulations.

28. (1) The Cabinet Secretary shall facilitate the establishment of a Mineral and Metals Commodity Exchange.

Establishment of Minerals and Metal Commodity Exchange

(2) The purpose of the Mineral and Metals Commodity Exchange shall be to facilitate efficiency and security in mineral trade transactions.

(3) The Cabinet Secretary may make Regulations to prescribe the criteria for the establishment and the functions of a mineral and metals commodity exchange.

29. The Cabinet Secretary shall ensure that –

Access to geoscience information.

(a) a database of geoscience and information is kept and maintained; and

(b) is made available to the public on request.

30. (1) There is established a Mineral Rights Board.

Mineral Rights Board.

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- (2) The Mineral Rights Board shall comprise of-
- (a) a chairperson with demonstrable knowledge and experience of the minerals and mining sector, who shall be appointed by the President;
 - (b) the Principal Secretary responsible for matters relating to mining ;
 - (c) the Principal Secretary responsible for the National Treasury;
 - (d) one person who has relevant qualifications or experience in mining, geology, geophysics or engineering, nominated by the Council of County Governors;
 - (e) the Chairperson of the National Land Commission;
 - (f) the Director of Mines who shall be the secretary to the Mineral Rights Board;
 - (g) the Director of Geological Surveys; and
 - (h) two persons with professional qualifications and experience in the mining industry.

(3) The Cabinet Secretary shall appoint the persons under sub-section (2) (d) and (h) who shall serve a period of three years.

(4) A person shall be qualified for appointment as a chairperson or member of the Mineral Rights Board if that person-

- (a) is a citizen of Kenya;
- (b) holds a degree from a recognized university, in geology, geophysics, mining, engineering, economics, business administration or law ;
- (c) has experience in the mining sector of not less than ten years in the case of the chairperson and five years in the case of any other member; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(5) A person shall not be qualified for appointment as a Chairperson or member of the Mineral Rights Board, if that person—

- (a) is an undischarged bankrupt;
- (b) suffers from physical or mental infirmity which renders him or her incapable of discharging the function of the Mineral Rights Board; and
- (c) has been convicted of an offence whose term of imprisonment exceeds six months.

(6) The Chairperson and members of the Mineral Rights Board appointed under subsection (2) (a) and (h) shall hold office for a period of three years and may be eligible for re appointment for one further term.

31. (1) The functions of the Mineral Rights Board shall be to advise and give recommendations, in writing, to the Cabinet Secretary on-

Functions of the Mineral Rights Board.

- (a) the grant, rejection, retention, renewal, suspension, revocation, variation, assignment, trading, tendering, or transfer of Mineral Rights Agreements;
- (b) the areas suitable for small scale and artisanal mining;
- (c) the areas where mining operations may be excluded and restricted;
- (d) the declaration of certain minerals as strategic minerals;
- (e) cessation, suspension, or curtailment of production in respect of mining licences;
- (f) fees, charges and royalties payable for a mineral right or mineral; and
- (g) any matters which under this Act, are required to be referred to the Mineral Rights Board.

(2) The Mineral Rights Board may for the purpose of facilitating the performance of its functions establish such number of committees to advise the Mineral Rights Board on matters relating to mining and minerals.

PART VI—GENERAL PROVISIONS ON MINERAL RIGHTS

32. (1) The Cabinet Secretary, on the recommendation of the Mineral Rights Board, may grant, deny or revoke a mineral right.

Categories of mineral rights.

(2) A mineral right may be granted in respect of a large scale operation or small scale operation.

(3) The following licences and permits may be granted for a mineral right under this Act to authorise a mineral right holder to engage in—

(a) large scale operations which shall include —

- (i) a reconnaissance licence;
- (ii) a prospecting licence;
- (iii) a retention licence;
- (iv) a mining licence; or

(b) small scale operations, which shall include —

- (i) a prospecting permit; or
- (ii) a mining permit.

(4) The Cabinet Secretary may on the recommendation of the Mineral Rights Board, by notice in the Gazette, designate any other mineral right which may be granted under this Act.

33. (1) A person shall make an application for a mineral right in the prescribed manner to the Cabinet Secretary.

(2) The Cabinet Secretary shall, on the recommendation of the Mineral Rights Board, approve or reject an application-

- (a) within ninety days in the case of an application for prospecting licence or reconnaissance licence; or
- (b) within one hundred and twenty days in the case of an application for a mining licence.

(3) Subject to sub-section (2), the Cabinet Secretary shall notify the Mineral Rights Board of the decision to approve or reject an application before notifying the applicant.

(4) Subject to subsection (2), the Cabinet Secretary shall notify the applicant in writing whether the application has been accepted or rejected.

(5) Where the application is approved, the applicant shall by notice in writing accept or reject the offer for grant

Feedback on status of applications for large scale operations.

of the mineral right within twenty-one days from the date of receipt of notification of the approval.

(6) Where the applicant does not notify the Cabinet Secretary of the acceptance of the offer, the approval of the application shall lapse after twenty-one days.

(7) An applicant who is aggrieved by the decision of the Cabinet Secretary may appeal to the High Court within thirty days.

34. (1) The Cabinet Secretary shall, on receipt of the application, give notice in writing of the pending application for the grant of a mineral right to –

Mineral right applications

- (a) the land owner or lawful occupier of the land where the mineral is located;
- (b) the community; and
- (c) the relevant county Government.

(2) The Cabinet Secretary shall, on receipt of the application, publish notice of the pending application in a newspaper of wide circulation at the applicant's expense.

(3) A notice given under sub-section (1) shall-

- (a) state the proposed boundaries of the land in relation to which an application for a mineral right is made; and
- (b) be published, for twenty one days in the Gazette and in the offices of the County Government within which county the land is situated.

(4) Subject to sub-section (3), a person or community may object to the grant of a licence-

- (a) within twenty one days in the case of an application for a prospecting licence; and
- (b) within forty two days in the case of an applications for a mining licence.

(5) The Cabinet Secretary shall hear and determine any objection to an application under subsection (4) through the Minerals Rights Board.

35. (1) A mineral right issued under this Act or any other written law, shall be evidenced by a licence or permit.

Form of mineral right.

(2) The licence or permit referred to under subsection (1), shall be in the prescribed form.

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36. (1) The Cabinet Secretary shall not grant a mineral right which authorises prospecting or mining operations on—

Mineral rights in excluded and restricted areas.

- (a) any land specified by the Cabinet Secretary, by notice in the Gazette, to be land upon which such operations are excluded or restricted; or
- (b) an area of which is subject to an existing permit or licence.

(2) The Mineral Rights Board shall, prior to recommending to the Cabinet Secretary the grant of a mineral right, require the applicant to seek —

- (a) approval of the National Land Commission, in relation to public land;
- (b) the approval of the relevant State agency where that mineral right is on public land under Article 62 (1)(b) of the Constitution;
- (c) the approval of the appropriate Cabinet Secretary or other authority, where the area in respect of which a mineral right is sought is dedicated or set apart as a place of burial, religious significance, as a public building, or for any other public purpose;
- (d) the Governor of the respective county exercising control where the land is situated within a town, municipality or trading centre;
- (e) the Cabinet Secretary responsible for matters relating to wildlife conservation and management, where the land is situated within a marine park, a national park or a local sanctuary under the Wildlife (Conservation and Management) Act;
- (f) the Cabinet Secretary responsible for matters relating to the environment, where the land is situated within a protected area, a protected natural environment, or a protected coastal zone under the Environmental Management and Coordination Act;
- (g) the Director of the Kenya Forest Service, where the land is situated within a forest area or; operations on, under or over an area, that has been declared a forest area under the Forests Act;

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- (h) any other person who in the opinion of the Cabinet Secretary would otherwise be affected by the grant of a mineral right, who may include the owner of private land or the community in occupation of the land.

(2) The Cabinet Secretary shall determine any questions as to whether operations on any land are excluded under this section.

37. (1) A prospecting and mining rights shall not be granted under this Act with respect to private land without the express consent of the registered owner, and such consent shall not be unreasonably withheld.

Mineral rights on private land.

(2) For the purpose of subsection (1), consent shall be deemed to be given for the purposes of this Act where the owner of private land has entered into —

- (a) a legally binding arrangement with the applicant for the prospecting and mining rights or with the Government, which allows for the conduct of prospecting or mining operations; or
- (b) an agreement with the applicant for the prospecting and mining rights concerning the payment of adequate compensation.

(3) Where consent is granted prior to any change in land ownership, such consent shall continue to be valid for as long as the prospecting and mining rights subsists.

38. (1) A prospecting and mining rights shall not be granted under this Act or any other written law over community land without the consent of —

Mineral rights on community land.

- (a) the authority obligated by the law relating to administration and management of community land to administer community land; or
- (b) the National Land Commission in relation to community land that is unregistered.

(2) For the purpose of subsection (1), consent shall be deemed to be given for the purposes of this Act where the registered owners of community land have entered into —

- (a) a legally binding arrangement with the applicant for the prospecting and mining rights or with the Government, which allows the conduct of prospecting or mining operations; or

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(b) an agreement with the applicant for the prospecting and mining rights concerning the payment of adequate compensation.

(3) Subject to the law relating to community land, where consent is granted prior to any change in land ownership, such consent shall be valid for as long as the prospecting and mining rights subsists.

(4) The Cabinet Secretary may, by notice in the Gazette, make regulations for the grant of prospecting and mining rights over community land.

39. The person responsible for a State organ, agency, or authority or a person referred to under sections 36, 37 or 38 shall give written consent or notice of refusal to the applicant within twenty days.

Consent or otherwise.

40. (1) The Cabinet Secretary may take steps under the law relating to the compulsory acquisition of land or rights or interests in land, to vest the land or area in question, or rights or interests in such land or area, in the Government or on behalf of the Government, where the consent required under sections 36, 37 or 38 is—

Compulsory acquisition of land for prospecting and mining

(a) unreasonably withheld; or

(b) the Cabinet Secretary considers that withholding of consent is contrary to the national interest.

(2) Subject to sub-section (1), the land or area shall cease to be land excluded from prospecting or mining.

41. (1) The Cabinet Secretary shall invite parties to tender in respect of large-scale operations over an area or areas of land designated under section 14.

Tendering for mineral rights.

(2) The Cabinet Secretary shall in consultation with the National Treasury and subject to the law relating to public procurement, make Regulations to provide for tendering guidelines.

42. (1) A mineral right may be granted subject to such conditions as may be determined by the Cabinet Secretary including conditions concerning—

Conditions attaching to mineral rights.

(a) the protection of the mineral interests;

(b) the protection of the environment;

- (c) community development;
- (d) safety of prospecting and mining operations;
- (e) health and safety of persons undertaking those operations;
- (f) the protection of the lawful interests of the holders of any other mineral right; and
- (g) the maximum number of blocks a person or a company may hold.

(2) Unless otherwise provided for in the mineral right, the condition subject to which a mineral right is granted shall continue to have effect and be enforceable after the —

- (a) expiration of the term of the mineral right;
- (b) surrender of the whole or part of the area specified in the mineral right; or
- (c) revocation of the mineral right in respect of the whole or part of the area specified in the right.

(3) Subject to sub-section (2), the Cabinet Secretary may enforce the conditions, as if the conditions were contained in a contract between the Cabinet Secretary and the holder of the mineral right and valuable consideration had been given to the holder for the holder's compliance with the condition.

43. (1) A holder of a mineral right shall not—

- (a) engage in wasteful mining or treatment practices; or
- (b) conduct his operations otherwise than in accordance with this Act, best industry practice and any other guidelines as shall be prescribed from time to time by the Cabinet Secretary.

(2) The Cabinet Secretary or an officer authorised by the Cabinet Secretary, may issue directions to the holder of a mineral right requiring the holder to undertake measures necessary to —

- (a) prevent wasteful mining practices; or
- (b) ensure that prospecting or mining operations are carried out in accordance with mining best practice, the Act or guidelines under this Act.

Directions concerning good mining practice.

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(3) The holder of a mineral right shall comply with any direction given under this Act.

(4) A person who does not comply with the provisions of this section commits an offence.

44. The holder of a mineral right shall exercise the rights conferred under the mineral right reasonably, responsibly and in a manner that does not adversely affect the interests of any other holder of a mineral right, or the owner or occupier of the land over which the mineral right extends.

Mineral rights to be exercised reasonably and responsibly.

45. A holder of a mineral right and any agent appointed by the holder of a mineral right shall register with the Principal Secretary an address in Kenya to which all communications and notices made under this Act to the mineral right holder or agent may be sent.

Registered address.

46. (1) To ensure skills transfer to and capacity building for the citizens, the holder of a mineral right shall submit to the Cabinet Secretary a detailed programme for the recruitment and training of citizens of Kenya in a manner as may be prescribed by the Cabinet Secretary.

Employment and training of Kenyans.

(2) The submission and approval of the programme under subsection (1) shall be a condition for the grant of mineral right.

(3) The Cabinet Secretary shall make regulations to provide for the replacement of expatriates, the number of years such expatriates shall serve and provide for collaboration and linkage with universities and research institutions to train citizens.

(4) The Cabinet Secretary shall issue policy guidelines making further provision to give effect to this section.

47. (1) The holder of a mineral right shall give preference in employment to members of the community and citizens of Kenya.

Preference in employment.

(2) In the case of a large scale operation, the holder of a mineral right shall –

- (a) conduct training programmes for the benefit of employees;
- (b) undertake capacity building for the employees;

- (c) only engage non-citizen technical experts in accordance with such local standards for registration as may be prescribed in the relevant law;
- (d) work towards replacing technical non-citizen employees with Kenyans, within such reasonable period as may be prescribed by the Cabinet Secretary;
- (e) provide a linkage with the universities for purposes of research and environmental management;
- (f) where applicable and necessary facilitate and carry out social responsible investment for the local communities; and
- (g) implement a community development agreement as may be prescribed in Regulations.

48. (1) Where a mineral right is for a large scale mining operation, the State shall acquire ten percent free carried interest in the share capital of the right in respect of which financial contribution shall not be paid by the State.

Government participation in mining licence.

(2) The provisions of sub-section (1) shall apply to large scale mining operations and to mining operations relating to strategic minerals.

(3) Subsection (1) shall not preclude the State from any other or further participation in mining and operations which shall be agreed with the holder at arm's length.

(4) The Cabinet Secretary shall make regulations to provide for state participation in mining or prospecting operations between the Government and the holder of a mineral right.

49. (1) The Cabinet Secretary shall prescribe the limits of capital expenditure for the purpose of this section.

Local equity participation

(2) A holder of a mining licence whose planned capital expenditure exceeds the prescribed amount shall list at least twenty percent of its equity on a local stock exchange within three years after commencement of production.

(3) The holder of a mining licence may apply in writing to the Cabinet Secretary to execute an equitable

alternative mechanism that will allow the company to meet the requirement set in subsection (1), including an extension of time.

