

## CHAPTER 21:04

# MINERALS MARKETING CORPORATION OF ZIMBABWE ACT

*Acts 2/1982, 9/1990 (s. 7), 29/1990 (s. 21), 17/1991, 22/2001 (s. 4).*

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## SCHEDULE

Powers of Corporation.

**AN ACT to establish the Minerals Marketing Corporation of Zimbabwe and to provide for the functions, powers and duties thereof; to provide for the constitution, functions, powers and duties of the Minerals Marketing Board; to provide for the control and regulation of the export, sale and stockpiling of minerals; and to provide for matters incidental to or connected with the foregoing.**

[Date of commencement: 7th March, 1983.]

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Minerals Marketing Corporation of Zimbabwe Act [*Chapter 21:04*].

#### 2 Interpretation

(1) In this Act—

“appointed member” means member appointed in terms of paragraph (a) or (c) of subsection (1) of section *five*;

“Board” means the Minerals Marketing Board established by section four;

“Corporation” means the Minerals Marketing Corporation of Zimbabwe established by section three;

“member” means the chairman or any other member of the Board referred to in subsection (1) of section five;

“mineral” means any—

- (a) substance produced from a registered mining location or quarry; or
- (b) product derived from the smelting, refining or other beneficiation of a substance referred to in paragraph (a); or
- (c) manufactured or partly-manufactured thing which is declared in terms of paragraph (a) of subsection (2) to be a mineral;

but does not include any substance or product declared in terms of paragraph (b) of subsection (2) not to be a mineral for the purposes of this Act;

“Minister” means the Minister of Mines or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“quarry” has the meaning assigned to it in subsection (1) of section 5 of the Mines and Minerals Act [*Chapter 21:05*];

“registered mining location” has the meaning assigned to it in subsection (1) of section 5 of the Mines and Minerals Act [*Chapter 21:05*]; “sell” includes barter.

(2) The Minister, after consultation with the Board, may, by statutory instrument, declare that—

- (a) any manufactured or partly-manufactured thing derived from a substance or product referred to in paragraph (a) or (b) of the definition of “mineral” in subsection (1) shall be a mineral for the purposes of this Act;
- (b) any substance or product referred to in paragraph (a) or (b) of the definition of “mineral” in subsection (1) shall not be a mineral for the purposes of this Act; and

may in like manner amend or revoke any such declaration.

## PART II

### MINERALS MARKETING CORPORATION OF ZIMBABWE AND MINERALS MARKETING BOARD

### **3 Establishment of Minerals Marketing Corporation of Zimbabwe**

There is hereby established a corporation, to be known as the Minerals Marketing Corporation of Zimbabwe, which shall be a body corporate and shall, in the name of the Minerals Marketing Corporation of Zimbabwe, be capable of suing and being sued and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform.

### **4 Establishment of Minerals Marketing Board**

The operations of the Corporation shall, subject to this Act, be controlled by a board, to be known as the Minerals Marketing Board, constituted in terms of this Part.

### **5 Constitution of Board**

(1) The Board shall consist of—

- (a) the general manager appointed in terms of section *twenty-four*; and
- (b) not fewer than six and not more than ten other members appointed by the Minister after consultation and in accordance with any directions the President may give him, of whom—
  - (i) two shall be appointed after consultation with the Chamber of Mines;
  - (ii) one shall be appointed after consultation with a trade union which, in the opinion of the Minister, represents the majority of persons employed in the mining industry;
  - (iii) two shall be appointed after consultation with the Ministers of such Ministries as the Minister considers have responsibilities which are related to or connected with the marketing, export and sale of minerals;
  - (iv) the remainder shall be appointed for their knowledge and experience in the field of mineral production or international commodity marketing or for their professional qualifications or their suitability otherwise for appointment.

(2) The Minister shall designate one appointed member as chairman of the Board and another as deputy chairman of the Board, and the deputy chairman shall exercise the powers and perform the duties of the chairman of the Board during any period that the chairman is unable to do so.

(3) The Minister may appoint any person to the Board as an alternate to any member referred to in subsection (1), and such member—

- (a) shall act as a member only when the member to whom he is alternate is for any reason unable to exercise his functions on the Board;
- (b) when acting as a member shall exercise the functions and powers and perform the duties of the member to whom he is alternate:

Provided that an alternate to the chairman or deputy chairman of the Board shall not exercise the functions and powers or perform the duties of the chairman or deputy chairman, as the case may be.

(4) In appointing a person as an alternate to a member in terms of subsection (3) the Minister shall be bound by the same requirements for appointment that are applicable, in terms of subparagraph (i), (ii), (iii) or (iv), as the case may be, of paragraph (c) of subsection (1), to the appointment of the member concerned.

## **6 Conditions of office of appointed members**

(1) An appointed member shall, subject to this Part, hold office for such period, not exceeding three years, appointed members as the Minister may fix on his appointment.

(2) Subject to section *thirteen*, an appointed member shall hold office on such conditions as the Minister may in his case fix.

(3) A retiring member shall be eligible for reappointment as a member.

## **7 Disqualifications for appointment as member**

The Minister shall not appoint a person as an appointed member and no person shall be qualified to hold office as an appointed member who—

(a) is not a citizen of Zimbabwe permanently resident in Zimbabwe; or

(b) has, or is married to a person who has, a financial interest in any business or is, or is married to a person who is, engaged in any activity connected with any business, if, in the opinion of the Minister, such financial interest or activity is likely to interfere with the impartial discharge by that person of his duties as a member; or

(c) has in terms of a law in force in any country—

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

(ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside;

or

(d) has, within the period of five years immediately preceding the date of his proposed appointment, been sentenced in any country to a term of imprisonment of or exceeding six months imposed without the option of a fine and has not received a free pardon.

