

## CHAPTER 21:05

### MINES AND MINERALS ACT

*Acts 38/1961, 24/1962 (s. 2), 18/1963 (s. 24), 19/1963 (s. 12), 7/1964, 22/1964 (s. 54), 10/1966, 9/1967 (s. 17), 30/1968 (s. 38), 17/1969, 61/1969, 80/1971 (s. 33), 39/1973 (s. 52), 46/1973, 15/1975, 22/1976, 41/1976, 42/1976 (s. 10), 48/1976, 7/1978, 8/1978, 41/1978 (s. 12), 15/1979, 32/1979, 37/1979, 29/1981, 20/1982, 26/1987, 8/1988, 9/1990, 14/1991, 3/1992, 22/1992 (s. 9), 10/1993, 10/1994; 9/1997 (s. 10); 12/1997 (s. 15;) 22/2001 (s. 4, 12/2006 (s. 46); 10/2009(ss34-44); R.G.N.s 153/1963, 801/1963, 214/1964, 386/1964, 216/1970, 217/1970, 313/1970, 88/1974, 1135/1975.*

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### **AN ACT to consolidate and amend the law relating to mines and minerals.**

[Date of commencement: 1st November, 1961.]

## PART I

### PRELIMINARY

#### **1 Short title**

This Act may be cited as the Mines and Minerals Act. [*Chapter 21:05*].

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

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

#### **3 Acquisition of mining rights**

Except where otherwise provided under any title deed to land granted prior to the 1st November, 1961, rights can be acquired in the manner hereinafter in this Act set out and in such manner only to all minerals, mineral oils and natural gases.

#### **4 Savings**

(1) Every prospecting licence, mining location or other mining right whatsoever legally acquired before the 1st November, 1961, and legally held at that date, and every special grant made before that date and legally held at that date, is hereby confirmed, but shall from and after that date be held under and subject to this Act:

Provided that—

- (i) in the case of a prospecting licence, such licence shall be valid until and inclusive of the 1st November, 1963;
- (ii) whenever, prior to the promulgation of the Mines and Minerals Ordinance, 1895, any mining location had been registered without a discovery point being established and a discovery notice posted, or whenever, prior to the promulgation of the Mines and Minerals Ordinance, 1903, any mining location had been registered and the discovery reef thereof is unascertainable from the documents in the possession of the mining commissioner, or cannot otherwise be proved, the expression “discovery reef”, in relation to such location, shall mean the main or principal reef discovered, exposed or opened up in such location;
- (iii) whenever the width of any mining location has been extended under the Mining Laws Defining Regulations, 1896, the date of acquisition of title to such extended width shall, if the ground covered by such extended width was open to prospecting at the time when such extended width was pegged, be deemed to be the same as the date of acquisition of title to such mining location;
- (iv) in the case of an exclusive prospecting order, the terms and conditions thereof, including the conditions prescribed in the Mines and Minerals Act, 1951 (No. 18 of 1951), for an extension or renewal of the order, shall continue in force, notwithstanding anything contained in this Act which is contrary to or inconsistent with such terms or conditions, as though the laws repealed by this Act had not been so repealed.

(2) With effect from the 7th December, 1979—

- (a) Special Grants Nos. 6, dated the 10th December, 1901, and 82, dated the 29th October, 1925, as held by the Wankie Colliery Company Limited (hereinafter in this subsection called the company) immediately

before the 7th December, 1979, shall be deemed to be special grants issued under Part XX in respect of the reduced concession area as defined in the Wankie Coalfield Act [*Chapter 167 of 1974*], and the company shall continue to exercise its rights thereunder subject to the terms and conditions of the special grants and to such provisions of this Act as are not inconsistent therewith:

- (b) coal mining lease No. 1, dated the 1st November, 1976, granted to the company in terms of the Wankie Coalfield Act [*Chapter 167 of 1974*], shall be deemed to be a special grant issued in terms of Part XX, and the provision in the mining lease for the payment of an annual rent being construed as a provision for the payment of an annual fee referred to in subsection (2) of section *three hundred and three*, and the company shall continue to exercise its rights thereunder accordingly.

## 5 Interpretation

(1) In this Act—

“alluvial deposit” means—

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

“approved beneficiation plant” means a bank assay department, factory, refinery, smelter or treatment plant which has been declared to be an approved beneficiation plant in terms of section *two hundred and forty-seven*;

“approved cultivation scheme” means a scheme approved by the Board under section one hundred and eighty;

“approved prospector” means a person for the time being registered in the Register of Approved Prospectors;

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

“arbitration” means arbitration in terms of the Arbitration Act [Chapter 7:02], for which purpose the parties to a dispute shall be deemed to have entered into a written agreement to submit the dispute to arbitration, the arbitrators to be one person appointed by each of the parties, together with a third person appointed by such arbitrators;

“base minerals” means all minerals and mineral substances, other than nuclear energy source material, precious metals, precious stones, mineral oils, natural gases and coal, and includes all such slimes, concentrates, slags, tailings and residues as are valuable and contain base minerals as hereinbefore defined;

“block” means a claim or a group of claims which may be registered in terms of this Act under one certificate of registration;

“Board” means the Mining Affairs Board established under Part II;

“Chamber of Mines of Zimbabwe” means the Chamber of Mines of Zimbabwe incorporated in terms of the Chamber of Mines of Zimbabwe Incorporation (Private) Act [Chapter 21:02];

“coal” means anthracite, bituminous coal, brown coal, oil shale and lignite;

“course of a reef” means a line on the surface marking the intersection of the centre of a reef with such surface and, in cases where the whole or any portion of a reef is situated below the surface of the ground, the course of such reef shall be ascertained by projecting vertically to the surface the various points at which the centre of such reef approaches nearest to the surface, when the various points thus obtained shall be deemed to constitute the course of such reef;

“dam” means any works permitting of the artificial storage or accumulation of water, together with the water and all land submerged at high flood-level;

“disposal”, in relation to any mineral or mineral-bearing product, means the sale, donation or other alienation of such mineral or mineral-bearing product:

Provided that, where any mineral or mineral-bearing product is disposed of under an agreement in terms of which delivery of the mineral or mineral-bearing product is to be effected— (a) at some future date; or

(b) over a period of time; the mineral or mineral-bearing product, as the case may be, shall be deemed to have been disposed of on the dispatch thereof or on the dispatch of each consignment thereof, as the case may be;

“dump” means any aggregate of rock fragments or tailings which contain valuable minerals and have been accumulated by mining on a mining location;

“eluvial deposit” means a residual concentration of minerals in the immediate vicinity of the outcrop of the vein or lode from which it is derived;

“exclusive prospecting order” means an order issued under Part VI;

“exclusive prospecting reservation” means the area embraced by an exclusive prospecting order;

“extra-lateral right” means the right of following a reef on its dip beyond the vertical limits of a block;

“holder”, in relation to a registered mining location, means the person in whose name such location is registered with the mining commissioner or with the Board or with the Secretary and, in the case of a deceased person or of a company in liquidation, or of any person under a legal disability, means the executor, administrator, liquidator, trustee, tutor, curator or other person who has the administration or control of the property of the person in whose name such location is registered;

“holding”, in relation to private land, means the whole area of land which is held by an owner under one title or one agreement with the State:

Provided that if the owner of a holding has leased any portion thereof to any other person under an agreement of lease which is registered in the Deeds Registry, such portion shall be deemed to be a separate holding;

“inspector of mines” means an inspector of mines appointed in terms of section *three hundred and fortythree*;

“land surveyor” means a land surveyor duly admitted to practise in Zimbabwe and, at the time of the performance by him of any acts under this Act in such capacity, entitled so to practise in Zimbabwe;

“mine” includes any place, excavation or working whereon, wherein or whereby any operation in connection with mining purposes is carried on;

“mine surveyor” means a person who possesses, at the time of the performance by him of any acts under this Act required or permitted to be performed by a mine surveyor, such qualifications as may from time to time be specified by the Minister by statutory instrument;

“miner” means the person actually carrying on the work of mining on any mining location, whether he is the holder or the lessee or assignee of the rights of such holder;

“mineral” means—

- (a) any substance occurring naturally in or on the earth, which has been formed by or subjected to a geological process; and
- (b) any substance declared to be a mineral in terms of paragraph (a) of subsection (3), to the extent of such declaration;

but does not include—

- (i) except for the purposes of Part XX, mineral oils and natural gases; or
- (ii) any substance declared not to be a mineral in terms of paragraph (b) of subsection (3), to the extent of such declaration;

“mining commissioner” means the mining commissioner of the mining district within which the land or claims concerned, as the context may require, are situated;

“mining district” means a mining district declared in terms of section *three hundred and forty-two*;

“mining lease” means a mining lease issued under Part VIII or the area covered by such a mining lease, as the context may require, and subject to section *one hundred and sixty-eight*, includes a special mining lease;

“mining location” means a defined area of ground in respect to which mining rights, or rights in connection with mining, have been acquired under this Act or which were acquired under any previous law relating to mines and minerals and which were held immediately before the 1st November, 1961;

“mining purposes” means the purpose of obtaining or extracting any mineral by any mode or method or any purpose directly or indirectly connected therewith or incidental thereto;

“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;

“nuclear energy source material” means uranium or thorium or any other substance containing one or both of such elements in such concentrations as may be prescribed;

“occupier”, in relation to land, means the person lawfully and actually using or possessing any land under and by virtue of any grant or agreement;

“ore” means all forms of minerals or mineral aggregates which in the abstract are of economic value;

“output” means—

- (a) in respect of precious stones, precious stones which have been recovered from any mining location;
- (b) in respect of any other mineral, ore which has been mined and reduced to a saleable form or which is in a saleable form on being mined;

“owner”, as applied to land, means the registered owner of such land or any person lawfully holding land in accordance with any enactment or agreement with the State which entitles such person to obtain title thereto on the fulfilment by him of the conditions prescribed by such enactment or agreement and the duly authorized

representative of any such person or, in the case of any portion of Communal Land, the occupier of such portion; “peg” means—

- (a) an artificial post or rod, other than a metal peg, of a height of not less than one comma two metres above the ground and not less than one hundred millimetres in diameter or of such other dimensions as may be prescribed;
- (b) a metal peg of a height of not less than one comma two metres above the ground or such other height as may be prescribed and not less than ten millimetres in cross-section;

“placer deposit” means any form of mineral deposit which does not fall within the definitions of “reef”, “dump”, “alluvial deposit”, “eluvial deposit” or “rubble deposit”;

“point of departure” means any point at which the course of a reef crosses a boundary of a mining location;

“precious metals” means gold, silver, platinum and platinoid metals in an unmanufactured state, and includes all such slimes, concentrates, slags, tailings residues and amalgams as are valuable and contain such precious metals;

“precious stones” means rough or uncut diamonds or emeralds or any substances which may, in terms of subsection (2), be declared to be precious stones for the purposes of this Act;

“primary purposes” means domestic purposes and the support of animal life;

“private land” means any land the ownership of which has by law, grant or title deed become vested in any person, and includes any land held by any person under any enactment or agreement whereby such person is entitled to obtain from the State title thereto on the fulfilment by him of the conditions prescribed by such enactment or agreement;

“private water” bears the same meaning as in the Water Act [*Chapter 20:22*];

“prospecting licence” means an ordinary or a special prospecting licence taken out under section *twenty*;

“public water” bears the same meaning as in the Water Act [*Chapter 20:22*];

“quarry” means any place, excavation or working, other than a mining location, where any substance other than a mineral is obtained or extracted by means of quarrying operations;

“reef” means any form of ore deposit contained within defined boundaries occurring in the earth’s crust that has been deposited in the enclosing country rocks, and includes a true fissure vein, contact vein, segregated vein, gash vein, bedded vein or metalliferous blanket, and all such deposits as conform generically to the above classification and any bed of any mineral, such as ironstone or limestone, but does

not include alluvial deposits, eluvial deposits, placer deposits, rubble deposits or coal;

“Register of Approved Prospectors” means the register established in terms of section *fourteen*;

“registered mine manager” means the person registered in terms of the regulations as the mine manager of the mining location concerned;

“registered mining location” means—

- (a) a mining location which has been registered under this Act or which was registered under any previous law relating to mines and minerals and was held immediately before the 1st November, 1961;
- (b) a mining lease or a special mining lease;
- (c) a special grant as defined in this section or a special grant issued under Part XX; but does not include an exclusive prospecting reservation or a special grant to carry out prospecting operations;

“rubble deposit” means any natural deposit of rock fragments accumulated at or near the surface of the ground;

“Secretary” means the Secretary of the Ministry for which the Minister is responsible;

“special grant” means—

- (a) a special grant issued under Part XIX;
- (b) a special grant which was acquired before the 1st November, 1961, under any law relating to mines and minerals and which was held immediately before that date;
- (c) any mining right or any right in connection with mining which was acquired before the 1st September, 1935, and was registered in terms of section 86 of the Mines and Minerals Ordinance, 1903, and which was held immediately before the 1st November, 1961;

“special mining lease” means a special mining lease issued under Part IX or the area covered by such a special mining lease, as the context may require;

“specified”, in relation to a mineral or mineral-bearing product, means specified in a notice made in terms of section *two hundred and forty-seven*;

“State land” means land the ownership of which is vested in the President, excluding Communal Land:

Provided that, for the purposes of sections *twenty-six* and *twenty-nine*, State land shall not include any land which is private land;

“strike” means a horizontal line drawn at right angles to the dip of a reef;

“town lands” means any land falling within—

- (a) the area in terms of the Urban Councils Act [*Chapter 29:15*] of any municipality or town or any local government area for which a local board has been established; or
- (b) any other area declared by the President, by statutory instrument, to be town lands for the purposes of this Act;

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

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

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

- (a) any naturally-occurring substance, which is obtained or extracted by mining or quarrying or by similar methods, shall be a mineral for the purposes of all or any of the provisions of this Act;
- (b) any substance referred to in paragraph (a) of the definition of “mineral” in subsection (1) shall not be a mineral for the purposes of all or any of this Act;

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

## PART II

### ESTABLISHMENT AND FUNCTIONS OF MINING AFFAIRS BOARD

#### 6 Establishment and functions of Mining Affairs Board

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

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

#### 7 Constitution of Board

(1) The Board shall consist of—

- (a) the Secretary or, in his absence, the Deputy Secretary of the Ministry responsible for mines, who shall be the chairman; and
- (b) an under secretary or, in his absence, an assistant secretary of the Ministry responsible for mines; and (c) the Chief Government Mining Engineer; and
- (d) the Director of Metallurgy; and
- (e) the Director of Geological Survey; and
- (f) six other members appointed in terms of subsection (3).

(2) A member appointed in terms of subsection (3) shall hold office for such period, not exceeding two years, as may be fixed in his case by the Minister and shall be eligible for re-appointment.

(3) Of the members appointed by the Minister—

- (a) four, of whom two shall be small-workers, shall be selected by the Minister from a panel of names submitted by the Chamber of Mines of Zimbabwe;
- (b) one shall be selected by the Minister from a panel of names submitted by the Commercial Farmers' Union of Zimbabwe;
- (c) one shall be a member of the Institute of Chartered Accountants of Zimbabwe who is publicly practising as a chartered accountant in terms of the Chartered Accountants Act [*Chapter 27:02*].

(4) The Chief Government Mining Engineer, the Director of Metallurgy and the Director of Geological Survey may each appoint another member of the Public Service, who is not a member of the Board, to be his alternate member on the Board, and such alternate member shall be entitled to attend and vote at any meeting of the Board in the absence of the officer who appointed him.

(5) The Chamber of Mines of Zimbabwe and the Commercial Farmers' Union of Zimbabwe may nominate persons to be alternates to the members of the Board appointed by the Minister under paragraphs (a) and (b), respectively, of subsection (3) and each such person shall, if approved by the Minister, be an alternate member of the Board and shall be entitled to attend and vote at any meeting of the Board in the absence of the member to whom he is an alternate.

(6) If any body which is entitled to submit a panel of names in terms of subsection (3) for any cause whatsoever fails or neglects or refuses to submit such panel, it shall be lawful for the Minister to appoint to the Board any person as a member.

#### 8 Filling of vacancies

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

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

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

(3) If any member of the Board, other than the chairman, is prevented by illness, absence from Zimbabwe or other specific cause from exercising his functions on the Board, the Minister may appoint any person to act for such member during his absence.

(4) If the chairman is prevented by illness, absence from Zimbabwe or other specific cause from exercising his functions on the Board, the Minister may appoint any person to act as chairman during his absence, and the person so appointed shall during the term of his appointment exercise all the powers and fulfil all the duties of the chairman.

(5) If a member of the Board is appointed to act as chairman, the Minister may appoint any person to act as a member of the Board during the period of the chairman's absence.

## **9 Remuneration of members of Board**

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

## **10 Procedure of Board**

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

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

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

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

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

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

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

## **11 Powers of Board in relation to applications**

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

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

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

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

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

## **12 Witnesses may be examined on oath**

(1) The Board may examine persons appearing before it on oath, which oath the chairman of the Board is hereby empowered to administer.

(2) Any person who, having been duly sworn, makes a false statement to the Board on any matter relevant to the inquiry, knowing the statement to be false or not having reasonable grounds for believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection substituted by section 4 of Act 22 of 2001]

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

[Subsection amended by section 4 of Act 22 of 2001]

### **13 Penalty for obstruction**

Any person who obstructs or hinders any person authorized by the Board in his examination of a mining location or other area of ground shall be guilty of an offence and liable to a fine not level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment

[Subsection amended by section 4 of Act 22 of 2001]

## **PART III**

### **REGISTER OF APPROVED PROSPECTORS**

#### **14 Register of Approved Prospectors**

(1) The Secretary shall establish and maintain at the head office of the Ministry of Mines a register to be known as the Register of Approved Prospectors.

(2) There shall be entered in the Register of Approved Prospectors—

- (a) the name of every approved prospector registered as such in terms of paragraph (a) of subsection (3) of section *fifteen*; and
- (b) the area for which the approved prospector is registered in terms of subparagraph (i) of paragraph (a) of subsection (3) of section *fifteen*; and
- (c) particulars of any renewal, cancellation or suspension of the registration of such approved prospector; and
- (d) such other particulars as the Secretary may deem necessary.

#### **15 Application for registration as approved prospector**

(1) A person who wishes to be registered as an approved prospector shall— (a) make application in writing to a mining commissioner in the prescribed form; and

(b) submit therewith such photographs of himself as may be prescribed; and

(c) pay at the time of making such application the prescribed fee; and (d)

provide such other information as the mining commissioner may require:

Provided that a person who is not a permanent resident of Zimbabwe shall not be entitled to make any such application unless he has first obtained the prior written consent of the Secretary, and submits with his application such consent.

(2) On receipt of an application in terms of subsection (1) the mining commissioner shall satisfy himself as to the fitness of the applicant to be registered as an approved prospector, including the extent of the knowledge of the applicant of pegging procedures and of the rights and duties of prospectors and owners and occupiers of land under this Act, and shall then forward the application to the Secretary, together with his report and recommendation thereon.

(3) On receipt of an application, report and recommendation from the mining commissioner in terms of subsection (2) the Secretary may—

(a) if he is satisfied that no good cause to the contrary exists, grant the application, in which case he shall—

(i) register the applicant as an approved prospector; and

(ii) issue to him a numbered certificate of registration as an approved prospector which shall be in the prescribed form;

or

(b) remit the application to the mining commissioner for further investigation, report and recommendation:

or

(c) refuse the application, in which case the applicant shall be notified accordingly:

Provided that before refusing an application the Secretary shall notify the applicant that he is considering refusing his application, informing him of the grounds therefor, and give him an opportunity to make written representations in connection therewith within twenty-one days after the date of such notification.

(4) An applicant whose application in terms of subsection (1) has been refused by the Secretary may, within twenty-one days after the date of notification of such refusal, appeal in writing, giving grounds, to the Minister who may—

(a) allow the appeal, in which case the Secretary shall proceed in accordance with paragraph (a) of subsection (3) as if he had originally granted the application; or



(b) dismiss the appeal, in which case the applicant shall be notified accordingly.

(5) An applicant whose appeal in terms of subsection (4) has been dismissed by the Minister may not make a fresh application in terms of subsection (1) until after the expiry of a period of five years from the date on which his appeal was dismissed or such lesser period as the Minister may specify when dismissing the appeal.

(6) No application in terms of subsection (1) shall be granted unless the applicant has attained the age of eighteen years.

## **16 Expiry and renewal of registration**

(1) Subject to sections *seventeen* and *eighteen*, the registration of a person as an approved prospector shall be valid for a period of five years from the date of registration and then it shall automatically expire unless, prior to the expiry of such period, the registration is renewed for a further period of five years which shall be final.

(2) An approved prospector who wishes to renew his registration as such shall, not later than two months before his registration is due to expire in terms of subsection (1)—

(a) make written application to a mining commissioner on the prescribed form; and

(b) pay at the time of making such application the prescribed fee; and (c) submit therewith his certificate of registration as an approved prospector.

(3) On receipt of an application in terms of subsection (2) the mining commissioner—

(a) shall issue the applicant with a temporary document which shall serve as his certificate of registration as an approved prospector during the remainder of the current period of registration; and

(b) may, and if so instructed by the Secretary shall, satisfy himself afresh as to the matters referred to in subsection (2) of section *fifteen* and shall forward the application, together with his report and recommendation thereon, to the Secretary.

(4) On receipt of an application, report and recommendation from the mining commissioner in terms of subsection (3) the Secretary may—

(a) if he is satisfied that no good cause to the contrary exists, renew the registration of the applicant for a further period of five years, endorse the certificate of registration accordingly and return it to the holder; or

(b) remit the application to the mining commissioner for further investigation, report and recommendation; or

(c) refuse the application, in which case the applicant shall be notified accordingly:

Provided that before refusing an application the Secretary shall notify the applicant that he is considering refusing his application, informing him of the grounds therefor, and give him an opportunity to make written representations in connection therewith within twenty-one days after the date of such notification.

(5) An applicant whose application in terms of subsection (1) has been refused by the Secretary may, within twenty-one days after the date of notification of such refusal, appeal in writing, giving grounds, to the Minister who may—

(a) allow the appeal, in which case the Secretary shall proceed in accordance with paragraph (a) of subsection (4) as if he had originally granted the application; or

(b) dismiss the appeal, in which case the applicant shall be notified accordingly.

(6) An applicant whose appeal in terms of subsection (5) has been dismissed by the Minister may not make a fresh application for registration as an approved prospector in terms of subsection (1) of section *fifteen* until after the expiry of a period of five years from the date on which his appeal was dismissed or such lesser period as the Minister may specify when dismissing the appeal.

## **17 Cancellation or suspension of registration**

(1) The registration of a person as an approved prospector shall be cancelled or suspended by the Secretary on the direction of the Minister given in accordance with this section.

(2) If an approved prospector—

(a) is convicted of an offence, whether under this Act or otherwise; or

(b) has, in the exercise of any rights under this Act, conducted himself in a manner; which, in the opinion of the Minister, renders it necessary to suspend or cancel his registration as an approved prospector, the Minister may direct the Secretary—

(i) to suspend his registration for a specified period which shall expire before the date on which that registration is in any event due to expire in terms of subsection (1) of section *sixteen*; or

(ii) to cancel his registration; as the case may be.

(3) Before giving a direction in terms of subsection (2) the Minister shall notify the approved prospector concerned that he is considering taking action in terms of that subsection, informing him of the grounds therefor, and give him an opportunity to make written representations in connection therewith within twenty-one days of the date of such notification.

(4) The cancellation or suspension of the registration of a person as an approved prospector in terms of this section shall be in addition to any other penalty which may be imposed under this Act or any other law.

(5) The Secretary shall give written notice to the approved prospector concerned of the cancellation or suspension of his registration in terms of this section and the period of suspension.

### **18 Effect of expiry, cancellation or suspension of registration**

(1) A person whose registration as an approved prospector has expired in terms of section *sixteen* or has been cancelled or suspended in terms of section *seventeen* shall forthwith surrender to a mining commissioner his certificate of registration as an approved prospector.

(2) Where a certificate of registration as an approved prospector has been surrendered in terms of subsection (1) by reason of the suspension of the registration of the holder, such certificate shall be returned to the holder immediately on the expiry of the period of suspension.

(3) Until the period of suspension has expired a person whose registration as an approved prospector has been suspended in terms of section *seventeen* shall be deemed not to be registered as such.

(4) A person whose registration as an approved prospector has been cancelled in terms of section *seventeen* may not make a fresh application in terms of section *fifteen* for registration as an approved prospector until after the expiry of a period of five years from the date on which his registration was cancelled or such lesser period as the Minister may specify when directing the cancellation.

### **19 Duplicate certificate of registration as an approved prospector**

(1) If an approved prospector has lost his certificate of registration or the certificate has been destroyed, he may apply to a mining commissioner for a duplicate copy thereof.

(2) On making an application referred to in subsection (1) the approved prospector shall—

(a) pay the prescribed fee; and

(b) furnish a solemn declaration in a form to be approved by the mining commissioner which shall state— (i) the name of the holder of the certificate; and

(ii) the number of the certificate; and

(iii) that the certificate has been lost or destroyed; and

(c) submit such photographs as he would be required to submit if he were making an application in terms of section *fifteen*.

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

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

## **PART IV**

### ACQUISITION AND REGISTRATION OF MINING RIGHTS

### **20 Prospecting licences**

(1) Subject to this section and section *twenty-four*, any person who is a permanent resident of Zimbabwe or any duly appointed agent of such person may take out at the office of any mining commissioner one or more prospecting licences on payment of the appropriate fee prescribed in respect of each such licence.

(2) On making application for a prospecting licence the applicant shall furnish to the mining commissioner his full name and permanent postal address, which shall appear on the licence issued to him, and such other information as the mining commissioner may require.

(3) The mining commissioner may refuse to issue a prospecting licence, but shall forthwith report each refusal to the Secretary.

(4) Upon receipt of a report in terms of subsection (3), the Secretary shall refer the report to the Minister and shall, if so instructed by the Minister, direct the mining commissioner to issue a prospecting licence.

### **21 Appointment of approved prospector as representative of holder of prospecting licence**

(1) Any holder of a prospecting licence may, in writing under his hand, appoint an approved prospector to act as his representative under any prospecting licence already issued to him or under any prospecting licence which may thereafter be issued to him.

(2) A representative appointed in terms of subsection (1) shall act under a prospecting licence to which his appointment relates solely for the benefit of the holder of the licence.

(3) The rights conferred by this Act upon the holder of a prospecting licence— (a) shall be exercised by the holder personally only if he is an approved prospector;

(b) shall, where the holder is not an approved prospector, be exercised only by a representative appointed by the holder in terms of subsection (1).

(4) Without prejudice to any right of the holder of a prospecting licence to cancel such an appointment, the appointment of a person as a representative in terms of subsection (1) shall automatically be terminated if the registration of that person as an approved prospector expires or is cancelled or suspended.

## **22 Duplicate prospecting licence**

(1) If the holder of a prospecting licence has lost such licence, he may apply to any mining commissioner for a duplicate copy thereof.

(2) On such application he shall furnish a solemn declaration in a form to be approved by the mining commissioner which shall state—

- (a) that the licence has been lost or destroyed; and
- (b) from what mining commissioner's office he originally obtained the licence; and (c) the number of the licence.

(3) On receipt of such application and such solemn declaration the mining commissioner shall make any necessary inquiries at the office from which the original licence was obtained and shall, if he is satisfied that no good reason to the contrary exists, issue a duplicate copy of such licence to the applicant on payment of the prescribed fee for each such copy.

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

## **23 Duration of prospecting licence**

A prospecting licence shall be valid until and inclusive of the second anniversary of the date of issue thereof.

## **24 Holder of prospecting licence to be 18 or older**

No person who is under the age of eighteen years shall hold any prospecting licence.

## **25 Sale of prospecting licence forbidden**

(1) No person shall sell or otherwise dispose of any prospecting licence or certificate of registration as an approved prospector.

(2) Any sale or other disposition in terms of subsection (1) shall be void and the parties to such sale or other disposition shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment

[Subsection amended by section 4 of Act 22 of 2001]

## **26 Land open to prospecting**

Subject to the provisions and limitations contained in section *thirty-one*, the following land is open to prospecting—

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

## **27 Rights of prospecting and pegging conferred by prospecting licence**

(1) Subject to sections *twenty-one* and *three hundred and sixty-eight*, every holder of a prospecting licence shall be entitled to the following rights—

(a) the right, subject to the provisions and limitations hereinafter contained, of prospecting and searching for any minerals, mineral oils and natural gases on land open to prospecting, but not of removing or disposing of any mineral discovered save for the *bona fide* purpose of having it assayed or of determining the nature thereof or with the permission in writing of the mining commissioner; (b) the right, subject to the provisions hereinafter contained, of pegging—

- (i) one block of precious metal claims; or (ii) one block of precious stones claims; or (iii) one block of base mineral claims.

(2) No drilling or excavation work, whether at the surface or underground, shall be undertaken by the holder of a prospecting licence, save in the exercise of exclusive rights conferred on him by subsection (5) of section *forty-one* or subsection (2) of section *forty-two*.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## **28 Cancellation of certain rights to timber conferred by certain title deeds**

Any condition in a title deed to any piece of land stating that all indigenous timber is reserved and may be cut free of charge by holders of mining locations or of prospecting licences shall be regarded as *pro non scripto* and

every right possessed by any such holder by virtue of such a condition shall cease with effect from the 1st November, 1961.

## **29 Surface rights of holder of prospecting licence**

(1) In this section—

“location” means the area covered by the relevant prospecting notice and, where a discovery notice has also been posted, the area as extended by that discovery notice; “private land” does not include Communal Land.

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

(a) the right to take free of charge for primary purposes any public water or private water from land not closed to prospecting in terms of section *thirty* or *thirty-five* but only in so far as such taking does not interfere with the use of such water for primary purposes by the owner or occupier of the land; (b) after having posted his prospecting notice—

- (i) subject to the Forest Act [*Chapter 19:05*] and to such conditions as may be prescribed, and on payment to the occupier or, where there is no occupier, the owner of the land in advance of such tariff rate as may be prescribed, the right to take and use for firewood within the limits of his location any dead indigenous wood or timber found within those limits on land which is neither Communal Land nor land in regard to which a reservation has been made under section *thirty-six* or *thirty-seven*; and
- (ii) subject to this section, the right to erect within the limits of his location any temporary accommodation for himself and his employees and any temporary buildings or machinery for the purposes of his work:

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

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

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

(4) If an occupier of private land to whom notice has been given in terms of subsection (3) objects to the site chosen for such accommodation by the prospector and agreement between the occupier and the prospector on any such objection is not reached, the occupier may, within seven days of receipt of the notice or such longer period as may be determined by the mining commissioner, refer the matter to the mining commissioner to decide where the employees of the prospector should be accommodated and the decision of the mining commissioner shall be final and without appeal.

## **30 Meaning of “land under cultivation” and “permanent improvements”**

For the purposes of section *thirty-one*—

“land under cultivation” means—

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

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

“permanent improvements” does not include fences of any description, aqueducts, pipelines, wells, boreholes, dams or reservoirs.

## **31 Ground not open to prospecting**

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

- (a) upon any holding of private land except with the consent in writing of the owner or of some person duly authorized thereto by the owner or, in the case of a portion of Communal Land, by the occupier of such portion, or upon any State land except with the consent in writing of the President or of some person duly authorized thereto by the President—
- (i) within four hundred and fifty metres of the site of the principal homestead on such holding or on such State land, whether such homestead is already erected or actually in the course of erection;
  - (ii) within four hundred and fifty metres of the site of any intended principal homestead, which site has been registered with the mining commissioner by the landowner:  
 Provided that if a principal homestead is not erected on such a site within three years after the date of such registration, such site shall thereupon become open to prospecting;
  - (iii) within ninety metres of any area set aside on which housing constructed of brick or concrete has been erected for occupation by farm employees, if the total value of such housing is not less than five thousand dollars;
  - (iv) within ninety metres of any other building or permanent improvement of a value of not less than five hundred dollars;
  - (v) within ninety metres of any permanent cattle dip tank or spray race;
  - (vi) upon any land under cultivation or within fifteen metres thereof;
  - (vii) within nine metres of any other permanent *bona fide* farm building, except on payment to the landowner of such compensation as may be fixed by agreement or, failing agreement, by the Administrative Court to whom the matter shall be referred for decision;
- (b) upon any mining location, other than one in respect of which he may have acquired the exclusive right of prospecting under such licence or special grant or exclusive prospecting order;
- (c) within the surveyed limits of any city, town, township or village, or upon a belt fifty metres in width outside such limits;
- (d) upon any site which is on town lands, but outside the surveyed limits of any city, town, township or village situated thereon, and has been surveyed and set aside for any specific purpose;
- (e) upon any licensed aerodrome or any emergency landing ground or aerodrome of the State;
- (f) upon any rifle range of the State, any railway reserve or any cemetery; (g) except with the consent in writing—
- (i) of the owner or of some person duly authorized thereto by the owner, upon any holding of land which does not exceed one hundred hectares in extent and which is held by such owner under one separate title:  
 Provided that if such owner has one or more holdings which are contiguous and the total area of such contiguous holdings exceeds one hundred hectares this paragraph shall not apply to such holdings; or
  - (ii) in the case of a portion of Communal Land which does not exceed one hundred hectares in extent, of the occupier of such portion;
  - (iii) where any consent in terms of this paragraph is unreasonably withheld, the Minister may authorize any person to exercise his rights under any prospecting licence or any special grant to carry out prospecting operations or any exclusive prospecting order on such land, subject to such conditions as the Minister may impose;
- (h) upon any Communal Land occupied as a village without the written consent of the rural district council established for the area concerned.
- (2) Where a site intended for a principal homestead has been registered by the landowner under subparagraph (ii) of paragraph (a) of subsection (1)—
- (a) the landowner shall as soon as may be after such registration erect a peg marking the centre of the site and bearing an inscription stating the purpose of such peg, and shall maintain such peg and maintain such inscription in legible form;
  - (b) the landowner shall not, if such principal homestead has not been erected within the period of three years mentioned in the proviso to that subparagraph, be entitled again to register such site or any portion thereof until a period of not less than twelve months has elapsed from the date upon which such site again became open to prospecting.
- (3) If a landowner fails to comply with any provisions of paragraph (a) of subsection (2), the mining commissioner may cancel the registration of the site to which such failure relates.

### **32 Disputes between landowners and prospectors**

If any dispute arises between the holder of a prospecting licence or a special grant to prospect or an exclusive prospecting order and a landowner or occupier of land as to whether land is open to prospecting or not, the matter shall be referred to the Administrative Court for decision.

### 33 Registration of arable land

(1) Every owner of a holding of private land, or any person who has acquired the right to obtain title to private land under an agreement of sale which has been notarially executed, may apply to the mining commissioner for the registration of the arable portion or portions of such land, not exceeding in all two hundred hectares in extent.

(2) Any arable land which, at the date of the application mentioned in subsection (1), is not open to prospecting and pegging by virtue of paragraph (a) of subsection (1) of section *thirty-one* shall be deducted from the area of two hundred hectares which may be registered in terms of this section.

(3) Every applicant shall submit with his application, made in terms of subsection (1), a plan of the holding showing the area or areas which he wishes to be registered, together with a certificate from such person as may be approved by the mining commissioner confirming the situation and extent of such area or areas and of any other arable land and land under cultivation within such private land.

(4) Upon receipt of the plan and such certificate, referred to in subsection (3), the mining commissioner shall, if he is satisfied as to the title of the applicant and that the plan is satisfactory, register such land.

(5) Upon the registration of any land by the mining commissioner under this section, the land so registered shall, during the period of registration, be deemed to be land under cultivation for the purposes of section *thirty-one*.

(6) The person in whose favour registration has been granted under this section shall beacon the area or areas so registered in such manner as the mining commissioner may direct, and shall maintain the beacons in proper order and condition.

(7) If the person in whose favour registration has been granted under this section fails to beacon such area or areas or to maintain the beacons in proper order and condition, the mining commissioner may cancel the registration.

(8) The period of registration mentioned in subsection (5) shall terminate on the 31st August next succeeding the second anniversary of the date upon which the person upon whose application the registration was granted became the owner of the land so registered, or upon which such notarial agreement was executed, as the case may be:

Provided that the mining commissioner may on application extend the period of such registration for any period not exceeding three years.

(9) Any person who is aggrieved by the refusal of the mining commissioner to grant an extension of the period of registration may appeal against that decision to the Administrative Court.

### 34 Roads and railways may be included in location under certain conditions (1) In this section—

“road” includes any area of land reserved for road purposes under Part III of the Roads Act [*Chapter 13:12*] and any restricted road declared under Part IV of that Act.

(2) Subject to this section and section *three hundred and seventy-seven*, the holder of a prospecting licence or of a special grant or of an exclusive prospecting order or of a mining lease, may include in his location any road, railway track, electric power line, aqueduct, pipeline, occupied dwelling, well, borehole, dam, reservoir or works designed to prevent soil erosion or any land reserved for the taking of road-making materials under section 24 of the Roads Act [*Chapter 13:12*].

(3) No person shall carry on prospecting or other mining or development operations upon any road, nor within fifteen metres of the middle of any road.

(4) No person shall carry on prospecting or other mining or development operations or erect any building for the purposes of a mining location upon any railway track, nor within forty-five metres of any railway track.

(5) No person shall hinder or impede the use of any road or railway track by mining operations.

(6) Notwithstanding anything in this Act relating to the erection and maintenance of pegs and beacons, no person shall erect any pegs or beacons of a mining location on any road or railway track, nor within fifteen metres of the middle of any road, nor within forty-five metres of any railway track, but in lieu thereof there shall be fixed such means of indicating the position of the location as shall be prescribed.

(7) No person shall carry on prospecting or other mining or development operations within twenty-five metres of any pipeline constructed of asbestos pipes exceeding thirty centimetres in diameter or five metres of any other pipeline, nor within ten metres of any occupied dwelling, nor within thirty metres of any aqueduct, well or borehole, nor within ninety metres of any dam or reservoir, without the consent of the owner of such work, and no person shall impair or interfere with any such work or impede the use of such work by mining operations.

(8) No person shall carry on prospecting or other mining or development operations— (a) within ten metres of the centre line of an electric power line carrying 33kV or less; or

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

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

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

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

(9) No person shall carry on prospecting or other mining or development operations upon any land reserved for the taking of road-making materials under section 24 of the Roads Act [*Chapter 13:12*].

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

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

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

### **35 Reservations against prospecting and pegging**

(1) The mining commissioner may, and, if so instructed by the Secretary on the authority of the Minister, shall, reserve by notice posted at his office any area against prospecting and pegging, and all rights possessed by the holder of any prospecting licence or exclusive prospecting order to prospect for and peg minerals shall cease and may not be exercised within such area as from the date and hour of the posting of such notice or such later hour or later date and hour as may be specified in such notice:

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

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

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

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

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

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

(6) Where a reservation has been made on the instructions of the Secretary or the Minister has approved of a reservation mentioned in subsection (3), such reservation shall be advertised by notice in the *Gazette*.

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

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

(9) Every withdrawal of a reservation which has been advertised in the *Gazette* shall, likewise, be advertised by notice in the *Gazette*.

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

(11) For all the purposes of this Act, every special reservation of any area against prospecting and pegging which was lawfully made by the Administrator, the Governor or a mining commissioner before the 1st November, 1961, and which was still in force immediately before that date, shall be deemed to be a reservation made by notice by the mining commissioner on the instructions of the Secretary under this section.

### **36 Reservation of timber on application by landowner**

(1) Every owner or occupier of a holding of private land may apply for and shall be granted by the mining commissioner a reservation against the cutting or taking by prospectors or miners of fifty *per centum* of such indigenous wood or timber as is existing on his land at the time of his application for the reservation.

(2) A reservation of indigenous wood or timber made under subsection (1) shall not restrict prospecting or pegging or the working of mining locations on any such area.

(3) Any indigenous wood or timber within any area described in paragraph (a) of subsection (1) of section *thirty-one* shall be part of and be included in any timber reservation granted to such owner.

(4) The owner or occupier shall beacon and demarcate the area in which the wood or timber is reserved in such manner and within such time as the mining commissioner may direct.

(5) Where a reservation of timber has been granted under this section— (a) the owner or occupier shall be entitled—

- (i) to cut such wood or timber, and no more, outside the area of the reservation as may be necessary for the *bona fide* purposes of clearing or for the improvement of pastures;
- (ii) to use the wood or timber so cut for his own purposes or to sell it to a prospector or miner or, with the consent of the mining commissioner, to sell it to any other person;

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

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

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

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

(6) Where a reservation of timber has been granted under this section and it appears to the mining commissioner that a redistribution of the indigenous wood or timber on the land is necessary or desirable because the holding has been subdivided or for any other reason, he may cancel such reservation and grant a fresh reservation, and subsections (2), (3), (4) and (5) shall apply, *mutatis mutandis*.

(7) If any dispute arises as to the equal division of wood or timber under this section, the matter shall be referred to the Administrative Court for decision.

### **37 Reservation of timber on instruction of Minister**

(1) The mining commissioner may, when authorized thereto by the Minister, reserve by notice posted at his office all indigenous wood and timber or any specified indigenous wood or timber on any area, and all rights conferred by this Act upon any holder of a prospecting licence or special grant or upon any holder of a mining location to cut or take such wood or timber shall cease and may not be exercised within such area as from the date and hour of the posting of the reservation notice, but any such reservation of wood or timber shall not restrict prospecting or pegging within such area or the cutting of wood or timber which interferes with prospecting or mining operations.

(2) The beaconing and demarcation of any area reserved under subsection (1) shall be carried out in such manner as the mining commissioner may direct.

(3) The mining commissioner may, under the same conditions and in the same manner, withdraw any reservation made under subsection (1).

### **38 Notice of intention to prospect**

(1) This section shall apply to—

- (a) town lands;
- (b) private land the boundaries of which are fenced or clearly marked by beacons and cut lines or consist of rivers, roads or railway lines;
- (c) any area of land declared under the Forest Act [*Chapter 19:05*] to be demarcated forest or protected private forest;
- (d) Communal Land.

(2) Every person, before exercising any of his rights under a prospecting licence, special grant to carry out prospecting operations issued under subsection (1) of section *two hundred and ninety-one* or exclusive prospecting order on any land to which this section applies shall give notice of his intention to do so in whichever one or more of the following forms is applicable to the case—

- (a) if the land is a portion of town lands, he shall give notice in writing by registered letter addressed to the local authority concerned;
- (b) if the land is occupied private land, he shall give notice in writing to the occupier of the land in person or by registered letter addressed to the occupier at his ordinary postal address;
- (c) if the land is unoccupied private land, he shall give notice in writing by registered letter addressed to the owner at his ordinary postal address;
- (d) if the land has been declared a demarcated forest, he shall give notice in writing to the chief executive officer of the Forestry Commission established under the Forest Act [*Chapter 19:05*];
- (e) if the land has been declared a protected private forest, he shall give notice in writing to the owner of such land in person or by registered letter addressed to the owner at his ordinary postal address or, if such land is unoccupied, to the mining commissioner;



(f) if the land is in Communal Land, he shall give notice in writing to any rural district council established for the area concerned; and shall state in such notice his permanent postal address.

(3) In every notice given in terms of subsection (2) there shall, in addition, be stated the name and address of the person who will be in charge of prospecting operations on the land concerned.

(4) A notice which has been duly given in terms of this section by the holder of a prospecting licence shall be valid for a period of one hundred and twenty days from the date on which it was delivered or posted, as the case may be, and, if such holder has not pegged and registered a block on the land concerned within that period, he shall give fresh notice in terms of this section before continuing to exercise his rights under the prospecting licence.

(5) A notice which has been duly given in terms of this section by the holder of an exclusive prospecting order or a special grant to carry out prospecting operations shall be valid for the period of validity of that order or special grant.

(6) Notwithstanding subsections (4) and (5), in the event of any change in the particulars notified in terms of subsection (3), the holder shall forthwith give notice of that change and subsection (2) shall apply, *mutatis mutandis*, to the giving of that notice.

(7) Where a mining location has been pegged by a person who has failed to give any notice required by this section, the pegging of the mining location shall not be deemed to be invalid by virtue only of the failure to give such notice.

(8) Any person who fails to give any notice required in terms of this section, whether or not a mining location has been pegged, shall be guilty of an offence and liable to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

### **39 Hours of pegging and posting notices**

(1) No person shall peg any mining location, which term includes the posting of a prospecting, discovery or registration notice, between six o'clock in the afternoon and six o'clock in the morning.

(2) The pegging of any locations during the period prohibited by subsection (1) shall not confer any rights whatsoever on any person.

(3) No pegging shall be deemed to be illegal by reason of being done on a Sunday or public holiday.

### **40 Manner in which notices to be posted**

(1) If a prospecting, discovery or registration notice is posted on a notice board, such board shall be fixed on a peg.

(2) All notices shall be distinctly and legibly written, printed or painted, and no paper or other material which is liable to be washed off, and no writing liable to be rendered illegible by rain or exposure shall, except for purely temporary purposes, be deemed a proper marking.

### **41 Prospecting notices**

(1) Subject to this Act, any holder of a prospecting licence may and, if he wishes to drill or excavate, whether at the surface or underground, shall post a notice to be called a "prospecting notice" on ground open to prospecting.

(2) Such notice shall—

(a) in so far as material be in the prescribed form, and all the particulars required by such form shall be duly filled in;

(b) be carried on a peg erected in a conspicuous and accessible place.

(3) On posting a prospecting notice the holder of the prospecting licence under which it is posted shall immediately forward to—

(a) the mining commissioner; and

(b) whichever authority or person would be entitled in terms of section *thirty-eight* to be given notice of intention to prospect on the land affected by the prospecting notice;

a certified copy of the prospecting notice, together with a plan based on a map issued under the authority of the State and of a scale of not less than 1:25 000 sufficiently identifying the point where such notice has been posted and the area covered thereby.

(4) No person shall post a second prospecting notice by virtue of any licence until such time as notice of abandonment has been posted on the ground previously located in the manner provided in section *two hundred and fifty-eight* or until the prospecting notice previously posted under the same licence has lapsed.

(5) The posting of a prospecting notice in terms of subsection (1) shall confer upon the holder of the prospecting licence under which it is posted the exclusive right of prospecting, including the right to drill and excavate, whether at the surface or underground, for a period of thirty-one days each of twenty-four hours from the time of such posting on all ground which is open to prospecting at the time of the posting of such notice within an area described by a radius of three hundred metres from the point where the prospecting notice has been posted:

Provided that on the posting of a registration notice in terms of section *forty-four* all such rights outside the area of the block pegged shall lapse.

#### **42 Discovery of minerals or precious stones**

(1) If the holder of a prospecting licence, after posting his prospecting notice, by the work of himself or his agents, discovers within the area covered by such notice any ore or deposit of precious metals or precious stones, he shall mark the point of such discovery by a peg marked "DP".

(2) If the holder of a prospecting licence, after the posting of his prospecting notice, in like manner discovers within the area covered by such notice any ore or deposit of any base mineral, he shall mark the point of such discovery by a peg marked "DP" and indicate upon a notice to be styled a "discovery notice" in the prescribed form, posted at the spot where his prospecting notice is posted, the position of the DP peg, the nature of the base mineral he has discovered and the date and time of the discovery, and thereupon for the remainder of the period of thirty-one days mentioned in section *forty-one* he shall be entitled to the sole and exclusive right of prospecting, including the right to drill and excavate, whether at the surface or underground, upon all ground open to prospecting within an area described by a radius of nine hundred metres from his prospecting notice.

(3) The intersection of a reef by a borehole shall be deemed to constitute a discovery within the meaning of this section.

(4) If the holder of more than one special prospecting licence posts two discovery notices in such positions that the areas covered by such notices overlap, and thereafter he posts a registration notice in terms of section *forty-four* in respect of one of such areas, so much of the common segment as lies outside the block pegged by him shall, for the unexpired period of the prospecting notice in respect of which such registration notice was posted, be deemed to form part of the area covered by the other discovery notice.

#### **43 Pegging of precious metal, precious stones or base mineral blocks**

(1) A block of precious metal or precious stones claims shall, if possible, be pegged in regular form, and may be pegged in irregular form only if it is not possible to peg it in regular form.

(2) The regular form of a block of precious metal or precious stones claims shall be a parallelogram, which for a ten claim block shall not exceed five hundred metres in length nor two hundred metres in breadth, and the block shall be pegged in the following manner—

- (a) the pegger shall first measure off a straight line, which in the case of reef claims shall be in the direction of the strike of the reef, extending for a maximum distance of fifty metres in respect of each claim, not exceeding ten in all, which he desires to include in the block;
- (b) the line thus established shall be known as the "centre line", and its ends shall be established by pegs, marked E and F respectively, which shall be known as the "centre end pegs";
- (c) the pegger shall then measure off two parallel straight lines drawn as nearly as possible at right angles to the centre line, and passing respectively through each centre end peg and extending for equal distances not exceeding one hundred metres from each of those pegs on each side of the centre line;
- (d) the lines thus measured off shall be known as the "end lines", and their ends shall be established by pegs, to be known as "corner pegs", marked A, B, C and D respectively in such manner that the line AD passes through E and the line BC passes through F;
- (e) straight lines on either side of the centre line and joining the corner pegs A and B and C and D shall then constitute and be known as the "side lines" of the block;
- (f) the point marked "DP" shall lie within the boundaries of the block thus established, and no ground not open to prospecting, except as otherwise provided in section *thirty-four*, shall be included within such boundaries.