(4) The Cabinet Secretary, may after consultation with the National Treasury extend the period set out in subsection (2), for reasons that the market conditions do not allow for a successful completion of the offering in the local stock exchange.

50. The holder of a mineral right shall, in the conduct of prospecting, mining, processing, refining and treatment operations, transport or any other dealings in minerals give preference to the maximum extent possible—

Preference for local products.

- (a) to materials and products made in Kenya;
- (b) to services offered by members of the community and Kenyan citizens; and
- (c) to companies or businesses owned by Kenyan citizens.

51. (1) The holder of a mineral right shall not assign, transfer, mortgage or trade such right or part thereof without the consent of the Cabinet Secretary on recommendation of the Mineral Rights Board.

Assignments, transfers, mortgage and trade of mineral rights.

(2) The Cabinet Secretary shall not unreasonably withhold consent to assign, transfer, mortgage or trade a mineral right and shall inform an applicant of the decision within thirty days of receipt of an application to assign, transfer, mortgage or trade a mineral right.

(3) The Cabinet Secretary shall not consent to a proposed assignment, transfer, mortgage or trade of a mineral right to a person or a body corporate which is not eligible for the grant of a mineral right under this Act.

(4) Prior to assignment, transfer, mortgage or trade of a mineral right, and within thirty days from the date of receiving consent, the holder of such right shall notify the Kenya Revenue Authority of the transfer of an interest in a mineral right.

(5) The Cabinet Secretary shall not register the interest of the transferee until the transferor produces evidence of compliance with the relevant tax provisions.

(6) Subject to this Act, the holder of a mineral right shall notify the Cabinet Secretary of any significant

proposed change in the ownership or control of the mining company with any single interest exceeding twenty-five percent interest in the licence.

(7) A proposed change shall not take effect until it has been approved by the Cabinet Secretary.

(8) The Cabinet Secretary shall not refuse to grant approval, except for valid reasons.

(9) The transferee as well as the transferor of a mineral right shall be liable for the payment of all rent and compensation which may have accrued, and the observance of all obligations imposed by the licence up to the date of the transfer in respect of the licence or part thereof so transferred, but the transferor shall not be liable for the payment of any future rents and compensation or the compliance with any obligations so imposed as aforesaid in regard to the licence or part thereof so transferred after the date of the transfer.

52. The Mineral Rights Board shall prepare and submit a report on each application for a mineral right to the Cabinet Secretary.

Preparation of reports

53. (1) The holder of a mineral right shall, within three months following the end of each financial year, furnish the Cabinet Secretary and the Kenya Revenue Authority with a copy of audited annual financial statements, in accordance with International Accounting Standards.

Annual financial reports.

(2) The Cabinet Secretary shall prescribe the form and contents of the annual financial statements.

54. (1) The holder of a mineral right, or an applicant for the grant or renewal of a mineral right, shall provide such additional information to the Cabinet Secretary as may be reasonably required for consideration of the application.

Power to require additional information.

(2) The Cabinet Secretary shall request for information by written notice to the holder of the mineral right.

(3) Where the Cabinet Secretary requires additional information to be provided under subsection (1), an application for the grant or renewal of a mineral right shall be deemed to be incomplete until the mineral right holder

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furnishes the additional information to the Cabinet Secretary.

55. (1) The Cabinet Secretary shall submit an annual report, to Cabinet, of all mineral rights granted or rejected under this Act or any other written law.

Report by the Cabinet Secretary.

(2) The report submitted under subsection (1) shall indicate the justification for granting or rejecting a mineral right under this Act or any other written law.

56. Applications for a mineral right shall be considered, processed and determined on a first-come first-served basis.

Priority of applications.

57. (1) The Cabinet Secretary shall extend the term of a mineral right that has expired by effluxion of time—

Treatment of applications.

(a) where the mineral right is for a prospecting licence and the holder is awaiting a decision on an application made in accordance with this Act for—

(i) the renewal of the licence; or

(ii) a retention licence or a mining licence that applies to the whole, or a part, of the area covered by the prospecting licence.

(b) where the mineral right is for a retention licence and the holder is awaiting a decision on an application made in accordance with this Act for—

(i) the renewal of the licence; or

(ii) a mining licence; or

(c) where the mineral right is for a mining licence or a mining permit and the holder is awaiting a decision on an application for renewal of the mineral right made in accordance with this Act.

(2) An extension of the term of a mineral right in accordance with subsection (1) shall end immediately if an application for any of the mineral rights mentioned in this section is surrendered or is refused.

58. The Cabinet Secretary shall only grant or renew a mineral right for a large scale operation where the applicant has complied with the provisions of this Act.

Conditions for grant of mineral rights for large scale operations.

59. An application for the grant or renewal of a mineral right may be withdrawn by the applicant at any time before the applicant receives information of the approval or rejection of the application.

Withdrawal of an application.

Large scale operations

Reconnaissance Licence

60. This Part shall only apply to reconnaissance licence holders.

Application of Part

61. (1) An application for reconnaissance licence shall be submitted to the Cabinet Secretary in the prescribed form with the prescribed fee.

Application for a reconnaissance licence.

(2) An applicant for a reconnaissance licence shall provide the following information to the Cabinet Secretary—

- (a) the area in respect in which the reconnaissance licence is sought;
- (b) the proposed programme for the reconnaissance operations to be carried out;
- (c) details of the technical expertise and financial resources to be used in the conduct of the reconnaissance operations;
- (d) a plan outlining the proposals for procurement of local goods and services by the applicant; and
- (e) any other information required by the Cabinet Secretary as may be prescribed by Regulations.

(3) The Cabinet Secretary, on the recommendation of the Mineral Rights Board shall grant a reconnaissance licence, if—

- (a) the size area of land on which the reconnaissance licence is sought is reasonable and in line with the programme of operations proposed by the applicant;
- (b) the applicant has adequate financial resources, technical competence and mining industry experience to carry on the proposed programme of reconnaissance operations;
- (c) the local product plan by the applicant with respect to the procurement of locally available goods and services is acceptable; and

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(d) the local employment plan by the applicant with respect to employment and training of Kenyan citizens is acceptable.

62. (1) The maximum area covered by a reconnaissance licence shall be a block or any number of blocks not exceeding five thousand contiguous blocks each having a side in common with at least one block the subject of the application.

Maximum area of reconnaissance licence

(2) Notwithstanding the number of blocks that may be granted under sub-section (1), nothing in this Act shall prevent the government from conducting any reconnaissance over the total land offshore area of Kenya or such lesser area as the Cabinet Secretary may approve.

(3) A person or company may hold only one reconnaissance licence or such number of licences as the Cabinet Secretary shall prescribe in Regulations.

63. The term of a reconnaissance licence shall not exceed two years and is not renewable.

Term of a reconnaissance licence

64. (1) Any existing mineral right area, or an area closed to prospecting and mining falling within the reconnaissance licence area, shall be deemed to be excluded from the application.

Restrictions on grant of reconnaissance licence

(2) Where any land which is the subject of a reconnaissance licence becomes the subject of an exclusive Mineral Right, or is subsequently closed to prospecting or mining, it ceases to be subject of the reconnaissance licence.

(3) Where it is required to fly over any land for the purpose of the exercise of any right under a reconnaissance licence nothing shall prevent any such flight from being undertaken anywhere within the boundaries of the reconnaissance licence area whether or not any areas are excluded by virtue of sub-sections (1) and (2).

(4) Any results obtained from any airborne survey shall be subject to copyright laws of Kenya with regards to disclosure as prescribed in Regulations.

65. (1) The holder of a reconnaissance licence shall enjoy non-exclusive rights to carry out reconnaissance for the minerals in the area covered by the licence in accordance with the provisions of this Act.

Rights conferred by a reconnaissance licence

(2) The holder of a reconnaissance licence may, in exercise of the rights conferred under sub-section (1) —

- (a) enter on or fly over the reconnaissance area to carry out approved reconnaissance operations;
- (b) take and remove specimens and samples from the reconnaissance area not exceeding such limit as is reasonably required for reconnaissance purposes;
- (c) take timber and water from any lake or watercourse for the purposes of reconnaissance operations;
- (d) erect equipment, plant and buildings necessary to carry out the reconnaissance operations; and
- (e) remove on or before the termination of the reconnaissance operations, any camps, temporary buildings or installations which the holder may have erected in the licence area.

(3) A person appointed by the holder of a reconnaissance licence to act as an agent of the holder may exercise the rights of the holder of the licence subject to any limitations on the power of the agent contained in the instrument of appointment.

66. Any mineral acquired in the course of reconnaissance operations under reconnaissance licence shall be the property of the National Government and shall not be disposed of or removed from Kenya without the written consent of the Cabinet Secretary.

Minerals obtained under reconnaissance licence

67. (1) The holder of a valid reconnaissance licence shall—

Obligations under reconnaissance licence

- (a) commence reconnaissance within three months of grant of the licence;
- (b) carry out reconnaissance in accordance with the approved programme of reconnaissance operations;
- (c) expend on reconnaissance in accordance with the programme of reconnaissance, not less than such amount as may be specified in the reconnaissance licence;
- (d) not engage in drilling, excavation or other subsurface exploration techniques;

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- (e) inform and consult on an ongoing basis with the national and county government authorities and communities about the reconnaissance operations that require physical entry onto the land within their jurisdiction;
- (f) not enter land that is excluded from the reconnaissance licence;
- (g) compensate users of land for damage to land and property resulting from reconnaissance operations in the licence area;
- (h) not remove any mineral from reconnaissance area except for the purpose of having such mineral analysed, valued or tested;
- (i) ensure that the amount of work and amount of expenditure as specified in the approved programme or reconnaissance operations is actually expended in the course of undertaking reconnaissance operations within the mandated deadlines stipulated in the plan and reported in the reports that may be required by the relevant Regulations;
- (j) notify the Cabinet Secretary without any unreasonable delay of the discovery of any mineral deposit of potential commercial use;
- (k) notify the Cabinet Secretary of any archaeological discovery;
- (l) comply with the conditions of the licence and any directions issued by the Cabinet Secretary or authorised officer in accordance with the Act;
- (m) submit to the Cabinet Secretary geological and financial reports and such other information relating to reconnaissance operations as may be prescribed;
- (n) carry out reconnaissance in accordance with the international good practice standards and any guidelines as may be prescribed;
- (o) remove within sixty days of the expiration of the reconnaissance licence, any camps, temporary buildings or machinery erected or installed by the

holder and repair or otherwise make good any damage to the surface of the ground occasioned by such removal to the satisfaction of the Cabinet Secretary or a duly appointed officer.

(2) Where the expenditure specified in the approved programme of reconnaissance operations in sub-section (1) (c) is not expended during the term of the reconnaissance licence, any shortfall shall be paid to the Ministry of Mining in a manner as prescribed by the Cabinet Secretary.

(3) A reconnaissance licence is subject to an area-based annual charge as may be prescribed.

(4) A reconnaissance licence is not transferable.

68. (1) A reconnaissance licence issued in accordance with this Act shall include—

Form of
reconnaissance
licence

- (a) an approved programme of reconnaissance including an expenditure commitment;
- (b) an approved plan for the procurement of local goods and services;
- (c) an approved plan to employ and train citizens of Kenya; and
- (d) any other conditions applying to the licence.

69. (1) The holder of reconnaissance licence shall keep complete and accurate records of the reconnaissance operations at the registered office of the holder in the prescribed manner.

Record- keeping
and reporting
requirements

(2) The records of a reconnaissance operations shall include—

- (a) details of all minerals discovered;
- (b) the results of geological, geochemical, geophysical or airborne surveys obtained and compiled by the holder;
- (c) financial statements and books of accounts as the Cabinet Secretary may by notice require; and
- (d) any other reports or information as may be prescribed or otherwise determined by the Cabinet Secretary.

(3) The holder of a reconnaissance licence shall submit six-monthly and annual reports on reconnaissance operations in the form prescribed in guidelines

70. (1) The holder of a reconnaissance licence may make an application in the prescribed form to the Cabinet Secretary for approval to amend the approved programme for reconnaissance.

Amendment of programme for reconnaissance.

71. (1) The holder of a reconnaissance licence may, upon application in the prescribed form and manner and upon meeting prescribed conditions, surrender the licence.

Right to surrender reconnaissance licence.

(2) Upon surrender, the holder of a reconnaissance licence shall submit all records, reports, results, data and interpretation arising from the reconnaissance operations to the Cabinet Secretary which shall become the property of the State, and the holder shall not trade or otherwise divulge information to any third party without the express permission of the Cabinet Secretary.

Prospecting Licence

72. (1) A person may apply for a prospecting licence to the Cabinet Secretary in the prescribed form and accompanied by the prescribed fee.

Application for prospecting licence.

(2) An applicant for a prospecting licence shall provide the following information to the Cabinet Secretary

- (a) the mineral or minerals in respect of which the licence is sought;
- (b) the area in respect of which the licence is sought;
- (c) particulars of the proposed programme for prospecting operations to be carried out under the licence;
- (d) details of the experience and financial resources available to the applicant to be able to conduct the prospecting operations;
- (e) a plan giving particulars of the proposals by the applicant with respect to the employment and training of Kenyan citizens; and
- (f) a plan giving particulars of the proposals by the applicant with respect to the procurement of local goods and services.

(3) The Cabinet Secretary shall not grant a prospecting licence unless he is satisfied that—

- (a) the size area of land over which the prospecting licence is sought is reasonable having regard to the proposed programme of prospecting operations by the applicant;
- (b) the applicant has adequate financial resources, technical competence and mining industry experience to carry on the proposed programme of prospecting operations;
- (c) the applicant has submitted an environmental rehabilitation and restoration plan;
- (d) the local product plan by the applicant with respect to the procurement of locally available goods and services are acceptable; and
- (e) the employment plan by the applicant with respect to employment and training of Kenyan citizens are acceptable.

(4) The Cabinet Secretary shall prescribe the items required to be submitted by the applicant where an application for the prospecting licence is approved under this Act.

73. The area covered by a prospecting licence shall be a block or a number not exceeding one thousand five hundred contiguous blocks each having a side in common with at least one other block the subject of the application.

Maximum area of prospecting licence.

74. The term of a prospecting licence shall be specified in the licence, and in any case shall not exceed three years.

Term of prospecting licence.

75. (1) The holder of a prospecting licence shall enjoy exclusive rights to carry out prospecting operations in the area covered by the licence in accordance with the provisions of this Act.

Rights conferred by prospecting licence.

(2) The holder of a prospecting licence may, in the exercise of the rights conferred under subsection (1) –

- (a) demarcate the areas that fall within the licence area;
- (b) enter the area of land specified in the licence and take all reasonable measures on or under the surface of the land to carry out prospecting operations; and

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(c) erect equipment, plant and buildings necessary to carry out the prospecting operations.

