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THE MINING AND MINERALS BILL, 2011

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THE MINING AND MINERALS BILL 2011

A BILL FOR

An Act of Parliament to govern minerals exploration, prospecting, mining and dealings in Kenya and for related purposes

Enacted by the Parliament of Kenya as follows –

PART I - PRELIMINARY

- Short title. **1.** This Act may be cited as the Mining and Minerals Act, 2011.
- Commencement. **2.** This Act shall come into operation on such date as the Cabinet Secretary may by notice in the Gazette, appoint, and different dates may be appointed for the coming into operation of different provisions.
- Scope of the Act **3(1).** This Act applies to minerals as specified in schedule 2 to this Act.
- Act not to apply to petroleum. **(2).** Except to the extent stipulated in this Act, the search for or production of petroleum shall be governed by the Petroleum Act Cap 116 Laws of Kenya.
- Interpretation. **4.** In this Act, unless the context otherwise provides –
- “accruing benefits” means a portion of financial and other benefaction to which communities in mining areas are entitled and shall receive from the proceeds of mining and related activities.

“application” includes –

- (a) an application for the grant, renewal, transfer, assignment or surrender of a mineral right under this Act; or,

- (b) an application for the grant or renewal of a mineral dealer's licence, a diamond dealer's licence, an export permit or, an import permit under this Act.

"authorised officer" means the Commissioner or a public officer duly authorised to perform functions under and in accordance with this Act;

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

"Benefit sharing" means the distribution of a portion of proceeds of and gains derived from mining and related activities to communities affected by mining operations and those in whose locality mining takes place.

Cap. 486.

"Board" means the Minerals Advisory Board established under section 16 of this Act.

"body corporate" includes a company, firm, partnership, municipal corporation, or other legal persons entity or agency;

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

"Commissioner" means the Commissioner of Geology and Mines appointed under section 22 of this Act;

"Community" means a group of individuals or

families who share a common heritage, interest or stake in an identifiable land, land based resources or benefits that may be derived from them;

"company" means

a) a company formed and registered under the Companies Act ; or

(b) a body corporate incorporated abroad but registered and authorised to operate in Kenya;

"diamond" includes any rough and uncut diamond;

"diamond dealer's licence" means a mineral dealer's licence issued specifically in relation to diamonds;

No. 8 of 1999

"environment" shall have the meaning assigned to it in the Environmental Management and Coordination Act,1999 or as revised ;

"Environmental Impact Assessment Licence" means an environmental impact assessment licence granted under the Environmental Management and Coordination Act,1999;

"excavation" means a trench, pit, shaft or other working that is related to operations under a mineral right;

"financial difficulty", in respect of a company or other body corporate, means that the company or body corporate –

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

- (d) which remains in effect; and
a company under stabilization
funds under government
arrangements or schemes

"function" includes a power, duty, obligation or responsibility;

"Gazette" has the meaning assigned to it in the Interpretation and General Provisions Act and includes a supplement to the Kenya Gazette;

No. 8 of 2002.

"groundwater" shall have the meaning assigned to it in the Water Act, 2002;

"holder", in respect of a mineral right or another licence or permit that has been granted and registered in accordance with this Act –

- (a) means the person to whom the right is granted; but
- (b) where such a right has been lawfully transferred or assigned, means the person to whom the right has been lawfully transferred or assigned;

"Industrial minerals" means any naturally occurring mineral of economic value applied in the manufacture of products/commodities as integral components thereof, to improve product quality or to protect product characteristics.

"Kimberly certificate" means a certificate issued in respect of diamonds by the country of origin pursuant to the Kimberly process;

"Kimberly process" means the process leading to the adoption of UN Resolutions No. 55/56 of 2000 and 56/263 of 2001 on the role of diamonds in fuelling Armed Conflict and;

"land" includes:

- (a) the surface of the earth and the sub surface rock;
- (b) any body of water on or under the surface;
- (c) marine waters in the territorial sea and exclusive economic zone;
- (d) natural resources completely contained on or under the surface; and
- (e) the air space above the surface.

"large-scale operation" means a prospecting or mining operation that is a large-scale operation in accordance with this Act

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

"liquidator" means a person appointed to wind up a mining or mineral prospecting company, including selling off its assets.

"maritime zones" means the seabed, subsoil, territorial sea, the exclusive economic zone and the continental shelf.

"mine"-

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

"mine waste and tailings" means the residue of

mining operations that includes gravel, sand, slime, or other substances that are discarded in the course of mining operations;

"mineral" means a substance formed by, or subject to, a geological process whether in solid, liquid or gaseous form occurring naturally in or on the earth or in or under water and includes the minerals listed in schedule 2 to this Act but does not include petroleum or groundwater;

"mineral agreement" means a mineral agreement entered into in accordance with section 90 of this Act;

"mineral dealings" means –

- (a) buying minerals;
- (b) selling minerals;
- (c) bartering minerals; or
- (d) depositing or receiving minerals as a pledge or security

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

"mineral right" means –

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

"Minerals Advisory Board" or "Board" means the Minerals Advisory Board established under this Act.

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

" mining bond" means an obligatory payment or cash deposit that may be required of mineral rights holders as guarantee for their due implementation of a mining programme or mining activities including site restoration.

"mining permit" means a permit relating to small-scale operations granted in accordance with this Act that authorises its holder to carry out mining operations;

"mines inspector" means a public officer who has been appointed as a mines inspector for purposes of this Act;

"mining licence" means a licence relating to large-scale operations granted in accordance with this Act that authorises its holder to carry out mining operations;

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

- (a) to win a mineral from where it occurs;
- (b) to extract a mineral from its natural state; or
- (c) to dispose of a mineral or waste substances resulting from such winning or extraction;

Cap. 908.

"permit area" means the area covered by a prospecting permit or a mining permit.

"petroleum" has the same meaning as in the Petroleum (Exploration and Production) Act;

"precious minerals" means –

- (a) precious stones, which include: agate, amber, amethyst, aquamarine, beryl, zoisite, chrysolite, diamond, emerald, garnet, opal, peridot, ruby, sapphire, tourmaline, turquoise and any other prescribed precious stones; and
- (b) precious metals, being gold, silver or other metal of the platinoid group in the un-manufactured state and, any other rare metals that are prescribed;

"prescribed" means prescribed by this Act or by regulations made by the Cabinet Secretary under this Act;

"programme of mining operations", in respect of a mining licence –

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

"programme of prospecting operations", in respect of a prospecting licence means a programme of intended prospecting operations prepared by the holder of the licence and approved by the Commissioner on the grant or renewal of the licence, and where the programme is amended pursuant to this Act, means the programme as so amended;

"prospecting area" means the area or areas of land covered by a prospecting licence;

"prospecting licence" means a licence relating to large-scale operations granted in accordance with this Act that authorises its holder to carry out prospecting operations;

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

"prospecting permit" means a permit relating to small-scale operations granted in accordance with this Act that authorises its holder to carry out prospecting operations;

"public officer" shall have the meaning assigned to it in the Constitution;

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

"reconnaissance area" means an area or areas of land covered by a reconnaissance licence;

"reconnaissance licence" means a licence granted in accordance with this Act that authorises its holder to carry out reconnaissance operations;

"reconnaissance operations" means operations to search for minerals and mineral deposits or to test the mineral bearing qualities of land, or both, and includes geophysical surveys, geo-chemical surveys and photo-geological or other similar surveys;

"Register" means the Register of Mineral Rights established under this Act;

"regulations" means regulations made by the Cabinet Secretary under this Act;

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

"retention licence" means a retention licence granted under the Act;

"search for" means the activity of reconnaissance;

"small-scale operation" means a prospecting or mining operations as described by schedule 1 to this Act.

"strategic minerals" means such minerals as the Cabinet Secretary may declare to be strategic minerals under this Act.

"Tribunal" means the National Environment Tribunal established under the Environmental Management and Coordination Act, 1999;

"undischarged bankrupt" means a person –

- (a) who has been adjudged or otherwise declared a bankrupt and has not been otherwise discharged;
- (b) who has entered into an agreement or scheme of composition with his or her creditors and the agreement subsists; or,
- (b) who, being an individual, has taken advantage of a law for the benefit of debtors and continues to do so;

"unregistered company" has the same meaning as in the Companies Act;

"unwrought precious metal" means precious

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

"water resource" shall have the meaning assigned to it in the Water Act, 2002.

PART II - OWNERSHIP OF MINERALS

The Mining and Minerals Bill, 2011

Ownership of minerals.

5.(1) Every mineral in its natural state in, under or upon land in Kenya lakes, rivers, streams, water courses throughout the country, the exclusive economic zone and an area covered by the territorial sea or continental shelf is the property of the Republic and is vested in the State in trust for the people of Kenya.

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

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

Saving for custom

6. Nothing in this Act shall be deemed to prevent any citizen of Kenya from taking, subject to such conditions as may be prescribed, soil, clay iron, salt or soda from lands (other than lands within the area of a mining licence or permit or location) from which it has been the custom of the member of the community to which that citizen belongs to take the same.

Right of Pre-emption

7. (1) The State has a right of pre-emption of all minerals raised, won or obtained in Kenya and from any area covered by territorial waters, the exclusive economic zone and the continental shelf and products derived from the refining or treatment of these minerals.

(2) The State may appoint a statutory body to act as its agent in the exercise of its right of pre-emption.

Discovery of Minerals

8. (1) Subject to subsections 2 and 3, any person who discovers any minerals without an apparent owner, or on any area of land not held by that person under a mineral right that confers rights on the holder to conduct reconnaissance, prospecting or mining operations for minerals, shall forthwith report the discovery to the Secretary, and surrender the mineral to the Secretary.

(2) The Secretary shall advertise the discovery by notice in the Gazette, and, unless within three months from the date when the advertisement appears, any person proves to the satisfaction of a court of competent jurisdiction (Land and Environment Court) his title to the mineral, the court shall declare the same to be forfeited to the State.

(3) The Secretary may, where a person proves his title to the mineral, and after giving full consideration to such representations as the finder of the mineral may make, and to such other evidence regarding the matter as may be adduced by other persons, sell the minerals and pay to the finder a portion of the net proceeds of the sale, not exceeding one-half, after deducting from the gross proceeds the costs of realization and such royalties as may be prescribed under this Act.

(4) Every sale under subsection (3) shall be conducted in accordance with procedures prescribed under this Act.

PART III GENERAL PRINCIPLES

Restrictions on the acquisition of mineral rights.

9.(1) A person shall only acquire a right to search for, prospect, or mine a mineral or mineral deposit in Kenya in accordance with a mineral right granted in accordance with this Act.

(2) No person shall search for, prospect or mine any mineral or mineral deposit in Kenya except in accordance with a mineral right granted under this Act.

Acquisition of rights in minerals.

10.(1) A mineral right shall only be granted to or be held by an individual of sound mind –

(a) who has attained the age of eighteen

years; or,

- (b) who is not, or does not become, an undischarged bankrupt.

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

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

PART IV- ADMINISTRATION

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

11.(1) The Cabinet Secretary may, by notice in the Gazette designate any area of land to be an area reserved exclusively for small-scale mining operations.

(2) Notwithstanding subsection (1), the Cabinet Secretary shall not make a designation -

- (a) which would be incompatible with the continued enjoyment of a mineral right; or
- (b) with respect to an area of land mentioned in any provision of this Act, unless consent has been given by the authority, agency, Cabinet Secretary or other person mentioned in the relevant provision.

(3) It shall be a requirement that an environmental impact assessment study and licensing procedures required under the

Environmental Management and Coordination Act be carried out before the Cabinet Secretary makes a designation under subsection (1).

Cabinet Secretary may declare areas reserved for tendering.

12.(1) The Cabinet Secretary may by notice in the Gazette designate any area of land to be an area reserved for applications by tender for large-scale operations.