(3) A block in irregular form of precious metal or precious stones claims shall be so pegged as to fulfil all the following conditions—

- (a) it shall be bounded on not more than two sides by ground open to prospecting;
- (b) its area shall not exceed the area of a regular block of ten claims;
- (c) the length of any straight line which can be drawn between any two points on its boundary lines, whether the course of such line lies within or without the block, shall not exceed five hundred metres;
- (d) the point marked "DP" shall lie within its boundaries, and, except as otherwise provided in section *thirty-four*, no ground not open to prospecting shall be included within such boundaries;
- (e) in the case of reef claims the pegger shall fix pegs marked "Q" and "R" respectively at two points within the boundaries of his block, and the straight line joining such pegs shall determine the mean direction of the end lines of the block;
- (f) the boundary lines shall be straight lines, and the position of all points at which they intersect shall be established by corner pegs lettered in consecutive alphabetical order commencing with the letter A.

- (4) A block of base mineral claims may be pegged in any form, but shall be so pegged as to fulfil all the following conditions—
- (a) the boundary lines shall be straight lines;
  - (b) the pegger shall erect pegs at all points of intersection of the boundary lines, and, if any boundary is more than three hundred metres in length, he shall erect intermediate pegs, so that no peg shall be more than three hundred metres from the next adjoining peg on either side;
  - (c) all pegs shall be lettered in consecutive alphabetical order, commencing with the letter A;
  - (d) the point marked “DP” shall lie within the boundaries of the block, and no ground not open to prospecting, except as otherwise provided in section *thirty-four*, shall be included within such boundaries.
- (5) Where a block of base mineral claims is pegged by the holder of an ordinary prospecting licence it shall, in addition to the conditions mentioned in subsection (4), fulfil the following conditions—
- (a) it shall consist of not more than twenty-five claims and each claim shall not exceed one hectare in extent;
  - (b) the length of any straight line which may be drawn between any two points on its boundary lines, whether the course of such line lies within or without the block, shall not exceed one thousand two hundred and fifty metres.
- (6) Where a block of base mineral claims is pegged by the holder of a special prospecting licence, it shall, in addition to the conditions mentioned in subsection (4), fulfil the following conditions—
- (a) it shall consist of not more than one hundred and fifty claims, and each claim shall not exceed one hectare in extent;
  - (b) the length of any straight line which may be drawn between any two points on its boundary lines, whether the course of such line lies within or without the block, shall not exceed two thousand metres.
- (7) Every peg mentioned in this section shall bear on it, in addition to the distinguishing letter, the number of the licence under which the block was pegged and the name of the holder of the licence.

#### **44 Registration notices**

(1) Within the period of thirty-one days each of twenty-four hours from the posting of the prospecting notice, the holder of the prospecting licence who has discovered within the area covered by such notice any ore or deposit of precious metals or precious stones or any ore or deposit of any base mineral may peg a block, and thereafter, within the said period, post upon such block a notice, to be styled a “registration notice”, in like manner to the posting of the prospecting notice, and such registration notice shall be posted adjacent to the point marked “DP”, and the block so pegged shall include such registration notice and the point marked “DP”.

(2) Failure to peg off such block, and thereafter to post such registration notice within the period mentioned in subsection (1), shall be deemed to constitute an abandonment of all rights acquired by the posting of such prospecting notice.

(3) Notwithstanding subsection (1) or (2), where the discovery of the ore or deposit is by means of a borehole, the period within which a registration notice may be posted and a block pegged shall be extended to ninety days each of twenty-four hours from the time of the posting of the prospecting notice.

(4) A registration notice shall, so far as material, be in the form prescribed, and particulars required by such form shall be duly filled in.

#### **45 Registration of blocks**

(1) The holder of any mining location upon which a registration notice has been posted may, on application to the mining commissioner within a period of thirty-one days after the date of posting such registration notice, and on payment of the prescribed fee, obtain a certificate of registration.

(2) On every such application the applicant shall lodge the following with the mining commissioner—

- (a) the prospecting licence and the power of attorney or other document, if any, under and by virtue of which the block was located;
- (b) a copy of the prospecting notice;
- (c) in the case of a base mineral block, a copy of the discovery notice;
- (d) a copy of the registration notice;
- (e) a plan in triplicate based on a map issued under the authority of the State and of a scale of not less than 1:25 000, sufficiently identifying the position of the block to be registered, the position and lettering of the pegs, including the peg marked “DP”, and the position of the prospecting notice;
- (f) a certificate under his hand stating that the said copies of such notices are true copies and that all facts stated therein are true and correct;
- (g) if the block is pegged on ground for which the consent of the owner is required, the written consent of the owner or some person duly authorized thereto by the owner.

(3) If registration is granted, the mining commissioner shall—

- (a) return to the applicant one copy of the plan lodged with the registered number of the block endorsed thereon; and
- (b) send notification of such registration and one copy of the plan lodged with the registered number of the block endorsed thereon to whichever authority or person would be entitled in terms of section *thirty-eight* to be given notice of intention to prospect on the land on which the block is pegged; and (c) retain a copy of the plan.

(4) When application is made for a certificate of registration of a block which has been previously registered and abandoned or forfeited, the applicant shall furnish, if possible, the previous name and registered number of the block and so far as is possible any re-pegging of any location shall perpetuate the original name of such location.

(5) If the holder of any location fails to apply for a certificate of registration in the manner prescribed within the period of thirty-one days, he shall be deemed to have abandoned such block:

Provided that if such holder makes application within the said period to the mining commissioner for an extension of the period and furnishes any reason for such extension which to the mining commissioner seems good and sufficient, the mining commissioner may extend the said period for a further period not exceeding sixty-two days.

(6) If such holder of a location fails to apply for a certificate of registration in the manner prescribed within such extended period, he shall be deemed to have abandoned such block

#### **46 Numbering of locations**

The mining commissioner shall, on the original registration of every mining location, assign a registered number and name in his register.

#### **47 Pegging of sites**

(1) In this section—

“property” means two or more blocks of claims, whether contiguous or otherwise, owned by one person, from which the ore is being treated at the same milling or reduction plant, or which are under the control of one registered mine manager.

(2) The holder of a registered mining location may peg on any ground open to prospecting in the vicinity of such location a site or sites for the purpose of erecting thereon residences for himself or his employees, for a mill or other machinery required for the efficient working of his location, or for tailings or waste rock dumps, for a slimes or return water dam or dams, for the purpose of burning charcoal required for his mining location, or for any other legitimate object connected with and necessary for the purposes of his location:

Provided that the mining commissioner may, upon special application made to him for that purpose, and after consultation with the occupier of the land, grant permission for a site or sites to be pegged and registered on ground open to prospecting, although not in the vicinity of a registered mining location, for the purposes of such location.

(3) Save as otherwise provided in subsection (4), the maximum area which may be pegged as sites in terms of subsection (2) in respect of any one mining location or property shall be forty hectares and no one site shall exceed an area of forty hectares.

(4) The mining commissioner shall, on application made to him, permit the holder of a registered mining location or property to peg a site exceeding forty hectares or sites in the aggregate exceeding forty hectares if he is satisfied that such holder requires such larger area.

(5) In pegging a site, the position of all the points of intersection of the boundary lines, which shall be straight lines, shall be established by pegs, lettered in consecutive alphabetical order commencing with the letter A, and bear the word “site” and the registered number of the mining location in respect of which such site is pegged, and no ground not open to prospecting shall be included within such boundaries:

Provided that in no case shall the distance between two adjacent pegs on the same boundary line exceed three hundred metres.

(6) Any such holder who is aggrieved by the refusal of the mining commissioner to grant permission in terms of subsection (3) may appeal against such refusal to the Administrative Court.

#### **48 Registration of sites**

(1) Any pegger of any site mentioned in section *forty-seven* shall, on the same day as such site is pegged, post on it a registration notice as nearly as material in the prescribed form, and shall, within a period of thirtyone days from the date of such pegging, apply to the mining commissioner for a certificate of registration.

(2) On such application he shall lodge with the mining commissioner— (a) a copy of the registration notice; and

(b) a plan in triplicate based on a map issued under the authority of the State and of a scale of not less than 1:25 000 sufficiently identifying the form, position and extent of the site; and

(c) a certificate under his hand that the copy of the registration notice is a true copy and that all the facts therein stated are true and correct; and (d) the prescribed registration fee.

(3) The mining commissioner shall, if satisfied that the applicant is legally entitled to peg such site, issue to him a certificate of registration.

(4) If registration of a site is granted, the mining commissioner shall—

(a) return to the applicant one copy of the plan lodged with the registered number of the site endorsed thereon; and

(b) send notification of such registration and one copy of the plan lodged with the registered number of the site endorsed thereon to whichever authority or person would be entitled in terms of section *thirtyeight* to be given notice of intention to prospect on the land on which the site is pegged; and (c) retain a copy of the plan.

(5) If the pegger of a site fails to apply for a certificate of registration in the manner prescribed within the aforesaid period of thirty-one days, he shall be deemed to have abandoned such site:

Provided that if such pegger makes application within the said period to the mining commissioner for an extension of the period and furnishes any reason for such extension which to the mining commissioner seems good and sufficient, the mining commissioner may extend the said period for a further period not exceeding sixty-two days.

(6) If such pegger fails to apply for a certificate of registration of the site in the manner prescribed within such extended period, he shall be deemed to have abandoned such site.

#### **49 Sites to be attached to location**

(1) Every site which is registered with the mining commissioner in terms of section *forty-eight* shall be deemed to be inalienably attached to the location in respect of which it was pegged, and every transfer, hypothecation, option, abandonment, forfeiture or cancellation affecting such location shall act as a transfer, hypothecation, option, abandonment, forfeiture or cancellation affecting any site attached to such location, and no separate sale, lease, hypothecation or option purporting to affect any site apart from the mining location to which it is attached shall be valid.

(2) Any order of court affecting any mining location shall be deemed to affect similarly any site attached to such location.

(3) At any time prior to the hypothecation, giving of an option or lease, abandonment, forfeiture or cancellation of a mining location the holder thereof may apply to the mining commissioner for the cancellation of the registration of any site attached thereto, and, on filing with the mining commissioner the certificate of registration of such site, and on payment of the fee prescribed in section *forty-eight*, for the simultaneous re-registration thereof under a fresh registered number as attached to any other mining location registered in his name in the same vicinity, and upon such re-registration such other mining location shall, for the purposes of subsection (1), be deemed to be the location in respect of which the site was pegged.

#### **50 Cancellation of certificate of registration**

(1) Subject to subsection (2), the mining commissioner may, notwithstanding subsection (1) of section *fiftyeight*, at any time cancel a certificate of registration issued in respect of a block or site if he is satisfied that—

(a) at the time when such block or site was pegged it was situated on ground reserved against prospecting and pegging under section *thirty-one* or *thirty-five* or on ground not open to pegging in terms of subsection (3) of section *two hundred and fifty-eight*; or

(b) provisions of this Act relating to the method of pegging a block or site were not substantially complied with in respect of such block or site.

(2) At least thirty days before cancelling a certificate of registration under subsection (1), the mining commissioner shall give notice to the holder of the block or site of his intention to cancel such certificate and of the grounds for such cancellation and of the proposed date of such cancellation, and shall at the same time inform the holder that he may, at any time before that date, appeal in writing to the Minister against such cancellation.

(3) Such notice shall be given by registered letter addressed to the holder of the block or site at the postal address recorded in the office of the mining commissioner or, if no such address is recorded, by publication thereof in the *Gazette*.

(4) Where such an appeal is made, the Minister shall give directions to the mining commissioner as to whether or not the certificate of registration is to be cancelled, and the mining commissioner shall comply with such directions.

(5) Upon such cancellation the mining commissioner shall post upon the board whereon notices of forfeiture are posted a notice giving particulars of such cancellation and shall, in addition, publish those particulars in the *Gazette* and in a newspaper circulating in his district.

(6) A mining location, the certificate of registration of which has been cancelled in terms of this section, shall, for the purposes of sections *two hundred and sixty-eight*, *two hundred and sixty-nine*, *three hundred and sixty-three* and *three hundred and seventy-five*, be deemed to have been forfeited and, accordingly, any reference in section *two hundred and sixty-nine* to the posting of a forfeiture notice shall be read as including a reference to the posting of the notice of such cancellation.

## **51 Beaconing of locations**

(1) Within a period of two calendar months from the date of issue of a certificate of registration in respect of any mining location, all the pegs of such location shall be replaced by stone beacons or beacons consisting of concrete or mason work:

Provided that, where the pegs of a mining location have been replaced by stone beacons in terms of this subsection and thereafter a return in terms of paragraph (a) of subsection (1) of section *two hundred and fifty-one* has been rendered each month for six successive months in respect of that mining location, such beacons shall be replaced by beacons consisting of concrete or mason work.

(2) Every such stone beacon shall be at least six hundred millimetres high and one comma two metres in diameter at the base, and in the centre of such beacon there shall be solidly and securely fixed a peg in an upright position and standing not less than six hundred millimetres above the top of such beacon.

(3) Every such concrete or mason work beacon shall—

- (a) unless securely set into the solid rock, be embedded into the ground to a depth of not less than three hundred millimetres; and
- (b) be at least six hundred millimetres high; and
- (c) be at least six hundred millimetres square at ground level and three hundred millimetres square at the top; and
- (d) have in the centre thereof, solidly and securely fixed, a steel peg in an upright position and standing not less than six hundred millimetres above the top of the beacon.

(4) Every such concrete beacon shall be—

- (a) of concrete consisting of at least one part of fresh cement to three parts of clean sand and six parts of clean stone aggregate; and
- (b) solid or, if not solid, the shell thereof shall be not less than fifty millimetres thick.

(5) Where a beacon is placed on a boundary line there shall—

- (a) in the case of a stone beacon, be dug two direction trenches not less than one metre long, three hundred millimetres wide and three hundred millimetres deep, or other permanent means of demarcation approved by the mining commissioner; or
- (b) in the case of a concrete or mason work beacon, be engraved upon the top of the beacon, or otherwise affixed to the top of the beacon in such permanent manner as the mining commissioner may approve, two clear direction marks not less than one hundred millimetres long; to indicate the direction of the boundary lines.

(6) The upright pegs of every beacon shall bear a metal plate, the upper edge of which shall be level with the upper edge of such peg and which shall be not less than two hundred millimetres square and shall face inwards, and on which shall be legibly printed or painted, in the order shown, the following particulars— (a) a letter corresponding to the letter assigned to such peg in the registration notice; and

- (b) the name of the block or, if a site, the word “site”; and
- (c) the nature of the mineral in respect of which the location is pegged; and
- (d) the registered number of the location; and
- (e) the date of the original registration of the location; and
- (f) the name or names of the holder or holders; and
- (g) in the case of a site, the registered number of the block of claims to which it is attached.

(7) All beacons, pegs, claim plates, direction trenches and direction marks shall be kept and maintained in good order until a quitance certificate has been issued in terms of section *two hundred and sixty-nine* in respect of the mining location in question, and holders of mining locations shall make a certificate to the mining commissioner annually that the beacons, pegs, claim plates, direction trenches and direction marks of such location are in good order and condition and that they comply with the requirements of this Act.

(8) Subsections (2) to (6) shall not affect the validity of the beaoning of any mining location lawfully beaoned in accordance with the corresponding provisions in force immediately before the 1st January, 1974, hereinafter referred to as the old provisions, and the beacons, pegs, claim plates and direction trenches of any such location may be kept and maintained in accordance with the old provisions.

## **52 Survey for excess areas**

(1) If at any time the mining commissioner has reason to believe that the number of claims in any block exceeds the number registered in such block, he may cause the boundaries of such block to be surveyed by a land surveyor.

(2) If the number of claims in such block is found on such survey to exceed the number registered as aforesaid, the holder thereof shall be liable to pay to the mining commissioner the cost of such survey, in addition to any amount which he may be liable to pay under section *fifty-four*.

(3) The mining commissioner may, before authorizing any such survey, require any person who has filed information regarding the excess to lodge with him such sum of money as may, in his opinion, be necessary to cover the cost of such survey.

(4) The money so lodged shall, in the event of any excess being established by any such survey, be repaid to the person so informing as aforesaid; but, if no excess is established, the cost of such survey shall be paid with or out of such money, and any balance returned to the person so informing.

### **53 Excess areas lawfully pegged**

If more than ten precious metal claims have been pegged under one prospecting licence or special authority issued before the 1st September, 1935, which entitled the holder of such licence or authority to peg more than ten precious metal claims as one mining location, and such claims have been registered under one certificate of registration, all claims so registered shall be held as one block for all purposes of this Act.

### **54 Excess areas not lawfully pegged**

(1) If at any time after the registration thereof it is found that the number of claims in a block pegged and registered under one prospecting licence or other authority exceeds the number of claims registered in such block, the mining commissioner shall notify the holder thereof.

(2) The holder thereof shall, within thirty-one days of a date to be fixed by the mining commissioner in such notice, forward to the mining commissioner the certificate of registration of such block, together with a fine of an amount equivalent to level two for each claim or portion of a claim in excess of the number of claims originally registered in such block.

[Subsection amended by section 4 of Act 22 of 2001]

(3) Upon receipt of the certificate of registration and the fine, the mining commissioner shall register such excess claims as part of the original block and shall endorse upon the certificate of registration of such block the number of the excess claims so registered and the date of registration.

(4) Any excess claims so registered under this Act and any excess claims similarly registered under any law relating to mines and minerals which was in force before the 1st September, 1935, shall be held, together with the claims originally registered in the block, as one block for all purposes of this Act.

### **55 Determination of number of claims in block**

(1) In—

(a) subsection (2), every fifty metres in length and every hectare;

and

(b) subsection (3), every hectare; in area shall represent a claim.

(2) The number of claims in any precious metal or precious stones block shall be determined in a regular block by the length of the longest line which can be drawn within the block parallel to either side line, and in an irregular block by the length of the longest line which can be drawn between any two points on its boundary lines, whether the course of such line lies within or without the block, or in either case by the area, whichever may show the greater number of claims.

(3) The number of claims in every base mineral block shall be determined by its area: Provided that—

(i) in the case of a base mineral block which has been pegged by the holder of an ordinary prospecting licence, if the length of the longest straight line which can be drawn between any two points on its boundary lines, whether the course of such line lies within or without the block, exceeds one thousand two hundred and fifty metres, then, notwithstanding the fact that the total area of the block does not exceed twenty-five claims, every fifty metres of that excess of length shall be deemed to represent one claim;

(ii) in the case of a base mineral block which has been pegged by the holder of a special prospecting licence, if the length of the longest straight line which can be drawn between any two points on its boundary lines, whether the course of such line lies within or without the block, exceeds two thousand metres, then, notwithstanding the fact that the total area of the block does not exceed one hundred and fifty claims, every fifty metres of such excess of length shall be deemed to represent one claim.

(4) For the purposes of applying subsection (3) to any base mineral block registered under the provisions in force immediately before the 1st January, 1974, the first one hundred and fifty metres of any excess of length referred to in that subsection shall be disregarded.

## **56 Re-adjustment of internal beacons of groups of base mineral locations**

Notwithstanding sections *fifty-two*, *fifty-four* and *fifty-five*, the Secretary may authorize the holder of any group of contiguous base mineral mining locations, after a survey thereof has been made by a land or mine surveyor, to adjust the beacons of blocks within the outside boundaries of such group of mining locations, and thereupon fines in respect of excess claims shall only be payable on the excess claims existing after the adjustment of the internal beacons of the mining locations within the area:

Provided that no additional ground outside the boundary of the area originally pegged shall be included in any adjustment of beacons, nor shall the total area originally pegged be reduced.

## **57 Wilful overpegging**

Nothing in sections *fifty-two*, *fifty-three*, *fifty-four*, *fifty-five* and *fifty-six* shall be deemed to relieve any person from liability under this Act to any penalty prescribed for the wilful pegging of a mining location of a larger size than he is entitled to or purports to peg.

## **58 Impeachment of title, when barred**

When a mining location or a secondary reef in a mining location has been registered for a period of two years it shall not be competent for any person to dispute the title in respect of such location or reef on the ground that the pegging of such location or reef was invalid or illegal or that provisions of this Act were not complied with prior to the issue of the certificate of registration.

## **59 Lost certificates of registration**

(1) If the holder of the certificate of registration or of special registration last issued in respect of any mining location has lost or mislaid such certificate he may, thirty days after publication in the *Gazette*, in a form to be approved by the mining commissioner, of notice of his intention to do so, apply to the mining commissioner for a duplicate copy thereof.

(2) Such holder shall furnish to the mining commissioner with his application a solemn declaration which, *inter alia* shall state—

- (a) the fact of the loss or destruction of the certificate or that the same has been mislaid; and
- (b) that he has not delivered or pledged the certificate to any person either as security for money advanced to or owing by him or otherwise; and
- (c) that he is of right entitled to the mining location mentioned in the certificate of which a duplicate is required.

(3) On receipt of such application and such solemn declaration the mining commissioner shall, if he is satisfied that no good reason to the contrary exists, issue a duplicate copy of such certificate to the applicant on payment of the prescribed fee.

(4) A duplicate copy of a certificate issued in terms of this section shall supersede and take the place of the original.

## **60 Address to be given to mining commissioner**

(1) Every holder of a mining location on registration of such location in his name at the office of the mining commissioner and every lessee and assignee of such holder shall furnish such mining commissioner with an address within Zimbabwe at which all notices, orders or other processes shall be served by the mining commissioner or other officer duly appointed for the purposes of this Act, and any such holder, lessee or assignee may at any time change such address by registering at the office of such mining commissioner any other address within Zimbabwe.

(2) Service of any such notice, order or other process at such registered address shall be deemed to have the same effect as personal service.

(3) In default of any address being registered as by this section required, the posting in the office of the mining commissioner of any such notice, order or other process shall be deemed to have the same effect as personal service.

(4) Nothing in this section contained shall be construed so as to preclude the High Court from giving such directions with regard to service as to it seem proper or expedient.

## **61 Obligations of partnerships and companies**

(1) No more than six persons shall be registered as the joint holders of a mining location.

(2) When two or more persons are registered as the joint holders of a mining location, each and every such person shall be jointly and severally responsible for every obligation and liability attaching to the registered holder of such location.

(3) Every partnership or company which is the holder of a mining location shall at the time of registration register at the office of the mining commissioner the name of an accredited agent residing in Zimbabwe, and such agent shall, when registered, be personally responsible under this Act for all matters, acts and omissions in connection with such location in the same manner as if such location were registered in his name as his own property.



(4) If such partnership or company at any time revokes the registration of any such accredited agent, it shall register some other person as its accredited agent.

(5) A registered accredited agent may at any time resign his appointment as such by giving notice in writing to the mining commissioner, but such resignation shall not take effect until the expiration of forty-eight hours after the receipt of such notice by the mining commissioner.

(6) Where a registered accredited agent has resigned, the partnership or company concerned shall, within forty-eight hours after receipt of notice from the mining commissioner of the fact of such resignation, register some other person as its accredited agent.

(7) Subsections (3), (4) and (6) shall apply to every partnership or company which is working a mining location under tribute or option:

Provided that the time of registration shall be within two weeks of the start of such working.

(8) Nothing in this section shall be taken in any way to relieve a company or the members of a partnership of any liability incurred or any duty imposed under this Act in regard to any mining location held by such company or such partnership.

## **62 Cancellation of certificate of registration without abandonment**

(1) On application by the holder of any registered mining location, and on the production of the certificate of its registration, the Secretary may, at his discretion, authorize a mining commissioner to cancel such certificate of registration of such location without abandonment or forfeiture of such location, and cause to be issued to the said holder at one and the same time a fresh certificate or certificates of registration of the whole or any portion or portions of such location which have been previously beacons off within such location in the manner prescribed in this Act, assigning to such certificate or certificates fresh registered numbers.

(2) The said holder shall pay to the mining commissioner the prescribed fee for each such fresh certificate.

(3) Within a period of seven days from the date of issue of such fresh certificate or certificates, or within such period as the mining commissioner may fix, the holder of such location shall remove all the beacons of the original mining location not used for the beaconing of the new portion or portions, and on the beacons of the new portion or portions shall replace the registered number originally assigned to such location by the new registered number assigned to such portion or portions.

## **PART V**

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

## **63 Interpretation in Part V**

In this Part—

“order” means an order made under section *seventy-one* or *seventy-two*;

“owner”, in relation to State land, means the Minister responsible for the administration of such land;

“reserved ground” means land upon which a prospector is prohibited in terms of paragraphs (a) and (g) of subsection (1) of section thirty-one from exercising any of his rights under his prospecting licence without the consent in writing of the owner of the land, but does not include that portion of such land which lies within two hundred and twenty-five metres of the site of the principal homestead mentioned in subparagraph (i) of paragraph (a) of that subsection.

## **64 Application for authority to prospect on reserved ground**

(1) Any person may make written application to the Board for authority to prospect on reserved ground.

(2) The applicant shall furnish to the Board—

(a) full details of that portion of the reserved ground on which authority to prospect is sought, together with a plan thereof prepared by a mine or land surveyor; and

(b) the reasons why he thinks that such reserved ground may warrant the granting of the authority; and (c) full information as to his financial status; and

(d) any other information relative to the application which may be required of him by the Board.

(3) On receipt of the application by the Board—

(a) the chairman of the Board may issue a direction to the mining commissioner to reserve the ground to which the application relates against prospecting and pegging in terms of section *thirty-five*, and the mining commissioner shall, without obtaining the authority of the Minister, forthwith reserve such ground accordingly;

(b) the Board may refuse the application or approve it provisionally.

## **65 Procedure on provisional approval**

(1) If the Board provisionally approves such application it shall—

- (a) unless the chairman of the Board has issued a direction to the mining commissioner under paragraph (a) of subsection (3) of section *sixty-four* itself issue such a direction, and the mining commissioner shall comply therewith; and
- (b) after the mining commissioner has reserved the ground in accordance with a direction given under paragraph (a) of subsection (3) of section *sixty-four* or paragraph (a), notify the owner and the occupier, if any, of the reserved ground, of the application and require them to inform the Board in writing within thirty days of such notification whether they object to the grant of the application.

(2) Notification in terms of paragraph (b) of subsection (1) shall be given by posting a registered letter to the owner and the occupier, if any.

#### **66 Grant or refusal of application**

(1) If an owner or occupier of reserved ground informs the Board that he has objections to the grant of the application, the Board shall, on a day fixed by it and notified to the applicant and the objector, hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the application.

(2) If no notification of objection to the grant of the application has been received from the owner or the occupier, or if no notification was given in terms of paragraph (b) of subsection (1) of section *sixty-five* owing to the whereabouts of the owner and the occupier, if any, being unknown to the Board, the Board shall proceed with the consideration of the application.

#### **67 Board's powers in regard to application for authority to prospect**

(1) The Board may, after holding a hearing in terms of subsection (1) of section *sixty-six* or considering the application in terms of subsection (2) of that section—

- (a) grant authority to the applicant to prospect on such ground in such manner and by such means and for such period as shall be specified by the Board in such authority, if the Board is satisfied—
  - (i) that the applicant's financial status is such that he will be able to pay any sum which may become payable by him under section *eighty* or *eighty-two* as a result of the exercise of his rights under such authority; and
  - (ii) that minerals are likely to occur within the area to which the application relates; and
  - (iii) that little or no interference with the rights of the owner or occupier of the ground will result from such prospecting; or (b) refuse the application.

(2) Before granting any such authority, the Board— (a) shall consult the Natural Resources Board;

- (b) may, and, if so required by the owner or the occupier of any of the reserved ground, shall, require the applicant to furnish a guarantee satisfactory to the Board for the payment of the sum mentioned in subparagraph (i) of paragraph (a) of subsection (1).

(3) The Board may attach to an authority such conditions as it may think fit.

#### **68 Extension and amendment of authority granted under section 67**

(1) The holder of an authority granted under section *sixty-seven* may, at any time before the expiry of the period for which the authority was granted, make written application to the Board—

- (a) for an extension of the period for which the authority was granted;
- (b) for the amendment of the authority in respect of the manner in or means by which the prospecting operations are to be carried out.

(2) On receipt of such application the Board shall notify the owner and the occupier, if any, of the reserved ground of such application and require them to inform the Board in writing within thirty days of such notification whether they object to the grant of the application, and subsection (2) of section *sixty-five* shall apply, *mutatis mutandis*, in respect of such notification.

(3) Sections *sixty-six* and *sixty-seven* shall apply, *mutatis mutandis*, in respect of such application.

(4) The holder of an authority in respect of which an extension of the period has been granted under this section may, in like manner and subject to the like conditions, from time to time apply for and be granted an extension or amendment of the authority.

#### **69 Board may authorize more extensive prospecting operations**

(1) Where, on the written application of the holder of an authority granted under section *sixty-seven* made before the date on which the reservation in respect of the reserved ground is withdrawn by the mining commissioner under section *eighty-one*, the Board is satisfied that, having regard to the results of the prospecting operations carried out on the reserved ground under the authority, such a course is justified, it may, after consultation with the owner and the occupier, if any, of such ground, grant authority for the conduct of such more extensive prospecting operations on such ground as shall be specified by the Board and in such manner and by such means and during such period as the Board may specify.

(2) Subsection (2) of section *sixty-seven* shall apply, *mutatis mutandis*, in respect of such authority.

(3) The Board may attach to an authority such conditions as it may think fit.

(4) It shall be a condition of every authority granted under this section and of every extension thereof that the holder of the authority shall conduct prospecting operations progressively inwards from the perimeter of the reserved ground in such manner as the Board shall specify in the authority, but the Board may grant exemption from such a condition if it is satisfied that the proper prospecting of the area would be unduly impeded thereby.

#### **70 Extension and amendment of authority granted under section 69**

- (1) The holder of an authority granted under section *sixty-nine* may, at any time before the expiry of the period for which the authority was granted, make written application to the Board—
- (a) for an extension of the period for which the authority was granted;
  - (b) for the amendment of the authority in respect of the manner in or means by which the prospecting operations are to be carried out.
- (2) The Board may, after consultation with the owner and the occupier, if any, of the reserved ground, refuse such application or grant it subject to such conditions and for such period as it may think fit.
- (3) Subsection (2) of section *sixty-seven* shall apply, *mutatis mutandis*, in respect of such authority.
- (4) The holder of an authority in respect of which an extension of the period has been granted under this section may, in like manner and subject to the like conditions, from time to time apply for and be granted an extension or amendment of the authority.

#### **71 Holder of authority may apply for order**

(1) The holder of an authority granted under section *sixty-seven* or *sixty-nine* may, at any time before the date on which the reservation in respect of the reserved ground is withdrawn by the mining commissioner under section *eighty-one*, in writing request the Board to recommend to the Administrative Court that an order be made by that Court authorizing the acquisition by him of mining title in such form and to or in respect of so much of the reserved ground as shall be specified in such request.

- (2) On receipt of the request, the Board shall—
- (a) if it is not satisfied that, having regard to the results of prospecting operations carried out under the authority, a deposit of minerals exists which is economic or likely to prove economic, refuse the request; or
  - (b) if it is so satisfied, refer the matter to the Administrative Court, together with its recommendation that mining title be granted, as to the form of such title, the area to be covered by such title and the conditions to be attached to such title, and as to any other matter which to it may seem relevant:

Provided that where the owner and the occupier, if any, of the reserved ground have agreed in writing that the Board should itself issue the order and such agreement has been lodged with the Board, the Board shall not refer the matter to the Administrative Court and may itself issue an order for the grant of mining title in such form as it may determine and subject to such terms and conditions as may have been agreed upon by the parties and notified to the Board and such additional terms and conditions as the Board may determine.

#### **72 Grant or refusal of order by Administrative Court**

(1) Where a matter has been referred to the Administrative Court under section *seventy-one*, the Court shall, on a day fixed by it and notified in writing by registered post to the person seeking the order and the owner and the occupier, if any, of the reserved ground concerned, hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the order.

- (2) Subject to subsection (3), the Administrative Court may grant or refuse to grant an order.
- (3) The Administrative Court shall not grant an order—
- (a) unless it is satisfied that the national interest would be better served by the ground in respect of which the order is sought being used for mining purposes than by its being used for agricultural purposes;
  - (b) unless, if the owner or occupier of the reserved ground concerned has so required, the person seeking the order has furnished a guarantee satisfactory to the Court for the payment of any sum which may become payable by him under the provisions of this Part by way of compensation or in respect of the acquisition by him of the reserved ground or of the holding of which the reserved ground forms a part.
- (4) The Administrative Court may, in granting an order, attach thereto such conditions as to it may seem necessary or desirable, and shall attach a condition as to the period within which the rights under the order may be exercised.

#### **73 Appeals**

(1) There shall be no appeal against the grant or refusal by the Board of an application for an authority under section *sixty-seven* or *sixty-nine* or for the extension or amendment of an authority under section *sixty-eight* or *seventy* or the refusal of the Board to recommend a request for an order under section *seventy-one*.

(2) Any person who is aggrieved by a decision of the Administrative Court on a matter referred to it under section *seventy-one* may, within thirty days of such decision, appeal against that decision to the Supreme Court.

#### **74 Persons to whom copies of order to be sent**

The registrar of the Administrative Court shall by registered post send a copy of the order to the owner and the occupier, if any, of the reserved ground to which the order relates, to the person in whose favour it is made, to the mining commissioner and to the Board.

#### **75 Authority or order may not be ceded**

The rights granted under an authority granted under this Part or an order shall be personal to the holder thereof who may not cede or assign any such rights to any other person:

Provided that the rights granted under an order may be ceded or assigned with the permission in writing of the owner of the reserved ground or on the authority of the Administrative Court.

#### **76 Rights of holders of authorities and orders**

(1) The person to whom an authority is granted under this Part shall, subject to the terms and conditions of such authority and in terms of this Act, and notwithstanding the reservation of the ground on a direction given under this Part, have the sole and exclusive right of prospecting on the reserved ground to which such authority relates.

(2) The person in whose favour an order is made shall, subject to the terms and conditions of such order and in terms of this Act, and notwithstanding the reservation of the ground on a direction given under this Part, have the sole and exclusive right of pegging and registering mining locations on or acquiring mining leases in respect of the reserved ground to which such order relates.

#### **77 Revocation of authority or order**

(1) If the person to whom an authority has been granted under this Part or the holder of an order fails to comply with any of the terms and conditions attached to such authority or order, as the case may be, he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(2) Where a person to whom such authority has been granted fails to comply with the terms and conditions thereof, the Board may, in addition, revoke the authority.

(3) Where the holder of an order fails to comply with the terms and conditions thereof, the Administrative Court may, in addition, revoke the order and may direct the mining commissioner to declare any mining location registered by virtue of such order and held by such holder to be forfeited, and the mining commissioner shall, whether or not such mining location is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part XI, comply with such direction.

#### **78 Approval of transfer of mining location**

(1) A mining location which has been registered on reserved ground under an order may not as long as the ground remains reserved be transferred except to a person approved of by the Board, after consultation with the owner and the occupier, if any, of such reserved ground.

(2) The Board shall not approve of the transfer of such a mining location to any person unless he has furnished a guarantee satisfactory to the Board for the payment of such sum as is mentioned in paragraph (b) of subsection (3) of section *seventy-two* and the Board is satisfied that the holder of such location has paid all compensation and other moneys payable by him in terms of the order by virtue of which the location was pegged and registered or in terms of this Part.

#### **79 Forfeiture of mining location**

(1) The terms and conditions of every order which relates to mining on reserved ground shall be binding on any person to whom a mining location registered under such order is transferred and on any miner thereof.

(2) If any such person fails to comply with any such terms or conditions, the Board may forthwith direct the mining commissioner to declare such mining location forfeited, and the mining commissioner shall, whether or not such mining location is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part XI, comply with such direction.

#### **80 Compensation**

Any owner or occupier of reserved ground who is injuriously affected by the exercise of any rights under an authority or order granted under this Part or by any mining operation on any mining location registered under such order shall be entitled to recover compensation from the person to whom the authority was granted or in whose favour the order was made or the holder of the mining location, as the case may be, in such amount as may be agreed upon or, failing such agreement, as shall be determined by the Administrative Court.

#### **81 Withdrawal of reservation**

The Board shall, if it is satisfied that the reservation of any ground made under section *thirty-five* in consequence of a direction given under paragraph (a) of subsection (3) of section *sixty-four* or paragraph (a) of subsection (1) of section *sixty-five* is no longer necessary, direct the mining commissioner to withdraw such reservation, and the mining commissioner shall comply with such direction.

## **82 Compulsory acquisition of land by holder of an authority or order**

(1) Where an authority has been granted under this Part in respect of reserved ground mentioned in subparagraph (i) or (ii) of paragraph (a) of subsection (1) of section *thirty-one* or an order has been granted in respect of any reserved ground, the owner of such reserved ground may, subject to this section, apply to the High Court for an order compelling the holder of such authority or order, as the case may be, to acquire by purchase, exchange or otherwise the whole or a portion of the holding of which such reserved ground forms a part.

(2) At least thirty days before making such application, the owner of the reserved ground shall by registered post give notice in writing to the holder of the authority or order, as the case may be, of his intention to make such application.

(3) Notwithstanding section *eighty-four*, the holder of an authority or order, as the case may be, to whom notice has been given under subsection (2), may not after the expiry of a period of twenty-one days from the date of the receipt by him of such notice and until the High Court has disposed of the application or the application has been withdrawn, relinquish his rights under such authority or order, as the case may be.

(4) On an application made under this section, the High Court may refuse the order applied for or may grant it if the Court is satisfied that—

(a) the holder of the authority or order, as the case may be, is not precluded by the provisions of the Constitution or any enactment from owning such land; and

(b) the exercise by the holder of the authority or order, as the case may be, of the rights granted thereunder has resulted or is likely to result in such interference with the rights of the owner or occupier of the reserved ground as will render such ground or the holding of which such ground forms a part unsuitable, as far as such owner or occupier is concerned, for the purpose for which it was being used or was *bona fide* intended to be used immediately before the date of the making of the application to that Court and where such application is for an order compelling the acquisition of the whole of the holding or a portion thereof by an exchange of land, or partly by an exchange of land and partly by some other means, and the land required to be given in exchange for such holding or portion thereof is State land, the Court may make its order conditional upon such land being made available by the President for the purposes of such exchange.

(5) In deciding whether to grant or refuse the order applied for, the Court shall have regard to the stage which the prospecting operations of the holder of the authority or order, as the case may be, have reached at the time of the application and the extent to which minerals are present on the land and the economic possibilities of such minerals.

(6) If the High Court grants the order it shall determine the price to be paid or other consideration to be given for the reserved ground, having regard to the matters set out in section *eighty-three*.

(7) The costs of both parties to an application under this section shall be borne by the holder of the authority or order, as the case may be:

Provided that the High Court may make such order as to costs as to it seems just if the Court is of the opinion—

(a) that the applicant has unreasonably refused a fair offer for the acquisition of the holding concerned or portion thereof by such holder; or

(b) that the application is vexatious or frivolous.

(8) Where the owner of the reserved ground and the holder of the authority or order, as the case may be, have agreed in writing, the application mentioned in subsection (1) may be made to the Administrative Court, and in that event subsections (2) to (7) shall apply, *mutatis mutandis*, to and in respect of any such application.

(9) Any person who is aggrieved by the decision of the Administrative Court on an application made to it under subsection (8) may appeal against that decision to the Supreme Court.

## **83 Factors to be considered in fixing price**

Where a Court grants an order under section *eighty-two* it shall, in determining the price to be paid or other consideration to be given for the land by the holder of the authority or order, as the case may be, make due allowance for—

(a) the value of any improvements on and development of the land;

(b) the possible loss of profits over the period of three years next succeeding the date of the application for such order;

(c) the depreciation, if any, in the value of that portion of the holding which is not the subject of such order;

(d) the expense or loss, other than loss of profits, caused to the owner by the grant of the authority or order;

(e) any other loss directly or indirectly caused by the grant of the authority or order or the exercise of any right granted thereunder;

but no account shall be taken of any minerals which have been or may be discovered on such land.

## **84 Relinquishment of rights under an authority or order**

(1) Save as otherwise provided in section *eighty-two*, the holder of an authority or order granted under this Part may at any time give notice in writing to the owner or occupier of the reserved ground to which such authority

or order, as the case may be, relates of his intention to relinquish his rights under such authority or order, as the case may be, and shall lodge a copy of such notice with the Board.

(2) The rights of such holder under the authority or order, as the case may be, shall cease with effect from the time and date of the lodging of such notice with the Board.

(3) Nothing in this section contained shall affect the right of the owner or the occupier, if any, of the reserved ground to claim compensation from the holder of the authority or order, as the case may be, in respect of damage arising from anything done by the holder before the date of such relinquishment. **85 Board's authority required for acquisition of mining title in certain circumstances**

(1) Where the Board has made a recommendation under section *seventy-one*, it shall not be competent, except with the authority of the Board, for any person other than the person at whose request that recommendation was made to peg and register a mining location or to be granted a mining lease on or in respect of the whole or any portion of the ground to which such recommendation relates, within a period of seven years from the date of such recommendation.

(2) The Board may, in granting such authority, attach thereto such conditions as it thinks fit, including a condition as to the reimbursement of the person at whose request the recommendation was made in respect of any expenditure incurred by him in connection with or arising out of operations conducted by him on the reserved ground concerned and as to the payment to him of such reward for any discovery made by him as the Board considers just.

## PART VI

### EXCLUSIVE PROSPECTING RESERVATIONS

#### 86 Interpretation in Part VI

In this Part—

“concession holder” means a person in whose favour an order has been made;

“order” means an exclusive prospecting order made in terms of this Part;

“programme” means the programme of operations mentioned in section *ninety-six*; “reservation” means the area embraced by an order.

#### 87 Application for order

(1) Any person may make written application to the Board for the making of an order in his favour over any defined area in Zimbabwe, including any area reserved under section *thirty-five*.

(2) The applicant shall—

(a) deposit with the Secretary in respect of a period of six months a sum calculated at the rate of one hundred United States dollars per month for every hectare or part of a hectare of the area in respect of which the order is sought:

[Subsection amended by Act 10 of 2009]

Provided that a deposit in terms of this paragraph shall not exceed ninety thousand dollars; and

(b) furnish the Board with—

(i) full information as to his financial status;

(ii) if so required by the Board, particulars of any guarantees that may be offered for the performance of his obligations under the order;

(iii) particulars of the minerals which he wishes to seek and mine;

(iv) details illustrated by a sketch plan of the area to be embraced by the order and the size of such area;

(v) a statement whether or not he wishes the order to authorize him to prospect for specified minerals on any registered base mineral blocks within the reservation;

(vi) any further information required of him by the Board;

(vii) if the applicant is a company, the full names and nationality of the directors and the full names by which those directors have at any time been known in any part of the world;

(viii) a programme of the prospecting operations he intends to carry out within the reservation during the first period of six months from the date of granting the order.

(3) The chairman of the Board may provisionally approve an application before it is considered by the Board and, if he does so, he shall issue a direction to the mining commissioner to reserve the area embraced by the application against prospecting and pegging in terms of section *thirty-five*, and the mining commissioner, without obtaining the authority of the Minister, shall forthwith reserve such area accordingly.

(4) On receipt of the application the chairman of the Board shall—

(a) publish a notice in the *Gazette* giving details of the application and inviting objections thereto; and

- (b) if in any application authorization is sought to prospect on any registered base mineral blocks within the proposed reservation, give written notice to every registered holder of any such block.

### **88 Hearing of application by Board**

The Board shall, at a place and on a day fixed by it and notified to the applicant and to any person who has lodged written objection with the Board to the grant of the application, hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the application or any part thereof.

### **89 Board's recommendation in respect of application**

(1) If on any application under this Part the Board is satisfied—

- (a) that the applicant is a fit and proper person to obtain an order and is of adequate financial standing to undertake the operations under an order; and
- (b) that it would not be against the national interest to make such an order; the Board may, subject to section *ninety-three*, recommend to the Minister the making of an order in favour of the applicant over such area and subject to such conditions as the Board may think fit to recommend.

(2) In making a recommendation in terms of subsection (1) the Board may recommend, in accordance with subsection (3) of section *ninety-three*, that the area to be embraced by the order applied for should exceed the maximum area specified in paragraph (a), (b) or (c), as the case may be, of subsection (2) of section *ninetythree*.

(3) If on any such application the Board is not satisfied in terms of subsection (1), it shall refuse to recommend the application and shall notify the applicant accordingly and such refusal shall be final and without appeal.

### **90 President may approve or refuse order**

(1) Whenever on any application under this Part the Board recommends the making of an order, it shall submit to the Minister the application, together with all relevant documents, its written report and its recommendation in regard thereto.

(2) The Minister shall submit such recommendation to the President, who may refuse the application or authorize the issue of an order in terms of the recommendation of the Board or on such amended terms and conditions as he may think fit to fix.

### **91 Issue of order**

(1) If the President has approved of the making of an order, the Minister shall forthwith make an order in favour of the applicant which shall be in accordance with the terms and conditions fixed by the President and which shall specify the date from which the rights granted thereunder may be exercised and the date upon which the exercise of those rights shall cease.

(2) Every order shall be published in the *Gazette* and a copy of such order shall be sent to the applicant, to the Board and to the mining commissioner of the district in which the reservation is situated.

(3) Every order shall be laid before Parliament as soon as may be after Parliament next sits after the order is published in the *Gazette*.

(4) Where an order is made any reservation of the ground made in accordance with a direction given under subsection (3) of section *eighty-seventy* shall be deemed to have been withdrawn by the mining commissioner in all respects as if he had posted a notice of such withdrawal under that section at six o'clock in the morning on the day specified in the order as being the date from which the rights granted thereunder may be exercised.

### **92 Rights granted under order may not be ceded**

(1) The rights granted under an order shall be personal to the concession holder who may not, save with the permission in writing of the Minister given in terms of subsection (2), cede or assign any such rights to any other person.

(2) The Minister may, on the recommendation of the Board and on such terms and conditions as the Board may recommend, permit a concession holder to cede or assign such rights to another person, but the Board shall only make such a recommendation in circumstances which it considers to be special.

### **93 Limitation of area of reservation**

(1) For the purposes of subsection (5) a block shall be regarded as being worked or developed if the current inspection certificate for such block was obtained by any method other than by the payment of a fee in terms of section *two hundred and twelve*.

(2) Subject to subsection (3), no reservation shall exceed—

- (a) in the case of an order made solely in respect of coal, mineral oils or natural gases, one hundred and thirty thousand hectares;
- (b) in the case of an order which includes precious stones, other than diamonds, two thousand six hundred hectares;
- (c) in the case of any other order, twenty thousand hectares;

[Subsection amended by Act 10 of 2009]

and no order shall be granted in respect of an area which is less than two thousand six hundred hectares, except in the case of an order granted solely in respect of precious metals or precious stones.

(3) A reservation may exceed the maximum area specified in paragraph (a), (b) or (c), as the case may be, of subsection (2) if the Board, having due regard to—

- (a) the particular suitability of the applicant and his financial and operational capacity to fulfil the obligations under and within the period of the order recommended by the Board in relation to the minerals specified therein; and
- (b) the geographical situation of the area and the nature and extent of previous and current prospecting and mining activity therein; and
- (c) the absence of and the need for geological mapping, geophysical and geochemical investigations and other relative geological detail in respect of the area;

recommends that the reservation should exceed the said maximum area.

(4) An order may require a concession holder—

- (a) to furnish guarantees to the Minister to his satisfaction that the obligations of the holder under the order will be discharged;
- (b) to abandon a portion or portions of the reservation within such period or periods as are specified in the order.

(5) Subject to such terms and conditions as may be prescribed in the order, an order may authorize the concession holder to prospect on all registered base mineral blocks or specified registered base mineral blocks in his reservation which are not being worked or developed on the date of the lodging of the application for the order, but, save as aforesaid, no order may be made to authorize prospecting on any other registered block.

(6) Nothing in this section contained shall be deemed to prohibit the fixing of additional terms and conditions under an order.

#### **94 Duration of order**

No order shall be granted for a period in excess of three years but an order may be extended by the Minister, on the recommendation of the Board, for a further period or periods not exceeding three years in all.

#### **95 Challenge of validity of order, when barred**

(1) After a period of twelve months has elapsed since the date of publication of an order in the *Gazette*, it shall not be competent for any person to allege that any of the provisions of this Act were not complied with prior to the making of the order.

(2) Within thirty days of the extension of any order granted in terms of subsection (1), the concession holder shall deposit with the Secretary a sum calculated in accordance with the provisions of paragraph (a) of subsection (2) of section *eighty-eight*.

#### **96 Submission of programmes of work**

(1) Every concession holder shall, from time to time, prepare and submit for the approval of the Board programmes of the prospecting operations which he intends to carry out within his reservation during periods of six months.

(2) The first programme prepared in terms of subsection (1) shall be submitted for the approval of the Board at the time of the application for the grant of an order in terms of subsection (1) of section *eighty-seven*.