(3) A person appointed by the holder of a prospecting licence to act as an agent of the holder may exercise the rights of the holder of the licence under the licence, subject to any limitations on the powers of the agent contained in the instrument of appointment.

(4) In the event of change of land rights, a prospecting licence holder shall maintain mineral rights over the licence area unless fully compensated by the new land rights holder.

76. (1) Any mineral acquired in the course of prospecting operations under a prospecting licence –

Minerals obtained under prospecting licence –

- (a) is the property of the National Government; and
- (b) shall not be disposed of or removed from Kenya without the written consent of the Cabinet Secretary.

(2) Subsection (1) (b) shall not apply to the prescribed quantity required for sampling, assaying, analysis or other similar examination.

77. (1) The holder of a prospecting licence shall—

Obligations under prospecting licence.

- (a) commence prospecting operations within three months of the grant of the prospecting licence or a period specified in the approved programme for prospecting operation;
- (b) undertake prospecting operations in accordance with the approved programme of prospecting operations;
- (c) ensure that the amount of work and expenditure specified in the approved programme of prospecting operations is actually expended in the course of undertaking prospecting operations within the deadlines stipulated;
- (d) comply with the terms and conditions of the environmental rehabilitation and restoration plan;
- (e) without any unreasonable delay, notify the Cabinet Secretary of the discovery of any mineral deposit of potential commercial value including

mineral deposits for which the holder of the licence was not authorised to prospect;

- (f) notify the Cabinet Secretary of any archaeological discovery;
- (g) comply with the conditions of the licence or any existing and applicable minerals agreement, and any directions issued by the Cabinet Secretary or an authorized officer in accordance with this Act;
- (h) submit to the Cabinet Secretary geological and financial reports and such other information relating to prospecting operations as may be prescribed either quarterly or at such other intervals as may be determined by the Cabinet Secretary; and
- (i) carry out prospecting activities in accordance with the international best practice standards and guidelines as may be prescribed.

(2) Where the expenditure specified in the approved programme for prospecting operations in sub-section (1) (c) is not expended during the term of a prospecting licence, it shall be paid to the ministry in a manner as may be prescribed by Regulations made under this Act.

78. A prospecting licence issued in accordance with this Act shall include the following information in addition to the information referred to in section 72—

- (a) an approved programme for prospecting operations, including expenditure estimates;
- (b) an approved plan for the procurement of local goods and services;
- (c) an approved plan to employ and train citizens of Kenya; and
- (d) an approved environmental impact assessment report, a social heritage impact assessment and environmental management plan, where required.

79. (1) The holder of a prospecting licence shall keep complete and accurate records of the prospecting operations at the registered office of the holder in the manner prescribed.

Form of prospecting licence.

Record-keeping and reporting requirements.

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(2) For the purpose of sub-section (1), records of the prospecting operations include –

- (a) details of all minerals discovered;
- (b) the results of geochemical or geophysical analysis obtained and compiled by the holder;
- (c) financial statements and books of accounts as the Cabinet Secretary may by notice require; and
- (d) any other reports or information as may be prescribed or otherwise determined by the Cabinet Secretary.

80. The holder of a prospecting licence may make a written application in the prescribed form to the Cabinet Secretary for approval to amend the approved programme for prospecting operations.

Amendment of programme for prospecting operations.

81. (1) The holder of a prospecting licence may apply to the Cabinet Secretary for the renewal of the prospecting licence in respect of an area of land that forms part of the prospecting area.

Renewal of prospecting licence.

(2) An application under this section shall be made in the prescribed form and shall be accompanied by the prescribed fee.

(3) An application for the renewal of a prospecting licence shall be made three months before the expiry of the term of the current prospecting licence.

(4) The Cabinet Secretary, on the recommendation of the Mineral Rights Board, shall respond to an application for the renewal of a prospecting licence within sixty days of receipt of the application.

(5) Where an application has been made and the Cabinet Secretary fails to respond before the expiry of the prospecting licence, the applicant may continue the prospecting operations until the application is determined.

82. (1) An application for the renewal of a prospecting licence shall be accompanied by –

Application for renewal of prospecting licence.

- (a) a report on the progress of the prospecting operations;
- (b) a statement of the costs incurred in the course of undertaking prospecting operations;

- (c) particulars of the programme for prospecting operations that the applicant proposes to carry out during the renewal period, including an estimate of expenditure;
- (d) a plan showing the area of land in respect of which renewal is sought; and
- (e) proof of submission and approval of environmental audit reports relating to the initial application and the application for renewal, to the National Environmental Management Authority.

(2) Where an applicant does not provide a plan in accordance with subsection (1) (d), the Cabinet Secretary shall determine the area in respect of which renewal shall be granted.

(3) The Cabinet Secretary shall only renew a prospecting licence, where the applicant demonstrates compliance with this Act.

83. (1) The term for renewal of a prospecting licence shall be specified in the licence and in any case shall not exceed three years.

Term for renewal.

(2) A prospecting licence shall not be renewed for more than two times after the initial grant of the licence.

84. (1) Unless the Cabinet Secretary agrees that a smaller area may be relinquished, the size of the area specified in a prospecting licence shall be reduced upon renewal –

Relinquishment, consolidation etc.

- (a) by not less than one half the number of blocks, but a minimum of one hundred and twenty five blocks shall subject to the licence; or
- (b) where the blocks form not more than three discrete areas, each consisting of a single block or a number of contiguous blocks each having a side in common with at least one other block in that area.

(2) Where a person or company holds two or more contiguous prospecting licences of the same term and in respect of the same mineral or minerals, the Cabinet Secretary may, for the purposes of relinquishment of part or any of the areas thereof, declare the areas covered by such licence to be one area subject to a single prospecting

licence and provide written notification to the holder of the prospecting licence.

(3) A person shall not be paid compensation in respect of the relinquishment of land provided for under this Act or where the land formed part of the prospecting area under a prospecting licence.

Retention Licence

85. (1) This section applies where –

Eligibility for retention licence.

- (a) the holder of a prospecting licence has identified a mineral deposit that is of potential commercial significance within the prospecting area; and
- (b) the deposit cannot be developed immediately due to temporary adverse market conditions, economic factors, technical constraints, or other factors beyond the reasonable control of the holder of the licence.

(2) Where the circumstances described in subsection (1) exist, the holder of a prospecting licence may apply for a retention licence.

86. (1) The holder of a prospecting licence may apply for a retention licence by making an application to the Cabinet Secretary in the prescribed form and accompanied by the prescribed fee.

Application for retention licence.

(2) An applicant for a retention licence shall provide information to the Cabinet Secretary in the prescribed form in accordance with subsection (1) –

- (a) the mineral or mineral deposit in respect of which the licence is sought;
- (b) a full study and assessment by an independent expert on—
 - (i) the prospects for recovery;
 - (ii) the commercial significance of the mineral deposit;
 - (iii) the relevant adverse market conditions, economic factors, technical constraints or any other factors that may make it impossible to develop the mineral deposit immediately;

- (c) the area in respect of which the licence is sought;
- (d) particulars of any proposed prospecting operations to be carried out under the licence;
- (e) details of the experience and financial resources available to the applicant for the development of the mineral when the relevant adverse market conditions, economic factors, technical constraints or other factors which make it impossible to develop the mineral cease to exist;
- (f) a plan giving particulars of the applicant's proposals with respect to the employment and training of Kenyan citizens; and
- (g) a plan giving particulars of the applicant's proposals with respect to the procurement of local goods and services.

(3) The Cabinet Secretary, on the recommendation of the Mineral Rights Board, shall only grant a retention licence, if –

- (a) the application is reasonable having regard to the study and assessment referred to in sub-section (2)(b);
- (b) the applicant has adequate financial resources, technical competence and mining industry experience to develop the mineral deposit once the relevant adverse market conditions, economic factors, technical constraints or other factors that make it impossible to develop the mineral deposit cease to exist;
- (c) the applicant has obtained an environmental and social impact assessment licence and an environmental management plan which relates to the operations to be carried out under the retention licence where required under the Environment Management and Coordination Act;
- (d) the applicant's proposal with respect to the procurement of local goods and services is acceptable; and
- (e) the applicant's proposal with respect to employment and training of Kenyan citizens is acceptable.

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(4) The Cabinet Secretary may require the applicant to provide any additional information which may be reasonably required regarding the applicant's proposal for the retention and development of the mineral deposits covered by the application.

(5) Where an applicant does not respond to a request for additional information in accordance with subsection (4), the Cabinet Secretary shall reject the application.

87. (1) The term of a retention licence shall be specified in the licence, and shall not exceed two years.

Term of retention licence.

(2) The holder of a retention licence may, at any time but not later than three months before expiration of the initial term of the licence, apply to the Cabinet Secretary for a renewal of the retention licence in the prescribed manner.

(3) The Cabinet Secretary, on the recommendation of the Mineral Rights Board shall grant a renewal of the term of the licence for a further period not exceeding two years.

88. (1) The holder of a retention licence shall enjoy the exclusive right to -

Rights conferred by retention licence.

- (a) conduct prospecting operations in the retention area; and
- (b) apply for a mining licence in respect of all or a part of the retention area.

(2) The holder of a retention licence may, in the exercise of the rights conferred under subsection (1) -

- (a) demarcate areas that fall within the licence area;
- (b) enter the area of land specified in the licence and take all reasonable measures on or under the surface of the land to carry out prospecting operations; and
- (c) erect equipment, plant and buildings necessary to carry out the prospecting operations.

(3) A person appointed by the holder of a retention licence to act as an agent of the holder may exercise the rights of the holder of the licence under the licence, subject to any limitations on the powers of the agent contained in the instrument of appointment.

89. The holder of a retention licence shall –

- (a) demarcate the licence area in such manner as may be prescribed ;
- (b) back fill or otherwise make safe in the prescribed manner or as otherwise directed by the Cabinet Secretary any excavations made during the course of prospecting operations;
- (c) permanently preserve, or otherwise make safe in the prescribed manner or as otherwise directed by the Cabinet Secretary, any boreholes made during the course of prospecting operations;
- (d) comply with the terms and conditions of the environmental restoration, rehabilitation and heritage plan;
- (e) remove any equipment, plant or building erected for prospecting operations in the area specified in the licence;
- (f) carry out such studies and assessments of the prospects of the commercial exploitation of the mineral deposits concerned as may reasonably be required by the Cabinet Secretary ; and
- (g) comply with the conditions of the licence or any existing and applicable minerals agreement, and any directions issued by the Cabinet Secretary or an authorized officer in accordance with this Act.

90. (1) The holder of a retention licence shall keep at the registered office, complete and accurate records of prospecting operations relating to the licence in the manner prescribed.

Record-keeping
and reporting
requirements.

(2) The records to be kept by the holder of a retention licence for the purposes of subsection (1) shall include –

- (a) details of all minerals discovered;
- (b) results of geochemical or geophysical analysis obtained and compiled by the licence holder;
- (c) results of studies, surveys, tests and other work undertaken in the area covered by the Retention Licence, including any interpretation and assessment of those tests and surveys;

- (d) financial statements and such other books of account as the Cabinet Secretary may prescribe; and
- (e) such other reports and information as may be prescribed or otherwise determined by the Cabinet Secretary.

91. (1) The Cabinet Secretary may issue written notice to the holder of the retention licence requiring the holder to apply for a mining licence in respect of the minerals specified in the notice before the end of the period specified in the licence.

Compulsion to apply for mining licence by retention licence holder.

(2) The Cabinet Secretary shall issue a notice under sub-section (1) if he is satisfied, based on an independent report, that it has become technically possible and commercially viable for a mineral deposit that is the subject of a retention licence to be mined during the term of the licence.

(3) Where the holder of a retention licence fails to comply with a notice served in accordance with subsection (1), the Cabinet Secretary shall give such holder thirty days' notice to show cause as to why the retention licence should not be revoked.

(4) Where no response is received within the period specified in subsection (3), the Cabinet Secretary shall revoke the retention licence.

(5) The holder of a retention licence shall not be entitled to compensation, if a retention licence is revoked under this section.

Artisanal Miners Operations

92. (1) This part shall only apply to artisanal miners.

Application of Part

93. (1) The Cabinet Secretary may establish a county office of the Ministry.

Establishment of offices in the County.

(2) The Cabinet Secretary shall designate a representative of the Director of Mines who shall be the head of the county office and who shall report to the Director of Mines.

(3) The functions of the officer shall be to-

- (a) grant, renew and revoke artisanal mining permits;

- (b) compile a register of the artisanal miners and specifying particulars that may be determined by the Cabinet Secretary;
- (c) supervise and monitor the operation and activities of artisanal miners;
- (d) advise and provide training facilities and assistance necessary for effective and efficient artisanal mining operations;
- (e) submit to the Director of Mines, reports or other documents and information on artisanal mining activities within the county as prescribed in regulation;
- (f) facilitate the formation of artisanal association groups or cooperatives; and
- (g) promote fair trade of artisanal miners.

94. (1) There shall be established in every county an Artisanal Mining Committee.

Artisanal Mining Committee.

(2) An Artisanal Mining Committee shall comprise of-

- (a) a representative of the Governor ,who shall be the chairperson of the committee;
- (b) the representative of the Director of Mines who shall be the secretary;
- (c) three persons not being public officers and elected by the association of artisanal miners in the county;
- (d) a representative of the inspectorate division of the Ministry;
- (e) a representative of the National Environment Management Authority; and
- (f) a representative of the county land board.

(3) The Committee shall advise the representative of the Director of Mines in the granting, renewal or revocation of artisanal mining permits.

(4) The members of the Committee shall hold office for a period and on such terms and conditions as may be determined in the instrument of appointment.

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Qualification of applicants for an Artisanal Mining Permit

95. (1) A permit for an artisanal mining operation shall be granted to a person who –

- (a) is a citizen of Kenya;
- (b) has attained the age of majority; and
- (c) may be a member of an artisanal mining cooperative association or group.

(2) Where any other mineral right has been granted over a parcel of land an artisanal permit shall not be granted.

(3) A person shall not engage in artisanal mining operations unless the person has been granted an artisanal mining permit under this Act.

(4) A person may apply for an artisanal mining permit to the representative of the Director of Mines in the area of operation in the prescribed form.

(5) An application for an artisanal mining permit shall contain the following information–

- (a) the name, nationality and address of the applicant;
- (b) the name of the co-operative, association or group, place of registration and the registered office address;
- (c) the minerals in respect of which the permit is sought;
- (d) description of the area in respect of which the permit is sought; and
- (e) the land owner's consent has been obtained where the land is not designated as an artisanal or small scale mining area.

(6) The representative of the Director of Mines shall notify the applicant of the grant or refusal of the application within the prescribed time.

(7) A permit granted by the representative of the Director of Mines shall be for the specified mineral in the application and shall be subject to conditions specified in the permit.

96. (1) A permit granted under this Act shall be valid for a period three years from the date of issue and shall be renewable upon application for one more term.