(2) Notwithstanding subsection (1), the Cabinet Secretary shall not make a designation –

(a) which is incompatible with the continued enjoyment of an existing mineral right; or

(b) Unless written consent with respect to an area of land specified in section 28, section 29 or section 30 of this Act,

unless consent has been given by the authority, agency, Cabinet Secretary or other person referred to in the relevant section.

(3) It shall be a requirement that a environmental impact assessment study and licensing procedures under the Environment Management and Coordination Act be carried out before the Cabinet Secretary makes a designation as provided for under subsection (1).

Cabinet Secretary may restrict or exclude areas from operations.

13. The Cabinet Secretary may by notice in the Gazette exclude such areas as may be specified in the notice to be areas excluded from the operations under a licence or in which such operations are restricted.

Strategic Minerals

14 (1) The Cabinet Secretary may declare certain minerals to be strategic minerals for national social economic development.

(2) The State shall have exclusive use to the strategic

minerals referred to in subsection (1) above.

(3) The State may through an Act of Parliament establish the Kenya Mining Corporation which will be the investment arm of the State in respect of strategic minerals.

Regulations

15. The Cabinet Secretary may make Regulations for purposes of giving effect to any provisions of this Act.

Minerals Advisory Board

Establishment of
Minerals
Advisory Board.

16. There is hereby established a Minerals Advisory Board.

Composition of
Board.

17.(1) The Board shall consist of

- (a) a Chairman, being a person who has demonstrated exemplary competence in the field of mining or mining-related matters or has extensive experience in the regulation of the mining sector;
- (b) the Commissioner, who shall be the Secretary of the Board;
- (c) the Principal Secretaries in the Ministries responsible for –
 - (i) mining and minerals; and
 - (ii) finance; and
 - (iii) energy; and
- (d) a representative of the Geological Society of Kenya;
- (e) a representative of the National Environmental Management Authority; and

(f) a representative of the Kenya Maritime Authority; and

(g) one representative of small scale miners and one representative of large scale miners in the country; and

(h) two other persons not being public servants, with experience in mining, minerals, energy or related fields.

(2) The Cabinet Secretary shall make appointments to the Board by name through notice in the Gazette.

(3) All appointments to the Board shall be consistent with the gender requirements stipulated in the Constitution.

(4) The Chairman and members of the Board appointed under paragraphs (d) (e) and (f) shall hold office for a term of three (3) years, but shall be eligible for re-appointment for one further term.

(5) The office of the Chairman shall become vacant –

(a) if he resigns the office of Chairman of the Board or is removed from office for any of the reasons specified in subsection (6); or

(b) if he accepts any office the holding of which, if he were not a member of the Board, would make him ineligible for appointment to the office of Chairman of the Board.

(6) A person shall be removed or suspended from the office of the Chairman or member in the following circumstances –

- (a) if he is convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine;
 - (b) if he is incapacitated by prolonged physical or mental illness from performing his or her duties as a member of the Board;
 - (c) if he has, in the opinion of the Advisory Board and it advises the Cabinet Secretary in a resolution of a full board after he has been given an opportunity to defend himself, conducted himself in a manner that is incompatible with the office of Chairman of the Board; or
 - (d) if he has, in the opinion of the Advisory Board and it advises the Cabinet Secretary in a resolution of a full board after he has been given an opportunity to defend himself, conducted himself in a manner that has or is likely to bring the Board into disrepute.
- (7) A person shall not be removed or suspended from the office of Chairman except as provided by this section.

Functions of the Board.

18. (1) The functions of the Board shall be to

- (a) advise the Cabinet Secretary on policy formulation and implementation in accordance with the Act;
- (b) provide advice to the Cabinet Secretary on the negotiation and conclusion of mineral agreements;
- (c) advise the Cabinet Secretary on the grant, renewal, suspension and

cancellation of mineral rights relating to mining operations;

- (d) promote co-operation amongst public departments, local authorities, the private sector, research bodies, non-governmental organisations and other organisations engaged in mining related programmes and activities to enhance the administration and operation of this Act;
- (e) advise the Cabinet Secretary on the policy framework in order to promote cooperation, technical and capacity building and technology transfer; embody and conform to:
 - (i) relevant international conventions and national policies relating to the sustainable development of the mineral resources, geological surveys and ;
 - (ii) national policies relating to the sustainable development of the mineral resource sector and geological surveys; and
 - (iii) ensure that mining takes into account local and community values and;
 - (iv) ensure that mining is integrated into the national economy.
- (f) to advise the Cabinet Secretary and the Commissioner on minerals benefits sharing at National, County and Community levels ;and
- (g) provide general guidance and supervision to the Commissioner in the performance of the

Commissioner's functions; and

(h) perform such other functions as may be assigned to it in accordance with the provisions of this Act.

(2) Where, in accordance with this Act, any matter is required to be referred to the Board for advice, the Board shall submit the advice to the Minister and in the event that the Minister proposes to dispose of the matter otherwise than in accordance with the advice of the Board, he shall give reasons in writing for determining the matter otherwise than in accordance with the advice of the Board.

Power to appoint
Associate
Members.

19.(1) The Cabinet Secretary may, by notice in the Gazette, appoint two persons with special skills, knowledge, expertise or experience relating to mining or mining-related matters to be associate members of the Board, who may, subject to the conditions of appointment, participate in the deliberations of the Board and provide such advice and assistance to the Board as it may require.

(2) An associate member shall serve the Board for a maximum term of twelve (12) months.

(3) The term of appointment of an associate member shall cease if the person –

- (a) resigns his office by notice in writing addressed to the chairman;
- (b) is convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine;
- (c) is incapacitated by prolonged

physical or mental illness from performing his duties as an associate member of the Board;

(d) has, in the opinion of the Board, conducted himself in a manner that is incompatible with his continued participation in the work of the Board or conducted himself in a manner that has or is likely to bring the Board into disrepute.

Power to admit observers.

20 The Board may, from time to time, authorise up to two persons to attend its meetings as observers for such period and subject to such conditions as the Board may determine in accordance with its rules of procedure.

Procedures of the Board.

21.(1) The Board shall meet at least four (4) times in every financial year.

(2) The quorum for transaction of business of the board shall be one third of the members of the board including the person presiding;

(3) The Chairman shall preside at every meeting of the Board at which he is present, but in his absence, a member of the Board designated by the Chairman shall preside, and in his absence, the members present shall elect one of their number who shall, with respect to that meeting and the business conducted thereat, have all the powers of the Chairman;

(4) The Secretary of the Board shall not be entitled to vote on any matter before the Board but shall be entitled to participate in the deliberations and shall prepare and keep all its records

(5) An associate member of the Board shall not be entitled to vote on any matter before the Board and shall participate in the deliberations of the Board only in an advisory capacity.

(6) Unless a unanimous decision is reached, a decision or recommendation on any matter before the Board shall be by a majority of the votes of the members present, and, in the case of an equality of votes, the Chairman or person presiding shall have a casting vote.

(7) A member of the Board who has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of his or her functions in relation to the functions of the Board shall disclose such interest to the Chairman and shall not participate in the deliberations of the Board or to vote on the matter.

(8) The performance by the Board of its functions shall not be affected by –

(a) a vacancy in its membership; or,

(b) a defect in the appointment of a person to be a member or an associate member of the Board.

(9) The Board may form committees to deal with specialized matters such as offshore mining and mining of radioactive minerals;

(10) Except as provided in this Section, the Board may determine its own procedure.

Commissioner of Geology and Mines

Appointment of
Commissioner of
Geology and
Mines

22. The Cabinet Secretary shall appoint a suitably qualified person in the field of mining and mining related matters to be a Commissioner of Geology and Mines who shall be responsible for the directorates of geological surveys and mines.

Establishment of
directorates

23. The office of the Commissioner shall comprise of directorates of geological surveys, mines and such

other directorates as the Cabinet Secretary on advise of the Board, may appoint.

Functions of the Commissioner.

24.(1) The functions of the Commissioner shall be to -

- (a) receive applications and notices as provided for in this Act;
- (b) grant mineral rights relating to large-scale operations acting on the advice of the Minerals Advisory Board;
- (c) grant mineral rights relating to small-scale operations;
- (d) grant mineral dealers' licences and diamond dealers' licences in accordance with this Act;
- (e) ensure that the provisions of this Act relating to minerals and mining are complied with;
- (f) give directions and take steps necessary to ensure that the terms and conditions attached to mineral rights are complied with;
- (g) maintain the Register of Mineral Rights;
- (h) obtain any information in relation to minerals and mining that is required for the administration of this Act; and
- (i) conduct geological surveys and mapping, research and development; and
- (j) collecting, collating, processing, analysing, archiving and disseminating geosciences data; and

- (k) advising on all geological matters; and
- (l) Policy implementation; and
- (m) perform such other functions and exercise such other powers as are specified in this Act or the regulations.

(2) The Commissioner shall perform the functions under this section under general supervision of the Board.

25.(1) The Commissioner may delegate any of the Commissioner's functions under this Act to the heads of the directorates and such other public officers as may be approved in writing by the Board.

(2) The delegation of powers by the Commissioner under subsection (1) may be made subject to such conditions or limitations as the Commissioner may determine.

(3) The delegation of a function by the Commissioner shall not prejudice the continued exercise of the functions by the Commissioner.

PART V-MINERAL RIGHTS

Categories of mineral rights

26.(1) The following types of mineral rights may be granted under this Act to authorise a person to engage in ;

- (i) large-scale operations:
 - (a) a reconnaissance licence;
 - (b) a prospecting licence;
 - (c) a retention licence; and
 - (d) a mining licence.
- (ii) Small scale operations:

(a) a prospecting permit

(b) a mining permit

(2) The Cabinet Secretary may, through regulations, designate any other licence.

A- LICENSING

Form of mineral
right.

27.(1) Subject to the provisions of this Act, a mineral right issued under this Act shall be evidenced by a certificate in the prescribed form, which shall indicate --

(a) the name and registered address of the holder;

(b) the date of the grant of the mineral right;

(c) the term of the mineral right;

(d) a description of the area over which the mineral right is granted;

(e) the mineral or mineral deposit in respect of which the right is granted; and

(f) the conditions subject to which the rights given by the mineral right may be exercised.

The Mining and Minerals Bill, 2011

Excluded and restricted areas in respect of mineral rights.

28.(1) The Commissioner shall, prior to granting a mineral right authorising reconnaissance, prospecting or mining operations, require the applicant to seek the consent of –

- (a) the appropriate Cabinet Secretary or other authority, where the area for which the right is sought falls within land dedicated or set apart as a place of burial, religious significance, or public building, or for any other public purpose;
- (b) the appropriate municipal or other authority exercising control where the land is situated within a town, municipality or trading centre;
- (c) the Cabinet Secretary responsible for matters relating to wildlife conservation and management, where the land is situated within a marine park, a national park or a local sanctuary under the Wildlife (Conservation and Management) Act;
- (d) the Cabinet Secretary responsible for matters relating to the environment, where the land is situated within a protected area, a protected natural environment, or a protected coastal zone under the Environmental Management and Coordination Act.
- (e) the Director of the Kenya Forest Service, where the land is situated within a forest area or, operations on, under or over an area, that has been declared a forest area under the Forests Act.
- (f) the managing director of the Kenya Railways Corporation established under the Kenya Railways Corporation Act,

Cap 376

Act 8 of 1999

No. 7 of 2005.

Cap. 307.

where the land is reserved for the purpose of any railway or is situated within one hundred metres of any railway.

- (g) the owner of private land; or
- (h) the community owning the land; or
- (i) the land owner or the authority responsible, where the land is -
 - (i) used as a garden, orchard, vineyard, nursery or plantation;
 - (ii) within two hundred and fifty metres of any spring, well, borehole, reservoir, dam, artificial watercourse, wetland, lake, water catchment area, waterworks or other infrastructure; or
 - (iii) within two hundred and fifty metres of any house, homestead or building.

(2) The Commissioner shall not grant a mineral right that authorises reconnaissance, prospecting or mining operations on, under or over any land specified by the Cabinet Secretary, by notice in the Gazette, to be land upon which, such operations are excluded or restricted.