(3) The second programme and all other subsequent programmes shall, unless the concession holder has previously abandoned the whole of his reservation under section *one hundred and twelve*, be submitted for the approval of the Board not later than thirty days after the expiry of the period within which the last preceding programme was required to be carried out or, if an extension of such period has been granted under subsection (2) of section *one hundred*, not later than thirty days after the expiry of the extended period.

(4) Every programme shall contain particulars of the prospecting operations which are intended to be carried out thereunder and of the estimated cost of such operations.

#### **97 Deposit by concession holder in respect of longer period**

(1) Where the Board has approved a longer period under subsection (2) of section *ninety-six*, the concession holder shall, within thirty days from the date of such approval, if so required by the Board, deposit with the Secretary a further sum calculated at the rate set out in paragraph (a) of subsection (2) of section *eighty-seven* in respect of so much of such longer period as exceeds six months: Provided that—

- (i) a deposit in terms of this subsection shall not, together with the deposit made in terms of paragraph (a) of subsection (2) of section *eighty-seven*, exceed ninety thousand dollars;
- (ii) where the deposit made in terms of paragraph (a) of subsection (2) of section *eighty-seven* amounts to ninety thousand dollars, no deposit shall be required in terms of this subsection.

(2) If the concession holder fails to comply with a requirement in terms of subsection (1), the Board may recommend to the Minister that the order be revoked and the Minister may revoke the order.

#### **98 Powers of Board in regard to programmes**



On receipt of a programme, the Board shall consider it and—

(a) if satisfied that the programme makes provision for the proper prospecting of the reservation and that the estimated expenditure is consistent with the programme, the Board shall approve it; (b) if not so satisfied, the Board shall reject the programme.

### **99 Failure to submit programme**

(1) If the concession holder fails to submit a programme within the period mentioned in section *ninety-six*, or if the programme submitted does not satisfy the Board, the Board shall by notice in writing require the concession holder to submit a programme or an amended programme, as the case may be, within such period, being not less than thirty days, as the Board shall specify in such notice.

(2) If at the end of the period specified in the notice the concession holder has not submitted a programme satisfactory to the Board, the Board shall inform the Minister, and the Minister shall revoke the order.

(3) The Minister, when he revokes the order, may, on the recommendation of the Board, by action in any court of competent jurisdiction recover from the concession holder as a penalty a sum calculated at the rate of one hundred United States dollars per hectare or portion of a hectare of the reservation in respect of each month or portion of a month between the date of the revocation of the order and the date of expiry of the order.

[Subsection amended by Act 10 of 2009]

(4) Notice under subsection (1) shall be given by posting a registered letter to the concession holder.

### **100 Report by concession holder on work carried out**

(1) Every concession holder shall carry out the programme of work approved by the Board under section *ninety-eight* within the period covered by such programme or any extension thereof granted under subsection (2), and shall at any time after the completion thereof, but not later than thirty days after the expiry of such period or any extension thereof, submit to the Board a written report on the work carried out by him during the period covered by the programme, including particulars of the expenditure incurred in the carrying out of such work.

(2) The Board may, on application made to it before the expiry of the period covered by the programme, grant such extension of the period within which the programme of work is required to be carried out, as the Board may think fit, and where such extension has been granted, the Board may from time to time grant further extensions of such period.

(3) Where the Board has granted such an extension, the Minister may, on the recommendation of the Board, recover from the concession holder a sum calculated at the rate of one hundred United States dollars per hectare or portion of a hectare of the reservation for each month or portion of a month of such extension.

[Subsection amended by Act 10 of 2009]

### **101 Failure to complete programme**

(1) If a concession holder fails to satisfy the Board that he has carried out the programme approved by the Board, within the period covered by such programme or such extended period as the Board may have granted under section *one hundred*, the Board may recommend to the Minister—

(a)

that the order be revoked; and

(b) that there be recovered from the concession holder such sum of money as, in the opinion of the Board, it would have been necessary for the concession holder to expend in order to carry out or complete, as the case may be, such programme.

(2) Where the Board does not recommend that the order be revoked the order shall continue in all respects as if the programme had been completed.

(3) Where the Board has recommended that the order be revoked, the Minister shall revoke such order, and if the Board has made a recommendation mentioned in paragraph (b) of subsection (1), the Minister may by action in any court of competent jurisdiction recover such sum from the concession holder.

### **102 Failure to submit report**

(1) If a concession holder fails to submit a report in terms of subsection (1) of section *one hundred*, the Board shall notify him in writing that no report has been received and that the order is liable to be revoked.

(2) If such report is not received by the Board within twenty-one days of the posting of such notification, the Board shall inform the Minister, and the Minister shall revoke the order.

(3) Notification under subsection (1) shall be given by posting a registered letter to the concession holder.

### **103 Rights of concession holders**

(1) In this section—  
“private land” does not include Communal Land.

(2) Save as provided in section *one hundred and six*, within a reservation no person, other than the concession holder, may in terms of this Act prospect or peg and register any mining location or be issued with a special grant in respect of coal, mineral oils or natural gases:

Provided that the Minister may, on the recommendation of the Board, and with the consent of the concession holder, which consent shall not be unreasonably withheld, authorize within such period as he may specify, any person to peg and register a mining location within a reservation for a mineral other than a mineral for which the concession holder is authorized to prospect.

(3) No person shall peg and register more than five mining locations under an authority issued in terms of subsection (2).

(4) No base mineral mining location pegged and registered under an authority issued in terms of subsection

(2) shall exceed twenty-five claims.

(5) The concession holder shall retain his right to prospect over any mining location pegged and registered under an authority issued in terms of subsection (2).

(6) Subject to any provision in his order limiting the minerals for which he may prospect or peg and register mining locations, a concession holder shall, in terms of this Act, have the right of prospecting and pegging and registering mining locations in his reservation or may within his reservation be issued with a special grant in respect of coal, mineral oils or natural gases: Provided that a concession holder—

(a) need not take out a prospecting licence or post a prospecting or discovery or registration notice in terms of this Act; and

(b) shall not be subject to subsection (2) of section *twenty-seven*.

(7) Within his reservation a concession holder shall, when *bona fide* employed in the exercise of any of the rights conferred by his order, the onus of proof whereof shall lie upon him, be entitled to the following rights—

(a) the right to take free of charge for primary purposes any public water or private water from land not closed to prospecting in terms of section *thirty-one* or *thirty-four*, but only in so far as such taking does not interfere with the use of such water for primary purposes by the owner or occupier of the land;

(b) subject to this section and of the Forest Act [*Chapter 19:05*] and to such conditions as may be prescribed and on payment to the occupier or, where there is no occupier, the owner of the land in advance of such tariff rate as may be prescribed, the right to take and use for firewood or for any purposes connected with his prospecting operations any indigenous wood or timber from land open to prospecting which is neither Communal Land nor land in regard to which a reservation has been made under section *thirty-six* or *thirty-seven*;

(c) subject to this section, the right to erect on land open to prospecting any temporary accommodation for himself and his employees and any temporary buildings or machinery for the purposes of his work:

(a)

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

(d) the right to remove, within three months or such longer period as may be determined by the mining commissioner after the expiration or revocation of his order, any accommodation, buildings or machinery which may have been erected under paragraph (c).

(8) A concession holder who desires to take indigenous wood or timber from land referred to in paragraph (b) of subsection (7) which is private land shall give notice of such desire—

if the land is occupied, to the occupier of the land in person or by registered letter addressed to the occupier at his ordinary postal address; or

(b) if the land is unoccupied, by registered letter addressed to the owner at his ordinary postal address; and thereafter the concession holder and the occupier or owner may agree as to the area and period within which such wood or timber may be taken, the quantity and kinds of such wood or timber to be taken, the price to be paid for such wood or timber and any other conditions relating to such wood or timber.

(9) If, within a period of seven days from the date of the giving of notice in terms of subsection (8), no agreement has been concluded in accordance with that subsection, the concession holder shall have the rights conferred upon him by paragraph (b) of subsection (7) in respect of the land concerned.

(10) A concession holder who accommodates employees on occupied private land situated within his reservation for longer than seven days shall forthwith give to the occupier of the land written notice of that fact describing the site of the accommodation.

(11) If an occupier of private land to whom notice has been given in terms of subsection (10) objects to the site chosen for such accommodation by the concession holder and agreement between the occupier and the concession holder on any such objection is not reached, the occupier may, within seven days of receipt of the notice or such longer period as may be determined by the mining commissioner, refer the matter to the mining commissioner to decide where the employees of the concession holder should be accommodated and the decision of the mining commissioner shall be final and without appeal.

#### **104 Cutting and transporting of timber**

(1) If, in regard to any indigenous wood or timber required in connection with his prospecting operations, any concession holder does not carry out by his own labour or by the labour of his employees or with his own transport all or any of the following operations—

(a) the cutting of such wood or timber;

(b) the transporting of such wood or timber;

(c) the burning therefrom of any charcoal; then the occupier of the land on which such wood or timber is situated shall have the first option of carrying out such cutting or transporting or burning or all such operations, as the case may be, on such terms and conditions as may be mutually agreed upon.

(2) If no mutual agreement is reached, the matter shall be referred to the mining commissioner to decide on what terms and conditions and within what time the occupier of the land may exercise his option.

#### **105 Approved prospector to be in charge of all operations**

(1) A concession holder may, in writing under his hand, appoint one or more approved prospectors to act as his representatives under his order and any such representative shall act under that order solely for the benefit of the concession holder.

(2) The rights conferred by this Act upon the concession holder by section *one hundred and three*—

(a) shall be exercised by the concession holder personally only if he is an approved prospector;

(b) shall, where the concession holder is not an approved prospector, be exercised only through a representative appointed by the concession holder in terms of subsection (1).

(3) Without prejudice to any right of the concession holder to terminate any such appointment, the appointment of a person as a representative in terms of subsection (1) shall automatically be terminated if the registration of that person as an approved prospector expires or is cancelled or suspended.

#### **106 Concession holder's rights limited in certain cases**

(1) For the purposes of this section—

(a) a block shall be regarded as being developed—

(i) during the period between the date of first registration thereof and the date of issue of the first inspection certificate for such block;

(ii) if the current inspection certificate for such block was obtained by any method other than by payment of a fee in terms of section *two hundred and twelve*;

- (a)
- (b) a “property” means two or more blocks of claims, whether contiguous or otherwise, owned by one person, from which the ore is being treated at the same milling or reduction plant, or which are under the control of one registered mine manager;
- (c) a “standard block” means a block which may be pegged by the holder of an ordinary prospecting licence.

(2) A concession holder may not, for a period of sixty days from the date of the publication of his order in the *Gazette*, prospect or peg within five hundred metres of the boundaries of any property or registered block within the reservation which is being worked or developed.

(3) Notwithstanding subsection (2) of section *one hundred and three*, the holder of any property or registered block referred to in subsection (2) shall, during the period of sixty days referred to in subsection (2), have the right—

to prospect and peg and apply for the registration of standard blocks not exceeding six in all within five hundred metres of the boundaries of his property or registered block:

Provided that the rights conferred by this paragraph shall be confined to prospecting, pegging and applying for the registration of blocks in respect of a mineral for which such property or registered block was being worked or developed on the date of the publication of the order in the *Gazette*; and

- (b) subject to section *forty-seven*, to peg a site or sites in respect of such registered block or in respect of any registered block within such property not exceeding an area of ten hectares in all.

### **107 Rights of holder of existing location unaffected**

(1) An order shall not affect the rights of the holder of a mining location within a reservation to mine and develop his mining location.

(2) The holder of a mining location in a reservation who, save in a *bona fide* exercise of the rights mentioned in subsection (1), hinders or obstructs a concession holder in the exercise of any rights conferred upon him by the order to prospect on such location, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(3) If a concession holder unlawfully hinders or obstructs the holder of a mining location in the exercise of his rights, he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

### **108 Demarcation of reservation**

A concession holder shall erect beacons or notices demarcating the boundaries of his reservation in such manner as the mining commissioner may direct and shall maintain such beacons or notices in good order and condition in their proper position.

### **109 Performance of conditions of order**

(1) Every concession holder shall, when required by the Minister, furnish him with such information as may be necessary to satisfy the Minister that the conditions of the order are being complied with.

(2) If any concession holder is found to have given incorrect or incomplete information for the purposes of subparagraph (vii) of paragraph (b) of subsection (2) of section *eighty-seven*, or fails to comply with subsection (1), or in the opinion of the Minister has not complied with any terms or conditions of the order, the Minister may forthwith revoke such order, and thereupon the rights of the concession holder thereunder shall cease.

(3) Nothing in this section contained shall be deemed to relieve any concession holder of any penalty to which he may be liable under section *one hundred and one*.

### **110 Increase of reservation**

(1) A concession holder may, at any time after the approval by the Board of the programme mentioned in subsection (2) of section *ninety-six* make application to the Board for the inclusion of an additional area in the order.

(2) Sections *eighty-seven*, *eighty-eight*, *ninety* and *ninety-one* shall apply, *mutatis mutandis*, to any application made in terms of this section.

(3) Where an order is amended in terms of this section, the Board may require the concession holder to submit, within such period as the Board may specify, an amended programme of operations to be carried out in the reservation as so amended, and thereafter section *ninety-nine* shall apply, *mutatis mutandis*.

### **111 Inclusion of additional minerals in order**

(a)

(1) If in the course of exercising his rights under his order the concession holder discovers within his concession any mineral other than a mineral for which he is authorized to prospect he may apply to the Board for the inclusion of such mineral in his order.

(2) In making an application in terms of subsection (1), the concession holder shall furnish full particulars of the nature of the mineral he has discovered and of the situation and circumstances of the discovery.

(3) Sections *ninety* and *ninety-one* shall apply, *mutatis mutandis*, to any application made in terms of this section.

(4) Where an order is amended in terms of this section, the Board may require the concession holder to submit, within such period as the Board may specify, an amended programme of operations to be carried out in the reservation, and thereafter section *ninety-nine* shall apply, *mutatis mutandis*.

## **112 Abandonment of reservation**

(1) At any time before the Board has approved the second programme mentioned in subsection (3) of section *ninety-six*, the concession holder may, subject to subsection (2), by written notice to the Board abandon the whole or a portion or portions of his reservation.

(2) It shall not be competent for a concession holder— (a) to give more than one such notice; or

(b) to give such notice in respect of such portions of the reservation as would result in the area of the reservation to be retained by him being divided into separate portions or, except in the case of an order granted solely in respect of precious metals or precious stones, being less than two thousand six hundred hectares in extent.

(3) On receipt of a notice given under subsection (1), the Board shall inform the Minister thereof, and he shall—

(a) in the case of the abandonment of the whole reservation, revoke the order; or

(b) in the case of the abandonment of a portion or portions of the reservation, amend the order accordingly.

(4) Where at any time after the Board has approved the programme mentioned in subsection (2) of section *ninety-six*, the concession holder desires to abandon the whole or a portion of his reservation, he may make written application to the Board for the revocation or amendment of his order, as the case may be.

(5) If on an application made under subsection (4), the concession holder satisfies the Board—

(a) that he has carefully prospected his reservation or that portion which he desires to abandon, as the case may be; and

(b) that an economic deposit of any mineral for which he is authorized to prospect under his order is unlikely to be discovered in his reservation or that portion which he desires to abandon, as the case may be; and

(c) that he has complied with all the terms and conditions of his order; and

(d) that he has duly carried out the programme last approved by the Board under section *ninety-eight*; the Board may recommend to the Minister that the order be revoked or amended, as the case may be, and the Minister may revoke or amend the order accordingly.

(6) If on an application under subsection (4), the Board is not satisfied as to any matter mentioned in subsection (5), it shall refuse the application, and such refusal shall be final and without appeal.

(7) Where an order is revoked or amended by the Minister under this Part, the Board shall publish notice thereof in the *Gazette* and the ground shall become open to prospecting and pegging in terms of this Act on the day following the date of such publication.

### 113 Disposal of deposits

The total of the amounts deposited under paragraph (a) of subsection (2) of section *eighty-seven* and subsection (1) of section *ninety-seven*, hereinafter referred to as the deposit, shall be disposed of by the Secretary in whichever of the following ways is applicable to the case—

(a) where the application for an order is refused there shall be refunded to the applicant the whole of the deposit;

(b) where the concession holder has not, under subsection (1) of section *one hundred and twelve*, abandoned the whole or any portion of his reservation, there shall, upon the approval by the Board of the reports mentioned in subsection (1) of section *one hundred* and subsection (1) of section *one hundred and sixteen*, be refunded to him the deposit divided into equal amounts in proportion to the total number of reports required to be submitted, as and when such reports are submitted;

(c) where the concession holder has, under subsection (1) of section *one hundred and twelve*, abandoned a portion of his reservation, the concession holder shall forfeit and the Secretary shall pay to the Consolidated Revenue Fund out of the deposit a sum calculated at the rate of one hundred United States dollars for each hectare or portion of a hectare of the area so abandoned for each month or portion of a month of the period between the date of the making of the order and the date of receipt by the Board of the notice of abandonment, reduced by such sum as the concession holder satisfies the Board that he has expended on operations within the area in respect of which the order was made carried out in the exercise of the rights granted under the order between the date of the making of the order and the date of the receipt by the Board of the notice of abandonment, and any balance of the deposit shall be refunded to the concession holder upon the approval by the Board of the programme mentioned in subsection (2) of section *ninety-six*;

[Paragraph amended by Act 10 of 2009]

(d) where the concession holder has, under subsection (1) of section *one hundred and twelve*, abandoned the whole of the reservation, the concession holder shall forfeit and the Secretary shall pay to the Consolidated Revenue Fund out of the deposit a sum calculated at the rate of one hundred United States dollars for each hectare or portion of a hectare of the reservation for each month or portion of a month of the period between the date of the making of the order and the date of the receipt by the Board of the notice of abandonment, reduced by such sum as the concession holder satisfies the Board that he has expended on operations within the reservation carried out in the exercise of the rights granted under the

order between the date of the making of the order and the date of the receipt by the Board of the notice of abandonment, and any balance of the deposit shall be refunded to the concession holder;

- (e) where an order is revoked under subsection (2) of section *ninety-nine*, the deposit shall be forfeited by the concession holder and shall be paid by the Secretary to the Consolidated Revenue Fund.

[Paragraph amended by Act 10 of 2009]

#### **114 Compensation for interference with registered mining location**

If a concession holder exercises on a registered base mineral block any prospecting rights conferred upon him by his order under subsection (5) of section *ninety-three*, he shall be liable to pay compensation to the holder of such location for any loss or damage caused thereby in such amount as may be agreed upon or, failing agreement, as shall be determined by arbitration.

#### **115 Concession holder may expropriate dormant location**

If in the exercise of his rights under an order a concession holder discovers, in a registered base mineral block upon which he has been authorized to prospect under subsection (5) of section *ninety-three*, a mineral for which he may prospect under such order, other than the mineral for which such block is registered or a mineral which has, within the twelve months preceding the date of the lodging of the application for the order, been produced from the block and declared to the mining commissioner in terms of section *two hundred and fifty-one* he may, upon the authority of the President granted by him upon the recommendation of the Board, expropriate such base mineral block upon the payment of such compensation as may be agreed upon or, failing such agreement, as shall be determined by arbitration:

Provided that in assessing such compensation no allowance shall be made for the actual or potential value of the mineral discovered by the concession holder.

#### **116 Plans and reports to be lodged by concession holder**

(1) Not later than three months after the expiry or revocation of an order, the person who was the concession holder under such order shall lodge with the Board in triplicate a final report, including plans and other relevant information, which shall be in two separate parts with respect to—

- (a) prospecting work carried out by the concession holder on any mining location within the reservation during the currency of such order; and  
(b) prospecting work carried out by the concession holder within his reservation which has not been registered as a mining location:

Provided that if during the period referred to in this subsection, the concession holder applies in writing to the Board for an extension of such period and satisfies the Board that he was prevented by circumstances beyond his control from complying with this subsection within that period the Board may extend the period by such further period as the Board may determine.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

#### **117 Dangerous workings**

Section *two hundred and sixty-two* shall, save in respect of shafts, open surface workings and excavations not made by him apply, *mutatis mutandis* to a concession holder in respect of his reservation and for this purpose the date of the expiration or revocation of the order shall be regarded as the date of the abandonment of the reservation.

#### **118 Withdrawal of reservation made by mining commissioner**

Where the mining commissioner has reserved any ground against prospecting and pegging under section *thirty-five* in consequence of a direction given under subsection (3) of section *eighty-seven*, the Board shall upon the refusal of the application direct the mining commissioner to withdraw the reservation, and the mining commissioner shall, without obtaining the authority of the Minister, withdraw such reservation.

#### **119 Order granting relief from provisions of this Part in certain circumstances**

(1) If at any time after the making of an order the Board, on the application of the concession holder, is satisfied that his operations have been or are likely to be restricted or curtailed by abnormal circumstances beyond his control, the Minister may, on the recommendation of the Board, give such directions as he deems fit for the relief of the concession holder from this Part.

(2) Without derogation from the generality of subsection (1), directions given in terms of that subsection may include provision for—

- (a) refunding the deposit referred to in section *one hundred and thirteen*;  
(b) where the reservation or a portion thereof is abandoned, reserving the ground so abandoned against prospecting and pegging pending a return to circumstances permitting normal operations and granting a

- first option in respect of the ground so reserved to the concession holder in respect of any fresh application in terms of this Part on the return of such circumstances;
- (c) the suspension for an appropriate period of the concession holder's obligations under this Part and the extension of the order for a like period.

(3) To the extent that any direction given in terms of subsection (1) is inconsistent with any other provision of this Act the direction shall prevail.

(4) Directions given in terms of subsection (1) may at any time be revoked or varied by the Minister.

(5) Where directions given by the Minister in terms of subsection (1) affect the period of the order, the Minister shall publish notice thereof in the *Gazette*.

## PART VII

### PEGGING OF UNDERGROUND EXTENSIONS

#### 120 Interpretation in Part VII

In this Part—

“authorized holder” means a holder in whose favour an order has been made;

“holder”, in relation to an underground extension block, means the person in whose name such block is from time to time registered;

“order” means an order issued under this Part authorizing a holder of a registered mining location to peg and register an underground extension;

“owner”, in relation to State land, means the Minister responsible for the administration of such land;

“reserved ground” means land upon which a prospector is prohibited in terms of paragraph (a), (c), (d), (e), (f) or (g) of subsection (1) of section *thirty-one* or subsection (1) of section *thirty-five* from exercising any of his rights under his prospecting licence;

“underground extension block” means a block which has been pegged and registered under an order.

#### 121 Application for order

(1) If the holder of a registered mining location, other than a site, has reason to believe that a deposit of any mineral occurs underground beneath reserved ground, he may make written application to the Board for an order authorizing him to peg and register an underground extension block or blocks contiguous to such location.

(2) The applicant shall furnish to the Board— (a) full details of the reserved ground; and

(b) the reasons why he considers that such reserved ground warrants the granting of the authority; and

(c) the depth from the surface of the ground at which he wishes to be authorized to mine such reef; and

(d) full information as to his financial status; and (e) any other information required of him by the Board.

(3) On receipt of the application by the Board—

(a) the chairman of the Board may, if the application relates to reserved ground referred to in paragraph (a) or (g) of subsection (1) of section *thirty-one* issue a direction to the mining commissioner to reserve the ground to which the application relates against prospecting and pegging in terms of section *thirty-five* and the mining commissioner shall, without obtaining the authority of the Minister, forthwith reserve such ground accordingly;

(b) the Board may refuse the application or approve it provisionally.

#### 122 Procedure on provisional approval

(1) If the Board provisionally approves such application it shall—

(a) unless the chairman of the Board has issued a direction to the mining commissioner under paragraph (a) of subsection (3) of section *one hundred and twenty-one* itself issue such a direction, and the mining commissioner shall comply therewith; and

(b) after the mining commissioner has reserved the ground in accordance with a direction given under paragraph (a) of subsection (3) of section *one hundred and twenty-one* or paragraph (a), notify the owner and the occupier, if any, of the reserved ground, of the application and require them to lodge, within thirty days of such notification, or such longer period not exceeding sixty days as the Board may, on application made within the period of thirty days, approve, their objections, if any, to the grant of the application.

(2) Notification in terms of paragraph (b) of subsection (1) shall be given by posting a registered letter to the owner and the occupier, if any.

#### 123 Grant or refusal of application



(1) If an owner or occupier of reserved ground lodges objections to the grant of the application, the Board shall on a day fixed by it and notified to the applicant and the objector hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the application.

(2) If no objection has been received or if no notification was given in terms of paragraph (b) of subsection (1) of section *one hundred and twenty-two* owing to the whereabouts of the owner and the occupier, if any, being unknown to the Board, after due inquiry, the Board shall proceed with the consideration of the application.

(3) After holding a hearing in terms of subsection (1) or considering the application in terms of subsection (2), the Board may refuse the application or, subject to section *one hundred and twenty-four*, grant it, in whole or in part, subject to such terms and conditions as it may fix, including a condition as to the period within which the rights under the order may be exercised.

(4) If the owner or the occupier of the reserved ground is aggrieved by the grant of the application, he may, within twenty-one days after the Board's decision, appeal to the Minister in writing against that decision, setting out the grounds of his appeal.

(5) On any such appeal the Minister may revise or alter the decision of the Board and may revoke the grant of the application or amend the terms and conditions fixed by the Board, and the Minister's decision shall be final and without appeal.

#### **124 Board to be satisfied on certain points**

The Board shall not grant an order unless it is satisfied—

- (a) that there is reason to believe that the deposit occurs beneath the reserved ground; and
- (b) that conditions permit of the mining of such reef below the surface without disturbing or detracting from the use or value of the reserved ground; and
- (c) that the mining of such reef will be carried out without in any way interfering with the rights of the landowner in the reserved ground or causing any foreseeable loss or damage to such landowner; and
- (d) that the financial status of the applicant is such that he will be able to pay any compensation payable under section *one hundred and thirty-three*.

#### **125 Publication of order**

(1) If no appeal is made to the Minister within the prescribed time or, if an appeal is made, on receipt of the Minister's decision thereon, the Board shall make an order consistent with the terms and conditions fixed by it or the Minister, as the case may be, authorizing the applicant to peg and register an underground extension block on the reserved ground.

(2) Every order shall be published in the *Gazette* and a copy of the order shall be sent to the applicant and to the mining commissioner of the district in which the reserved ground is situated and to the owner or the occupier of the reserved ground affected by such order.

#### **126 Rights of applicant**

An authorized holder shall, subject to the terms and conditions of the order and in terms of this Act, have the sole and exclusive right of pegging and registering an underground extension block or blocks on the reserved ground:

Provided that such authorized holder need not post a prospecting notice or DP peg in terms of this Act.

#### **127 Order may not be ceded**

The rights granted under an order shall be personal to the authorized holder who may not cede or assign any such rights to any other person.

#### **128 Approval of transfer of underground extension block**

(1) An underground extension block may not be transferred except to a person approved of by the Board.

(2) The Board shall not approve of the transfer of an underground extension block to any person unless it is satisfied that his financial status is such that he will be able to pay any compensation payable under section *one hundred and thirty-three* and that the existing holder of the block has paid all compensation payable by him in terms of that section.

#### **129 Forfeiture of underground extension block**

(1) The terms and conditions attached to an order shall be binding on every registered holder of an underground extension block.

(2) If the holder of an underground extension block fails to comply with such terms and conditions, he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(3) In addition the Board may direct the mining commissioner to declare the underground extension block to be forfeited and the mining commissioner shall, whether or not such block is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part XI, comply with such direction.

### **130 Indicatory beacons**

Notwithstanding anything to the contrary contained in this Act, the mining commissioner may authorize the authorized holder to demarcate his underground extension block by indicatory beacons posted off the reserved ground in accordance with regulations.

### **131 Surface rights abrogated**

The holder of an underground extension block may not exercise in respect of such block any of the surface rights mentioned in section *one hundred and seventy-eight*.

### **132 Secondary reefs**

(1) The holder of an underground extension block who discovers a secondary reef therein shall notify the Board of such discovery.

(2) The Board may authorize such holder on such terms and conditions as it thinks fit to impose to mine such secondary reef.

(3) Such holder shall upon such authorization register the secondary reef with the mining commissioner in terms of this Act, but shall not post a DP peg or secondary reef registration notice or Q and R pegs.

### **133 Compensation**

Any owner or occupier of reserved ground who is injuriously affected by any mining operations carried on any underground extension block shall be entitled to recover compensation from the holder of such block in such amount as may be agreed or, failing agreement, as shall be determined by the Administrative Court.

### **134 Conversion of underground extension block**

(1) If the surface of an underground extension block ceases to be reserved ground, the holder of such block shall immediately notify the mining commissioner of the fact, and if the mining commissioner is, after due inquiry, satisfied that such ground is no longer reserved ground, he shall direct such holder to beacon the block in terms of this Act and, if such block has been pegged in irregular form, to erect pegs marked Q and R in terms of paragraph (e) of subsection (3) of section *forty-three*, and, if a secondary reef has been registered, to erect pegs marked Q and R in terms of paragraph (c) of subsection (1) of section *one hundred and seventy*.

(2) As soon as the holder has complied with the directions of the mining commissioner under subsection (1) the block shall cease to be an underground extension block and shall no longer be held subject to the order under which it was pegged and registered.

## **PART VIII**

### **MINING LEASES**

### **135 Application for mining lease**

(1) The holder of a registered mining location or of contiguous registered mining locations may make written application to the mining commissioner for the issue to him of a mining lease in respect of a defined area within which such mining location or locations are situated:

Provided that, save as is provided in section *thirty-four*, ground not registered as a mining location in the name of the applicant shall not be included within the defined area unless it is open to prospecting.

(2) The applicant shall furnish to the mining commissioner—

- (a) particulars of the minerals which are being mined or are to be mined in the area applied for;
- (b) details illustrated by a sketch plan based on a map issued under the authority of the State and of a scale of not less than 1:25 000 identifying the position of the area applied for and of any registered mining locations situated therein and specifying the extent of such area;
- (c) if any precious metal reef blocks are covered by the application, details of such blocks in respect of which he wishes to retain extra-lateral rights in the event of the mining lease being issued;
- (d) a list of all the mining locations registered in his name, situated within the area applied for, and the certificates of registration of such locations;
- (e) the name and address of the owner and the occupier, if any, of the land to which the application relates;
- (f) any other information relevant to the application which may be required of him by the mining commissioner or the Board.

(3) The sketch plan mentioned in paragraph (b) of subsection (2) shall indicate the position of each mining location mentioned in paragraph (d) of that subsection and the position of the boundaries of any holding of land falling within the area applied for.

(4) The boundaries of the area applied for shall be straight lines.

### **136 Reservation of ground by mining commissioner**

(1) Where the area applied for includes any ground which is not registered as a mining location in the name of the applicant, the mining commissioner shall, on receipt of the application, without obtaining the authority of the Minister, reserve the ground against prospecting and pegging in terms of section *thirty-five*.

(2) The landowner or occupier of land shall, in respect of the ground not so registered in the name of the applicant and reserved under subsection (1) and which was open to prospecting at the time such reservation was made, during the period of the reservation, have the same rights in all respects as if the ground not so registered formed part of a mining location registered in the name of the applicant.

### **137 Submission of application for provisional approval by Board**

(1) On receipt of an application in terms of section *one hundred and thirty-five* and after complying where necessary with the provisions of subsection (1) of section *one hundred and thirty-six*, the mining commissioner shall submit the application to the Board together with any report he may wish to make on the application.

(2) The Board shall consider any application submitted to it under subsection (1) and shall, if it is satisfied, having regard to the provisions of subsections (3) and (5) of section *one hundred and forty-two*, that the application has a reasonable prospect of success, provisionally approve the application in respect of either the whole or a portion of the area applied for or, if not so satisfied, shall refuse the application.

(3) Notwithstanding subsection (2), if the Board is satisfied—

- (a) that the applicant will meet the criteria mentioned in paragraphs (a) and (b) of subsection (1) of section *one hundred and fifty-nine*; or
- (b) having regard to the matters set out in subsection (2) of section *one hundred and fifty-nine*, that it is desirable in the interests of the development of Zimbabwe's mineral resources to consider the grant of a special mining lease to the applicant; the Board may require the applicant to apply for a special mining lease in terms of Part IX.

(4) When the Board has arrived at a decision under subsection (2) or (3) it shall return the application to the mining commissioner together with written notification of the decision.

(5) The mining commissioner shall notify the applicant in writing of the Board's decision under subsection (2) or (3) and, where the Board has provisionally approved the application, the mining commissioner shall in writing require the applicant to submit, within such period as the mining commissioner shall specify, a plan in triplicate prepared by a land surveyor of the area provisionally approved by the Board which shall, where it is a portion of the area originally applied for, thereafter be deemed to be the area applied for.

(6) The plan mentioned in subsection (5) shall show all points of intersection of the boundary lines of the area concerned and all points of intersection of such boundary lines by the boundary lines of any piece of land in respect of which an approved diagram or general plan is filed on record in the office of the Surveyor-General.

(7) If the applicant fails to submit the plan mentioned in subsection (5) within the period specified by the mining commissioner, or within such extended period as the mining commissioner may have allowed, the application shall be deemed to have been withdrawn.

(8) Within the period or extended period mentioned in subsection (7), the applicant may, by written notice to the mining commissioner, withdraw his application.

(9) The decision of the Board under subsection (2) or (3) shall be final and without appeal, but—

- (a) the provisional granting of an application under subsection (2) shall not in any way affect the discretion of the Board to approve or refuse the application under section *one hundred and forty-two*;
- (b) a decision that the applicant should apply for a special mining lease under Part IX shall not in any way affect the discretion of the Board, the Minister or the President under that Part to make or not to make a recommendation or to grant or refuse an application, as the case may be.

### **138 Notice of application to be published in Gazette**

On receipt of the plan mentioned in section *one hundred and thirty-seven* the mining commissioner shall—

- (a) publish a notice in the *Gazette* giving details of the application, including particulars of the mining locations to which the application relates, and inviting the lodging, within a period of thirty days from the date of such publication, of objections thereto;

- (b) by registered letter notify the owner and the occupier, if any, of the ground applied for of the application and invite them to lodge, within a period of thirty days from the date of the publication in the *Gazette* of the notice mentioned in paragraph (a), their objections thereto.

### **139 Determination of objections**

(1) If in any objection lodged with the mining commissioner under section *one hundred and thirty-eight* it is alleged that the title of the applicant to any of the mining locations to which the application relates is defective on the ground that the pegging of such locations was invalid or illegal or that this Act was not complied with prior to the issue of the certificate of registration in respect of such locations, the objection shall be determined by the mining commissioner in terms of this Act.

(2) If in any objection so lodged it is alleged by the owner or the occupier of the land that any ground which is not registered in the name of the applicant as a mining location was not, on the date of the reservation of the ground by the mining commissioner under subsection (1) of section *one hundred and thirty-six* open to prospecting and pegging, the matter shall be determined by the Administrative Court.

(3) Any objection not mentioned in subsections (1) and (2) shall be determined by the Board.

### **140 Transmission of objections to Administrative Court**

(1) The mining commissioner shall, as soon as he receives an objection mentioned in subsection (2) of section *one hundred and thirty-nine* transmit it to the Administrative Court for determination.

(2) The registrar of the Administrative Court shall, as soon as the Court has determined an objection transmitted to it under subsection (1), forward to the mining commissioner a copy of the Court's determination.

### **141 Submission of application to Board**

After the period for the lodging of objections has expired and all the objections mentioned in subsections (1) and (2) of section *one hundred and thirty-nine* have been determined, the mining commissioner shall submit the application to the Board, together with—

- (a) any objections thereto mentioned in subsection (3) of that section; and
- (b) copies of the determinations made in respect of any other objections lodged with him; and (c) his report on the application.

### **142 Consideration of application by Board**

(1) On receipt of the documents mentioned in section *one hundred and forty-one* the Board shall consider the application and any objections mentioned in subsection (3) of section *one hundred and thirty-nine*.

(2) The Board may, having regard to any determination made on any objection by the Administrative Court or the mining commissioner and any objection mentioned in subsection (3) of section *one hundred and thirty-nine* refuse the application or, subject to subsections (3), (4) and (5), approve it.

(3) The Board shall not approve an application unless it is satisfied—

- (a) that the applicant's financial status is such that he will be able to meet any payment which may become due by him under the provisions of section *three hundred and forty-four*; and
- (b) that mining operations on a substantial scale are likely to be conducted for a considerable period within the area applied for; and
- (c) that no ground not open to prospecting, save as provided in section *thirty-four* is included in the area to which such approval would relate.

(4) Before approving an application the Board may, and, if so required by the landowner, shall, require the applicant to furnish a guarantee satisfactory to the Board for the payment mentioned in paragraph (a) of subsection (3).

(5) The Board may approve the application in respect of the whole of the area applied for or, having regard to the dispersal of the mineral deposits within the area, to the extent of the ground necessary for the mining operations mentioned in paragraph (b) of subsection (3) and to any other factor which the Board may deem to be relevant, may approve the application in respect of a portion of the area applied for, and may, in approving the application require the inclusion in the mining lease of such terms and conditions not inconsistent with this Act, as the Board may fix, including a condition amending any plan previously approved in terms of Part XIII.

(6) The decision of the Board to grant or refuse an application under this section shall be final and without appeal.

### **143 Notice to applicant of Board's decision**

(1) The Board shall notify the applicant and any objector in writing of its decision under section *one hundred and forty-two* and, where the application has been approved, of the terms and conditions to be included in the mining lease under subsection (5) of that section.

(2) Where such approval relates to a portion of the area applied for, the Board shall furnish the applicant with details of such portion.

(3) Within thirty days of the date of the notification mentioned in subsection (1), the applicant may, by written notice given to the Board, the owner and the occupier, if any, of the land withdraw his application.

#### **144 Submission of amended survey plan**

(1) Where the Board has approved of the application in respect of a portion of the area applied for and the applicant does not withdraw his application under subsection (3) of section *one hundred and forty-three* he shall, within the period mentioned in that subsection, or such longer period as the Board may allow, submit to the Board an amended plan in triplicate prepared by a land surveyor of the area approved.

(2) If the applicant fails to submit such amended plan within the period mentioned in subsection (1), the Board shall inform him that the amended plan has not been received and, if the plan is not received by the Board within thirty days from such notification, the application shall be deemed to have been withdrawn.

(3) Subsection (6) of section *one hundred and thirty-seven* shall apply, *mutatis mutandis* to the preparation of an amended plan for the purposes of this section.

#### **145 Issue of mining lease**

(1) Where the Board has approved an application under section *one hundred and forty-two* the Board shall, unless the application has been withdrawn under subsection (3) of section *one hundred and forty-three* or the application is deemed to have been withdrawn under subsection (2) of section *one hundred and forty-four* forthwith issue a mining lease in favour of the applicant in respect of the area approved and in accordance with the terms and conditions fixed by the Board under subsection (5) of section *one hundred and forty-two* and shall give notice in writing of the issue thereof to the owner and the occupier, if any, of the land and to any objector.

(2) The original of such lease shall be sent to the applicant together with a copy of the plan prepared by a land surveyor mentioned in section *one hundred and thirty-seven* or *one hundred and forty-four* as the case may be, and one copy of such mining lease and such plan shall be sent to the mining commissioner by the Board.

(3) The Board shall retain a copy of such mining lease and of such plan for purposes of record.

#### **146 Registers of mining leases**

(1) The Board shall assign a number to each mining lease issued under this Part and such number and the particulars of each lease shall be recorded in a register of mining leases kept by the Board for the purpose.

(2) The mining commissioner shall keep a register in which shall be recorded the number assigned thereto by the Board and the particulars of every mining lease issued in respect of ground within his district.

#### **147 Withdrawal of reservation**

Where the mining commissioner has reserved ground under section *one hundred and thirty-six* and—

- (a) the application has been withdrawn or is deemed to have been withdrawn under section *one hundred and thirty-seven* or has been refused, the mining commissioner shall forthwith, without obtaining the authority of the Minister, withdraw the reservation;
- (b) the application has been provisionally approved in respect of a portion of the area applied for, the mining commissioner shall forthwith, without obtaining the authority of the Minister, withdraw the reservation in respect of the portion not approved;
- (c) the application has been approved in respect of the whole or a portion of the area applied for, the mining commissioner shall, without obtaining the authority of the Minister, withdraw the reservation—
  - (i) after the mining lease has been issued; or
  - (ii) after the application has been withdrawn under section *one hundred and forty-three*; or
  - (iii) after the application is deemed to have been withdrawn under section *one hundred and forty-four*; as the case may be.

#### **148 Second or subsequent applications**

Where an application has been refused under section *one hundred and thirty-seven* or *one hundred and forty-three* or has been withdrawn under section *one hundred and thirty-seven* or *one hundred and forty-three* or is deemed to have been withdrawn under section *one hundred and thirty-seven* or *one hundred and forty-four* the person who made the application may not make a second or subsequent application for a mining lease in respect

of the same area until a period of twelve months has elapsed from the date of the refusal or withdrawal or the date on which the application is deemed to have been withdrawn, as the case may be.

#### **149 Approval of transfer of mining lease**

(1) A mining lease may not be transferred except to a person approved of by the Board, after consultation with the owner of the ground covered by the lease.

(2) The Board shall not approve of the transfer of a mining lease to any person unless the Board is satisfied that his financial status is such that he will be able to meet any payment which may become due by him under section *three hundred and fourteen*.

(3) Before approving of the transfer of a mining lease to any person the Board may, and if so required by the landowner, shall, require that person to furnish a guarantee satisfactory to the Board for the payment mentioned in subsection (2).

#### **150 Mining rights of holder of mining lease**

(1) Subject to any prior right possessed by the holder of any mining location under section *one hundred and seventy-one*, every holder of a mining lease, hereinafter in this Part called the lease holder, shall possess the following mining rights—

- (a) the exclusive right of mining any ore or deposit of any mineral mentioned in paragraph (a) of subsection (2) of section *one hundred and thirty-five* which occurs within the vertical limits of the area covered by his lease; and
- (b) the exclusive right within the vertical limits of the area covered by his lease of mining any ore or deposit of any other mineral discovered within such area after he has notified the mining commissioner of such discovery:

Provided that nothing in this paragraph contained shall be construed so as to confer any right to mine any coal or mineral oil or natural gas.

(2) The holder of a mining lease which includes any precious metal blocks in respect of which he gave details under paragraph (c) of subsection (2) of section *one hundred and thirty-five* shall retain, in respect of such blocks, the extra-lateral rights which he held at the date of issue of the lease.

(3) The holder of a mining lease which includes such precious metal blocks shall, notwithstanding anything contained in this Part, keep and maintain in good order all the original beacons, pegs and claim plates of such blocks and shall make a certificate to the mining commissioner annually that such beacons, pegs and claim plates are in good order and condition and that they comply with section *fifty-one*.

#### **151 Beaconing of mining lease area**

(1) Subject to this section, within a period of two months from the date of issue of a mining lease or such longer period as the mining commissioner may allow, the lease holder shall—

- (a) erect beacons of concrete or solid mason work at all points of intersection of the boundary lines of the area covered by the lease and at all points of intersection of such boundary lines by the boundary lines of any piece of land in respect of which an approved diagram or general plan is filed on record in the office of the Surveyor-General; and
- (b) if any boundary is more than three hundred metres in length, erect intermediate beacons so that no beacon shall be more than three hundred metres from the next adjoining beacon on either side.

(2) All beacons mentioned in paragraph (a) of subsection (1) shall be erected under the supervision of, and in the position determined by, a land surveyor and may be so erected at the time the area concerned is surveyed for the purposes of preparing the plan mentioned in section *one hundred and thirty-seven* or *one hundred and forty-four*.

(3) The beacons referred to in subsection (1) shall be lettered in consecutive alphabetical order in a clockwise direction commencing with the letter A but omitting the letters Y and Z, and if there are more beacons than twenty-four the letters and figures A2, B2 and so on shall be used in respect of the beacons up to forty-eight and thereafter the letters and figures A3, B3 and so on shall be used

(4) Every beacon mentioned in this section shall bear on it, in addition to the distinguishing letter, the words "Mining Lease" followed by the number assigned to such lease by the Board.

(5) The distinguishing letter and the particulars mentioned in subsection (4) shall be engraved upon the beacon or otherwise affixed thereto in such permanent manner and in such position as the mining commissioner may approve.

(6) Subsections (3) and (4), paragraph (b) of subsection (5) and subsections (7) and (8) of section *fifty-one* shall apply, *mutatis mutandis* to and in respect of all such beacons.

#### **152 Cancellation of certificates of registration**

Upon the issue of a mining lease the certificates of registration in respect of all mining locations situated within the area covered by such lease shall be deemed to have been cancelled:

Provided that any site attached to any such mining location shall be deemed to be attached to such lease, and thereafter section *forty-nine* shall apply, *mutatis mutandis* to or in respect of such sites.

### **153 No impeachment of title to mining leases**

When a mining lease has been issued it shall not be competent for any person to dispute the title of the lease holder to any of the ground covered by the lease on the following grounds—

- (a) that the pegging of any of the mining locations which were included in the area covered by such lease or of any secondary reef which was registered in respect of any such location was invalid or illegal or that provisions of this Act or of any other enactment were not complied with prior to the issue of the certificate of registration of any such location or reef;
- (b) that any ground not open to prospecting was included in the area covered by the lease;
- (c) that provisions of this Act were not complied with in respect of such lease prior to the issue thereof.

### **154 Increase of area of mining lease**

(1) A lease holder may make written application to the Board for the inclusion in his mining lease of an additional contiguous area of ground.

(2) Subsections (2), (3) and (4) of section *one hundred and thirty-five* and sections *one hundred and thirtysix* to *one hundred and forty-four* and sections *one hundred and forty-seven*, *one hundred and forty-eight* and *one hundred and fifty-two* shall apply, *mutatis mutandis* to or in respect of such application, the reservation of the ground, the plan of the area concerned, any objections to the application, the approval or refusal of the application, the withdrawal of the reservation, the beaconing of the additional area and the certificates of registration of mining locations within such area, respectively.

(3) Where the Board has approved an application made under this section, the Board shall, unless the application has been withdrawn or is deemed to have been withdrawn, amend the original and the copies of the mining lease mentioned in section *one hundred and forty-five* accordingly, and shall return the amended original and a copy of the lease to the lease holder and the mining commissioner, respectively, and send a copy of the plan to each of them and shall retain one copy of the lease and of the plan.

(4) As soon as subsection (3) has been complied with, the registers mentioned in section *one hundred and forty-six* shall be amended accordingly.

(5) Where the area covered by a mining lease is amended by the inclusion of an additional area, the lease holder shall beacon such additional area in accordance with section *one hundred and fifty-one* so however, that—

- (a) the letter Y shall precede the letter or letters to be engraved upon or affixed to the beacons of the additional area under that section; and
- (b) it shall not be necessary for the lease holder to erect a new beacon at any point which is already demarcated by a beacon of the original area of the lease.

(6) Where the area covered by a mining lease is amended under this section, section *one hundred and fiftythree* shall apply in all respects as if the lease had been issued in respect of the increased area.

### **155 Abandonment of portion of mining lease**

(1) A lease holder may make written application to the Board, through the mining commissioner, for the abandonment of any portion or portions of his mining lease:

Provided that it shall not be competent for a lease holder so to apply if—

- (a) the mining lease is the subject of a hypothecation or option registered under Part XVII; or
- (b) such abandonment would result in the area covered by the lease to be retained by him being divided into separate portions or if the boundaries of the reduced area of the lease would not be straight lines.

(2) The applicant shall, with his application, submit to the Board a plan in triplicate prepared by a land surveyor of the area or areas which he wishes to abandon.

(3) The Board may, if it is satisfied that all the terms and conditions of the mining lease have been complied with by the applicant, approve the application or may refuse it, and the Board's decision shall be final and without appeal.

(4) Where the Board has approved an application made under this section, the Board shall amend the original and the copies of the mining lease accordingly and shall retain one copy of the plan and send a copy thereof to the lease holder and the mining commissioner.

(5) As soon as subsection (4) has been complied with, the registers mentioned in section *one hundred and forty-six* shall be amended accordingly.

(6) Upon any such abandonment the lease holder shall—

- (a) remove the pegs or direction marks indicating the direction of boundary lines of any beacon which falls outside the reduced area of the mining lease;

- (b) erect beacons in accordance with the provisions of section *one hundred and fifty-one* along such boundaries of the reduced area of the lease as do not form part of the boundaries of the area covered by the lease before such abandonment, so, however, that the letter Z shall precede the letter or letters to be inscribed on the new beacons under that section.

(7) Where the area covered by a mining lease is amended under this section, section *one hundred and fiftythree* shall apply in all respects as if the lease had been issued in respect of the reduced area.

### **156 Total abandonment of mining lease**

(1) A lease holder who desires to abandon the whole of his mining lease may in writing apply to the Board, through the mining commissioner, for the cancellation of his mining lease:

Provided that it shall not be competent for a lease holder so to apply if the mining lease is the subject of a hypothecation or option registered under Part XVII.

(2) The lease holder shall together with such application lodge with the mining commissioner his copy of the mining lease.

(3) On receipt of the application the Board shall cancel the mining lease and shall inform the mining commissioner and the applicant of such cancellation, and the fact of such cancellation shall be noted in the registers mentioned in section *one hundred and forty-six*.