Duration of a permit

(2) A holder of an artisanal mining permit may apply to convert it to a small scale permit in the manner as may be prescribed in Regulations.

97. (1) The representative of the Director of Mines may revoke a permit granted where the holder of the permit—

Revocation of a permit

- (a) contravenes the terms and conditions of the permit; or
- (b) is convicted of any offence relating to smuggling or illegal sale or dealing in minerals.

98 (1). A holder of an artisanal permit may mine and produce minerals in an effective and efficient method.

Operations of Artisanal Miners

(2) The holder of an artisanal permit shall observe good mining practices, health and safety rules and pay due regard to the protection of the environment.

(3) The Cabinet Secretary shall prescribe Regulations for the protection, health and safety of artisanal mining operations.

99. Where a permit is granted in a designated area to a person other than the owner of the land, the holder shall compensate the owner of the land in the prescribed manner.

Compensation of use of land

100. The sale of minerals won by an artisanal miner shall be subject to the Regulations prescribed by the Cabinet Secretary.

Sale of minerals

Mining Licence

101. (1) A person or company may apply for a mining licence in the prescribed form and accompanied by the prescribed fee.

Application for mining licence.

(2) An application for a mining licence under subsection (1) shall be in the prescribed form and addressed to the Cabinet Secretary and shall provide the following information –

- (a) the mineral or minerals in respect of which the licence is sought;
- (b) the area in respect of which the licence is sought;
- (c) a proposed programme of mining operations that outlines the mine forecasts and operation plans,

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including the options for minerals beneficiation in the prescribed form;

- (d) a feasibility study;
- (e) a statement regarding the mineral or minerals in the area of land over which the licence is sought, including details of all known minerals as well as probable mineral reserves;
- (f) a statement of the financial and technical resources available to the applicant to carry out the proposed mining operations and to comply with the conditions of the licence;
- (g) a plan giving particulars of the applicant's proposals with respect to the employment and training of Kenyan citizens;
- (h) a plan giving particulars of the applicant's proposals with respect to the procurement of local goods and services;
- (i) proof of submission and approval of an environmental and social impact assessment report and environmental management plan for the term of the mining licence to the National Environment Management Authority; and
- (j) a plan giving particulars of the applicant's proposals with respect to social responsible investments for the local community

102. The Cabinet Secretary shall not grant a mining licence in respect of land which is the subject of a prospecting licence, reconnaissance licence, a retention licence or a mining licence unless –

- (a) the applicant is the holder of that licence; or
- (b) the applicant, with the consent of the licence holder, is applying for a licence that would permit the applicant to work a mine dump or mine waste and tailings on the land but not to undertake any other mining operation on the land.

103. The Cabinet Secretary, on recommendation of the Mineral Rights Board, may grant a mining licence if satisfied that –

Restrictions in respect of mining licences.

Consideration of applications

- (a) the area of land over which the mining licence is sought is reasonable having regard to the applicant's proposed programme of mining operations, but in any case not more than three hundred contiguous blocks;
- (b) the applicant has adequate financial resources, technical competence and mining industry experience to carry out the proposed programme of mining operations;
- (c) the applicant has obtained an approved environmental impact assessment licence, a social heritage assessment and environmental management plan in respect of the applicant's proposed mining operations;
- (d) the applicant's proposal with respect to the procurement of local goods and services is acceptable;
- (e) the applicant's proposal with respect to employment and training of Kenyan citizens is acceptable;
- (f) the project is feasible based on the feasibility study; and
- (g) the applicant's proposal with respect to engaging in community investments is socially responsible.

104. The Cabinet Secretary shall grant a mining licence to an applicant where –

- (a) the applicant is the holder of a prospecting licence and has given notice to the Cabinet Secretary of the discovery of minerals in or on terrestrial or marine areas which are the subject of the prospecting licence; and
- (b) the applicant has satisfied the requirements prescribed by this Act for the grant of a mining licence.

105. The Cabinet Secretary shall not reject an application for a mining licence unless –

- (a) he has given the applicant a notice of the intention to reject the application stating the grounds for rejecting the application;

Application by holder of prospecting licence.

Notice of refusal

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- (b) he has specified in the notice a period within which the applicant may make appropriate proposals to remedy the grounds stated in the notice of intention to reject the application; and
- (c) the applicant has failed, within the specified period, to make appropriate proposals.

106. A mining licence shall contain the following information in addition to any other information provided for under this Act—

Form of mining licence.

- (a) the mineral in respect of which the licence is issued;
- (b) name and address of the holder;
- (c) date of grant and expiry of the licence;
- (d) the area in respect of which the licence issued;
- (e) the approved programme for mining operations;
- (f) the approved plan for the procurement of local goods and services;
- (g) conditions subject to which the licence is issued;
- (h) the approved plan to employ and train citizens of Kenya;
- (i) details of the approved environmental impact assessment report, social heritage impact assessment and environmental management plan; and
- (j) such other information as the Cabinet Secretary may consider necessary.

107. The term of a mining licence shall not exceed –

Term of mining licence.

- (a) twenty five years; or
- (b) the forecast life of the mine,

whichever is shorter, and shall be specified in the licence.

108. (1) The holder of a mining licence shall enjoy the exclusive right to carry out mining operations in respect of the mineral or mineral deposit specified in the licence within the area specified subject to the provisions of this Act and the terms and conditions set out in the licence.

Rights conferred by mining licence.

(2) In the exercise of the rights referred to in subsection (1), the holder of a mining licence may –

- (a) enter the area of land specified in the licence and take all reasonable measures on or under the surface of the land to carry out mining operations;
- (b) erect equipment, plant and buildings necessary to mine the specified mineral and to transport, dress or treat the minerals so recovered; or
- (c) dispose of any mineral recovered subject to the payment of the required fees and royalties.

(3) A person appointed by the holder of a mining licence to act as an agent of the holder may exercise the rights of the licensee under the licence, subject to any limitations on the powers of the agent contained in the instrument of appointment.

109. The holder of a mining licence shall—

- (a) commence mining operations within six months of the grant of the licence, or as may be specified in the approved program for mining operations or in any relevant minerals agreement;
- (b) conduct mining operations in compliance with the approved programme for mining operations;
- (c) comply with the terms and conditions of the approved environmental impact assessment licence, social heritage assessment and environmental management plan relating to the operations to be carried out under the mining licence;
- (d) demarcate and keep demarcated the mining area in the prescribed manner;
- (e) comply with the conditions of the licence, any applicable mineral agreement and any directions issued by the Cabinet Secretary or an authorized officer in accordance with this Act;
- (f) submit to the Cabinet Secretary up to date quarterly returns of mine development and mineral production;
- (g) stack or dump any mineral or waste products in the manner provided for in the licence or as

Obligations under mining licence.

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otherwise prescribed, having regard to good mining industry practice;

- (h) carry out prospecting and mining activities in accordance with international best practice and the prescribed guidelines; and
- (i) sign a community development agreement with the community where mining operations are to be carried out in such a manner as shall be prescribed in Regulations.

110. (1) The holder of a mining licence shall keep at the registered office, a complete and accurate record of the mining operations in the prescribed form.

Record-keeping and reporting requirements.

(2) For the purpose of subsection (1) records shall include –

- (a) copies of all maps, geological reports, sample analysis, aerial photographs, cores, logs and tests and other data obtained and compiled by the licence holder;
- (b) financial statements and such other books of account as the Cabinet Secretary may prescribe; and
- (c) such other reports and information as may be prescribed or otherwise determined by the Cabinet Secretary.

111. (1) Subject to the terms and conditions of the licence, the holder of a mining licence shall notify the Cabinet Secretary of any proposed amendment to the approved programme for mining operations.

Amendment of programme of mining operations.

(2) Unless the Cabinet Secretary rejects the proposed amendment, the amendment shall take effect three months after the date of notification under subsection (1).

(3) A proposed amendment which is likely to substantially alter the approved programme of mining operations shall not take effect unless expressly approved by the Cabinet Secretary.

112. (1) The holder of a mining licence shall notify the Cabinet Secretary of the discovery of any mineral to which the licence does not relate within thirty days of the discovery.

Newly discovered minerals.

(2) The notification under sub-section (1) shall include the particulars of the site and such other circumstances of the discovery as may be prescribed or otherwise required by the Cabinet Secretary.

(3) Subject to subsections (1), the holder of the mining licence may apply to the Cabinet Secretary to include a newly discovered mineral or minerals under the mining licence.

(4) An application to include a newly discovered mineral or minerals made under subsection (3) shall be in the prescribed form and shall include a proposed programme for mining operations relating to such mineral or minerals.

(5) The Cabinet Secretary, on recommendation of the Mineral Rights Board may approve an application made in accordance with subsections (3), subject to such additional conditions as the Cabinet Secretary may prescribe.

113. (1) The holder of a mining licence shall give the Cabinet Secretary a notice of any intention to cease or suspend mining operations, or curtail production carried on pursuant to the mining licence.

Cessation, suspension, or curtailment of production in respect of mining licences.

(2) For the purposes of subsection (1), the holder shall give notice of at least –

- (a) six months, for cessation of mining operation;
- (b) three months, for suspension of mining operation;
or
- (c) one month, for curtailment in production.

(3) A notice given under section shall include a statement that sets out the technical and economic basis for the proposed cessation, suspension or curtailment of production.

(4) Upon receipt of a notice given in accordance with this section, the Cabinet Secretary shall investigate the circumstances leading to the proposed cessation, suspension or curtailment of production and if he or she is satisfied, the cessation, suspension or curtailment of production should be granted.

(5) The Cabinet Secretary may approve the cessation, or suspension of mining operations or curtailment of

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production proposed by the licence holder subject to the holder complying with such conditions as the Cabinet Secretary may determine.

(6) The Cabinet Secretary shall prescribe the period within which a suspension allowed under this section may be acceptable.

(7) Where the holder is unable to give the required notice as provided under subsection (1) and the holder suspends or curtails production from a mine, the holder shall, within three days of the suspension or curtailment, notify the Cabinet Secretary.

(8) The Cabinet Secretary shall make Regulations to provide for the conditions to manage the mines and the licence area where a cessation notification has been approved.

114. (1) The holder of a mining licence may apply to the Cabinet Secretary for the renewal of the licence.

Renewal of
mining licence.

(2) An application under subsection (1) shall be made in the prescribed form and be accompanied by the prescribed fee in respect of all or part of the licence area.

(3) An application for the renewal of a mining licence shall be made at least one year before the expiry of the licence.

115. An application for the renewal of a mining licence shall contain the information or be accompanied by the following documents –

Application for
renewal of mining
licence.

- (a) a proposed programme of mining operations to be carried out during the term of renewal;
- (b) a plan of the area in respect of which renewal of the mining licence is sought including all or any of the contiguous blocks in the mining licence area;
- (c) an approved environmental impact assessment licence, social heritage assessment, environmental management plan in respect of the applicant's proposals, where required under the Environmental Management and Coordination Act and Community Development Agreement; and
- (d) such additional information as the Cabinet Secretary may prescribe.

116. The term of renewal of a mining licence shall not exceed –

- (a) fifteen years; or,
- (b) the remaining life of the mine,

whichever is the shorter and shall be specified in the licence.

Term of renewal.

PART VII—MINERAL AGREEMENTS

117. (1) The Cabinet Secretary in consultation with the National Treasury may enter into a mineral agreement with the holder of a mining licence where the proposed investment exceeds five hundred million United States dollars.

Mineral agreement.

(2) A mineral agreement shall include terms and conditions relating to –

- (a) the minimum prospecting or mining operations to be carried out and the time table determined for purposes of such operations;
- (b) the minimum expenditure in respect of the prospecting or mining operations;
- (c) the manner in which prospecting or mining operations shall be carried out;
- (d) the environmental obligations and liabilities, subject to the requirement of the Environment Management and Co-ordination Act;
- (e) the procedure for settlement of disputes;
- (f) the processing, whether wholly or partly in Kenya, of any mineral or group of minerals found, obtained or mined by the holder of a mineral right in the course of mining operations;
- (g) the basis on which the market value of any mineral or group of minerals in question may from time to time be determined;
- (h) insurance arrangements;
- (i) resolution of disputes through an international arbitration or a sole expert; and
- (j) community development plans;

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(k) the payments of royalties, taxes, cess and other fiscal impositions; and

(l) financial arrangements.

(3) Nothing contained in a mineral agreement shall be construed as to absolve any party to such agreement from a requirement prescribed by law.

(4) A mineral agreement shall be prepared in accordance with a standard format as may be prescribed in Regulations.

(5) All mineral agreements shall be submitted to the National Assembly and the Senate for ratification.

118. The Cabinet Secretary may, on behalf of the State, on the advice of the Mineral Rights Board, negotiate with an applicant for or holder of a prospecting licence, a retention licence or a mining licence in respect of large scale mining or exploitation of minerals in the marine and terrestrial areas in accordance with the provisions of this Act and any other written law.

Power to negotiate mineral agreements.

119. (1) Subject to Article 35 of the Constitution and any other written law, all mineral agreements entered into in accordance with this Act shall be public and be made accessible to the public.

Publication of mineral agreements.

(2) The Cabinet Secretary shall ensure access to information under this Act, including ensuring that mineral agreements and the status thereof is available in the official website of the Ministry for the time being responsible for mining.

(3) The Cabinet Secretary shall make Regulations to provide for accountable and transparent mechanisms of reporting mining and mineral related activities, including-

(a) revenues paid to the government by mineral right holders; and

(b) production volumes under each licence or permit.

(4) The Cabinet Secretary shall publish on the ministry website, annually, records, reports, mineral agreements and any other relevant information.

120. (1) The Cabinet Secretary shall have regard to provisions of Article 71 of the Constitution prior to executing any mineral agreements, or other agreement relating to the exploitation of any natural resources.

Requirements for conclusion and execution of mineral agreements.

(2) Any agreement relating to large scale mining operations on terrestrial and marine areas shall be submitted to the National Assembly and the Senate for ratification before execution by the Cabinet Secretary.

121. (1) A term or condition contained in a mineral agreement which is inconsistent with any provision of this Act or the Constitution shall, to the extent of the inconsistency, be void and of no legal effect.

Consistency with legislation.

(2) A term or condition forming part of a mineral agreement shall not absolve any party to it from complying with provisions of this Act or any other written law.

122. The Cabinet Secretary shall apply the criteria set out in the Second Schedule for the purpose of distinguishing between small scale and large scale operations.

Distinction between large scale operations and small scale operations.

Small Scale Operations

123. The following types of mineral rights may be granted in respect of authorising small scale operations -

Categories of mineral rights relating to small scale operations.

- (a) a reconnaissance permit;
- (b) a prospecting permit; and
- (c) a mining permit.

124. (1) A person shall not be granted or be entitled to hold or acquire an artisanal mining permit, a prospecting permit or a mining permit under this Part unless that person is -

Eligibility for mineral rights relating to small scale operations.

