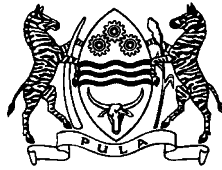


MINES AND MINERALS ACT, 1999

No. 17



of 1999

REPUBLIC OF BOTSWANA

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An Act to re-enact with substantial amendments the provisions that regulate the law relating to Mines and Minerals; to provide for the granting, renewal and termination of mineral concessions; to provide for the payment of royalties; and for matters incidental to and connected to the foregoing.

Date of Assent: 01/09/99

Date of Commencement: By Notice

PART I — Preliminary

1. This Act may be cited as the Mines and Minerals Act, 1999, and shall come into operation on such date as the Minister, by notice published in the *Gazette*, may appoint.

2. (1) In this Act, unless the context otherwise requires—
 "associated company" means a company that directly or indirectly controls or is controlled by a party to the mineral project or a company which directly or indirectly controls or is controlled by a company which controls a party to the mineral project; for the purposes of this definition the term 'controls' means ownership by one company of more than 50% of the voting securities of the other company, or the power to direct, administer and dictate policies of the other company even where the voting securities held by such company exercising such effective control in that other company is less than 50%; the term 'controlled' shall be construed accordingly;

"associated mineral" means a mineral which occurs with a mineral resource in such circumstances that it is physically impossible to mine the mineral resource without also mining the mineral found in association with the mineral resource;

"authorised officer" means a person authorised by the Minister to exercise the powers conferred by section 7(1);

"default" means a breach of a mineral concession or of any provision this Act or any related legislation, and the term 'in default' shall be construed accordingly;

"diagram" means a document containing geometrical, numerical and verbal representations of a piece of land, which has been signed by a land surveyor and which has been approved or certified by the Director of Surveys and Mapping or other officer empowered under the Land Survey Act, so to approve or certify a diagram;

"Director of Mines" means the officer for the time being occupying the position of Director of Mines in the Ministry responsible for minerals, energy and water affairs;

"Director of Geological Survey" means the officer for the time being occupying the position of Director of Geological Survey in the Ministry responsible for minerals, energy and water affairs; "holder" or "holder of a mineral concession" means the holder of a mineral concession under this

"industrial mineral" means barite, basalt, clay, dolomite, feldspar, granite, gravel, gypsum, laterite, limestone, mica, magnesite, marble, phosphate, rock, sand, sandstone, slate and talc, when used for agricultural, building, road making or industrial purposes and such other minerals as may be prescribed in the regulations to be industrial minerals;

"mine", when used as a noun, means any place, excavation or working wherein, whereon or whereby any operation connected with mining is carried on, together with all buildings, premises, erections and appliances belonging or appertaining thereto above and below the ground for the purpose of winning, or preparing minerals, obtaining or extracting any mineral or metal by any mode or method or for the purpose of dressing mineral ores;

"mine", when used as a verb, means intentionally to win minerals and includes any operations directly or indirectly necessary therefor or incidental thereto, and "mining" shall be construed accordingly;

"mineral" means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth, formed by or subject to a geological process, but excluding petroleum as defined in section 2 of the Petroleum (Exploration and Production) Act, and public and private water when used for a primary, secondary or tertiary use, as defined in the Water Act;

"mineral concession" means a prospecting licence, a retention licence, a mining licence, or a minerals permit;

"minerals permit" means a permit issued under section 52;

"minerals permit area" means land subject to a minerals permit;

"mining area" means the land subject to a mining licence;

"mining licence" means a right to mine required under Part VI;

"ore" means a natural aggregate of one or more minerals which may be mined and sold at a profit;

"private land" means all land and all interests in land other than unalienated land or interests therein;

"programme of mining operations" means such programme approved on the granting or renewal of a mining licence and includes any amendment thereto made in pursuance of the provisions of this Act;

"programme of prospecting operations" means such programme approved on the granting or renewal of a prospecting licence and includes any amendment thereto made in pursuance of the provisions of this Act;

"prospect" means intentionally to search for minerals and includes determining their extent and economic value;

"prospecting area" means the land subject to a prospecting licence;

"prospecting licence" means a right to prospect acquired under Part IV;

"radioactive mineral" means a mineral which 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 the following—

- (a) monazite sand and other ores containing thorium;
- (b) carnotite, pitchblende and other ores containing uranium;

"retention area" means land subject to a retention licence;

"retention licence" means a right of retention over a prospecting area acquired under Part V;

"small scale mining" means the intentional winning of minerals other than diamonds in operations involving the mining and processing of less than 50 000 tonnes of raw ore per annum and in which the overall investment in fixed assets does not exceed P1 million.

"specially authorised officer" means an authorised officer specially authorised by the Minister to exercise the powers conferred by section 7(2);

"termination" means the extinguishment of a mineral concession whether by expiry of time, surrender or cancellation, and where any surrender or relinquishment is in respect of part only of the area covered by a mineral concession then the mineral concession shall be deemed to have been extinguished in respect of that surrendered or relinquished area;

"tribal area" has the meaning assigned to it under the Tribal Land Act;

"working for profit" means producing a mineral product with the intention of use or sale.

- (2) Where in this Act provision is made for a matter to be referred to arbitration, the matter shall be referred to a single arbitrator appointed by the parties and finally resolved under the rules of the International Centre for the Settlement of Investment Disputes in force from time to time or in accordance with such other rules or procedures as the parties may agree.
- (3) In the event of the parties being unable to agree on a single arbitrator, each party shall choose an arbitrator, and the arbitrators so chosen shall choose an umpire.
- (4) Arbitration proceedings shall be conducted in accordance with the Arbitration Act and conducted in English and shall be held in Gaborone, unless the parties otherwise agree.
- (5) Where in this Act any application, report or other document is required to be submitted to the Minister—
 - (a) in the case of a prospecting licence, such application, report or document shall be submitted through the Director of Geological Survey; and
 - (b) in the case of any other mineral concession and in all other cases, shall, except where otherwise stated, be submitted through the Director of Mines.

- (6) The Minister may exercise any of his functions through the Permanent Secretary, the Director of Mines or the Director of Geological Survey.

**PART II — Ownership of minerals and
acquisition of mineral rights**

3. Subject to the provision of the Mineral Rights in Tribal Territories Act, all rights of ownership in minerals are vested in the Republic and the Minister shall ensure, in the public interest, that the mineral resources of the Republic are investigated and exploited in the most efficient, beneficial and timely manner.
4. No right to explore for or produce petroleum (as defined in section 2 of the Petroleum (Exploration and Production) Act) shall be granted or exercised under this Act.
5. (1) Subject to the provisions of this Act, the right to prospect for, to retain and to mine, minerals may be acquired and held only under and in accordance with the provisions of this Act, notwithstanding any right of ownership or otherwise which any person may possess in and to the soil on, in or under which minerals are found or situate.
- (2) No person may prospect for or mine minerals except as provided in this Act.
- (3) Nothing in this Act shall prevent a member of any tribe from taking, subject to such conditions and restrictions as may be prescribed, minerals from any land from which it has been the custom of members of that tribe to take minerals and to the extent that this is permissible under the customary law of that tribe.
- (4) Notwithstanding the provisions of this Act, the Minister may, in the public interest and subject to such conditions as he may determine, authorize any person to undertake non commercial investigations into the geological resources of Botswana.
6. No mineral concession shall be granted to or held by—
- (a) an individual who—
- (i) is under the age of 18 years;
 - (ii) not being a citizen of Botswana, has not been ordinarily resident in Botswana for a period of four years or such other period as may be prescribed;
 - (iii) is or becomes an undischarged bankrupt, having been adjudged or otherwise declared bankrupt, whether under the laws of Botswana or elsewhere; or

the previous 10 years, of any offence of which dishonesty is an element, or of any offence under this Act, any related or similar Act, or any similar written law in force outside Botswana, and has been sentenced to imprisonment without the option of a fine or to a fine exceeding P1000 or the equivalent thereof;

- (b) a company—
- (i) which has not established a *domicilium citandi et executandi* in Botswana;
 - (ii) unless, in the case of a mining licence, such company is incorporated under the Companies Act, and intends to carry on the sole business of mining under that mining licence;
 - (iii) which is in liquidation or under judicial management except where such liquidation or judicial management is a part of a scheme for the reconstruction or amalgamation of such company; or
 - (iv) which has among its directors or shareholders any person who would be disqualified in terms of paragraph (a)(iii) and (iv).

PART III — Administration

7. (1) An authorized officer may, at all reasonable times, enter upon any prospecting area, retention area, mining area, minerals permit area or any premises or workings thereon or thereunder, other than a dwelling-house, for the purpose of—
- (a) generally inspecting such area, premises or workings and examining prospecting or mining operations or the treatment of minerals being performed or carried out thereon;
 - (b) ascertaining whether the provisions of this Act are being complied with;
 - (c) ascertaining whether any nuisance or breach of environmental obligations exists in such area, premises or workings;
 - (d) giving directions and taking steps to enforce any provisions of this Act, or to abate or remove any nuisance;
 - (e) taking soil samples or specimens of rocks, ore, concentrates, tailings or minerals situated upon such area, premises or workings for the purpose of examination or assay;
 - (f) examining books, accounts, vouchers, documents or records of any kind; or
 - (g) obtaining such information as he may deem necessary.
- (2). A specially authorized officer may—
- (a) enter at all reasonable times upon any land with such persons, animals, vehicles, appliances, instruments and materials as are necessary;

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- (b) break up the surface of such land for the purpose of ascertaining the rocks or minerals within or under the same;
 - (c) take and carry away samples and specimens of the soil, and of rocks or minerals found thereon, therein or thereunder;
 - (d) fix any post, stone, mark or object to be used in the survey of any such land;
 - (e) dig up any ground for the purpose of fixing any such post, stone, mark or object;
 - (f) enter into or upon any land through which it may be necessary to pass for the purposes of such survey:
provided that—
 - (i) it shall not be lawful to fix any post, stone, mark or object within any walled or fenced garden or orchard without the consent of the lawful occupier thereof;
 - (ii) as little damage and inconvenience as possible shall be caused by the exercise of the powers conferred by this subsection and the owner or lawful occupier thereof shall be entitled to compensation for any damage sustained in the exercise thereof; and
 - (iii) before abandoning any land all excavations shall be backfilled or otherwise made safe.
3. Authorised and specially authorised officers shall be appointed by the Minister by notice in the Gazette.
8. The Minister may direct the holder of a mineral concession to produce for inspection by an authorised officer any books, accounts, vouchers, documents or records of any kind concerning the mineral concession.
9. No public officer or other authorized officer or Government nominated director of any holder of a mineral concession shall be liable for anything done or omitted to be done bona fide in the performance or purported performance of any function vested in or delegated to him by or under this Act or in his capacity as a director as aforesaid.
10. Any fees, dues, rents, royalties or payments which may become due in respect of any mineral concession or under the provisions of this Act shall be a debt due to Government and recoverable in a court of competent jurisdiction.
11. (1). No core obtained in the exercise of rights conferred by a mineral concession shall be destroyed or otherwise disposed of except for the purposes of assay, identification or analysis without the permission in writing of the Minister, which permission shall not be unreasonably withheld.
- (2) Where any core is retained for the purpose of complying with subsection (1), there shall be maintained a record in such degree of particularity as is sufficient for the identification of the core or sample and the location and geological horizon of its origin.