### **157 Failure to comply with terms and conditions of mining lease**

(1) If the Board is satisfied that a lease holder has failed to comply with any of the terms and conditions of his mining lease, the Board may recommend to the Minister that—

- (a) there be recovered from the lease holder as a penalty such sum as the Board may deem appropriate; or  
(b) that the mining lease be cancelled.

(2) Where the Board has recommended the recovery of a penalty under paragraph (a) of subsection (1), the Minister may by action in any court of competent jurisdiction recover from the lease holder the sum so recommended or such lesser sum as the Minister may deem fit.

(3) Where the Board has recommended that the lease be cancelled, the Minister may— (a) direct the Board to cancel the lease; or

- (b) recover from the lease holder by action in any court of competent jurisdiction, as a penalty, such sum as he may determine after consultation with the Board.

(4) If the Minister directs that the lease be cancelled, the Board shall comply with such direction and shall inform the mining commissioner and the lease holder, and the fact of such cancellation shall be noted in the registers mentioned in section *one hundred and forty-six*.

## **PART IX**

### **SPECIAL MINING LEASES**

### **158 Interpretation in Part IX**

In this Part—

“application” means an application for a special mining lease made in terms of section *one hundred and fifty-nine*;

“mining development plan” means a plan referred to in paragraph (e) of subsection (3) of section *one hundred and fifty-nine*.

### **159 Application for special mining lease**

(1) Where the holder of one or more contiguous registered mining locations intends to establish or develop a mine thereon and, subject to subsection (2)—

- (a) investment in the mine will be wholly or mainly in foreign currency and will exceed one hundred million United States dollars in value; and  
(b) the mine’s output is intended principally for export; he may apply in writing to the mining commissioner for a special mining lease in respect of a defined area within which his mining location or locations are situated:

Provided that, except as provided in section *one hundred and thirty-five*, ground not registered as a mining location in the name of the applicant shall not be included within the defined area unless it is open to prospecting.

(2) The Board may permit a person to make an application under subsection (1) notwithstanding that either or both the criteria mentioned in paragraphs (a) and (b) of that subsection will not be met, if the Board, having regard to—

- (a) the nature and size of the mineral deposits within the area over which the applicant seeks a special mining lease; and  
(b) the estimated life and economic viability of the proposed mine; and



- (c) the extent of the investment that will be made in the proposed mine; and
- (d) the proposed method of extraction, mining and treatment of ore from the proposed mine; and
- (e) any other relevant circumstance; considers that it is desirable in the interests of the development of Zimbabwe's mineral resources to consider the grant of a special mining lease to the applicant.

(3) An applicant for a special mining lease shall furnish to the mining commissioner—

- (a) particulars of the minerals which are being mined or are to be mined in the area applied for; and
- (b) a sketch plan based on a map issued under the authority of the State and of a scale not less than 1:25 000 identifying the position of the area applied for and any registered mining locations situated therein and specifying the extent of the area; and
- (c) a list of all the registered mining locations of which he is the sole or joint holder and which are situated within the area applied for, and the certificates of registration of such locations; and
- (d) the name and address of each owner and the occupier, if any, of the land to which the application relates; and
- (e) a plan for the development and operation of the proposed mine, including—
  - (i) a feasibility study relating to the development of the proposed mine; and
  - (ii) a financing plan indicating the type and source of finance to be obtained in order to develop the proposed mine and construct the necessary infrastructure and facilities; and
  - (iii) a marketing plan setting out proposals and a timetable for the beneficiation and disposal of the output of the proposed mine, together with any relevant marketing studies; and
  - (iv) proposals for the efficient and economic exploitation of the mineral deposits to be mined, specifying the proposed method of mining and treatment of the ore and the dates on which such mining and treatment will commence; and
  - (v) an economic evaluation of the proposed mine, including a detailed forecast of the capital investment, operating costs and projected revenues and profits; and
  - (vi) a comprehensive report, supported by documentary evidence, on the mineral deposits to be mined, including details of their extent, grade and quantity and distinguishing between proven, probable and estimated ore reserves and indicating the anticipated mining conditions; and
  - (vii) a report on the anticipated impact of mining operations on the environment and any measures to be taken to assess, prevent or minimize such impact, including proposals for—
    - A. the prevention or treatment of pollution; and
    - B. the treatment and disposal of waste;
    - C. the protection of rivers and other sources of water; and
    - D. the reclamation and rehabilitation of land disturbed by mining operations; and
    - E. monitoring the effect of mining operations on the environment; and
  - (viii) details of any roads, railway lines, electricity supply and other infrastructure which will be required and which the applicant proposes to provide for the purposes of mining operations; and
  - (ix) the proposed timetable for the establishment and operation of the proposed mine and the facilities associated with it; and
  - (x) details of any insurance to be taken out against liability arising from mining operations, including liability for damage to the environment and injury to persons and property; and
  - (xi) proposals for the storage, recording and shipment of the output of the proposed mine; and
  - (xii) information on the extent to which local goods and services will be utilized in the development and operation of the proposed mine; and
  - (xiii) details of the manpower requirements of the proposed mine, including the numbers of expatriate staff and any proposals for training citizens of Zimbabwe;

and

- (f) any other information which might reasonably affect the grant or refusal of the application or which relates to the applicant's ability to perform his obligations under a special mining lease or any agreement under section *one hundred and sixty-seven*; and
- (g) any other information relevant to the application which the mining commissioner or the Board may require

## **160 Applications of certain provisions of Part VIII to special mining leases**

(1) Subject to this section, sections *one hundred and thirty-six* to *one hundred and forty-two* shall apply, *mutatis mutandis*, to the consideration of applications and the determination of any objections thereto:

Provided that the Board shall not have power to approve or refuse an application, but instead shall make recommendations thereon to the Minister, and any reference in those sections to an approval or refusal of an application by the Board shall be construed as a recommendation by the Board to the Minister that the application should be granted or refused, as the case may be.

(2) The Board shall not recommend to the Minister that an application be granted unless the Board is satisfied, in addition to the matters referred to in subsection (3) of section *one hundred and forty-two*, that—

- (a) the criteria mentioned in paragraphs (a) and (b) of subsection (1) of section *one hundred and fifty-nine* will be met or, if those criteria will not be met, that having regard to the matters referred to in paragraphs (a) to (e) of subsection (2) of section *one hundred and fifty-nine*, it would be desirable in the interests of the development of Zimbabwe's mineral resources for the application to be granted; and
- (b) the area to which the application relates contains a mineral or group of minerals which may profitably be mined and sold or otherwise disposed of; and
- (c) the applicant's mining development plan takes proper account of environmental and safety factors; and
- (d) the applicant's programme of mining operations will ensure the efficient, timely and beneficial use of the mineral resources concerned; and
- (e) the applicant's proposals for the procurement and use of local goods and services and the employment of Zimbabwean citizens are satisfactory; and
- (f) the applicant is able and willing to comply with the terms and conditions of any special mining lease that may be granted to him and of any agreement that may be concluded with him in terms of section *one hundred and sixty-seven*; and
- (g) the applicant possesses or can obtain the technical and financial resources required to develop and operate the proposed mine; and
- (h) it would be in the national interest for the applicant to be granted a special mining lease.

(3) The Board shall not recommend refusal of an application on the ground that the Board is not satisfied as to any matter referred to in subsection (2) unless the Board has notified the applicant of the proposed recommendation and the reasons therefor, and has given the applicant a reasonable opportunity to modify his mining plan or make representations or otherwise to remove the ground on which the proposed recommendation is based.

(4) Where the Board recommends to the Minister that an application should be granted, the Board may include in its report recommendations as to—

- (a) the minimum amount which the applicant should be required to invest in the development of the proposed mine; and
- (b) where the proposed mine is to be developed by a company, the minimum shareholding which the applicant should hold in the company; and
- (c) the area to be included in the special mining lease; and
- (d) the period of the special mining lease and any renewal thereof; and
- (e) the terms and conditions to be inserted in the special mining lease and in any agreement to be entered into with the applicant under section *one hundred and sixty-seven*; and
- (f) the period within which construction of the proposed mine should commence; and (g) any other matter connected with or incidental to the special mining lease.

#### **161 Recommendation that application be granted in part**

(1) Before recommending to the Minister that an application should be granted in respect of a portion of the area applied for, the Board shall notify the applicant in writing of its intention to make the recommendation and shall furnish him with details of the portion concerned.

(2) Within thirty days of the date of the notification mentioned in subsection (1), the applicant may, by written notice to the Board and any owner and occupier of land within the area applied for, withdraw his application.

(3) If the applicant does not withdraw his application in terms of subsection (2) he shall, within the period mentioned in that subsection, or such longer period as the Board may allow, submit to the Board an amended plan in triplicate, prepared by a land surveyor, of the area in respect of which the Board has recommended that the application should be granted.

(4) If the applicant fails to submit an amended plan in terms of subsection (3) within the period mentioned in subsection (2), the Board shall notify him in writing that the amended plan has not been received and, if the plan is not received by the Board within thirty days from such notification, the application shall be deemed to have been withdrawn.

(5) Subsection (6) of section *one hundred and thirty-seven* shall apply, *mutatis mutandis*, to the preparation of an amended plan for the purposes of this section.

#### **162 Forwarding of application to Minister and President**

(1) Having considered an application in terms of section *one hundred and sixty*, and, where appropriate, having complied with section *one hundred and sixty-one*, the Board shall without delay forward the application to the Minister together with its recommendations thereon and—

- (a) copies of all objections lodged in respect of the application and copies of the determinations made in respect of the objections; and
- (b) the mining commissioner's report on the application.

(2) The Minister, having considered the documents forwarded to him in terms of subsection (1), shall submit them to the President, together with his recommendations thereon, for the President's approval.

#### **163 Issue of special mining lease**

(1) After considering documents submitted to him in terms of subsection (2) of section *one hundred and sixty-two*, the President may authorize the Minister to issue a special mining lease in accordance with the Board's recommendations or on such other terms and conditions as the President may direct.

(2) Where the President has authorized him to do so, the Minister shall forthwith issue a special mining lease to the applicant, subject to sections *one hundred and sixty-four* and *one hundred and sixty-seven*, in accordance with the President's authorization or directions.

(3) The Minister shall cause the original of any special mining lease he issues under subsection (2) to be sent to the applicant together with a copy of the plan, prepared by a land surveyor, of the area over which the lease is issued, and shall cause copies of the lease and the plan to be sent to the Board and the mining commissioner.

#### **164 Terms and conditions of special mining lease**

(1) A special mining lease shall not be issued in respect of an area within which there is more than one mine that will be established and developed by the holder of the special mining lease

(2) A special mining lease shall not be issued—

- (a) to an individual, unless he is a citizen of Zimbabwe; or
- (b) subject to subsection (3), to a body of persons, unless they constitute a body corporate.

(3) A special mining lease may be issued to two or more persons jointly if each of them is qualified under subsection (2) to be issued with the lease:

Provided that, where a special mining lease is issued to two or more persons jointly, their obligations under the lease shall be joint and several.

(4) A special mining lease shall not be issued for a period exceeding twenty-five years, but provision may be made for its renewal by the Minister with the President's approval for periods not exceeding ten years, having regard to the life of the mine concerned and the circumstances then prevailing.

(5) Subject to the President's directions, a special mining lease shall contain such provisions, not inconsistent with this Act, as the Minister may determine.

#### **165 Application of further provisions of Part VIII to special mining leases**

Subject to this Part, sections *one hundred and forty-six* to *one hundred and fifty-three* and *one hundred and fifty-five* to *one hundred and fifty-seven* shall apply, *mutatis mutandis*, to special mining leases.

#### **166 Issue of mining lease instead of special mining lease**

If an application for a special mining lease has been refused in terms of this Part but the Board is satisfied that the applicant meets the requirements for the issue of a mining lease under Part VIII, the Board may, with the applicant's consent, issue him with a mining lease under section *one hundred and forty-five*.

#### **167 Agreement re issue of special mining lease**

The Minister, with the approval of the President, may enter into an agreement, not inconsistent with this Act, with any person regarding—

- (a) the issue of a special mining lease to that person, and the renewal of the special mining lease; and
- (b) the terms and conditions of any special mining lease that may be issued to that person; and
- (c) the liabilities and obligations of that person in terms of any special mining lease that may be issued to him, including payments by way of royalties, rents and fees; and
- (d) any other matter connected with or incidental to any special mining lease that may be granted to that person.

#### **168 Application of other provisions of this Act relating to mining leases**

Subject to this Part, provisions of this Act relating to mining leases and the rights and obligations of the holders thereof shall apply, *mutatis mutandis*, in relation to any special mining lease and its lease holder, except to the extent that those provisions are inconsistent with this Part.

## PART X

### RIGHTS OF CLAIM HOLDERS AND LANDOWNERS

#### 169 Precious metal reef claims; mining rights within vertical limits

Every holder of a registered block of precious metal reef claims shall possess the following mining rights—

- (a) the exclusive right of mining such portions of his discovery reef as are comprised within the vertical limits of his block;
- (b) the exclusive right within the vertical limits of his block of prospecting for any other precious metal reefs which may exist within such limits in addition to his discovery reef, such reefs being hereinafter designated “secondary reefs”;
- (c) the exclusive right, after discovery of any secondary reef, of pegging and registering such reef in the manner provided in section *one hundred and seventy* and thereafter of mining such portions of such reef as are comprised within the vertical limits of his block;
- (d) the exclusive right of mining any placer deposit, alluvial deposit, eluvial deposit, rubble deposit or dump containing precious metals found within the vertical limits of his block;
- (e) the exclusive right within the vertical limits of his block of prospecting for any base mineral or precious stones and if any ore or deposit of any base mineral or precious stones is discovered within the block, the holder thereof shall notify the mining commissioner of such discovery and shall, subject to this Act, thereafter have the right of working such ore or deposit within the vertical limits of his block.

#### 170 Pegging of secondary reef

(1) If the holder of a registered block of precious metal reef claims by the work of himself or his agents discovers a secondary reef, he may peg such reef in the following manner— (a) the point of discovery shall be marked by a peg marked DP:

Provided that where the reef is discovered at depth the said peg shall be placed at surface at a point as nearly as possible vertically above the point of discovery;

- (b) the pegger shall post near such peg a notice to be styled a secondary reef registration notice which shall be so far as is material in the form prescribed and shall contain the following particulars— (i) the depth from the surface of the reef;
  - (ii) the direction of the dip of the reef;
  - (iii) the approximate angle from the horizontal of the dip of such reef;
- (c) the pegger shall fix pegs marked Q and R respectively at two points within the boundaries of his block, the straight line joining such pegs being at right angles to the strike of the reef.

(2) The pegger of any secondary reef in respect of which a registration notice has been posted may, on application to the mining commissioner within a period of thirty-one days after the date of the posting of such registration notice, obtain a certificate of registration.

(3) The applicant shall lodge with every such application the following with the mining commissioner—

- (a) a copy of such registration notice;
- (b) a plan in duplicate showing the position of the secondary reef in relation to the boundaries of such registered block;
- (c) a certificate under his hand stating that the said copy of such notice is a true copy and that all the facts stated therein are true and correct.

(4) The mining commissioner shall assign a number to every secondary reef for which a certificate of registration has been issued.

(5) After he has issued a certificate of registration of the secondary reef, the mining commissioner shall return to the applicant one copy of the plan lodged with the registered number of such reef endorsed thereon, and shall retain the other copy.

#### 171 Precious metal reef claims: extra-lateral mining right

(1) For the purposes of this section a block shall be deemed to be that portion of the block as pegged which lies between the side lines and the corrected end lines.

(2) For the purposes of extra-lateral rights conferred by this section, a regular block of precious metal reef claims shall have its end lines corrected as follows—

- (a) straight horizontal lines shall be drawn parallel to each other and to the mean direction of the end lines of the block as pegged;
- (b) each of such horizontal lines shall pass through one of the corner pegs of the block and they shall be so drawn that no portion of either of them shall lie outside the end lines of the block as pegged.

(3) Every holder of a registered regular block of precious metal reef claims shall possess the extra-lateral rights of pursuit of and mining the following portions of his discovery reef as it descends outside the vertical limits of his block—

- (a) if only two points of departure are established, such portions of the reef as lie in its course within the block and as are comprised between two vertical planes of unlimited dimensions passing through straight horizontal lines drawn through the points of departure parallel to the corrected end lines;
- (b) if more than two points of departure are established, such portions of the reef as lie in its course within the block and as are comprised between vertical planes of unlimited dimensions passing through straight horizontal lines drawn through the points of departure between which the course of the reef lies within the block and parallel to the corrected end lines;
- (c) if only one point of departure is established and that point is situated on a corrected end line or if no point of departure is established, such portions of the reef as are comprised between vertical planes of unlimited dimensions passing through the corrected end lines;
- (d) if only one point of departure is established and that point is situated on a side line, such portions of the reef as lie between two vertical planes of unlimited dimensions, of which one passes through a straight horizontal line drawn through the point of departure and parallel to the corrected end lines and the other passes through that corrected end line towards which the course of the reef runs within the block from the point of departure.

(4) Every holder of an irregular registered block of precious metal reef claims shall possess the extra-lateral rights of pursuit of and mining the following portions of his discovery reef as it descends outside the vertical limits of his block—

- (a) if only two points of departure are established, such portions of the reef as lie in its course within the block and as are comprised between vertical planes of unlimited dimensions passing through straight horizontal lines drawn through the points of departure and parallel to the line QR;
- (b) if more than two points of departure are established, such portions of the reef as lie in its course within the block and as are comprised between vertical planes of unlimited dimensions passing through straight horizontal lines drawn through the points of departure between which the course of the reef lies within the block and parallel to the line QR;
- (c) if only one point of departure is established, such portions of the reef as are comprised between vertical planes of unlimited dimensions passing through two straight horizontal lines, both of which shall be drawn parallel to the line QR so that one of them passes through the point of departure and the other passes through the point at which a line drawn through the DP peg at right angles to the line QR crosses a boundary line of the block on that side of the DP peg which is opposite to the point of departure;
- (d) if no point of departure is established, such portions of the reef as are comprised between vertical planes of unlimited dimensions passing through two straight horizontal lines which shall be drawn parallel to the line QR through the points at which a line drawn through the DP peg at right angles to the line QR crosses the boundary lines of the block.

(5) Every holder of a registered block of precious metal reef claims, whether such block is regular or irregular, shall possess the same extra-lateral rights of pursuit of and mining any secondary reef registered by him as are given to the holder of an irregular block in respect of his discovery reef by subsection (4).

(6) Notwithstanding anything in this section contained, the holder of a registered block of precious metal reef claims shall not have or exercise any extra-lateral right in respect of any reef unless and until—  
(a) it is established that some portion of the course of such reef lies within such block; or (b) he has obtained a special grant of such right in terms of section *two hundred and eighty-five*.

(7) Notwithstanding anything in this section contained, no holder of any block of precious metal reef claims registered after the 1st September, 1935, shall have any extra-lateral right of pursuit of or mining any platinum or platinoid metal reef.

## **172 Mining rights: other than precious metal claims**

Subject to any prior right possessed by the holder of any mining location under section *one hundred and seventy-one* and this Act, every holder of a registered block of claims other than precious metal reef claims shall possess the following mining rights—

- (a) the exclusive right of mining any ore or deposit of the mineral in respect of which the block is registered which occurs within the vertical limits of his block; and
- (b) the exclusive right within the vertical limits of his block of prospecting for any ore or deposit of any mineral other than the mineral in respect of which the block is registered and if any such ore or deposit is discovered within such block, the holder thereof shall notify the mining commissioner of such discovery and shall, subject to this Act, thereafter have the right of mining such ore or deposit within the vertical limits of his block:

Provided that nothing in this paragraph contained shall confer any rights to mine any coal or mineral oil or natural gas.

### **173 Conversion of blocks**

(1) The holder of a registered block of precious metal claims may, if he proves to the satisfaction of the mining commissioner that any base mineral occurs in such block in such amount as to exceed in value the amount of the precious metal contained therein, apply for the conversion of the block into a base mineral block, and thereupon the mining commissioner shall issue a new registration certificate for the area originally registered.

(2) The holder of a registered block of claims other than precious metal reef claims may, if he proves to the satisfaction of the mining commissioner that any reef containing precious metals occurs in such block in such amount as to exceed in value the amount of the mineral contained therein for which such block was registered, apply for the conversion of the block or any part thereof into a precious metal reef block or blocks, and shall peg such reef in terms of section *forty-three* and thereupon the mining commissioner shall issue a new registration certificate or certificates for the area converted.

(3) The mining commissioner may, if it appears to him that any precious metal discovered in any registered block of base mineral claims occurs in such quantity in such block as to exceed in value the mineral in respect of which the block was originally registered or that such block includes any ground which formerly formed part of a location registered for precious metal, call upon the holder to show cause why the block should not be relocated and repegged under the provisions of this Act relating to the pegging of precious metal claims and if the holder of such block fails to show such cause to the satisfaction of the mining commissioner, the holder shall forthwith relocate and repeg the block in such manner as in this Act is prescribed for such precious metal, and shall thereafter hold such claims as precious metal claims.

(4) The mining commissioner may, if it appears to him that any precious stones discovered in any registered block of claims other than precious stones claims occur in such block in such amount as to exceed in value the mineral in respect of which the block is registered, call upon the holder to show cause why the block or portion thereof should not be relocated and repegged under the provisions of this Act relating to the pegging of precious stones claims and if the holder of such block fails to show such cause to the satisfaction of the mining commissioner, the holder shall relocate and repeg such block or portion of such block in such manner as in this Act is prescribed for precious stones and shall thereafter hold the block or such portion thereof as precious stones claims:

Provided that if the whole block is not so repegged, the holder may, at his option, abandon the remaining portion or portions of such block or may retain such remaining portion or portions as one or more blocks of claims registered for the mineral in respect of which the block was registered prior to such repegging and the mining commissioner may issue a fresh certificate of registration for any separate portion so retained.

(5) The holder of a registered block of claims other than precious stones claims may, if he proves to the satisfaction of the mining commissioner that precious stones occur in such block in such amount as to exceed in value the amount of mineral contained therein in respect of which the block was originally registered, apply for the relocation of such block under the provisions of this Act relating to the pegging of precious stones claims and if the mining commissioner approves the application, the holder shall forthwith relocate and re-register the block in such manner as in this Act is prescribed for precious stones, and the claims shall thereafter be held as precious stones claims:

Provided that if the whole block is not so repegged the remaining portion or portions shall be dealt with in the manner prescribed in subsection (4).

(6) The holder of a registered block of reef claims may apply for the conversion of the whole or any portion of such block into a block of dump, rubble deposit, alluvial or eluvial claims. If the mining commissioner approves the application, the holder shall forthwith relocate and re-register such block or portion of such block, and thereafter it shall be held as a dump rubble deposit, alluvial or eluvial claims block. If the whole block is not so relocated and re-registered, the holder shall abandon the remaining portion of the block.

(7) The holder of a registered block of claims may apply for the conversion of the whole or any portion of such block into a site. Such holder shall peg such site in terms of section *forty-seven* and the mining commissioner shall, if satisfied that the area pegged is not in excess of the holder's requirements for a site, issue a certificate of registration in terms of section *forty-eight*. If the whole block is not registered as a site, the holder shall abandon that portion of the block which is not so registered.

(8) The holder of a registered site may apply to the mining commissioner for the conversion of the whole or any portion of such site into a registered block of claims. If the mining commissioner approves the application, the holder of the site shall forthwith relocate and re-register such site or portion thereof in such manner as in this Act is prescribed for the appropriate class of mineral, and thereafter it shall be held as a registered block of claims in respect of the mineral for which it has been registered. If the whole site is not registered as a block of claims the holder shall abandon that portion of the site which is not so re-registered or may re-register such portion as a site.

(9) Where any conversion is effected under this section the holder shall pay to the mining commissioner in respect of the new certificate of registration the fee that would have been payable under Part III if such certificate of registration had been an original certificate of registration.

#### **174 Provisions concerning conversion of blocks**

(1) Where the holder of a registered block of claims has—

- (a) applied for the conversion of the whole or portion of the block in terms of subsection (2) of section *one hundred and seventy-three* and the mining commissioner has issued a new registration certificate; or
- (b) relocated and repegged the whole or portion of the block under subsection (3) of section *one hundred and seventy-three*; the mining commissioner shall report the matter to the Board.

(2) After receiving any report in terms of subsection (1), if the Board, after inquiring into the circumstances of the case and affording the holder an opportunity of making representations, is of the opinion that the block was not originally pegged for the *bona fide* purpose of working the mineral for which it was registered, the Board may recommend to the Minister that one or both of the following penalties be imposed—

- (a) payment by the holder of an amount not exceeding two thousand dollars for each precious metal block so registered or relocated and repegged;
- (b) such block be excluded from section *one hundred and seventy-one*.

(3) On receipt of a recommendation in terms of subsection (2) the Minister may make an order providing for one or both of the penalties referred to in paragraphs (a) and (b) of subsection (2), as he may deem fit.

(4) Where the Minister has imposed a penalty referred to—

- (a) in paragraph (a) of subsection (2), the amount shall be payable by such holder to the mining commissioner for payment into the Consolidated Revenue Fund and, in default of payment, the amount may be recovered by the mining commissioner from such holder in any court of competent jurisdiction;
- (b) in paragraph (b) of subsection (2), the mining commissioner shall endorse on the registration certificate relating to the block the fact that it is excluded from section *one hundred and seventy-one*.

#### **175 Amendment of registration certificates of base mineral blocks**

(1) If the holder of a registered block of base mineral claims discovers that any base mineral occurs in such block in such amount as to exceed in value the amount of the mineral contained therein in respect of which the block is registered, he may apply to the mining commissioner for the amendment of the certificate of registration of such block by the substitution of such first-mentioned mineral for the mineral in respect of which the block is registered, and the mining commissioner, if he is satisfied as to the grounds on which the application is made, may approve the application and, if he so approves, shall amend the certificate of registration and his records accordingly.

(2) The mining commissioner may, if it appears to him that any base mineral occurs in any registered base mineral block in such amount as to exceed in value the amount of the mineral contained therein in respect of which the block is registered, call upon the holder to show cause why the certificate of registration of the block should not be amended; if the holder of such block fails to show such cause to the satisfaction of the mining commissioner, the mining commissioner shall amend his records accordingly and thereafter the certificate of registration shall be deemed to have been amended accordingly.

#### **176 Sites: mining rights**

The holder of a registered site shall in respect of any minerals which may exist within the vertical limits of his site, *mutatis mutandis* possess, but only within such limits, the same rights as are possessed by the holder of a

registered block of claims in respect of minerals within the vertical limits of his block, but such rights shall be inseparably connected with and shall not be alienated in any way from such site.

### **177 Priority of mining rights**

(1) For the purposes of this section—

“pegger” means the person in whose name or on whose behalf a mining location, reef or deposit was registered and each and every successor in title to the rights acquired by such person.

(2) For the purposes of subsection (3)—

“acquisition of title” shall be taken to mean the due performance of the first physical act required to be done under this Act, or any previous law governing mining rights at the time when the act was performed, in order to acquire any exclusive rights in respect of any mining location, reef or deposit.

(3) Priority of acquisition of title to any mining location, reef or deposit, if such title has been duly maintained, shall in every case determine the rights as between the various peggers of mining locations, reefs or deposits as aforesaid and in all cases of dispute the rule shall be followed that, in the event of the rights of any subsequent pegger conflicting with the rights of a prior pegger, then, to the extent to which such rights conflict, the rights of any subsequent pegger shall be subordinated to those of the prior pegger, and all certificates of registration shall be deemed to be issued subject to the above conditions.

(4) In case of any dispute arising with regard to any reef which has been registered by one pegger and is claimed as a discovery or secondary reef by another, the rule of priority shall be followed even though it involves the following of such reef into or through the vertical limits of the block or site belonging to another.

(5) Where reefs apparently distinct, but in reality merely branches of the same reef, or forming part of an irregular deposit, coalescing in depth, have been independently located by more than one pegger, then, up to the time of the fact of such coalescence as aforesaid having been established, each pegger shall, in pursuance of his *prima facie* right, have the right of following the reef even below any point of junction:

Provided that after establishment of such coalescence the right of pursuit below the point of junction shall be vested in the first pegger.

(6) Where any reefs intersect on the dip, each pegger shall have the right of following his reef through and beyond the junction of the reefs, but the whole of the ore at such junction shall, subject to subsection (7), be the property of the first pegger, and if any question arises as to the extent of the ore included in such junction, the same shall be referred to arbitration.

(7) In all cases the holder of any mining location shall, as long as he is *bona fide* in pursuit of his *prima facie* rights, have the right of working and of extracting any of the minerals which he is entitled to mine under this Act, until such time as any other pegger has obtained an injunction from the mining commissioner or from the High Court to stay such working, and all minerals so extracted prior to receiving notice from any other pegger who succeeds in establishing his priority rights shall be deemed to be and shall remain the property of such holder as aforesaid.

(8) If the holder of any mining location claims that an encroachment has been made on his location by a subsequent pegger, and the subsequent pegger proves—

- (a) that there is no encroachment according to the beacons existing at the time when such subsequent pegger pegged the alleged encroachment; and
- (b) that the alleged encroachment was caused by the failure of the claimant or of his predecessor in title to maintain his beacons in their original positions;

the claimant shall be ordered to establish or replace his beacons in their original positions as shown on the survey or sketch plan lodged with the mining commissioner, and no action for damages shall lie against the subsequent pegger for any damages caused by the alleged encroachment.

### **178 Surface rights of miners**

(1) For the purposes of paragraph (e) of subsection (2)—

“property” means two or more blocks of claims, whether contiguous or otherwise, owned by one person, from which the ore is being treated at the same milling or reduction plant or which are under the control of one registered mine manager.

(2) Every miner of a registered mining location shall have and possess the following respective surface rights—

- (a) the right, subject to any existing rights, to the use of any surface within the boundaries thereof for all necessary mining purposes of his location; and as against the holder of a prospecting licence or of any other mining location the right, except as in section *three hundred and fifty-seven* provided, to the use of all surface within such boundaries;



- (b) the right to use, free of charge, soil, waste rock or indigenous grass situated within his location for all necessary mining purposes of such location;
- (c) the right to sell or otherwise dispose of waste rock recovered by him from his location in the course of *bona fide* mining operations: Provided that—
  - (i) nothing in this paragraph contained shall be construed so as to derogate from the right conferred upon the Minister under section *four hundred and two* or any person duly authorized by him under that section;
  - (ii) as from the date on which the rights of the miner to carry on the work of mining on the location cease, the rights of the miner to sell or otherwise dispose of such waste rock shall cease and any agreement for the sale or other disposition of such waste rock shall be of no further force or effect;
- (d) the same right of taking water for primary purposes as is possessed by the holder of a prospecting licence;
- (e) subject to this section and of the Forest Act [*Chapter 19:05*] and to such conditions as may be prescribed and on payment to the occupier or, where there is no occupier, the owner of the land in advance of such tariff rate as may be prescribed, the right to take and use for firewood or for the purposes of his mining location any indigenous wood or timber from land open to prospecting which is neither Communal Land nor land in regard to which a reservation has been made under section *thirtysix* or *thirty-seven*:

Provided that nothing in this paragraph shall be construed so as to permit a miner to use any wood or timber taken by him for firewood elsewhere than on his location or, where his location is a block forming part of a property, on that property.

(3) A miner who desires to take indigenous wood or timber from land referred to in paragraph (e) of subsection (2) which is private land shall give notice of such desire—

- (a) if the land is occupied, to the occupier of the land in person, or by registered letter addressed to the occupier at his ordinary postal address; or
- (b) if the land is unoccupied, by registered letter addressed to the owner at his ordinary postal address; and thereafter the miner and the occupier or owner may agree as to the area and period within which such wood or timber may be taken, the quantity and kinds of such wood or timber to be taken, the price to be paid for such wood or timber and any other conditions relating to such wood or timber.

(4) If, within the period of seven days from the date of the giving of notice in terms of subsection (3), no agreement has been concluded in accordance with that subsection, the miner shall have the rights conferred upon him by paragraph (e) of subsection (2) in respect of the land concerned.

(5) Section *one hundred and four* shall apply, *mutatis mutandis*, in relation to a miner in respect of indigenous wood or timber required by him in connection with his mining operations.

### **179 Saving of rights of landowner over mining location**

Subject to subsection (12) of section *one hundred and eighty*, the owner or the occupier of land on which a registered mining location is situated shall retain the right to graze stock upon or cultivate the surface of such location in so far as such grazing or cultivation does not interfere with the proper working of the location for mining purposes.

### **180 Approval of scheme to cultivate surface of mining location**

(1) For the purposes of this section and sections *one hundred and eighty-one* and *one hundred and eightytwo*—

“landholding parties” means—

- (a) in relation to land, other than Communal Land, to which an approved cultivation scheme or proposed scheme relates—
  - (i) the owner; and
  - (ii) where the occupier of the land is not the owner thereof, the occupier of that land;
- (b) in relation to Communal Land to which an approved cultivation scheme or proposed scheme relates, any rural district council within the area of which that Communal Land is situated;

“mining parties” means— (a)

the holder of; and

- (b) where the miner of the registered mining location is not the holder thereof, the miner of; and
- (c) the holder of a hypothecation or option registered under this Act over;

the registered mining location to which an approved cultivation scheme or proposed scheme relates.

(2) Subject to subsection (3)—

- (a) the occupier of any land on which a registered mining location is situated may lodge with the mining commissioner, for examination by him and approval by the Board, a written scheme, together with three

copies thereof, in regard to the cultivation by such occupier of the whole or any part of the surface of such location:

Provided that—

- (i) no such scheme shall provide for the cultivation of land for the purpose of planting or establishing orchards, tree plantations or other like permanent crops;
  - (ii) where the occupier is not the owner of the land, no such scheme shall be lodged with the mining commissioner unless the owner has agreed to the scheme and his agreement has been endorsed on the scheme and signed by him;
- (b) a rural district council may lodge with the mining commissioner, for examination by him and approval by the Board, a written scheme, together with three copies thereof, in regard to the cultivation, by persons entitled to reside in such Communal Land, of the surface of any registered mining location situated on Communal Land within the area of such rural district council:

Provided that no such scheme shall provide for the cultivation of land for the purpose of planting or establishing orchards, tree plantations or other permanent crops.

(3) Not later than thirty days before lodging a scheme under subsection (2), the occupier or rural district council, as the case may be, shall give notice of his or its desire to lodge the scheme, together with a copy of the scheme, to—

- (a) each of the mining parties affected thereby; and
- (b) where notice is being given by the occupier and he is not the owner of the land, the owner of the land; in person or by posting a registered letter addressed to the ordinary postal address of the person concerned:

Provided that, if a scheme has been agreed to by all the landholding and mining parties and the agreement of each such party has been endorsed on the scheme and signed by him, this subsection shall not apply and the scheme may forthwith be lodged under subsection (2).

(4) On receipt of a scheme under subsection (2) and if satisfied that subsection (3) has been complied with or does not apply, the mining commissioner shall forthwith by registered letter—

- (a) notify each of the mining parties affected thereby of the receipt of the scheme and require the holder of the registered mining location to lodge with him, within twenty-one days of the date of such notification, his certificate of registration or his copy of the mining lease or special grant to carry out mining operations, as the case may be; and
- (b) if the scheme has not been agreed to by a mining party affected thereby and his agreement endorsed on the scheme and signed by him, send to that party a copy of the scheme and require him to inform the mining commissioner in writing, within twenty-one days of the date of such notification, whether he agrees to the scheme or objects to it and, if he objects, to set out his objections.

(5) After complying with subsection (4), the mining commissioner shall submit to the Board any scheme lodged with him under subsection (2), together with any objections thereto lodged under subsection (4) and his own report on the scheme and the objections.

(6) If, upon examination of the documents submitted to it under subsection (5) and after consulting the Minister responsible for agriculture, the Board is satisfied that—

- (a) the period of the scheme is clearly stated in the scheme and that the scheme is to terminate on a date specified therein; and
- (b) the registered mining location concerned is being held for *bona fide* mining purposes; and
- (c) the scheme specifies the basis on which the compensation shall be calculated in the event of termination of the scheme under section *one hundred and eighty-one*; and
- (d) the scheme is satisfactory in all respects and is not designed or likely to hinder or prevent the future exploitation of the mineral resources of the mining location;

the Board may approve the scheme.

(7) If the Board is not satisfied as to any of the matters referred to in subsection (6), it shall refuse to approve the scheme and may submit to the landholding and mining parties affected by the scheme such amendments to the scheme as it may deem fit and require them to state within a period to be specified by the Board— (a) in the case of a landholding party, whether or not he agrees to the amendments; (b) in the case of a mining party, any objections he may have to the amendments.

(8) If the landholding parties agree to the amendments submitted to them by the Board under subsection (7), the Board may, after considering any objections to the amendments stated by the mining parties, amend the scheme accordingly and approve the scheme as amended.

(9) Where the Board has approved a scheme it shall—

- (a) endorse its approval on the scheme and on the copies thereof; and
- (b) retain the original copy of the scheme; and

- (c) send a copy of the scheme to each of the parties to the scheme and to the mining commissioner who shall forthwith endorse on the certificate of registration or copy of the mining lease or special grant, as the case may be, the fact that the registered mining location is subject to a scheme and the period of the scheme.

(10) The Board shall keep a record of schemes which have been approved by it under this section.

(11) Upon approval of a scheme by the Board under this section—

- (a) in the case of land other than Communal Land, the occupier shall be entitled, subject to the provisions of the scheme, to exercise the rights conferred on him by the scheme, and
- (b) in the case of Communal Land, persons entitled in terms of the Communal Land Act [*Chapter 20:04*] to cultivate the land concerned shall be entitled, subject to the provisions of the scheme, to exercise the rights conferred on them by the scheme; and
- (c) the scheme shall be binding on the holder of the registered mining location concerned and on the miner, if any, thereof.

(12) Where a scheme has been approved by the Board under this section, any rights of cultivation conferred by section *one hundred and seventy-nine* in respect of the land to which the scheme relates shall be suspended for the duration of the scheme.

(13) Upon the approval of a scheme by the Board under this section the mining commissioner shall forthwith, without obtaining the authority of the Minister, reserve the ground covered by the scheme against prospecting and pegging under section *thirty-five* for the period of the scheme.

(14) Upon the termination of a scheme, whether by effluxion of time or otherwise, the mining commissioner shall by notice posted at his office withdraw the reservation.

### **181 Termination of scheme by miner**

(1) Subject to this section, the miner of the registered mining location concerned or, if the location is not being mined, the holder thereof may at any time during the currency of an approved cultivation scheme terminate the scheme by giving written notice of termination to each of the landholding parties, either in person or by posting a registered letter to the ordinary postal address of the party concerned:

Provided that, if the miner is not the holder of the registered mining location, no notice of termination may be given unless the holder has agreed thereto and his agreement has been endorsed thereon and signed by him.

(2) A notice of termination of a scheme under subsection (1) shall specify the date on which the termination is to take effect which shall be a date not less than two months from the date of the giving of the notice of termination to the landholding parties:

Provided that, if notice has to be given to two or more landholding parties and is not given to them on the same day, the date so specified shall be not less than two months from the date of the last giving of such notice.

(3) Where notice of termination of a scheme has been given under this section—

- (a) the miner or, if there is no miner, the holder of the registered mining location shall on or before resumption of the land concerned pay to—
  - (i) in the case of land other than Communal Land, the occupier or, if there is no occupier, the owner of the land;
  - (ii) in the case of Communal Land, any rural district council established for the area concerned, for distribution to the persons entitled in terms of the Communal Land Act [*Chapter 20:04*] to cultivate the land;

such compensation as may be mutually agreed upon or, failing agreement, as may be determined, on the basis specified in the scheme, by the Board or by the Administrative Court on appeal from the determination of the Board under subsection (5);

- (b) the scheme shall cease to be of effect and the miner or holder, as the case may be, may resume possession of the land to which the scheme related—
  - (i) on the date specified for that purpose in the notice of termination; or
  - (ii) where the compensation referred to in paragraph (a) has not been paid before the date referred to in subparagraph (i), as soon as that compensation has been paid.

(4) Notwithstanding subsection (3), no person shall be disturbed in his cultivation of land under a scheme terminated under this section until he has had time to reap at the proper season any annual crops sown before the date of receipt of the notice of termination by—

- (a) in the case of land other than Communal Land, the occupier of the land;
- (b) in the case of Communal Land, the rural district council, if any, established for the area concerned.

(5) If either party is dissatisfied with the determination of compensation by the Board for the purposes of subsection (3), he may appeal against that determination to the Administrative Court.

### **182 Termination of scheme by consent**

(1) An approved cultivation scheme may at any time be terminated, either as to the whole or a part of the area covered thereby, by the mutual consent of the landholding and mining parties affected by the scheme.

(2) Where a scheme is terminated under subsection (1) the parties involved in such termination shall forthwith inform the mining commissioner of the termination and the mining commissioner shall notify the Board.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection substituted by section 4 of Act 22 of 2001]

### **183 Board may cancel scheme**

(1) Where the owner or occupier of any land, other than Communal Land, to which an approved cultivation scheme relates has in the opinion of the Board failed adequately to exercise his rights under the scheme, the Board may call upon him to show cause why the scheme should not be cancelled and, if the owner or occupier fails to show such cause to the satisfaction of the Board, the Board may, after consultation with the Minister responsible for agriculture, cancel the scheme.

(2) Where the persons entitled in terms of the Communal Land Act [*Chapter 20:04*] to cultivate Communal Land to which an approved cultivation scheme relates have in the opinion of the Board failed adequately to exercise their rights under the scheme, the Board may call upon any rural district council established for the area concerned to show cause why the scheme should not be cancelled, and, if the rural district council fails to show such cause to the satisfaction of the Board, the Board may cancel the scheme.

### **184 Resumption of rights by miner**

On the expiry of the period of an approved cultivation scheme or on the termination of a scheme under section *one hundred and eighty-two* or the cancellation of a scheme under section *one hundred and eighty-three*, the miner or, if there is no miner, the holder of the registered mining location concerned may exercise his full rights in respect of the registered mining location or part thereof, as the case may be, without payment to any person for or in respect of anything done in the exercise of any rights under the scheme.

### **185 Termination of scheme on forfeiture or abandonment of location**

(1) Subject to subsection (3) of section *two hundred and seventy-two*, if title to a mining location to which an approved cultivation scheme relates is extinguished by forfeiture or abandonment or in any other manner before the period of the scheme expires, the scheme shall be deemed to have been terminated and Part V shall thereafter apply to or in respect of so much of the land covered by the scheme as comes within the definition of "land under cultivation" contained in section *thirty*.

(2) Where a portion of a mining location to which an approved cultivation scheme relates is abandoned before the period of the scheme expires, the scheme shall be deemed to have been terminated in respect of that portion of the location which has been abandoned and Part V shall apply to so much of the abandoned portion as comes within the definition of "land under cultivation" contained in section *thirty*.

### **186 Scheme to bind successors in title**

Unless an approved cultivation scheme is terminated or deemed to have been terminated or is cancelled before the expiry of the period thereof, the scheme and sections *one hundred and eighty* to *one hundred and eighty-five* shall for the period of the scheme apply to or in respect of and be binding on—

- (a) any person to whom the mining location to which the scheme relates is transferred and on any miner thereof; and
- (b) any person to whom land, other than Communal Land, covered by the scheme is transferred and on any occupier thereof; and
- (c) any person becoming entitled in terms of the Communal Land Act [*Chapter 20:04*] to cultivate any Communal Land covered by the scheme:

Provided that, where a scheme has been terminated under section *one hundred and eighty-two* as to part only of the area covered thereby, this section shall apply in relation to the remainder of the area.

### **185 Inspection certificates and payments to landowners during period of agreement** During the currency of an approved cultivation scheme—

- (a) any inspection certificate falling due in respect of the registered mining location to which the scheme relates shall, notwithstanding anything contained in Part XI, be obtainable, without any work having been executed for the purpose, on payment of the fee referred to in section *two hundred*; and

- (b) neither the owner of the land concerned nor, in the case of Communal Land, the President shall be entitled to any payment under section *one hundred and eighty-eight* in respect of such location which would otherwise be due for the period of the scheme.

## **188 Payments to landowners**

(1) In this section—

“block” does not include an underground extension block;

“producing mining location” means a block, mining lease or special grant in respect of which there have been rendered under section *two hundred and fifty-one* returns of minerals or mineral-bearing products won from the block, mining lease or special grant, as the case may be, during at least two months of the period to which an application made under subsection (2) relates;

“special grant” means a special grant to carry out mining operations issued under Part XIX or a special grant issued under Part XX.

(2) Subject to any regulations, every owner of a holding of private land shall, on application to the mining commissioner made on the prescribed form and within such period as may be prescribed and on furnishing such evidence as may be required by the mining commissioner to substantiate his claim, be entitled to the following payments for any period falling within the year ending on the previous 31st December during which a registered mining location situated upon his land was held—

- (a) in respect of a site or a producing mining location, the appropriate sum prescribed for the purposes of this paragraph;
- (b) where paragraph (a) does not apply, in respect of any registered block, mining lease or special grant, the appropriate sum prescribed for the purposes of this paragraph which shall be a sum smaller than the corresponding sum prescribed for the purposes of paragraph (a):

Provided that, where the whole or any part of the period during which the location was held is covered by an order issued by the Board under subsection (4), the sum to be paid for that period or that part of that period, as the case may be, shall be the sum specified by the Board in its order.

(3) The owner of any holding of private land on which a registered mining location is situated may apply in writing to the Board for an order authorizing increased payments in respect of that location.

(4) On receipt of an application under subsection (3) the Board may, if satisfied that—

- (a) on account of mining operations, whether past or present, on the registered mining location concerned, the applicant is denied the use of the surface of the location or a substantial portion thereof; and
- (b) it is in all the circumstances reasonable that payments in respect of the registered mining location concerned should be made at a rate higher than the appropriate rate prescribed for the purposes of paragraph (b) of subsection (2);

make an order specifying for the purposes of the proviso to paragraph (b) of subsection (2) a sum which shall be greater than the appropriate sum prescribed for the purposes of that paragraph but not greater than the sum prescribed for the purposes of paragraph (a) of subsection (2).

(5) An order made by the Board under subsection (4) may—

(a) be made in respect of—

- (i) the year preceding the year in which the application for the order is made:

Provided that no owner shall be entitled by virtue of an order having been made to any additional payment for a period for which payment has already been made to any person under subsection (2); and

- (ii) a definite or an indefinite period;

(b) at any time be amended or revoked by the Board.

(6) The Board shall forthwith notify the mining commissioner and the owner of the land concerned of every order made under subsection (4) and of any amendment or revocation thereof.

(7) Subsections (2) to (6) shall apply in respect of Communal Land as if all Communal Land within the area under the jurisdiction of any one rural district council were a holding and the rural district council were the owner thereof:

Provided that any payments due in terms of subsection (2) in respect of such Communal Land shall be paid to the District Development Fund referred to in section 3 of the District Development Fund Act [*Chapter 29:06*].

(8) Notwithstanding anything contained in this section, an owner of land shall not be entitled to receive the payments referred to in subsection (2) if he or his spouse or any child of either of them holds any direct or indirect pecuniary interest in the mining location concerned, other than the payments referred to in this section or in section *two hundred and thirty-two* or an entitlement to a share in the royalties due on minerals, mineral oils or natural gases won from that mining location.

(9) For the purposes of subsection (8), a person shall not be regarded as holding a pecuniary interest in a mining location solely by reason of his ownership of shares in a public company unless—

- (a) his shareholding is such that he has: or
- (b) where any other person referred to in subsection (8) owns shares in the same company, their combined shareholding is such that they have; a controlling interest in the company.

(10) If the owner of a holding of land is entitled to any share in the royalties due on minerals, mineral oils or natural gases won from that holding of land and he invokes that entitlement by claiming a share of any royalties paid thereon in respect of any one year ending on the 31st December, he shall not be entitled to any payments in terms of this section in respect of any mining location on that holding of land for that year.

(11) From and after the 1st January, 1974, any condition in a title deed to any piece of land in terms of which payments due to the owner of the land under this section are payable to any person other than the owner of the land shall be regarded as *pro non scripto* and the rights possessed by any such other person in terms thereof shall lapse with effect from that date, and it shall not be lawful to include any such condition in any title deed to any piece of land.

(12) Nothing in this section contained shall be deemed to deprive the owner of any holding of land held under the title known as the Matabeleland Volunteer Right (Victoria Agreement) of any rights conferred by such title:

Provided that an amount equal to five *per centum* of any amount due under such title shall be deducted as the cost of collection.

(13) All moneys payable in terms of this section shall be defrayed from moneys appropriated for the purpose by Act of Parliament.

#### **189 Miner to fence mining location adjacent to pasture land**

(1) Where the owner or occupier of any land has fenced off a portion of such land for the purpose of depasturing stock, the mining commissioner may, on application by such owner or occupier, direct any miner who is carrying on mining operations within the area so fenced off, to fence off in the manner prescribed the whole or any portion of his mining location within such period as the mining commissioner may specify.

(2) If the miner fails to comply with such direction within the period specified, the owner or occupier may himself fence off the whole of the mining location and may recover the cost thereof from the miner.