(3) Whenever a question arises as to whether operations on any land are excluded under this section, such question shall be referred to the Cabinet Secretary, and the Cabinet Secretary decision thereon shall be final.

The Mining and Minerals Bill, 2011

Mineral rights on private land.

29. (1) A mineral right shall not be granted under this Act on, under or over private land without the consent of the owner.

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

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

(3) Where consent is granted prior to a change in land ownership, such consent shall remain valid for as long as the mineral right subsists.

Compulsory acquisition of land for prospecting and mining

30. Where any consent required under subsection 28 and 29 is unreasonably withheld or the Cabinet Secretary considers that any withholding of consent is contrary to the national interest, the Cabinet Secretary may take such steps as are necessary under the law relating to the compulsory acquisition of land or rights or interests in land to vest the land or area in question, or rights or interests in such land or area, in the Government or on behalf of the Government; and thereafter such land or area shall cease to be land excluded from prospecting or mining.

Tendering for mineral rights.

31.(1) The Cabinet Secretary may seek tenders in respect of large-scale operations over an area or areas of land designated under section 12 of this Act.

(2) Tenders shall be made and assessed in accordance with procedures prescribed under this Act, or otherwise in accordance with established Government tendering procedures.

Conditions attaching to mineral rights.

32.(1) A mineral right may be granted under this Act subject to conditions determined by the Commissioner, including conditions concerning –

- (a) the protection of the mineral interests of Kenya;
- (b) the protection of the environment of Kenya;
- (c) the safety of prospecting and mining operations, and of persons undertaking those operations; and
- (d) the protection of the lawful interests of the holders of any other mineral right.

(2) Unless otherwise provided by the mineral right, a condition subject to which a mineral right was granted shall continue to have effect and enforceable after –

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

and may be enforced by the Commissioner as if the condition were contained in a contract between the Commissioner and the holder of the right and

valuable consideration had been given to the holder for the holder's compliance with the condition.

Directions concerning good mining practice.

33. (1) The Commissioner or an authorized public officer may issue directions to the holder of a mineral right requiring the holder to undertake measures necessary-

- (a) to prevent wasteful mining practices; or
- (b) to ensure that reconnaissance, prospecting or mining operations are carried out in accordance with good mining industry practice.

(2) A holder of a mineral right shall comply with a direction given to the holder in accordance with subsection (1).

Mineral rights to be exercised reasonably.

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

Registered address.

35. The holder of a mineral right, and any agent appointed by the holder of a mineral right, shall register with the Commissioner an address in Kenya to which all communications and notices under this Act to the mineral right holder or agent may be sent.

Employment and training requirements.

36.(1) The holder of a mineral right shall give preference in employment to citizens of Kenya.

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

- (a) conduct training programmes for the benefit of employees; and
- (b) conduct capacity building for the employees; and
- (c) provide funding for education in mining-

related disciplines to a level agreed with the Commissioner; and

- (d) work at replacing expatriate managerial employees with Kenyans, within a period of 3 years; and
- (e) provide a linkage with the universities for purposes of research and environmental management; and
- (f) demonstrate social responsibility to the local communities.

Local procurement requirements.

37.(1) The holder of a mineral right shall, in the conduct of prospecting and mining operations permitted by the right, give preference to the maximum extent possible –

- (a) to materials and products made in Kenya; and
- (b) to service agencies located in Kenya and owned by Kenyan citizens.

(2) The holder of a mining right shall support development and local projects for the communities within the mining area.

Transfers and assignments of mineral rights.

38.(1) A holder of a mineral right may, with prior approval of the Commissioner, transfer or assign the mineral right or part of the mineral right subject to taxation requirements.

(2) The Commissioner shall not unreasonably withhold or delay approval for the transfer or assignment of a mineral right.

(3) The Commissioner shall not approve a proposed transfer or assignment of a mineral right to a person or a body corporate which is not eligible for the grant of a mineral right under this Act.

Preparation of reports.

39.(1) The Commissioner shall submit an application for a mineral right relating to large-scale operations to the Board for consideration and

advice.

(2) An application submitted to the Board by the Commissioner in accordance with subsection (1) shall be accompanied by the Commissioner's written report on the application.

(3) The written report shall include the text of any proposed mineral agreement negotiated by the Cabinet Secretary with the applicant.

Annual financial reports.

40.(1) The holder of a reconnaissance licence, a prospecting licence, a retention licence or a mining licence shall, within three (3) months following the end of each financial year, furnish the Commissioner with a copy of an audited annual financial report.

(2) The annual financial report furnished under subsection (1) shall be in a form approved by the Commissioner and shall contain information on-

(a) the profit or loss of the holder for the financial year; and

(b) the state of the financial affairs of the holder at the end of the financial year.

(3) The Commissioner may extend the period mentioned in subsection (1) by written notice to the holder of the mineral right.

Power to require additional information.

41.(1) The holder of a mineral right, or an applicant for the grant or renewal of a mineral right, shall provide such further information to the Commissioner as the Commissioner may reasonably require for consideration of the application.

(2) Where the Commissioner requires information under subsection (1), the Commissioner shall request such information by written notice to the holder of the mineral right.

(3) Where the Commissioner requires further

information to be provided under subsection (1), an application for the grant or renewal of a mineral right shall be deemed to be incomplete until the mineral right holder furnishes such information to the Commissioner.

B- LICENCES

Priority of applications.

42.(1) Where two or more persons not acting together each make an application for the grant of the same category of mineral right over the same area of land, or over overlapping parts of the same area of land, the Commissioner shall assign priority

- (a) to the application first received and registered by the Commissioner; and
- (b) where two or more applications are received on the same day, in accordance with the time of receipt of each application.

Treatment of applications.

43.(1) The Commissioner shall extend the term of a mineral right that has expired by effluxion of time -

- (a) where the mineral right is a prospecting licence and its holder is awaiting a decision on an application made in accordance with this Act for -
 - (i) the renewal of the licence; or,
 - (ii) a retention licence or a mining licence that applies to the whole, or a part, of the area covered by the prospecting licence.
- (b) where the mineral right is a retention licence and its holder is awaiting a decision on an application made in accordance with this Act for -

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

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

Conditions for grant of mineral rights for large-scale operations.

44 The Commissioner shall only grant or renew a mineral right for large-scale operations where such grant or renewal has been approved by the Board.

Withdrawal of application

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

Reconnaissance Licence

Application for Reconnaissance Licence

46.(1) A person may apply for a reconnaissance licence by application to the Commissioner in the prescribed form accompanied by the prescribed fee.

(2) An applicant for a reconnaissance licence shall provide information on the following matters to the Commissioner when making an application in accordance with subsection (1) –

- (a) the mineral or minerals in respect of which the licence is sought;
- (b) the area in respect of which the licence is

sought;

- (c) particulars of the proposed reconnaissance operations to be carried out under the licence;
 - (d) details of the experience and financial resources available to the applicant to conduct the reconnaissance operations;
 - (e) a plan giving particulars of the applicant's proposals with respect to the employment and training of Kenyan citizens; and
 - (f) a plan giving particulars of the applicant's proposals with respect to the procurement of local goods and services.
- (3) The Board shall recommend the grant of a reconnaissance licence where it is satisfied that
- (a) the area of land over which the reconnaissance licence is sought is reasonable having regard to the applicant's proposed programme of reconnaissance operations;
 - (b) the applicant has adequate financial resources, technical competence and mining industry experience to carry on the proposed programme of reconnaissance operations;
 - (c) the applicant has obtained an environmental impact assessment licence with respect to the applicant's proposed reconnaissance operations where required under the Environment Management and Coordination Act;
 - (d) the applicant's proposals with respect to

the procurement of local goods and services are acceptable; and,

- (e) the applicant's proposals with respect to employment and training of Kenyan citizens are acceptable.

Maximum Area of reconnaissance licence.

47. The area covered by a reconnaissance licence shall not exceed one thousand square kilometres (1,000km²) for both marine and terrestrial areas.

Term of reconnaissance licence.

48. The term of a reconnaissance licence shall be specified in the licence, and in any case shall not exceed two years.

Rights conferred by reconnaissance licence.

49. (1) The holder of a reconnaissance licence shall enjoy exclusive rights to undertake reconnaissance operations in the area specified in the licence in accordance with the provisions of this Act.

(2) For the purposes of exercising the rights referred to in subsection (1), the holder of a reconnaissance licence may –

- (a) demarcate areas that fall within the licence area; and,
- (b) erect camps or temporary buildings including installations in any waters that form part of the area covered by the licence.

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

(4) A reconnaissance licence shall not confer upon the holder or an agent of the holder of the licence –

- (a) the right to conduct reconnaissance operations in a part of the area specified in the licence which has been demarcated in accordance with this Act by the holder of a prospecting licence, a retention licence, mining licence, prospecting permit or mining permit; or
- (b) the right to conduct reconnaissance operations in an area where the holder of another mineral right enjoys exclusive rights to prospect for, or to mine, the mineral or minerals specified in the reconnaissance licence.

Obligations under reconnaissance licence.

50. The holder of a reconnaissance licence shall –

- (a) carry on reconnaissance operations authorised by the licence in accordance with the conditions of the licence;
- (b) submit to the Commissioner geological and financial reports and such other information relating to reconnaissance operations as may be prescribed, either quarterly or at such other intervals as may be determined by the Commissioner;
- (c) comply with the terms and conditions of any environmental impact assessment licence which relates to the operations to be carried out under the reconnaissance licence;
- (d) report promptly any mineral discovery to the Commissioner;
- (e) on or immediately following the end of the term of the licence, remove any camps or temporary buildings or installations erected by the holder for use during the process of exploration; and,

- (f) repair or make good any damage caused to the surface of the land.

Minerals obtained under reconnaissance licence.

51.(1) Any minerals acquired in the course of undertaking reconnaissance operations under a reconnaissance licence shall –

- (a) remain the property of the Government; and
- (b) shall not be disposed of or removed from Kenya without the consent of the Commissioner.

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

Renewal of reconnaissance licence.

52.(1) The holder of a reconnaissance licence may apply to the Commissioner for the renewal of the licence in respect of an area of land that forms part of the licence area by application in the prescribed form accompanied by the prescribed fee.

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

Term of renewal.

53.(1) The term of renewal of a reconnaissance licence shall not exceed one (1) year, and shall be specified in the licence.

(2) A reconnaissance licence shall not be renewed more than three times.

Prospecting Licence

Application for prospecting licence

54.(1) A person may apply for a prospecting licence to the Commissioner in the prescribed form accompanied by the prescribed fee.

(2) An applicant for a prospecting licence

shall provide information on the following matters to the Commissioner when making an application in accordance with subsection (1) –

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

(3) The Commissioner shall not recommend the grant of a prospecting licence unless satisfied that:-

- (a) the area of land over which the prospecting licence is sought is reasonable having regard to the applicant's proposed programme of prospecting operations;
- (b) the applicant has adequate financial resources, technical competence and mining industry experience to carry on the proposed programme of prospecting operations;

- (c) the applicant has obtained an environmental impact assessment licence that relates to the operations to be carried out under the prospecting licence where required under the Environmental Management and Coordination Act;
- (d) the applicant's proposals with respect to the procurement of local goods and services are acceptable; and,
- (e) the applicant's proposals with respect to employment and training of Kenyan citizens are acceptable.

Maximum area of prospecting licence.

55. The area covered by a prospecting licence shall not exceed five hundred square kilometres (500km²) for both marine and terrestrial areas.

Term of prospecting licence.

56. The term of a prospecting licence shall be specified in the licence, and in any case shall not exceed three (3) years.

Rights conferred by prospecting licence.

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

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

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

operations.

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

Minerals obtained
under prospecting
licence

58.(1) Any minerals acquired in the course of prospecting operations under a prospecting licence -

(a) shall remain the property of the State; and

(b) shall not be disposed of or removed from Kenya without the consent of the Commissioner.