- (3) Any person who destroys or disposes of core in contravention of subsection (1) or fails to maintain a record as required by subsection (2) shall be guilty of an offence.
12. (1) The holder of a mineral concession issued under this Act, shall, in the conduct of his operations under such concession, and in the purchase, construction and installation of facilities, give preference, to the maximum extent possible consistent with safety, efficiency and economy, to—
- (a) materials and products made in Botswana; and
 - (b) service agencies located in Botswana and owned by Botswana citizens or bodies corporate established under the Companies Act.
- (2) The holder of a mineral concession shall, in all phases of his operations, give preference in employment to citizens of Botswana to the maximum extent possible consistent with safety, efficiency and economy.
- (3) The holder of a mining licence shall, in his operations, conduct training programmes in consultation with the Minister for the benefit of employees so that such employees may qualify for advancement.

PART IV — Prospecting Licences

13. A person wishing to obtain a prospecting licence shall make application to the Minister by completing Form I set out in the First Schedule.
14. (1) The Minister shall grant a prospecting licence if—
- (a) the applicant has, or has secured access to, adequate financial resources, technical competence and experience to carry on effective prospecting operations;
 - (b) the proposed programme of prospecting operations is adequate and makes proper provision for environmental protection;
 - (c) the proposed prospecting area is not the same as, nor does it overlap an existing prospecting area, retention area, mining area or minerals permit area in respect of the same mineral or associated mineral; and
 - (d) the applicant is not in default.
- (2) The Minister may cause such investigations to be made or such negotiations or consultations to be carried on as he may deem necessary to enable him to assess whether or not the criteria in subsection (1) has been satisfied.
- (3) Where an application is made for a prospecting licence in respect of an area over which a previous prospecting licence in respect of the same or an associated mineral has been held for seven years, no new prospecting licence shall be granted before a period of three months has elapsed since the expiry of the previous licence, and the Minister shall in the event of competing applications grant a prospecting licence to the applicant which in his opinion has the best proposed programme.

15. The Minister shall cause the applicant to be notified in writing of his decision on the application and, if the prospecting licence is refused, the Minister shall give reasons for such refusal.
16. (1) A prospecting licence shall be in Form II of the First Schedule.

(2) There shall be appended to a prospecting licence the programme of prospecting operations.
17. (1) Subject to this Act, a prospecting licence shall be valid for such period as the applicant has applied for, which period shall not exceed three years.

(2) The holder of a prospecting licence may, at any time not later than three months before the expiry of such licence, apply to the Minister by completing Form I set out in the First Schedule for renewal thereof stating the period for which the renewal is sought and submitting together with the application—
 - (a) a report on prospecting operations so far carried out and the direct costs incurred thereby; and
 - (b) a proposed programme of prospecting operations to be carried out during the period of renewal and the estimated cost thereof.
(3) Subject to this Act, the applicant shall be entitled to the grant of no more than two renewals thereof, each for the period applied for, which periods shall not in either case exceed two years, provided that—
 - (a) the applicant is not in default; and
 - (b) the proposed programme of prospecting operations is adequate.
(4) Before rejecting an application for renewal under subsection 3(a), the Minister shall give notice of the default to the applicant and shall call upon the applicant to remedy such default within a reasonable time.

(5) Before rejecting an application for renewal under (3)(b), the Minister shall give the applicant opportunity to make satisfactory amendments to the proposed programme of prospecting operations.

(6) Notwithstanding the provisions of subsection (3), the Minister may renew a prospecting licence for a period or periods in excess of the periods specified in that subsection where a discovery has been made and evaluation work has not, despite proper efforts, been completed.
18. (1) If, in the course of exercising his rights under a prospecting licence, the holder thereof discovers any mineral not included therein, he may apply to the Minister for an amendment of his prospecting licence to include such mineral.

(2) An application for the amendment of a prospecting licence under subsection (1) shall—
 - (a) specify the mineral discovered;
 - (b) give particulars of the situation and circumstances of the discovery; and
 - (c) have appended thereto a proposed programme of prospecting operations in connection therewith.

- (3) Subject to the provisions of subsection (4), and provided that the applicant is not in default, the Minister shall permit the amendment of a prospecting licence to include the mineral concerned.
- (4) An amendment of a prospecting licence under subsection (3) shall not be permitted if any person other than the applicant is the holder of a prospecting licence, retention licence, mining licence or minerals permit in respect of the mineral concerned or an associated mineral over the area in which it was discovered.
19. (1) Subject to the provisions of this Act, a prospecting licence shall cover such area, not exceeding 1000 km², as is in accordance with the applicant's application.
- (2) Subject to the provisions of subsection (4), the prospecting area shall be reduced in size to eliminate therefrom—
- (a) at the end of the initial term of the prospecting licence, not less than half of the initial area;
 - (b) at the end of each period of renewal, half of the remaining area, or such lower proportion as the Minister may in any case agree; and
 - (c) the area covered by any retention licence or mining licence granted thereon.
- (3) The holder of a prospecting licence shall designate, prior to the end of each of the periods referred to in subsection (2), the area or areas to be eliminated from the prospecting area and, in default thereof, the designation shall be made by the Minister.
- (4) Where a person holds two or more contiguous prospecting licences covering the same period and the same mineral or minerals the Minister shall, for the purposes of the elimination, under subsection (2), of part of any of the areas thereof, permit the areas covered thereby to be deemed to be one area, the subject of one such prospecting licence.
- (5) No compensation shall be payable to the holder of any prospecting licence arising out of reductions in area effected in terms of subsection (2).
20. Subject to the provisions of Part VIII, the holder of a prospecting licence may, in the exercise of his rights thereunder, enter upon any land to which his prospecting licence relates together with his servants and agents and may—
- (a) prospect thereon for the mineral to which his prospecting licence relates;
 - (b) drill boreholes and make such excavations as may be necessary; and
 - (c) erect camps and put up temporary buildings for machinery necessary for prospecting purposes.
21. (1) The holder of a prospecting licence shall—
- (i) commence prospecting operations within three months or such further period as the Minister may allow, of the date of issue of his licence;

- (ii) carry on prospecting operations in accordance with the programme of prospecting operations;
- (iii) notify the Minister of the discovery of the mineral to which his prospecting licence relates within a period of 30 days of such discovery;
- (iv) notify the Minister of the discovery of any mineral deposit of possible economic value within a period of 30 days of such discovery;
- (v) backfill or otherwise make safe any excavation made during the course of his prospecting operations, to the reasonable satisfaction of the Director of Geological Survey;
- (vi) permanently preserve or otherwise make safe any borehole in the manner directed by the Director of Geological Survey and surrender to Government without compensation all such boreholes and any water rights in respect thereof on termination;
- (vii) unless the Director of Geological Survey otherwise stipulates, remove, within 60 days of the expiry or termination of his prospecting licence, any camp, temporary buildings or machinery erected or installed by him, and repair or otherwise make good any damage to the surface of the ground occasioned by such removal, to the reasonable satisfaction of the Director of Geological Survey;
- (viii) subject to the conditions of his prospecting licence and the provisions of section 22, expend on prospecting, in accordance with his prospecting programme, not less than such amount as may be specified in his prospecting licence; and
- (ix) submit to the Director of Geological Survey, at least quarterly, reports containing the information required under the licence and the Act both in digital and analogue form.

(2) The holder of a prospecting licence shall submit to the Director of Geological Survey not later than three months after the end of each year of the licence, an audited statement of expenditure directly incurred under the licence and any moneys required to be spent under the provisions of subsection (1)(h) and which are not so spent shall be a debt due to Government recoverable in a court of competent jurisdiction.

(3) The holder of a prospecting licence shall keep full and accurate records of his prospecting operations which shall show—

- (i) boreholes drilled;
- (ii) strata penetrated, with detailed logs of such strata;
- (iii) minerals discovered;
- (iv) the results of any geochemical or geophysical analysis;
- (v) the result of any analysis or identification of minerals removed under section 24;
- (vi) the geological interpretation of the records maintained under paragraphs (a) to (e) inclusive;
- (vii) the number of persons employed;
- (viii) any other prospecting work not listed above;

and shall supply, at least once in every three months, copies of such records to the Director of Geological Survey.

(4) Any person who fails to keep any record or information required to be kept under subsection (3) or who fails to supply any record to the Director of Geological Survey or who supplies any false or misleading record or information shall be guilty of an offence.

22. (1) The holder of a prospecting licence may, from time to time, notify the Minister of amendments he wishes to make to his programme of prospecting operations and such amendments shall, unless the Minister rejects the same within two months after being so notified, have effect after such period.

(2) The Minister may, on application being made to him by the holder of a prospecting licence, limit or suspend the obligation to carry on prospecting as required by section 21(1)(b), or to expend moneys as required by section 21(1)(h).

23. (1) Subject to this section, a prospecting licence or any interest therein or any controlling interest in the holder thereof may be transferred to any other person provided that the Minister is notified not less than 30 days before the intended transfer.

(2) In such notification, the applicant shall give to the Minister such details of the transferee as would be required in the case of an application for a prospecting licence.

(3) Where the Minister is satisfied that the transferee is not disqualified under any provision of this Act from holding a prospecting licence, he shall notify the applicant of his approval of the transfer of the prospecting licence or an interest therein.

(4) Upon the transfer of a prospecting licence, the transferee shall assume and be responsible for all rights, liabilities and duties of the transferor under the prospecting licence.

24. The holder of a prospecting licence shall not, without the written permission of the Minister, which permission shall not be unreasonably withheld, and subject to such reasonable conditions as the Minister may determine, remove any mineral from a prospecting area except for the purpose of having such mineral analysed, valued, or tested in Botswana.

PART V — Retention Licences

25. (1) The holder of a prospecting licence may, by submitting to the Minister an application as set out in Form III of the First Schedule, apply for a retention licence in relation to an area and a mineral covered by his licence.

(2) An application made under subsection (1) shall be made not less than three months prior to the expiry of the prospecting licence concerned.