#### **190 Trading on mining locations**

(1) For the purposes of subsection (3) “liquor” has the meaning assigned to it in the Liquor Act [*Chapter 14:12*].

(2) No person shall erect upon any registered mining location any building for the purpose of trading in any way with the public or for any other business not legitimately connected with and necessary for the purposes of such location, or carry on any such business upon such location, except when authorized thereto by the Secretary with the consent of the holder of such location and, unless the title deed of the land on which such location is situated is such that the consent of the owner of the land is not required, with the consent of the owner of the land.

(3) In giving his consent, such holder or owner, as the case may be, shall state whether or not the right to trade in liquor is included, and the Secretary shall, in granting his authority, state accordingly whether or not such right is included.

#### **191 Agreement as to use of private water**

The use of any private water on private land may be acquired by a miner requiring the use thereof for mining purposes upon such terms and conditions as may be mutually agreed upon between such miner and the owner of the private water.

#### **192 Registration of agreement**

Any agreement between a landowner and a miner as to the use of private water may be reduced to writing and registered at the office of the mining commissioner.

#### **193 Right of miner to private water on State land**

Private water may be taken free of charge by a miner from any source of supply existing upon State land which is both unalienated and unoccupied, under such conditions as may in each case be fixed by the President.

#### **194 Public water**

The right of any miner to the use of any public water for purposes other than primary purposes shall be regulated by the Water Act [*Chapter 20:22*].

#### **195 Subterranean water and storm-water**

(1) In subsection (2)—

“storm-water” has the meaning given by section 2 of the Water Act [*Chapter 20:22*].

(2) The use of any water issuing from or brought to the surface of the ground from the subterranean working of any mining location, provided the presence of such water in such workings is not due to a contravention of any provisions of this Act, and of any storm-water conserved by a dam or reservoir constructed by the holder of any mining location on such mining location or on any site attached to such mining location, which, but for such dam or reservoir, would have run to waste, shall, to the extent to which it may be required for the necessary purposes of such location or of any other mining location in the same vicinity, be vested in the holder of such location.

#### **196 Owner or occupier of land may appoint agent**

(1) The owner or occupier of any land may register with the mining commissioner or with the Board the name and postal address of a person appointed by such owner or occupier to represent him as his agent in any matter arising under this Act.

(2) Every such appointment shall be valid for a period of twelve months, but may be renewed from time to time for like periods.

### **PART XI**

#### **PRESERVATION OF MINING RIGHTS**

#### **197 First inspection certificates**

(1) Except as otherwise provided in this Act, the holder of any block of base mineral claims or of any block of reef or placer deposit claims registered for precious metals or of any mining lease shall, within a period of six months from the date of registration of such block or the issue of such mining lease, as the case may be, apply to the mining commissioner for and obtain a first inspection certificate therefor in respect of work executed upon such block or mining lease.

(2) A certificate issued in terms of subsection (1) shall protect the block or the mining lease from forfeiture for a period of twelve months from the date of registration of the block or the date of issue of the mining lease, as the case may be.

(3) Subsection (1) and (2) shall not apply to a mining lease upon which the principal mineral being mined or to be mined is precious stones.

#### **198 Second inspection certificates**

(1) Within a period of twelve months from the date of the registration of such block or the issue of such mining lease, the holder thereof shall apply to the mining commissioner for and obtain a second inspection certificate therefor in respect of work executed upon such block or mining lease.

(2) A certificate issued in terms of subsection (1) shall protect the block or mining lease from forfeiture for a period of twelve months from the date of expiry of the first inspection certificate.

#### **199 Subsequent inspection certificates, etc.**

(1) During each succeeding period of twelve months, beginning from the date of expiry of the first inspection certificate, the holder of a registered block or mining lease shall apply to the mining commissioner for and obtain an inspection certificate in respect of work executed upon such block or mining lease.

(2) A certificate issued in terms of subsection (1) shall protect the block or mining lease from forfeiture for a period of twelve months from the date of expiry of the last inspection certificate.

(3) Notwithstanding subsections (1) and (2), if the mining commissioner has reason to believe that any registered block or mining lease has not been worked at all, or has not been adequately developed or worked for a period of one year from the date of registration of such block or the issue of such mining lease, as the case may be, he shall defer the issue of an inspection certificate and refer the matter to the Board for investigation.

(4) If, in the light of an investigation carried out in terms of subsection (3), the Board is satisfied that the registered block or mining lease has not been worked at all, or has not been adequately developed or worked for a period of one year from the date of registration of such block or the issue of such mining lease, the Board shall call upon the holder of such block or mining lease to make representations to it as to why such block or mining lease should not be forfeited.

(5) After considering any representations made by the holder in terms of subsection (4), unless the Board finds that—

- (a) the failure to develop or work, or adequately to develop or work such block or mining lease, is due to circumstances beyond the control of the holder and that he has made every effort to overcome them; or
- (b) it is the holder's declared intention to start or continue developing or working the block or mining lease within a period of six months on a scale satisfactory to the Board; or

- (c) there is reasonable cause for the delay in developing or working the block or mining lease or for not adequately developing or working such block or mining lease; or
- (d) the block forms part of a series of not more than ten blocks contiguous to a main block being worked by the holder and is essential to the proper working of such main block; the Board shall order the mining commissioner to forfeit forthwith the registered block or mining lease, and shall notify the holder accordingly.

(6) A person aggrieved by a decision of the Board in terms of this section may appeal to the Minister against such decision within thirty days of the notification thereof.

(7) The noting of an appeal in terms of subsection (6) shall suspend the forfeiture of the registered block or mining lease until the Minister's decision on the appeal has been given.

(8) Upon an appeal in terms of subsection (6), the Minister may confirm the forfeiture or set it aside.

## **200 Particulars to accompany application for inspection certificate**

Every application for an inspection certificate, except as otherwise provided in this Act, shall be accompanied by a certificate by the applicant declaring the nature and extent of the work which has been executed and that none of such work has previously been used for the purpose of obtaining an inspection certificate or a certificate of extra work, and by the prescribed fee.

## **201 Mining commissioner may order inspection of development work**

(1) Where an inspection certificate is applied for in respect of development work, the mining commissioner may, before issuing the inspection certificate, order an inspector of mines or any other official of the Ministry responsible for mines to inspect the work and measure it.

(2) The mining commissioner shall give notice to the holder of the block or the mining lease concerned of such inspection, and such holder shall, if so required by the mining commissioner, be present at such inspection and afford all facilities and information necessary for measuring.

## **202 Issue of inspection certificate**

On receipt of the certificate mentioned in section *two hundred* and the prescribed fee, the mining commissioner shall issue to the applicant an inspection certificate:

Provided that the mining commissioner may refuse to issue such certificate if he is not satisfied that any work declared has been executed *bona fide* for the purposes of developing minerals or locating the reef in the block or mining lease concerned.

## **203 Work defined**

For the purposes of this Part—

“work” includes—

- (a) development work as defined in section *two hundred and eight*;
- (b) the production of minerals; (c) capital expenditure;
- (d) such other work in connection with a mining location as the Minister may from time to time, by statutory instrument, declare to be work for the purposes of this section.

## **204 Period within which work to be executed**

The work required to be executed for obtaining an inspection certificate shall—

- (a) in the case of the first inspection certificate, be executed within a period of six months from the date of the registration of the block or the date of the issue of the mining lease, as the case may be: Provided that—
  - (i) development work performed by the holder of a prospecting licence subsequent to the posting of his prospecting notice may be declared for the purpose of obtaining such inspection certificate for such block;
  - (ii) in the case of the first inspection certificate for a mining lease, any work performed by the holder thereof within a period of twelve months before the date of the issue of the lease upon any registered mining location in respect of which the lease was issued may be declared for the purpose of obtaining such inspection certificate;
- (b) in the case of the second inspection certificate, be executed within a period of twelve months from the date of the registration of the block or the date of the issue of the mining lease, as the case may be;
- (c) in the case of the third or subsequent inspection certificate, be executed during the period for which the last issued inspection certificate was valid:

Provided that if more than the amount of work prescribed in this Part has been executed during that period, any excess of such work may be used for the purpose of obtaining the two next succeeding inspection certificates.

## **205 Amount of work required to obtain inspection certificates for blocks pegged under ordinary prospecting licences**



(1) The amount of work required to obtain an inspection certificate for a block of claims, whether pegged under an ordinary prospecting licence or a special prospecting licence, shall be— (a) in the case of development work on—

- (i) a block of base mineral claims, five metres;
- (ii) a block of precious metal claims, ten metres;

(b) in the case of the production of minerals, such quantity or value as may be prescribed in respect of the mineral for which the block is registered; (c) in the case of capital expenditure on—

- (i) a block of base mineral claims, four hundred dollars;
- (ii) a block of precious metal claims, two hundred and fifty dollars;

(d) in the case where other work has been prescribed under paragraph (d) of section *two hundred and three*, such amount as may be prescribed;

for every five claims or portion of five claims registered for the block:

Provided that the amount of work required for obtaining a first or second inspection certificate shall be fifty *per centum* of the work prescribed in paragraph (a), (b) or (c).

(2) In prescribing the quantity or value of minerals for the purposes of paragraph (b) of subsection (1), the Minister may prescribe different quantities or values for different minerals.

### **206 Inspection by survey**

The holder of a registered block of reef or placer deposit claims who lodges with the mining commissioner a survey plan of his block completed by a land surveyor may apply for and obtain one inspection certificate for such block on payment of the prescribed fee for each such certificate.

### **207 When development work not required for precious metal claims**

(1) If the holder of a registered block of precious metal reef or placer deposit claims satisfies the Board that—

- (a) no development work is required for the proper working of such block by reason of the nature of the deposits of the precious metal; or
- (b) no further development work is required for the proper working of the block by reason of the fact that such block has already been thoroughly developed; the Minister may upon the application of such holder authorize the issue of an inspection certificate for such block upon the payment of the prescribed fee.

(2) If the holder of a block of precious metal reef or placer deposit claims satisfies the Board that he was unable to carry out *bona fide* development work upon such block owing to circumstances which were entirely beyond his control, the Minister may upon the application of such holder authorize the issue of an inspection certificate for such block upon the payment of the prescribed fee.

(3) Lists of blocks for which inspection certificates have been issued in terms of this section shall from time to time be posted on a board to be exhibited in some conspicuous way outside the office of the mining commissioner.

### **208 Development work defined**

(1) Development work shall consist of shafts, drives, adits or tunnels, winzes, rises and boreholes, and shall be performed for the purpose of developing the mineral contained within the mining location.

(2) Development work shall include trenching or excavation of a minimum depth of one metre which has been performed for the tracing of a reef or the proving of a deposit: Provided that—

- (i) the trenching or excavation may only be utilized for obtaining first and second inspection certificates; and
- (ii) each seven cubic metres of trenching or excavation shall count as one metre of development work.

(3) Development work shall be new work and not the restoration or cleaning out of development work previously done.

(4) The minimum dimensions of development work, and the ratio in which work of larger dimensions or at certain distances from the surface shall be allowed to be reckoned as development work, shall be as fixed and prescribed in the First Schedule.

(5) The Minister may from time to time, by statutory instrument, declare any work in connection with a mining location not mentioned in subsections (1) and (2) to be development work for the purposes of this Part.

(6) Work may not be declared for the purpose of obtaining an inspection certificate in respect of development work to the extent that expenditure incurred in respect of that development work has been declared for the purpose of obtaining an inspection certificate in respect of capital expenditure.

### **209 Cleaning out, restoration and other work may be used under certain conditions**

(1) Notwithstanding subsection (3) of section *two hundred and eight*, where *bona fide* work in connection with cleaning out, dewatering or restoration of old workings on a mining location is to be

undertaken with a view to the reopening of such mining location, and, in addition, it can be shown to the satisfaction of the mining commissioner that an expenditure of not less than two thousand dollars will be incurred in carrying out such cleaning out, dewatering or restoration work, the holder of such property may apply for and be granted, on completion of such work to the said value of two thousand dollars, one certificate of inspection in respect of the block on which the work has been done, and for each additional amount of one thousand dollars expended in excess of two thousand dollars one certificate of extra work.

(2) A certified statement showing the amount and nature of the work done shall be lodged with the mining commissioner, to whom one month's notice shall be given by the holder of the mining location of his intention to carry out the work with a view to reopening such mining location.

(3) Capital expenditure on plant shall not be taken into account in arriving at the valuation of the work carried out.

## **210 Conditions for inspection by production**

(1) The Minister may, in special circumstances, on application by the miner and on the recommendation of the Board, reduce the quantity or value of minerals prescribed under section *two hundred and five* in respect of any mining location for the purpose of obtaining any particular inspection certificate.

(2) Where two or more minerals are produced from any mining location, the total value of such minerals shall be aggregated for the purpose of obtaining inspection certificates.

(3) For the purpose of obtaining an inspection certificate in respect of the production of minerals, the value of such minerals shall be the value thereof shown in the return referred to in subparagraph (i) of paragraph (a) of subsection (1) of section *two hundred and fifty-one*.

## **211 Conditions for inspection by capital expenditure**

(1) For the purposes of section *two hundred and three*—  
“capital expenditure” does not include—

(a) the purchase price paid or other consideration given in respect of the acquisition of a mining location; (b) expenditure incurred in the exercise of rights under an exclusive prospecting order.

(2) If any dispute arises as to whether any expenditure declared for the purpose of obtaining an inspection certificate is capital expenditure, the matter shall be referred to the Board, whose decision shall be final and without appeal.

(3) For the purpose of obtaining an inspection certificate in respect of capital expenditure, any capital expenditure incurred in respect of any mining location after the date of the registration of the block or the date of the issue of the mining lease, as the case may be, may, notwithstanding section *two hundred and four*, be declared unless such expenditure was incurred more than two years before the date on which it is declared.

(4) Where capital expenditure is incurred in respect of any property, such expenditure may be declared for the purpose of obtaining an inspection certificate for any block forming part of such property, and in such case no certificate of extra work shall be required for any such inspection certificate.

(5) For the purposes of subsection (4)—

“property” means two or more blocks of claims, whether contiguous or otherwise, owned by one person from which the ore is being treated at the same milling or reduction plant or which are under the control of one registered mine manager.

(6) Every declaration of capital expenditure for the purpose of obtaining an inspection certificate or a certificate of extra work shall be accompanied by a statement certified by the auditors of the applicant for the inspection certificate, setting out the amount of expenditure ranking as capital expenditure for the purposes of this Act and such other information relevant to the application as may be required by the mining commissioner.

(7) For the purpose of obtaining the first or second inspection certificate, any expenditure in respect of prospecting operations other than expenditure incurred in the exercise of rights under an exclusive prospecting order may be declared as capital expenditure.

(8) Expenditure incurred in respect of development work may not be declared for the purpose of obtaining an inspection certificate in respect of capital expenditure to the extent that that development work has been declared for the purpose of obtaining an inspection certificate in respect of development work.

## **212 Inspection certificates for base mineral blocks obtainable by payment**

(1) Subject to subsection (3) of section *one hundred and ninety-nine*, the holder of a registered block of base mineral reef or placer deposit claims may, from time to time, when an inspection certificate falls

due, obtain such certificate upon payment to the mining commissioner of the prescribed sum for every five claims or portion of five claims registered for the block.

(2) If the mining commissioner has reason to believe that any block of base mineral claims has been pegged or is being held for any purpose other than *bona fide* mining purposes, he may report the matter to the Board, and the Board may order that no inspection certificate may be obtained in respect of such block under this section except with the approval of the Board or may, if it thinks fit, order the mining commissioner to declare such block to be forfeited.

(3) The Board shall not approve of the issue, under subsection (2), of more than one inspection certificate at a time.

(4) The Board may at any time discharge an order made under subsection (2).

(5) Where the Board has under subsection (2) ordered the mining commissioner to declare a block to be forfeited, the mining commissioner shall forthwith, whether or not such block is currently protected from forfeiture by an inspection or protection certificate issued in terms of this Part, declare it to be forfeited.

(6) If the Minister is satisfied that the general market conditions prevailing in respect of or any other circumstances relating to any base mineral are such as to discourage the production of such mineral, he may, upon an application in writing made to the Board by the holder of any block registered for such mineral and upon the recommendation of the Board, reduce the fee prescribed under subsection (1) in respect of any certificate due at the date of such application or which will become due within a period of twelve months from such date: Provided that—

- (i) the Minister shall not so reduce the fee unless he is satisfied that such market conditions or circumstances, as the case may be, have prevailed for a period of at least two years immediately preceding the date of the application;
- (ii) the Minister shall not so reduce the fee to an amount which is less than one-half of such prescribed fee.

(7) The Minister may in like manner and in like proportions reduce the fee prescribed under subsection (3) of section *two hundred and twenty-one* for mining leases upon which such mineral is the principal mineral being mined or to be mined.

(8) If the Minister is satisfied that the general market conditions prevailing in respect of or any other circumstances relating to any base mineral are such as to discourage the production of such mineral, he may, by statutory instrument, declare that during such period as may be specified in such notice, the fee payable under subsection (1) for inspection certificates which fall due within such period for all blocks registered for such mineral shall be reduced to such amount as may be specified in such notice: Provided that—

- (i) the Minister shall not so reduce the fee unless he is satisfied that such market conditions or circumstances, as the case may be, have prevailed for a period of at least two years immediately preceding such declaration;
- (ii) the Minister shall not so reduce the fee to an amount which is less than one-half of such prescribed fee;
- (iii) the period specified in such notice shall not exceed one year, but the Minister may in like manner and from time to time reduce the fee for further periods not exceeding one year at a time.

(9) During the period of any reduction of inspection fees in terms of subsection (8) the fee payable for inspection certificates under subsection (3) of section *two hundred and twenty-one* for mining leases on which such mineral is the principal mineral being mined or to be mined shall be deemed to have been reduced in like proportions.

### **213 Extra work certificates**

(1) Notwithstanding sections *one hundred and ninety-seven*, *one hundred and ninety-eight* and *one hundred and ninety-nine*, when any work has been executed on any block of claims while such block was still subject to those sections, in respect of which work an inspection certificate or a certificate of extra work has not previously been obtained, the holder may, upon giving a certificate under his hand to that effect and describing the nature and extent of such work, apply for and obtain from the mining commissioner a certificate of extra work so executed.

(2) In like manner a holder may, on complying with subsection (2) of section *two hundred and nine*, obtain a certificate of extra work.

(3) A certificate of extra work may not be applied for in respect of work executed more than twelve months before the date of application for such certificate:

Provided that capital expenditure may be used for the purpose of obtaining such a certificate if such expenditure was incurred within two years of the date of application for such certificate.

### **214 Availability of extra work certificates**

(1) For the purposes of subsection (4)—

“property” means two or more blocks of claims, whether contiguous or otherwise, owned by one person from which the ore is being treated at the same milling or reduction plant or which are under the control of one registered mine manager.

(2) A certificate of extra work may be used for the purpose of obtaining an inspection certificate for any other block which is registered in the name of the person to whom such certificate was issued or in which such person has a registered interest of not less than one-half and which is contiguous to, or forms part of a series of blocks in which such person has a registered interest of not less than one-half and which are contiguous to, the block on which the work was executed, and for that purpose the work in respect of which the certificate of extra work was issued shall be regarded as if executed on the block for which the inspection certificate is to be obtained:

Provided that—

- (i) the number of blocks covered by inspection certificates issued in respect of certificates of extra work which have been obtained by virtue of work executed on any one block shall, in the case of precious metal blocks, at no time exceed ten;
- (ii)

[Proviso repealed by s. 15 of Act No. 12 of 1997]

(3) In like manner, a certificate of extra work issued in respect of work executed on a block registered in the names of two holders in equal undivided interests may be used for the purpose of obtaining an inspection certificate for any other block registered in the name of either of such holders in such manner as may, by written agreement to be filed with the mining commissioner, be agreed upon between them.

(4) Notwithstanding the limitation contained in subsection (1), a certificate of extra work issued in respect of work executed on a block of precious metal claims shall, on the authority of the Board and under like conditions, be available for obtaining an inspection certificate of a block which forms part of a series of not more than twenty blocks contiguous to the block upon which the work was executed:  
Provided that—

- (i) the Board shall not grant such authority unless it is satisfied that—
  - (a) the holder of the block for which the inspection certificate is to be obtained is carrying on mining operations to the limit of his resources as far as plant, materials and labour are concerned; and
  - (b) distribution of work over the blocks would not be in the best interests of his mining operations; and
  - (c) all the blocks for which inspection certificates are to be obtained are necessary for the proper working of the property of which such first-mentioned block forms a part and that such holder has a registered interest of not less than one-half in such blocks;
- (ii) the number of blocks covered by inspection certificates issued under this subsection shall at no time exceed twenty.

### **215 Work executed by option holders or tributors**

If work has been executed by any person on a block registered in the name of another but over which such person has an option or a tribute which has been approved in terms of Part XVIII, such work, after providing for the inspection certificate next due for such block, shall be apportioned in accordance with the terms of a written agreement entered into for that purpose between the holder of the block and the holder of the option or the tributor, as the case may be: Provided that—

- (i) the work so apportioned to the option holder or tributor shall, subject to sections *two hundred and thirteen* and *two hundred and fourteen*, be regarded as if executed upon any other block registered in his name or over which he holds an option or tribute;
- (ii) in the case of an option, a duplicate original, grosse or notarially certified copy of the agreement shall be filed with the mining commissioner before a certificate of extra work is issued;
- (iii) the option holder or tributor shall obtain such certificate of extra work during the period of the option or tribute, as the case may be, or within fourteen days of the expiration thereof.

### **216 Filing of extra work certificates**

The mining commissioner to whom any certificate of extra work is presented for the purpose of obtaining an inspection certificate shall retain and file such certificate of extra work.

### **217 Protection certificates for blocks**

(1) The Secretary may authorize a mining commissioner to grant a protection certificate in respect of any block of reef or placer deposit claims.

(2) A protected block shall not, during the period of protection, be liable to forfeiture for any failure to take out an inspection certificate, but the date on which inspection certificates fall due shall be as

prescribed in sections *one hundred and ninety-seven*, *one hundred and ninety eight* and *one hundred and ninety-nine*, and any inspection certificate which may be due shall be obtained on or before the expiry of the protection certificate.

(3) The Minister may, in circumstances which he may deem exceptional, by notice in writing to the holder of the blocks concerned, grant protection for any period in respect of any number of blocks or class of blocks or for all blocks situated in a particular area.

(4) A block protected under subsection (3) shall not, during the period of protection, be liable to forfeiture for failure to obtain an inspection certificate, and the period within which the first or the next inspection certificate, as the case may be, has to be obtained in respect of any such block shall be extended by a period equal to the period of such protection.

(5) The fee payable for a certificate in terms of subsection (1) or the grant of protection in terms of subsection (3) shall be as prescribed:

Provided that the Minister may remit, in whole or in part, any fee payable for the grant of protection in terms of subsection (3).

### **218 Precious stones blocks to be worked continuously**

(1) The holder of a block of precious stones claims shall continuously work his claims from the date of registration of such block and shall pay to the mining commissioner annually in advance the prescribed fee in respect of such block.

(2) The Board may, on the application of such holder—

- (a) exempt him from the obligation continuously to work such claims for such period as it may deem fit;
- (b) where such block forms part of a group of contiguous blocks of precious stones claims owned by such holder, authorize him to restrict his work to any one or more of such blocks.

(3) The holder of a mining lease upon which the principal mineral being mined or to be mined is precious stones shall continuously work such lease from the date of issue thereof and shall, in respect of such mining lease, pay to the mining commissioner annually in advance the prescribed fee.

(4) The Board may, on the application of the holder of a mining lease referred to in subsection (3), exempt him from the obligation continuously to work such mining lease for such period as it may deem fit.

### **219 Alluvial, eluvial, rubble deposit and dump precious metal claims to be worked continuously**

(1) The holder of a block of precious metal claims which are registered as alluvial, eluvial, rubble deposit or dump claims shall continuously work his claims from the date of registration of such block and shall pay to the mining commissioner annually in advance the prescribed fee.

(2) The Board may, on the application of such holder—

- (a) exempt him from the obligation continuously to work such claims for such period as it may deem fit;
- (b) where such block forms part of a group of contiguous blocks of claims similarly registered, authorize him to restrict his work to any one or more of such blocks.

### **220 Unutilized dumps**

(1) Where the Minister has cause to believe that any dump on any registered mining location appears to be unutilized, the Minister may direct the Board to investigate— (a) whether or not the dump is economically viable; and

(b) whether the dump is in fact unutilized and, if so, the reasons therefor.

(2) In making an investigation in terms of subsection (1), the Board shall take into account— (a) the length of time that the dump has not been worked; and

(b) the reasons, if any, given by the holder of the registered mining location concerned as to why the dump has not been worked; and

(c) the intentions of the holder of the registered mining location concerned in regard to the future working of the dump; and

(d) any other relevant factors bearing on the matter.

(3) At the conclusion of the investigation carried out in terms of subsection (2), the Board shall submit a report to the Minister advising whether or not it considers the dump to be unutilized, and whether or not the dump is economically viable, and shall forward a copy thereof to the holder of the registered mining location concerned.

(4) A holder of a registered mining location may, upon receipt of a copy of a report in terms of subsection

(3) submit his comments thereon to the Minister for consideration.

(5) Where the Board reports that it considers the dump to be unutilized and that it is economically viable, the Minister may, if he considers it to be in the public interest to do so, direct the holder of the registered mining location concerned to work the dump himself or to tribute it so that it can be worked by someone else, within such reasonable period as the Minister may specify.

### **221 Amount of work required and fees payable to obtain inspection certificates for mining leases**

(1) The amount of work required to obtain an inspection certificate for a mining lease shall be— (a) in the case of development work—

- (i) if the principal mineral being mined or to be mined is a base mineral, five metres;
- (ii) if the principal mineral being mined or to be mined is a precious metal, ten metres;

(b) in the case of production of minerals, such quantity or value as may be prescribed in respect of the principal mineral being mined or to be mined upon the mining lease; (c) in the case of capital expenditure—

- (i) if the principal mineral being mined or to be mined is a base mineral, four hundred dollars;
- (ii) if the principal mineral being mined or to be mined is a precious metal, one thousand dollars;

(d) in the case where other work has been prescribed under paragraph (d) of section *two hundred and three*, such amount as may be prescribed; for every five hectares or portion of five hectares contained in the area covered by the mining lease:

Provided that the amount of work required for obtaining a first or second inspection certificate shall be fifty *per centum* of the work prescribed in paragraph (a), (b) or (c).

(2) For the purpose of obtaining an inspection certificate for a mining lease, the holder may declare work of any of the kinds specified in section *two hundred and three*.

(3) For the purpose of obtaining any particular inspection certificate for a mining lease, the holder may declare work of one or more of the kinds of work specified in section *two hundred and three* and, if sufficient work has not been executed to obtain the inspection certificate, he may, if the principal mineral being mined or to be mined is a base mineral, make up the deficiency by the payment of the prescribed sum for every five hectares or portion of five hectares contained in the area covered by the mining lease not accounted for by the execution of work.

(4) For the purposes of this section, the Board shall determine which mineral is the principal mineral being mined or to be mined upon a particular mining lease and may from time to time reconsider and alter its determination.

## **PART XII**

### **WORKING OF ALLUVIAL, ELUVIAL AND CERTAIN OTHER DEPOSITS**

### **222 Control of working of alluvial or eluvial deposits of designated minerals**

(1) In this section—

“designated mineral” means chromite and any other mineral declared to be a designated mineral in terms of subsection (2);

“working period” means a period notified by a miner under an order issued in terms of section *two hundred and twenty-five* as the period during which he proposes to conduct operations, including, where required by the order, the rehabilitation of the surface of the land worked, on the land concerned and includes any extension of such period permitted under the order.

(2) The Minister may, by statutory instrument, declare any mineral to be a designated mineral for the purposes of this section and may in like manner revoke any such declaration.

(3) No person shall work any alluvial or eluvial deposit of a designated mineral except under an order issued in terms of section *two hundred and twenty-five*.

(4) The miner of any alluvial or eluvial deposit of a designated mineral in respect of which an order has been issued in terms of section *two hundred and twenty-five* shall, before commencing or continuing operations under the order on—

- (a) a block pegged under an ordinary prospecting licence, pay to the mining commissioner a levy consisting of the prescribed sum for every claim or portion of a claim registered for such block for every year ending on the 31st December or portion of such year falling within any working period relating to that block;
- (b) any part of a block pegged under a special prospecting licence, a mining lease or a special grant or, where a portion only of a block, mining lease or special grant is subject to the order, any part of that portion, pay to the mining commissioner a levy consisting of the prescribed sum for every hectare or portion of a hectare in that part for every year ending on the 31st December or portion of such year falling within any working period relating to that part.

(5) Where—

- (a) an alluvial or eluvial deposit of a designated mineral other than chromite was being worked immediately before the date on which the mineral concerned became a designated mineral in terms of subsection (2); and
- (b) there was not at that time in force in relation thereto an order issued before the 1st January, 1974, which is deemed to have been issued under section *two hundred and twenty-five* or an order issued under section *two hundred and twenty-five*; provisions of subsection (3) shall not apply to the working of that deposit until—
  - (i) an order is issued in terms of section *two hundred and twenty-five* or the expiry of the period of three months commencing on the date on which the mineral becomes a designated mineral, whichever is the sooner; or
  - (ii) where, during the period of three months referred to in subparagraph (i), an application for an order has been made in terms of section *two hundred and twenty-three* and the application has not been determined, the determination of the application.

### **223 Application for order controlling working of such deposits**

(1) Any person wishing to work a deposit referred to in subsection (3) of section *two hundred and twentytwo* shall make application in writing to the Board for an order prescribing the manner of and conditions governing the working of the deposit.

(2) An application referred to in subsection (1) shall specify details of the proposed method of working the deposit and shall be supported by a plan, based on a map issued under the authority of the State and of a scale of not less than 1:25 000, showing the registered mining location concerned:

Provided that, where, in the case of a block pegged under a special prospecting licence, a mining lease or a special grant, a portion only thereof is proposed to be covered by the order, that portion shall be accurately shown on the plan.

(3) The applicant shall send a copy of his application and the supporting plan to—

- (a) the Natural Resources Board; and
- (b) where the land affected by the application is—
  - (i) State land, the Minister responsible for the administration of that land; (ii) Communal Land, any rural district council established for the area concerned; (iii) private land, the owner and the occupier, if any.

(4) An application in terms of this section may relate to more than one mining location.

### **224 Application for order in respect of certain other deposits or reefs**

(1) This section shall apply to the working of—

- (a) any deposit of any mineral the working of which interferes with or is likely to interfere with the bed, banks or course of a public stream or any swamps or marshes forming the source of a public stream or found along its course; and
- (b) any alluvial or eluvial deposit or rubble or placer deposit of a mineral other than a designated mineral as defined in section *two hundred and twenty-two*; and
- (c) any chromite reef carried out by surface strip-mining using open-cast workings.

(2) Where any working referred to in subsection (1) is being carried out or is about to be commenced, written application may be made to the Board by—

(a) in respect of any land, the Natural Resources Board; (b)

where the land concerned is—

- (i) State land, the Minister responsible for the administration of that land;
- (ii) Communal Land, any rural district council established for the area concerned;
- (iii) private land, the owner or the occupier, if any;

for an order prescribing the manner of and conditions governing the working of the deposit or reef concerned.

(3) An application referred to in subsection (2) shall specify— (a) the registered mining location concerned; and (b) the proposed contents of the order applied for.

(4) The applicant shall send a copy of his application to the miner and to every other party entitled to make application in terms of subsection (2) in respect of the land concerned.

(5) An application in terms of this section may relate to more than one mining location.

### **225 Board may make order**

(1) After hearing any evidence and representations made by the applicant and the other parties to whom copies of the application are required to be sent, the Board may refuse an application made in terms of section *two hundred and twenty-three* or *two hundred and twenty-four* or may make an order prescribing the manner of and conditions governing the working of the deposit or reef.

- (2) An order made in terms of this section—
- (a) may contain provisions requiring the miner to rehabilitate the surface of any land worked; (b) shall contain provisions requiring the miner to give notice of—
- (i) every period during which he proposes to conduct operations, including, where required by the order, the rehabilitation of the surface of any land worked; and
  - (ii) the particular land within the area covered by the order on which such operations are proposed to be conducted;
- to the mining commissioner and where the land concerned is—
- A. State land, to the Minister responsible for the administration of that land; B. Communal Land, to any district council established for the area concerned;
  - C. private land, to the owner and the occupier, if any, thereof.

## **226 Board may amend order**

- (1) Where an order has been made in terms of section *two hundred and twenty-five*, application for the amendment of the order may be made in writing to the Board by— (a) the miner; or
- (b) the Natural Resources Board; or
- (c) where the land affected by the order is—
- (i) State land, the Minister responsible for the administration of that land; (ii) Communal Land, any rural district council established for the area concerned; (iii) private land, the owner or the occupier, if any.
- (2) An application in terms of subsection (1) shall specify the order concerned and the amendment applied for and the applicant shall send a copy of the application to all other interested parties referred to in subsection
- (1).
- (3) After hearing any evidence and representations made by the applicant and the other interested parties referred to in subsection (1), the Board may refuse the application or may make an order amending the order concerned.

## **227 Appeal to Administrative Court**

An appeal against any decision of the Board under section *two hundred and twenty-five* or *two hundred and twenty-six* shall lie to the Administrative Court at the instance of the applicant or any of the other interested parties referred to in the said section.

## **228 Order binding on all miners**

- (1) An order made under section *two hundred and twenty-five*, as amended from time to time by an order made under section *two hundred and twenty-six*, shall be binding on every miner of the mining location concerned.
- (2) Notwithstanding the forfeiture, abandonment or cancellation of the registered mining location to which an order made under this Part relates, or the cancellation by the Board under subsection (1) of section *two hundred and thirty* of any rights under any order, any provisions of such order requiring the miner to rehabilitate the surface of the land concerned shall continue in force and be binding on the person who was the miner of the mining location concerned.
- (3) Any person who contravenes or fails to comply with an order referred to in subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## **229 Enforcement of this Part**

- (1) A copy of every order made under this Part shall be sent to—
- (a) the miner; and
  - (b) the registered owner of the mining location; and (c) where the land affected by the order is—
    - (i) State land, the Minister responsible for the administration of that land;
    - (ii) Communal Land, any rural district council established for the area concerned;
    - (iii) private land, the owner and the occupier, if any; and
  - (d) the Natural Resources Board; and (e) the mining commissioner.
- (2) The mining commissioner shall cause inspections of the mining location to be made periodically.
- (3) If any person—
- (a) contravenes subsection (3) or (4) of section *two hundred and twenty-two*; or



(b) contravenes or fails to comply with the provisions of an order made under this Part which are binding on him; he shall be guilty of an offence and liable to a fine not exceeding one thousand dollars or, in default of payment, to imprisonment for a period not exceeding twelve months.

(4) The court which has convicted any person of an offence under subsection (3) shall cause notification of the conviction and the sentence imposed to be sent to the Board.

### **230 Cancellation of rights under order**

(1) In the event of a conviction under subsection (3) of section *two hundred and twenty-nine* the Board may cancel any right to work any deposit or reef under the order concerned made under this Part.

(2) The Board shall cause notification of the cancellation of any rights under subsection (1) to be sent to the miner, the mining commissioner and, where the land concerned is—

- (a) State land, the Minister responsible for the administration of that land; (b) Communal Land, any rural district council established for the area concerned; (c) private land, the owner and the occupier, if any, thereof.

### **231 Evidence of order**

The production of a copy of any order made under this Part which purports to be certified as correct by the secretary of the Board shall be sufficient evidence of the making of the order and of its contents.

### **232 Special payments to landowners**

(1) As soon as possible after receipt of a levy referred to in subsection (4) of section *two hundred and twenty-two*, the mining commissioner shall, if any of the land in respect of which the levy has been paid is—

- (a) Communal Land, pay to the District Development Fund referred to in section 3 of the District Development Fund Act [*Chapter 29:06*]; or  
(b) private land, pay to the owner thereof; the amount of the levy.

(2) Where the land in respect of which a levy has been paid does not consist solely of Communal Land or of land held by one owner, the manner of allocation of the amount of the levy shall be as prescribed.

(3) All moneys payable in terms of this section shall be defrayed from moneys appropriated for the purpose by Act of Parliament.

(4) Subsections (8), (9), (10), (11) and (12) of section *one hundred and eighty-eight* shall apply, *mutatis mutandis*, in respect of the payments referred to in this section.

(5) An order prescribing the manner of and conditions governing the working of an alluvial or eluvial deposit which is in force immediately before the 1st January, 1974, shall, unless it relates to the working of a deposit in relation to which it is not competent to issue an order in terms of this Part, continue in force and be deemed to have been issued in terms of section *two hundred and twenty-five*.

## **PART XIII**

### **CONTROL OF SITING OF WORKS ON MINING LOCATIONS**

### **233 Interpretation in Part XIII**

In this Part, any reference to the owner or occupier of land shall be construed, in relation to—

- (a) Communal Land, as a reference to any rural district council established for the area concerned; (b) State land, as a reference to the Minister responsible for the administration of the land concerned.

### **234 Approved plan required prior to erection of certain works**

(1) Subject to section *two hundred and thirty-nine*, no miner of a registered mining location shall erect or construct upon his mining location any of the following works—

- (a) machinery or plant used for the treatment of ores, concentrates, tailings, slimes or other residues; (b) dumps;  
(c) dams for the storage of waste water or slimes;  
(d) compounds for his employees;  
(e) buildings of a permanent nature;  
(f) sewage disposal works;  
(g) recreation grounds;

(h) roads; unless and until he has lodged with the mining commissioner a plan showing the position of such works and such plan has been approved under this Part.

(2) Before erecting or constructing any works mentioned in subsection (1), the miner of any registered mining location shall—

- (a) lodge with the mining commissioner for his approval a plan in triplicate showing the position of the boundaries of the location and of the proposed site of such works or of the areas within which such works are to be situated;
- (b) furnish to the mining commissioner the name and address of any owner and occupier, if any, of the land concerned and particulars of all mining locations which are contiguous to the mining location to which the plan relates.
  - (3) The miner shall, at the same time, furnish a copy of such plan to each such owner and occupier, if any, of land.

### **235 Particulars to be shown on plan**

Such plan shall, in addition to the particulars mentioned in paragraph (a) of subsection (2) of section *two hundred and thirty-four*, indicate the position of the workings of such location, the position of any works erected or constructed under section *two hundred and thirty-nine* and the position of any rivers, hills and other natural features, and shall be prepared in such a manner as to indicate as clearly as possible the position of the proposed site and to conform to the requirements of the mining commissioner as to manner of preparation.

### **236 Procedure on receipt of plan**

On receipt of the plan referred to in section *two hundred and thirty-four*, the mining commissioner shall forthwith—

- (a) by registered letter notify—
  - (i) every owner and occupier, if any, of land concerned; and
  - (ii) every holder of a contiguous mining location; of the receipt of the plan and require them to lodge, within twenty-one days after the date of such notification, their objections, if any, to the approval of the plan or to any works which may have been erected or constructed under section *two hundred and thirty-nine*; and
- (b) consult the provincial planning officer of the Department of Physical Planning, the regional mining engineer, the provincial water engineer and the regional land inspector of the Department of Natural Resources and, where it is proposed to construct a road, the regional agricultural extension officer of the Department of Agricultural Technical and Extension Services.

### **237 Approval of plan**

(1) If any objections have been lodged under section *two hundred and thirty-six*, the mining commissioner shall, on a day fixed by him and notified to the miner who submitted the plan and the objectors, hear such evidence and arguments as those persons may wish to lay before him in regard to the approval or otherwise of the plan or the siting of any works which have been erected or constructed under section *two hundred and thirtynine*.

(2) If no objection has been received or if no notification was given under section *two hundred and thirtysix* owing to the whereabouts of the owner or the occupier or the holder of a contiguous mining location not being known to the mining commissioner after due inquiry, the mining commissioner shall proceed to consider the matter.

(3) After holding a hearing in terms of subsection (1) or considering the matter in terms of subsection (2), the mining commissioner may— (a) approve the plan; or

- (b) approve the plan with such amendments and subject to such conditions as he may deem necessary; or (c) refuse to approve the plan:

Provided that the mining commissioner shall not uphold any objection or require any amendment or impose any condition if the mining operations of the miner who lodged the plan are likely to be affected adversely and materially thereby.

(4) In arriving at a decision for the purposes of subsection (3), the mining commissioner shall take into account the views, if any, expressed by the provincial planning officer of the Department of Physical Planning, the regional mining engineer, the provincial water engineer, the regional land inspector of the Department of Natural Resources or the regional agricultural extension officer of the Department of Agricultural Technical and Extension Services:

Provided that, if he considers it necessary for the fair decision of the application, he shall give the applicant an opportunity of making representations in relation to such views, either at the hearing in terms of subsection (1) or otherwise.

(5) If the mining commissioner does not so approve of the siting of any works which may have been erected or constructed under section *two hundred and thirty-nine*, such works shall thereupon be deemed to have been erected or constructed in contravention of this Part and section *two hundred and forty* shall apply thereto.

(6) If any person is aggrieved by the decision of the mining commissioner he may, within ten days of such decision, appeal against the decision to the Administrative Court, and the decision of that Court thereon shall be final and without appeal.

(7) On the approval of a plan under this section the mining commissioner shall return one copy of the plan to the miner concerned with such approval endorsed thereon and send one copy similarly endorsed to the landowner and to the occupier of the land, if any, concerned and shall retain the other copy similarly endorsed for purposes of record.

### **238 Amendment of plan**

At any time after a plan has been approved under section *two hundred and thirty-seven*, the miner of the mining location to which the plan relates, or the owner or occupier of the land concerned, may apply to the mining commissioner for an amendment of the plan, and this Part shall apply, *mutatis mutandis*, in respect thereof as if such application were a plan submitted to the mining commissioner under section *two hundred and thirty-four*.

### **239 When works may be erected or constructed without approved plan**

(1) For the purposes of subsection (2)—

“property” means two or more blocks of claims, whether contiguous or otherwise, owned by one person, from which the ore is being treated at the same milling or reduction plant, or which are under the control of one registered mine manager.

(2) Notwithstanding anything contained in section *two hundred and thirty-four*, the miner of any registered mining location or property may, subject to subsection (5) of section *two hundred and thirty-seven*, at any time before a plan has been approved under section *two hundred and thirty-seven*, erect or construct upon such location or property all or any of the following works— (a) dumps other than tailings; (b) residences to house not more than thirty-two persons employed in mining operations; (c) roads not exceeding four metres in width which have no artificial surface such as gravel, stone or similar material:

Provided that—

- (i) nothing in this paragraph contained shall be construed so as to permit the construction of a road if there is in existence any other suitable road which serves the same purpose;
- (ii) no such road may be constructed unless and until the siting thereof has been approved by—
  - (a) in the case of Communal Land, any rural district council established for the area concerned;
  - (b) in any other case, the conservation and extension officer of the district.

(3) For the removal of doubt it is hereby declared that a miner mentioned in subsection (2) may prior to the erection or construction of any of the works mentioned in that subsection lodge with the mining commissioner for his approval in respect of such works the plan referred to in paragraph (a) of subsection (2) of section *two hundred and thirty-four*.

### **240 Mining commissioner may order removal of unauthorized works**

(1) If any miner erects or constructs any works on a registered mining location in contravention of this Part or of any condition attached to the approval of a plan under section *two hundred and thirty-seven*, the mining commissioner may order the holder or the miner of such mining location, within such period as shall be specified in the order, to remove such works or to discontinue the use thereof.

(2) If such holder or miner fails to comply with such order within the period specified therein, he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment and the mining commissioner may thereafter make a fresh order or orders requiring such holder or miner to comply with his original order within a period which the mining commissioner shall specify, and if such holder or miner fails to comply with such further order or orders he may again be prosecuted notwithstanding any previous conviction or acquittal for failing to comply with any previous order and shall be liable to the penalties prescribed by this subsection.

[Subsection amended by section 4 of Act 22 of 2001]

(3) Upon the conviction of a person for a contravention of subsection (2), the mining commissioner may authorize the owner or occupier of the land concerned or the holder or miner of a contiguous mining location to remove such works and if such owner, occupier, holder or miner does so he shall be entitled to recover the cost of such removal from the holder or miner to whom the order was given under subsection (1).

### **241 Re-siting of existing roads**

(1) Where any road in respect of which a plan has not been approved under section *two hundred and thirty-seven* has been constructed upon a registered mining location, whether it was constructed before or

after the 1st November, 1961, the mining commissioner may, on the application of the owner or occupier of the land concerned, order the holder or miner of the mining location concerned to discontinue the use of such road or to alter the course thereof within such period as the mining commissioner may specify.

(2) If such holder or miner fails to comply with such order within the period specified therein he shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

## **242 Approved plan to be binding on successors in title**

A plan approved under section *two hundred and thirty-seven* shall, subject to section *two hundred and thirty-eight*, be binding upon any holder or miner of the mining location concerned and upon any owner or occupier of the land.

## **PART XIV**

### **ROYALTY**

## **243 Application of Part XIV**

This Part shall apply to the holder of a special mining lease only to the extent that the terms and conditions of his special mining lease or of any agreement entered into with him in terms of section *one hundred and sixtyseven* are consistent with this Part.

## **244 Royalty**

(1) Subject to this Part, the miner of a registered mining location shall pay royalty on all minerals or mineral-bearing products won from such location which have been disposed of by him or on his behalf, whether within or outside Zimbabwe, during any month, at such rate per unit of mass as may be fixed in terms of section *two hundred and forty-five*.

(2) Where a registered mining location forms part of a property mentioned in section *two hundred and forty-six* royalty shall be paid in terms of subsection (1) on the total of all minerals or mineral-bearing products won from such property.

(3) Where the royalty assessed in respect of minerals or mineral-bearing products disposed of in any one month—

- (a) does not exceed two hundred United States dollars, there shall be a full rebate of such royalty;
- (b) exceeds two hundred United States dollars but does not exceed three hundred United States dollars, the royalty payable shall be three times the amount by which the assessed royalty exceeds two hundred dollars.

[Paragraphs (a) and (b) amended by Act 10 of 2009]

(4) There shall be a full rebate of royalty in respect of all minerals or mineral-bearing products used wholly within Zimbabwe.

(5) There shall be a rebate of royalty in respect of any mineral or mineral-bearing product which is—

(a) disposed of to or received for treatment by an approved beneficiation plant; and

(b) specified in relation to that approved beneficiation plant; at the rate specified by the Minister in

terms of section *two hundred and forty-seven* in respect of that approved beneficiation plant:

Provided that where the degree of beneficiation specified in the application made in terms of subsection (1) of section *two hundred and forty-seven* relating to the approved beneficiation plant is not carried out in relation to any mineral or mineral-bearing product in respect of which a rebate referred to in this subsection has been earned, the owner of such mineral or mineral-bearing product shall, on the disposal thereof, pay royalty in the amount of the rebate to the mining commissioner within whose mining district the registered mining location from which the mineral or mineral-bearing product was won is situated.

## **245 Fixing of royalty**

(1) The rate of royalty payable in terms of section 244 shall be fixed by the House of Assembly in the Schedule to Chapter VII of the Finance Act [*Chapter 23:04*].

[Subsection substituted by Act 10 of 2009]

Before the 31st August in each year the Minister may fix the rate of royalty payable in terms of section *two hundred and forty-four*.

(2) The rate of royalty fixed in terms of subsection (1) shall apply to the period of twelve months commencing on the 1st January next following the year in which the rate of royalty is fixed.

(3) In fixing the rate of royalty in terms of subsection (1) the Minister shall have regard to—

- (a) the prices at which minerals or mineral-bearing products were sold during the period of three years immediately preceding the 1st July in the year in which the rate is fixed;

- (b) the representations, if any, by the Chamber of Mines of Zimbabwe relating to the rate of royalty; (c) any other matter which he deems fit.

(4) Notwithstanding subsections (1) and (2), where production commences in Zimbabwe of a mineral or mineral-bearing product in respect of which no rate of royalty has been fixed or, if the Minister considers it desirable in the national interest, where production of such a mineral or mineral-bearing product has previously commenced and been carried on, the Minister—

- (a) may as soon as possible fix the rate of royalty which shall be payable in respect of that mineral or mineral-bearing product for—

- (i) the period ending on the 31st December of the year in which such rate is fixed; or  
(ii) if no rate has been fixed for such period in terms of subsection (1), the period of twelve months commencing on the 1st January next following the date on which such rate is fixed;

or both;

- (b) shall, in fixing the rate of royalty in terms of this subsection, have regard to—

- (i) the prices at which that mineral or mineral-bearing product was sold during the period of three years ending on the 30th June preceding the date when the rate of royalty is fixed;  
(ii) the representations, if any, by the Chamber of Mines of Zimbabwe relating to the rate of royalty;  
(iii) such other matters as he may deem fit.

(5) In fixing the rate of royalty payable in terms of subsection (1) the House of Assembly may fix different rates of royalty in respect of different minerals and mineral-bearing products.

[Subsection substituted by Act 10 of 2009](6) As soon as any rate of royalty has been fixed in terms of this section it shall be advertised by notice in the *Gazette* and by notice posted at the office of every mining commissioner.