- (a) a citizen of Kenya; or
- (b) a body corporate, where no less than sixty percent of the shareholding is held by citizens of Kenya.

(2) An artisanal mining permit, prospecting permit or a mining permit shall cease to be valid when its holder or any of its holders is or becomes ineligible for the grant of a permit.

Reconnaissance Permit

125. (1) A person may apply for a reconnaissance permit to the Cabinet Secretary in the prescribed form and upon payment of the prescribed fee.

Application for a reconnaissance permit

(2) An application for a reconnaissance permit shall contain the following-

- (a) the full name, nationality and address of the applicant;

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- (b) the mineral or minerals in respect of which the permit is sought; and
- (c) the area in respect of which the permit is sought.

126. (1) The holder of a reconnaissance permit shall enjoy the non-exclusive rights to conduct reconnaissance for the mineral or minerals in the area specified in the permit.

Rights conferred
by a
Reconnaissance
Permit

(2) The holder of a reconnaissance permit may, in exercise of the right conferred under sub-section (1) enter into the land within the area specified in the permit and take all reasonable measures to undertake reconnaissance of the land .

127. The holder of reconnaissance permit shall—

Obligations under
reconnaissance
permit

- (a) comply with the terms and conditions specified in the Permit; and
- (b) take all necessary measures to protect the environment.

128 (1) A reconnaissance licence or permit and prospecting licence or permit shall be granted under this Act on, under or over community land unless it involves excavation and drilling in which case consent should be sought prior to those activities being undertaken from—

Mineral Rights on
Community land

- (a) the authority obligated by the law relating to administration and management of community land to administer community land; or
- (b) the county government in relation to the community land that is un-alienated.

(2) Consent shall be deemed to have been given for the purposes of this Act where the registered community land representatives have—

- (a) entered into a legally binding arrangement with the applicant for the mineral rights or with the Government, which allows the conduct of mining operations; or
- (b) entered into an agreement with the applicant for the mineral right concerning the payment of adequate compensation.

(3) Subject to the law relating to community land, where consent is granted prior to any change in land

ownership, such consent shall be valid for as long as the mineral right subsists.

(4) The Cabinet Secretary may make Regulations to provide for the grant of mineral rights over community land which is not already covered by valid licences and permits duly granted under this Act, during the period of validity and renewal terms.

Prospecting Permit

129. (1) A person may apply for a prospecting permit to the Cabinet Secretary in the prescribed form and upon payment of the prescribed fee.

Application for prospecting permit.

(2) An applicant for a prospecting permit shall contain the following information –

- (a) the full name, nationality and address of the applicant or, in the case of a body corporate, the place of incorporation and the registered address;
- (b) the mineral or minerals in respect of which the permit is sought;
- (c) the area in respect of which the permit is sought;
- (d) the particulars of the proposed prospecting operations to be carried out under the permit; and
- (e) details of the experience and financial resources available to the applicant to conduct the prospecting operations.

130. (1) Where the Cabinet Secretary intends to reject an application, he or she may issue a notice of intention to reject an application to the applicant.

Notice to applicants.

(2) A notice under sub-section(1) shall state –

- (a) the grounds for the intended rejection of the application; and
- (b) a period within which the applicant may make an appropriate proposal to correct or remedy the ground for the intended refusal.

(3) Where an applicant does not respond to the notice within the period stated in the notification, the Cabinet Secretary shall reject the application.

131. (1) The term of a prospecting permit shall be specified in the permit, but in any case shall not exceed five years and may be renewed for one further term.

Term and size of prospecting permit.

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(2) The area contained in a prospecting permit shall not exceed twenty five contiguous blocks.

132. (1) The holder of a prospecting permit shall enjoy the right to prospect for the mineral or minerals and in the area specified in the permit.

Rights conferred by prospecting permit.

(2) The holder of a prospecting permit may, in exercise of the right conferred under subsection (1) -

- (a) demarcate areas that fall within the permit area;
- (b) enter into land that falls within the area specified in the permit and take all reasonable measures to undertake prospecting operations on or under the surface of the land; and
- (c) erect equipment, plant and buildings for the prospecting operations.

(3) Save for any prescribed quantities required for sampling and assaying purposes, a prospecting permit granted under this Act shall not be construed to confer upon the holder the right to dispose of minerals obtained in the course of prospecting without the consent of the Cabinet Secretary.

133. The holder of a prospecting permit shall –

Obligations under prospecting permit.

- (a) comply with the terms and conditions specified in the permit;
- (b) take all necessary measures to protect the environment; and
- (c) comply with any prescribed record keeping obligations.

134. The holder of a prospecting permit may apply for the renewal of the permit to the Cabinet Secretary in the prescribed form and upon payment of the prescribed fee.

Renewal of prospecting permit.

135. The term for renewal of a prospecting permit shall be specified in the permit, and in any case shall not exceed five years, which is the maximum period of a prospecting permit issued under this Act.

Term of renewal.

Mining Permit

136. (1) A person may apply for a mining permit to the Cabinet Secretary in the prescribed form and upon payment of the prescribed fee.

Application for mining permit.

(2) An applicant for a mining permit shall provide the following information to the Cabinet Secretary –

- (a) the full name, nationality and address of the applicant, or, in the case of a body corporate, its place of incorporation, names and nationalities of the directors and its registered address;
- (b) the mineral in respect of which the permit is sought;
- (c) details of the area in respect of which the permit is sought;
- (d) particulars of the proposed mining operations to be carried out under the permit; and
- (e) details of the mining experience and financial resources available to the applicant to conduct the mining operations.

137. (1) The Cabinet Secretary, on recommendation of the Mineral Rights Board, shall not reject an application for a mining permit, unless he or she has given the applicant a notice of intention to reject the application.

Approval of application for mining permit.

(2) A notice under sub-section (1) shall state the grounds for rejecting the application and a period within which the applicant may make an appropriate proposal to correct or remedy the grounds set out in the notice.

(3) Where the grounds for the intended refusal are not capable of being remedied, the applicant may show cause, within the specified period, to the satisfaction of the Cabinet Secretary, why the application should not be refused.

138. (1) The term of a mining permit shall be specified in the permit and shall not exceed five years.

Term of mining permit.

(2) The area contained in a mining permit shall not exceed two contiguous blocks.

139. (1) The holder of a mining permit shall enjoy the exclusive rights to carry out mining operations in the area specified in the permit.

Rights conferred by mining permit.

(2) In exercising the rights referred to in subsection (1), the holder of a mining permit may –

- (a) enter the area specified in the permit and take all reasonable measures to carry out the approved mining operations;

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- (b) erect on the area buildings and equipment necessary to carry out the mining operations; and
- (c) subject to the payment of royalties, use or dispose of any minerals recovered.

(3) A person appointed by the holder of a mining permit to act as an agent may exercise the rights of the holder of the permit, subject to any limitations on the powers of the agent contained in the instrument of appointment.

140. The holder of a mining permit shall—

Obligations under mining permit.

- (a) conduct mining operations in compliance with a plan approved by the Cabinet Secretary;
- (b) demarcate and keep demarcated the mining area in the prescribed manner;
- (c) take all measures necessary to protect and restore the environment within the mining area;
- (d) submit to the Cabinet Secretary up to date quarterly returns on mine development and mineral production;
- (e) comply with any prescribed record keeping obligations;
- (f) stack or dump any minerals or building materials or waste products in the manner provided for in the permit or as otherwise approved by the Cabinet Secretary;
- (g) not use such equipment as may be prescribed in Regulations or chemicals such as cyanide and mercury; and
- (h) pay royalties, fees, mining taxes and charges.

141. The holder of a mining permit may apply for the renewal of the permit by application to the Cabinet Secretary in the prescribed form and upon payment of the prescribed fee.

Renewal of mining permit.

142. (1) The term of renewal of a mining permit shall be specified in the permit but shall not exceed —

Term of renewal.

- (a) five years; or
- (b) the remaining life of the mine,

whichever is the shorter.

(2) The Cabinet Secretary may make Regulations to provide for inspections with respect of any area to which a mining permit is issued under this Act.

PART VIII—SURRENDER, SUSPENSION AND REVOCATION OF MINERAL RIGHTS

143. The holder of a mineral right may by notice in writing to the Cabinet Secretary apply to surrender the mineral right.

Application for approval of surrender.

144. (1) The Cabinet Secretary, on the recommendation of the Mineral Rights Board, may allow the holder of a mineral right to surrender that mineral right in respect of the whole or any part of the area specified in the mineral right.

Approval required for the surrender of mineral right.

(2) The holder of a mineral right shall apply to surrender the mineral right to the Cabinet Secretary.

(3) An application under sub-section (2) shall be in the prescribed form and the applicant shall give -

- (a) at least three months' notice of intention to surrender the whole or part of the area specified in the mineral right; or
- (b) in the case of a prospecting permit at least one months' notice of intention to surrender the whole or part of the area specified in the permit.

(4) An application made under subsection (2) shall include -

- (a) a plan of the area to be surrendered in a form which is acceptable to the Cabinet Secretary if the surrender relates to part of the area specified in the right;
- (b) proof of implementation of any environmental management plans; and
- (c) all records and reports with respect to the prospecting or mining operations carried out in the area to be surrendered.

145. (1) A proposed surrender of an area covered under a mineral right shall have no effect unless and until the Cabinet Secretary, on the recommendation of the Mineral Rights Board, gives the holder thereof written notice that the application for surrender has been approved.

Notification of approval of surrender.

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(2) An approval for the surrender of a mineral right may be granted subject to such conditions as the Cabinet Secretary, on the recommendation of the Mineral Rights Board, may deem appropriate.

146. (1) Except as provided by section 42(2) of this Act, a mineral right shall cease to have any effect when an application for its surrender is approved.

Effect of
surrender.

(2) Where the application is in respect of part of the area specified in the mineral right it shall cease to have effect in respect of that area but shall continue to have effect in respect of the remaining area.

147. (1) The Cabinet Secretary, on the recommendation of the Mineral Rights Board, may suspend or revoke a mineral right if the holder—

Grounds for
suspension and
revocation.

- (a) fails to make a payment required under this Act on the due date;
- (b) fails to comply with any condition specified in the right or an obligation placed on the holder by this Act, or fails to take the action required by the Cabinet Secretary to be taken in accordance with subsection (3);
- (c) commits an offence under this Act;
- (d) makes or is found to have made a false statement in the application for the grant or renewal of the mineral right; or
- (e) is adjudged bankrupt or in the case of a company it is declare insolvent.

(2) The Cabinet Secretary may suspend or revoke a prospecting or mining permit if the holder does not commence prospecting or mining operations under the permit in accordance with the approved work programme or programme of mining operations.

(3) Before suspending or revoking a mineral right in accordance with subsection (2), the Cabinet Secretary shall give the holder a written notice requiring him –

- (a) to comply with the condition or obligation within a reasonable period of time; or
- (b) to show cause, within that period, as to why the mineral right should not be suspended or revoked.

148. (1) Subject to section 42 (2), a mineral right shall cease to have effect upon its cancellation.

Effect of
revocation.

(2) The revocation of a mineral right shall not prejudice any liability or obligation incurred under or in relation to the mineral right prior to its revocation.

149. (1) The holder of a mineral right who applies to surrender the right shall furnish the Cabinet Secretary with a statement of the immovable and movable assets and any other information in the prescribed form –

Assets on
termination.

- (a) a statement of assets which identifies the assets the holder intends to remove from the area and those the holder intends to leave; and
- (b) a notification of any potentially hazardous substances, excavations and buildings in the area.

(2) Where a mineral right is not renewed at the end of its term or is cancelled by the Cabinet Secretary, the former holder of the mineral right shall provide a statement to the Cabinet Secretary in the prescribed form containing the information prescribed in subsection (1) within such reasonable period as the Cabinet Secretary may direct.

(3) All immovable assets of the holder under the mining licence shall vest in the Republic from the effective date of the surrender or termination of the licence.

(4) All movable assets of the holder in the mining area which are fully depreciated for tax purposes shall vest in the County Government without charge on the effective date of such termination and any property not then fully depreciated for tax purposes, the County Government or the Republic shall have the right of first refusal for the sale of such assets from the effective date of termination at the depreciated cost.

(5) Subject to subsection (4), the Cabinet Secretary may permit the assets to be removed solely and exclusively for the purpose of use by the holder in another mining operation in the country.

(6) The Cabinet Secretary shall prescribe Regulations on the use of the assets.

150. Where a mineral right is not renewed or is surrendered by the holder or cancelled by the Cabinet Secretary, the holder shall deliver to the Cabinet Secretary within a period of two months –

Delivery of
records and
documents on
termination.

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- (a) all the records which, prior to termination, the holder was obliged to maintain under this Act; and
- (b) all plans or maps of the area covered by the mineral right prepared by or for the holder.

PART IX—SURFACE RIGHTS

COMPENSATION AND DISPUTES

151. The holder of a mineral right or an agent or employee of the holder shall, when exercising a right under the mineral right over land owned or occupied by some other person, produce evidence of the mineral right if required to do so by any lawful owner or occupier of the land.

Evidence of mineral right to be produced.

152. The owner or lawful occupier or user of an area of land which is the subject of a mineral right shall continue to enjoy the right to graze livestock on the land or to cultivate the land to the extent, in each case, that doing so—

Right to graze livestock and cultivate land.

- (a) does not unduly interfere with the relevant prospecting or mining operations; and
- (b) does not, by virtue of those operations, constitute a danger or hazard to livestock or crops.

153. (1) Where the exercise of the rights conferred by a mineral right —

Principles of compensation.

- (a) disturbs or deprives the owner or any lawful occupier or user of the land or part of the land;
- (b) causes loss of or damage to buildings and other immovable property;
- (c) causes damage to the water table or deprives the owner of water supply;
- (d) in the case of land under cultivation or grazing of domesticated animals, causes any loss of earnings or sustenance suffered by the owner or lawful occupier of the land,
- (e) a demand or claim for compensation may be made to the holder of the mineral right to pay prompt, adequate and fair compensation to the lawful owner, occupier or user of the land in accordance with the provisions of this Act.

(2) A mineral right holder shall deposit a compensation guarantee bond with the relevant Ministry.

(3) The Cabinet Secretary may make Regulations relating to compensation guarantee bonds.

(4) A person shall not demand or claim compensation whether under this Act or otherwise –

(a) in consideration for permitting entry to the land connected with the enjoyment of rights conferred under a mineral right;

(b) in respect of the value of any mineral in, on or under the land that is the subject of a mineral right; or,

(c) for any loss or damage for which compensation cannot be assessed according to legal principles.

(5) Where a demand or claim for compensation is disputed, the parties to the dispute shall seek to resolve the dispute amicably by agreement reached through negotiations in good faith.

(6) Where a dispute cannot be resolved through negotiations within a reasonable period of time, either party to the dispute may refer the matter to the Cabinet Secretary for a determination in accordance with section 129 of this Act.