## **8 Vacation of office by appointed member**

An appointed member shall vacate his office and his office shall become vacant—

(a) after giving the Minister such period of notice of intention to resign as may be fixed in his conditions of appointment or, if no such period has been fixed, after the expiry of one month after the date he gives such notice, or after the expiry of such other period of notice as he and the Minister may agree; or

(b) on the date he begins to serve a sentence of imprisonment the term of which is not less than six months, whether or not any portion has been suspended, imposed without the option of a fine in any country; or

(c) if he becomes disqualified in terms of paragraph (a), (b) or (c) of section *seven* to hold office as a member; or

(d) if he is required in terms of section *nine* to vacate his office; or

(e) if he is absent from three consecutive meetings of the Board, of which he has had not less than seven days' notice, without the permission of the Board.

## **9 Minister may require appointed member to vacate office**

The Minister may require an appointed member to vacate his office if the Minister is satisfied that the member—

(a) has been guilty of improper conduct as a member; or

(b) has failed to comply with the conditions of his office fixed by the Minister in terms of subsection (2) of section *six*; or

(c) is mentally or physically incapable of efficiently performing his duties as a member.

## **10 Filling of vacancies on Board**

On the death of, or the vacation of office by, an appointed member, the Minister shall appoint a person to fill the vacancy until the expiration of the period during which the appointed member would, but for his death or the vacation of his office, have continued in office:

Provided that, if the appointed member would, but for his death or the vacation of his office, have continued to hold office for less than six months, the Minister need not appoint a person to fill the vacancy.

## **11 Meetings and procedure of Board**

(1) The Board shall hold its first meeting on such date and at such place as the Minister may fix and thereafter the Board shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that a meeting of the Board shall be held not less than three times in each financial year of the Corporation.

(2) The chairman of the Board may himself at any time and shall, at the request in writing of not less than two members, convene a special meeting of the Board, which meeting shall be convened for a date not less than seven days nor more than thirty days after receipt of such request.

(3) If at a meeting of the Board the chairman and the deputy chairman are both absent, the members present may elect one of their number to preside at that meeting as chairman.

(4) A majority of members shall form a quorum at a meeting of the Board.

(5) All acts, matters or things authorized or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(6) At all meetings of the Board each member present shall, subject to the provisions of section *fifteen*, have one vote on a question before the Board and, in the event of an equality of votes, the chairman shall have, in addition to a deliberative vote, a casting vote.

(7) Any proposal circulated among all members and agreed to in writing by a majority of all members shall be of the same force and effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that such proposal be placed before a meeting of the Board, the provisions of this subsection shall not apply to such proposal.

## **12 Committees of Board**

(1) For the better exercise of its functions and powers the Board may establish one or more committees in which may be vested and on which may be imposed such of the functions and powers of the Board as the Board, with the consent of the Minister, may direct: Provided that—

(i) the vesting or imposition of any such functions and powers in a committee shall not divest the Board of such functions and powers; and

(ii) the Board may amend or withdraw any decision of any such committee in the exercise of its functions and powers.

(2) The procedure of a committee of the Board shall be fixed by the Board.

(3) The chairman of the Board may at any time and place convene a meeting of a committee of the Board.

(4) The Board—

(a) shall appoint to any committee established in terms of subsection (1) not less than one member of the Board, who shall be chairman of the committee;

(b) may appoint as members of any committee established in terms of subsection (1), on such terms and conditions as the Board may fix, persons who are not members of the Board.

## **13 Remuneration and expenses of appointed members and members of committees**

An appointed member or a member of a committee of the Board shall be paid from the funds of the Corporation—

(a) such remuneration, if any, as the Minister may in his case fix;

(b) such allowance as the Minister may fix to meet any reasonable expenses incurred by him in connection with the business of the Board or that committee, as the case may be.

## **14 Right of certain officers to attend meetings of Board or committees**

Such officers of the Public Service as the Minister may designate shall be entitled to attend meetings and to take part in the proceedings of the Board or of a committee established in terms of section *twelve* as if they were members thereof but they shall not have a vote on any question before the Board or committee, as the case may be.

## **15 Members to declare connection with companies and firms dealing with Corporation**

(1) If a member or his spouse—

(a) tenders for or acquires or holds a direct or indirect pecuniary interest in a contract with the Corporation; or

(b) knowingly acquires or holds a direct or indirect pecuniary interest in a company or association of persons applying or negotiating for a contract with the Corporation; or

(c) owns immovable property or a right in immovable property or a direct or indirect pecuniary interest in a company or association of persons which results in his private interests coming or appearing to come into conflict with his duties as a member; the member shall forthwith disclose the fact to the Board.

(2) A member referred to in subsection (1) shall take no part in the consideration or discussion of, or vote on, any question before the Board which relates to any contract, right, immovable property or interest referred to in that subsection.

(3) The general manager appointed in terms of section *twenty-four* shall take no part in the consideration or discussion of, or vote on, any question before the Board which relates to the terms and conditions of his appointment as general manager.