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

Obligations under
prospecting
licence.

59. The holder of a prospecting licence shall

(a) commence prospecting operations within three months of the grant of the prospecting licence or such other period as may be specified in the licence;

(b) undertake prospecting operations in accordance with the programme of prospecting operations;

(c) ensure that the amount specified in the programme of prospecting operations is expended in the course of undertaking prospecting operations;

(d) comply with the terms and conditions of any environmental impact assessment licence which relates to the operations

to be carried out under the prospecting licence;

- (e) notify the Commissioner of the discovery of any mineral deposit of potential commercial value (including mineral deposits for which the holder of the licence was not authorised to prospect),
- (f) notify the Commissioner of any archaeological discovery; and
- (g) comply with the conditions of the licence or any existing and applicable minerals agreement, and any directions issued by the Commissioner or an authorized officer in accordance with this Act.
- (h) submit to the Commissioner geological and financial reports and such other information relating to prospecting operations as may be prescribed either quarterly or at such other intervals as may be determined by the Commissioner.

PROVIDED that where the amount specified in the programme of prospecting operations in (c) is not expended in the course of prospecting operations, such amount as shall not have been expended, shall be recoverable by the State as a civil debt.

Form of
prospecting
licence.

60. A prospecting licence issued in accordance with this Act shall include the following information in addition to the information referred to in section 22 of this Act –

- (a) the approved programme of prospecting operations;

- (b) the approved plan for the procurement of local goods and services; and
- (c) the approved plan to employ and train citizens of Kenya.

Record-keeping and reporting requirements.

61. (1) The holder of a prospecting licence shall keep at the holder's registered address complete and accurate records of prospecting operations relating to the licence in the manner prescribed.

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

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

Amendment of programme of prospecting operations.

62. The holder of a prospecting licence may seek amendments to the approved programme of prospecting operations by written application to the Commissioner in the prescribed form.

Renewal of prospecting licence.

63. (1) The holder of a prospecting licence may apply to the Commissioner for the renewal of the licence in respect of an area of land that forms part of the prospecting area by application in the prescribed form accompanied by the prescribed fee.

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

licence.

- (3) Where an application has been submitted as per subsection (2) and the Commissioner fails to respond before expiry of the prospecting licence, the applicant may continue prospecting.

Term of renewal.

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

(2) A prospecting licence shall not be renewed more than two times.

Application for renewal of prospecting licence.

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

- (a) a report on the progress of prospecting operations;
- (b) a statement of costs incurred in the course of undertaking prospecting operations;
- (c) particulars of the programme of prospecting operations that the applicant proposes to carry out during the renewal period; and,
- (d) a plan identifying the area of land in respect of which renewal is sought; and
- (e) proof of submission of environmental audit reports to the National Environmental Management Authority.

(2) Where a plan is not provided in accordance with subsection (1)(d), the Commissioner shall determine the area in respect of which renewal shall be granted.

Relinquishment.

66.(1) Unless the Commissioner agrees that a smaller area may be relinquished, the size of the prospecting area specified in a prospecting licence shall

be reduced upon renewal –

- (a) by 50% of the prospecting area upon first renewal; and,
- (b) by 25% of the remaining prospecting area upon the second renewal.

(2) Upon the renewal of a prospecting licence, any area of land that is covered by a retention licence or mining licence shall be omitted from the prospecting area under the prospecting licence.

(3) Where a person holds two or more contiguous prospecting licences of the same term and in respect of the same mineral or minerals, the Commissioner may, for the purposes of relinquishment under subsection (1) of part or any of the areas thereof, declare the areas covered to be one area subject to a single prospecting licence and provide written notification to the holder of the prospecting licence.

(4) Compensation shall not be payable under this Act in respect of the relinquishment of land provided for under this Act where the land had formed part of the prospecting area under a prospecting licence.

Retention Licence

Eligibility for retention licence.

67.(1) This section applies where –

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

(2) Where the circumstances described in subsection (1) exist, the holder of a prospecting licence

may apply for a retention licence.

Application for
retention
licence.

68.(1) The holder of a prospecting licence may apply for a retention licence by application to the Commissioner in the prescribed form accompanied by payment of the prescribed fee.

(2) An applicant for a retention licence shall provide information on the following matters to the Commissioner in the prescribed form in accordance with subsection (1): –

- (a) the mineral or mineral deposit in respect of which the licence is sought;
- (b) a full study and assessment by independent experts on the prospects for recovery and the commercial significance of the mineral deposit and on the relevant adverse market conditions, economic factors, technical constraints or other factors that make it impossible to develop the mineral deposit immediately;
- (c) the area in respect of which the licence is sought;
- (d) particulars of any proposed prospecting operations to be carried out under the licence;
- (e) details of the experience and financial resources available to the applicant to develop the mineral or minerals once the relevant adverse market conditions, economic factors, technical constraints or other factors that make it impossible to develop the mineral or minerals cease;
- (f) a plan giving particulars of the applicant's proposals with respect to the employment and training of Kenyan citizens; and
- (g) a plan giving particulars of the applicant's

proposals with respect to the procurement of local goods and services.

(3) The Commissioner shall not recommend the grant of a retention licence unless satisfied that –

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

(4) At any time before determining the application, the Commissioner may require the applicant to provide any additional information that the Commissioner may reasonably require regarding the applicant's proposals for the retention and development of the mineral deposits covered by the application.

(5) Where a request for additional information is made in accordance with subsection (3), the Commissioner shall not be required to determine the

application until the additional information has been provided.

Term of retention licence.

69. The term of a retention licence shall be specified in the licence, and in any case shall not exceed two years.

Rights conferred by retention licence.

70.(1) The holder of a retention licence shall enjoy the exclusive right to engage in prospecting operations in the retention area and to apply for a mining licence in respect of all or a part of the retention area.

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

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

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

Obligations under retention licence.

71. The holder of a retention licence shall –

- (a) demarcate the licence area in the prescribed manner;
- (b) back fill or otherwise make safe in the prescribed manner or as otherwise directed by the Commissioner any excavations made during the course of prospecting operations;

- (c) permanently preserve, or otherwise make safe in the prescribed manner or as otherwise directed by the Commissioner, any boreholes made during the course of prospecting operations;
- (d) comply with the terms and conditions of any environmental impact assessment licence relating to the operations to be carried out under the retention licence;
- (e) remove any equipment, plant or building erected for prospecting operations in the area specified in the licence;
- (f) carry out studies and assessments of the prospects of the commercial exploitation of the mineral deposits concerned as may reasonably be required by the Commissioner; and,
- (g) comply with the conditions of the licence or any existing and applicable minerals agreement, and any directions issued by the Commissioner or an authorized officer in accordance with this Act.

Record-keeping
and reporting
requirements.

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

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

- (a) details of all minerals discovered;
- (b) results of geo-chemical or geo-physical analysis obtained and compiled by the licence holder;
- (c) results of studies, surveys, tests and other work undertaken in the area covered by the retention licence, including any

interpretation and assessment of those tests and surveys;

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

Requirement to apply for mining licence.

73.(1) Where the Commissioner is satisfied that it has become technically possible and commercially viable for a mineral deposit that is the subject of a retention licence to be mined during the term of the licence, the Commissioner may serve a written notice on the holder of the retention licence requiring him to apply for a mining licence in respect of the minerals specified in the notice before the end of the period specified in the licence.

(2) Where the holder of a retention licence fails to comply with a notice served in accordance with subsection (1), the Commissioner may thereafter at any time cancel the licence PROVIDED that the holder will have been given 30 days to show cause as to why the retention licence should not be cancelled.

(3) No compensation shall be payable under this Act if a retention licence is cancelled in accordance with subsection (2).

Mining licence

Application for mining licence.

74.(1) A person may apply for a mining licence by application to the Commissioner in the prescribed form accompanied by the prescribed fee.

(2) An applicant for a mining licence shall provide information on the following matters to the Commissioner in the prescribed form when making an application in accordance with subsection (1) –

- (a) the mineral or minerals in respect of which the licence is sought;
- (b) the area in respect of which the licence is sought;
- (c) a proposed programme of mining operations that outlines mine forecasts and operation plans, including the options for minerals beneficiation in the prescribed form;
- (d) a statement regarding the mineral or minerals in the area of land over which the licence is sought, including details of all known minerals as well as probable mineral reserves;
- (e) a statement of the financial and technical resources available to the applicant to carry out the proposed mining operations and to comply with the conditions of the licence;
- (f) a plan giving particulars of the applicant's proposals with respect to the employment and training of Kenyan citizens; and,
- (g) a plan giving particulars of the applicant's proposals with respect to the procurement of local goods and services.

Restrictions in respect of mining licences.

75. The Commissioner shall not grant a mining licence in respect of land that is the subject of a prospecting licence, a retention licence or a mining licence unless –

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

Consideration of applications

76. The Board shall not recommend the grant of a mining licence unless it is satisfied that –

- (a) the area of land over which the mining licence is sought is reasonable having regard to the applicant's proposed programme of mining operations;
- (b) the applicant has adequate financial resources, technical competence and mining industry experience to carry out the proposed programme of mining operations;
- (c) the applicant has obtained an environmental impact assessment licence in respect of the applicant's proposed mining operations;
- (d) the applicant's proposals with respect to the procurement of local goods and services are acceptable; and,
- (e) the applicant's proposals with respect to employment and training of Kenyan citizens are acceptable.

Application by holder of prospecting licence.

77. The Board shall recommend the grant of a mining licence to an applicant where –

- (a) the applicant is the holder of a prospecting licence who has given notice to the Commissioner of the discovery of minerals in or on terrestrial or marine areas that is the subject of the prospecting licence, or in respect of minerals to which the prospecting licence relates; and
- (b) the applicant satisfies all of the requirements prescribed by this Act for the grant of a mining licence.

Notice of refusal.

78. An application for a mining licence made in the prescribed form by a *bona fide* applicant shall not be refused on any of the grounds prescribed by this Act

unless –

- (a) the Commissioner has given the applicant notice of the intended refusal and the ground for the refusal;
- (b) the Commissioner has specified in the notice a period within which the applicant may make appropriate proposals to correct or remedy the ground for the intended refusal; and
- (c) the applicant has not, within that period, made appropriate proposals.

Treatment of applications and notification.

79. The Commissioner shall, within sixty days of the receipt of an application for the grant of a mining licence, and thereafter at thirty-day intervals, notify the applicant of the measures being taken regarding the application.

Form of mining licence

80. A mining licence issued in accordance with this Act shall include the following information in addition to any other information referred to in this Act:–

- (a) the approved programme of mining operations;
- (b) the approved plan for the procurement of local goods and services; and,
- (c) the approved plan to employ and train citizens of Kenya.

Term of mining licence.

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

- (a) twenty five (25) years; or
- (b) the forecast life of the mine,

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

Rights conferred
by mining
licence.

82.(1) The holder of a mining licence shall enjoy the exclusive right to mine the mineral deposit or deposits specified in the licence within the area specified subject to the provisions of this Act and the terms and conditions contained in the licence.

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

- (a) enter the area of land specified in the licence and take all reasonable measures on or under the surface of the land to carry out mining operations;
- (b) erect equipment, plant and buildings necessary to mine the specified mineral and to transport, dress or treat the minerals so recovered;
- (c) dispose of any mineral recovered subject to the payment of the required fees and royalties; and
- (d) stack or dump any mineral or waste products in the manner provided for in the licence or as otherwise required by the Commissioner, having regard to good mining industry practice.

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

Obligations
under mining
licence.

83. The holder of a mining licence shall –

- (a) commence operations under the licence within six months of the grant of the licence, or such other period of time as may be specified in the licence or in any relevant minerals agreement;
- (b) conduct mining operations in compliance with the approved programme of mining operations;
- (c) comply with the terms and conditions of the environmental impact assessment licence relating to the operations to be carried out under the mining licence;
- (d) demarcate and keep demarcated the mining area in the prescribed manner; and
- (e) comply with the conditions of the licence and any applicable minerals agreement, and any directions issued by the Commissioner or an authorized officer in accordance with this Act;
- (f) submit to the Commissioner upto date quarterly returns of mine development and mineral production.