(7) A holder of a mineral right shall not commence mining of minerals unless the lawful occupier, owner or user of land is compensated.

(8) The Cabinet Secretary in consultation with the community and the National Land Commission shall in such manner as may be prescribed, ensure that the inhabitants or communities who prefer to be compensated by way of resettlement as a result of being displaced by a proposed mineral operation are settled on suitable alternate land, with due regard to their economic wellbeing, social and cultural values and the resettlement is carried out in accordance with the relevant physical planning law.

(9) The cost of resettlement under sub-section (8) shall be borne by the holder of the mineral right.

154. Any dispute arising as a result of a mineral right issued under this Act, may be determined in any of the following manners—

General provisions on dispute resolution.

- (a) by the Cabinet Secretary in the manner prescribed in this Act;
- (b) through a mediation or arbitration process as may be agreed upon by the disputing parties or as may be stated in an agreement; or
- (c) through a court of competent jurisdiction.

155. Subject to the provisions of this Act, the Cabinet Secretary may inquire into and determine the following matters—

Determination of disputes by Cabinet Secretary.

- (a) a dispute of the boundaries of an area held under a prospecting or mining right;
- (b) any wrongful act committed or omitted in the course of prospecting and mining operations, by any persons against any other person;
- (c) a claim by any person to be entitled to erect, cut, construct or use any pump, line of pipes, flume, race, drain, dam or reservoir for mining purposes;
- (d) a claim to have any priority of water taken, diverted, used or delivered for mining purposes, as against any other person claiming the same ; or
- (e) assessment and payment of compensation where provided for under this Act.

156. (1) A dispute referred to in section 155 may be referred to and determined by the Cabinet Secretary in accordance with the following procedures—

Procedure for determination of disputes by the Cabinet Secretary.

- (a) the party referring the dispute to the Cabinet Secretary shall lodge a memorandum with the Cabinet Secretary together with a statement of claim in the prescribed form;
- (b) on receipt of the memorandum, the Cabinet Secretary shall notify the party against whom the complaint has been made of the referral of the dispute and shall advise the other party of the nature of the complaint and invite that party to lodge a memorandum in response to the complaint;

- (c) upon receiving the written response from the party against whom a complaint has been lodged for determination, the Cabinet Secretary shall notify the parties of the time and place at which the matter will be heard and determined;
- (d) the parties shall be invited to state their respective cases before the Cabinet Secretary and shall be entitled to adduce evidence on oath or affirmation in support of their cases; and
- (e) after hearing the statements and receiving the evidence the Cabinet Secretary shall make a written determination of the dispute.

(2) Any person who is a party to a dispute referred to the Cabinet Secretary for determination under this section may appear in person or be represented by an advocate.

(3) In making a determination of a dispute, the Cabinet Secretary shall, having regard to the subject matter of the dispute, apply relevant rules and principles concerning the matter in dispute.

(4) Subject to section 155, the Cabinet Secretary may make such orders as he may consider necessary to give effect to a determination, including ordering the payment of compensation by one party to the dispute to the other.

(5) An order made by the Cabinet Secretary under this section shall be enforceable by a Court as if the same were an order of that Court.

(6) The Cabinet secretary shall keep a record of all matters heard and determined by him, and shall keep a written record of the evidence given before him.

(7) Any person who is interested in any dispute, decision or order shall be entitled to obtain a copy of such record and notes upon payment of the prescribed fee.

(8) The Cabinet Secretary may send a copy, certified under his hand and seal, of any decree or order made by him to any civil court within the local limits of whose jurisdiction the subject-matter of the decree is situated, and such civil court shall enforce the decree of the Cabinet Secretary in the same manner in which it would enforce its own decree or order.

(7) The Cabinet Secretary shall by notice in the Gazette prescribe rules of procedure to be applied in respect to determination of disputes under this Act.

157. Any person aggrieved by any decree, order or decision made or given under the powers vested in the Cabinet Secretary may appeal within thirty days to the High Court.

Appeals.

PART X-DEALINGS IN MINERALS

158. (1) A person shall not dispose of minerals, whether for sampling, assay, analysis or otherwise except –

Disposal of minerals.

- (a) with the written consent of the Cabinet Secretary;
- (b) where the person is the holder of a mineral right, in accordance with the conditions of the mineral right;
- (c) where the person is the holder of a mineral dealer's licence or a diamond dealer's licence in accordance with the conditions of the licence; or
- (d) in any other case, as otherwise permitted by or under this Act.

(2) No title to minerals shall pass in any case where a person disposes of minerals otherwise than in accordance with subsection (1).

159. (1) A person shall not engage in mineral dealings, either as principal or agent, except with and in accordance with a mineral dealer's licence or a mineral dealer's permit.

Authorisation to deal in minerals.

(2) Notwithstanding subsection (1), the holder of a mineral right may deal in minerals lawfully acquired in accordance with the terms and conditions of the mineral right.

- (3) Subsection (1) shall not apply to –
 - (a) the holder of a diamond dealer's licence who is engaged in buying diamonds in accordance with the provisions of the licence; or
 - (b) any person lawfully entitled to carry on the business of a banker.

160. (1) An application for a mineral dealer's licence shall be made to the Cabinet Secretary in the prescribed form and shall be accompanied by the prescribed fee.

Application for mineral dealer's licence.

(2) An application made under subsection (1) shall be accompanied by evidence sufficient to show that the applicant is in possession of, or commands, either sufficient knowledge, experience, or working capital to ensure that the applicant can carry on the business that would be permitted under the licence.

161. (1) A mineral dealer's licence shall expire on the thirty-first day of December of the year in which it is issued.

Term of mineral dealer's licence.

(2) A mineral dealer may apply for renewal of a mineral dealer's licence to the Cabinet Secretary in the prescribed form and upon payment of the prescribed fee.

162. The holder of a mineral dealer's licence shall not

Obligations under mineral dealer's licence.

(a) deal in minerals otherwise than in accordance with the conditions set out in the licence; or

(b) engage in mineral dealings permitted under the licence with a person who has not acquired the minerals lawfully or is otherwise not lawfully entitled to deal in the minerals.

163. (1) The holder of a mineral dealer's licence shall keep a register of the mineral dealings in the prescribed form.

Record-keeping obligations of holder of mineral dealer's licence.

(2) The holder of a mineral dealer's licence shall record in the register the following information in respect of each transaction –

(a) the nature and weight of the minerals purchased or sold;

(b) the price paid or received for the minerals;

(c) the date of the purchase or sale; and

(d) the name and address of the vendor or the purchaser or consignee.

(3) The holder of a mineral dealer's licence shall submit to the Cabinet Secretary a true copy of the register in duplicate for the preceding three months, together with a statutory declaration of the correctness thereof, in the months of January, April, July and October of every year.

164. (1) A mineral dealer's permit shall be issued, to citizens of Kenya or in the case of a body corporate, where

Mineral dealers permit.

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sixty percent of the shareholding is held by citizens of Kenya.

(2) A mineral dealer's permit shall be issued by the Cabinet Secretary upon application and payment of the requisite fees.

(3) A mineral dealer's permit shall expire on the thirty first day of December of the year in which it is issued.

(4) The holder of a mineral dealer's permit shall not export minerals but shall have the right to buy and sell locally.

165. (1) A person shall not deal in diamonds, as either principal or agent unless the person has obtained a diamond dealer's licence.

Dealings in diamonds.

(2) Notwithstanding subsection (1), the holder of a mineral right may deal in diamonds lawfully acquired in accordance with the terms and conditions of a mineral right.

(3) Subsection (1) shall not apply to any person lawfully entitled to carry on the business of a banker.

166. (1) A person shall make an application for a diamond dealer's licence to the Cabinet Secretary in the prescribed form and shall be accompanied by the prescribed fee.

Application for diamond dealer's licence.

(2) An application made under subsection (1) shall be accompanied by evidence sufficient to show that the applicant is in possession of, or commands, sufficient working capital to ensure that he can carry on the business that would be permitted under the diamond dealer's licence.

(2) The Cabinet Secretary shall, before issuing a licence under this section, require the applicant to provide security, by way of bond or cash deposit in the prescribed form as the Cabinet Secretary shall require, for the due payment of any prescribed fees or royalties which may become payable by such dealer in the course of his business under this Act.

167. (1) A diamond dealer's licence shall expire on the thirty-first day of December of the year in which it is granted.

Term of diamond dealer's licence.

(2) A diamond dealer may apply for renewal of a diamond dealer's licence to the Cabinet Secretary in the prescribed form and upon payment of the prescribed fee.

168. (1) The holder of a diamond dealer's licence shall not –

Obligations under diamond dealer's licence.

- (a) deal in diamonds except in accordance with the conditions set out in the licence;
- (b) engage in mineral dealings concerning diamonds, as either principal or agent, except with either the holder of a mineral right who is authorized to mine diamonds, or the holder of a diamond dealer's licence;
- (c) store diamonds except at the place or in the premises specified in the licence; or
- (d) deal in diamonds as either principal or agent, except at the place or in the premises specified in the licence.

(2) The holder of a diamond dealer's licence shall comply with any other condition specified in the licence.

(3) The holder of a diamond dealer's licence shall keep a register of dealings in diamonds in the prescribed form.

(4) The holder of a diamond dealer's licence shall record in the register the following information in respect of transactions for diamonds –

- (a) the nature and weight of the diamonds ;
- (b) the price of the diamonds;
- (c) the date of the transaction;
- (d) in the case of a purchase of diamonds, details of the vendor's authority to sell the minerals; and,
- (e) the name and address of the vendor, purchaser or consignee.

(5) The holder of a diamond dealer's licence shall submit to the Cabinet Secretary in the months of January, April, July and October of every year, a true copy of the register in duplicate for the preceding three months, together with a statutory declaration of the correctness

thereof, and shall also produce and exhibit the register to a police officer of or above the rank of Inspector whenever required in writing by the officer.

169. (1) The holder of a diamond dealer's licence may appoint an agent for the purpose of engaging in diamond dealings on behalf of the licence holder.

Appointment of agent by holder of diamond dealer's licence.

(2) The appointment of an agent under subsection (1) shall not operate to exempt the holder of a diamond dealer's licence from compliance with the relevant provisions of this Act and the conditions of the licence.

(3) Where the holder of a diamond dealer's licence appoints an agent he or she shall furnish the Cabinet Secretary with the following information in the prescribed form -

- (a) the name and registered address of the agent;
- (b) the date of the appointment of the agent; and,
- (c) the duration of the instrument of appointment between the licence holder and the agent and details of the terms and conditions of the agency agreement.

(4) An agent appointed by the holder of a diamond dealer's licence may exercise the rights of the holder of the licence subject to any limitations on the powers of the agent contained in the agreement or instrument of appointment between the licence holder and the agent.

170. (1) A person or company shall provide any mine support services subject to being issued with a licence by the Cabinet Secretary, upon recommendation of the Mineral Rights Board.

Mines support

(2) The Cabinet Secretary shall prescribe Regulations to give effect to this section.

Import and Export of Minerals

171. (1) A person shall not export a mineral otherwise than in accordance with an export permit granted by the Cabinet Secretary.

Export of minerals.

- (2) The holder of—
 - (a) a mineral right;

- (b) a mineral dealer's licence; or
- (c) a diamond dealer's licence,

may apply to the Director of Mines for an export permit in the prescribed form.

(3) The grant of an export permit to a person in accordance with this Act shall not exempt the person from an obligation to comply with the requirements of any other law relating to the export of minerals.

(4) Where diamonds are exported pursuant to a permit issued under this section, such export shall conform to the international best practices.

(5) The Cabinet Secretary may make Regulations to govern value addition on minerals.

172. Where a person imports minerals, the person shall make a declaration at the point of entry in the prescribed form.

Import of minerals.

Suspension and Revocation of Licence

173. (1) The Cabinet Secretary may suspend or revoke a licence or permit granted under this Part if the holder -

Suspension and revocation.

- (a) fails to make a prescribed payment by the due date;
- (b) fails to comply with a condition specified in the licence or an obligation imposed on the holder by this Act and fails to take action to remedy a breach within a reasonable time;
- (c) makes a false statement or gives false information to the Cabinet Secretary or to a public officer exercising functions under this Act that was, which information is material to the grant of the licence or permit;
- (d) dies;
- (e) becomes of unsound mind;
- (f) is adjudged bankrupt,;
- (g) is subject to financial difficulty or otherwise ineligible to hold the licence or permit; or
- (h) commits any offence under this Act.

(2) Before suspending or revoking a licence or permit under subsection (1) the Cabinet Secretary shall give the

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holder of the licence or permit written notice requiring the holder –

- (a) to comply with the condition or obligation within a reasonable period of time; or
- (b) where this is not possible, to show cause within that period, why the licence should not be suspended or revoked.

174. (1) A licence or permit which is revoked shall cease to have any effect.

Effect of revocation.

(2) The revocation of a licence or permit shall not prejudice any liability or obligation incurred under or in relation to the licence or permit prior to its cancellation.

175. Upon revocation of a licence, the holder shall deliver to the Cabinet Secretary within the prescribed period all the records which, prior to revocation or expiration, he was obliged to maintain under this Act.

Delivery of records and documents on revocation.

PART XI -HEALTH, SAFETY AND ENVIRONMENT

176. (1) A mineral right or other licence or permit granted under this Act shall not exempt a person from complying with any law concerning the protection of the environment.

Environmental laws to prevail.

(2) A mining licence shall not be granted to a person under this Act unless the person has obtained an environmental impact assessment licence, social heritage assessment and the environmental management plan has been approved.

177. A provision of this Act and any right or entitlement conferred under a mineral right shall not exempt a person from compliance with the provisions of the Water Act, 2002 concerning the right to the use of water from any water resource.

Water rights laws to prevail.

178. (1) A provision of this Act and a right or entitlement conferred under a mineral right shall not operate to exempt a person from compliance with the provisions of the Occupational Health and Safety Act, 2007 concerning the safety of workers and mine operations.

Occupational health and safety.
No. 15 of 2007

(2) In addition to provisions in subsection (1), the Cabinet Secretary shall make Regulations for safety and

health of persons employed in mines, and the carrying on of prospecting or mining operations in safe, proper, sanitary and effectual manner.

179. The holder of a permit or licence under this Act shall use the land in accordance with the terms of the permit or licence and shall ensure-

Land use.

- (a) the sustainable use of land through restoration of abandoned mines and quarries;
- (b) that the seepage of toxic waste into streams, rivers, lakes and wetlands is avoided and that disposal any toxic waste is done in the approved areas only;
- (c) that blasting and all works that cause massive vibration is properly carried out and muffled to keep such vibrations and blasts to reasonable and permissible levels in conformity with the Environmental Management and Coordination Act; and
- (d) that upon completion of prospecting or mining, the land in question shall be restored to its original status or to an acceptable and reasonable condition as close as possible to its original state.