## 16 Validity of decisions and acts of Board

No decision or act of the Board or act done under the authority of the Board shall be invalid by reason only of the fact that—

- (a) the Board consisted of less than the number of persons for which provision is made in subsection (1) of section *five*; or
- (b) a disqualified person acted as a member at the time the decision was taken or the act was done or

## 17 Execution of contracts and instruments by Corporation

An agreement, contract or instrument approved by the Board may be entered into or executed on behalf of the Corporation by any person or persons generally or specially authorized by the Board for that purpose.

## 18 Transaction of business of an urgent nature

If it is impracticable to hold a meeting of the Board for the transaction of business of an urgent nature, the chairman of the Board, after consulting such of the other members as is practicable in the circumstances, may deal with the business himself and, as soon as may be thereafter, give to the Board full particulars of the nature and extent of the urgency of the business, of the circumstances in which the urgency arose and of the action that was taken by him in the matter.

## 19 Minutes of proceedings of Board and committees

(1) The Board shall cause minutes of all proceedings of and decisions taken at a meeting of the Board or of a committee of the Board to be entered in books kept for the purpose.

(2) Any minutes referred to in subsection (1) which purport to be signed by the chairman of the meeting to which the minutes relate or by the chairman of the next following meeting of the Board or of the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

## PART III

### FUNCTIONS, POWERS AND DUTIES OF CORPORATION

## 20 Functions of Corporation

Subject to this Act, the functions of the Corporation shall be— (a)

to act as the sole marketing and selling agent for all minerals;

(b) to investigate or cause to be investigated marketing conditions, whether inside or outside Zimbabwe, for minerals in general or for any particular mineral;

(c) to purchase and acquire any minerals for its own account and to sell or dispose of such minerals;

(d) to encourage the local beneficiation and utilization of any minerals;

(e) to advise the Minister on all matters connected with the marketing of minerals;

(f) to do all things which by this Act or any other enactment are required to be done by the Corporation.

## 21 Powers of Corporation

(1) Subject to this Act, the Corporation shall, for the better exercise of its functions, have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Schedule, either absolutely or conditionally and either solely or jointly with others.

(2) In the exercise of its powers or the performance of its functions in terms of this Act, the Corporation may deal differently with different persons and with different types or grades of minerals.

## 22 Principles to be observed by Corporation

When exercising any power or performing any function or duty in terms of this Act, the Corporation shall—

(a) at all times act in such manner as the Corporation considers will best promote the efficient marketing, export and sale of all minerals, taking into account—

(i) the national interest of Zimbabwe; and

(ii) the interests of any producer of any mineral for whom the Corporation may be acting; and

(iii) the common interest of all producers of minerals; and

(b) so far as is practicable, act in consultation with persons whose interests are affected by the exercise of such power or the performance of such function or duty; and

(c) keep its expenses as low as is consistent with the provision of efficient services to producers and sellers of minerals.

## 23 Reports of Corporation

(1) In addition to any annual report which the Corporation is required to submit to the Minister in terms of the Audit and Exchequer Act [*Chapter 22:03*], the Corporation—

(a) shall submit to the Minister such other reports as the Minister may require;

(b) may submit to the Minister such other reports as the Corporation may deem advisable; in regard to the operations, undertakings and property of the Corporation.

(2) The Corporation shall give to the Minister all such information relating to the undertakings of the Corporation as the Minister may at any time require.

(3) The Minister may lay a report submitted to him by the Corporation in terms of subsection (1) before Parliament.

#### **24 Appointment of general manager**

(1) The Corporation—

(a) shall appoint, subject to the provisions of this Act and on such terms and conditions as the Board deems fit, a person nominated by the Minister to be the general manager of the Corporation in whom, subject to the control of the Board, shall be vested the management of the operations and property of the Corporation; and

(b) may, with the approval of the Minister, assign to the general manager such of the functions and powers of the Corporation as the Board deems fit.

(2) No person shall be appointed as general manager and no person shall be qualified to hold office as the general manager if he is not a citizen of Zimbabwe permanently resident in Zimbabwe.

(3) The appointment of the general manager shall be terminated if he would be required in terms of paragraph (b) or (c) of section *eight* to vacate his office had the provisions of that section and of paragraphs (b) and (c) of section *seven* applied to him.

(4) Any assignment of functions and powers in terms of paragraph (b) of subsection (1)—

(a) may be made either generally or specially and subject to such restrictions, reservations and exceptions as the Board may determine;

(b) may be revoked by the Board at any time;

(c) shall not preclude the exercise of the functions and powers by the Board itself.

#### **25 Minister may give Corporation directions in national interest**

(1) The Minister may, after consultation with the Board, give to the Corporation such directions in writing of a general character relating to the exercise by it of its functions, duties and powers as appear to the Minister, taking into account the common interests of producers of minerals, to be requisite in the national interest.

(2) The Corporation shall, with all due expedition, comply with any direction given to it in terms of subsection (1).

### **PART IV**

#### **ISSUE OF SHARES AND DEBENTURES BY CORPORATION**

#### **26 Authorized share capital of Corporation**

(1) The authorized share capital of the Corporation shall be thirty-six million dollars divided into thirty-six million shares of one dollar each.

(2) With approval of the Minister and the Minister responsible for finance, the Board may by resolution increase the authorized share capital of the Corporation.

(3) Where the Board has increased the authorized share capital of the Corporation in terms of subsection (2), the Minister shall cause the increase to be notified in the *Gazette*.