#### **246 Meaning of “property”**

(1) For the purpose of calculating royalty on any mineral or mineral-bearing product, other than chrome, when ore from two or more blocks of claims, whether contiguous or otherwise, owned or held under a tribute agreement by the same person is treated at the same milling or reduction plant, then such blocks of claims shall be deemed to be one property.

(2) For the purpose of calculating royalty on chrome, all blocks owned or held under a tribute agreement and worked by the same person in any one mining district shall be deemed to be one property.

#### **247 Beneficiation plant**

(1) The Minister may, upon the application by the owner thereof, by statutory instrument, declare any bank assay department, factory, refinery, smelter or treatment plant which is situated in Zimbabwe to be an approved beneficiation plant in relation to a mineral or mineral-bearing product to be specified in the notice.

(2) In a declaration made in terms of subsection (1) the Minister shall specify the rate of rebate of royalty which shall apply in respect of any specified mineral or mineral-bearing product treated at the approved beneficiation plant referred to in the declaration.

(3) A person making an application referred to in subsection (1) shall specify the degree of beneficiation which it is proposed to carry out at the bank assay department, factory, refinery, smelter or treatment plant, as the case may be.

(4) The Minister may, by statutory instrument, withdraw a declaration made in terms of subsection (1) in respect of any approved beneficiation plant—

- (a) where the approved beneficiation plant is not operated as such for any period which exceeds, or aggregate of periods which exceed, three months in any one year; or  
(b) where the degree of beneficiation carried out at the approved beneficiation plant is reduced below that specified in the application made in terms of subsection (1) relating to that plant.

(5) The owner of an approved beneficiation plant shall, not later than the tenth day of each month, render a return in the form prescribed of all minerals and mineral-bearing products disposed of to or received for treatment by the beneficiation plant in the preceding month to the mining commissioner within whose mining district the registered mining location from which the minerals or mineral-bearing products were won is situated.

#### **248 Dump may be unit for royalty purposes**

Notwithstanding anything to the contrary contained in section *two hundred and forty-six*, a dump shall be deemed to be a separate property if—

- (a) the right to work the dump is held by a person other than the miner working the block on which it is situated; or

- (b) the dump is worked by a person other than the miner working the block on which it is situated; or
- (c) the reduction plant for the treatment of the dump is entirely separate from that in or at which the ore extracted from the block on which the dump is situated is being treated; or
- (d) the person who has disposed of the right to work the dump or block on which the dump is situated has no interest in the working of the reduction plant for the treatment of the dump or of the ore extracted from the block on which the dump is situated, as the case may be, or the extraction from such dump or block, other than the payment, rental or royalty specified in the agreement under which the right to work the dump or block is given.

#### **249 Exemption of royalty when ore extracted for experimental purposes**

If any miner desires to extract or treat ore from his location for experimental or similar purposes, he may apply to the Secretary for permission to treat or deal with the mineral or mineral-bearing product obtained from his location for a limited period or up to a limited amount, and the Secretary may permit such treatment or dealing without payment of royalty under such terms and conditions as may by him be deemed expedient.

#### **250 Acquisition or removal of ore, etc., to be declared**

If any person acquires or removes from the mining location from which it was derived any ore, tailings, slimes, concentrates, residues or other mineral-bearing product he shall immediately—

- (a) declare such acquisition or removal to the mining commissioner;
- (b) render to the mining commissioner such returns thereof as may be prescribed.

#### **251 Monthly returns and payment of royalty**

(1) A miner shall, not later than the tenth day of each month—

- (a) render to the Commissioner-General of the Zimbabwe Revenue Authority, or an officer of the Authority appointed for the purpose by the Commissioner-General a return in the prescribed form showing—
  - (i) in respect of minerals, other than precious stones, or mineral-bearing products won from his mining location—
    - A. the output; and
    - B. full details of the disposal thereof by him or on his behalf;
  - (ii) in respect of precious stones won from his mining location, such details relating thereto and to the disposal thereof during the preceding month and the quantity thereof held by him at the end of the preceding month as may be prescribed;
- and
- (b) furnish the Commissioner- General or officer with such affidavits, certificates and documents relating to any matter referred to in paragraph (a) as the mining commissioner may require; and
- (c) submit to the mining commissioner the royalty payable by him in terms of section *two hundred and forty-four* in respect of the preceding month or the provisional amount of royalty assessed in terms of subsection (2).

[Subsection amended by Act 10 of 2009]

(1a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(2) Where it is impracticable for any reason to calculate before the tenth day of any month the royalty payable in respect of the preceding month the Commissioner-General of the Zimbabwe Revenue Authority, or an officer of the Authority appointed for the purpose by the Commissioner-General may assess a provisional amount of royalty which shall be payable.

[Subsection amended by Act 10 of 2009] and also amended in error by section 41(b) (ii) of the same Act

(3) When the correct amount of royalty is assessed the miner shall—

- (a) be entitled to a refund of any sum paid by him in terms of subsection (2) which exceeds the correct amount of royalty payable in terms of section *two hundred and forty-four*; or
- (b) pay to the mining commissioner such sum as represents the difference between the correct amount of royalty payable in terms of section *two hundred and forty-four* and the amount paid in terms of subsection (2).

#### **252 Inspection of books and records, etc.**

The Commissioner-General of the Zimbabwe Revenue Authority or any person duly authorized by him shall at all reasonable times have access for the purpose of inspection to all books and records, reports and other documents relating to the acquisition, disposal or removal of any mineral or mineral-bearing product as may be necessary for the purpose of ascertaining or verifying any return, details, solemn declaration, certificate or document rendered under this Part.

[Section amended by Act 10 of 2009]

## **253 Prohibition of disposal of minerals when royalty or returns, etc., have not been lodged**

(1) If the miner of a registered mining location fails to pay any royalty due in respect of such location the Commissioner-General of the Zimbabwe Revenue Authority, or an officer of the Authority appointed for the purpose by the Commissioner-General may issue an order prohibiting the disposal of any minerals or mineral-bearing products from such location or from any other location which is being worked by the miner, whether or not the miner has failed to pay any royalty due in respect of the other location, until all outstanding royalty has been paid or until an arrangement has been made which is acceptable to the Commissioner-General or officer for the payment of such royalty.

[Subsection amended by Act 10 of 2009]

(2) If the Commissioner-General of the Zimbabwe Revenue Authority, or an officer of the Authority appointed for the purpose by the Commissioner-General has reason to believe that minerals or mineral-bearing products have been produced or disposed of from any registered mining location and he has not received in respect thereof the return, details, solemn declarations, certificates and documents referred to in section *two hundred and fifty-one* he may issue an order prohibiting the disposal of any minerals or mineral-bearing products from that location until the return, details, solemn declarations, certificates and documents have been rendered and any royalty due in respect of such disposal has been paid or until an arrangement has been made which is acceptable to the Commissioner-General or officer for the payment of such royalty.

[Subsection amended by Act 10 of 2009]

(3) A miner who fails to observe an order issued in terms of this section and any person who, knowing of such order, receives any minerals from the location referred to in the order contrary to the terms thereof shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

## **254 Remission of royalty**

(1) The President may remit, in whole or in part, the royalty payable on— (a) any mineral or mineral-bearing product or class thereof; or

(b) any mineral or mineral-bearing product won from any specified registered mining location or property mentioned in section *two hundred and forty-six*;

for such period as he may determine whenever he deems it expedient to do so as an inducement to—

(i) the commencement or continuation of mining operations; or

(ii) the processing or refining within Zimbabwe of minerals or mineral-bearing products; or

(iii) the development of any export market; and such remission may be granted with effect from a date which precedes the date on which it is granted by not more than four years.

(2) Notwithstanding the provisions of this Part, where a remission of royalty was granted or ordered before the 1st January, 1970, in respect of any period extending beyond the 31st December, 1969, that remission of royalty shall continue to apply in respect of that period.

## **PART XV**

### **PAYMENTS TO LOCAL AUTHORITIES**

## **255 Miners to make certain payments to local authorities**

(1) The Minister, acting with the approval of the Minister responsible for finance and after consultation with the Minister responsible for local government and any organization which the Minister considers represents mining interests, may by statutory instrument, require any miner of a registered mining location, or any class of such miners, to pay a specified sum at specified intervals to any local authority within whose area the registered mining location is situated.

(2) The Minister may specify a sum for the purposes of subsection (1) as a lump sum or as a percentage of the value of the output of the mining location concerned, or in such other manner as the Minister may think appropriate.

(3) Every miner to whom a notice in terms of subsection (1) applies shall make the payments required by the notice, and in the event of his default any sums unpaid shall be a debt due to the local authority concerned, and may be recovered by the local authority from the miner by proceedings in a competent court.

## **256 Certain dumps to constitute separate mining locations**

For the purposes of section *two hundred and fifty-five*, a dump shall be deemed to be a separate mining location if—

- (a) the right to work the dump is held by a person other than the minor working the mining location on which it is situated; or
- (b) the dump is worked by a person other than the miner working the mining location on which it is situated; and the person working the dump or holding the right to work it shall be deemed to be the miner of the dump.

#### **257 Remission or exemption from liability to make payments**

(1) The Minister, acting with the approval of the Minister responsible for finance and after consultation with the Minister responsible for local government and any organization which the Minister considers represents mining interests, may remit, in whole or in part, the sums payable in terms of section *two hundred and fiftyfive*—

- (a) by any miner or class thereof; or
- (b) in respect of any mineral or mineral-bearing product or class thereof; for such period as the Minister may determine, whenever he considers it expedient to do so as an inducement to—
  - (i) the commencement or continuation of mining operations; or
  - (ii) the development of any export market; and the Minister shall cause any such remission to be notified in writing to every miner and local authority concerned.

(2) On application being made by a miner who wishes to extract ore from his mining location for experimental or similar purposes, the Secretary may permit the miner, subject to such terms and conditions as the Secretary may fix, to extract the ore without paying any sums in respect of it in terms of section *two hundred and fifty-five*.

(3) The Secretary shall ensure that the local authority concerned is notified in writing of any permission granted by him in terms of subsection (2).

### **PART XVI**

#### **ABANDONMENT AND FORFEITURE**

#### **258 Abandonment of unregistered locations**

(1) The holder of any mining location with respect to which no certificate of registration has yet been obtained may at any time abandon such location.

(2) Prior to such abandonment, the holder shall remove all beacons, if any, from such location, and shall post on a peg on the location a notice stating the fact and date of such abandonment.

(3) No person shall make any relocation upon any unregistered mining location abandoned or deemed to be abandoned under the provisions of this Act until after the expiration of seven clear days from and exclusive of the date on which such location was abandoned or deemed to be abandoned.

#### **259 Abandonment of registered blocks or sites**

(1) Subject to section *two hundred and seventy-nine*, the holder of a registered block or site may abandon such block or site, or any portion of such block or site, by applying in writing to the mining commissioner for and obtaining a certificate of abandonment.

(2) Such certificate of abandonment shall be deemed to constitute valid and sufficient proof of such abandonment.

(3) If such holder abandons a portion only of such block or site, he shall re-beacon the remainder of such block or site according to section *fifty-one*.

#### **260 Forfeiture for failure to obtain inspection certificate for block**

Failure to obtain an inspection certificate within the period prescribed therefor shall, unless a protection certificate has been obtained under section *two hundred and seventeen* in respect of such block, render liable to forfeiture the block in respect of which such failure has taken place.

#### **261 Forfeiture of alluvial, eluvial, rubble deposit or dump precious metal claims**

If the holder of a block of precious metal claims which are registered as alluvial, eluvial, rubble deposit or dump claims fails to work his claims continuously, the block shall be liable to forfeiture unless—

- (a) he has been exempted in respect of such block under paragraph (a) of subsection (2) of section *two hundred and nineteen*; or
- (b) the Board has under paragraph (b) of subsection (2) of that section authorized him to restrict his work to one or more blocks and such block is one of the blocks on which work is not required to be done.

#### **262 Forfeiture of precious stones blocks**

If the holder of a block of precious stones claims fails to work his claims continuously, the block shall be liable to forfeiture unless—



- (a) he has been exempted in respect of such block under paragraph (a) of subsection (2) of section *two hundred and eighteen*; or
- (b) the Board has under paragraph (b) of subsection (2) of that section authorized him to restrict his work to one or more blocks and such block is one of the blocks on which work is not required to be done.

### **263 Forfeiture of mining leases**

(1) If the holder of a mining lease fails to obtain any inspection certificate within the period prescribed therefor, the mining commissioner shall by registered letter notify the holder of such failure and shall send a copy of such letter to the Board.

(2) If within a period of thirty days from the date of posting such notification such holder has failed to obtain such inspection certificate, the mining commissioner shall inform the Board and the Board shall, by registered letter, notify the holder that the mining lease is liable to forfeiture.

(3) Within a period of thirty days from the date of the posting by the Board of such notification, the holder of the mining lease may, if he has not obtained such inspection certificate, make written application to the Board for an extension of time within which to obtain such certificate.

(4) If within the period mentioned in subsection (3), the holder of the mining lease has not obtained such inspection certificate or has failed to make such application for an extension of time, the Board may direct the mining commissioner to declare the mining lease to be forfeited, and the mining commissioner shall forthwith comply with such direction.

(5) Where the holder of a mining lease has made application to the Board for the extension of time mentioned in subsection (3), the Board may refuse such application or may grant an extension of time for such period as it may deem fit.

(6) Where an extension of time has been granted under subsection (5), the Board may, on the application of the holder of the mining lease, from time to time, grant further extensions of time.

(7) Where the Board has refused to grant any such extension of time or where an extension has been granted and the holder of the mining lease has failed to obtain the inspection certificate before the expiry of such extension of time, the Board may direct the mining commissioner to declare the mining lease to be forfeited, and the mining commissioner shall forthwith comply with such direction.

### **264 Forfeiture of sites**

If at any time the monthly rent of any registered mining site has remained due and unpaid for a period of three months or more, such site shall be liable to forfeiture:

Provided that in the case of a site attached to a mining lease, the mining commissioner shall by registered post notify the lease holder that payment of the site rent is so in arrear and if such rent is not paid within thirty days of the posting of such notification, the mining commissioner may declare the site to be forfeited.

### **265 Forfeiture of mining locations**

(1) If a holder of a registered mining location fails to comply with a directive given by the Minister in terms of subsection (5) of section *two hundred and twenty*, the Minister may order in writing that the registered mining location on which the dump concerned is situated be forfeited, unless the holder thereof satisfies the Minister that he took all reasonable and practicable steps to comply with the directive either by working the dump himself or by tributing it to someone else but was unable to do so.

(2) Subject to subsection (3), an order in terms of subsection (1) shall not take effect until a period of thirty days has expired after the holder of the registered mining location concerned has been notified in writing of the order.

(3) During the period of thirty days referred to in subsection (2), any person aggrieved by an order in terms of subsection (1) to forfeit a registered mining location may appeal to the High Court against such order and, pending the determination of such appeal, the mining location concerned shall not be forfeited.

(4) The procedure in any appeal in terms of subsection (3) shall be as prescribed in rules of court.

(5) In any appeal in terms of subsection (3), the High Court may make such order in the matter as it thinks just.

### **266 Locations belonging to estate of deceased persons: special conditions as to forfeiture**

(1) Any registered mining location belonging, and which is notified in writing to the mining commissioner by any person interested as belonging, to the estate or registered in the name of any deceased person, minor, mentally disordered or defective person or insolvent shall not, after the date of the receipt of such notification by the mining commissioner, be liable to forfeiture by reason of failure to take out any certificate within the prescribed period, or to pay licence moneys, rents, dues, fees or fines until after the expiration of a period of thirty days from the issue of letters of administration to the executor

or executors of such deceased person, or, in the case of the estate of any minor, mentally disordered or defective person or insolvent, from the date of appointment of a curator or trustee of such estate.

(2) It shall be competent for any executor, curator or trustee within the aforesaid period of thirty days, according to the circumstances of the case, either to take out any certificate required as aforesaid or make the necessary payments in respect of licence moneys, dues, fees or fines, and to retain such location as aforesaid as an asset in such estate: Provided that—

- (i) if the issue of such letters of administration or the appointment of such curator or trustee has been made outside Zimbabwe, the above period of thirty days shall be reckoned from the date of the official recognition in Zimbabwe of such letters of administration or appointment, as the case may be;
- (ii) in all cases after the expiration of six months from the date of the aforesaid notification to the mining commissioner, the provisions of this section shall cease to apply to such location unless the High Court otherwise directs.

#### **267 Removal of buildings and machinery from abandoned, forfeited or cancelled location**

Subject to section *three hundred and sixty-six*, the former holder of any mining location which has been abandoned, forfeited or cancelled may, within a period of three months from the date of such abandonment, forfeiture or cancellation, remove any buildings or machinery belonging to him: Provided that—

- (i) if such location or any part of it is repegged by any other person as a fresh mining location, the holder of such fresh mining location shall not be liable for any damage done to such buildings or machinery in the due and proper exercise of his rights as such holder;
- (ii) the owner or the occupier of the land on which such buildings or machinery are situated shall not be liable for any damage done to such buildings or machinery in the due and proper exercise of his rights as owner or occupier of the land;
- (iii) the mining commissioner may, if he is satisfied that it is necessary to do so, extend the period within which the buildings or machinery may be removed by a further period not exceeding three months.

#### **268 Removal of beacons from abandoned or forfeited locations**

Whenever any mining location or part of such location has been abandoned, or whenever any mining location has been duly forfeited according to law, and the holder has not removed all pegs and beacons appertaining to such location or the part abandoned, it shall be lawful for any mining commissioner, claim inspector or other person duly authorized thereto by the mining commissioner at any time after the date of such abandonment or forfeiture, to remove and destroy all the beacons, pegs and boundary marks of such location, or of so much as has been abandoned:

Provided that no such removal or destruction may be carried out until a quittance certificate has been issued in terms of section *two hundred and sixty-nine* in respect of such mining location or part thereof.

#### **269 Open workings to be protected on abandonment, forfeiture or cancellation of location**

(1) In this section—

“director” means any person who controls or governs the company or is a member of a body or group of persons which controls or governs the company or, where there is no such body or group, is a member of the company;

“holder” includes the person who was the holder of an abandoned, forfeited or cancelled mining location before its abandonment, forfeiture or cancellation;

“occupier”, in relation to Communal Land, means any rural district council established for the area concerned;

“owner”, in relation to State land, means the Minister responsible for the administration of such land;

“quittance work” means any work required for proper compliance with subsection (2).

(2) On or before the abandonment, forfeiture or cancellation of a registered mining location or not later than thirty days after the posting by the mining commissioner of the notice mentioned in section *two hundred and seventy-two*, the holder of such location shall fill in all shafts, open surface workings and excavations or otherwise so deal with them as permanently to ensure the safety of persons and stock:

Provided that the mining commissioner may in circumstances which he may deem exceptional extend such period of thirty days.

(3) A holder who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection substituted by section 4 of Act 22 of 2001]

(4) Where a holder has contravened subsection (2), and whether or not he has been prosecuted for the contravention, the mining commissioner—

- (a) shall in writing order him to comply with subsection (2) within such reasonable period as the mining commissioner shall specify in the order; and
- (b) may make further such orders if the holder fails to comply with the order made in terms of paragraph (a).

[Subsection substituted by section 4 of Act 22 of 2001]

(5) A holder who contravenes an order under subsection (4) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection substituted by section 4 of Act 22 of 2001]

(5a) A holder may be convicted of an offence under subsection (5) whether or not he has been prosecuted—  
(a) for the contravention of subsection (2) which gave rise to the order concerned; or (b) for contravening any previous order made under subsection (4).

[Subsection inserted by section 4 of Act 22 of 2001]

(5b) The court that convicts a person of contravening subsection (3) or (5) may order the cancellation of any prospecting licence held by him, and thereupon the licence shall be cancelled and no new licence shall be issued to him until he has proved to the satisfaction of the Secretary that he has complied in all respects with subsection (2) or with the order in respect of which he has been convicted, as the case may be.

[Subsection inserted by section 4 of Act 22 of 2001]

(6) Orders may be made under subsection (4) in respect of any registered mining location which was abandoned, forfeited or cancelled on or after the 1st July, 1947, and in respect of which a quittance certificate has not been issued.

[Subsection amended by section 4 of Act 22 of 2001]

(7) The manner in which shafts, open surface workings and excavations shall be dealt with for the purposes of subsection (2) shall be prescribed by regulation, and compliance with such regulations shall be sufficient compliance with that subsection.

(8) When such shafts, open workings or excavations have been filled in or suitably enclosed and protected, the holder shall, not later than thirty days after the completion of such work, send to the mining commissioner a certificate in the form prescribed by regulation stating the nature of the work which has been done for the purposes of subsection (2) and if there are no shafts, open surface workings or other excavations on the mining location which require quittance work, the holder shall, not later than thirty days after the posting of the notice mentioned in section *two hundred and seventy-two* by the mining commissioner, send to the mining commissioner a certificate to that effect:

Provided that, if the holder has not complied with subsection (2) within the period specified therein, he shall, not later than thirty days after the posting of the notice mentioned in section *two hundred and seventy-two*, send to the mining commissioner a written statement to that effect stating the reasons therefor.

(9) In addition to the certificate required by subsection (8), the holder shall send to the mining commissioner the written consent of the occupier or, if there is no occupier, the owner of the land upon which the relevant mining location was situated to the issue of a quittance certificate in terms of this section:

Provided that, if the holder has not been able to obtain such written consent, he shall send instead to the mining commissioner a written statement to that effect.

(10) If written consent to the issue of a quittance certificate is lodged in terms of subsection (9), the mining commissioner shall issue a quittance certificate relieving the holder from any further responsibility in terms of subsection (2).

(11) If written consent to the issue of a quittance certificate is not lodged in terms of subsection (9), the mining commissioner shall by registered letter notify the occupier of the land or, if there is no occupier, the owner of the land upon which the relevant mining location was situated that he has received such certificate and that a quittance certificate relieving such holder from any further responsibility under subsection (2) will be granted to such holder unless a written objection giving full details of all unprotected or insufficiently protected shafts, open surface workings or excavations is lodged by or on behalf of such owner or occupier within thirty days of the date of the posting of such notification by the mining commissioner.

(12) If the whereabouts of the owner or the occupier of any land are unknown to the mining commissioner after due inquiry or if no objection is lodged with the mining commissioner within the prescribed period, the mining commissioner shall issue a quittance certificate relieving the holder from any further responsibility under subsection (2).

(13) If an objection is received to the issue of a quittance certificate, the mining commissioner shall notify the person who lodged such objection and the holder of the time when a person appointed by the mining commissioner will inspect the abandoned or forfeited mining location, and the objector may attend at such inspection and point out to the inspector in what respect he considers the quittance work to be insufficient.

(14) If the mining commissioner is satisfied from the report of the inspector that the quittance work is adequate, he shall issue a quittance certificate relieving the holder from any further responsibility under subsection

(2).

(15) If the mining commissioner is not satisfied in terms of subsection (14), he shall give written notice to the holder of what additional work is necessary and shall order the holder to perform such work within a time specified by the mining commissioner.

(16) If the holder fails to comply with the order of the mining commissioner within the specified time he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment and the mining commissioner shall thereafter make a fresh order or orders requiring such holder to comply with his original order within a period specified by the mining commissioner.

[Subsection amended by section 4 of Act 22 of 2001]

(17) If the holder fails to comply with any such further order or orders he shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years, and he may again be prosecuted notwithstanding any previous conviction or acquittal for failing to comply with any previous order of the mining commissioner.

[Subsection amended by section 4 of Act 22 of 2001]

(18) When the holder has complied with any order made by the mining commissioner in terms of this section, the mining commissioner shall issue to such holder a quittance certificate relieving such holder from any further responsibility under subsection (2).

(19) A copy of every quittance certificate issued in terms of this section shall be sent by the mining commissioner to the relevant owner or occupier of land.

(20) If any holder fails to furnish a certificate or written statement in terms of subsection (8) or (9) or makes any false statement in such certificate or written statement, he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(21) Where, in the case of a registered mining location formerly held by a company, the company has been dissolved before the issue of a quittance certificate in terms of this section in respect of that registered mining location, every person who was a director of the company—

- (a) at the time of the abandonment, forfeiture or cancellation of the registered mining location or at any time thereafter; or
- (b) where the dissolution of the company occurred before the forfeiture or cancellation of the registered mining location, at the commencement of the winding up of the company or, in the event of a dissolution not preceded by a winding up, at its dissolution;

shall upon the dissolution of the company be deemed to be a holder of the registered mining location for the purposes of this section.

## **270 Removal of or interference with protective works prohibited**

(1) Except in the exercise of any right acquired under this Act or with the permission in writing of the mining commissioner and subject to such conditions as the mining commissioner may attach to such permission, no person shall remove or interfere with any fencing or other works erected or constructed under section *two hundred and sixty-nine* for the protection of mine workings.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(3) If any person is convicted of an offence under this section, the court may, in addition to any other penalty imposed by it, order such person to restore such fencing or other works or otherwise so to deal with them as permanently to ensure the safety of persons or stock.

## **271 Mining commissioner may declare location to be forfeited**

(1) Subject to section *two hundred and sixty-three*, where any mining location is liable to forfeiture in terms of this Act, the mining commissioner may declare such location to be forfeited.

(2) Nothing in subsection (1) shall be construed as affecting in any way the duty of the mining commissioner to declare a location to be forfeited under section *seventy-seven, seventy-nine, one hundred and twenty-nine, two hundred and twelve or three hundred and thirty*.

## **272 Relocation of abandoned, forfeited or cancelled locations and reinstatement of forfeited locations**

(1) Lists of registered mining locations which have been abandoned or forfeited in terms of this Act shall from time to time be posted on a board to be exhibited in some conspicuous way outside the office of the mining commissioner, and any such location may be relocated after the expiration of thirty-five clear days from and exclusive of the date of the posting of the notice relating thereto, unless the declaration of forfeiture is revoked in terms of this section or in the said notice it is upon instruction of the Secretary otherwise provided.

(2) The person who at the date of the declaration of forfeiture was the holder of a block or site which has been declared forfeited in terms of section *two hundred and seventy-one* owing to his failure to obtain the necessary inspection certificate or to pay site rent therefor may apply to the mining commissioner for the revocation of such declaration of forfeiture.

(3) If—

- (a) the application under subsection (2) is made within twenty-one days of the date of the posting in terms of subsection (1) of the notice of forfeiture relating to such mining location; and
- (b) the prescribed fee is paid to the mining commissioner; and
- (c) the applicant is granted a protection certificate under section *two hundred and seventeen* or obtains the necessary inspection certificate for such mining location or pays the arrears of site rent, as the case may be, within twenty-one days of the date of the posting in terms of subsection (1) of the notice of forfeiture relating to such mining location; the mining commissioner shall revoke the declaration of forfeiture and upon such revocation such mining location shall be regarded for all purposes as if no forfeiture thereof had been declared and any approved cultivation scheme which relates to such mining location shall not be affected by such forfeiture.

## **273 Mine plans to be lodged on abandonment or closing down**

(1) This section shall not apply to any mine upon which no development work has been done at a depth of more than fifteen metres.

(2) If the miner of any mine on which mining operations are being carried out intends to close down such mine or substantially reduce mining operations, he shall, not less than sixty days before such closing down or such substantial reduction of mining operations, give written notice to the mining commissioner of such intention.

(3) A notice given in terms of subsection (2) shall state the reasons why the miner intends to close down the mine or substantially reduce mining operations.

(4) The mining commissioner shall, as soon as practicable after receiving a notice given in terms of subsection (1), forward it to the Minister, together with his comments thereon.

(5) Within thirty-one days of the date of closing down a mine or substantially reducing mining operations, the miner shall lodge with the mining commissioner in respect of each mine a plan or plans which shall comply with the following conditions—

- (a) where development work has been executed to a vertical or incline depth of more than one hundred metres on the dip, the plan or plans shall be prepared by a mine surveyor;
- (b) where development work has been executed to a vertical or incline depth of not more than one hundred metres on the dip, the plan or plans shall be prepared by a mine surveyor or otherwise shall be based on tape and compass survey;
- (c) the plan or plans shall show details of all work done on the mine, together with such further particulars as the mining commissioner may require;
- (d) plans prepared by a mine surveyor shall be drawn to any recognized scale; other plans shall be drawn to a scale of 1:250 or 1:500:

Provided that with effect from the promulgation of the regulations made under paragraph (c) of subsection (2) of section *four hundred and three* the plans to be lodged in terms of this paragraph shall comply with the said regulations and not with the aforesaid conditions.

(6) If the miner of any mine shows to the satisfaction of the Chief Government Mining Engineer that he is unable to prepare or cause to be prepared the plans required under subsection (3), the Chief Government Mining Engineer shall cause such plans to be prepared by a Government mining engineer.

- (7) The miner of any mine who—
- (a) fails to furnish such notice or to lodge such plans as are prescribed; or
  - (b) wilfully refuses to produce such plans or to allow them to be examined or copied by the inspector of mines or any other officer duly authorized thereto by the Minister; or
  - (c) conceals any part of the workings of the mine from a Government mining engineer who has been instructed to prepare the plans under subsection (3); or
  - (d) knowingly produces or transmits an imperfect or inaccurate plan; shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

## PART XVII

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

### 274 Interpretation in Part XVII

In this Part—

“mining location” does not include an exclusive prospecting reservation, a special grant or a special grant issued under Part XX.

### 275 Registration of transfer of mining locations and transfer duty payable

(1) When any registered mining location or any interest therein is sold or otherwise alienated in any manner whatsoever, the seller or person who so alienates shall notify the mining commissioner of the transaction within sixty days of the date of such transaction, and shall inform him of the name of the person to whom such location or interest is sold or otherwise alienated and of the amount of the valuable consideration, if any, agreed upon, and the date of the transaction.

(2) When any registered mining location or any interest therein has been sold or otherwise alienated, whether before or after the 1st November, 1961, in any manner whatsoever for valuable consideration, transfer duty at the rate fixed by Parliament shall be paid by the purchaser, which term shall include any person becoming entitled to such location or interest therein by way of sale, exchange or other like transaction.

(3) If the holder of a registered mining location has granted to any person the right to purchase such location, and if the said right to purchase becomes vested in some other person by cession or assignment of the said right, then upon the exercise of the said right to purchase any sums paid for any such cession or assignment shall be deemed to form part of the consideration in the sale or alienation of such mining location.

(4) The transfer duty payable in terms of subsection (2) shall be calculated on the cash value of the consideration. If the consideration consists partly of cash and partly of shares in a company already formed or to be formed, which is to acquire such location, the cash value of such shares shall be deemed to be their nominal value; if the consideration of any portion thereof consists of anything other than cash or such shares, then the duty shall be payable on the true cash value thereof, to be assessed by the parties concerned to the satisfaction of the mining commissioner. If the payment of the consideration or any portion thereof is contingent upon the happening of some future event, the purchaser shall give security to the satisfaction of the mining commissioner that he will pay transfer duty at the rate fixed as aforesaid on such consideration or such portion thereof if and when such consideration becomes payable.

(5) The transfer duty payable in terms of subsection (2) shall be paid within six months from the date of the sale or other alienation of the mining location, as the case may be: Provided that—

- (i) such period may be extended by the Secretary on cause shown, but in any such case from and after the expiration of such period of six months and until payment or deposit of the amount of such duty, interest thereon at the rate of twelve *per centum* per annum shall be payable and paid by the purchaser;
- (ii) if the payment of the consideration or any portion thereof is contingent upon the happening of some future event, the period of six months provided for by this subsection shall, in respect of the transfer duty on such consideration or such portion thereof, be calculated as from the happening of such event.

(6) Subject to this Act, any person entitled to be registered as the holder of a registered mining location, or any interest therein, shall make application to the mining commissioner for the transfer of such location or interest, and every such application shall be in writing and signed by or on behalf of the applicant, and shall be accompanied by the following particulars—

- (a) the last issued certificate of registration or of special registration of the location, or the holder's copy of the mining lease, as the case may be;
- (b) certificates by the transferor and transferee in the prescribed form;
- (c) a duplicate original, grosse or notarially certified copy of any and every existing written agreement affecting or bearing upon the sale, alienation, exchange or transfer;
- (d) in the event of there being no such existing written agreement, certificates by the transferor and transferee to that effect;
- (e) the original or a notarially certified copy of any power of attorney which may be required to authorize an agent to act on behalf of any party to the transfer; if the original power is lodged with the mining commissioner and the applicant does not wish the mining commissioner to retain it, he shall furnish with it a copy which the mining commissioner shall compare with the original, certify to be a true copy and retain;
- (f) if such application is in respect of the transfer of any mining location registered for precious stones or any interest therein, a certificate from the Secretary that the Minister has granted the permission required under section *two hundred and eighty-two* in respect of such transfer.

(7) The mining commissioner shall, on receipt of such application and other documents and of the transfer duty or, if no such duty is or may in the future be payable or the whole of such duty has been remitted under subsection (9), of the prescribed fee, and if he is satisfied that the other provisions of this Act have been complied with, register transfer by making the necessary entries in his registers and other records: Provided that—

- (i) no transfer as aforesaid shall be valid unless it has been registered by the mining commissioner, and no such registration shall be made—
  - (a) while such location is liable to forfeiture or under attachment;
  - (b) until duties, fees, royalties, rents or other moneys due and payable to the mining commissioner under this Act in respect of the property to be transferred have been paid;
  - (c) where the location is situated in the area of a rural council, unless there is produced to the mining commissioner a certificate, issued by the rural council concerned, stating that all charges payable to the council in respect of the location during the period of five years immediately preceding the date of issue of the certificate have been paid or are, in the opinion of the council, irrecoverable:
 

Provided that no such certificate shall be valid for the purposes of this paragraph for a longer period than three months from the date of issue thereof;
  - (d) where the transferee is not a permanent resident of Zimbabwe, unless the mining commissioner, after consultation with the Reserve Bank of Zimbabwe, is satisfied that all requirements imposed by or under the Exchange Control Act [*Chapter 22:05*] have been complied with;
- (ii) where the location transferred is a mining lease, the mining commissioner shall endorse on the holder's copy of the mining lease the fact of transfer, the date of registration thereof and the name of the transferee and shall transmit to the Board the particulars of such transfer;
- (iii) where security is required under subsection (4), the mining commissioner shall not register transfer until such security has been given.

(8) The mining commissioner shall also, on receipt of the prescribed fee, issue to the transferee a certificate of registration in the form prescribed and such certificate shall record the interest of the transferee, whether whole or otherwise, in such block.

(9) If it is proved to the satisfaction of the Minister that a transfer applied for is merely for the purpose of carrying out the reconstruction of any company holding a mining location, or the amalgamation of two or more companies holding locations, the duty to be paid in respect of such transfer shall be one-half of the rate aforesaid.

(10) If in any transfer from one company to another registered by the mining commissioner under this section, it is shown to the satisfaction of the Minister that at the date of the sale or other alienation of the mining location such mining location was acquired—

- (a) by a company from its wholly-owned subsidiary; or
- (b) by a wholly-owned subsidiary of a company from its parent company; or
- (c) by a wholly-owned subsidiary of a company from another wholly-owned subsidiary of the same parent company, or
- (d) by a company in which the majority shareholder is the same person who holds a majority of shares in the company which transferred the location; the Minister shall remit the whole or any part of the duty payable under this section.

(11) If when any transfer is applied for the applicant did not derive his rights to transfer from the holder, but there has been any intermediate agreement of sale or alienation, or some other person has previously acquired the right to obtain transfer, transfer may be made direct to the applicant:

Provided that if transfer duty payable on any such intermediate transaction or acquisition of rights has not been paid, such duty shall be payable by the applicant and the requirements of subsection (2) shall be met in respect of each such intermediate transaction or acquisition of rights.

(12) No such transfer shall be registered until each seller and purchaser, or their respective agents, has filed a certificate in accordance with the prescribed form.

(13) All certificates lodged in terms of subsection (6) shall be filed in the office of the mining commissioner, who shall keep a register in which full particulars as to any transfer shall be kept; such particulars shall include the names of the parties to the transaction, the name and registered number of the mining location, the nature and amount of the stipulated consideration, if any, and the extent of the interest transferred.

## **276 Registration of hypothecation of mining location**

(1) Any holder of a registered mining location may make application to the mining commissioner for the hypothecation of the whole or of any portion of his interest in such location.

(2) Every such hypothecation shall be effected at the office of the Secretary, where a register shall be kept in which full particulars as to the date and nature of the transaction, the names of the parties concerned, the official number of the mining location to be hypothecated, the stipulated amount for which the hypothecation is to be effected and the rate *per centum* and the times at which interest, if any, is payable shall be duly registered.

(3) Every such application as aforesaid shall be accompanied by three duplicate original notarial copies or three notarially certified copies of the agreement between the parties to the transaction, embodying the terms upon which the hypothecation is to be effected, which notarial copies shall be endorsed by the notary before whom the same were completed to the effect that the minute or original filed in his protocol is stamped with revenue stamps in accordance with the fees fixed by Parliament:

Provided that where such notarial copies are endorsed by the notary to the effect that the hypothecation is auxiliary or collateral to or substituted for a previous hypothecation executed by the same person for the same debt or obligation and that the minute or original relating to such previous hypothecation was duly stamped in accordance with such prescribed fees, no such stamps or corresponding endorsement shall be required in respect of such subsequent hypothecation.

(4) The Secretary shall thereupon inscribe upon such deed of hypothecation an official or registered number, as also a certificate of registration of such hypothecation, and shall return to the notary who prepared them one copy, file another in his office and issue the third copy to the person in whose favour such hypothecation is effected:

Provided that—

- (i) prior to the issue of such certified deed as aforesaid, the Secretary shall require the certificate of registration or of special registration or the holder's copy of the mining lease, as the case may be, of such location to be produced for his inspection, and shall inscribe on such certificate or mining lease the fact of such hypothecation as aforesaid having been effected, and also the date of registration of such hypothecation;
- (ii) if the mining location sought to be hypothecated is registered for precious stones or in the case of a mining lease, the principal mineral being mined or to be mined on such location is precious stones, the Secretary shall not register such hypothecation unless he is satisfied that the Minister has granted the permission required under section *two hundred and eighty-two* in respect thereof.

(5) Should the hypothecation of any interest in any mining location be for the purpose of securing any issue of debentures, the fees fixed in terms of subsection (3) shall only be payable on such amount of debentures as are actually issued from time to time in respect of such location.

## **277 Hypothecation in respect of loans granted by State**

(1) If out of moneys provided by Parliament the Minister has, at the request of the holder of a mining location—

- (a) made a loan to such holder; or
- (b) caused work to be done on such location; or
- (c) sold to such holder mining machinery for use on such location;

and such holder has failed to give suitable and sufficient security for the repayment of such loan, the payment for such work or the purchase price of such machinery, the Minister may instruct the Secretary to register a hypothecation of all or any of the mining locations registered in the name of such holder in favour of the State.



(2) On receipt of such instruction the Secretary shall, in respect of every mining location to be hypothecated in terms of subsection (1), enter in the register required to be kept in terms of section *two hundred and seventysix*—

- (a) the official number of such location; and
- (b) the amount of the loan, the cost of the work done or the amount of the purchase price owed by the holder, as the case may be; and
- (c) the rate *per centum* and the terms on which interest is payable; and (d) the fact that such location is hypothecated to the State.

(3) Such entries shall constitute a hypothecation of such location in favour of the State from the date on which such entries were made and for the amount stated and the interest thereon.

## **278 Registration of options on mining locations**

(1) When and as often as any holder of a registered mining location or locations has agreed in writing to grant to any other person, hereinafter termed the option holder, the option of exercising the right to purchase, or in any other manner to deal with, such location or locations at a certain future date, such option holder may apply to the mining commissioner for the registration of a notarial deed embodying the terms of such contract in the office of such mining commissioner, where a register shall be kept in which full particulars as to such contract shall be described; such particulars shall include— (a) the names of the parties to the contract; and

- (b) the name and registered number of the mining location or locations to which such contract relates; and
- (c) the date upon which the right or option conferred by such contract commences and expires.

(2) Every such application as aforesaid shall be accompanied by three duplicate original notarial copies or three notarially certified copies of such deed and, if the application is in respect of a contract relating to a mining location registered for precious stones or a mining lease on which the principal mineral being mined or to be mined is precious stones or any interest therein, a certificate from the Secretary that the Minister has granted the permission required under section *two hundred and eighty-three* in respect thereof.

(3) The mining commissioner, on receipt of such application and of the deeds above mentioned, shall forthwith register such contract, retain one copy and return two copies to the applicant with an endorsement thereon by him of the fact of such registration:

Provided that if the application is in respect of a contract relating to a mining location registered for precious stones or a mining lease on which the principal mineral being mined or to be mined is precious stones or any interest therein, the mining commissioner shall not register the contract unless the certificate mentioned in subsection (2) is produced to him.

(4) There shall be paid by the applicant for the registration of the above mentioned deed the fees fixed by Parliament and where consideration is given and received for such option and the whole consideration is not in cash the true cash value of such consideration shall, for the purpose of determining the fees payable by the applicant, be declared by the option holder and the registered holder at the time of the registration of the option:

Provided that prior to the registration of such certified deed as aforesaid, the mining commissioner shall require the certificate of registration, or of special registration, or the holder's copy of the mining lease, as the case may be, of such location to be produced for his inspection, and shall inscribe on such certificate or copy the fact of such an option as aforesaid having been effected and also the date of registration of such option.

(5) Whenever an agreement registered in terms of this section contains provisions granting a tribute or any other limited right to work the mining location to the option holder, so much of such agreement as relates to the tribute or other limited right to work the mining location, hereinafter called the tribute agreement, shall, while it remains in force, be binding upon any person who acquires the ownership of such mining location or any interest therein, and it shall not be lawful for the holder of such mining location to abandon such location during the period that such tribute agreement remains in force.

(6) Whenever an agreement registered in terms of this section contains provisions granting a tribute or any other limited right to work the mining location to the option holder, the mining commissioner shall, in addition to inscribing on the certificate of registration or of special registration or the holder's copy of the mining lease, as the case may be, of such mining location the fact of an option having been effected and the date of the registration thereof, inscribe on such certificate of registration or of special registration or copy of the mining lease, as the case may be, the fact of the existence of the agreement granting a tribute or any other limited right to work such mining location.

## **279 Registration of hypothecation or option is bar to transfer**

- (1) The registration of a hypothecation or option over any mining location shall, during the period for which such hypothecation or option continues to be of force and effect, be a bar to—
- (a) the transfer of such mining location, unless the consent in writing of the holder of the hypothecation or option or the cancellation thereof has been obtained and filed in the office of the mining commissioner; and
  - (b) the abandonment of the whole or portion of such mining location.

(2) Notwithstanding anything in this section contained, the registration of a hypothecation or option shall not be a bar to the transfer of a mining location if the transfer is to be passed—

- (a) in execution of the judgment of any competent court by the officer appointed by law or by that court; or
- (b) by the trustee of an insolvent estate or by such an assignee as is described in Part VIII of the Insolvency Act [*Chapter 6:04*]; or
- (c) by an executor administering and distributing an estate under the Administration of Estates Act [*Chapter 6:01*]; or
- (d) by the liquidator of a company which is being wound up by or under the supervision of the High Court:

Provided that on any such transfer of a mining location over which an option is registered, the option shall continue and shall be endorsed by the mining commissioner on the new certificate of registration or special registration or on the holder's copy of the mining lease, as the case may be.

(3) The registration of an option over any mining location shall, during the period for which such option continues to be of force and effect, be a bar to the subsequent registration of any hypothecation of or any other option over such mining location, unless the consent in writing of the holder of the registered option or the cancellation thereof has been obtained and filed in the office of the mining commissioner.

## **280 Registration of tribute agreements**

(1) If any holder of a registered mining location has agreed in writing to grant a tribute or any other limited right to work such mining location to any other person, hereinafter called the tributor, such tributor may, after such agreement has been approved under Part XVIII, apply to the mining commissioner for the registration of a notarial deed embodying the terms of such agreement in the office of such mining commissioner, where a register shall be kept in which particulars as to such agreement shall be entered.

(2) Such particulars shall include—

- (a) the names of the parties to the agreement; and
- (b) the name and registered number of the mining location or the registered number of the mining lease to which such agreement relates; and
- (c) the date upon which the rights conferred by such agreement commence and expire.

(3) The applicant shall produce to the mining commissioner four duplicate original notarial copies or four notarially certified copies of such deed and the certificate of registration or of special registration or the holder's copy of the mining lease, as the case may be, of the mining location, and, if the application is in respect of a

tribute agreement relating to a mining location registered for precious stones or a mining lease on which the principal mineral being mined or to be mined is precious stones or an interest therein, a certificate from the Secretary that the Minister has granted the permission required under section *two hundred and eighty-two* in respect thereof.

(4) The mining commissioner shall, on receipt of an application in terms of subsection (1) and of the documents mentioned in subsection (3)— (a) register the agreement; and

- (b) retain two copies of the deed; and
- (c) return the other copies of the deed to the applicant with an endorsement made thereon by him of the fact of such registration; and
- (d) inscribe on the certificate of registration or of special registration or the copy of the mining lease, as the case may be, the fact of the agreement having been registered and the date of the registration thereof.

(5) There shall be paid by the applicant for the registration of such deed the fee fixed by Parliament.

(6) Any agreement registered in terms of this section shall, while it remains in force, be binding upon any person who acquires the ownership of such mining location or any interest therein, and it shall not be lawful for the holder of such mining location to abandon the whole or part of such location during the period that such agreement remains in force.

(7) If in any agreement referred to in subsection (1) the tributor is granted the option of exercising the right to purchase or in any other manner to deal with such mining location at a certain future date, then the agreement may only be registered in terms of section *two hundred and seventy-eight*.

## **281 Registration of conditions governing mining rights on reserved ground**

(1) In giving written consent in terms of paragraph (a) of subsection (1) of section *thirty-one*, the President or other person giving such consent may impose terms prescribing the conditions under which mining rights on any mining location that may be pegged and registered in terms of such consent may be exercised.

(2) If the President or other person has given a written consent referred to in subsection (1), the mining commissioner shall upon the registration of any mining location pegged under such consent—

- (a) register the terms of such consent in a register to be kept by him; and
- (b) retain the original written consent; and
- (c) inscribe on the certificate of registration the fact of such consent having been registered.

(3) The terms of any written consent registered under this section shall be binding upon the holder of the registered mining location and upon any person who acquires the ownership of such mining location or any interest therein.

(4) Upon application by the holder of the mining location or of the person who gave such written consent, the mining commissioner shall supply a certified copy of the written consent filed in his office to such person.

(5) If any person is guilty of any breach of the terms imposed in any written consent registered in terms of this section, he shall be guilty of an offence and liable to a fine not exceeding level six.

[Subsection amended by section 4 of Act 22 of 2001]

(6) On the contravention of this section the holder and any lessee or tributor or manager of the mining location in respect of which such terms were imposed shall be liable to prosecution and conviction for such contravention.

(7) After a conviction for a contravention of subsection (5) or (6) the mining commissioner shall, upon application by the person who owns the land upon which such mining location is situated, declare the mining location in question to be forfeited.

(8) In any prosecution for a contravention of subsection (5) or (6) a copy of any written consent certified as correct by the mining commissioner shall be received in evidence upon its production by the prosecutor.

## **282 No tribute, sale or alienation of precious stones location without approval of Minister**

(1) Notwithstanding anything contained in this Act or any other enactment, no holder of a mining location registered for precious stones or a mining lease on which the principal mineral being mined or to be mined is precious stones shall tribute, cede, assign, sell or otherwise alienate in any manner whatsoever, that mining location or mining lease or any interest therein without the permission of the Minister.

(2) The Minister may require the holder and such other person to furnish to him such information as he may require for the purpose of deciding whether he should or should not grant his permission under this section.

## **PART XVIII**

### **APPROVAL OF TRIBUTE AGREEMENTS**

## **283 Interpretation in Part XVIII**

In this Part—

“grantor” means any person who has under a tribute agreement given a tributor the right to mine a mining location;

“mining location” does not include a special grant or a special grant issued under Part XX;

“tribute agreement” means any agreement or arrangement entered into after the 1st July, 1947, whereunder any person has given a tribute, licence, concession, authority or other right to mine a mining location to a tributor; and includes any such agreement or arrangement which was entered into before the 1st July, 1947, and which is renewed after such date, and any agreement to alter the terms of a tribute agreement which has been approved by the Board and any renewal of a tribute agreement which has been approved by the Board;

“tributor” means the person who has been granted the right to mine a mining location under a tribute agreement.

## **284 Submission of tribute agreements for approval**

The terms of every tribute agreement shall be reduced to writing and such agreement, together with the prescribed number of copies thereof, shall be submitted to the mining commissioner for examination and approval by the Board or the mining commissioner.

## **285 Approval of tribute agreements by mining commissioner**

(1) The Board may authorize the mining commissioner to approve any tribute agreement which conforms to a standard agreement drawn up and approved by the Board.

(2) If any tribute agreement submitted to the mining commissioner conforms to such standard agreement, the mining commissioner may approve such agreement and shall report such approval to the Board and to the occupier or, if there is no occupier, the owner of the land concerned and shall furnish the Board with a copy of the agreement.

(3) If the mining commissioner does not himself approve a tribute agreement he shall submit the agreement to the Board for consideration.