26. Upon receipt of application for a retention licence, the Director of Mines shall notify a holder of any other prospecting licence over the area that such an application has been made.
27. (1) The Minister shall grant a retention licence if—
- (a) the applicant has carried out a feasibility study in respect of the deposit to which the application relates in accordance with good industry practice and the study has established that the deposit cannot be mined on a profitable basis at the time of the application;
 - (b) the approved prospecting programme in respect of the area applied for has been completed; and
 - (c) the applicant is not in default.
- (2) Before rejecting an application for a retention licence under subsection (1)(a), the Minister shall give the applicant opportunity to make satisfactory amendments to the proposed mining programme submitted in the feasibility study.
- (3) Before rejecting an application for a retention licence under subsection (1)(c), the Minister shall give notice of the default to the applicant and shall call upon the applicant to remedy such default within three months of such notification.
- (4) A retention licence shall not be granted to the holder of a prospecting licence in respect of an area larger than that which would be required, having regard to the deposit to which the application relates, to carry on mining operations.
28. The Minister shall cause the applicant to be notified in writing of his decision on the application and, if the retention licence is refused, the Minister shall give reasons for such refusal.
29. A retention licence, granted in accordance with section 27, shall be in Form IV of the First Schedule.
30. (1) Subject to the provisions of this Act, a retention licence shall be valid for such period as the applicant has applied for, which period shall not exceed 3 years.
- (2) A retention licence may be renewed once only, for a period not exceeding 3 years.
- (3) Subject to subsection (2) above, the holder of a retention licence may apply to the Minister for the renewal of his licence at any time not later than three months before the expiry of the licence, and provided that he has properly complied with section 32 and the deposit cannot be mined on a profitable basis, the Minister shall grant renewal.
31. Subject to the provisions of this Act, any other written law and the terms and conditions of his licence, the holder of a retention licence shall be entitled—
- (a) to retain the retention area to which the retention licence relates, for future mining operations;

- (b) to carry on prospecting operations in the retention area in order to determine from time to time the prospects of mining any mineral to which the retention licence relates on a profitable basis;
- (c) to remove any mineral or sample of a mineral for any purpose other than sale or disposal, from any place where it was found or incidentally won in the course of prospecting operations referred to in paragraph (b) to any other place within Botswana or, with the permission of the Director of Mines, outside Botswana; and
- (d) to carry on, in order to determine, from time to time, the prospect of mining any mineral to which the licence relates, on a profitable basis, such other investigations and operations, including the erection of necessary equipment, plant and buildings, in the retention area as may be reasonably necessary for, or in connection with, any future mining operations or any prospecting operations contemplated in paragraph (b).

32. (1) The holder of a retention licence shall—

- (a) demarcate and keep demarcated the retention area in the prescribed manner;
- (b) obtain the consent of the Director of Mines to any amendment of his intended work programme;
- (c) unless the Director of Mines otherwise stipulates—
 - (i). back fill or otherwise make safe excavations made during the course of his prospecting operations to the satisfaction of the Director of Mines;
 - (ii). permanently preserve or otherwise make safe any borehole in the manner directed by the Director of Geological Survey and Director of Mines; and
 - (iii). remove, within two months of the expiry of his licence, any camp, equipment, plant or building erected by him in the retention area, and repair or otherwise make good any damage to the surface area of the grant occasioned by such removal, to the satisfaction of the Director of Mines.

(2) The holder of a retention licence shall furnish to the Director of Geological Survey and to the Director of Mines a quarterly report covering all matters under section 31(b),(c) and (d).

(3) The holder of a retention licence shall—

- (a) furnish to the Minister by submitting to the Director of Mines, as soon as they become available—
 - (i) the results of all studies, surveys and tests including but not limited to analytical, metallurgical, mineralogical, and geo-physical work incidental to those prospecting operations;
 - (ii) the interpretation and assessment of such studies, surveys and tests; and
- (b) submit annually to the Director of Mines an updated feasibility study and an audited statement of direct expenditure if any, incurred in the retention area during the year.

33. (1) Upon expiry of the first period of a retention licence all geological information relating to that licence and to the prospecting licences which preceded it shall be placed on open file at the Department of Geological Survey.
- (2) For the purposes of this section, the expression “geological information” shall include information supplied under section 32(3)(a) but not feasibility studies or proprietary information.
34. (1) During any renewal period of a retention licence the Minister may, on notice to the holder, authorise and the holder thereof shall permit third parties to have access to the area for the purpose of collecting samples and data required for the purpose of applying for a mining licence.
- (2) Any geological data obtained by such third party by means of such access shall be promptly reported to the Director of Geological Survey.
- (3) A representative portion of each core sample so obtained shall be promptly delivered to the Director of Geological Survey.
- (4) A person authorized under this section shall carry out his operations in such manner as not to disturb or interfere with the operations or workings of the holder of the retention licence and shall have, in respect of his operations in the retention area, the rights and obligations of the holder of a prospecting licence in terms of sections 20, 21 and 24.
35. (1) A person authorized in terms of section 34(1), shall be entitled to apply for a mining licence in respect of the retention area.
- (2) In the event that both the holder and the authorized third party make application for a mining licence, the Minister shall consider the applications on merit.
- (3) In the event that the Minister grants a licence to the authorized third party, the rights and obligations of the retention licence holder shall be extinguished save for his rights under section 32(1)(c)(iii).
36. (1) No retention licence or any interest therein shall be transferred, assigned, encumbered or dealt with in any other way without the approval of the Minister.
- (2) In any application to the Minister for his approval under subsection (1), the applicant shall give such particulars concerning the proposed transferee, assignee or other party concerned as would be required in an application for a mining licence.
- (3) The Minister shall grant his approval to the transfer, assignment or other dealing with any retention licence or interest therein provided the transferee is not disqualified under any provision of this Act from holding a retention licence and the Minister is satisfied in accordance with section 27.

(4) For the purposes of this section, “interest” in a retention licence shall mean in the case of a holder who is a private company, a controlling interest in such holder.

PART VI – Mining Licences

37. (1) Subject to the provisions of this Act, the holder of a prospecting licence, retention licence, or a waiver issued under subsection (3) may apply for a mining licence for an area in respect of which the waiver has been issued, or for an area within his prospecting area or retention area, in respect of the mineral covered by such prospecting licence, retention licence or waiver, and in the case of a prospecting licence or a retention licence, the issue of a mining licence shall have the effect of reducing the prospecting area or retention area, as the case may be, by the area in respect of which the mining licence is granted.

(2) An application made under subsection (1) shall be made not less than three months prior to the expiry of the prospecting licence or retention licence.

(3) Where the Minister is satisfied that the area over which a mining licence is required has been sufficiently prospected and that no other person has exclusive rights over that area, he may waive the requirements of subsection (1), provided that where a waiver is granted in respect of an area over which a retention licence is current, the Minister shall notify the holder of the retention licence of the granting of such waiver.

(4) Notwithstanding the provisions of subsection (1), an application for a mining licence may only be made by a company incorporated under the Companies Act, which intends to carry on the sole business of mining under the mining licence applied for.

(5) For the purposes of subsection (1), the expression “holder of a prospecting or retention licence” shall include a company formed between such holder and any person or persons invited by such holder for the purposes set out in subsection (4) above.

38. A person wishing to obtain a mining licence shall apply to the Minister by submitting an application in Form V of the First Schedule.

39. (1) The Minister shall grant a mining licence if satisfied that—

- (a) the proposed programme of mining operations will ensure the most efficient and beneficial use of the mineral resources in the proposed mining area;
- (b) the proposed mining area is not the same as nor does it overlap an existing mining area or retention area unless the holder of that area consents to the grant of a mining licence, or in the case of a retention licence, has failed to make application in terms of section 35(1);
- (c) the proposed mining area extends to cover only that area reasonably required for surface mining and treatment facilities and also to cover the proved, indicated and inferred reserves;

- (d) the applicant has or has secured access to adequate financial resources, technical competence and experience to carry on effective mining operations;
- (e) the proposed financing plan submitted as part of the feasibility study is in accordance with good financial practice, and provides for a debt to equity ratio of no more than 3:1 unless the Minister otherwise agrees;
- (f) the parent company guarantee in the prescribed form has been furnished;
- (g) the applicant is not in default, and
- (h) in the case of an application to mine diamonds, agreement has been reached following a negotiation under section 51.

(2) The Minister shall not reject an application on any of the grounds referred to in—

- (a) subsection (1)(a) or (e), unless the applicant has been so notified and has failed to propose reasonable amendments satisfactory to the Minister to his proposed programme of mining operations or financing plan within three months of such notification;
- (b) subsection (1)(g), unless the applicant has been given details of the default and has failed to remedy the same within three months of such notification.

(3) The Minister may cause such investigations to be made or such negotiations or consultations to be carried on as he may deem necessary to enable him to assess whether or not the criteria in subsection (1) has been satisfied.

Government
investment

(4) In the case of competing applications for a mining licence over the same or overlapping areas, the Minister shall grant a licence to the applicant whose programme will make more beneficial use of the mineral resources of the area.

40. (1) Upon the issue of a mining licence, the Government shall have the option of acquiring up to 15% working interest participation in the proposed mine in the following manner—

- (a) upon its exercise of its option Government shall be issued a single P1.00 special share at par, which shall carry the right to appoint up to two directors, with alternates, and to receive all dividends or other distributions in respect of its working interest percentage; and
- (b) government shall be obliged in the same manner as other share holders to contribute its working interest percentage of—
 - (i) all audited arms-length expenditure incurred by the company to which the licence was issued that is directly attributable to the acquisition of the licence, including relevant prospecting expenditure; and
 - (ii) all expenditure on the mine incurred subsequent to the issue of the mining licence.

(2) Government shall on issuing the licence inform the applicant as to whether or not it is exercising its option and of the working interest percentage it wishes to take.

(3) The provisions of this section shall not apply to a licence to mine diamonds, where the extent and terms of Government participation shall be agreed under section 51.

41. A mining licence shall be in Form VI of the First Schedule, save that a licence to mine diamonds shall have annexed to it a copy of the agreement reached under section 51.

42. (1) Subject to the provisions of this Act, a mining licence shall be valid for such period, not exceeding 25 years, as is reasonably required to carry out the mining programme.

(2) The holder of a mining licence may apply to the Minister for the renewal of his licence at any time not later than one year before the expiry of such licence.

(3) An application for renewal of a mining licence shall be in Form V of the First Schedule.

(4) The Minister shall grant an application for renewal if satisfied that—

- (a) the applicant is not in default;
- (b) development of the mining area has proceeded with reasonable diligence;
- (c) the proposed programme of mining operations will ensure the most efficient and beneficial use of the mineral resources in the mining area; and
- (d) in the case of an application for renewal of a licence to mine diamonds, agreement has been reached following negotiation under section 51.

(5) The Minister shall not reject an application on the ground referred to in—

- (a) subsection (4)(a), unless the applicant has been given details of the default and has failed to remedy the same within three months of such notification;
- (b) subsection (4)(b), unless the applicant has been given reasonable opportunity to make written representations thereon to the Minister; or
- (c) subsection (4)(c), unless the applicant has been so notified and has failed to propose amendments to his proposed programme of mining operations satisfactory to the Minister within three months of such notification.

(6) Subject to the provisions of this Act, the period of renewal of a mining licence shall be such period, not exceeding 25 years, as is reasonably required to carry out the mining programme.

(7) On the renewal of a mining licence the Minister shall append thereto the programme of mining operations to be carried out in the period of renewal.