#### **27 Allotment, issue and transfer of shares of Corporation**

(1) Twelve million of the Corporation's shares shall be allotted to the State, subject to such terms and conditions as may be determined by the Minister and the Minister responsible for finance in consultation with the Board.

(2) Subject to subsection (4), the remainder of the Corporation's shares may be issued in such circumstances and subject to such terms and conditions as may be determined by the Board with the approval of the Minister and the Minister responsible for finance.

(3) Terms and conditions under which the Corporation's shares are allotted or issued to the State may include terms and conditions—

(a) for payment to be made out of moneys appropriated for the purpose by Act of Parliament, or

(b) after consultation with the Board, for the value of all or any of the shares to be set off against loans previously granted to the Corporation by the State; or

(c) for all or any of the shares to be allotted or issued in consideration for the writing off of loans previously granted to the Corporation by the State; or

(d) for all or any of the shares to be allotted or issued in consideration for capital grants previously made to the Corporation by the State.

(4) At all times at least seventy-five *per centum* of the Corporation's issued share capital shall be held by the State, and the remainder may be held by such producers of minerals and other persons as may be approved by the Minister in consultation with the Minister responsible for finance:

Provided that not more than—

(a) fifteen *per centum* of the Corporation's issued share capital shall be held by approved producers of minerals; and

(b) ten *per centum* of the Corporation's issued share capital shall be held by approved persons other than producers of minerals.

(5) Subject to subsection (4), the Corporation's shares may be transferred by the holders subject to such terms and conditions as may be prescribed or as may be determined by the Minister and the Minister responsible for finance in consultation with the Board.

### **28 Liability of shareholder**

The liability of the holder of a share issued by the Corporation shall be limited to the amount, if any, unpaid on the share.

### **29 Issue of debentures**

(1) The Corporation may issue debentures, which may be taken up in such circumstances and under such terms and conditions as the Board may determine.

(2) Debentures may be issued by the Corporation to the State in respect of any loan previously granted by the State to the Corporation.

(3) Subject to subsection (2), debentures taken up by the State shall be paid for out of moneys appropriated for the purpose by Act of Parliament.

(4) The Corporation's debentures may be transferred subject to such terms and conditions as may be determined by the Board.

## **PART V**

### **FINANCIAL PROVISIONS RELATING TO CORPORATION**

### **30 Conduct of financial affairs of Corporation**

It shall be the object of the Corporation so to exercise its functions and conduct its business as to ensure that in each financial year its income is sufficient—

(a) to meet the expenditure of the Corporation properly chargeable to revenue in that year; and

(b) to enable the Corporation to make provision for any taxes, duties or rates for which it is liable;  
and

(c) to permit the redemption on due date of the Corporation's debentures and other loan capital;  
and

(d) to enable the Corporation to make such appropriations to its general reserve in terms of section *thirty-six* as may be necessary or desirable; and in general the Corporation shall conduct its business on sound commercial lines.

### **31 Capital of Corporation**

The capital of the Corporation shall consist of—

(a) the share capital of the Corporation; and

(b) any other moneys or assets that may vest in or accrue to the Corporation as capital, whether in the course of its operations or otherwise.

### **32 Revenues of Corporation**

The revenues of the Corporation shall consist of any moneys, other than moneys referred to in section *thirtyone*, that may accrue to the Corporation, whether in the course of its operations or otherwise.

### **33 Dividends and repayment of capital**

Where in a financial year the revenues of the Corporation are more than sufficient—

(a) to meet the expenditure of the Corporation properly chargeable to revenue in that year; and

(b) to enable the Corporation to make provision for any taxes, duties or rates for which it is liable; and

(c) to permit the redemption on due date of the Corporation's debentures and other loan capital; and

(d) to enable the Corporation to make such appropriations to its general reserve in terms of section *thirty-six* as are necessary or desirable;

the Corporation shall pay out of the surplus such dividends to its shareholders as the Board may determine in relation to that year.

### **34 Investments and loans by Corporation**

(1) Moneys not immediately required by the Corporation may be invested in such manner as the Board may determine.

### **35 Corporation to make certain charges to revenue account**

(1) The Corporation shall charge to its revenue account all charges which, in the normal conduct of business, are regarded as proper to be charged to revenue account and, in so doing, shall make in each financial year proper provision for—



- (a) the depreciation or diminution in value of assets; and
- (b) the payment of interest on and all other charges and expenses incurred in connection with loans and debentures; and
- (c) the redemption of loans at due times to the extent that such redemption exceeds provision for depreciation.

(2) In charging to its revenue account all charges which in the normal conduct of business are regarded as proper to be charged to revenue account as provided in subsection (1), the Corporation may, in each financial year, make provision for—

- (a) meeting, in whole or in part, increases in the cost of replacing assets to an extent approved by the Minister after consultation with the Minister responsible for finance;
- (b) making payments to an insurance fund established by the Corporation to meet, in whole or in part, such liabilities of the Corporation as the Minister may approve;
- (c) making payments to a pension fund established by the Corporation to meet, in whole or in part, superannuation liabilities of the Corporation.

### **36 Establishment and operation of general reserve**

(1) The Corporation shall establish a general reserve to which, subject to the provisions of this Part, may be appropriated from a surplus of income over expenditure at the end of its financial year such sums as the Minister may approve.

(2) Subject to this Part, moneys in the general reserve established in terms of subsection (1) may be used for such purposes as the Board may consider expedient for the proper exercise by the Corporation of its functions, including the development of its assets.