180. (1) The Cabinet Secretary shall not grant a prospecting licence, a retention licence or a mining licence to an applicant, unless the applicant has submitted a site mitigation and rehabilitation or mine-closure plans for approval.

Requirement of site restoration and mine closure plans.

(2) The Cabinet Secretary may prescribe Regulations for site rehabilitation and mine-closure obligations.

181. (1) An applicant for a prospecting licence, a retention licence or a mining licence shall provide a bond or some other form of financial security in this section called an environmental protection bond sufficient to cover the costs associated with the implementation of the environmental and rehabilitation obligations of the holder under this Act.

Environmental protection bonds.

(2) An environmental protection bond required under subsection (1) shall be in a form and for an amount as may be determined by the Cabinet Secretary having regard to the particular characteristics of the project.

(3) In determining the form and amount of the bond referred to in subsection (2), the Cabinet Secretary shall take into account the amount that the applicant is required to provide by way of bond or some other form of financial security under the provisions of relevant Environmental Management and Coordination Act.

(4) The Cabinet Secretary may release in part an environmental protection bond upon the satisfactory completion of rehabilitation measures undertaken within the duration of a licence and shall release the bond in full following the successful completion of all environmental and rehabilitation obligations mentioned in subsection (1).

PART XII-FINANCIAL PROVISIONS

182. (1) An applicant or a holder of –

Fees.

- (a) a mineral right,
- (b) a mineral dealer's licence; or
- (c) a diamond dealer's licence,

shall pay such fees or charges and at such time as may be prescribed, by notice in the Gazette.

(2) The prescribed fees may include –

- (a) application filing fees;
- (b) report filing fees;
- (c) fees for access to geological data; and
- (d) fees for access to public registers.

(3) The prescribed charges may include annual charges payable upon grant of the relevant mineral right, mineral dealer's permit or diamond dealer's licence.

(4) The prescribed charges shall be payable annually for the duration of the mineral right, mineral dealer's permit or diamond dealer's licence.

(5) All fees and charges payable under this Act shall be demanded and recovered in the same manner as a civil debt.

183. (1) The holder of a mineral right shall pay royalty to the State in respect of the various mineral classes won by virtue of the mineral right.

Royalties.

(2) The Cabinet Secretary shall prescribe the rates payable under subsection (1).

(3) The Cabinet Secretary may require the holder of a mineral right to make returns relating to any royalties paid in such manner and within a period as may be prescribed.

(4) Any mineral samples including core samples, removed for the purposes of testing, shall not be subject to royalty unless they exceed maximum value stipulated in regulations

(5) The royalties payable under sub-section (1) shall be distributed as follows—

- (a) seventy percent to the National Government;
- (b) twenty percent to the County Government; and
- (c) ten percent to the community where the mining operations occur.

184. A transaction for the transfer of a mineral or mineral product shall be deemed to have occurred at the point of sale and shall be equal to the arm's length value of the mineral or mineral product.

Transfer
of mineral right.

185. (1) A mineral right holder who wins, extracts, produces, or disposes of minerals or mineral products shall maintain up to date records.

Record to be kept
by a mineral
rights holder.

(2) The records required to be kept under sub-section (1) shall include –

- (a) the quantity ; and
- (b) the commercially relevant characteristics of the minerals or mineral products.

(3) The Cabinet Secretary may designate a qualified person to inspect and examine any samples, books, records and accounts to ascertain the quantity, quality, grade or value of minerals or mineral products for the purpose of ascertaining or verifying the amount of any royalty payable.

186. (1) All fees, charges and royalties payable by the holder to the State under this Act shall be paid by the holder into the designated account of the State department responsible for collecting royalties.

Payment of fees
,charges and
royalties

(2) A payment shall be accompanied by a statement from the holder stating-

- (a) details of the mineral or mineral product;

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- (b) the relevant point of sale; and
- (c) the date and the amount of royalty paid.

(3) A copy of the statement shall be delivered to the Mining Cadastre Office.

(4) A mineral right holder shall report the royalty liability for each month by the fifth business day of the month.

(5) Upon receipt of a royalty payment the State department responsible for collecting royalties shall issue a receipt.

187. (1) Where there is a default in payment of the prescribed royalties by a mineral right holder, the Mining Cadastre Office shall issue a thirty day notice to the mineral right holder requiring repayment of the outstanding royalties.

Default in paying royalties

(2) In the event that the mineral right holder does not pay the royalties payable within the period specified in the notice -

- (a) the Mining Cadastre Office shall record the outstanding royalties in the cadastral register; and
- (b) the Cabinet Secretary shall suspend the respective licence or permit.

(3) In the event that the mineral right holder does not pay the royalties payable within sixty days, the Cabinet secretary shall revoke the licence or permit as the case may be.

(4) Where the holder of mineral right fails to pay the prescribed royalty with the prescribed period, the Cabinet Secretary may prohibit the disposal of any mineral or mineral product from the mining area concerned, or from any other mining area held by that mineral right holder.

188. (1) A mineral right holder may apply to the Cabinet Secretary for a reduction or temporary suspension of a royalty rate.

Reduction or suspension of royalties

(2) The Cabinet Secretary shall make Regulations to provide for the conditions and criteria for determining applications for reduction or suspension of payment of royalties.

189. A fee, royalty or other charge payable under this Act and which remains unpaid shall be deemed to be a debt due to the national government which may be recoverable summarily.

Recovery of royalty, fees and other charges

190. The Income Tax (Transfer Pricing) Rules, 2006 or successor legislation shall apply to transactions under this Act.

Transfer pricing
LN 67 of 2006

PART XIII— RECORDS AND REGISTRATION OF MINERAL RIGHTS

191. (1) There shall be established and maintained an up to date computerized mining cadastre and registry system, including a register of mineral rights.

Register of mineral rights.

(2) The register of mineral rights shall be a public document and may be inspected in such a manner as may be prescribed in Regulations.

192. (1) The register established under section 164 shall contain details of each application, grant, assignment, transfer, notice, surrender, suspension and cancellation of a mineral right.

Requirement to enter information in register.

(2) The Cabinet Secretary may prescribe such other records and instruments that shall entered into the register.

(3) The computerized mining cadastre and registry system shall include an online transactional facility to enable applications for granting and renewal of mineral rights to be submitted online.

(4) The cadastre shall be a public document and may be inspected by an interested person upon the payment of a prescribed fee.

(5) The National Land Commission shall keep a copy of the cadastre.

193. An authorised officer shall, where –

Power to correct register.

(a) an error is made in the register; or

(b) a matter is incorrectly entered or recorded in the register,

notify the person affected by the error and promptly rectify the error by correcting the error in the register.

194. An authorised officer may, upon being satisfied that the original of any document or instrument evidencing any right under this Act has been lost, destroyed or rendered illegible, at the request of the holder of such

Replacement of originals.

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document or instrument and on payment of any prescribed fee –

- (a) prepare, endorse, certify and issue to the holder a copy of the original; and
- (b) enter details of the copy in the register.

195. An authorised officer may, on receipt of payment of the prescribed fee, issue an evidentiary certificate based on the register specified in this Part, and which may be produced in any administrative or legal proceedings as evidence of the following matters –

Evidentiary certificates.

- (a) the grant, transfer, assignment, suspension, revocation or termination of a mineral right in accordance with the provisions of this Act;
- (b) that a specified land parcel was the subject of a mineral right on a date specified in the certificate;
- (c) that a mineral specified in the certificate was the subject of a mineral right;
- (d) that a person named in the certificate is or was the holder of a mineral right;
- (e) that a condition specified in the certificate is or was a condition of a mineral right; and
- (f) that a certificate of surrender was issued with respect to any particular land on a date specified in a certificate.

PART XIV – MONITORING, COMPLIANCE AND ENFORCEMENT

196. (1) The Cabinet Secretary may, by notice in the Gazette, designate duly qualified public officers, to be inspectors of mines for such jurisdictional units as may be specified in the notice.

Appointment of inspectors of mines.

(2) A mines inspector shall monitor compliance and take enforcement action and perform such other functions as may be required under this Act or specified in the notice of appointment.

(3) The Cabinet Secretary shall issue a mines inspector with a document of identification.

197. (1) The Cabinet Secretary or a mines inspector authorised by the Cabinet Secretary may without prejudice to all other written laws, at all reasonable times –

General powers of search and inspection.

- (a) enter, inspect and examine land on which prospecting or mining operations are being conducted or land which is the subject of a mineral right;
- (b) enter into an area, structure, vehicle, vessel, aircraft or building that, in the opinion of the Cabinet Secretary or the mining inspector has been or is being used for or in connection with prospecting or mining operations;
- (c) carry out periodic inspections of premises within the jurisdictional limits which have been or are being used for or in connection with prospecting or mining operations;
- (d) enter, inspect and examine any premises where mineral dealings are being conducted;
- (e) require the production of, inspect, examine, and take copies of licences, permits, registers, records of any kind and other documents relating to this Act and the carrying out of operations authorised by a mineral right, or other licence or permit granted under this Act;
- (f) take samples of any article and substances to which this Act relates and submit such samples for testing and analysis in such a manner as may be prescribed;
- (g) seize for a maximum period of seven days any article, vessel, motor vehicle, plant, equipment, substance or any other thing which the inspector reasonably believes has been used in the commission of an offence under this Act or regulations made thereunder;
- (h) upon giving the holder three months' written notice, install any equipment on any land, premises, vessel or motor vehicle for the purposes of monitoring compliance with the provisions of this Act, or regulations made thereunder;
- (i) enter into any premises to ascertain best mining and mineral processing practices including safety and health concerns;
- (j) enter into any premises to examine and enquire into the condition and ventilation of any mine or

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any building used in or connected with prospecting, mining or mineral processing operations and all matters relating to safety, welfare and the health of persons employed in any such mine or building, including the inspection of the accident and incidents register;

- (k) require such changes, as may be necessary in regard to the safety of the operation and protection of employees, to be implemented within a specified time, failing which the licence holder will be considered in breach;
- (l) order the temporary cessation of operations where he considers that the mining or processing activities are so hazardous as to constitute a serious and imminent danger to life;
- (m) enter into any premises used in or connected with prospecting, mining or mineral processing operations to examine the circumstances surrounding any accidents or incidents affecting the health of employees including the subsequent actions taken by licence holder; and
- (n) with an arrest warrant and the assistance of a police officer, arrest any person whom he reasonably believes has committed an offence under this Act.

(2) In exercising the powers under subsection (1), the inspector of mines shall carry the identification issued under this Act.

198. (1) A police officer of or above the rank of Inspector who has reasonable cause to believe that an article containing diamonds or any strategic mineral is being conveyed by post or courier in connection with the commission of an offence under this Act or Regulations made thereunder or an offence has been committed, may stop or cause the article to be stopped at any point in Kenya either during transit or otherwise.

Power to intercept and detain minerals sent by post or courier

(2) If the person who dispatched the article referred to in subsection (1) can be ascertained and is in Kenya, the police officer shall by notice in writing personally served upon that person, require him to attend, either personally or by an agent duly authorized by him in writing, at the point

at which the article is detained at a specified time which shall allow reasonable opportunity for his attendance or that of that agent, in order that he or the agent may be present at the opening and examination of the article.

(3) At the time and place specified in a notice given under subsection (2) the police officer shall open the article in the presence of the person for the time being in charge of the point of detention, and if such person or such agent attends, in the presence of such person or such agent, and shall, after examination, either release the article for transmission or require the same to be detained pending an order of a court of competent jurisdiction.

(4) If the person who dispatched the article cannot be ascertained or is not in Kenya, the police officer may at any time open the article at the point at which it is detained in the presence of the person for the time being in charge of the point of detention, and may examine the same, and shall, after examination, either release the article for transmission or require the same to be detained pending an order of a court of competent jurisdiction for the disposal thereof.

199. A police officer above the rank of an Inspector may arrest, without warrant, any person whom he has reasonable grounds to believe has committed an offence under this Act, and shall take the person before a court within the period specified in the Constitution and the Criminal Procedure Code.

Powers of arrest.

200. The Cabinet Secretary or a public officer may apply to the Environment and Land Court for orders compelling a person to immediately stop activities and operations for, or connected with, the search for, prospecting, or mining of a mineral or mineral deposit in Kenya where he reasonably believes that such operations are being carried out in contravention of the provisions of this Act.

Court orders to cease operations.

201. Subject to Article 157 of the Constitution, an authorised officer may institute proceedings in respect of any contravention of any provision of this Act or for any offence committed under this Act.

Powers to prosecute.

202. (1) A person who engages in activities and operations for, or connected with, the dealing, disposition,

Offences relating to unauthorised operations

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search for, prospecting, or mining, processing, refining export or import of a mineral or mineral deposit whether they are processed or unprocessed in Kenya without a valid licence or permit granted under this Act commits an offence and is liable on conviction to—

- (a) imprisonment for a term not exceeding two years;
- (b) a fine not exceeding ten million shillings; or
- (c) both, an imprisonment term and a fine.

(2) The Court may on the conviction of a person for the offence under sub-section (1) or if it is satisfied that an offence was committed notwithstanding that no person has been convicted of the offence, order that minerals obtained in the commission of the offence be forfeited to the national government and be disposed of as the Court may direct.

203. A person who is found in the possession of a mineral, contrary to the provisions of this Act or any other written law, commits an offence and liable on conviction to—

- (a) imprisonment for a term not exceeding six months;
- (b) a fine equivalent to the value of the mineral but not less than five hundred thousand shillings; or
- (c) both, an imprisonment term and a fine.

Offences relating to unauthorised possession of minerals.

204. A person who obstructs or hinders the holder of a mineral right, or an agent or employee of the holder, from doing an act which is authorised under this Act or under the terms of the mineral right commits an offence and liable on conviction to—

- (a) imprisonment for a term not exceeding three years;
- (b) a fine of not less than five million shillings; or
- (c) both, an imprisonment term and a fine

Offences relating to mineral rights holders.

205. (1) A person who –

- (a) hinders or obstructs the Cabinet Secretary or an authorised public officer in the exercise of their duties under this Act or Regulations made thereunder;

Offences relating to monitoring and inspection.

- (b) fails to comply with a lawful order or requirement made by the Cabinet Secretary or an authorised public officer in accordance with this Act or Regulations made thereunder;
- (c) denies the Cabinet Secretary or an authorised public officer entry upon any land, premises, vehicle or aircraft that they are empowered to enter under this Act or Regulations made there under;
- (d) impersonates the Cabinet Secretary or an authorised public officer; or,
- (e) denies the Cabinet Secretary or an authorised public officer access to records or documents kept pursuant to this Act or Regulations made thereunder commits an offence.

(2) A person who commits an offence under this section is liable on conviction to —

- (a) imprisonment for a term not exceeding three years;
- (b) a fine of not less than one million shillings; or
- (c) both an imprisonment term and a fine.