43. The holder of a mining licence may, from time to time, notify the Minister of amendments he wishes to make to his programme of mining operations and such amendments shall, unless the Minister rejects them within three months after being so notified, have effect after such period.
44. (1) Subject to the provisions of this Act or any other written law the holder of a mining licence may, in the exercise of his rights thereunder, enter upon any land to which his mining licence relates with his servants and agents and may—
- (a) take all reasonable measures on or under the surface to mine the mineral to which his mining licence relates;
 - (b) erect the necessary equipment, plant and buildings for the purposes of mining, transporting, dressing, treating, smelting or refining minerals recovered by him during mining operations;
 - (c) dispose of any mineral product recovered;
 - (d) prospect within his mining area for the mineral for which he holds a mining licence and for any other mineral; and
 - (e) stack or dump any mineral or waste product in a manner approved by the Director of Mines.
- (2) If, in the course of exercising his rights thereunder, the holder of a mining licence discovers any further deposits of the mineral for which he holds a mining licence or any mineral not included in such licence, he shall, within 30 days after such discovery, notify the Minister thereof, giving particulars of the mineral discovered and the site and circumstances of the discovery, and may, subject to section 51, apply to the Minister to have the mining of such deposit or such mineral included in his mining licence, giving in his application a proposed programme of mining operations in respect of that mineral.
- (3) Subject to section 51, if the Minister is satisfied with the proposed programme of mining operations submitted under subsection (2), he shall approve such application and shall amend the mining licence accordingly.
- (4) The Minister shall not reject an application under subsection (3) above unless he shall first give the applicant opportunity to amend the programme in a manner satisfactory to the Minister.
- (5) Subject to section 51 and subsection (7) below, the holder of a mining licence may apply to the Minister to have his mining area enlarged and the Minister shall, subject to the provisions of subsection (6), approve such application if he is satisfied that such approval will ensure the most efficient and beneficial use of the mineral resources of Botswana.
- (6) A mining area shall not be enlarged so as to include any area which is not contiguous to the mining licence.

(7) The applicant for enlargement of a mining licence area shall be the holder of a prospecting licence, a retention licence, or a waiver in respect of the area sought to be added to the mining area.

45. (1) Subject to the provisions of this Act, the holder of a mining licence shall—
- (a) commence production on or before the date referred to in the programme of mining operations as the date by which he intends to work for profit;
 - (b) develop and mine the mineral covered by his mining licence in accordance with the programme of mining operations as adjusted from time to time in accordance with good mining and environmental practice;
 - (c) demarcate and keep demarcated the mining area in such manner as may be prescribed and, within three months of the date referred to in paragraph (a), submit to the Minister a diagram of the mining area;
 - (d) keep and maintain an address in Botswana, full particulars of which shall be registered with the Minister, to which all communications and notices may be addressed; and
 - (e) notify the Minister as soon as he begins to work his mining area for profit.
- (2) The holder of a mining licence shall—
- (a) maintain at the address kept in accordance with subsection (1)(d)—
 - (i) complete and accurate technical records of his operations in the mining area;
 - (ii) copies of all maps and geological reports, including interpretations, mineral analyses, aerial photographs, core logs, analyses and test results obtained and compiled by the holder in respect of the mining area;
 - (iii) accurate and systematic financial records of his operations in the mining area and such other books of accounts and financial records as the Minister may require; if such holder is engaged in any other activity not connected with his operations under the mining licence, he shall maintain separate books of accounts of his operations under such licence;
 - (b) permit an authorized officer at any time to inspect the books and records maintained in pursuance of paragraph (a) and shall deliver to the Minister, without charge, copies of any part of such books and records as the Minister may from time to time require;
 - (c) submit to the Minister such reports, records and other information as the Minister may from time to time reasonably require concerning the conduct of his operations in the mining area; and
 - (d) furnish the Minister with a copy of his annual audited financial statements within six months of the end of each financial year.

46. (1) No holder of a mining licence shall engage in wasteful mining or treatment practices or conduct his operations otherwise than in accordance with good mining practice.
- (2) If the Minister considers that the holder of a mining licence is in breach of subsection (1), he may notify him accordingly and require him to show cause why he should not discontinue such breach.
- (3) If, within the time specified in any notice issued under subsection (2), the holder of a mining licence fails to discontinue the breach or to satisfy the Minister that he is not in breach, the Minister may direct the holder to discontinue the breach and the holder shall comply with such direction.
47. (1) The holder of a mining licence shall notify the Minister—
- (a) one year in advance, if he proposes to cease production from his mine;
 - (b) six months in advance, if he proposes to suspend production from his mine;
 - (c) three months in advance, if he proposes to curtail such production, and shall, in all cases, give reasons for such cessation, suspension or curtailment.
- (2) If, for reasons beyond his control, the holder of a mining licence terminates, suspends or curtails production from his mine without giving notice in accordance with subsection (1), he shall, within 14 days of such termination, suspension or curtailment, notify the Minister thereof.
- (3) On receiving notification under subsection (1) or if he otherwise becomes aware of any cessation, suspension or curtailment of production, the Minister may cause the matter to be investigated and may either—
- (a) give his approval to such cessation, suspension or curtailment; or
 - (b) if this is in accordance with good mining practice, direct the holder of the mining licence to continue or resume full production at the mine.
48. (1) No person shall export any radioactive mineral except under and in accordance with the terms and conditions of a permit granted by the Minister.
- (2) The grant of a permit under subsection (1) shall be at the discretion of the Minister exercised reasonably.
- (3) A permit issued under subsection (1) shall be in such form and shall be subject to the payment of such fee and such reasonable terms and conditions as the Minister may determine.
49. (1) No person shall, in any mining area, carry on any business for which a licence is required under the Trade and Liquor Act without the consent of the Minister:
Provided that such consent shall not entitle any person to carry on any such business except under and in accordance with the provisions of the Trade and Liquor Act.

- (2) No person shall, in any mining area, erect any building or other structure for the purpose of carrying on any such business without the consent of the holder of the mining licence.
50. (1) No mining licence or any interest therein shall be transferred, assigned, encumbered or dealt with in any other way without the approval of the Minister.
- (2) In any application to the Minister for his approval under subsection (1), the applicant shall give such particulars concerning the proposed transferee, assignee, or other party concerned as would be required in an application for a mining licence.
- (3) Subject to section 51, the Minister shall grant his approval to the transfer, assignment, encumbrance or other dealing with any mining licence or interest therein provided the transferee is not disqualified under any provision of this Act from holding a mining licence and the Minister is satisfied in accordance with section 39.
- (4) For the purposes of this section, “interest” in a mining licence shall mean in the case of a holder who is a private company, a controlling interest in such holder.
51. (1) Notwithstanding the provisions of this Part, any application for the issue, renewal, transfer or amendment of a licence to mine diamonds shall initiate a negotiating process, in good faith, between Government and the applicant covering all technical, financial and commercial aspects of the proposed project including Government participation.
- (2) Should the negotiations not lead to agreement within six months or such extended period as the Minister may allow, the application shall fail.
- (3) Upon successful conclusion of the negotiation under subsection (1), the Minister shall issue a licence reflecting the terms and conditions agreed.

PART VII — Minerals Permits

52. (1) Subject to the provisions of this Part, a person wishing to conduct small scale mining operations may apply for a minerals permit to conduct such operations for any mineral other than diamonds over an area not exceeding 0.5 km² per permit.
- (2) A person wishing to obtain a minerals permit shall apply to the Minister by completing Form VII of the First Schedule.
- (3) An application for a minerals permit relating to—
- (a) any area in respect of which consent is required under any written law shall be accompanied by evidence that such consent has been obtained;

- (b) land of which the applicant is not the owner shall be accompanied by evidence that the consent of the owner, or, in the case of tribal territory, the consent of the appropriate land board, has been obtained; or
 - (c) a prospecting area, retention area or mining area or part thereof shall be accompanied by evidence that the consent of the holder of the prospecting licence, retention licence or mining licence has been given, unless such holder will not be prejudiced by the issue of a minerals permit.
- (4) The Minister shall grant a minerals permit if satisfied that—
- (a) the proposed programme of working will ensure the efficient and beneficial use of the mineral resource;
 - (b) consent has been obtained—
 - (i) under any written law where such consent is required in respect of the area applied for;
 - (ii) from the owner of the area applied for; and
 - (iii) from the holder of any existing mineral concession over the land applied for.
- (5) Notwithstanding subsection 4(b)(iii) above, the Minister may grant a minerals permit without the consent of the holder of an existing mineral concession over the area applied for if such holder will not be prejudiced by the grant of a permit, and the holder has been given a reasonable opportunity to make representations to the Minister as to why a permit should be refused.
- (6) A minerals permit shall be in Form VIII of the First Schedule. (7)
No minerals permit shall be granted for the mining of diamonds.
53. (1) Subject to the provisions of subsection (2), a minerals permit to exploit industrial minerals shall not be granted to a person who is not a citizen of Botswana.
- (2) The Minister may exempt any person from the provisions of subsection (1) if he is satisfied that—
- (a) it is in the public interest that a minerals permit to exploit industrial minerals should be granted to such person; or
 - (b) the permit applied for is in respect of industrial minerals required for specific works and the applicant has given an undertaking that the minerals concerned will not be sold or otherwise disposed of for profit.
- (3) In this section “citizen of Botswana” means—
- (a) in relation to an individual, an individual who is a citizen of Botswana;
 - (b) in relation to a partnership or association of individuals, a partnership or association which is composed exclusively of individuals who are citizens of Botswana; and

- (c) in relation to a corporate body, a corporate body which is incorporated under the Companies Act—
 - (i). which is certified by the Minister to be controlled by the Government, or
 - (ii). whose directors and beneficial shareholders are all citizens of Botswana.
- 54. The holder of a minerals permit shall, within three months of the issue thereof, demarcate the area covered by such permit in such manner as may be prescribed.
- 55. (1) Subject to the provisions of subsection (2), a minerals permit shall be valid for such period, not exceeding five years, as the Minister may determine and may, on application made to the Minister, be renewed for further periods not exceeding five years at a time.

(2) Without prejudice to section 76, the Minister may terminate a minerals permit issued to exploit industrial minerals if he is satisfied that the holder thereof has ceased to be a citizen of Botswana or has entered into an arrangement with a person who is not a citizen of Botswana, as defined in section 53(3), which arrangement has the effect of transferring to that person any interest in such permit.
- 56. The holder of a minerals permit may, subject to the provisions of this Act and to any other written law, enter upon the area covered by such permit with his servants and agents and—
 - (a) mine the minerals to which his permit relates;
 - (b) dispose of the minerals to which his permit relates; and
 - (c) erect such temporary structures, other than residential buildings, as may be necessary for the purposes of mining.
- 57. The holder of a minerals permit shall—
 - (a) notify the Minister of any change in his address;
 - (b) mine the mineral to which his permit relates within the area covered by his permit in conformity with good mining and environmental practice (as may be prescribed);
 - (c) submit a report to the Minister each year during the currency of his permit and any renewal thereof giving—
 - (a). the mineral production from the area covered by his permit in the preceding year and the value of such production;
 - (b). the average number of employees during the preceding year; and
 - (c). a brief description of his plant, vehicles and equipment; and
 - (d). at the termination of his permit, clear and make safe the area covered by his permit, to the satisfaction of the Director of Mines.
- 58. (1) Nothing in this Act shall prevent—
 - (a) a local authority on land owned by it;
 - (b) the owner or lawful occupier of any land owned or occupied by him; or

(c) the holder of a mineral concession on land the subject of such concession,
from prospecting for and mining industrial minerals to be used solely for building, road making or agricultural purposes on such land, so long as the exercise of such powers is not inconsistent with or detrimental to the rights of any other mineral concession holder.