### **286 Approval of tribute agreements by Board**

If upon examination of any tribute agreement which has been submitted to it by a mining commissioner the Board is satisfied—

- (a) that the method of fixing the tribute royalty payable to the grantor and the rate of such royalty are satisfactory and are not likely to retard the progress or expansion of the mine or bring about the early cessation of mining operations; and
- (b) that the interests of both the grantor and the tributor are adequately safeguarded thereunder; and
- (c) that the period of such agreement is clearly defined and, if termination of the agreement by notice is provided for, that the interests of the parties to the agreement are adequately protected; and
- (d) that the development work required by the agreement is reasonable in the circumstances and is not unduly burdensome or likely to cause the premature cessation of mining operations on the mine; and
- (e) that the tributor is required to carry out sufficient development work to ensure the continuity of mining operations on the mine; and
- (f) that the grantor is entitled periodically and at reasonable times to inspect the mine and satisfy himself that the terms of the agreement are being observed; and
- (g) that in all respects the agreement is satisfactory and likely to result in the mine being mined to the best advantage;

the Board may approve the agreement and shall endorse such approval thereon and shall inform the owner or occupier of the land concerned of such approval.

### **287 Refusal of approval of or amendment of tribute agreements**

(1) If the Board is not satisfied in terms of section *two hundred and eighty-six* it may refuse to approve the agreement or may submit to the parties thereto such amendments as it may deem fit.

(2) If the parties agree to such amendments the Board shall make the necessary amendments to the agreement and the agreement shall have effect as so amended and approved by the Board.

(3) If the Board refuses to approve an agreement or is only prepared to approve an agreement with such amendments as the parties refuse to accept, the parties may appeal to the Minister to reverse the Board's decision, and the Minister, whose decision shall be final, may uphold or reverse the Board's decision.

(4) If the Minister reverses or alters the Board's decision, the Board shall approve the agreement in accordance with the Minister's decision and shall endorse the agreement accordingly.

### **288 Records of agreements**

(1) The Board and the mining commissioner shall keep a copy of all tribute agreements submitted for approval under this Part.

(2) The Board shall further keep a record of what agreements have been approved or disapproved and the details of any amendments made to any agreements with the approval of the parties and shall notify the mining commissioner of approved agreements.

### **289 Penalty for acting under unapproved agreement**

(1) No party to a tribute agreement shall exercise any right under such agreement unless and until such agreement has been examined and approved by the Board or a mining commissioner.

(2) Any party who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six.

[Subsection amended by section 4 of Act 22 of 2001]

### **290 Prohibition of disposal of minerals**

(1) If a tributor is mining a mining location under an unapproved agreement or in conflict with the terms of an approved agreement the mining commissioner shall issue an order prohibiting the disposal of minerals from such mining location until he is satisfied that the agreement has been approved under this Part or until the terms of the approved agreement are complied with.

(2) Any miner of such mining location who fails to observe such an order and any person knowing of such an order who contrary thereto receives any minerals from such mining location shall be guilty of an offence.

## **PART XIX**

### **SPECIAL GRANTS**

#### **291 Issue of special grants**

(1) The Secretary may issue to any person—

- (a) a special grant to carry out prospecting operations; or
- (b) a special grant to carry out mining operations or any other operations for mining purposes; upon a defined area situated within an area which has been reserved against prospecting or pegging under section *thirty-five* for a period which shall be specified in such special grant and on such terms and conditions, including terms and conditions relating to the amendment or cancellation thereof, as may be approved by the Minister and shall be incorporated in such special grant.

(2) A copy of every special grant issued and of all documents relating thereto shall be retained by the Secretary for purposes of record.

(3) The Secretary shall send written notification of the issue of a special grant to every occupier or, if there is no occupier, owner of land falling within the area covered by the special grant.

#### **292 Register of special grants**

The Secretary shall maintain a register of special grants issued under section *two hundred and ninety-one* in which there shall be recorded the official number assigned to each grant and the particulars thereof.

#### **293 Fee for special grant**

The person to whom a special grant is issued shall pay the prescribed fee in respect of the issue of a special grant or any renewal thereof.

#### **294 Application of other provisions of this Act to special grants**

(1) Where a special grant to carry out mining operations has been issued, provisions of this Act relating to registered mining locations shall apply to such special grant but only in so far as they do not conflict with the terms and conditions of the special grant.

(2) Where a special grant to carry out prospecting operations has been issued, the holder of the special grant shall, subject to the terms and conditions of the special grant, have the following rights—

- (a) the exclusive right of prospecting within the area of the special grant on all ground which is open to prospecting on the date on which the special grant is issued, including the right to drill and excavate, whether at the surface or underground;
- (b) the same surface rights within the area of the special grant as are conferred upon the holder of a prospecting licence under section *twenty-nine*, and for this purpose the date on which the special grant is issued shall be deemed to be the date of the posting of a prospecting notice by the holder of the special grant:

Provided that the holder of a special grant shall have the right of removing any accommodation, buildings or machinery which have been erected within that area within three months or such longer period as may be determined by the mining commissioner after the expiration or cancellation of the special grant.

#### **295 Beaconing of special grant**

The holder of a special grant shall beacon such grant in such manner as the mining commissioner may direct and shall maintain the beacons in good order and condition in their proper position.

#### **296 Conversion of special grant to registered block**

(1) If after the issue of any special grant, whether such grant was issued before or after the 1st November, 1961, any portion of such grant becomes land which would but for the presence of such grant be open to prospecting and pegging in terms of this Act, the Minister may permit or may direct the holder of the special grant to peg and register such portion in accordance with this Act governing the pegging and registration of blocks of claims:

Provided that for the purpose of such pegging the holder of the special grant shall not be required to take out a prospecting licence nor to post a prospecting, discovery or registration notice.

(2) If the holder of the special grant fails to comply with any such direction within such period as the Minister may have allowed, the Minister may cancel the special grant.

(3) On the issue of the certificate of registration in respect of any such portion of the special grant, the grant shall be deemed to have been cancelled in respect of that portion.

## PART XX

### SPECIAL GRANTS FOR COAL, MINERAL OILS AND NATURAL GASES

#### 297 Interpretation in Part XX

In this Part—

“grantee” means any person to whom a special grant has been issued, ceded or assigned under this Part;  
“special grant” means a special grant issued under this Part.

#### 298 Rights to mine coal, mineral oils or natural gases may only be acquired under special grant

Subject to section *three hundred and seven*, no rights to mine coal, mineral oils or natural gases or nuclear energy source material may be acquired except under and in accordance with a special grant issued under this Part.

#### 299 Application for special grant

Any person who wishes to mine coal, mineral oils or natural gases or nuclear energy source material may apply to the Board for a special grant, and on such application shall furnish to the Board— (a) full information as to his financial status; and

- (b) particulars of any guarantees that may be required for the performance of his obligations under the special grant; and
- (c) information whether the application relates to coal, mineral oils or natural gases; and
- (d) details illustrated by a sketch plan of the area to be embraced by the grant and the size of such area; and
- (e) if the applicant is a company, the full names and nationality of each director and the full names by which those directors have at any time been known in any part of the world; and (f) any further information required of him by the Board.

#### 300 Consideration and report by Board on application for special grant

(1) The Board shall consider every application in terms of section *two hundred and ninety-nine* and shall report thereon to the Minister with its recommendation whether the application should be granted or refused.

(2) In considering an application in terms of section *two hundred and ninety-nine* the Board shall have regard to whether—

- (a) the applicant is a fit and proper person to be issued with a special grant;
- (b) the financial status of the applicant is such that he will be able to comply with the terms and conditions of any special grant that may be issued to him;
- (c) it would be in the national interest to issue the special grant.

(3) Where the Board recommends that an application shall be granted it may include in its report recommendations relating to—

- (a) the minimum capital which the applicant should be required to invest in the development of the area to be covered by the special grant;
- (b) the period that should be permitted to the applicant to bring operations in the area to be covered by the special grant to the producing stage;
- (c) the minimum rate of production of coal, mineral oils or natural gases or nuclear energy source material that should be conducted by the applicant;
- (d) the amount of royalty that should be paid by the applicant to the Minister in respect of coal, mineral oils or natural gases or nuclear energy source material won by the applicant;
- (e) the annual fee that should be paid by the applicant to the Minister as a consideration for the issue of the special grant.

#### 301 President may grant or refuse application for special grant

(1) The Minister shall submit the report and recommendations of the Board made to him in terms of section *three hundred* to the President who may refuse the application or authorize the Minister to issue a special grant on such terms and conditions as he may fix.

(2) Where the President has refused an application made in terms of section *two hundred and ninety-nine* the applicant shall not make a fresh application in terms of that section until at least three months have elapsed since the refusal of his last application.

#### 302 Rights under special grant personal to the grantee

The rights granted under a special grant shall be personal to the grantee, who may not cede or assign any such rights to any other person unless authorized to do so by the President.

#### 303 Rate of royalty and annual fee

(1) Notwithstanding Part XIV, provision may be made in a special grant stipulating for the payment of royalty on all coal, mineral oils or natural gases or nuclear energy source material won by the grantee under his special grant at such rate as the President may fix.

(2) Provision may be made in a special grant for the payment by the grantee of such annual fee as the President may fix as consideration for the issue of the special grant.

### **304 Amendment of area covered by special grant**

The President may, on application by a grantee, extend or reduce the area covered by his special grant or may alter the boundaries thereof.

### **305 Cancellation of special grant**

(1) If a grantee contravenes the terms and conditions attached to his special grant, the President may cancel such grant.

(2) No grant shall be cancelled in terms of subsection (1) unless written notice has been given to the grantee of the proposed cancellation twelve months before such cancellation.

### **306 Application of certain sections**

(1) Sections *two hundred and ninety two* to *two hundred and ninety-five* shall apply, *mutatis mutandis*, in relation to every special grant.

(2) Section *two hundred and sixty nine* shall apply, *mutatis mutandis*, to a grantee in respect of his mining location registered under the special grant, and for this purpose the date of the expiration or cancellation of the special grant shall be regarded as the date of the forfeiture of such mining location.

### **307 This Part not to apply to certain blocks registered under Part XII of Cap. 195 of 1939**

This Part shall not apply to the holder of a block of coal, mineral oil or natural gas claims which was registered under Part XII of the Mines and Minerals Act [*Chapter 195 of 1939*].

## **PART XXI**

### **MINING ON TOWNLANDS**

### **308 Application of this Act to town lands**

(1) This Part shall apply to town lands.

(2) The right to prospect for and mine and win minerals on or under any town lands shall be governed by the other Parts of this Act, except in so far as they conflict with this Part.

### **309 Local authorities may make by-laws on certain matters**

The local authority having control over any town lands shall have full power and authority to make and enforce regulations and by-laws for proper and efficient sanitary arrangements, for the enclosing of all pits, excavations and dangerous surface works and for the protection of the neighbourhood within which prospecting and mining are being carried on, and shall for the above purposes have the right to enter upon and inspect all such works existing or proceeding on such lands:

Provided that no such regulation or by-law shall be of any force or effect until approved by the Minister and duly published in statutory instrument.

### **310 Consent required for pegging of sites on town lands**

No holder of a registered mining location shall be entitled to peg or acquire any site on any town lands under section *forty-seven* unless and until he has obtained the consent in writing of the local authority concerned or, failing the consent of such local authority, the consent of the President.

### **311 Limitation of timber rights**

No holder of a prospecting licence or of a mining location situated on town lands shall have the right of cutting indigenous wood or timber upon such lands without the consent of the mining commissioner, who shall only give his consent when such wood or timber interferes with prospecting or mining operations or the erection of buildings required for such operations.

### **312 Disposal of subterranean water**

(1) The holder of any mining location situated on town lands shall lead into the nearest natural water channel any water issuing from or brought to the surface of the ground from the subterraneous working of such location and not being used by such holder.

(2) The holder, while complying with subsection (1), shall not pollute any water in such channel.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## PART XXII

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

#### 313 Interpretation in Part XXII

(1) In this Part—  
“private land” means any land the ownership of which has by law, grant or title deed become vested in any person.

(2) The Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, in respect of matters arising under this Part.

#### 314 Compulsory purchase or sale of private land covered by mining lease

(1) Subject to subsection (3), where a mining lease has been issued and the whole or a portion of the land covered by such mining lease is private land, the owner of such private land may apply to the Administrative Court for an order compelling the holder of such mining lease to purchase—

- (a) so much of his land as falls within the area of the mining lease;
- (b) where a portion only of his land falls within the area of the mining lease and by reason of the presence of such mining lease or the nature of the mining operations carried out in the area of such mining lease all his land has become unsuitable, so far as he or the occupier of the land, if any, is concerned, for the agricultural purpose for which it is being used or is *bona fide* intended to be used, all such land.

(2) Subject to subsection (3), the holder of a mining lease may apply to the Administrative Court for an order compelling an owner of private land to sell to him so much of such land as falls within the area of the mining lease.

(3) It shall not be competent for an application to be made under this section for an order if the proposed purchaser is a person who is precluded by the Constitution or any law from owning the land concerned or if the purchase or sale of such land is prohibited by any such enactments.

(4) The Administrative Court may grant or refuse the order applied for.

(5) The Administrative Court, in deciding whether to grant or refuse an order, shall have regard to the following matters—

- (a) the extent to which the surface of the land concerned is required or likely to be required for mining operations;
- (b) the value of permanent improvements erected or constructed for mining purposes or likely so to be erected or constructed on the land concerned;
- (c) the value of the land for agricultural purposes;
- (d) the interference or possible interference with the use or intended use of the land by the owner or occupier thereof of the mining operations being carried out or intended to be carried out by the holder of the mining lease;
- (e) in the case of an order referred to in paragraph (b) of subsection (1), whether the land concerned has become unsuitable, so far as the owner or occupier of the land, if any, is concerned, for the agricultural purpose referred to in that paragraph;
- (f) any other matter which to the Court may seem relevant.

(6) If the Administrative Court grants the order it shall determine the price to be paid for the land and shall in doing so make allowance for the depreciation, if any, in the value of any remaining portion of the land concerned due to the reduction in area of the land or the mining operations of the holder of the mining lease, but no deduction shall be made in respect of the appreciation, if any, in the value of such remaining portion due to such mining operations.

#### 315 Right of holder of mining lease to purchase State land

(1) Subject to subsection (2), the holder of a mining lease shall be entitled to purchase from the State any State land falling within the area of the mining lease:

Provided that nothing in this subsection contained shall be construed so as to constitute an encumbrance upon such land or so as to preclude the sale or other alienation thereof by the State to some other person before such holder has indicated that he intends to purchase such land.

(2) It shall not be competent for the holder of a mining lease to purchase land under subsection (1) if he is precluded by the Constitution or any law from owning such land or if the purchase or sale of such land is prohibited by any such enactment or if such land is land held by any person under any enactment or agreement whereby such person is entitled to obtain from the President title thereto on the fulfilment by him of the conditions fixed by such enactment or agreement, as the case may be.



(3) If the holder of the mining lease and the President are unable to agree upon the price to be paid for the land mentioned in subsection (1), the President shall refer the matter to the Administrative Court for determination.

### **316 Compulsory purchase of land not covered by mining lease**

(1) For the purposes of this section—

“mining property” means a registered block or two or more such blocks, whether contiguous or otherwise, owned by one person from which the ore is being treated at the same milling or reduction plant or which are under the control of one registered mine manager.

(2) Where the owner of any private land on which the whole or a portion of a mining property, other than a mining lease, is situated considers that the nature and extent of the mining operations being carried out or likely to be carried out thereon fulfil the requirements in that regard for the issue of a mining lease in respect of such mining property, he may make application in writing to the Board, through the mining commissioner, for a certificate to that effect.

(3) The Board shall, on a day fixed by it, being not less than thirty days after the date of posting such notification, and notified to the applicant and the holder of the mining property, hear such evidence and arguments as those persons may wish to lay before it in regard to the grant or refusal of the application.

(4) If the Board is satisfied that mining operations on a substantial scale are likely to be conducted for a considerable period on the mining property concerned it shall issue the certificate unless the holder of the mining property satisfies the Board that his financial status is such that he is unable to meet any payment for which he would be liable if the order mentioned in subsection (6) were granted.

(5) The decision of the Board to grant or refuse the application shall be final and without appeal:

Provided that if the Board's decision to refuse the application is based solely on the ground that the financial status of the holder is inadequate, the owner of the land may appeal against such decision to the Administrative Court.

(6) On the issue to him of the certificate referred to in subsection (2) the owner of the land concerned may apply to the Administrative Court for an order compelling the holder of the mining property to purchase—

(a) so much of his land as falls within the area of such mining property; or

(b) where a portion only of his land falls within the area of the mining property and by reason of the presence of such mining property or the nature of the mining operations carried out thereon all his land has, so far as he or the occupier of the land, if any, is concerned, become unsuitable for the agricultural purpose for which it is being used or is *bona fide* intended to be used, all such land;

and subsections (3), (4), (5) and (6) of section *three hundred and fourteen* shall apply, *mutatis mutandis*, in respect of such application.

(7) The Board may, if it considers that any application made under this section is vexatious or frivolous, order the applicant to reimburse the holder of the mining property in respect of any costs or expenses incurred by him in connection with the application in such amount as to the Board may seem just and equitable.

### **317 Compulsory purchase of land covered by mining locations**

(1) If the owner of any holding of private land upon which one or more registered mining locations are situated finds that by reason of the presence of such mining locations or the nature of the mining operations carried out thereon such holding has become unsuitable, so far as he or the occupier of the land, if any, is concerned, for the purpose for which it is being used or is *bona fide* intended to be used, he may apply to the Minister for the purchase by the President of such holding of land and shall inform the Minister of the price which he considers should be paid to him for such land:

Provided that it shall not be competent for any owner so to apply by reason of the presence of a registered mining location owned by him or in which he or his wife or the minor child of either of them has a direct or indirect interest or of any registered mining location, other than a mining lease, which was registered within a period of two years before the making of such application.

(2) If the President is satisfied that—

(a) the holding of land has, by reason of the presence thereon of the mining location or by reason of the nature of the mining operations carried out thereon, become unsuitable, so far as the applicant or the occupier, if any, of such land is concerned, for the purpose mentioned in subsection (1); and

(b) the price stipulated by the applicant is fair and reasonable; he shall purchase such holding at that price.

(3) If the President is not so satisfied as to the matter mentioned in paragraph (a) of subsection (2) or as to the price stipulated by the applicant or as to both such matters, he shall refer such matter or matters to the Administrative Court for determination.

(4) The Administrative Court shall determine any matter referred to it under subsection (3) and shall cause a copy of such determination to be sent to the Minister and to the applicant.

(5) If the Administrative Court finds in favour of the applicant on the matter mentioned in paragraph (a) of subsection (2) or the President has not referred that matter to the Administrative Court for determination, the President shall purchase the land at the price stipulated by the applicant or, if the matter of the price to be paid for such land has been referred to the Administrative Court and the applicant agrees within thirty days of the Court's determination to accept the price determined by that Court, at the price so determined:

Provided that if the applicant does not so agree to accept the price as determined by the Administrative Court, the President shall not be bound to purchase the land.

(6) Where the President has purchased land under this section then, for the purposes of subsection (1) of section *three hundred and fourteen*, such land shall be deemed to be private land and the President shall be deemed to be the owner thereof.

### **318 Cost of survey to be borne by holder of mining location**

Where any land is purchased by the holder of a mining location under the provisions of this Part, the cost of the survey of such land for the purpose of obtaining title thereto shall be borne by such holder.

## **PART XXIII**

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

### **319 Interpretation in Part XXIII**

In this Part—

“expropriated location” means a mining location which has been transferred to the Minister in terms of this Part and is registered in his name;

“order” means an order of expropriation made under this Part.

### **320 Report that mining location not being adequately worked**

(1) If any person has reason to believe that a registered mining location is not being worked at all or is not being adequately developed or worked, he may report the matter in writing to the mining commissioner and, with such report, shall lodge a deposit of four hundred dollars.

(2) On receipt of such report the mining commissioner shall obtain from a Government mining engineer a report on the matter.

(3) If the mining commissioner has reason to believe, whether in consequence of the receipt of a report mentioned in subsection (1) or otherwise, that a registered mining location is not being worked at all or is not being adequately developed or worked, he shall obtain a report from a Government mining engineer.

(4) On receipt of the report of the Government mining engineer under subsection (2) or (3), the mining commissioner shall refer the matter to the Board.

### **321 Board shall investigate why mining location is not being adequately developed or worked**

Upon the receipt of a report in terms of section *three hundred and twenty*, the Board shall inquire into the history of the mining location and investigate the mining activities that have been or are being conducted on such mining location with a view to discovering whether such location is being adequately developed or worked.

### **322 Board may call upon holder to show cause why his mining location should not be expropriated**

If after investigation the Board is of opinion that the mining location is not being developed or worked at all or is not being adequately developed or worked, it shall call upon the registered holder of such location to show cause why such location should not be expropriated.

### **323 Recommendation for order of expropriation**

After considering the representations made by the registered holder under section *three hundred and twentytwo*, the Board may recommend to the President that an order expropriating the mining location be made by him unless it is satisfied as to any one of the following matters—

(a) that the failure to develop or work or adequately to develop or work such location is due to causes beyond the control of the holder, which he has made every effort to overcome;

(b) that it is the holder's intention to start or continue developing or working the location within a period of six months on a scale satisfactory to the Board;

- (c) that the location is essential to other mining operations being conducted by the holder and will be worked when the mine which he is at present operating ceases to be productive;
- (d) that there is reasonable cause for the delay in developing or working such location or for not adequately developing or working such location;
- (e) that the location forms part of a series of not more than ten blocks contiguous to a main block being worked by the holder and is essential to the proper working of such main block.

### **324 Order of expropriation**

(1) Whenever the Board makes a recommendation for the making of an order of expropriation, it shall submit to the President all relevant documents and a written report setting out the grounds for its recommendation.

(2) Upon receipt of such report and recommendation the President may require the Board to make further investigations and shall afford the holder of the location an opportunity of making representations to him why the order should not be granted.

(3) If after considering all the information laid before him the President is of opinion that the mining location is not being worked at all or is not being adequately developed or worked, he may make an order declaring that the mining location is expropriated.

(4) Every order made by the President under this section shall be published in the *Gazette* and a copy of the order shall be sent to the holder of the expropriated mining location and to the mining commissioner of the district in which the mining location is situated and, where the expropriated mining location is a mining lease, to the Board.

### **325 Transfer of expropriated location**

(1) Upon receipt of a copy of the order the mining commissioner shall transfer the expropriated location to the Minister by making the necessary entries in the appropriate registers and other records and shall inform the Board of such transfer.

(2) No fee or duty shall be payable in respect of anything done in terms of subsection (1).

(3) Save as provided by section *three hundred and twenty-nine*, no compensation shall be payable to the holder of any expropriated location or to any other person in respect of an expropriated location.

### **326 Part XI not to apply to expropriated location in certain respects**

The provisions of Part XI in regard to the obtaining of inspection certificates shall not apply to an expropriated location.

### **327 Sale of expropriated location**

(1) The Board may sell any expropriated location on such terms and conditions as it thinks fit.

(2) The Board shall publish monthly in the *Gazette* and in such newspapers circulating in Zimbabwe as it may select a statement describing expropriated locations and calling for tenders for their purchase.

(3) The Board shall be under no obligation to accept any tender or the highest tender.

(4) In determining the purchaser the Board shall pay due regard to his ability to finance and conduct mining operations on the expropriated location.

### **328 Disposal of expropriated location without consideration**

The Minister may, on the recommendation of the Board, transfer any expropriated location to any person for no valuable consideration.

### **329 Disposal of purchase price**

The purchase price of any expropriated location shall be paid by the Board to the holder from whom such location was expropriated less any costs incurred by the Board in connection with such location and its sale.

### **330 Forfeiture of expropriated location**

If an expropriated location has not been sold or transferred within twelve months of the date when it was transferred to the Minister, the Board shall, in the case of a mining lease, cancel such lease, or otherwise the mining commissioner shall declare such expropriated location to be forfeited, whether or not it is currently protected from forfeiture by an inspection or protection certificate issued in terms of Part XI:

Provided that if the Board is of the opinion that no economic deposit of any mineral has been found or is likely to be found thereon, such location may be so cancelled or forfeited after the expiration of such shorter period as the Board may fix.

### **331 Part XI applies to expropriated location on transfer from Minister**

An expropriated location which has been transferred to any person shall be subject to Part XI in regard to the obtaining of inspection certificates, and for such purpose the date of registration by the mining commissioner of the transfer shall be deemed to be the date of the registration of the block or the date of the issue of the mining lease, as the case may be.

### **332 Refund of deposit**

The deposit mentioned in section *three hundred and twenty* shall, after the Board has considered the matter under section *three hundred and twenty-three*, be refunded to the person who made the deposit:

Provided that if the Board is of the opinion that the report made under section *three hundred and twenty* is frivolous or vexatious it may direct that such deposit be forfeited and be paid by the mining commissioner into the Consolidated Revenue Fund. **333 Applicability of this Part**

Nothing in this Act contained shall be construed so as to preclude the expropriation under this Part of a mining location, the last issued inspection certificate for which was obtained by payment under section *two hundred and twelve*.

## PART XXIV

### TERMINATION OF ENTITLEMENT TO SHARE IN ROYALTIES

#### **334 Interpretation in Part XXIV** In this Part—

“beneficiary” means the beneficiary under an entitlement;

“entitlement” means a right, by virtue of a condition in the title deeds to any land, to any share in the royalties due on minerals, mineral oils or natural gases won from such land or to any share in any other revenues whatsoever which may accrue by reason of the ownership of the said land from the exercise in relation to such land of mining or kindred rights under the law relating to mines and minerals;

“judge” means the Chief Justice or any other judge of the High Court whom the Chief Justice may appoint to decide any question of compensation referred to a judge by the President in terms of this Part.

#### **335 President may terminate entitlement**

Subject to this Part, the President may at any time declare any entitlement to be absolutely terminated.

#### **336 President may refer question of compensation to judge**

(1) If the President considers it desirable to terminate an entitlement, the Minister shall notify the beneficiary thereof, who shall forthwith inform the Minister of the amount of compensation which he considers should be paid to him for the loss of his entitlement.

(2) If the President and the beneficiary agree on the amount of the compensation, the President may forthwith declare that the entitlement concerned is absolutely terminated.

(3) Upon any declaration made in terms of subsection (2) the amount of compensation agreed shall become payable to the beneficiary.

(4) If the President and the beneficiary are unable to agree on the amount of the compensation and if, after negotiations with the beneficiary, the President still considers it desirable to terminate the entitlement, the President shall refer the question of compensation to a judge for his determination, and the Minister shall notify the beneficiary of such reference.

#### **337 Procedure and powers of judge**

Subject to this Part, the procedure to be followed in any proceedings for the determination of compensation in terms of this Part shall be as determined by the judge, who shall have and may exercise, *mutatis mutandis*, any of the powers conferred in terms of the Arbitration Act [*Chapter 7:02*] or the Schedule thereto on— (a) a judge in regard to the summoning of witnesses; and (b) an arbitrator.

#### **338 No costs to be awarded**

Save as provided in section *three hundred and thirty-nine*, neither party to any proceedings in terms of this Part shall be liable to pay the costs of the other party and the judge shall not make any order as to costs.

#### **339 Powers of President on determination of compensation**

(1) The President shall, within twelve months of the date of the determination by the judge of the amount of compensation due to a beneficiary—

- (a) declare that his entitlement is absolutely terminated; or
- (b) notify the beneficiary that he does not intend to make such a declaration.

(2) Upon any declaration made in terms of paragraph (a) of subsection (1), the amount of compensation fixed by the judge shall become payable to the beneficiary in question from moneys appropriated for the purpose by Act of Parliament.

(3) If the President gives notification in terms of paragraph (b) of subsection (1), the Minister shall, subject to subsection (4), pay to the beneficiary from moneys appropriated for the purpose by Act of Parliament the costs incurred by the beneficiary in connection with the proceedings.

(4) If the Minister considers that the amount claimed as costs by a beneficiary for the purposes of subsection (3) is excessive, he may require the costs to be taxed, in which event the costs shall be determined and taxed by the registrar of the High Court in accordance with the rules of the High Court relating to the taxation of costs.

(5) Notification in terms of paragraph (b) of subsection (1) shall not preclude the President thereafter from taking action afresh in terms of section *three hundred and thirty-six*:

Provided that, on a further reference to a judge to fix the amount of compensation, no alteration to the amount of compensation previously fixed shall be made unless fresh facts justifying such alteration are adduced to the judge.

#### **340 Effect of declaration in terms of this Part**

(1) With effect from the date on which the President makes a declaration in terms of this Part that an entitlement is absolutely terminated, that entitlement shall lapse and cease to be of force or effect for all purposes whatsoever.

(2) Whenever an entitlement has been terminated in terms of this Part, the Minister shall give written notice of the fact and date of such termination to the beneficiary and to the Registrar of Deeds, who shall record the termination in the appropriate register in the Deeds Registry.

### **PART XXV**

#### **ADMINISTRATION OF ACT**

#### **341 Administration of Ministry**

(1) The Secretary shall be and is hereby vested with authority generally to supervise and regulate the proper and effectual carrying out of this Act by mining commissioners or other officers of the Public Service duly appointed thereto, and to give all such orders, directions or instructions as may be necessary.

(2) The Secretary may at his discretion assume all or any of the powers, duties and functions by this Act vested in any mining commissioner, and may lawfully perform all such acts and do all such things as a mining commissioner may perform or do, and is further empowered in his discretion to authorize the correction of any error in the administration or in the carrying out of the provisions of this Act, or to perform any other lawful act which may be necessary to give due effect to its provisions.

(3) The Secretary may exercise such of the powers by this Act vested in the Minister as may be delegated to him by the Minister.

#### **342 Declaration of mining districts**

The Minister may, from time to time, by statutory instrument, declare any area within Zimbabwe to be a mining district, and may, by like notice, alter the boundaries of or abolish any such district.

#### **343 Appointment of officers**

For the purposes of this Act, there shall be— (a)

a Chief Mining Commissioner; and

(b) in respect of every mining district, a mining commissioner who shall perform the functions imposed upon him under this Act or any other enactment; and

(c) whenever the exigencies of the mining industry so require, an acting mining commissioner, assistant mining commissioner or such other officer to perform the functions of a mining commissioner; and

(d) a Director of Geological Survey; and

(e) a Director of Metallurgy; and

(f) a Chief Government Mining Engineer; and

(g) Regional Mining Engineers; and

(h) a Chief Mine Surveyor; and

(i) Regional Mine Surveyors; and

(j) such inspectors of mines and other mining officers as may be necessary for the efficient administration of this Act; who shall respectively perform the functions imposed upon them under this Act or any other enactment.

#### **344 Mining commissioner's powers to take oaths**

(1) Any such mining commissioner, acting mining commissioner or assistant mining commissioner may, with the consent of the Secretary, delegate to any other officer any of the powers or duties by this Act vested in him.

(2) In all matters in which, in terms of this Act, an oath or solemn declaration is required to be made, such mining commissioner, assistant mining commissioner, acting mining commissioner or any other person may and is hereby empowered to administer such oath or receive such solemn declaration.

#### **345 Jurisdiction of High Court and mining commissioners**

(1) Except where otherwise provided in this Act, or except where both the complainant and defendant have agreed in writing that the complaint or dispute shall be investigated and decided by the mining commissioner in the first instance, the High Court shall have and exercise original jurisdiction in every civil matter, complaint or dispute arising under this Act and if in the course of any proceeding and

if it appears expedient and necessary to the Court to refer any matter to a mining commissioner for investigation and report, the Court may make an order to that effect.

(2) Where the parties have agreed in writing, as provided for in subsection (1), the mining commissioner shall, in the investigation and the decision of the complaint or dispute, be guided by sections *three hundred and forty-six to three hundred and sixty*.

(3) The mining commissioner, before whom any claim, dispute or proceeding is brought, shall hear and determine such claim, dispute or proceeding in the manner set forth in this Act and shall be and is hereby empowered to give and make all such orders, directions, judgments or decrees, and do or cause to be done all such things, as may be necessary to give effect to his decision in respect of such claim, dispute or proceeding:

Provided that no mining commissioner shall have or exercise any criminal jurisdiction except as provided in section *three hundred and eighty-nine* mentioned, nor adjudicate upon any claim for debt or damages.

### **346 Judicial powers of mining commissioners**

(1) A mining commissioner may hold a court in any part of the mining district to which he is appointed, or at his discretion in such place outside the said mining district as may be convenient to the parties interested, and may adjourn such court from time to time and from place to place as occasion may require.

(2) A mining commissioner shall hear and determine, in the simplest, speediest and cheapest manner possible, all actions, suits, claims, demands, disputes and questions arising within his jurisdiction, as set forth in section *three hundred and forty-five*, and make such orders as to costs as he may deem just.

(3) For the purpose of such hearing a mining commissioner shall examine witnesses on oath, which oath he is hereby empowered to administer, and take down the evidence in writing to be signed by the person giving the same, and do all things which he may deem necessary for a proper decision.

(4) A mining commissioner shall have power to summon all witnesses required by the respective parties, or whom he may deem necessary to appear before him, and, in default of any such witness appearing, may, upon proof that his reasonable expenses have been paid or tendered to him, issue a warrant for his arrest, and may inflict upon him such penalties as he would have been liable to for disobedience to a subpoena to appear before a magistrates court.

(5) The service of the summons and the execution of the warrant, issued in terms of subsection (3), may be lawfully performed by any person appointed for that purpose by the mining commissioner.

(6) Any witness who, being duly sworn, wilfully gives false evidence before such mining commissioner on any question material to the matter at issue, knowing such evidence to be false, or not knowing or believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

### **347 Summons and commencement of proceedings before mining commissioner**

(1) Every proceeding in a mining commissioner's court shall be commenced by a summons which shall as nearly as material be in the prescribed form.

(2) Every such summons shall be issued by such mining commissioner upon the application of any complainant, and shall be filled up according to the nature of his case so as to show the substance of the complaint, and shall require the defendant to appear before the mining commissioner's court on a day and at a place to be named in the summons.

(3) Upon the day and at the place so named, or upon any adjourned day of hearing and upon proof of such service or substituted service of the said summons as the mining commissioner thinks sufficient, the court shall proceed to investigate the matter of such complaint, and in the presence of the parties interested, or of such of them as appears to him sufficiently to represent all the parties interested, or in the absence of any of the parties interested who, having been duly served with such summons, do not appear, shall hear, receive and examine evidence and determine such complaint in a summary way, with full power to adjourn the hearing of such complaint to any other time or place, and to make all such amendments in any proceedings in such court as may be necessary for the purpose of determining the real question at issue between the parties.

### **348 Summary hearing of complaints**

Notwithstanding requirements of sections *three hundred and forty-five* and *three hundred and forty-six*, the mining commissioner may, if the parties concerned consent thereto in writing and are both present at the hearing, hear and determine any such complaint as above mentioned, summarily, and without any formal proceedings taken before him.

A minute of the decision shall be made by him in a register of complaints in which shall be entered every complaint laid before him, together with particulars thereof.

### **349 Mining commissioner may amend summons**

No complaint shall be dismissed by any mining commissioner for informality, either in the summons itself or in the entry thereof, nor shall any objection to any such summons or complaint be taken or allowed for any alleged defect or misnomer or inaccurate description of any person or place or on the ground that the complainant appears at the hearing of the summons to be entitled to different relief from that sought therein, or for any variance between such summons and the evidence adduced on the part of the complainant, but such summons may be amended by the mining commissioner so that the real question in controversy between the parties plainly appears and the court shall proceed to adjudicate according to the rights of the parties:

Provided that if it appears to the mining commissioner, upon the hearing of the case, that the defendant has been deceived, misled or prejudiced, by reason of any such amendment having been made, such mining commissioner may, on such terms as to costs or otherwise as he thinks fit, adjourn the further hearing of the case to another day.

### **350 Mining commissioner to keep register of his decisions**

(1) A minute in the form prescribed of every decision of a mining commissioner's court shall be entered by such mining commissioner in the register mentioned in section *three hundred and forty-eight* and he shall make an order in accordance with such decision, and note the same in that register; and such decision with the order so noted shall be signed by the mining commissioner, and no formal order or other record of such decision shall be necessary.

(2) A copy of such minute or order shall be given on demand by the mining commissioner to any of the parties interested therein, and any copy certified by the mining commissioner as a true copy shall at all times be admitted in all courts and places whatsoever as conclusive evidence of such decision or order having been given or made.

(3) Failure to obey any such order shall, unless an appeal to the High Court has been entered against the same, render the person in default liable to the penalties provided by section *three hundred and fifty-nine*.

[Subsection as amended by s. 10 of Act No. 9 of 1997]

### **351 Writs of execution**

(1) Where any sum of money is awarded in a mining commissioner's court by way of costs and the same is not forthwith paid, the mining commissioner, on the application of the person entitled to receive such sum or of any legal practitioner or duly authorized agent on his behalf, shall grant to the party so applying a writ of execution under his hand as nearly as practicable in the form in use in a magistrates court:

Provided that the mining commissioner may withhold the issue of such writ, if he considers it just and reasonable so to do, until after the expiration of three days from the date of the decision under which such sum was awarded.

(2) Any messenger of a magistrates court to whom such writ is directed by such mining commissioner for execution shall do and perform all things in respect of such writ which such messenger is required to do and perform in respect of a writ of execution issued out of a magistrates court in the case of the non-payment of money under the judgment of such court.

(3) Unless an appeal has been noted against the order concerned, any person who contravenes or fails to comply with an order of a mining commissioner in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection substituted by section 4 of Act 22 of 2001]

### **352 Mining commissioner may direct surveys for purposes of trial of case**

If before or during the hearing of any complaint it appears to the mining commissioner that it will be necessary for a survey to be made of any land or mining location in dispute, such mining commissioner may order either party to cause such survey and a plan thereof to be made, and the costs thereof shall be in the discretion of the mining commissioner.

### **353 Mining commissioner's powers when encroachment alleged**

(1) Any mining commissioner may at his discretion upon the application of any person claiming to be legally interested in any mining location, by writing under the hand of such mining commissioner, authorize a surveyor or other duly appointed officer to enter upon any mining location or land adjacent to such firstmentioned mining location for the purpose of ascertaining whether the holder, owner or occupier

of the mining location or land so to be entered upon is encroaching upon such first-mentioned mining location.

(2) Such surveyor or officer may thereupon enter upon the mining location or land described in such order and descend any shaft or mine, and for such purpose use the engines and machinery ordinarily employed for that purpose.

(3) Such surveyor or officer may make such plans or sections of the mining location or land entered upon and of any drives or other works therein or thereon as are necessary for the purpose aforesaid.

(4) Every such surveyor or officer shall, before entering upon such mining location or land, make a sworn declaration before such mining commissioner that he, the said surveyor or officer, will not, except as a witness in a court of justice, without the consent in writing of the holder, owner or occupier of the mining location or land to be entered upon, divulge or cause to be divulged, to any person whomsoever, any information obtained upon or by such entry, save only as to whether such holder, owner or occupier is encroaching upon such firstmentioned mining location.

### **354 Mining commissioner may grant injunctions**

(1) Any person claiming to be legally interested in any mining location, or in any servitude appertaining to a mining location, or complaining that he has been obstructed or interfered with in the enjoyment of his rights in respect of the premises aforesaid, may make application to the mining commissioner for an injunction in terms of this section.

(2) At least twenty-four hours before the making of such application the applicant shall serve or cause to be served notice thereof on all the parties interested in opposing the application, or on such persons as appear to the mining commissioner sufficiently to represent such parties.

(3) If the mining commissioner is satisfied that reasonable attempts have been made to serve notices on the parties mentioned in subsection (2) without success it shall be sufficient service of any such notice if the same is advertised in such newspaper and for such time as the mining commissioner appoints.

(4) Upon such application the mining commissioner may in the presence of such parties as aforesaid, or in the absence of any of them upon whom service of such notice is proved to his satisfaction to have been effected, hear, receive and examine evidence.

(5) The mining commissioner may in his discretion and upon such terms as he may consider just, by order under his hand, enjoin any person named in such order to refrain from encroaching upon, occupying, using or working such mining location or servitude as aforesaid, or from prospecting thereon or extracting or removing any mineral or other substance to which this Act applies from such mining location, or from selling or disposing of or otherwise interfering with such mining location, servitude, mineral or other substance or any share or interest therein, or from doing any act whereby the right, title or interest of such applicant in or to the same might be affected, or from obstructing or interfering with such applicant in the enjoyment of his rights in respect of the premises aforesaid.

(6) On every such application the mining commissioner shall make such order as to costs as to him seems just.

(7) Every such order shall be in force for such period as is named therein unless it is sooner discharged by the mining commissioner making it or by the High Court.

(8) Nothing in this section contained shall be deemed to divest the High Court of the power of granting injunctions in any matter arising under this Act.

### **355 How mining commissioner's orders to be served**

Every order made by a mining commissioner under section *three hundred and fifty-four* shall, unless the mining commissioner otherwise orders, be served by delivering a copy to the person to be bound thereby, and at the same time showing the original order if such person requires to see the same, and every such order shall be entered by the mining commissioner, who made it, in the register to be kept by him as aforesaid:

Provided that if the mining commissioner sees fit so to direct, it shall be sufficient service of any such order to publish a copy thereof in such newspaper, and to affix a copy thereof in such conspicuous place at or near the property in dispute, if any, as the mining commissioner appoints.

### **356 When mining commissioner may permit working of locations under injunctions**

When any injunction has been granted by a mining commissioner under this Act, such mining commissioner may, upon application of any holder or holders of any registered mining location adjacent to the mining location under such injunction, who shows to the satisfaction of such mining commissioner that the location of such holder or holders will sustain damage, or be materially depreciated in value, by reason of the non-working of the mining location under injunction, order, upon such terms and conditions as he thinks fit, such working of the mining location as in his opinion will be sufficient to prevent such damage or depreciation and the mining commissioner shall make such order as to the cost of such working as he thinks just.



### **357 Mining commissioner may authorize certain works**

(1) Any holder of any mining location may apply to the mining commissioner for an order authorizing the applicant to sink such boreholes for water on any land or any other mining location or to construct or erect upon or over any land or any other mining location such aqueducts, roads, railways, tramways, wires, electric power lines, fencing or other works as may be necessary for the more advantageous working of the mining location held by the applicant, or authorizing the applicant to sink tunnels or boreholes on such land or other mining location for the purpose of ascertaining or prosecuting any extra-lateral rights to which the applicant may be entitled under the provisions of this Act.

(2) In like manner, the owner or the occupier of any land may apply to the mining commissioner for an order authorizing the applicant to sink such boreholes for water on any mining location or to construct or erect upon or over any mining location such aqueducts, dams, roads, fencing or other works as may be necessary for the better working of his land.

(3) In like manner, any local authority may apply to the mining commissioner for an order authorizing it to construct or erect upon or over any mining location such works as may be necessary for the institution or maintenance of any public services which such local authority may lawfully institute and maintain.

(4) In like manner, the holder of any mining location may apply to the mining commissioner for an order authorizing the applicant to use any existing private road for any lawful purpose in connection with such location.

(5) On receipt of any such application the mining commissioner shall forthwith give notice to the holder, owner and occupier, if any, of the land or mining location on which the borehole for water is to be sunk or upon or over which such works are to be constructed or erected or on which the tunnels or boreholes are to be sunk or over which the road mentioned in subsection (4) passes, as the case may be, calling upon him to appear before the mining commissioner upon a fixed day, not being a day within thirty days of such notice, and to show cause why the order applied for should not be granted:

Provided that if both the applicant and the respondent consent the period of notice may be less than thirty days.

(6) On the day appointed, or on any other day to which the hearing of the matter may be adjourned, the mining commissioner may grant an order authorizing the applicant to do all or any of the acts or things applied for, in, upon or in respect of such land or mining location:

Provided that, before making any order authorizing the applicant to construct a road, the mining commissioner shall consult—

- (a) where any land concerned is Communal Land, any rural district council established for the area concerned;
- (b) in the case of land which is not Communal Land, the conservation and extension officer for the area concerned.

(7) No such order shall be granted unless the mining commissioner is satisfied that the use and working of any land or mining location belonging to any person other than the applicant will not be materially impeded, interfered with or obstructed by any act or thing done pursuant to such order.

(8) The mining commissioner granting any such order may limit such order by such terms, conditions and restrictions as appear to him to be required for the protection of the owner, occupier or holder of such lastmentioned land or mining location, and shall include a condition requiring the holder of the mining location to maintain or contribute towards the cost of maintaining any road mentioned in subsection (4), and may at any time on due cause shown amend or cancel such order.

(9) No such order shall be deemed in any way to affect or bind any owner, occupier or holder to whom no such notice as aforesaid has been given.

(10) Nothing in this section contained shall be deemed in any way to prejudice the right of any person thereafter to recover from the applicant or any other person acting under any such order damages for any injury which he may prove to have been sustained by him in consequence of any act or thing done by the applicant pursuant to any such order by any mining commissioner.

(11) Any person who is aggrieved by any order made by the mining commissioner under this section or by the refusal of the mining commissioner to make such an order may, within ten days thereof, appeal against such order or such refusal, as the case may be, to the Administrative Court.

### **358 How acts ordered by mining commissioner to be performed**

Whenever a mining commissioner's court or mining commissioner is empowered or required by this Act to cause any act to be performed, and the mode of performing such act is not otherwise expressly provided for, any person verbally authorized by the mining commissioner, and in his presence, or any police officer authorized in

writing by the mining commissioner, may perform such act, and all police officers shall, if so required, aid and assist any mining commissioner or person authorized as aforesaid in the performance of his duty under this Act.

### **359 Penalty for contempt of mining commissioner's court**

(1) If any person—

- (a) wilfully insults a mining commissioner during his sittings in court; or
- (b) wilfully interrupts the proceedings of a mining commissioner's court; or
- (c) on being summoned or examined as a witness before a mining commissioner, refuses to be sworn or to answer any lawful question;

the mining commissioner may impose on the offender a fine not exceeding level three or commit him to prison for a period not exceeding one month, or impose such a fine on him and commit him to prison for such a period.

[Subsection substituted by section 4 of Act 22 of 2001]

(2) In any case in which a mining commissioner acts in terms of subsection (1) he shall issue a warrant in the form, as nearly as material, in use in a magistrates court; such warrant shall be good and valid in law without any other order, summons or adjudication whatsoever, and the officer to whom the same is addressed shall obey the same.

(3) In every case in which a mining commissioner has acted in terms of subsection (1) he shall without delay transmit to the registrar of the High Court for the consideration of a judge in chambers a statement certified by him to be true and correct of the circumstances and reasons for having fined or imprisoned the offender, and shall likewise furnish the offender with a copy of such certified statement, and the judge may confirm, amend or cancel any committal order or sentence imposed by the mining commissioner as to him may seem in accordance with real and substantial justice.

### **360 Magistrates court procedure to be observed in mining commissioner's court**

Save as otherwise provided in this Act, the procedure to be observed by a mining commissioner's court and the fees chargeable in respect of any proceedings therein shall, so far as practicable, be in accordance with the law and rules governing procedure and fees in civil cases in magistrates courts.

### **361 Appeal from mining commissioner's court to High Court**

Any party who is aggrieved by any decision of a mining commissioner's court under this Act may appeal against such decision to the High Court, and that court may make such order as it deems fit on such appeal.

[Section as amended by s. 10 of Act No. 9 of 1997]

### **362 Magistrates may hear and decide matters in certain circumstances**

If in any matter between a miner and a farmer, which would otherwise come before the mining commissioner under this Part, the farmer states to the mining commissioner in writing that he wishes the matter decided by the provincial magistrate instead of by the mining commissioner, then the matter shall be heard and decided by the provincial magistrate who for that purpose shall have all the powers conferred by this Part upon the mining commissioner.

### **363 Claim holders must point out boundaries of their locations**

(1) The holder of a mining location shall, when called upon by a mining commissioner or any other person duly authorized thereto by a mining commissioner, point out all notices, beacons, pegs or other landmarks defining or purporting to define in terms of this Act the boundaries of any mining location registered in his name or belonging to him.

(2) Subsection (1) shall apply to any person who was the holder of an abandoned, forfeited or cancelled mining location in respect of which a quitance certificate is required and has not been issued under section *two hundred and sixty-nine*.

(3) If the holder of the mining location fails or refuses to comply with subsection (1), the mining commissioner may by registered letter call upon him so to comply and at the same time warn him that on failure to do so within the period stated in such letter such location will become liable to forfeiture and if the address of the holder is not known the mining commissioner shall cause a notice in the like terms to be inserted in the *Gazette*.

(4) If within the period mentioned in subsection (3) such holder has not so complied, the mining commissioner may declare the mining location to be forfeited, and such forfeiture shall not relieve such holder from any other penalty to which he may be liable under this Act.

### **364 Disabilities of officials**

(1) Except on behalf of the State without personal reward or gain, no official in the Ministry responsible for mines shall directly or indirectly acquire or hold any mining location or any interest in such location, or carry on any trade or undertake any agency of any sort whatsoever, or have any share in any mining company or any mining partnership carrying on business in Zimbabwe, or in any partnership

in any mining business, or be connected with any mining company as director, adviser, manager or official.