Record-keeping
and reporting
requirements.

84.(1) The holder of a mining licence shall keep at his registered address complete and accurate records of mining operations in the prescribed form.

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

- (a) copies of all maps, geological reports, sample analyses, aerial photographs, cores, logs and tests and other data obtained and compiled by the licence holder;

- (b) financial statements and such other books of account as the Commissioner may require; and
- (c) such other reports and information as may be prescribed or otherwise determined by the Commissioner.

Amendment of programme of mining operations.

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

(2) Unless rejected by the Commissioner, any such amendment shall, subject to subsection (3), take effect three months after the date of notification under subsection (1).

(3) Any proposed amendment likely to substantially alter the approved programme of mining operations shall not take effect unless expressly approved by the Commissioner.

Newly discovered minerals.

86.(1) The holder of a mining licence shall notify the Commissioner of the discovery of any mineral to which the licence does not relate within thirty days of the discovery and shall include such particulars of the site and the circumstances of the discovery as may be prescribed or otherwise required by the Commissioner.

(2) Subject to subsections (1) , the holder of the mining licence may apply to the Commissioner to include a newly discovered mineral or minerals in the mining licence.

(3) An application to include a newly discovered mineral or minerals made under subsection (2) shall be in the prescribed form and shall include a proposed programme of mining operations relating to such mineral or minerals.

(4) The Commissioner may approve an application made in accordance with subsections (2) and (3) subject

to such additional conditions as the Commissioner may determine.

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

87.(1) The holder of a mining licence shall give the Commissioner notice of any intention to cease, suspend, or curtail production from mining operations carried out pursuant to the licence.

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

- (a) twelve (12) months if cessation of production is intended;
- (b) six (6) months if suspension of production is intended; or
- (c) three (3) months if curtailment in production is intended.

(3) A notice given under subsections (1) and (2) shall include a statement that sets out the technical and economic basis for the proposed cessation, suspension or curtailment of production.

(4) Upon receipt of a notice given in accordance with this section, the Commissioner shall –

- (a) investigate the circumstances leading to the proposed cessation, suspension or curtailment of production; and
- (b) advise the Board of the proposed cessation, suspension or curtailment of production.

(5) Subject to the advice of the Board, the Commissioner may approve the cessation, suspension or curtailment of production proposed by the licence holder subject to the holder complying with such conditions as the Commissioner may reasonably determine.

Renewal of mining licence.

88.(1) The holder of a mining licence may apply to the Commissioner for the renewal of the licence by

application in the prescribed form accompanied by the prescribed fee in respect of all or part of the licence area.

(2) An application for the renewal of a mining licence shall be made at least one (1) year before the expiry of the licence.

Application for renewal of mining licence.

89.(1) The following documents and information shall be required to accompany an application for the renewal of a mining licence –

- (a) a proposed programme of mining operations to be carried out during the term of renewal;
- (b) a plan of the area in respect of which renewal of the mining licence is sought;
- (c) an environmental impact assessment licence in respect of the applicant's proposals, where required under the Environmental Management and Coordination Act; and
- (d) such additional information as the Commissioner may require.

Term of Renewal.

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

- (a) fifteen (15) years; or,
- (b) the remaining life of the mine,

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

Mineral Agreements

Power to negotiate mineral agreements.

91. The Cabinet Secretary may, on behalf of the Government, negotiate and enter into a mineral agreement with an applicant or holder of a prospecting licence, a retention licence or a mining licence in respect of large scale mining or exploitation of minerals in the

marine and terrestrial areas in accordance with the provisions of this Act.

Terms of mineral agreements.

92.(1) A minerals agreement entered into under this Act may contain terms and conditions relating to rights and obligations of the holder of one or more prospecting licences, retention licences or mining licences, or any combination of such mineral rights.

(2) A minerals agreement may contain, in particular, provisions concerning –

- (a) the payment of royalties, taxes, fees and other fiscal impositions;
- (b) the circumstances or the manner in which a discretion conferred under this Act is to be exercised;
- (c) subject to the requirement of the Environment Act, environmental obligations and liabilities; and
- (d) procedures on the settlement of disputes.

Requirements for conclusion and execution of mineral agreements.

93. The Cabinet Secretary shall not execute a minerals agreement under this Act unless the Board has been provided with a copy of the text of the proposed agreement and has recommended that a minerals agreement be concluded and executed.

Consistency with legislation.

94.(1) A provision of a mineral agreement that is inconsistent with a provision of this Act shall be void.

(2) A provision of a mineral agreement shall not absolve a party to it from complying with relevant provisions of this or any other written law.

(3) Large scale mining agreements on terrestrial and marine areas must be submitted to Parliament for ratification and approval before execution by the Cabinet Secretary.

Small-Scale Operations

Categories of mineral rights relating to small-scale operations.

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

- (a) prospecting permits; and
- (b) mining permits.

Distinction between small-scale operations and large-scale operations.

96.(1) The Commissioner shall apply the criteria set out in the Schedule for the purpose of distinguishing between small-scale and large-scale operations in administering the provisions of this Act.

(2) The Cabinet Secretary may make by Order published in the Gazette, amend the Schedule.

Eligibility for mineral rights relating to small-scale operations.

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

- (a) a citizen of Kenya; or
- (b) a body corporate composed of Kenyan citizens, or any combination of such persons.

(2) A prospecting permit or a mining permit shall cease to be valid when its holder or any of its holders is or becomes ineligible by virtue of subsection (1) to be granted the permit.

Prospecting Permit

Application for prospecting permit.

98.(1) A person who meets the eligibility requirements referred to in section 97 of this Act may apply for a prospecting permit to the Commissioner in the prescribed form and upon payment of the prescribed fee.

(2) An applicant for a prospecting permit shall provide information on the following matters to the

Commissioner when making an application in accordance with subsection (1) –

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

Notice to applicants.

99.(1) Where after considering an application for a licence under this Part, the Commissioner is of the opinion that the application should be refused, the Commissioner shall give notice to the applicant of his intention to refuse to grant the permit, which notice shall specify –

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

(2) The applicant shall comply with the Commissioner's requirement under subsection (1) within the specified period failing which the Commissioner shall refuse the application.

(3) Notwithstanding subsection (2), where the ground for the intended refusal is not capable of being

remedied, the applicant may, instead of making an appropriate proposal under subsection (1)(b), show cause, within the specified period and to the satisfaction of the Commissioner, why the application should not be refused.

Term of prospecting permit.

100. The term of a prospecting permit shall be specified in the permit, but in any case shall not exceed twelve (12) months.

Rights conferred by prospecting permit.

101.(1) Subject to subsection (3), the holder of a prospecting permit shall enjoy the right to prospect in the area specified in the permit for the mineral or minerals specified in the permit.

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

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

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

Obligations under prospecting permit.

102. The holder of a prospecting permit shall -

- (a) comply with the terms and conditions

specified in the permit;

- (a) take all necessary measures to protect the environment and
- (b) comply with any prescribed record keeping obligations.

Renewal of
prospecting
permit

103. The holder of a prospecting permit may apply for the renewal of the permit by application to the Commissioner in the prescribed form and upon payment of the prescribed fee.

Term
renewal.

104.(1) The term of renewal of a prospecting permit shall be specified in the permit, and in any case shall not exceed twelve months.

(2) The Commissioner shall not renew a prospecting permit more than two times.

Mining Permit

Application for
mining permit.

105.(1) A person who is eligible under section 90 of this Act may apply for a mining permit to the Commissioner in the prescribed form and upon payment of the prescribed fee.

(2) An applicant for a mining permit shall provide information on the following matters to the Commissioner –

- (a) the full name, nationality and address of the applicant, or, in the case of a body corporate, its place of incorporation, names and nationalities of the directors and its registered address;
- (b) the mineral in respect of which the permit is sought;
- (c) details of the area in respect of which the permit is sought;

- (d) particulars of the proposed mining operations to be carried out under the permit; and
- (e) details of the mining experience and financial resources available to the applicant to conduct the mining operations.

Approval of application for mining permit.

106.(1) An application made by a person qualified for the grant of a mining permit shall not be refused unless –

- (a) the Commissioner has given notice to the applicant of the intention to refuse to grant the permit specifying the ground for doing so, and a period within which the applicant may make an appropriate proposal to correct or remedy the ground for the intended refusal; and
- (b) the applicant has not, within that period, made an appropriate proposal.

(2) Where the ground for the intended refusal is not capable of being remedied the applicant may, instead of making an appropriate proposal under subsection (1), show cause, within the specified period, to the satisfaction of the Commissioner, why the application should not be refused.

Term of mining permit.

107. The term of a mining permit shall be specified in the permit but shall not exceed three years.

Rights conferred by mining permit.

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

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

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

- (b) erect on the area temporary buildings and equipment necessary to carry out the mining operations;
 - (c) subject to the payment of royalties, use or dispose of any minerals recovered; and
 - (d) stack or dump any minerals or building materials or waste products in the manner provided for in the permit or as otherwise approved by the Commissioner
- (4) A person appointed by the holder of a mining permit to act as an agent may exercise the rights of the holder of the permit, subject to any limitations on the powers of the agent contained in the instrument of appointment.

Obligations
under mining
permit.

109. The holder of a mining permit shall: –

- (a) conduct mining operations in compliance with a plan approved by the Commissioner;
- (b) demarcate and keep demarcated the mining area in the prescribed manner;
- (c) take all measures necessary to protect the environment;
- (d) submit to the Commissioner upto date quarterly returns on mine development and mineral production, and
- (e) comply with any prescribed record keeping obligations.

Renewal of
mining permit.

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

Term of
renewal.

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

years.

(2) The Commissioner shall not renew a mining permit more than two times.

PART VI - SURRENDER, SUSPENSION AND CANCELLATION OF MINERAL RIGHTS

Application for approval of surrender

112. The holder of a mineral right may by notice in writing to the Commissioner apply for approval to surrender such right.

Approval required for the surrender of mineral right.

113.(1) The Commissioner may, on receipt of an application from the holder of a mineral right, permit the holder of a mineral right to surrender the right in respect of the whole or any part of the area specified in the right.

(2) An application for the surrender of a mineral right shall be made to the Commissioner in the prescribed form and shall give at least three months' or, in the case of a prospecting permit, one month's notice of the intention of the holder to surrender the whole or part thereof of the mineral right in respect of the area specified in the right.

(3) An application made under subsection (2) shall include –

- (a) a plan of the area to be surrendered in a form acceptable to the Commissioner if the surrender relates to part of the area specified in the right; and
- (b) proof of implementation of Environmental Management Plans
- (c) all records and reports with respect to the reconnaissance, prospecting or mining operations carried out in the area to be surrendered.

Notification of approval of surrender.

114.(1) A proposed surrender of an area covered by a mineral right shall have no effect unless and until the Commissioner gives the holder thereof written notice

that the surrender has been approved.

(2) An approval of the surrender of a mineral right may be granted subject to such conditions as the Commissioner may deem appropriate.

Effect of
surrender.

115.(1) Except as provided by section **32(2)** of this Act, a mineral right shall cease to have any effect when an application for its surrender is approved.

(2) Where the application is in respect of part of the area specified in the mineral right,–

it shall cease to have effect in respect of that area but shall continue to have effect in respect of the remaining area.

Grounds for
suspension and
cancellation.

116. (1) The Commissioner may suspend or cancel a mineral right if the holder of the right –

- (a) fails to make a payment required under this Act by the due date;
- (b) fails to comply with any condition specified in the right or an obligation placed on the holder by this Act, or fails to take the action required by the Commissioner to be taken in accordance with subsection (3);
- (c) commits an offence under this Act or any other written law;
- (d) makes or is found to have made a false statement in the application for the grant or renewal of the mineral right; or
- (e) becomes bankrupt, or suffers any pecuniary embarrassment, or otherwise becomes ineligible to hold the mineral right.