### **37 Establishment and operation of purchasing fund**

(1) The Corporation shall establish and administer a fund to be known as the purchasing fund, which shall consist of and into which shall be paid—

- (a) moneys appropriated for the purpose by Act of Parliament; and
- (b) the proceeds of the sale of any minerals purchased by the Corporation in terms of section *forty-three*.

(2) The moneys in the purchasing fund established in terms of subsection (1) shall be used by the Corporation—

- (a) for the purchase of minerals by the Corporation in terms of section *forty-three* and for meeting expenses incurred in connection with such purchases and the sale of such minerals; and
- (b) to meet such other expenses as the Minister may approve.

### **38 Financial year of Corporation**

The financial year of the Corporation shall be the period of twelve months ending on the 30th June in each year or on such other date as may be prescribed.

### **39 Accounts of Corporation**

(1) The Corporation shall keep proper accounts and other records relating thereto in respect of all its operations, undertakings and property, including such particular accounts and records as the Minister may direct.

(2) The Corporation shall prepare and submit to the Minister a statement of accounts in respect of each financial year or such other period as the Minister may direct.

### **40 Audit of accounts of Corporation**

(1) The Corporation shall appoint as auditors one or more persons who are registered as public auditors in terms of the Public Accountants and Auditors Act [Chapter 27:12].

(2) The accounts of the Corporation kept in terms of subsection (1) of section thirty-nine shall be examined by the auditors appointed in terms of subsection (1).

(3) The auditors appointed in terms of subsection (1) shall make a report to the Board and the Minister on the statement of accounts prepared in terms of subsection (2) of section thirty-nine and such report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the state of the financial affairs of the Corporation.

(4) In addition to the report referred to in subsection (3), the Minister may require the Board to obtain from the auditors appointed in terms of subsection (1) such other reports, statements or explanations in connection with the operations, undertakings and property of the Corporation as the Minister may consider expedient.

(5) If, in the opinion of the auditors appointed in terms of subsection (1)— (a) they have not obtained the information and explanations they require; or

(b) any accounts or records relating thereto have not been properly kept by the Corporation; or

(c) the Corporation has not complied with this Part; the auditors shall include in the report made in terms of subsection (3) or (4), as the case may be, statements to that effect.

### **41 Powers of auditors**

(1) The auditors appointed in terms of subsection (1) of section *forty* shall be entitled at all reasonable times to require to be produced to them all accounts and other records relating thereto kept by the Corporation or its agents

and to require from any member or person employed by the Corporation or its agents such information and explanations as in their opinion are necessary for the purposes of their audit.

(2) Any member or employee or agent of the Board who fails without just cause to comply with a requirement of an auditor in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or imprisonment for a period not exceeding three months or to both such fine and such imprisonment,

[Subsection as amended by section 4 of Act No. 22 of 2001]

## PART VI

### CONTROL OF SALE AND EXPORT OF MINERALS

#### 42 Prohibition of sale or export of minerals otherwise than through Corporation

(1) Subject to this Act, no person other than the Corporation shall— (a) sell any mineral, either inside or outside Zimbabwe, except—

- (i) to the Corporation; or
- (ii) in terms of a contract negotiated by the Corporation on behalf of the seller; or
- (iii) when authorized to do so by the Corporation in terms of section *forty-three* and in accordance with the terms and conditions of such authority;

or

(b) export any mineral from Zimbabwe except—

- (i) in terms of a contract referred to in subparagraph (ii) of paragraph (a); or
- (ii) when authorized to do so by the Corporation in terms of section *forty-three* and in accordance with the terms and conditions of such authority.

(2) Any person who sells or exports any mineral in contravention of subsection (1) shall be guilty of an offence and liable to—

- (a) a fine not exceeding level twelve or double the value of the mineral within Zimbabwe at the date of the export or sale or double the price at which the mineral was sold, whichever is the greatest; or
- (b) imprisonment for a period not exceeding one year; or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

(3) Paragraph (b) of subsection (1) shall be construed as being additional to, and not as derogating from, the provisions of any other enactment which controls or prohibits the export of any mineral.

#### 43 Sale and export of minerals through Corporation

(1) Any person who wishes to sell any mineral, either inside or outside Zimbabwe, or to export any mineral from Zimbabwe shall advise the Corporation in writing, providing the Corporation with— (a) particulars of the quantity, type, grade and location of the mineral concerned; and

- (b) details of his proposal, if any, for the sale or export of the mineral, including the terms and conditions of any proposed contract or arrangement relating to the proposed sale or export, as the case may be; and
- (c) such other particulars and documents as may be prescribed or as the Corporation may in any particular case require.

(2) On receipt of advice in terms of subsection (1) the Corporation may, subject to this Part, in its discretion do any of the following things—

- (a) with all due expedition endeavour to negotiate on behalf of the seller the sale of the mineral concerned, so far as possible in accordance with any proposal submitted by the seller; or
- (b) purchase the mineral concerned from the seller, on such terms and conditions as may be agreed between the Corporation and the seller; or
- (c) authorize the seller to sell the mineral concerned, subject to such terms and conditions as the Corporation may impose; or
- (d) authorize the export of the mineral concerned, subject to such terms and conditions as the Corporation may impose.