(2) For the purposes of subsection (1), a Land Board established under the Tribal Land Act shall be deemed to be a local authority.

(3) Any person exercising rights under this section shall do so in such manner as to minimize environmental damage and shall rehabilitate within a reasonable time, the site of any such prospecting or mining to the reasonable satisfaction of the Director of Mines.

59. (1) No minerals permit or any interest therein shall be transferred, assigned, encumbered or dealt with in any other way without the approval of the Minister.

(2) In any application to the Minister for his approval under subsection (1), the applicant shall give such particulars concerning the proposed transferee, assignee, or other party concerned as would be required in an application for a minerals permit.

(3) The Minister shall grant his approval to the transfer, assignment, encumbrance or other dealing with any minerals permit or interest therein provided the transferee is not disqualified under any provision of this Act from holding a minerals permit and the Minister is satisfied in accordance with section 52(4).

(4) For the purposes of this section, “interest” in a minerals permit shall mean in the case of a holder who is a private company, a controlling interest in such holder.

PART VIII — Mineral Concessions and Surface Rights

60. (1) No holder of a mineral concession shall exercise any right thereunder—

- (i) without the written consent of the President, upon—
 - (i) any land dedicated as a place of burial;
 - (ii) any land containing any ancient monument or national monument, as defined in the Monuments and Relics Act; or
 - (iii) any land set aside or used for the purposes of Government;
- (ii) without the written consent of the owner or lawful occupier thereof—
 - (i) within 200 metres of any inhabited, occupied or temporarily unoccupied house or building;
 - (ii) within 50 metres of any land which has been cleared or ploughed or otherwise bona fide prepared for the growing of agricultural crops or upon which agricultural crops are growing;

- (iii) upon any land from which, during the year immediately preceding, agricultural crops have been reaped; or
- (iv) within 100 metres of any cattle dip, tank, dam or private water, as defined in the Water Act:

Provided that where consent is unreasonably withheld the Minister may authorize the holder of a mineral concession to exercise all or any of his rights thereunder on such land, subject to such reasonable conditions as he may impose, including payment of reasonable compensation;

Provided further that a dispute over the level of compensation shall not preclude the exercise of the concession holder's rights while such dispute remains to be settled;

- (iii) in a national park, without permission obtained under section 10 of the Wildlife Conservation and National Parks Act;
- (iv) upon any land reserved for the purposes of a railway track or within 50 metres of any railway track, without the written consent of the railway administration concerned;
- (v) upon any land within, or within 200 metres of, the boundaries of any township, without the consent of the local authority concerned;
- (vi) upon any street, road, highway, public place or aerodrome, without the consent of the Minister or other authority having control thereof;
- (vii) upon any land on which industrial minerals are being mined on behalf of Government or a local authority, or by any person holding a permit under Part VII, without the consent of the Minister, such local authority or the holder of such permit, as the case may be; or
- (viii) upon land specified by the Minister, by order published in the Gazette, to be land upon which prospecting or mining is prohibited or restricted.

(2) A person exercising any right under a mineral concession shall produce evidence of the possession of such concession to the owner or lawful occupier of any land upon which such right is to be exercised upon demand being made to him and, in default of such production, such person may be treated as a trespasser.

(3) No person shall exercise any right under a mineral concession upon any land other than unalienated State land unless he has given at least 14 days notice of his intention to do so to the owner or lawful occupier thereof giving in such notice details of the area in which the right is to be exercised and the date of expiry of his permit or licence.

(4) A notice given under subsection (3) shall be valid only for the period of validity of the mineral concession and the person giving such notice shall not exercise any right under such permit or licence in respect of the land to which the notice relates after the expiry thereof and, in the event of a renewal of such concession, he shall give fresh notice under subsection (3).

- (5) No consent applied for under this section shall be unreasonably withheld.
61. (1) The owner or lawful occupier of any land within the area of a mineral concession shall retain the right to graze stock upon or to cultivate the surface of such land insofar as such grazing or cultivation does not interfere with the proper use of such area for prospecting, retention or mining purposes.
- (2) In the case of a mining area, a retention area or a minerals permit area, the owner or lawful occupier of any land within such area shall not erect any building or structure thereon without the consent of the holder of the mining licence, retention licence or minerals permit, as the case may be, which consent shall not be unreasonably withheld.
- (3) The rights conferred by a mineral concession shall be exercised reasonably and so as to affect as little as possible the interests of any owner or lawful occupier of the land on which such rights are exercised consistent with the reasonable and proper conduct of the operations concerned.
- (4) No holder of a mineral concession shall create unprotected pits, hazardous waste dumps or other hazards such as to be likely to endanger the stock, crops or other lawful activity of the owner or lawful occupier of the land covered by such mineral concession.
62. (1) The holder of a retention licence, mining licence or minerals permit may, if he requires the exclusive use of the whole or any part of the retention area or mining area or minerals permit area, and shall, if requested by the owner or lawful occupier of any part of such area, obtain a lease thereof or other rights to use the same upon such terms as to the rents to be paid therefor, the duration thereof or the extent or area of the land to which such lease relates as may be agreed between such holder and such owner or lawful occupier, or, failing such agreement, as may be determined by arbitration:
- Provided that—
- (i) the holder of a mining licence or such a permit shall not obtain a lease of or other rights over any land specified in paragraphs (a) and (c) to (g) inclusive of section 60(1) except with the consent of the persons specified in such paragraphs;
 - (ii) in the case of tribal land, any rents payable under this subsection shall be payable to the Land Board within the area in which the land is situated;
 - (iii) an arbitrator appointed in pursuance of this subsection may, on application by any interested party, apportion any rent payable under this subsection between the owner and any lawful occupier; and
 - (iv) no demand made in terms of this subsection shall entitle the owner or lawful occupier to prevent or hinder the exercise by the holder of rights under his concession pending determination of compensation to be paid.

(2) In assessing any rent payable under the provisions of this section, an arbitrator shall determine the matter in relation to values at the time of arbitration current in the area in which the mining licence or retention licence or minerals permit is situated for land of a similar nature to the land concerned but without taking into account any enhanced value due to the presence of minerals.

63. (1) The holder of a mineral concession shall, on demand being made by the owner or lawful occupier of any land subject to such concession, promptly pay such owner or occupier fair and reasonable compensation for any disturbance of the rights of such owner or occupier and for any damage done to the surface of the land by such operations and shall, on demand being made by the owner of any crops, trees, buildings or works damaged during the course of such operations, pay compensation for such damage:

Provided that—

- (i) payment of rent under the provisions of section 62 shall be deemed to be adequate compensation for deprivation of the use of land to which such rent relates;
- (ii) in assessing compensation payable under this section, account shall be taken of any improvement effected by the holder of the mineral concession or by his predecessor in title, the benefit of which has or will enure to the owner or lawful occupier thereof;
- (iii) the basis upon which compensation shall be payable for damage to the surface of any land shall be the extent to which the market value of the land (for which purpose it shall be deemed saleable) upon which the damage has occurred has been reduced by reason of such damage, but without taking into account any enhanced value due to the presence of minerals;
- (iv) no compensation shall be payable to the holder of a state grant of land or his successors-in-title in respect of any operations under a mineral concession existing at the date of such grant; and
- (v) no demand made in terms of this subsection shall entitle the owner or lawful occupier to prevent or hinder the exercise by the holder of rights under his concession pending the determination of compensation to be paid.

(2) If the holder of a mineral concession fails to pay compensation when demanded under the provisions of this section, or if the owner or lawful occupier of any land is dissatisfied with any compensation offered, the dispute shall be determined by arbitration.

(3) A claim for compensation under the provisions of subsection (1) shall be made within a period of four years from the date when such claim has accrued, failing which, notwithstanding the provisions of any other written law, such claim shall not be enforceable.

64. (1) Where the President considers that any land is required to secure the development or utilization of the mineral resources of Botswana, he may compulsorily acquire such land.
- (2) Acquisition of land under this section shall be deemed to be for a public purpose in terms of the provisions of the Cap. 2:10 Acquisition of Property Act and any acquisition under this section shall be effected in accordance with the provisions of that Act.

PART IX – Environmental Obligations

65. (1) The holder of a mineral concession shall, in accordance with the law in force from time to time in Botswana and in accordance with good mining industry practice, conduct his operations in such manner as to preserve in as far as is possible the natural environment, minimize and control waste or undue loss of or damage to natural and biological resources, to prevent and where unavoidable, promptly treat pollution and contamination of the environment and shall take no steps which may unnecessarily or unreasonably restrict or limit further development of the natural resources of the concession area or adjacent areas.
- (2) In accordance with good international mining industry standards, the applicant for a mining licence or retention licence or any renewal of either shall prepare and submit a comprehensive Environmental Impact Assessment as part of the Project Feasibility Study Report.
- (3) The holder of a mineral concession shall ensure that his concession area is rehabilitated from time to time and ultimately reclaimed in so far as is practicable in a manner acceptable to the Director of Mines.
- (4) Without prejudice to the generality of subsection (3) above, during and at the end of operations in any mine, excavation, waste dump or pond, the holder of a mineral concession shall take such measures as are required from time to time to maintain and restore the top soil of affected areas and otherwise to restore the land substantially to the condition in which it was prior to the commencement of operations.
- (5) If there is any dispute as to the extent of the measures necessary to comply with the requirements of this section, the holder of a mineral concession may refer the question to arbitration.
- (6) In the event that the holder of a mineral concession fails to fulfil his obligation under this section and without prejudice to any other remedy available or other liability the holder may otherwise incur, the Minister may, after having notified the holder of his default and having given the holder a reasonable period of time to carry out the necessary restorations, carry out the necessary restoration whereupon the cost of such restoration shall be a debt due to Government by the holder and shall be recoverable in a court of competent jurisdiction, provided that the cost of any part of the restoration determined by an arbitrator not to have been necessary in terms of subsection (3) shall be deducted from the sum payable or if paid, refunded from the sum paid.

(7) In the event of an emergency or extraordinary circumstances requiring immediate action, the holder of a mineral concession shall forthwith notify the Director of Mines and shall take all immediate action in accordance with the reasonable directions of the Director of Mines.

(8) For the purpose of this section “emergency or extraordinary circumstances” means a situation or occurrence, whether existing or imminent, resulting from an act of man or nature, which if no prompt remedial action were taken, might result in death, bodily harm or injury to any person, or loss of or damage to capital assets or to any natural or biological resources.

(9) The holder of a mineral concession shall make adequate ongoing financial provision for compliance with his obligations under this section.