(2) The Commissioner may suspend or cancel a

prospecting or mining permit if the Commissioner is satisfied that the holder has not commenced prospecting or mining operations under the permit within three months of the date of grant thereof.

(3) Before suspending or cancelling a mineral right in accordance with subsection (2) the Commissioner shall give the holder a written notice requiring him –

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

Effect of
cancellation.

117.(1) Subject to section **32(2)**, a mineral right shall cease to have any effect on its cancellation.

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

Assets on
termination.

118.(1) The holder of a mineral right who applies to the Commissioner to surrender the right shall furnish the Commissioner with the following information in the prescribed form –

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

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

direct.

(3) On receipt of the information mentioned in subsection (1) or (2), the Commissioner may serve a notice on the holder or former holder requiring him –

- (a) not to remove any building or fixed machinery specified in the notice which the Commissioner considers necessary for the continued care and maintenance of the area; or
- (b) to remove buildings and other items of fixed machinery specified in the notice; and
- (c) to remove or make safe in accordance with the approved site closure plan or in such other manner as the Commissioner may direct, potentially hazardous substances, buildings and excavations specified in the notice.

(4) A person shall comply with a notice served in accordance with subsection (3) before the end of the period specified in the notice.

(5) Where the Commissioner requires that the holder of a right should not remove any building or machinery under paragraph (3)(a), such holder shall be entitled to receive compensation from the Government in respect of the buildings or fixed machinery specified by the Commissioner.

(6) The amount of any compensation payable under subsection (5) shall be –

- (a) such amount as may be agreed or,
- (b) failing agreement, such amount as may be determined by the Commissioner in accordance with the provisions of this Act.

Delivery of
records and

119.(1) In cases where a mineral right not renewed at

documents on termination. the end of its term, is surrendered by the holder or cancelled by the Commissioner, the holder shall deliver to the Commissioner within a period of two months –

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

**PART VII - SURFACE RIGHTS,
COMPENSATION AND DISPUTES**

Enjoyment of Rights and Compensation

Evidence of mineral right to be produced.

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

Right to graze livestock and cultivate land.

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

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

Principles of Compensation.

122.(1) Where the exercise on land of the rights conferred by a mineral right –

- (a) disturbs or deprives the owner or any lawful occupier or user of the land or part of the land;

- (b) causes loss of or damage to buildings and other immovable property;
- (c) in the case of land under cultivation or grazing of domesticated animals, causes any loss of earnings or sustenance suffered by the owner or lawful occupier of the land,

a demand or claim for compensation may be made to the holder of the mineral right to pay prompt, adequate and fair compensation to the lawful owner, occupier or user of the land in accordance with the provisions of this Act.

(2) No demand or claim for compensation shall lie, whether under this Act or otherwise –

- (a) in consideration for permitting entry to the land connected with the enjoyment of rights conferred under a mineral right;
- (b) in respect of the value of any mineral in, on, or under the land that is the subject of a mineral right; or,
- (c) for any loss or damage for which compensation cannot be assessed according to legal principles.

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

(4) Where a dispute cannot be resolved by negotiations within a reasonable period of time, either party to the dispute may refer the matter to the Commissioner for a determination in accordance with section 123 of this Act.

(5) A demand for compensation made under this section shall not entitle an owner, occupier or user of land to prevent or hinder the exercise over that land of

any rights under a mineral right pending the settlement of the matter.

Determination of Mining Disputes

Determination of mining disputes by Commissioner.

123. Subject to the provisions of this Act, the Commissioner may inquire into and decide on a dispute-

- (a) between applicants for mineral rights;
- (b) between mineral rights holders;
- (c) between an applicant for a mineral right and a mineral rights holder; or
- (d) between the applicant or the holder of a mineral right and a third party, not being the State, including disputes in respect of compensation payable under section **122**.

Procedure for determination of disputes by Commissioner.

124.(1) A dispute referred to in section **123** may be referred to and determined by the Commissioner in accordance with the following procedures –

- (a) the party referring the dispute to the Commissioner shall lodge a memorandum with the Commissioner together with a statement of claim in the prescribed form;
- (b) on receipt of the memorandum, the Commissioner shall notify the party against whom the complaint has been made of the referral of the dispute to the Commissioner, and shall advise the other party of the nature of the complaint and invite that party to lodge a memorandum that responds to the complaint.
- (c) upon receiving the written response from the party against whom a complaint has been lodged for determination, the Commissioner shall notify the parties of the time and place

at which the matter will be heard and determined;

(d) the parties shall be invited to state their respective cases before the Commissioner and shall be entitled to adduce evidence on oath or affirmation in support of their cases; and,

(e) after hearing the statements and receiving the evidence the Commissioner shall make a written determination of the dispute.

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

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

(4) Subject to section 125, the Commissioner may make such order as he may consider necessary to give effect to a determination, including ordering the payment of compensation by one party to the dispute to the other.

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

(6) The Minister shall by notice in the gazette prescribe rules of procedure to be applied in respect to determination of disputes under this Act.

Mining Disputes Review Tribunal

Establishment of
Mining Disputes

124.The National Environment Tribunal

The Mining and Minerals Bill, 2011

Review
Tribunal.

established under the Environmental Management and Coordination Act shall be the Tribunal to hear and determine mining disputes under this Act.

PART VIII-DEALINGS IN MINERALS

Disposal of
minerals.

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

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

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

Authorisation to
deal in minerals.

127(1) A person shall not engage in mineral dealings, as either principal or agent, except with and in accordance with a mineral dealer's licence.

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

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

Application for
mineral dealer's
licence.

128.(1) An application for a mineral dealer's licence shall be made to the Commissioner in the prescribed

form and shall be accompanied by the prescribed fee.

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

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

Term of mineral dealer's licence.

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

(2) A mineral dealer's licence may be renewed upon an application being made to the Commissioner in the prescribed form and upon payment of the prescribed fee.

Obligations under mineral dealer's licence.

130.(1) The holder of a mineral dealer's licence shall not –

- (a) deal in minerals otherwise than in accordance with the conditions set out in the licence;
- (b) engage in mineral dealings in the course of the business permitted by the licence with a person who has not acquired the minerals lawfully or is otherwise not lawfully entitled to deal in the minerals;
- (c) engage in mineral dealings as either principal or agent, except at the place or in the premises specified in the licence;
- (d) store minerals except at the place or in the premises specified in the licence and shall comply with any other conditions specified in the licence.

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

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

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

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

(3) The holder of a mineral dealer's licence shall deliver or transmit to the Commissioner in the months of January, April, July and October of every year, a true copy of the register in duplicate for the preceding three months, together with a statutory declaration of the correctness thereof, and shall also produce the register to a police officer of or above the rank of Inspector whenever required in writing by the officer.

Appointment of Agent.

132. (1) The holder of a mineral dealer's licence may appoint an agent for the purpose of engaging in mineral dealings.

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

(3) Following the appointment of an agent under this section, the holder of a mineral dealer's licence shall furnish the Commissioner with the following information

in the prescribed form -

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

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

Diamond Dealer's Licence

Dealings in diamonds.

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

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

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

(4) Where a banker wishes to exercise its statutory power of sale over diamonds in its possession, the banker will have to seek the consent of the Secretary

Application for diamond dealer's licence.

134.(1) An application for a diamond dealer's licence shall be made to the Commissioner in the prescribed form and shall be accompanied by the prescribed fee.

(2) An application made under subsection (1) shall be accompanied by evidence sufficient to show that the

applicant is in possession of, or commands, sufficient working capital to ensure that he can carry on the business that would be permitted under the diamond dealer's licence.

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

Term of
diamond dealer's
licence.

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

(2) A diamond dealer's licence may be renewed upon an application being made to the Commissioner in the prescribed form and upon payment of the prescribed fee.

Obligations
under diamond
dealer's licence.

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

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

and shall comply with any other condition

specified in the licence.

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

(3) The holder of a diamond dealer's licence shall record in the register the following information in respect of transactions for the purchase or sale of diamonds: –

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

(4) The holder of a diamond dealer's licence shall deliver or transmit to the Commissioner in the months of January, April, July and October of every year, a true copy of the register in duplicate for the preceding three months, together with a statutory declaration of the correctness thereof, and shall also produce and exhibit the register to a police officer of or above the rank of Inspector whenever required in writing by the officer.

Appointment of
Agent by holder
of Diamond
Dealer's
Licence.

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

(2) The appointment of an agent under subsection (1) shall not operate to exempt the holder of a diamond dealer's licence from compliance with the

relevant provisions of this Act and the conditions of the licence.

(3) Following the appointment of an agent under this section, the holder of a diamond dealer's licence shall furnish the Commissioner with the following information in the prescribed form -

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

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

Import and Export of Minerals

Export of
minerals.

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

(2) The holder of a mineral right or of a mineral dealer's licence or a diamond dealer's licence may apply to the Commissioner for an export permit by application in the prescribed form, accompanied by the prescribed fee.

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

- (5) Where diamonds are to be exported pursuant to a permit issued under this section, export shall be in conformity with the Kimberley certification scheme.

Import
minerals.

of **139.(1)** A person shall not import minerals except in accordance with an import permit granted by the Commissioner.

(2) An application for an import permit shall be made to the Commissioner in the prescribed form, and be accompanied by the prescribed fee.

(3) Where a person imports minerals in accordance with a permit granted under this section:-

(a) the person shall make a declaration before a customs officer regarding the type and quantity of the minerals imported; and

(c) the customs officer shall certify the import permit accordingly.

(4) Where diamonds are imported pursuant to a permit issued under this section they shall be accompanied by a Kimberly certificate.

Suspension and Cancellation of Licence

Suspension and
cancellation.

140.(1) The Commissioner may suspend or cancel a licence or permit granted under this Part if the holder -

(a) fails to make any prescribed payment by the due date;

(b) fails to comply with a condition specified in the licence or an obligation imposed on the holder by this Act and fails to take action to remedy the breach within a reasonable time;

(c) makes a false statement or has supplied false

information to the Commissioner, or to a public officer exercising functions under this Act that was, material to the grant of the licence or permit;

- (d) dies, becomes of unsound mind, bankrupt, subject to financial difficulty or otherwise ineligible to hold the licence or permit; or
- (e) commits any offence under this Act.

(2) Before suspending or cancelling a licence or permit under subsection (1) the Commissioner shall give the holder of the licence or permit written notice requiring the holder –

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

Effect of
cancellation.

141.(1) A licence or permit cancelled under section 140 shall cease to have any effect on its cancellation.

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

Delivery of
records and
documents on
cancellation.

142. Upon cancellation of a licence under section 140, the holder shall deliver to the Commissioner within the prescribed period all the records which, prior to cancellation or expiration, he was obliged to maintain under this Act.

PART IX - PROTECTION OF THE ENVIRONMENT

Environmental
laws to prevail.

143.(1) No mineral rights or other licence or permit

granted under this Act shall exempt a person from complying with any law concerning the protection of the environment.

(2) A mineral right shall not be granted to a person under this Act unless the person has been granted an environmental impact assessment licence where required under the Environmental Management and Coordination Act.

Water rights
laws to prevail.

No. 8 of 2002.

144. No provision of this Act and no rights or entitlements conferred under a mineral right granted under this Act shall operate to exempt a person from compliance with the provisions of the Water Act, 2002 concerning the right to the use of water from any water resource.

Land use.

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

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

Requirement of site restoration and mine closure plans.

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

(2) Regulations made under this Act may prescribe site rehabilitation and mine-closure obligations that shall apply to the holder of a mineral right.

Environmental protection bonds.

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

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

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

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

PART X – FINANCIAL PROVISIONS

Fees.

148. The holder of a mineral right, a mineral dealer's licence or a diamond dealer's licence shall pay at

the prescribed times such fees as may be prescribed in respect of the right or licence.