#### 44 Conditions under which Corporation may negotiate or approve contracts

(1) The Corporation shall not in terms of section *forty-three* negotiate or authorize any contract for the sale of any mineral unless the contract permits the Corporation, on due notice to the parties thereto—

- (a) to take custody or control of the minerals concerned and to arrange all matters relating to delivery of the minerals to the purchaser; and
- (b) for the purpose of exercising any power referred to in paragraph (a), to require the seller of the mineral concerned to surrender custody or control of the mineral concerned to the Corporation or to any person nominated by the Corporation.

(2) The Corporation shall not in terms of section *forty-three* negotiate or authorize any contract for the sale outside Zimbabwe of any mineral unless provision is made to the satisfaction of the Corporation for—

- (a) the payment of the purchase price to be made to the Corporation, save in exceptional circumstances authorized by the Corporation; and
- (b) any insurance and transport of the mineral to be arranged by the Corporation; and
- (c) the safe custody and availability for inspection by the Corporation of all documents in connection with the contract, in particular any bills of lading or insurance policies; and
- (d) any amendments or variations in the contract to be negotiated by the Corporation or, where the contract has been authorized by the Corporation, to be submitted to the Corporation for its prior approval.

#### **45 Liability of Corporation in relation to sale of minerals**

The negotiation or authorization of any contract for the sale of any mineral in terms of section *forty-three* shall not render the Corporation liable under the contract as if it were a party thereto, save to the extent that the contract concerned provides to the contrary.

#### **46 Duration of authority to export minerals**

Any authority granted by the Corporation in terms of section *forty-three* for the export of any minerals shall be valid for such period, not exceeding twelve months, as the Corporation may fix.

#### **47 Corporation to receive proceeds from sales of minerals**

(1) Save in exceptional circumstances authorized by it, the Corporation shall—

- (a) receive all moneys paid by buyers in terms of contracts negotiated or authorized by the Corporation for the sale outside Zimbabwe of minerals; and
- (b) after deducting any sums to which it is entitled in terms of section *forty-eight*, within thirty days of receiving such moneys account for and pay over to the sellers concerned any balance of such moneys.

(2) The Corporation shall keep separate accounts of all moneys received by it in terms of subsection (1) and of any deductions made therefrom and shall on demand make the relevant account available to the seller concerned for his examination.

#### **48 Commission and expenses of Corporation**

(1) Subject to this section, and after consultation with the Corporation, the Minister may from time to time, by notice in a statutory instrument, fix the amount or amounts of the commission which the Corporation shall levy in respect of—

(a) the negotiation or authorization of contracts for the sale of minerals in terms of section *forty-three*; and (b) any other function or service performed by the Corporation in terms of this Act.

(2) The commission referred to in subsection (1) shall be fixed as a percentage of the price at which the minerals concerned are sold.

(3) The amount of—

(a) any commission fixed in terms of this section; and

(b) any sums required to cover any reasonable expenses incurred by the Corporation on behalf of the seller in providing any function or service in terms of this Act; shall be payable to the Corporation by the seller of the minerals concerned.

(4) Any commission or other sums to which the Corporation may be entitled in terms of this section may be deducted by the Corporation from any moneys received by it pursuant to any contract.

(5) Without derogation from subsection (4), the Corporation may, by civil action in a court of competent jurisdiction, recover any amount to which it is entitled in terms of this section.

(6) Any amount paid to or recovered by the Corporation in terms of this section shall be paid into the revenue fund of the Corporation.

(7) Any person who is aggrieved by the amount of any commission or other sum levied or claimed by the Corporation in terms of this section may appeal to the Minister who may give such direction in the matter as he thinks just.

#### **49 Orders prohibiting stockpiling of minerals**

(1) The Corporation may, by notice in writing served upon the person concerned—

- (a) fix the maximum quantity of any mineral which any person may— (i) own; or (ii) have in his possession or under his control;

at any one time; and

(b) where appropriate, order such person to reduce, within such time as the Corporation shall specify, the quantity of any mineral which such person owns, possesses or controls to the quantity fixed by the Corporation in terms of paragraph (a).

(2) Any person aggrieved by a notice served upon him in terms of subsection (1) may appeal to the Minister.

(3) On an appeal in terms of subsection (2) the Minister may confirm, amend or revoke the whole or any part of the notice concerned.

(4) Any person who fails, without just cause, to comply with a notice served upon him in terms of subsection (1) or any amendment thereof effected in terms of subsection (3) shall be guilty of an offence and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

## **50 Corporation may require information as to holding and production of minerals**

(1) The Corporation may, by notice in writing served upon the person concerned, require any person to supply the Corporation, within such reasonable period and at such intervals as may be specified in the notice, with such information as may be required by the Corporation relating to—

- (a) the quantity, type, grade and location of any mineral owned, possessed or controlled by such person; and
- (b) the quantity, type and grade of any mineral mined, smelted, refined or otherwise produced by such person; and
- (c) the quantity, type and grade of any mineral sold by such person and the price at which and the person to whom such mineral was sold, whether such sale took place before, on or after the 7th March, 1983.