PART X – Financial

66. (1) Subject to the provisions of this Part, the holder of a mineral concession shall be liable to pay royalties to the Government on any mineral obtained by him in the course of the exercise of his rights thereunder at the rates and in the manner prescribed under this section.

(2) The royalties payable shall be the following percentages of gross market value as defined under subsection (3) below—

| <u>Mineral Type</u> | <u>Percentage</u> |
|------------------------------------|-------------------|
| Precious stones | 10% |
| Precious metals | 5% |
| Other minerals or mineral products | 3% |

(3) The term “gross market value” shall for the purposes of calculation of royalties be defined as the sale value receivable at the mine gate in an arms length transaction without discounts, commissions or deductions for the mineral or mineral product on disposal.

(4) Royalty shall be paid on a mineral or mineral product on receipt of each payment or other consideration for such mineral or mineral product, and each royalty payment shall be accompanied by full particulars of the mineral or mineral product sold or disposed of and the terms of payment therefor:

Provided that any disposal for other than monetary consideration or consideration deferred for a period beyond industry practice shall be referred to the Minister for determination of royalty in terms of subsection (5) below.

(5) Where it appears to the Minister that minerals have been disposed of otherwise than in an arms length transaction, the Minister shall determine the royalty payable on the basis of prices ruling in the industry, and the royalty so determined shall be payable on demand:

Provided that the royalty so determined and paid may be varied by court review or arbitration and the sum of any such variation shall thereupon become payable or repayable as the case may be.

(6) For the purposes of this section, the expression “arms length transaction” shall mean a transaction between a willing buyer and willing seller in the open market where the purchase price for the sale is not influenced by any special relationship or other arrangement between the parties to the transaction and is not affected by any non-commercial considerations and specifically excludes any barter, swap, exchange, or transfer price arrangements, restricted or distress transaction which is associated with special financial, commercial or other considerations.

67. (1) The Minister may, in the public interest, remit all or part of any royalty payable on any mineral or mineral product for such period as he may determine.

(2) The Minister may exempt from liability to royalty samples of minerals required for the purpose of assay, analysis or other examination.

68. The Minister may, on application being made to him by the holder of a mineral concession, defer payment of any royalty due from such holder for such period and subject to such conditions as he may determine.

69. (1) If the holder of a mineral concession fails to pay any royalty due in respect of that concession on or before the due date or any extension thereof, or if the Minister has reason to believe that minerals have been produced from any area and royalties have not been paid in respect thereof, the Minister may, by order served on the holder of the mineral concession concerned, prohibit the disposal of any mineral from such area, or from any other area held by such holder under a mineral concession until all outstanding royalties have been paid or until an arrangement has been made, acceptable to the Minister, for the payment of such royalties.

(2) Any holder of a mineral concession who contravenes or fails to comply with the provisions of an order given under subsection (1) and any person who, knowing of such an order and contrary thereto, receives any mineral from the area concerned, shall be guilty of an offence.

70. (1) There shall be due and payable to Government by every holder of a prospecting licence or retention licence the non refundable annual charge prescribed in the Second Schedule.

(2) The annual charge payable under the provisions of subsection (1) shall be payable on the issue of a prospecting licence or retention licence and thereafter annually on the anniversary thereof until the termination of such licence.

(3) Where a prospecting licence or retention licence is granted over land in a tribal area, one-half of any moneys received under the provisions of this section shall be appropriated to the Land Board within the area in which the land is situated.

71. (1) There shall be paid by the holder of every mining licence or minerals permit an annual charge as prescribed in the Second Schedule.
 (2) The annual charge payable under the provisions of subsection (1) shall be payable on the issue of the licence or permit as the case may be and thereafter annually on the anniversary thereof until the termination of such licence or permit.
72. All overdue payments under this Act shall bear interest at the commercial bank prime lending rate ruling from time to time plus a premium of five percentage points.
73. The Minister may, from time to time, make reasonable arrangements to secure that the holders of mineral concessions comply with the provisions of this Act, and, without prejudice to the generality of the foregoing, may require or accept guarantees, whether from shareholders or otherwise, in respect of such compliance.

PART XI — *Withdrawal of Applications, Surrender and Termination
of Mineral Concessions, etc.*

74. An applicant for a mineral concession or any renewal thereof may withdraw his application at any time before such application is approved or rejected by notifying the Minister, in writing, that he withdraws such application.
75. (1) Subject to the provisions of section 47 and of any condition in his mineral concession, the holder of a mineral concession may surrender the area covered by his mineral concession or part thereof by—
- (a) giving the Minister not less than three months' notice of his intention to surrender the whole or part of the area concerned;
 - (b) complying with any reasonable requirement of the Director of Geological Survey or the Director of Mines, as to the rehabilitation and reclamation of the concession area.
- (2) If the application for surrender is in respect of part only of the area covered by the mineral concession, the holder thereof shall—
- (a) if it relates to a mining area, provide a diagram of the area to be surrendered;
 - (b) in the case of any other mineral concession, provide a reliable plan of the area to be surrendered;
 - (c) give the results of prospecting carried out; and
 - (d) demarcate the remaining area in the prescribed manner.
- (3) A surrender shall be without prejudice to any liabilities or obligations incurred by the holder in relation to the area surrendered prior to the date of surrender.
- (4) Following compliance with subsection (1)(b) by the holder, the Minister shall—

- (a) if the surrender is in relation to the whole area covered by a mineral concession, cancel such concession; or
 - (b) if the surrender is in respect of part only of the area covered by a mineral concession, amend the concession accordingly.
76. (1) Subject to the provisions of this section, the Minister may suspend or cancel a mineral concession if the holder thereof—
- (a) fails to make any of the payments required by or under this Act on the due date;
 - (b) contravenes any provision of this Act or the conditions of his mineral concession or the provisions of any other written law relating to mines and minerals;
 - (c) dies, becomes of unsound mind, becomes insolvent, commits any act of bankruptcy, enters into any agreement or scheme of composition with his creditors, takes advantage of any written law for the benefit of debtors, or, in the case of a company, goes into liquidation, except as part of a scheme for its reconstruction or amalgamation.
 - (d) makes any statement to the Government in connection with his mineral concession which he knows or ought to have known was false; or
 - (e) for any reason is or becomes ineligible to hold a mineral concession under the provisions of section 6.
- (2) Before suspending or canceling a mineral concession under paragraphs (a) and (b) of subsection (1), the Minister shall give the holder thereof notice in writing specifying the particular failure or contravention and calling upon the holder to remedy the same within such period, being not less than 30 days, as may be specified in such notice.
- (3) If the holder of a mineral concession fails to remedy any failure or contravention specified in paragraphs (a) and (b) of subsection (1) within the period specified in a notice issued under subsection (2), the Minister may, by notice to the holder thereof, suspend or cancel the mineral concession forthwith.
- (4) On cancellation of a mineral concession under the provisions of this section, the rights of the holder thereof shall be extinguished but without prejudice to any liabilities or obligations incurred in relation thereto prior to the date of cancellation.
77. (1) Where the holder of a mineral concession intends to cease operations either during the period of or on termination of his licence, he shall, not less than three months or such other period as the Director of Mines may allow before such cessation or termination, furnish to the Director of Mines, a full register of assets showing those assets which he intends to remove and those which he intends to leave in the concession area, and shall further notify the Director of Mines of any potentially hazardous substances, erections or excavations in the concession area.
- (2) On receipt of a notice in terms of subsection (1) above, the Director of Mines shall, if he deems it necessary—

- (a) certify that specified items of fixed machinery are necessary for the care and maintenance of the concession area and such items and machinery shall not be removed;
- (b) require that specified buildings and other items of fixed machinery shall be removed; or
- (c) require that potentially hazardous substances, erections and excavations be removed or made safe in such manner as he may direct.

(3) If removal of specified assets which the holder has indicated that he wishes to remove is prohibited under subsection 2(a) above, the Government shall pay reasonable compensation to the holder for such assets and any person who acquires a mineral concession over the area concerned shall reimburse the Government the sum equal to the compensation so paid.

(4) Upon cessation of operations by the holder of a mineral concession in terms of this clause, the mining area shall revert to the owner thereof provided that should the Director of Mines determine that the area should be retained, it shall be so retained by the Government subject to payment of fair compensation to the owner for such right of retention.

(5) Any fresh water dam and the waters impounded thereby shall be left intact on cessation of operations in or termination of a mineral concession.

78. (1) Upon termination of any mineral concession the holder thereof shall deliver to the Minister—
- (a) all records which the holder is obliged under the provisions of this Act to maintain; and
 - (b) all plans or maps of the area covered by the mineral concession prepared by the holder or at his instructions.
- (2) Any person who fails to deliver any document required to be delivered under the provisions of subsection (1) within 14 days of being called upon to do so by the Minister shall be guilty of an offence.

79. Where the holder of—
- (a) a prospecting licence has made application for a renewal thereof or for either a retention licence or a mining licence over part of the area covered by his prospecting licence;
 - (b) a retention licence has made application for a renewal thereof or for a mining licence; or
 - (c) a mining licence or a minerals permit has made application for a renewal thereof,

the Minister may extend the period of validity of such prospecting licence, retention licence, mining licence or minerals permit, as the case may be, pending his decision on the application.

PART XII —Regulations

80. (1) The Minister may make regulations for the better carrying into effect of this Act and, in particular and without prejudice to the generality of the foregoing, regulations may provide for the following matters or purposes—
- (i) prescribing anything which in terms of this Act is to or may be prescribed;
 - (ii) for making of returns of minerals won and for the valuation of such minerals, and the sampling, weighing and testing of any mineral;
 - (iii) the shape of the areas over which mineral concessions may be granted;
 - (iv) the manner in which areas and boundaries shall be marked, beacons and surveyed;
 - (v) the gathering of fuel wood and the cutting and use of timber for the purposes of carrying on prospecting and mining operations;
 - (vi) the returns to be rendered and the nature of the accounts, books and plans to be kept by the holders of mineral concessions;
 - (vii) the fees to be paid in respect of any matter or thing done under this Act; and
 - (viii) the protection of the environment.
- (2) Regulations made under this section may provide a penalty for the contravention thereof in any amount not exceeding P5000 or to imprisonment for a term not exceeding six months, or to both.
- (3) The Minister may by notice amend or replace any schedule to this Act.

PART XIII — Offences and Penalties

81. (1) If the Minister considers that the holder of a mineral concession is in breach of any of the provisions of this Act, or of any of the terms or conditions of such concession, he may, in lieu of proceeding under any other provision of this Act, notify the holder accordingly and require him to show cause, in writing, within such reasonable time as the Minister shall specify in the notification, why he should not incur a penalty for such breach.
- (2) If, within the time specified in a notification, the holder of a mineral concession fails to satisfy the Minister that—
- (a) the alleged breach had not occurred;
 - (b) the holder had taken all appropriate precautions, due care and reasonable alternative measures with the object of avoiding such breach; or

- (c) there was a reasonable excuse for the breach;
the Minister may order that there be imposed on the holder a penalty in such sum, not exceeding P50 000, as the Minister may deem appropriate having regard to the nature of the breach, its seriousness and the other occasions, if any, upon which the holder has been in breach of this Act or of the terms or conditions of his mineral concession.