Prohibition on the disposal of minerals while payments outstanding.

149. (1) The holder of a mineral right shall not sell or otherwise charge or dispose of minerals won by virtue of that right until –

- (a) all fees, royalties, taxes and other charges levied under this Act have been paid in respect of the minerals; or
- (b) arrangements approved by the Commissioner to secure those payments have been made.

(2) Where minerals are sold or otherwise charged or disposed of contrary to subsection (1) no title to nor property in the minerals shall pass to the other party to the transaction.

Royalties.

150.(1) The holder of a mineral right shall pay *ad valorem* royalty on minerals won by virtue of the mineral right at the following rates –

- (a) 10 % of the gross sales value for diamond;
- (b) 5% of gross sales value for other precious minerals;
- (c) building minerals at the rate prescribed in accordance with section 151(4) for building minerals; and
- (d) 3% of gross sales value for all other minerals, unless another rate of royalty is prescribed.

(2) The holder of a mineral right shall pay royalty on a mineral on receipt of the payment or other consideration for the mineral.

(3) A royalty payment shall be accompanied by

the prescribed form on which shall be entered –

- (a) the name of the holder;
- (b) particulars for the mineral sold or disposed of, and
- (c) such amount of the payment and such other terms as may be necessary.

(4) The Commissioner may exempt the holder of a mineral right from the obligation to pay royalties on minerals where the Commissioner considers it is appropriate to do so since the minerals have been or are to be subject to assay, analysis or technical examination.

Valuation base
for royalties.

151.(1) For the purpose of determining the royalty payable under this Act, the gross sales value of minerals shall be their gross sales value at their point of sale.

(2) In this section –

"gross sales value" means the sale value receivable at the point of sale in an arms-length transaction without discounts, commissions or deductions for the mineral on disposal;

"point of sale" means –

- (a) the mine gate for domestic sales when first extracted from the mine site;
- (b) the plant gate for minerals sold after beneficiation for the first saleable mineral product; and
- (c) the point of export for minerals that are exported;

"arms-length transaction" means a sale transaction in the open market where, the purchase price for the sale

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

(3) Where it appears to the Commissioner that minerals have been disposed of other than in an arms-length transaction, the gross sales value of the minerals shall be such amount as is determined by the Commissioner in accordance with this section.

(4) The Cabinet Secretary may make regulations to prescribe a different royalty valuation method for building minerals.

Discretionary relief.

152. The Board may recommend for reduction or temporary suspension of a royalty rate where it is satisfied that a satisfactory economic case has been made by the holder of a mineral right to justify such recommendation.

Annual holding fee.

153. The holder of a prospecting licence, a retention licence, or a mining licence shall pay the prescribed annual holding fee to the State in respect of the area specified in the licence.

Recovery of royalty, fees and charges

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

Sharing of royalties

Benefit Sharing

155. Royalties shall be shared by the State, county governments and communities in areas subject to

mineral rights as specified in schedule 3 to this Act.

PART XI- RECORDS AND REGISTRATION OF MINERAL RIGHTS

Register of Mineral Rights.

156.(1) The Commissioner shall establish and maintain a Register of Mineral Rights.

(2) The Register shall be a public document and may be inspected by any interested person upon the payment of a prescribed fee.

Requirement to enter information in Register.

157.(1) The Commissioner shall cause to be entered in the Register details of each application, grant, assignment, transfer, notice, surrender, suspension and cancellation of a mineral right.

(2) The Commissioner shall cause to be entered in the Register such other documents, records and instruments as may be prescribed by regulations made under this Act.

Power to correct Register.

158. Where the Commissioner is satisfied:-

- (a) that a mistake has been made in the Register; or
- (b) that a matter has been incorrectly entered or recorded in the Register,

the Commissioner shall notify the person or persons affected by the mistake or error and shall promptly rectify the error by correcting the mistake or entry in the Register.

Replacement of originals.

159. The Commissioner may, where he is satisfied that the original of any document or instrument evidencing any right under this Act has been lost, destroyed or rendered illegible, at the request of the holder of such document or instrument and on payment of any prescribed fee: -

- (a) prepare, endorse, certify and issue to the

holder a copy of the original; and

- (b) enter details of the copy in the Register.

Evidentiary
Certificates.

160. The Commissioner may, on payment of any prescribed fee, issue an evidentiary certificate based on the register specified in this Part which may be received in administrative, court or arbitration proceedings as evidence of the following matters –

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

Cadastral
system

161. (1) The Commissioner shall establish and maintain a cadastral system for mineral rights.

(2) The cadastral shall be a public document and may be inspected by any interested person upon the payment of a prescribed fee.

PART XII-MONITORING, COMPLIANCE AND ENFORCEMENT

Powers of Search and Inspection

Appointment of
inspectors of
mines.

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

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

General powers
of search and
inspection.

163.(1) The Commissioner or an inspector mines may without prejudice to all other written laws, at all reasonable times –

- (a) enter, inspect and examine land on which reconnaissance, prospecting or mining operations are being conducted or land that is the subject of a mineral right;
- (b) enter into an area, structure, vehicle, vessel, aircraft or building that, in the opinion of the Commissioner or the mining inspector has been or is being used for or in connection with reconnaissance, prospecting or mining operations;
- (c) carry out periodic inspections of premises within their jurisdictional limits that have been or are being used for or in connection with reconnaissance, prospecting or mining operations;
- (d) enter, inspect and examine any premises where mineral dealings are being conducted;
- (e) require the production of, inspect, examine, and take copies of licences, permits, registers, records of any kind and other documents relating to this Act and the carrying out of operations authorised by a mineral right, or other licence or permit granted under this Act;

- (f) take samples of any article and substances to which this Act relates and submit such samples for test and analysis in such a manner as may be prescribed;
- (g) seize any article, vessel, motor vehicle, plant, equipment, substance or any other thing which he reasonably believes has been used in the commission of an offence under this Act or regulations made thereunder;
- (h) upon giving the holder three months' written notice, install any equipment on any land, premises, vessel or motor vehicle for the purposes of monitoring compliance with the provisions of this Act, or regulations made thereunder.
- (i) enter into any premises to ascertain best mining and mineral processing practices including safety and health concerns; and
- (j) enter into any premises to examine and enquire on the condition and ventilation of any mine or any building used in or connected with prospecting, mining or mineral processing operations and all matters relating to safety, welfare and the health of persons employed in any such mine or building; and
- (k) with an arrest warrant and the assistance of a police officer, arrest any person whom he reasonably believes has committed an offence under this Act; and

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

Power to intercept and detain minerals sent by post or courier

164. (1) A police officer of or above the rank of Inspector who has reasonable cause to believe that an article containing minerals is being conveyed by post or courier in connection with the commission of an offence

under this Act or regulations made thereunder, or that such an offence has been committed, may stop or cause the article to be stopped at any point in Kenya either during transit or otherwise.

(2) If the person who has dispatched the article referred to in subsection (1) can be ascertained and is in Kenya, the police officer shall by notice in writing personally served upon that person, require him to attend, either personally or by an agent duly authorized by him in writing, at the point at which the article is detained at a specified time which shall allow reasonable opportunity for his attendance or that of that agent, in order that he or the agent may be present at the opening and examination of the article.

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

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

Powers of
arrest.

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

Code.

Court orders to
cease operations.

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

Powers to
Prosecute.
Cap. 75

167. An authorised officer may, subject to the direction of the Director of Public Prosecutions, conduct prosecution of any offence under this Act or regulation made thereunder, and shall for that purpose have all the powers conferred upon a police officer by the Criminal Procedure Code.

Offences and Penalties

Offences
relating to
unauthorised
operations

168.(1) A person who engages in activities and operations for, or connected with, the dealing, search for, prospecting, or mining of a mineral or mineral deposit in Kenya in the absence of the relevant mineral right granted under this Act shall be guilty of an offence and liable to imprisonment for a term not exceeding six months, or to a fine not less than fifty thousand shillings, or both such fine and imprisonment.

(2) The Court before which a person is charged for an offence under subsection (1) may, in addition to any other order –

- (a) upon the conviction of the accused; or,
- (b) if it is satisfied that an offence was committed notwithstanding that no person has been convicted of the offence,

order that minerals obtained in the commission of the offence be forfeited to the State and be disposed of as the

Court may direct.

Offences relating to unauthorised possession of minerals.

169. A person found in the possession of a mineral shall, unless he proves that he obtained it lawfully, be guilty of an offence and liable, upon conviction, to imprisonment for a term not exceeding six months, or to a fine commensurate with the value of the mineral but not less than five hundred thousand shillings, or both such imprisonment and fine.

Offences relating to mineral rights holders.

170. A person who, without reasonable or lawful excuse, obstructs or hinders the holder of a mineral right, or an agent or employee of the holder, from doing an act that the holder or person is authorised to do under this Act or under the terms of the mineral right shall be guilty of an offence and liable to imprisonment for a term not exceeding thirty six months, or to a fine of not less than one million shillings, or both.

Offences relating to monitoring and inspection.

171. A person who, without reasonable or lawful excuse –

- (a) hinders or obstructs the Commissioner or an authorised public officer in the exercise of his duties under this Act or regulations made thereunder;
- (b) fails to comply with a lawful order or requirement made by the Commissioner or an authorised public officer in accordance with this Act or regulations made there under;
- (c) refuses the Commissioner or an authorised public officer entry upon any land, premises, vehicle or aircraft that he is empowered to enter under this Act or regulations made there under;
- (d) impersonates the Commissioner or an authorised public officer; or,
- (e) refuses the Commissioner or an authorised

public officer access to records or documents kept pursuant to this Act or regulations made there under,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding thirty six months, or to a fine of not less than one million shillings, or both.

Offences relating to records and statements.

172. A person who:-

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

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding twelve months, or to a fine of not less than one million shillings, or to both such imprisonment and fine.

Offences relating to conditions of licences and permits.

173. A person who:-

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

licence, a diamond dealer's licence, an export licence or an import licence;

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine of not more than fifty thousand shillings, or to both such imprisonment and fine.

Offences relating to Salting.

174. A person who –

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

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

Offences relating to malicious placing of minerals on premises.

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

Offences relating to the unlawful disposal, export, or import of minerals.

176. A person who disposes of, transports, exports or imports a mineral, otherwise than in accordance with this Act or the conditions of a licence obtained under this Act, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding twelve months, or to a fine commensurate with the value of the mineral but not less than five hundred thousand shillings, or to both such imprisonment and fine.

Offences relating to the unlawful disclosure of information.

177.(1) A person who discloses confidential information otherwise than in accordance with this Act, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine of not less than one million shillings, or both.

(2) Subsection (1) shall not apply to any disclosure made –

- (a) in accordance with a provision of this Act;
- (b) in connection with the administration of this Act;
- (c) in connection with monitoring carried out in accordance with a provision of this Act, or the enforcement of a provision of this Act;
- (d) in connection with legal proceedings under this Act;
- (e) for the preparation of Government statistics;
- (f) for the purpose of making the information available to a public officer or a consultant engaged by the Government who has been authorised to receive the information for the purposes of the administration of this Act; or
- (g) with the consent of the person who provided the information;
- (h) by a person disclosing confidential information for selfish gain.

Offences by bodies corporate, partnerships, principals and employees.

178.(1) Where an offence against this Act is committed by a body corporate, the body corporate and every director or officer thereof, or, in the case of a partnership, a partner or officer in the partnership, who had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to

ensure compliance with this Act, shall be liable to be prosecuted and if found liable convicted and punished for that offence.

(2) A person shall be personally liable for an offence committed by him or her against this Act, whether committed by him on his own account or as an agent or employee of another person.

(3) An employer or principal shall be liable for an offence committed by an employee or agent against this Act, unless the employer or principal proves that the offence was committed against his express or standing directions.

Attempts and abetment.

179. A person who attempts to commit or aids and abets the commission of an offence under this Act or any regulations made thereunder commits that offence and shall be liable, upon conviction, to the same punishment as provided for the principal offence.