(2) If any person upon whom a notice has been served in terms of subsection (1)—

- (a) fails to supply the Corporation with any information required by the Corporation in terms of that subsection; or
- (b) supplies the Corporation with information which he knows to be false or has no reasonable ground for believing to be true;

he shall be guilty of an offence and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

## **PART VII**

### **GENERAL**

## **51 Exemption from liability of Corporation**

No liability shall attach to the Corporation or to any member for any loss or damage sustained by any person as a result of the *bona fide* exercise or performance by the Corporation, the Board, a committee of the Board or any employee or agent of the Corporation of any power, duty or function conferred or imposed upon the Corporation or the Board in terms of this Act or any other law:

Provided that the provisions of this section shall not be construed so as to prevent any person from recovering, by action in a court of competent jurisdiction, compensation for any loss or damage sustained by him which was caused by negligence or breach of contract **52 Investigation into affairs of Corporation**

(1) The Minister may at any time cause an investigation to be made into the affairs of the Corporation by one or more persons appointed by him in writing.

(2) Any person appointed in terms of subsection (1) shall have the same powers as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to an investigation made in terms of subsection (1) and to any person summoned to give or giving evidence at that investigation.

## **53 Proceedings on failure of general manager, Board or Corporation to comply with Act**

(1) If at any time the Minister is satisfied that the general manager of the Corporation, the Board or the Corporation has failed to comply with this Act, he may, by notice in writing, require the general manager, the Board or the Corporation, as the case may be, to make good the default within a specified time.

(2) If the general manager, the Board or the Corporation fails to comply with a notice issued in terms of subsection (1), the Minister may apply to the High Court for an order compelling the general manager, the Board or the Corporation, as the case may be, to remedy the default and the High Court may make such order on the application as it thinks fit.

## **54 Preservation of secrecy**

(1) All members and employees of the Corporation shall, subject to the provisions of this Act, keep secret, and aid in keeping secret, all information relating to the business of producers, sellers and purchasers of minerals which comes to their knowledge in the exercise of their powers or the performance of their functions and duties in terms of this Act.

(2) Subject to this Act, no member or employee of the Corporation shall, except in the exercise of his powers or the performance of his functions and duties in terms of this Act, or unless he is required to do so by order of a competent court—

- (a) communicate information referred to in subsection (1) to any person who is not the producer, seller or purchaser to whom the information relates or the lawful representative of such producer, seller or purchaser; or
- (b) allow any person who is not the producer, seller or purchaser to whom the information relates nor the lawful representative of such producer, seller or purchaser to have access to any record under the control or in the custody of the Corporation which contains information referred to in subsection (1).

(3) Any member or employee of the Corporation who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level six or imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

## 55 Use of information for private gain by members and employees

(1) No member or employee of the Corporation shall, for his personal gain, make use of any information which has come to his knowledge in the exercise of his powers or the performance of his functions and duties in terms of this Act.

(2) Any member or employee of the Corporation who contravenes subsection (1) shall be guilty of an offence and liable to—

(a) a fine not exceeding level ten or double the amount of his gain, whichever is the greater; or

[Paragraph as amended by section 4 of Act No. 22 of 2001]

(b) imprisonment for a period not exceeding five years; or to both such fine and such imprisonment.

## 56 Regulations

(1) The Minister may, after consultation with the Board, make regulations prescribing anything which in terms of this Act is to be prescribed or which, in his opinion, is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the form and manner in which any application shall be made to the Corporation;
- (b) the form of any notice or order made or issued in terms of this Act and the manner in which any such notice or order may be served;
- (c) the form in which any approval may be given by the Corporation;
- (d) the exemption of any person or class of persons from compliance with all or any of the provisions of Part VI; and
- (e) the appointment of inspectors and their duties and powers, including powers of entry and search and powers to inspect records and documents.
- (f) the reduction of the share capital of the Corporation;
- (g) the application, subject to such modifications as may be specified, of any of the provisions of the Companies Act [*Chapter 24:03*] in relation to the Corporation's shares and debentures.

(3) Regulations made in terms of subsection (1) may provide penalties for contraventions thereof but no such penalty shall exceed a fine of level four or imprisonment for a period of three months or both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

(4) Regulations shall not be made for a purpose referred to in paragraph (f) or (g) of subsection (1) without the approval of the Minister responsible for finance.

## 57 Existing contracts

(1) Notwithstanding any other provision of this Act, but subject to this section, a party to an existing contract may, in accordance with the terms of such contract, export or sell any mineral without the approval of the Corporation.

(2) The Corporation may, by notice in writing served upon any person—

- (a) subject to the provisions of section *forty-four*, direct that person, before such date as may be specified in the notice, to modify or vary, to such extent as may be so specified, the terms of any existing contract to which that person is a party; or
- (b) declare that, with effect from such date as may be specified in the notice, any existing contract to which that person is a party shall terminate.

(3) Where a person upon whom has been served a notice referred to in paragraph (a) of subsection (2)—

- (a) modifies or varies, in accordance with the provisions of the notice, any existing contract specified or described therein, such existing contract shall be deemed to have been concluded in terms of Part VI;

(b) fails or refuses, before the date specified in the notice, to modify or vary, in accordance with the provisions of the notice, any existing contract specified or described therein, such existing contract shall, with effect from that date, cease to be of force and effect for any purpose whatsoever.

(4) Any existing contract specified or described in a notice referred to in paragraph (b) of subsection (2) shall, with effect from the date of termination specified in the notice, cease to be of force or effect for any purpose whatsoever.

(5) Where an existing contract has terminated in terms of this section—

(a) neither the Corporation nor any party to such contract shall incur any liability in respect of such termination, whether by way of damages for breach of contract, specific performance or otherwise;

(b) such termination shall not be regarded as an event whereby any person incurs any liability under a contract ancillary to the existing contract.