(2) Any official who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight, in addition to any penalty to which he may be liable under any law relating to the Public Service.

[Subsection amended by section 4 of Act 22 of 2001]

### **365 Prohibition of use of patented metallurgical process, etc.**

(1) Subject to sections 34, 35 and 36 of the Patents Act [*Chapter 26:03*], no official in the Ministry responsibility for mines shall, within ten years of his leaving the service of the Ministry, use for his personal reward or gain or for that of any other person any metallurgical process, prototype plant, machine or other invention produced with public funds for the service of the State, in respect of which specifications relating thereto have been lodged with the Patent Office.

(2) Subsection (1) shall apply, *mutatis mutandis*, to the reproduction, refinement or simulation of any metallurgical process, prototype plant, machine or other invention referred to in that subsection.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level nine.

[Subsection substituted by section 4 of Act 22 of 2001]

### **366 Mining commissioner may sue for and have hypothec for amounts due**

(1) The mining commissioner, or other official duly authorized thereto by him, may ask, demand, sue for, recover and receive all amounts due and payable in respect of licences, royalties, fines, transfer duties or any other fees payable on or in connection with any mining location in his mining district.

(2) For any such amounts the mining commissioner shall have a hypothec against such location and all buildings, machinery or plant thereon which are the property of the holder of the location, and against any machinery and plant thereon which are the property of a lessee of the location; such hypothec shall be preferent to any other hypothec or lien whatsoever:

Provided that where such royalty is payable by any person other than the holder of the mining location, the mining commissioner shall not have a hypothec therefor against such location or such buildings, machinery or plant which are the property of such holder.

### **367 Indemnity of officials**

No action for injury or wrong shall lie in any court against any mining commissioner or other official for any act done in good faith by him in the exercise of the functions by this Act vested in him.

## **PART XXVI**

### **OFFENCES AND PENALTIES**

### **368 Prospecting prohibited save in certain circumstances**

(1) Subject to subsections (2) and (3), no person shall prospect or search for any mineral, mineral oil or natural gas except in the exercise of rights granted under a prospecting licence, exclusive prospecting order or special grant or unless he is the duly authorized representative of the holder of such licence, order or special grant and acting in the exercise of such rights.

(2) No person shall prospect or search for any mineral, mineral oil or natural gas unless he is an approved prospector.

(3) No approved prospector registered for Communal Land only in terms of subparagraph (i) of paragraph (a) of subsection (3) of section *fifteen* shall prospect or search for any mineral, mineral oil or natural gas elsewhere than in Communal Land.

- (4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and liable—
- (a) if there are no special circumstances in the particular case, to imprisonment for a period of not less than two years; or
  - (b) if the person convicted of the offence satisfies the court that there are special circumstances in the particular case why the penalty provided under paragraph (a) should not be imposed, which circumstances shall be recorded by the court, to imprisonment for a period not exceeding two years or a fine not exceeding level ten.

[Subsection inserted by section 46 of Act 12 of 2006]

(5) A court sentencing a person under paragraph (a) of subsection (4) shall not order that the operation of the whole or any part of the sentence be suspended.

[Subsection inserted by section 46 of Act 12 of 2006]

### **369 Production of authority to prospect**

(1) Every person prospecting or searching for any mineral, mineral oil or natural gas shall, if so requested by any official duly authorized thereto by the mining commissioner or at the request of any police officer or of the owner or the occupier of the land on which he is so prospecting or searching, or of the duly authorized representative of such owner or occupier, produce his certificate of registration as an approved prospector, his prospecting licence or evidence of any other authority under which he is prospecting.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

### **370 Protection of open workings by prospectors**

(1) Every person digging a prospecting trench shall throw out the earth in such manner as to form as far as possible regular ridges on either side of such trench.

(2) Every person acting under and by virtue of any prospecting licence, exclusive prospecting order or special grant shall fence or enclose the mouths of all his shafts and other open surface workings and excavations sufficiently to ensure the safety of persons and stock, and he shall maintain such fencing or other works in good and effective repair while carrying on his work and before abandoning any prospecting area, he shall fill in such shafts, workings and excavations or shall so fence or deal with them as permanently to ensure the safety of persons and stock, and shall restore any work previously erected or constructed for the protection of mine workings which he may have removed or interfered with, and shall notify the occupier, if any, of the land that he has completed the protection work required under the provisions of this subsection:

Provided that if any such shaft, working or excavation is within twenty metres of a public road or thoroughfare he shall not fence it, but shall fill it in.

(3) Subject to the proviso to subsection (2), the manner in which shafts, open surface workings and excavations shall be dealt with for the purposes of subsection (2) shall be prescribed by regulations and compliance with such regulations shall be sufficient compliance with that subsection.

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

[Subsection inserted by section 4 of Act 22 of 2001]

(5) The court that convicts a person of contravening subsection (4) may order the cancellation of any prospecting licence held by him, and thereupon the licence shall be cancelled and no new licence shall be issued to him until he has proved to the satisfaction of the Secretary that he has complied in all respects with subsection (1) or (2), as the case may be.

[Subsection inserted by section 4 of Act 22 of 2001]

### **371 Duties of absentee prospector**

(1) Whenever an approved prospector, acting under and by virtue of—

- (a) a prospecting licence, proposes to be absent from the area covered by a prospecting notice; or
- (b) an exclusive prospecting order or special grant for prospecting, proposes to be absent from his area of operations;

for a continuous period of more than twenty-four hours and to leave any employees in such area during his absence, he shall appoint a suitable person to be in charge of such employees and shall provide him with written evidence of such appointment which he shall produce upon request by the owner or occupier of the land or the duly authorized representative of such owner or occupier.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

### **372 Illegal pegging**

(1) No person shall intentionally peg any ground which is not open to prospecting.

(2) No person shall post— (a) a prospecting notice;

(b) a discovery notice; or

(c) a registration notice, save a registration notice applicable to the pegging of—

(i) a site in terms of section *forty-eight*; or

(ii) a secondary reef in terms of section *one hundred and seventy*;

unless he is an approved prospector and the holder of a prospecting licence or the duly authorized representative of such holder, and there is correctly stated in such notice the number of the prospecting licence under which such notice is to be posted.

(3) No person shall peg any ground, save ground to be pegged as— (a) a site in terms of section *forty-seven*; or

(b) a secondary reef in terms of section *one hundred and seventy*; unless he is an approved prospector.

(4) No person shall post a prospecting, discovery or registration notice which is incorrect in any material particular.

(5) No person shall peg a mining location in a manner other than that prescribed.

(6) No person shall wilfully peg a larger or longer mining location than he is entitled to peg or purports to peg.

(7) No person shall register or attempt to register a mining location under or by virtue of a prospecting licence other than the one under which it was pegged.

(8) No person shall register or attempt to register a mining location under or by virtue of a prospecting licence of which he was not the lawful holder at the time of pegging.

(8a) Any person who contravenes subsection (1), (2), (3), (4), (5), (6), (7) or (8) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(9) The mining commissioner may refuse to register a mining location in respect of which there has been a contravention of this section.

### **373 Illegal cutting of wood**

(1) No person purporting to act under section *twenty-nine, one hundred and three, one hundred and seventy-eight* or *two hundred and ninety-four* shall cut, fell, remove or use any indigenous wood or timber for any other purpose than those therein authorized.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

### **374 Interference with fences**

(1) Save as provided in section *two hundred and seventy*, no holder of a prospecting licence, exclusive prospecting order or special grant and no miner shall cut or in any way interfere with any fence on any land, except with the consent in writing of the owner or the occupier of such land or under an order granted in terms of section *three hundred and fifty-seven*.

(2) No owner or occupier of any land shall cut or in any way interfere with any fence on any mining location erected by the holder or miner of such location, except with the consent in writing of such holder or such miner or under an order granted in terms of section *three hundred and fifty-seven*.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

### **375 Beacons and pegs to be maintained in good order**

(1) The holder of any mining location who fails, in terms of this Act, to erect or to keep in proper order and in their proper positions his notices, pegs, beacons or trenches of such location shall be guilty of an offence and liable to a fine not exceeding level three and, in addition, to a fine not exceeding level one for each month or portion of a month during which he has allowed such location to remain improperly designated or beacons after notice thereof has been given to him by the mining commissioner.

[Subsection amended by section 4 of Act 22 of 2001]

(2) Subsection (1) shall apply to any person who was the holder of an abandoned or forfeited mining location in respect of which a quitance certificate is required and has not been issued under section *two hundred and sixty-nine*.

### **376 Position of beacons and pegs may not be altered**

(1) No person shall, except as provided in this Act, deface, alter the position of, remove, pull down, injure, destroy or erect or renew in any other than its proper or original position any peg, notice, beacon

or landmark designating or intended to designate the position, boundary, name or other particular of any mining location, reef or deposit or designating the name of the discoverer or holder thereof.

(1a) Any person contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(2) Save as otherwise provided in this Act, if the position of any one or more of the pegs or beacons of any mining location has been altered or dealt with by the holder of such location or his agent so as to make it appear that any of the original ground is cut off from or any fresh ground is added to such location, or if the holder or his agent has consented to or condoned any such action, the mining commissioner may, in addition to any other penalty attaching to such action, declare any ground so cut off to have ceased to be a portion of such location from the date of such action or from any later date, and no fresh ground so added shall in any case be deemed to have become a portion of such location.

### **377 Mining permitted under certain objects on certain conditions**

(1) For the purposes of this section—

“road” includes any area of land reserved for road purposes under Part III of the Roads Act [*Chapter 13:12*] and any restricted road declared under Part IV of that Act.

(2) Save as otherwise provided in subsection (3) the holder of a mining location shall not exercise any right to carry out mining operations in respect of such location beneath any of the following— (a) any road, railway or railway reserve or pipeline reserve;

(b) any electric power line;

(c) any aqueduct, pipeline, well or borehole;

(d) any land within the surveyed limits of any city, town, township or village referred to in paragraph (c) of subsection (1) of section *thirty-one*;

(e) any licensed aerodrome or any State emergency landing ground or State aerodrome; (f) any State rifle range;

(g) any cemetery;

(h) any race course, public park or playground reserved under section *thirty-five*;

(i) any kraal;

(j) any building stand or machinery site;

(k) any river, lake, dam, reservoir or irrigation work other than irrigated lands;

(l) land under cultivation or land to which an approved cultivation scheme relates;

(m) any other surface object which in the opinion of the Chief Government Mining Engineer requires protection and of which he has given written notice to the holder;

or beneath the land outside the boundaries of any such premises as aforesaid and lying within such distance of such boundaries as may be prescribed or otherwise as the mining commissioner may specify.

(3) The Chief Government Mining Engineer or other official authorized thereto by him may grant permission in writing to such holder to carry out mining operations beneath any work mentioned in subsection (2) subject to such terms and conditions as may be specified by the Chief Government Mining Engineer or such other official, as the case may be:

Provided that no such permission shall be given until the owner of such work or other person interested therein has been given an opportunity to submit any objections which he may have.

(3a) Any person contravenes subsection (2) or any term or condition specified in terms of subsection (3) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(4) Nothing in this section contained shall be deemed in any way to prejudice the right of any person to recover from the holder of the mining location damages for any injury which he may prove to have been sustained by him in consequence of any act or thing done by such holder even though the permission mentioned in subsection (3) has been given.

### **378 Salting**

(1) No person shall place or deposit or be accessory to the placing or depositing of any minerals in any spot or place with intent to mislead any person as to the payable nature of such spot or place.

(2) No person shall mingle or cause to be mingled with any sample of any valuable mineral any valuable mineral or substance whatsoever which will increase the value of or in way change the nature of the said ore with intent to deceive, cheat or defraud.

(2a) Any person contravenes subsection (1) or (2) shall be guilty of fraud and liable to be prosecuted and punished accordingly.

[Subsection inserted by section 4 of Act 22 of 2001]

(3) In any proceedings taken for the contravention of subsection (1), if the accused person is proved to have placed or deposited or to have been accessory to the placing or depositing of any mineral in any spot or place where the finding thereof would tend to mislead any other person as to the payable nature of such spot or place, he shall be deemed to have so placed or deposited such mineral in contravention of that subsection unless he produces satisfactory evidence to the contrary.

### **379 Theft of ore**

Any person who breaks, severs or removes any mineral from any mining location, reef or deposit, or who takes, removes or conceals any mineral, slags, slimes, amalgam, residues, tailings or concentrates, the product of any mining location, reef or deposit, with intent to deprive the lawful owner or holder thereof, shall be guilty of theft and liable to be prosecuted and punished accordingly.

### **380 Fraudulent acts**

Any person engaged in the business of milling, leaching, sampling, concentrating, reducing, assaying, transporting or dealing in ores, metals or minerals, who keeps or uses any false or fraudulent scales or weights for weighing such ores, metals or minerals, or who keeps or uses any false or fraudulent assay scales or weights, or enriched fluxes used for ascertaining the assay value of minerals, knowing them to be false or fraudulent, shall be guilty of fraud and liable to be prosecuted and punished accordingly.

### **381 Eviction of squatters**

(1) If it appears to the mining commissioner that a registered mining location occupied by any person in reliance on mining title is being occupied otherwise than for *bona fide* mining purposes in accordance with the rights conferred on the miner thereof by section *one hundred and seventy-eight*, he may serve an order upon the occupier to vacate the mining location.

(2) Unless he has noted an appeal against the order in terms of subsection (3), a person upon whom an order has been served in terms of subsection (1) shall vacate the mining location concerned within fourteen days after the order was served, and shall not return to the location as long as the order remains in force.

[Subsection substituted by section 4 of Act 22 of 2001]

(2a) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(3) A person who is aggrieved by an order served upon him in terms of subsection (1) may at any time before the expiry of the period of fourteen days referred to in subsection (2) lodge an appeal in writing with the Secretary against such order, setting out his grounds of appeal, and shall at the time of noting the appeal deposit such sum as may be prescribed with the Secretary.

[Subsection amended by section 4 of Act 22 of 2001]

(4) When an appeal has been noted in terms of subsection (3), the order appealed against shall be suspended until the Minister has given his decision on the appeal in terms of subsection (5).

(5) The Minister may confirm or set aside the order appealed against and shall give notice of his decision to the mining commissioner and the appellant.

(6) Where the Minister—

- (a) confirms the order, the appellant shall comply with subsection (2) within fourteen days of the service upon him of notice of the decision of the Minister;
- (b) sets aside the order, the deposit paid in terms of subsection (3) shall be refunded to the appellant.

[Paragraph amended by section 4 of Act 22 of 2001]

(6a) Any person who contravenes paragraph (a) of subsection (6) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(7) An order made in terms of this section which has not been set aside by the Minister in terms of subsection (5) shall remain in force until revoked by the mining commissioner on proof to his satisfaction of the intention of the person concerned to occupy the mining location for *bona fide* mining purposes.

### **382 Returns to be furnished**

(1) The holder of any mining location and the miner thereof and the owner of any metallurgical establishment, or his representative, shall furnish to the mining commissioner such returns and reports of his operations thereon or therein, and such certificates or solemn declarations in respect of them, as are prescribed by or under this Act.

(2) Any person who is required to furnish a return, report, certificate or solemn declaration in terms of subsection (1) and who—

- (a) fails to furnish the return, report, certificate or solemn declaration in accordance with that subsection; or
- (b) fails to furnish a corrected return, report, certificate or solemn declaration after due notice that any such return, report, certificate or solemn declaration furnished by him was defective in a material respect;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection substituted by section 4 of Act 22 of 2001]

### **383 False declarations and certificates**

(1) Any person who makes any declaration, supplies any certificate or renders any return in terms of this Act which he knows to be false or which he does not know or reasonably believe to be true in any material particular shall be guilty of an offence.

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

[Subsection inserted by section 4 of Act 22 of 2001]

(2) In addition to any other penalty which it may inflict, the court may order that any person who has been convicted of an offence in terms of subsection (1a) shall forfeit his prospecting licence and all his title to or interest in any mining location to which such declaration or certificate had reference.

[Subsection amended by section 4 of Act 22 of 2001]

(3) It shall be lawful for the Minister to prohibit the issue of a prospecting licence to any person who has been convicted of an offence in terms of subsection (1a) for such period and on such terms as he deems fit.

[Subsection amended by section 4 of Act 22 of 2001]

### **384 Dams or reservoirs to be left intact**

(1) On abandonment, forfeiture or cancellation of any mining location to which a dam or reservoir is attached the holder of such location shall leave such dam or reservoir intact, together with the water it contains: Provided that—

- (i) all machinery and appliances in connection with such dam or reservoir which can be readily removed without in any way injuring, weakening or impairing such dam or reservoir, or impairing the water it contains, may be taken away by the holder within the period of three months next succeeding such abandonment, forfeiture or cancellation;
- (ii) the owner or the occupier of the land on which such machinery or appliances are situated shall not be liable for any damage done to such machinery or appliances in the due and proper exercise of his rights as owner or occupier of the land;
- (iii) the mining commissioner may, if he is satisfied that it is necessary to do so, extend the period within which the machinery or appliances or the machinery and appliances may be removed, by a further period not exceeding three months.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

### **385 Plans and returns of mines to be confidential**

(1) In subsection (2) “tributor” shall have the meaning assigned thereto in section *two hundred and seventynine*.

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

[Subsection inserted by section 4 of Act 22 of 2001]

(2) No person shall, without the permission in writing of the holder or tributor of the registered mining location concerned or the manager of the mine concerned, furnish to any person or allow any person to inspect any—

- (a) plan of any mine working or any copy thereof; or
- (b) return or report or any copy thereof; which has been taken, transmitted or

rendered in terms of this Act.

(3) Subsection (2) shall not apply in respect of any plan, return or report relating to any mining location which has been abandoned, forfeited or cancelled.

[Subsection amended by section 4 of Act 22 of 2001]



### 386 Mining commissioner's powers of entry upon locations

(1) The mining commissioner or other official duly authorized thereto by him may at all times enter upon any mining location or any premises or workings thereof or thereunder for the purpose of—

- (a) generally inspecting such location, premises or workings and examining the mining operations or the treatment of minerals performed thereon and any plans, books, registers or other documents relating thereto; or
- (b) ascertaining whether provisions of this Act are being carried out; or
- (c) ascertaining whether precious stones have been discovered or are being mined, and determining the nature of such stones and whether the extent of the deposit of such stones warrants an application for a licence or permit to mine for precious stones and what measures, if any, are necessary for the protection of any such deposit; or
- (d) ascertaining whether any nuisance exists upon such location, premises or workings; or
- (e) giving directions and taking steps to enforce any provisions of this Act or to abate or remove any nuisance; or
- (f) taking samples or specimens of the rocks, strata or minerals situated upon such location for the purpose of determining the nature or the percentage of the minerals contained therein.

(2) Any person who, without lawful excuse—

- (a) fails or refuses to provide all reasonable facilities and assistance to a mining commissioner or other authorised official when acting under subsection (1); or
- (b) fails or refuses to comply with any direction given by a mining commissioner or other authorised official in terms of paragraph (e) of subsection (1);

shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection substituted by section 4 of Act 22 of 2001]

(2a) A court convicting a person of an offence under subsection (2) may order him to remedy his default by providing such facilities and assistance as the court may specify to the mining commissioner or authorised official concerned or by complying with the direction given by the mining commissioner or authorised official concerned, as the case may be.

[Subsection inserted by section 4 of Act 22 of 2001]

(2b) Any person who contravenes or fails to comply with an order in terms of subsection (2a) shall be guilty of an offence and liable to—

- (a) a fine not exceeding—
  - (i) level five; or
  - (ii) level two for each month during which he has contravened or failed to comply with the order; whichever is the greater; or
- (b) imprisonment for a period of six months;

or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(3) The powers of entry conferred upon a mining commissioner under subsection (1) are hereby conferred upon the Director of Metallurgy, the Chief Government Mining Engineer, the Director of Geological Survey and any Government mining engineer, inspector of mines or other officer appointed in terms of section *three hundred and forty-three*, and subsection (2) shall be read as including a reference to those officials.

### 387 Geological survey

(1) The Director of Geological Survey and any person duly authorized in writing by him may for the purpose of carrying out any prospecting or exploration work on behalf of the State or a geological survey of Zimbabwe or any part thereof—

- (a) enter at all reasonable hours upon any land with such persons, animals, vehicles, appliances, instruments and materials as are necessary for such survey;
- (b) break up the surface of any part of such land for the purpose of ascertaining the rocks, strata or minerals within or under the same;
- (c) take and carry away samples and specimens of the rocks, strata or minerals found therein;
- (d) fix any post, stone, mark or object to be used in the survey in any such land;
- (e) dig up any ground for the purposes of fixing any such post, stone, mark or object;

- (f) enter into or upon any land on which it is proposed to carry out such prospecting or exploration work, or through which it may be necessary to pass for the purposes of such survey or such work: Provided that—
  - (i) it shall not be lawful to fix any object, post, stone or mark within any walled garden, orchard or pleasure ground without the consent of the owner or the occupier thereof;
  - (ii) reasonable notice of the intention to exercise any of the powers conferred by this subsection shall be given to the owner or the occupier of such land unless such land is unoccupied State land;
  - (iii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this section and such owner or occupier shall be entitled to compensation for any damage sustained in the execution of the powers conferred by this subsection.

(2) Any prospecting or exploration work carried out in terms of subsection (1) shall be subject to the provisions of sections *thirty-one and thirty-four*, save those of paragraph (b) of subsection (1) of section *thirty-one*.

(3) No prospecting or exploration work shall be carried out on a mining location pursuant to the powers conferred by subsection (1) without prior consultation with the holder of such location.

(4) Any person who in any way whatsoever prevents, obstructs or impedes the exercise of any of the powers conferred by subsection (1) or who displaces, defaces or destroys any stone, post, mark or object set up and placed for the purposes of any geological survey shall be guilty of an offence and liable to a fine not exceeding level three.

[Subsection amended by section 4 of Act 22 of 2001]

(5) If any dispute arises as to the amount of compensation payable under this section, the matter shall be referred to the Administrative Court for determination.

### **388 Obstruction of officials**

(1) No person shall—

- (a) obstruct or resist any mining commissioner or any person duly authorized in writing by any court or mining commissioner in lawfully entering upon any mining location or land or in performing any other act authorized by this Act; or
- (b) obstruct or resist any inspector of mines or other person in the performance of his duty or in the exercise of his powers under this Act; or
- (c) after being removed under the provisions of this Act from any mining location or other place, forcibly or clandestinely retake or retain or endeavour to retake or retain possession thereof or of any portion thereof; or
- (d) after any decision that any complainant is entitled to use for mining purposes or to divert any water, obstruct or resist such complainant or his agents in such use or diversion.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

### **389 Payment of fine without appearing in court**

(1) Where any person has, in respect of any offence in terms of this Act committed by him, been informed by a mining commissioner or an inspector of mines that it is intended to institute criminal proceedings against him for that offence and the mining commissioner or the inspector of mines, as the case may be, has reasonable grounds for believing that the court which will try that person for that offence will, on convicting him of that offence, not impose a sentence of imprisonment or a fine exceeding level three, that person may sign and deliver to the mining commissioner or inspector of mines, as the case may be, a document admitting that he is guilty of that offence and deposit with the mining commissioner or inspector of mines, as the case may be, such sum of money, not exceeding an amount equal to a fine of level three or the maximum of the fine with which the offence is punishable, whichever is the lesser, as the mining commissioner or inspector of mines may fix.

[Subsection amended by section 4 of Act 22 of 2001]

(2) Subject to subsection (7), a person who has signed an admission of guilt and paid a deposit in terms of subsection (1) shall not be required to appear in court to answer the charge of having committed the offence concerned.

(3) An admission of guilt signed and delivered in terms of subsection (1) shall forthwith be transmitted to the clerk of the court before which the person concerned would otherwise have appeared and shall be entered by him in the records of that court.

- (4) As soon as an admission of guilt has been recorded in terms of subsection (3) it shall be laid before the court and the court shall thereupon—
- (a) proceed to convict the person concerned of the offence charged and forthwith sentence him to a fine not exceeding level three in accordance with law; or
  - (b) by endorsement on the document signify its refusal to convict such person.

[Subsection amended by section 4 of Act 22 of 2001]

(5) If the sum deposited is not sufficient to pay the fine imposed by the court, the balance remaining due shall be recovered from the offender in the manner provided by section 348 of the Criminal Procedure and Evidence Act [*Chapter 9:07*].

(6) If the sum deposited is greater than the fine imposed by the court, the difference shall be refunded to the offender.

(7) Where the court has refused to convict the person concerned, as in paragraph (b) of subsection (4) provided, the sum deposited shall be refunded to him and he may be prosecuted in the ordinary course.

(8) Any magistrate of the court which will try the person concerned for the offence may advise the mining commissioner or inspector of mines, as the case may be, as to what the court is likely to consider an appropriate fine in any case and in fixing the sum of money to be deposited under subsection (1) regard shall be had to his advice.

(9) For the purpose of deciding whether to convict the person concerned in accordance with subsection (4) or determining the amount of the fine to be imposed, the court may have regard to any statements relevant to the offence charged made by the mining commissioner or inspector of mines or any other person having knowledge thereof.

(10) Where the admission of guilt signed and delivered in terms of subsection (1) purports to have been signed by a director, manager or secretary of a corporate body as the representative of that corporate body, the director, manager or secretary shall, notwithstanding proviso (i) to subsection (2) of section 385 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], be presumed to have been authorized by that corporate body to plead guilty on its behalf, unless the contrary is proved.

(11) The magistrate who convicted a person in accordance with subsection (4) may, notwithstanding anything contained in any law, set aside the conviction and order the refund to the person concerned of the fine paid by him in respect thereof if satisfied that that person should not have been convicted.

### **390 Penalty for mining secondary reef prior to pegging and registration**

Any person who mines any secondary reef before it has been pegged and registered in the manner set out in section *one hundred and twenty-nine* shall be guilty of an offence and liable to a fine not exceeding level nine.

[Subsection amended by section 4 of Act 22 of 2001]

### **391 Discovery of precious stones to be notified**

(1) Any person who discovers any precious stones shall, within ten days of the date of such discovery, give notice thereof and of the place where such discovery has been made to the mining commissioner.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

**392.....**

[Section repealed by section 4 of Act 22 of 2001]

## **PART XXVII**

### MISCELLANEOUS

### **393 Application of Cap. 20:10**

Wherever it is provided in this Act that any matter relating to the payment of compensation shall be referred to or determined by the Administrative Court—

- (a) at least two months before the claim is so referred the claimant shall, unless the other party agrees otherwise, submit to the other party a claim for compensation which complies with subsection (1) of section 22 of the Land Acquisition Act [*Chapter 20:10*]; and (b) that Act shall thereafter apply, *mutatis mutandis*.

### **394 Submission of geological information**

(1) The miner of a registered mining location shall submit annually to the Director of Geological Survey any information of a geological nature, including logs and assay results of drill cores from surface

diamond drill holes, and reports on any geological, geochemical and geophysical work, obtained by him during the course of his prospecting or mining operations.

(1a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(2) The Director of Geological Survey shall not, without the consent of the holder, disclose any information submitted in terms of subsection (1) to any person, or allow any person to inspect it unless the mining location to which it relates is forfeited, abandoned, or has been cancelled:

Provided that the Minister may, after consultation with the miner, disclose such information if he considers it necessary in the public interest to do so.

(3) In addition to the information specified in subsection (1), the miner of a registered mining location shall submit to the Director of Geological Survey, if called for, any representative rock samples obtained by him in the course of his prospecting and mining operations.

### **395 Site rent**

The holder of a registered mining site shall in respect of such site pay annually in advance to the mining commissioner rent calculated at the prescribed rate.

### **396 Cash reward for new discovery of certain minerals**

(1) For the purposes of subsection (2)—

“prescribed mineral” means—

(a) precious metals; or

(b) such precious stones or other mineral as the Minister may, by statutory instrument, prescribe for the purposes of this section.

(2) If any person registers with the mining commissioner a block of claims for a prescribed mineral which—

(a) has not been held during the previous fifteen years; and

(b) is situated not less than twenty kilometres from any other current mining location which is or was previously registered for the same mineral; he shall receive a cash reward for such discovery in accordance with regulations, but the onus of proving that he is so entitled to the cash reward shall be upon such person.

### **397 Land surveyors to be subject to Cap. 20:12**

Any land surveyor who carries out any surface survey under this Act shall have the same duties and be subject to the same liabilities as if he were carrying out a survey in terms of the Land Survey Act [*Chapter 20:12*].

### **398 Acquisition by President of location for public purposes**

(1) Subject to this section, the President may at any time, for the utilization of any mining location for a purpose beneficial to the public generally, or to any section thereof, acquire either the whole or any portion of such mining location, or limit the rights enjoyed by the owner thereof under this Act.

(2) The Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to such acquisition or limitation of rights as is referred to in subsection (1).

(3) For the purpose of ascertaining the amount of compensation payable to any person for an acquisition in terms of subsection (1), the Minister may direct any person employed in his Ministry to conduct an investigation into the nature and extent of any mining operations that have been or are being conducted on the mining location that has been or is to be acquired.

(4) A person directed to conduct an investigation in terms of subsection (3) shall have power at all reasonable times—

(a) to enter the mining location that has been or is to be acquired; and

(b) to require any person to supply any information or to produce any book, record or document relating to any mining operations that have been or are being conducted on the mining location that has been or is to be acquired; and

(c) to make copies of or extracts from any book, record or document referred to in paragraph (b); and shall make a written report to the Minister on the results of his investigation within such period as the Minister may direct.

(5) Any report prepared in terms of subsection (4) shall be admissible on its production by any person in any proceedings relating to the payment of compensation for an acquisition in terms of subsection (1), and the court concerned shall pay due regard to the contents of any report so produced.

(6) Any person who contravenes or fails to comply with any direction or requirement in terms of this section shall be guilty of an offence and liable to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### 399 Cancellation of mining rights

(1) If a mining commissioner has reason to believe that the holder of a registered mining location is using wasteful mining methods or metallurgical processes, he shall inspect the registered mining location forthwith and report to the Board accordingly.

(2) After receiving the report referred to in subsection (1), if the Board is satisfied that the holder of a registered mining location is using wasteful mining methods or metallurgical processes, the Board shall forthwith institute an inquiry into the matter and invite the holder of the registered mining location concerned to make representations to the inquiry as to why his certificate of registered mining location should not be cancelled for using wasteful mining methods or metallurgical processes.

(3) If in the light of an inquiry held in terms of subsection (2), and after due consideration of any representations made by the holder, the Board is still satisfied that the holder has actually used wasteful mining methods or metallurgical processes, the Board shall notify the holder accordingly and request him, within such reasonable time as the Board shall specify in the notification, to remedy the situation or to show cause why his certificate of registered mining location should not be cancelled.

(4) If within the time specified in the notification referred to in subsection (3), the holder of the registered mining location fails to remedy the situation, or to satisfy the Board that he has not used wasteful mining methods or metallurgical processes, the Board shall cancel his certificate of registered mining location and notify him accordingly.

(5) A holder whose certificate of registered mining location is cancelled in terms of this section may appeal to the Minister against such cancellation within thirty days of the notification thereof.

(6) The noting of an appeal in terms of subsection (5) shall suspend the cancellation until the Minister's decision on the appeal has been given.

(7) Upon an appeal in terms of subsection (5), the Minister may confirm the cancellation or set it aside.

### 400 Cancellation of mining rights in certain circumstances

(1) If the Minister has reason to believe that a miner—

- (a) has failed, within a reasonable period after commencing mining operations, to declare any output from his mining location, whether in terms of this Act or any other enactment; or
- (b) has knowingly rendered a false return or declaration regarding the output from his mining location, whether in terms of this Act or any other enactment; or
- (c) has, in relation to his mining location or the output thereof, contravened—
  - (i) section 5 or 6 of the Gold Trade Act [*Chapter 21:03*]; or
  - (ii) section 5, 6 or 14 of the Precious Stones Trade Act [*Chapter 21:06*]; or
  - (iii) section 42 or 50 of the Minerals Marketing Corporation of Zimbabwe Act [*Chapter 21:04*]; whether or not he has been convicted thereof by a court;

the Minister may do either or both of the following—

- (i) by written notice served on the miner concerned, notify the miner concerned of his intention to cancel his rights in relation to the mining location concerned, and call on the miner to show cause, within such reasonable period as may be specified in the notice, why such rights should not be cancelled;
- (ii) direct any person employed in his Ministry to conduct an investigation into the nature and extent of any mining operations that have been conducted on the mining location concerned.

(2) A person directed to conduct an investigation in terms of paragraph (ii) of subsection (1) shall have power at all reasonable times—

- (a) to enter the mining location concerned; and
- (b) to require any person to supply any information or to produce any book, record or document relating to any mining operations conducted on the mining location concerned; and
- (c) to make copies of or extracts from any book, record or document referred to in paragraph (b); and shall make a written report to the Minister on the results of his investigation within such period as the Minister may direct.

(3) If, at the expiration of the period specified in a notice given in terms of paragraph (i) of subsection (1), and after considering any representations made to him by the miner concerned and any report made in terms of

subsection (2), the Minister is satisfied on reasonable grounds that the miner— (a)

has failed in a respect referred to in paragraph (a) of subsection (1); or

- (b) has rendered a false return or declaration referred to in paragraph (b) of subsection (1); or

(c) has contravened a provision referred to in paragraph (c) of subsection (1); the Minister may, by notice in writing to the miner, cancel the miner's rights in relation to the mining location and make such order as he thinks fit in regard to the disposal of any output from the mining location which is in the possession of the miner or held on his behalf by any other person.

(4) Where the Minister has made an order in terms of subsection (3) in regard to the disposal of any output from a mining location, that order shall be enforced in the manner specified in the order.

(5) If a miner's rights are cancelled in terms of subsection (3) and the mining location concerned—

- (a) is registered in the miner's name, the mining commissioner shall declare the mining location to be forfeited, and thereafter sections *two hundred and sixty-seven to two hundred and seventy-two* shall apply in relation thereto;
- (b) is not registered in the miner's name, any tribute agreement between the miner and the holder of the mining location shall thereupon expire and neither the miner nor any other person shall exercise any right to mine the mining location except in accordance with the Minister's written approval.

(6) Any person who—

- (a) contravenes or fails to comply with any order, direction or requirement in terms of this section;

or

(b) mines any mining location in contravention of paragraph (b) of subsection (5); shall be guilty of an offence and liable to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

#### **401 Minister may order holder of mining location to transfer it**

(1) The holder of any registered mining location may apply in writing to the Board for the issue of an order authorizing the transfer to him of a registered mining location held by any other person, hereinafter referred to as the other location.

(2) On receipt of such application the Board shall by registered letter notify the holder of such other location and any person to whom a duly approved tribute has been granted over such location or in whose favour any option or hypothecation over such location has been registered with the mining commissioner of such application and require them to lodge with the Board in writing within sixty days of the posting of such letter their objections, if any, to the grant of the application.

(3) If any person lodges any objection with the Board within such period, the Board shall, on a day fixed by it and notified to the applicant and every objector, hear such arguments and evidence as such persons may wish to lay before it in regard to the grant or refusal of the application.

(4) If no objection is lodged to the grant of the application, the Board shall proceed with the consideration of the application.

(5) If the Board is satisfied that—

- (a) it is essential for the better working of the mining location owned by the applicant that he should have the use of the surface of the whole or a portion of such other location and that an order under section *three hundred and fifty-seven* could not lawfully be granted or, if granted, would not adequately meet the needs of the case; and
- (b) the applicant has made a reasonable offer to the holder of such other location to purchase such location which such holder has refused to accept; and
- (c) the applicant is able to pay any compensation likely to become payable if the order were granted; and
- (d) the granting of the order would be in the national interest; it may recommend to the Minister that an order be made by him authorizing the transfer of such other location to the applicant or, if the Board is not so satisfied, it shall refuse the application, and such refusal shall be final and without appeal.

(6) Where the Board recommends that the order be granted, it shall submit to the Minister the application, together with all relevant documents and its written report and recommendation in regard thereto, and the Minister shall submit such recommendation to the President, who may approve or refuse to approve the making of the order.

(7) Where the President has approved the making of an order, the Minister shall forthwith make an order authorizing the mining commissioner to effect transfer of such other location to the applicant, in terms of this section, and such order shall be valid for a period of three months unless the Minister for any reason which to him seems good and sufficient extends such period.

(8) The mining commissioner shall by registered post send a copy of such order to the applicant, the holder of such other location and every person who lodged objections under subsection (2) and require such holder or other person to inform him in writing, within a period of sixty days, whether he intends to claim compensation.

(9) Any person who may be adversely affected by the exercise of the rights granted under an order shall be entitled to be paid such compensation by the person in whose favour the order has been made as may be agreed upon or, failing agreement, as may be determined by arbitration:

Provided that such right shall be deemed to have lapsed unless such person has informed the mining commissioner in writing within the period of sixty days mentioned in subsection (8) of his intention to claim such compensation.

(10) The person in whose favour an order has been made under this section shall, before obtaining transfer of the other location, either pay to the person or persons entitled thereto the compensation mentioned in subsection (9), or furnish a guarantee satisfactory to the mining commissioner for the payment of such compensation.

(11) The mining commissioner shall, notwithstanding any bar to the registration of transfer under subsection (7) of section *two hundred and seventy-five* or of section *two hundred and seventy-nine*, on application made within the period of validity of the order by the person in whose favour the order has been made and on payment of the transfer duty mentioned in section *two hundred and seventy-five*, forthwith register transfer of such other location to such person by making the necessary entries in his registers and other records:

Provided that the mining commissioner shall not so register transfer unless he is satisfied that the compensation mentioned in subsection (10) has been paid or the guarantee mentioned in that subsection has been furnished.

(12) As from the date on which the holder of the other location is notified by the Board of an application made under this section and until the date on which such application is refused or, if it is granted, until the period of the validity of the order has expired, it shall not be lawful for the holder of such other location to sell, cede, assign or otherwise dispose of such location or any part thereof or interest therein, or to abandon or hypothecate such location or any part thereof or interest therein, or to grant an option or tribute over such location or any part thereof or interest therein.

(13) If the person in whose favour an order is made does not, during the period of validity of the order, apply to the mining commissioner under subsection (11) and satisfy the mining commissioner that the compensation mentioned in subsection (10) has been paid or furnish the guarantee mentioned in that subsection, the order shall be deemed to have lapsed.

#### **402 Training institutions**

(1) The Minister may provide for the establishment, equipment, maintenance, administration and operation of any institution for the technical education and training of persons leading to the award of diplomas, certificates and other qualifications relevant to the mining industry.

(2) For the purpose of establishing, equipping, maintaining, administering and operating any institution referred to in subsection (1), the Minister may—

- (a) enter into agreements and execute contracts or other instruments; and
- (b) provide suitable premises, equipment and amenities for the institution; and
- (c) with the approval of the Minister responsible for finance, make grants of money to the institution; and
- (d) subject to any charter referred to in subsection (3), appoint a board of management to control, manage and administer the institution; and
- (e) do all such other things as, in his opinion, are necessary or desirable for the purpose.

(3) The legal capacity, objects, autonomy and administration of an institution referred to in subsection (1) shall be provided for in a charter granted by the President by proclamation in the *Gazette*.

(4) All expenditure incurred by the Minister in terms of subsection (1) shall be met from moneys appropriated for the purpose by Act of Parliament.

#### **403 Regulations**

(1) The Minister may make such regulations as he may deem expedient to give force or effect to this Act or for its better administration.

(2) Regulations may provide for the following matters—

- (a) the proper and efficient management and working of all mining locations, quarries and mining operations;
- (b) the submission to the Minister by miners and persons operating or managing quarries of programmes of their intended exploration development and mining operations, showing the estimated amount of minerals to be produced during any specified period and the estimated cost thereof, and the right of the Minister to recommend changes thereto;
- (c) the registration of quarries and the licensing of persons who operate or manage quarries;

- (d) the grading of mica and its examination by a Government inspector and the control of the sale, disposal or export of mica which has not been graded in accordance with such regulations;
- (e) (i) the preparation, keeping and inspection of survey plans of mining locations and quarries, including underground workings;
  - (ii) the details and particulars to be shown on such plans, the manner of their preparation and the scale and size of plans;
  - (iii) the limits of error allowable on surveys in connection with the preparation of such plans;
  - (iv) the preparation of survey plans by the Chief Government Mining Engineer or a person authorized by him in case of failure by any person to comply with the regulations and the recovery by the Minister of the costs of survey and preparation of such plans;
- (f) the examination of mine surveyors and the fee payable in respect of such examination and the grant of certificates to successful candidates;
- (g) the inspection of books and documents relating thereto;
- (h) the regulation of works and machinery in so far as protection and safety is concerned;
- (i) sanitation;
- (j) establishment of burial places;
- (k) the proper feeding and housing of labourers;
- (l) the appointment by employers of suitable persons approved by the Minister to supervise all matters relating to the welfare of labourers and the observance of regulations affecting them;
- (m) the safety and health of persons employed in or about any mining location, quarry or mining operations;
- (n) the reporting of accidents and deaths occurring on any mining location or quarry;
- (o) what works, other than those defined in this Act, may be deemed to be development work;
- (p) any forms required for the purposes of this Act;
- (q) search and inspection fees, fees for duplicate copies of certificates issued under this Act, and any other fees, charges, levies, sums, amounts or payments required or permitted to be prescribed for the purposes of this Act;
- (r) the manner or procedure in regard to the hearing of any action, suit or cause arising out of this Act, other than any application or appeal to the Administrative Court, the High Court or the Supreme Court, and the fees and charges to be taken by officers and practitioners in connection therewith;

[Paragraph as amended by s. 10 of Act No. 9 of 1997]

- (s) the amount of and manner of claiming any cash reward payable under section *three hundred and ninety-six*;
- (t) the periods for which and within which the payments prescribed in section *one hundred and eighty-eight* may be claimed and the manner of allocation of such payments in cases where a mining location is situated partly on one holding and partly on another;
- (u) the duties and responsibilities of holders, lessees or assignees of the rights of a holder, managers and other persons engaged in or about a mine or quarry;
- (v) the qualifications to be possessed by persons engaged in or about a mine or quarry in the capacity of mine manager, resident engineer or underground manager and the keeping of official registers of persons so engaged;
- (w) the examination of persons wishing to be engaged in any capacity referred to in paragraph (v) and the fees payable in respect of such examination and the grant of diplomas or certificates to successful candidates;
- (x) the making by the mine manager or other person in authority of special rules, not inconsistent with this Act, for the maintenance of order and discipline and the prevention of accidents at any mine or quarry, such rules to have the same force and effect as the regulations;
- (y) all such matters as are by this Act required or permitted to be prescribed.

(3) Before prescribing any tariff rate for the purposes of section *twenty-nine*, *one hundred and three* or *one hundred and seventy-eight* in respect of indigenous wood or timber taken from private land other than Communal Land, the Minister shall consult the Chamber of Mines of Zimbabwe and the Commercial Farmers' Union of Zimbabwe and any tariff rate so prescribed shall be reviewed at intervals of not more than five years after like consultation.

(4) On non-compliance with any regulation made in the interests of safety or health, the Minister may order that work on any mine or any section thereof shall cease, save and in so far as work is necessary to remedy any defect complained of and any miner of such mine who, knowing of such order, fails to



comply therewith, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(5) Regulations may provide for penalties for any contravention thereof:

Provided that such penalties shall not exceed—

(a) in the case of a regulation made in the interests of management and safety or health and sanitation, a fine of level seven or imprisonment for a period of two years or both such fine and such imprisonment; (b) in the case of any other regulation, a fine of level five or imprisonment for a period of six months.

[Subsection amended by section 4 of Act 22 of 2001]

#### **404 Savings of powers of Administrative Court**

(1) Nothing in this Act contained shall be deemed to derogate in any way from the powers of Administrative Court exercising its jurisdiction and powers in terms of the Water Act [*Chapter 20:22*].

(2) Any order of a mining commissioner which—

(a) is made in terms of this Act; and

(b) affects public water or water works as defined in the Water Act [*Chapter 20:22*]; shall be provisional only and referred to the Administrative Court.

(3) The Administrative Court may confirm, vary or set aside an order referred to it in terms of subsection

(2).

#### **405 Mining of limestone for agricultural operations**

(1) If the Minister is satisfied that any owner or occupier of land needs limestone for his own farming purposes, he may, on application by such owner or occupier, authorize the reservation in terms of section *thirty-five* of such area of the land of such owner or occupier as he deems sufficient.

(2) Such owner or occupier may in the area so reserved search for and mine limestone solely for his own farming purposes, and this Act shall not apply to such owner or occupier in relation to such search and mining.

(3) If the Minister is satisfied that any such owner or occupier is using any limestone mined under subsection (2) or any lime derived therefrom for any purpose other than his own farming purposes, he shall order the withdrawal of any reservation authorized in terms of subsection (1), and after such withdrawal the right of such owner or occupier to search for and mine limestone under subsection (2) shall cease.

#### **406 District advisory boards**

(1) The Minister may establish a district advisory board for any mining district to advise him generally on mining affairs in that mining district and additionally, or alternatively, on any particular matter in connection with the mining industry in that mining district, as may be specified by the Minister.

(2) The Minister shall appoint the members of a district advisory board who shall hold office during the pleasure of the Minister on such terms and conditions as the Minister may fix.

(3) The functions and duties of a district advisory board shall be to advise the Minister as required in terms of subsection (1).

(4) The powers of a district advisory board shall be as are prescribed.

#### **407 Saving of existing rights**

(1) Neither—

(a) the replacement of the definition of “minerals” in section *five* by the Mines and Minerals Amendment Act, 1990; nor

(b) any declaration in terms of subsection (3) of section *five* that any substance shall be a mineral for the purposes of this Act;

shall have the effect of vesting in the President any mineral or substance which vested in some other person immediately before the 4th May, 1990, or of the declaration, as the case may be.

(2) Nothing in subsection (1) shall prevent the application of the appropriate provisions of this Act to the mining or quarrying of any mineral or substance referred to in that subsection.

### **SCHEDULE (Section 208)**

#### **GRADING OF DEVELOPMENT WORK**

##### *Dimensions*

1. None of the following shall count as development work—

- (a) any shaft, winze, rise, drive, adit or tunnel of less superficial area than 2 square metres;
- (b) any shaft which has been sunk to a total vertical or incline depth of less than 6 metres from the surface;
- (c) any borehole which has been sunk to a total vertical or incline depth of less than 20 metres from the surface;
- (d) any borehole from which a core is unobtainable and any borehole used for-blasting:

Provided that where intensive and systematic drilling of shallow boreholes has been carried out through overburden to prove the economic potentialities of mineral deposits, the Board may, notwithstanding subparagraphs (c) and (d), authorize such work to count as development work.

2. Subject to paragraph 1—

- (a) each metre of any shaft, winze or rise of 2 to 4 square metres superficial area shall count as one metre;
  - (b) each metre of any shaft, winze or rise of over 4 and up to 6 square metres superficial area shall count as 2 metres;
  - (c) each metre of any shaft, winze or rise of over 6 square metres superficial area shall count as 3 metres;
  - (d) each metre of any drive, adit or tunnel from the surface of 4 square metres superficial area and over shall count as 2 metres;
- of development work.

3. Where the Board has, in terms of paragraph 1, authorized that intensive and systematic drilling of shallow boreholes shall count as development work, each metre of any such borehole shall count as one metre of development work unless the Board determines a lesser rate of calculation.

*Depth*

4. Each metre of any portion of a shaft, winze or rise, or any drift, the floor of which is—

- (a) not more than 20 metres below the natural surface at the working point, shall count as 1 metre;
- (b) more than 20 metres but not more than 30 metres below the natural surface at the working point, shall count as 1,5 metres;
- (c) more than 30 metres but not more than 60 metres below the natural surface at the working point, shall count as 2 metres;
- (d) more than 60 metres but not more than 90 metres below the natural surface at the working point, shall count as 3 metres;
- (e) more than 90 metres but not more than 120 metres below the natural surface at the working point, shall count as 4 metres;
- (f) more than 120 metres but not more than 150 metres below the natural surface at the working point, shall count as 5 metres;
- (g) more than 150 metres below the natural surface at the working point, shall count as 6 metres; of development work.

*Distance from Entrance*

5. Each metre of any portion of an adit or tunnel from the surface which is 30 metres to 90 metres from a point in the centre of the roof at the entrance shall count as 1,5 metres of development work, and each metre of any portion which is 90 metres or more from that point shall count as 2 metres of development work.

*General*

- 6. All dimensions shall be taken at right angles to the line of direction of the work, and in the clear between outside timbers, if in position, or allowing for them, if they are to be put in later.
- 7. Depth in incline work shall be measured on the incline and the allowances for dimensions and depth or distance from entrance shall be cumulative, that is to say, each metre of any portion of a shaft of over 6 square metres superficial area which is more than 30 metres but not more than 60 metres from the surface shall count as 6 metres of development work.

*Allowance for Boreholes*

8. Each metre drilled below the natural surface for a distance—

- (a) of 90 metres, shall count as 1 metre;
- (b) exceeding 90 metres and up to 180 metres, shall count as 2 metres;
- (c) exceeding 180 metres and up to 270 metres, shall count as 3 metres;
- (d) exceeding 270 metres and up to 360 metres, shall count as 4 metres;
- (e) exceeding 360 metres, shall count as 5 metres; of development work.