Burden of Proof.

180. Whenever it is necessary, in proceedings against a person under this Act or under any regulations made there under, to ascertain whether he is the holder of a mineral right, or the holder of a licence or permit granted under this Act, or is otherwise authorized to engage in mineral dealings, the burden of proving that he was the holder of a mineral right or other licence or permit shall lie upon that person.

General Penalty.

181. A person who commits an offence against any provision of this Act or against regulations made under this Act for which no penalty is expressly provided shall be liable, upon conviction, to imprisonment for a term not exceeding six months or to a fine of not less than fifty thousand shillings or to both such imprisonment and fine.

Court orders relating to cancellation of licences and permits.
Cap. 75.

182. Where any offence specified in this Act or prescribed by regulations made under this Act is committed by the holder of a mineral right, or the holder of any other licence or permit given under this Act, the Court may, in addition to any other order, further order

that the mineral right, licence or permit be cancelled.

PART XIII- MISCELLANEOUS

Insurance cover.

183.(1) The holder of a mineral right or an agent appointed by the holder who is undertaking reconnaissance, prospecting or mining operations shall, with respect to those operations, maintain insurance cover in respect of the attached risks especially for health and safety of employees.

(2) The holder or person mentioned in subsection (1) shall, where required by the Commissioner, furnish the Commissioner with certified copies of certificates of insurance that set out the insurance policy and any other documents that are required to demonstrate that the policy is valid, effective, and appropriate and covers the prescribed risks.

Notices.

184. Without prejudice to any other mode of service permitted under any rule of law, a notice sent to a person under this Act shall be deemed to have been effectively delivered to the person if it is delivered personally, or sent by registered post to the last known registered address of the person.

Immunity of officials.

185. Neither the Commissioner nor any public officer, nor any member of the Minerals Advisory Board, shall be liable to be sued in a civil court in respect of the exercise or performance, or exercise or performance, in good faith of a function under and for the purposes of this Act.

Prohibition against public officers acquiring interests.

186.(1) A public officer responsible for the administration of provisions of this Act shall not be eligible for the grant of a mineral right under this Act.

(2) A public officer responsible for the administration of provisions of this Act shall not be eligible for the grant of a mineral dealer's licence, a diamond dealer's licence, an export permit or an import permit under this Act.

(3) A public officer shall not directly or indirectly acquire or retain a share in a company carrying on reconnaissance, prospecting or mining operations in Kenya.

(4) A transaction that purports to confer or transfer a right or share on or to a public officer contrary to subsection (1), subsection (2) or subsection (3) shall have no legal effect.

Power to publish manuals, codes and guidelines.

187.(1) The Commissioner may publish and disseminate manuals, codes or guidelines relating to large-scale and small-scale operations, including in relation to environmental matters.

(2) In developing manuals, codes and guidelines for the purposes of subsection (1), the Commissioner shall ensure that any such publications are consistent with guidelines issued by other Government departments, agencies and authorities.

(3) Evidence that a person –

- (a) has complied with manuals, codes and guidelines may be used to show that the person has complied with his environmental obligations under this or any other Act; and
- (b) has not complied with the guidelines, may be used to show that the person has not complied with those obligations.

Requirement to prepare annual report.

188. (1) As soon as practicable after the end of each financial year, the Commissioner shall prepare and present to the Cabinet Secretary an annual report giving full details of all activities undertaken by the Minerals Advisory Board, the Commissioner and such other matters as the Cabinet Secretary may direct.

(2) The Cabinet Secretary shall cause an annual report prepared in accordance with this section to be laid before Parliament as soon as practicable after its completion but not later than the first quarter of a succeeding financial year

Requirement to prepare annual consolidated public account.

189. (1) As soon as practicable after the end of each financial year but not later than the first quarter of a succeeding financial year the Cabinet Secretary shall cause an annual consolidated public account of mining fiscal receipts to be prepared and audited.

(2) The Cabinet Secretary shall cause an annual consolidated public account prepared in accordance with this section to be laid before Parliament as soon as practicable after its completion.

Radioactive minerals.

190.(1) The provisions of this Act which relate to reconnaissance, prospecting and mining of minerals shall, subject to the provisions contained in this section, apply to radio-active minerals with the modifications that may be necessary.

(2) Where a radioactive mineral is discovered in the course of exercising a right under this Act or under another enactment, the holder of the mineral right or another person shall immediately notify the Commissioner of the discovery.

(3) Where a radio-active mineral is discovered on land other than land subject to a mining right, the owner of the land shall immediately notify the Commissioner and of the discovery.

Holder of radio-active mineral right to report operations

(4) A holder of a licence or lease under section 62 shall within the first week of each month furnish the Commissioner and the Geological Survey Directorate with a true report in writing of the prospecting and mining operations conducted by the holder in the immediately preceding month with respect to radioactive minerals.

Cabinet Secretary may waive some provisions.

191. The Cabinet Secretary may, on advise of the Minerals Advisory Board, by notice in the Gazette, waive the application of the provisions of this Act in respect of specified minerals or their uses.

Power to make regulations.

192.(1) The Cabinet Secretary may on the written advice of the Minerals Advisory Board make regulations necessary or convenient for the proper administration and implementation of this Act.

(2) Without prejudice to the generality of the foregoing, the Cabinet Secretary may on the written advice of the Minerals Advisory Board make regulations prescribing –

- (a) the fees, royalties, rent and other charges that are payable under this Act or the manner in which they are to be calculated;
- (b) the royalties that are payable for specific minerals or the manner in which they are to be calculated;
- (c) the manner in which an area referred to in a mineral right shall be demarcated;
- (d) the manner in which records, accounts, books and other documents shall be kept, retained and made available for inspection;
- (e) the procedures to be followed in respect of tendering in areas that have been designated for tendering for large-scale operations in accordance with this Act;
- (f) the measures to be observed in respect of radioactive and other restricted minerals

- including, the storage and transportation of radioactive and restricted minerals and the sale or supply of such minerals;
- (g) the measures to be included in programmes for prospecting and mining operations that require the Commissioner's approval;
 - (h) the measures to be observed to protect and rehabilitate the environment;
 - (i) procedures for the grant of Mineral rights and guidelines for exploration and mining in Kenya's territorial sea, exclusive economic zone and the continental Shelf;
 - (j) the areas that are excluded areas under this Act;
 - (k) the categories of mineral rights that are not to be granted in prescribed areas;
 - (l) the form of any licence, permit, form, return or other document to be used for the purposes of this Act.

**PART XIV - REPEAL, SAVINGS AND
TRANSITIONAL PROVISIONS**

Repeal of
legislation and
savings.

193.(1) The following laws are hereby repealed –

- Cap. 306 (a) the Mining Act;
- Cap. 309 (b) the Trading in Unwrought Precious Metals Act;
- Cap. 310 (c) the Diamond Industry Protection Act;

Cap.311

(d) the Gold Mines Development Loans Act.

(2) Notwithstanding subsection (1) -

(a) any right, claim, royalties or lease granted under the Mining Act (now repealed) shall continue in force as a mineral right granted under this Act until it expires whereupon the holder shall apply for a new right, claim or lease under this Act;

(b) any licence, permit or authorisation granted under -

(i) the Trading in Unwrought Metals,
or

(ii) the Diamond Industry Protection Act, shall continue in force until it expires, whereupon the holder shall apply for a new licence, permit or authorisation under this Act.

(c) any pending applications made under the written laws specified in subsection (1) shall be determined in accordance with the provisions of this Act.

(d) Any person who, immediately before the commencement of this Act, held an office or position similar in function to an office or position created under this Act, shall upon such commencement, be deemed to have been appointed to the latter office or position under this Act.

(3) (a) The term Cabinet Secretary means the Minister, within the Constitutional transitional period; and

(b) The term Principal Secretary means the Permanent Secretary within the Constitutional transitional period.

Criteria for Determining Small-scale Prospecting and Mining Operations

1. A prospecting or mining operation or a proposed prospecting or mining operation shall be classified by the Commissioner as a small-scale operation for the purposes of this Act where-

- (e) in the case of prospecting operations, the proposed prospecting area does not exceed 5 km²;
- (f) in the case of mining operations, the proposed mining area does not exceed 0.05km².

2. Notwithstanding paragraph (1), a prospecting or mining operation or a proposed prospecting or mining operation may also be classified as a small-scale operation for the purposes of this Act where-

- (a) in the case of mining operations, the actual or estimated annual extraction of minerals or material bearing minerals does not or will not exceed 25,000 cubic meters; or,
- (b) the prospecting or mining operations do not or will not employ specialised prospecting or mining technologies; or,
- (c) the proposed prospecting or mining operations, do not or will not involve substantial capital investment or expenditure.

3. Proposed prospecting operations or mining operations that do not have or will not have any of the characteristics of a small-scale mining operation as specified in paragraphs 1 or 2 shall be classified as a large-scale operation.

SECOND SCHEDULE

Classification of Minerals (S/4)

A. CONSTRUCTION AND INDUSTRIAL MINERALS GROUP

Alunite, andalusite-sillimanite
kyanite, anhydrite, apatite, asbestos, barite, beryl, (excluding beryl as a source of beryllium metal or as a semi-precious stone), boron minerals, calcium carbonate, celestite, clay (including bentonite and Fuller's Earth (Palygorsite and attapulgite), ball clay, halloysite, hectorine, kaolin, refractory clay), corundum, diatomite, dolomite, epsomite, feldspar, fluorite, garnet, (for industrial purposes), graphite, gypsum, heavy mineral sands, iodine minerals, leucosene, lithium minerals, limestone and marble, magnesite, mica nepheline syenite, nitrate, olivine, perlite, phosphate, fossil guano, quartz (for industrial purposes), picture-stone, potash, pumice, pyrophyllite, sals, sepiolite, silica sand, soapstone, soda-ash and other sodium compounds, strotianite, sulphur and pyrite, talc, vermiculite, sand and wollastonite.

B. PRECIOUS STONES GROUP

Diamonds, emeralds, rubies and sapphires.

C. PRECIOUS METAL GROUP

Gold, silver, platinum, palladium, osmium, rhodium, iridium and ruthenium.

D. SEMI-PRECIOUS STONES GROUP

Amozone, aventurine, beryl, (including aquamarine, heliodor and morganite, but excluding beryl as a source of beryllium metal or as industrial mineral), chrysoberyl, chrysocolla, cordierite, diaptasidumortierite, garnet, milarite, quartz (including amethyst, citrine, rock crystal, rose and strawberry quartz, agate, carneline, chelcedony, chrysoprase, jasper, moss agate, hyalite, pietersite and tiger's eye), sodalite, topaz, tourmaline and turquoise.

E. BASE AND RARE METALS GROUP

Alluminium, antimony, arsenic, beryllium, bismuth, cadmium, caesium, chromium, cobalt, copper, gallium, germanium, hafnium, indium, iron, lead, manganese, mercury, molybdenum, nickel, rhenium, radium, "Rare Earths" or lanthanides, including the actinides, scandium and yttrium, rhenium, rubidium, selenium, tantalum, thallium, tin, tungsten, vanadium, zinc or zinc, but does not include any such mineral if such mineral is incidentally included in a mineral falling in any other group of minerals.

F. FUEL MINERAL GROUP

- a)NON-NUCLEAR: Coal and oil shale and all substances related thereto or derived thereto therefrom, but not including Petroleum; and
- b)NUCLEAR: source material containing Uranium and thorium.

THIRD SCHEDULE

Sharing of Royalties (Section 155)

Central Government	80%
County Government	15%
Community	5%

1. Where more than one county or community is involved in sharing of royalties, the royalties will be shared accordingly;
2. Every community benefitting from royalties must annually submit a proposed programme with budget and to be used thereat as appropriate. Such programme will be subject to audit on the utilization of the resources expended. The community will submit a report on the usage and disbursement of royalties to the Secretary who may seek clarification as appropriate.