(3) If the Minister makes an order under subsection (2), the penalty imposed may be recovered in any court of competent jurisdiction.

82. Any person who—

- (a) fails, neglects or refuses to allow or provide all reasonable facilities and assistance to an authorized officer;
- (b) fails, neglects or refuses to comply with any direction given under section 8;
- (c) prospects, retains a mineral deposit or mines otherwise than in accordance with the provisions of this Act;
- (d) fails to notify the Minister in pursuance of the provisions of section 21(1)(c) or (d), 32(3) or 45(1)(e);
- (e) carries on business in contravention of section 49(1) or who erects any building or other structure in contravention of the provisions of section 49(2);
- (f) obstructs, hinders or delays an authorized officer or specially authorised officer in the performance of his duties under this Act;
- (g) in making application for a mineral concession or any renewal thereof, knowingly makes any statement which is false or misleading in any material particular or makes any material omission;
- (h) in any report, return or affidavit submitted in pursuance of the provisions of this Act, knowingly includes any information which is false or misleading in any material particular or makes any material omission;
- (i) removes or fails to remove any buildings, fixed machinery or other movable property contrary to section 77;
- (j) removes or disposes of any mineral contrary to the provisions of section 24;
- (k) exports any radioactive mineral in contravention of section 48(1) or fails to comply with the terms or conditions of a permit issued under that section;
- (l) causes unlawful environmental damage contrary to section 65 or fails to rehabilitate an extraction site, or fails to deal with potentially hazardous substances, erections or excavations in accordance with directions given under subsection 77(2)(b).
- (m) places or deposits, or is accessory to the placing or depositing of, any mineral in any place with the intention to mislead any other person as to the mineral possibilities of such place;

- (n) mingles or causes to be mingled with any sample of ore any substance which will enhance the value or in any way change the nature of such ore with the intention to cheat, deceive or defraud; or
- (o) being engaged in the business of milling, leaching, sampling, concentrating, reducing, assaying, transporting or dealing in ores, metals or minerals, keeps or uses any false or fraudulent scales or weights for weighing such ores, metals or minerals, or uses any false or fraudulent assay scales or weights or enriched fluxes used for ascertaining the assay value of minerals, knowing them to be false or fraudulent,

shall be guilty of an offence.

83. (1) Any person guilty of an offence under section 82(a) to (e) inclusive or an offence for which no penalty is prescribed under this Act shall be liable, on first conviction, to a fine not exceeding P1 000 or to imprisonment for a term not exceeding three months, or to both.

(2) Any person guilty of an offence under section 82(f) to (i) inclusive shall be liable, on first conviction to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

(3) Any person guilty of an offence under section 82(j) to (o) inclusive shall be liable, on first conviction to a fine not exceeding P100 000 or to imprisonment for a term not exceeding 5 years, or to both.

(4) On a second or subsequent conviction for an offence under this Act, a court may impose a penalty which does not exceed double the penalty referred to in subsections (1), (2) and (3).

84. (1) An authorized officer or a specially authorised officer may, if satisfied that any person is guilty of an offence described in section 82, summarily demand from such person the payment of a fine not exceeding P200 in respect of such offence.

(2) Any person from whom payment of a fine has been demanded under the provisions of subsection (1) shall have the right to elect to admit liability and pay the fine, or to dispute liability, and such person shall be informed of such rights at the time by the person making the demand.

(3) The payment forthwith or within such time as the person making the demand may specify of a fine shall operate as a bar to any further proceedings against the person making such payment in respect of the offence concerned.

(4) An authorized officer or specially authorized officer receiving payment of a fine shall cause a receipt to be given in such form as may be prescribed, and shall cause the fine to be paid into the general revenues of the Republic.

(5) An election made under subsection (2) shall be irrevocable.

PART XIV — Records and Information

85. (1) The Minister shall maintain records of all mineral concessions issued under this Act in sufficient detail as to show—
- (a) the name of the holder of the mineral concession;
 - (b) the area subject to the mineral concession;
 - (c) the date of issue and duration of the mineral concession; and
 - (d) the mineral for which the concession is granted.
- (2) Records maintained under subsection (1) shall be open to inspection by members of the public during normal Government office hours, and members of the public shall be permitted to take copies thereof.
86. Records supplied under section 21(3), 32(3), 45(2) or 57(c) shall so long as the person supplying the same or his successor-in-title retains a prospecting licence, retention licence, mining licence or minerals permit over the area to which the records relate, be treated as confidential and shall not be divulged without the consent of the person supplying the same or his successor-in-title:
- Provided that nothing in this section shall prohibit the disclosure of any confidential information—
- (i) where such disclosure is necessary or required for the purposes of this Act;
 - (ii) for the purposes of a prosecution under this Act or any other law;
 - (iii) to any person being a consultant to or officer employed by the Government who is approved by the Minister to receive such confidential information:
- Provided further that subject to items (i), (ii) and (iii) all proprietary information supplied to the Minister or any officer under this Act shall be kept confidential.
87. The Mines and Minerals Act (hereafter referred to as the repealed Act) is hereby repealed.
88. (1) All subsidiary legislation made under the repealed Act, and in force immediately prior to the coming into operation of this Act shall, in so far as such subsidiary legislation may not be inconsistent with the provisions of this Act, continue in force as if made under this Act.
- (2) Nothing in this Act shall affect the continued validity of any title to, interest in or right over, any minerals, of whatsoever nature, subsisting immediately prior to the coming into operation of this Act (hereinafter called “existing right”):
- Provided that a state grant of a mining lease issued and in force immediately before the commencement of this Act shall be deemed for the purposes of this Act to be a mining licence issued under the provisions of Part VI:
- Provided further that in the event of any conflict between the terms and conditions of any existing right and the provisions of this Act, the terms and conditions of such existing right shall continue to be valid and enforceable notwithstanding the provisions of this Act.

FIRST SCHEDULE
(section 13)

Forms

Form I

Prospecting Licence Application Form (Issue/Renewal)

This application is in terms of section 13 of the Mines and Minerals Act

(attach additional sheets or annexures where necessary)

| | |
|---|------------------------------|
| 1. Name (and nationality where appropriate). In the case of company attach copy of certificate of incorporation | Address in Botswana |
| 2. Full name(s) of partners/directors/members of association | Nationalities |
| 3. Name(s) of shareholder who is a beneficial owner of more than 5% of the issued capital | Nationalities |
| 4. Details of financial status (attach bankers reference and most recent financial statements) | |
| 5. Technical competence (attach curriculum vitae of professionals to be involved) | |
| 6. Experience (established track record is an advantage but is not essential) | |
| 7. Description of area applied for (attach plan and co-ordinates) | |
| 8. Name(s) of mineral applied for | Period applied for |
| 9. Proposed programme of prospecting operations | Proposed minimum expenditure |
| Year 1 | |
| Year 2 | |
| Year 3 | |
| 10. Details of Botswana prospecting licence held within the preceding 10 years by the applicant or any person controlling, controlled by or under joint or common control with the applicant. | |

| |
|---|
| <p>11. Disclose any other information material to the application</p> <p>I being duly authorised, declare that the applicant and its partners/members/directors/shareholders are persons qualified in terms of section 6 of the Mines and Minerals Act to hold a prospecting licence, and that the information contained herein is true and correct.</p> <p>Signed Capacity Date</p> <p>Place</p> |
|---|

Form II

Prospecting Licence No.....

Issued in terms of section 16 of the Mines and Minerals Act.

WHEREAS a company incorporated under the laws of (hereinafter referred to as “the Holder”) has made application for the right to prospect for on land to which the Republic of Botswana holds mineral rights:

AND WHEREAS provision is made under section 14 of the Act for the conferring of such rights by means of a prospecting licence:

NOW THEREFORE the Minister hereby grants to the holder the exclusive right to prospect for in the Licence area for a period of years commencing on and ending on

1. The Licence area shall be the area shown on the map annexed hereto, in extent km², located in district(s) and more fully described in Annexure I hereto; and as reduced from time to time in accordance with the provisions of the Act.

2. In accordance with the provisions of section 70 of the Act, the holder shall, simultaneously with issuance of this licence and thereafter on each anniversary thereof, pay to the Government at the office of the Director of Geological Survey, an annual charge equal to multiplied by the number of square kilometers in the Licence area subject to a minimum annual charge of

3. The holder shall incur the minimum annual expenditures and shall expeditiously carry out the programme of prospecting operations set out in Annexure II.

GIVEN under my hand at GABORONE this day of in the year

.....
Minister
Ministry of Minerals, Energy and
Water Resources

ANNEXURE I

The Licence area is km² defined by boundary lines, which shall be straight unless otherwise stated, joining successive points at the following co-ordinates:

Point Latitude(south) Longitude(east)

ANNEXURE II

| Programme of prospecting operations | Proposed minimum expenditure |
|-------------------------------------|------------------------------|
| Year 1 | |
| Year 2 | |
| Year 3 | |

Retention Licence Application Form (Issue/Renewal)

This application is in terms of section 25 of the Mines and Minerals Act

(attach additional sheets or documents where necessary)

| | |
|---|---------------------|
| 1. Name of applicant (in the case of company attach copy of certificate of incorporation) | Address in Botswana |
| 2. Full name(s) of partners/directors/members of association | Nationalities |
| 3. Name(s) of shareholder who is a beneficial owner of more than 5% of the issued capital | Nationalities |
| 4. Details of financial status (attach supporting documents, bankers reference and most recent financial statements) | |
| 5. Technical competence (established mining track record is an advantage but is not essential) | |
| 6. Description of area applied for (prospecting licence number; attach plan and co-ordinates) | |
| 7. Name(s) of mineral which it is intended to retain | |
| 8. Period for which licence is sought | |
| 9. Details of prospecting or other work intended to be carried out during the period of retention | |
| 10. Furnish copy of feasibility study as prescribed including (a) to (h) below— | |
| (a) Details of mineral deposit (including all known, proven, indicated, inferred ore reserves and mining conditions) | |
| (b) Technical report on mining and treatment possibilities and the applicant's intention in relation thereto | |
| (c) Proposed programme of mining operations including— | |
| (i) estimated date by which applicant intends to work for profit | |
| (ii) estimated recovery rates(s) | |
| (iii) nature of product | |
| (iv) envisaged marketing arrangements for sale of mineral product(s) | |
| (v) environmental impact assessment study | |
| (vi) environmental management programme | |
| (d) Forecast of capital investment, cashflow and details of anticipated financing plan | |
| (e) Outline of proposed employment level and training program. | |
| (f) Outline of proposed sources of goods and services | |
| (g) Details of expected infrastructure requirements | |
| (h) attach audited statement of relevant exploration expenditure incurred prior to this application on the area applied for | |

| |
|---|
| 11. Disclose any other information material to this application |
| 12. I..... being duly authorised, declare that the applicant and its partners/directors/members/shareholders are persons qualified in terms of section 6 of the Mines and Minerals Act to hold a retention licence and that the information contained herein is true and correct. |
| 13. Signed.....Capacity |
| Date Place..... |

Form IV

Retention Licence No.....