(6) The Corporation may, by notice in writing served upon any person, require that person to supply the Corporation with such information as the Corporation may require relating to any existing contract to which that person is a party.

(7) If any person upon whom a notice has been served in terms of subsection (6)—

(a) fails to supply the Corporation with any information required by the Corporation in terms of that subsection; or

(b) supplies the Corporation with information which he knows to be false or has no reasonable grounds for believing to be true;

he shall be guilty of an offence and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001] (8)

In this section—

“existing contract” means any agreement or arrangement entered into—

(a) in the case of a mineral referred to in paragraph (a) or (b) of the definition of “mineral” in subsection (1) of section two, before the 7th March, 1983;

(b) in the case of a mineral referred to in paragraph (c) of the definition of “mineral” in subsection (1) of section two, before the date on which such mineral was declared in terms of subsection (2) of that section to be a mineral;

whereunder such mineral is or is to be exported or sold to any person either in a single quantity or in quantities over any fixed or indeterminate period.

## **SCHEDULE (Section 21)**

### POWERS OF CORPORATION

1. To acquire premises necessary or convenient for the exercise of its functions and the performance of its duties and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and interests therein and rights thereover and concessions, grants, powers and privileges in respect thereof.
2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions and the performance of its duties.
3. To maintain, alter or improve property acquired by it.
4. To mortgage any assets or part of any assets and to sell, exchange, lease, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions or the performance of its duties for such consideration as it may determine.
5. To draw, make, accept, endorse, discount, execute and issue for the purposes of its functions or duties promissory notes, bills of exchange, bills of lading, securities and other negotiable or transferable instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. To make contracts and enter into suretyships or give guarantees in connection with the exercise of its functions or the performance of its duties and to modify or rescind such contracts or rescind such suretyships or guarantees.
8. To enter into, renew, cancel or abandon arrangements with any government or authority, local or otherwise, that may seem conducive to the exercise of its functions or the performance of its duties or any of them and to obtain from such government or authority rights, privileges and concessions which it thinks desirable to obtain and carry out, exercise and comply with such arrangements, rights, privileges and concessions.
9. To establish and administer such funds and reserves not specially provided for in this Act as the Board may consider appropriate or necessary for the proper exercise of the functions of the Corporation.
10. To employ, upon such terms and conditions as the Board may deem fit, such persons as may be necessary for conducting the affairs of the Corporation and suspend or discharge any such persons.

11. To pay such remuneration and allowances and grant such leave of absence and, with the approval of the Minister, to make such gifts, bonuses and the like to its employees as it considers fit.
12. To provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which the provisions of this paragraph relate.
13. To purchase, take on lease or in exchange or otherwise acquire land or dwelling- for use or occupation by its employees.
14. To construct dwellings, outbuildings or improvements for use or occupation by its employees on land purchased, taken on lease or in exchange or otherwise acquired by the Corporation.
15. To sell or lease dwelling-houses and land for residential purposes to its employees.
16. To make or guarantee loans made to its employees or their spouses for the purchase of dwelling-houses or land for residential purposes, the construction of dwelling-houses and the improvement of dwelling-houses or land which are the property of its employees or their spouses.
17. To provide security in respect of loans such as are described in paragraph 16 by the deposit of securities, in which the Corporation may invest such moneys as the Board may deem necessary for the purpose.
18. To make loans to any employee of the Corporation—
  - (a) for the purpose of purchasing vehicles, tools or other equipment to be used by him in carrying out his duties; or
  - (b) not exceeding three months' salary or wages payable to him, for any purpose on such security as the Board considers adequate.
19. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research.
20. With the approval of the Minister, to promote, establish or acquire companies or other undertakings and, in connection with any such company or other undertaking— (a) to manage and to act as secretary thereof; (b) to appoint any person to act on behalf of the Corporation as a director thereof or in any other capacity in relation thereto.
21. With the approval of the Minister, to acquire an interest in, to provide by underwriting or otherwise or to assist in the subscription of capital for or to guarantee the obligations of a company, whether promoted by the Corporation or otherwise, engaged in or proposing to establish, expand or modernize any undertaking relating to the production, refining, smelting, processing or marketing of minerals.
22. To provide such services as the Board, with the approval of the Minister, considers could properly be provided by the Corporation and to charge for such services such fees as the Board, with the approval of the Minister, may from time to time determine.
23. To provide financial assistance to any institution or person whose activities or part of whose activities are such as to be, in the opinion of the Board, of benefit to the Corporation or to the mining industry or any part of that industry.
24. To grant such scholarships or bursaries as the Board considers to be in the interests of the mining industry or any part thereof, on such terms and conditions as the Board may fix in any particular case.
25. To engage in, establish, operate or manage schemes for—
  - (a) the training of persons engaged or to be engaged in any part of the mining industry;
  - (b) mining or mineral research;
  - (c) the refining, smelting or other processing of minerals.
26. To store, refine, smelt, process or sell any minerals acquired by the Corporation.
27. To do all things which are necessary in the opinion of the Board to promote, protect and maintain, having regard to trade interests and the stability of existing outside markets, the sale and export of minerals.
28. To do anything which by this Act is required or permitted to be done by the Corporation.
29. At any time to cancel or alter any order, direction, declaration or notice given, issued or served by the Corporation in terms of this Act.
30. Generally to do all such things as are calculated to facilitate or are incidental or conducive to the performance of the functions of the Corporation or the exercise of its powers in terms of this Act or any other enactment.