206. (1) A person who—

- (a) fails to keep records required to be kept under this Act;
- (b) fraudulently alters any records required to be kept under this Act; or
- (c) makes false or misleading statements in any application, report, notice, records or disclosure of mineral value and statements that are required to be made under this Act,

commits an offence.

(2) A person who commits an offence under this section is liable on conviction to—

- (a) imprisonment for a term not exceeding twenty-four months;
- (b) a fine of not less than one million shillings; or

Offences relating to records and statements.

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(c) both an imprisonment term and a fine

207. A person who –

- (a) contravenes a provision of this Act or regulations prescribed thereunder concerning the exercise of rights or obligations under a mineral right or the exercise of rights or obligations under any other licence or permit obtained under this Act;
- (b) contravenes a condition of a mineral right; or,
- (c) contravenes a condition of mineral dealer's licence, a diamond dealer's licence, an export licence or an import licence,

commits an offence and is liable on conviction to imprisonment for a term not exceeding three years, or to a fine of not less than one million shillings, or to both an imprisonment term and a fine.

208. A person who –

- (a) places or deposits material in a place with the intention of misleading another person as to the mineral endowment or potential of that place; or
- (b) manipulates a mineral sample to enhance its value or in any way changes the nature of the sample with the intention of deceiving or defrauding another person,

commits an offence and is be liable on conviction to imprisonment for a term not exceeding twelve months, or to a fine of not less than fifty thousand shillings, or both an imprisonment term and a fine.

209. A person who maliciously places a mineral in the possession, or in the premises, of another person with intent that the other person shall be convicted of an offence under a provision of this Act or under any Regulations prescribed under this Act commits an offence and is liable on conviction to imprisonment for a term not exceeding twenty-four months, or to a fine of not less than five hundred thousand shillings, or to both such imprisonment and fine.

210. A person who disposes of, transports, exports or imports a mineral, otherwise than in accordance with this Act or the conditions of a licence obtained under this Act,

Offences relating to conditions of licences and permits.

Offences relating to salting.

Offences relating to malicious placing of minerals on premises.

Offences relating to the unlawful disposal, export, or import of

commits an offence and is liable on conviction to imprisonment for a term not exceeding two years, or to a fine commensurate to the value of the mineral but not less than five hundred thousand shillings, or to both such imprisonment and fine.

minerals.

211. (1) A person who discloses confidential information otherwise than in accordance with this Act, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine of not more than five hundred thousand shillings, or both a term of imprisonment and a fine.

Offences relating to the unlawful disclosure of information.

(2) Subsection (1) shall not apply to any disclosure made—

- (a) in accordance with a provision of this Act;
- (b) in connection with the administration of this Act;
- (c) in connection with monitoring carried out in accordance with a provision of this Act, or the enforcement of a provision of this Act;
- (d) in connection with legal proceedings under this Act;
- (e) for the preparation of Government statistics;
- (f) for the purpose of making the information available to a public officer or a consultant engaged by the Government who has been duly authorised to receive the information for the purposes of the administration of this Act; or
- (g) with the consent of the person who provided the information.

212. (1) Where an offence is committed by a body corporate, the body corporate and every director or officer thereof, or, in the case of a partnership, a partner or officer in the partnership, who had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, commits an offence and is liable on conviction to be penalized accordingly.

Offences by bodies corporate, partnerships, principals and employees.

(2) A person is personally liable for an offence whether committed by him on his own account or as an agent or employee of another person.

(3) An employer or principal maybe held liable for an offence committed by an employee or agent against this Act, unless the employer or principal proves that the offence was committed against his express or standing directions.

213. A person who attempts to commit or aids and abets the commission of an offence under this Act or any Regulations made thereunder commits that offence and is liable, upon conviction, to the same punishment as provided for the principal offence under this Act.

Attempts and abetment.

214 Whenever it is necessary to ascertain whether a person is the holder of a mineral right, or the holder of a licence or permit granted under this Act, or is otherwise authorized to engage in mineral dealings, the burden of proof shall lie on the person who alleges that he or she is the holder of the licence or permit.

Burden of proof.

215. A person who commits an offence under this Act or regulations made under this Act for which no penalty is expressly provided, is liable on conviction to imprisonment for a term not exceeding two years or to a fine of not less than two million shillings or to both such imprisonment and fine.

General Penalty.

216. Where any offence, specified under this Act or by regulations made under this Act, is committed by the holder of a mineral right, or the holder of any other licence or permit given under this Act, the Court may, in addition to any other order, further order that the mineral right, licence or permit be revoked.

Court orders relating to revocation of licences and permits.

PART XV—MISCELLANEOUS PROVISIONS

217. (1) The holder of a mineral right or an agent appointed by a holder who is undertaking prospecting or mining operations shall, with respect to those operations, maintain insurance cover in respect of the attached risks especially for health and safety of employees.

Insurance cover.

(2) The holder or person mentioned in subsection (1) shall, where required by the Cabinet Secretary, furnish the Cabinet Secretary with certified copies of certificates of insurance that set out the insurance policy and any other documents that are required to demonstrate that the policy is valid, effective, and appropriate and covers the prescribed risks.

218. Without prejudice to any other mode of service permitted under any rule of law, a notice sent to a person under this Act shall be deemed to have been delivered to the person if it is delivered personally, or sent by registered post to the last known registered address of the person.

Notices.

219. Neither the Cabinet Secretary nor any public officer, shall be liable to be sued in a civil court in respect of the exercise or performance, or exercise or performance, in good faith of a function under and for the purposes of this Act.

Immunity of officials.

220. (1) A public officer responsible for the administration of the provisions of this Act shall not be eligible for the grant of a mineral right under this Act.

Prohibition against public officers acquiring interests.

(2) A public officer responsible for the administration of provisions of this Act shall not be eligible for the grant of a mineral dealer's licence, a diamond dealer's licence, an export permit or an import permit under this Act.

(3) A public officer shall not directly or indirectly acquire or retain a share or interest in a company carrying on prospecting or mining operations in Kenya.

221. (1) The Cabinet Secretary may publish and disseminate manuals, codes or guidelines relating to large scale and small scale operations, including in relation to environmental matters.

Power to publish manuals, codes and guidelines.

(2) In developing manuals, codes and guidelines for the purposes of subsection (1), the Cabinet Secretary shall ensure that any such publications are consistent with guidelines issued by other Government departments, agencies and authorities.

(3) Evidence that a person –

- (a) has complied with manuals, codes and guidelines may be used to show that the person has complied with his environmental obligations under this or any other Act; and
- (b) has not complied with the guidelines, may be used to show that the person has not complied with those obligations.

222. (1) Where a radioactive mineral is discovered in the course of exercising a right under this Act or under another enactment, the holder of the mineral right or

Radioactive minerals.

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another person shall immediately notify the Cabinet Secretary of the discovery.

(2) Where a radioactive mineral is discovered on land other than land which is subject to a mining right, the owner of the land shall immediately notify the Cabinet Secretary of that discovery.

(3) The holder of a mineral right shall within the first week of each month furnish the Cabinet Secretary and the Director of Geology with a true report in writing of the prospecting and mining operations conducted by the holder in the immediately preceding month with respect to radioactive minerals.

223. (1) The Cabinet Secretary may make Regulations necessary or convenient for the proper administration and implementation of this Act.

Power to make regulations.

(2) Without prejudice to the generality of the foregoing, the Cabinet Secretary may make Regulations prescribing –

- (a) the fees, royalties, rent and other charges that are payable under this Act or the manner in which they are to be calculated;
- (b) the royalties that are payable for specific minerals or the manner in which they are to be calculated;
- (c) the manner in which an area referred to in a mineral right shall be demarcated;
- (d) the manner in which records, accounts, books and other documents shall be kept, retained and made available for inspection;
- (e) the procedures to be followed in respect of tendering in areas that have been designated for tendering for large scale operations in accordance with this Act;
- (f) the measures to be observed in respect of radioactive and other restricted minerals including, the storage and transportation of radioactive and restricted minerals and the sale or supply of such minerals;
- (g) the measures to be included in programmes for prospecting and mining operations that require the Cabinet Secretary's approval;

- (h) the measures to be observed to protect and rehabilitate the environment;
- (i) procedures for the grant of mineral rights and guidelines for exploration and mining in Kenya's territorial sea, exclusive economic zone and the continental shelf;
- (j) the areas that are excluded areas under this Act;
- (k) the categories of mineral rights that are not to be granted in prescribed areas;
- (l) the form of any licence, permit, form, return or other document to be used for the purposes of this Act; and
- (m) anything which may be prescribed under this Act and for the better carrying into effect the provisions of this Act.

224. The Regulations necessary to bring into effect the provisions of this Act shall be made within one year after the coming into force of this Act.

Regulation
timelines.

PART XVI—REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

225. (1) The following laws are hereby repealed –

Repeal of
legislation and
savings.

- (a) the Mining Act;
- (b) the Trading in Unwrought Precious Metals Act;
and
- (c) the Diamond Industry Protection Act.

Cap. 306

Cap. 309

Cap. 310.

(2) Any Regulations made under the laws repealed under sub-section (1) shall continue to be in force in so far as they are consistent with this Act until such time as they are revoked by the Cabinet Secretary.

(3) Any right contained in a lease, prospecting right, exclusive prospecting licence, special licence and location granted under any of the laws repealed in (1) and subsisting immediately before the commencement of this Act, shall continue in force until expiration by passage of time.

(4) Subject to sub-section (3) the holder of mineral right in respect of large scale operations as defined under

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this Act and relevant Regulations, shall comply with all boundary provisions of the Act and Regulations.

(5) Notwithstanding sub-section (4), the holder of any mineral right in respect of a large scale operation as defined under this Act, shall be required, not later than eighteen months following enactment of the Act and relevant regulations, to update its mine plan with regard to conditions of employment, health and safety, the management of the environment and community social investments in order to comply with provisions of the new Act and its Regulations.

(6) A mineral right for prospecting, mining or dealing in minerals granted prior to this Act shall not be extended or renewed but where the granted Mineral Right provided a right to apply for a renewal or extension of the right, the holder of that mineral right may apply, subject to this Act for a similar type of licence or permit as provided for under this Act on a priority basis.

(7) Any pending applications made under the written laws specified in sub-section (1) shall be determined in accordance with the provisions of this Act and regulations

FIRST SCHEDULE (s.2)

CLASSIFICATION OF MINERALS

A. CONSTRUCTION AND INDUSTRIAL MINERALS

1. Alunite
2. Andalusite-Sillimanite Kyanite
3. Anhydrite
4. Aplite
5. Asbestos
6. Barite
7. Ball clay
8. Beryl, (excluding beryl as a source of beryllium metal or as a semi-precious stone)
9. Boron minerals
10. Calcium carbonate

11. Celestite
12. Corundum
13. Diatomite
14. Dolomite
15. Epsomite
16. Feldspar
17. Fluorite
18. Garnet for industrial purposes
19. Graphite
20. Gypsum
21. Hectorine
22. Halloysite
23. Heavy mineral sands
24. Fossil guano
25. Iodine minerals.
26. Kaolin(refractory clay),
27. Leucoxene
28. Lithium minerals
29. Limestone and marble
30. Magnesite
31. Mica
32. Nepheline
33. Nitrate
34. Olivine
35. Perlite
36. Phosphate
37. Picture-stone
38. Potash
39. Pumice
40. Pyrophyllite

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41. Quartz for industrial purposes
42. Salt
43. Sepiolite
44. Silica sand
45. Soda-ash and other sodium compounds
46. Strotianite
47. Sulphur and Pyrite
48. Syenite
49. Talc
50. Vermiculite

B. PRECIOUS STONES

1. Diamonds
2. Emeralds
3. Rubies
4. Sapphires
5. Green garnet or Tsavorite

C. PRECIOUS METAL GROUP

1. Gold
2. Osmium
3. Palladium
4. Platinum
5. Iridium
6. Silver
7. Rhodium
8. Ruthenium

D. SEMI-PRECIOUS STONES GROUP

1. Agatha
2. Amazonite
3. Amber
4. Amethyst

5. Aquamarine
6. Aventurine
7. Beryl, (including aquamarine, heliodor and morganite, but excluding beryl as a source of beryllium metal or as industrial mineral).
8. Chrysoberyl
9. Chrysocolla
10. Chrysolite
11. Cordierite
12. Diopase
13. Dumortierite
14. Garnete except green garnet
15. Jade
16. Milarite
17. Opal
18. Quartz (including amethyst, citrine, rock crystal, rose and strawberry quartz, agate, carneline, chelcedony, chrysoprase, jasper, moss agate, hyalite, pietersite and tiger's eye)
19. Sodalite
20. Topaz
21. Tourmaline
22. Turquoise

E. BASE AND RARE METALS GROUP

1. Antimony
2. Arsenic
3. Beryllium
4. Bauxite
5. Bismuth
6. Cadmium
7. Caesium

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8. Chromium
9. Cobalt
10. Copper
11. Gallium
12. Germanium
13. Hafnium
14. Indium
15. Iron
16. Lead
17. Magnesium
18. Manganese
19. Mercury
20. Molybdenum
21. Nickel
22. Niobium
23. Rhodium
24. Radium
25. "Rare Earths" or lanthanides, including the actinides, scandium and yttrium
26. Rhenium
27. Rubidium
28. Selenium
29. Tantalum
30. Thallium
31. Tin
32. Titanium
33. Tungsten
34. Vanadium
35. Zinc or zirconium, but does not include any such mineral if such mineral is incidentally included in a mineral falling in any other group of minerals.

F. FUEL MINERAL GROUP

1. NON-NUCLEAR: coal
2. NUCLEAR: source material containing Uranium and thorium.

G. GASEOUS MINERALS

1. Carbon Dioxide
2. Helium
3. Coal seam gas
4. Water

SECOND SCHEDULE (s.4)**CRITERIA FOR DETERMINING SMALL SCALE PROSPECTING AND MINING OPERATIONS**

1. A prospecting or mining operation or a proposed prospecting or mining operation shall be classified by the Cabinet Secretary as a small scale operation for the purposes of this Act where-

- (a) in the case of prospecting operations, the proposed prospecting area does not exceed twenty five contiguous blocks; or
- (b) in the case of mining operations, the proposed mining area does not exceed two contiguous blocks.

2. Notwithstanding paragraph (1), a prospecting or mining operation or a proposed prospecting or mining operation may also be classified as a small scale operation for the purposes of this Act where-

- (a) in the case of mining operations, the actual or estimated annual extraction of minerals or material bearing minerals does not exceed 25,000 cubic metres; or,
- (b) the prospecting or mining operations do not employ specialised prospecting , mechanised mining technologies ,chemicals including mercury and cyanide or explosives; or,
- (c) the proposed prospecting or mining operations, do not involve an investment or expenditure which exceed such amount as may be prescribed by the Cabinet Secretary.

3. Proposed prospecting operations or mining operations that do not have or will not have any of the characteristics of a small scale mining operation as specified in paragraphs 1 or 2 shall be classified as a small scale operation.