Issued in terms of section 29 of the Mines and Minerals Act.

WHEREAS a company incorporated under the laws of Botswana and holder of prospecting licence number....., and hereinafter referred to as “ the Holder”, has applied for a retention licence in respect of a deposit of discovered under the said prospecting licence.

AND WHEREAS provision is made under Part V of the Act for the conferring of such rights by means of a Retention licence.

NOW THEREFORE the Minister hereby grants to the holder a retention licence number to retain for future mining operations exclusive rights to deposits of in the retention area on the plan annexed hereto for a period of years commencing onand ending on subject to the provisions of the Act and to the terms and conditions of this licence.

1. The Holder shall upon issue of this licence and thereafter on each anniversary thereof, pay to the government at the office of the Director of Mines a fee in accordance with section 70 of the Act.

2. At the expiry of the retention licence, any minerals recovered or won by the Holder during the retention period shall be disposed of in such manner as the Minister may direct.

GIVEN under my hand at Gaborone this day of in the year

.....

Minister

*Ministry of Minerals, Energy
and Water Resources*

Mining Licence Application Form (Issue/Renewal)

This Application is in terms of section 38 of the Mines and Minerals Act

(attach additional sheets or documents where necessary)

| | |
|---|---------------------|
| 1. Name of applicant (attach copy of certificate of incorporation) | Address in Botswana |
| 2. Full Name(s) of Directors | Nationalities |
| 3. Authorised share capital and issued capital | |
| 4. Name(s) of Shareholder who is a beneficial owner of more than 5% of the issued capital | Nationalities |
| 5. Details of Financial Status (attach supporting documents, Bankers reference and most recent financial statements) | |
| 6. Technical Competence (established mining track record is an advantage but is not essential) | |
| 7. Prospecting/retention/waiver/Mining licence/Number | |
| 8. Description of area applies for (attach plan and coordinates) | |
| 9. Name(s) of mineral which it is intended to mine | |
| 10. Period for which licence/renewal is sought | |
| 11. Attach parent company guarantee as in annexure 1 | |
| 12. Furnish copy of feasibility study as described including (a) to (h) below (a) Details of mineral deposit (including all known, proven, indicated, inferred ore reserves and mining conditions) | |

| |
|---|
| <p>(b) Technical report on mining and treatment possibilities and the applicant's intention in relation thereto</p> <p>(c) Proposed programme of mining operations including</p> <p style="padding-left: 40px;">(i) estimated date by which applicant intends to work for profit</p> <p style="padding-left: 40px;">(ii) estimated recovery rate (s)</p> <p style="padding-left: 40px;">(iii) nature of product</p> <p style="padding-left: 40px;">(iv) envisaged marketing arrangements for sale of mineral product(s)</p> <p style="padding-left: 40px;">(v) environmental impact assessment study</p> <p style="padding-left: 40px;">(vi) environmental management programme</p> <p>(d) Forecast of capital investment, cashflow and details of anticipated financing plan</p> <p>(e) Outline of proposed employment level and training program</p> <p>(f) Outline of proposed sources of goods and services</p> <p>(g) Details of expected infrastructure requirements</p> <p>(h) Attach audited statement of relevant exploration and arms length acquisition expenditure incurred prior to this application on the area applied for</p> |
| 13. Disclose any other information/material relevant to this application |
| <p>14. I.....being duly authorised, declare that the applicant and its partners/directors/ members/shareholders are persons qualified in terms of section 6 of the Mines and Minerals Act to hold a mining licence and that the information contained herein is true and correct</p> <p>Signed.....Capacity.....</p> <p>Date.....Place.....</p> |

Annexure 1**PARENT COMPANY GUARANTEE****WHEREAS**

X Ltd a company duly organised and existing under the laws ofhaving its registered office at (hereinafter referred to as "the guarantor" which expression shall include its successors and permitted assignees) holds directly or indirectly a controlling interest in Y Ltd, a company duly incorporated and registered in Botswana, with its registered office at(which company, including its successors and permitted assignees, is referred to hereinafter as "the company");

AND WHEREAS

The company is the applicant for/holder of a Mining License pursuant to the Mines and Minerals Act of Botswana (hereinafter referred to as "the licence" and "Act" respectively) issued or to be issued, by the Government of Botswana represented by the Minister of Minerals, Energy and Water Affairs (hereinafter referred to as "the Government") in favour of the said company;

AND WHEREAS

The guarantor agrees to guarantee the performance of the obligations of the company under the licence and its compliance with the Act;

NOW THEREFORE this Deed hereby provides as follows:

1. The guarantor hereby unconditionally and irrevocably guarantees to the Government that it will make available, or cause to be made available, to the company or its permitted assignees, such financial, technical, managerial and other resources as are required to ensure that the company and/or any such assignee is able to carry out the obligations of the company or any permitted assignee as set forth in the licence and under the Act.
2. The guarantor further unconditionally and irrevocably guarantees to the Government the due and punctual compliance with or performance by the company or its permitted assignees, of any obligations of the company or any permitted assignees under the licence and the Act.
3. The guarantor hereby undertakes to the Government that if the company, or any permitted assignees, shall, in any respect, fail to perform its obligations under the licence or commits any breach of such obligations under the licence or the Act, then the guarantor shall fulfill or cause to be fulfilled the said obligations in place of the company or any permitted assignees, and will indemnify the Government against all losses, damages, costs, expenses or otherwise which may result directly from such failure to perform or breach on the part of the company or any permitted assignees.
4. This guarantee shall take effect from the date of the issue of the licence and shall remain in full force and effect for the duration of the said licence and any renewal thereof and thereafter until no obligation remains outstanding and no sum remains payable by the company, or its permitted assignees, under the licence or the Act or as a result of any decision or award made in any arbitration thereunder.
5. This guarantee shall not be affected by any change in the Articles of Association and bye-laws or any change in the ownership or control of the company or the guarantor.
6. The liabilities of the guarantor shall not be discharged or affected by:
 - (a) any time indulgence, waiver or consent given to the company;
 - (b) any amendment to the licence or the Act or any security or other guarantee or indemnity to which the company has agreed;
 - (c) the enforcement or waiver of any terms of the licence or the provisions of the Act or of any security, other guarantee or indemnity; or
 - (d) the dissolution, amalgamation, reconstruction or reorganisation of the company.
7. This guarantee shall be governed by and construed in accordance with the laws of Botswana.

The seal of X Ltd was hereto duly affixed by.....in accordance with its articles this.....day of.....in the year in accordance with its bye-laws and this guarantee was duly signed by..... and as required by the said bye-laws, they being duly authorised to represent X Ltd.

.....
Secretary

.....
Chairman and Director

.....
Witness:

Mining Licence No.....
Issued in terms of section 41 of the Mines and Minerals Act.

WHEREAS....., a company incorporated under the laws of Botswana and the holder of prospecting/retention/mining licence/waiver * number, and hereinafter referred to as “the Holder”, has applied for a mining licence in respect of a deposit discovered under prospecting licence number

AND WHEREAS provision is made under Part VI of the Act for the issue or renewal of a Mining Licence;

NOW THEREFORE the Minister hereby grants to the Holder mining licence number to mine for in the mining licence area on the plan annexed hereto for a period of years commencing on and ending on subject to the provisions of the Act and to the terms and conditions of this licence.

1. The Holder shall upon issue of this licence and thereafter on each anniversary thereof, pay to Government at the office of the Director of Mines a fee in accordance with Section 71 of the Act.
2. The Holder shall carry out its mining operations strictly within the mining licence area and in accordance with the approved programme of mining.
3. The Holder shall pay royalty to Government monthly in accordance with Section 66 of the Act.

GIVEN under my hand at Gaborone this.....day of.....in the year.....

.....

Minister
Ministry of Minerals, Energy
and Water Resources

* delete where inapplicable

Minerals Permit Application Form (Issue/Renewal)

This application is in terms of section 52 of the Mines and Minerals Act
(attach additional sheets or documents where necessary)

| | |
|--|---------------------|
| 1. Name of applicant (in case of company attach copy of certificate of incorporation) | Address in Botswana |
| 2. Full Name(s) of partners/directors/members of association | Nationalities |
| 3. Name(s) of Shareholders | Nationalities |
| 4. Description of area applied for (attach plan and coordinates) | |
| 5. Particulars of the minerals for which permit is sought | |
| 6. Period for which permit is sought | |
| 7. Attach proposed programme of working as in Annexure 1 | |
| 8. Disclose any other information/material relevant to this application | |
| <p>9. Ibeing duly authorised, declare that the applicant and its partners/directors/members/shareholders are persons qualified in terms of section 6 of the Mines and Minerals Act to hold a minerals permit and that the information contained herein is true and correct</p> <p>Signed..... Capacity.....</p> <p>Date Place.....</p> | |

Annexure 1

Proposed Programme of Working

- (a) Details of mineral deposit (including all known, proven, indicated and inferred ore reserves and mining conditions)
- (b) Proposed programme of mining operations including:
 - (i) estimated date by which applicant intends to work for profit
 - (ii) estimated capacity of production and scale of operations
 - (iii) nature of product
 - (iv) envisaged marketing arrangements for sale of mineral product(s)
 - (v) Brief environmental impact assessment study
 - (vi) Brief environmental reclamation programme

Form VIII

Minerals Permit No

Issued in terms of Section 52 of the Mines and Minerals Act

WHEREAS, hereinafter referred to as “ the Holder”
has applied for the issue/renewal * of a minerals permit in respect of

AND WHEREAS provision is made under Part VII of the Act for the
issue/renewal of a minerals permit.

NOW THEREFORE the Minister hereby grants to the Holder a minerals permit
number to mine for in the minerals permit
area demarcated in the plan annexed hereto for a period of years
commencing on and ending on subject to the
provisions of the Act and to the terms and conditions of this permit.

1. The holder shall upon the issue of the permit and thereafter on each anniversary thereof, pay to Government at the office of the Director of Mines a fee in accordance with Section 71 of the Act.
2. The Holder shall carry out its operations strictly within the minerals permit area and in accordance with the approved programme of working.
3. The Holder shall pay royalties to Government monthly in accordance with Section 66 of the Act.

GIVEN under my hand at Gaborone this day of in the year

.....

Minister

*Ministry of Minerals, Energy
and Water Resources*

* Delete where inapplicable

SECOND SCHEDULE
(Section 70)

Fees

The annual charges payable under this Act shall be as follows:

- (a) Prospecting Licence - P5.00 per km² or part thereof subject to a minimum of P500 for industrial minerals and P1 000 for all other minerals.
- (b) Retention Licence - P5 000 per km² or part thereof for the first year, increasing annually by P5 000 per km² for the second and subsequent years.
- (c) Mining Licence or Minerals Permit - P100/ km² or part thereof.

PASSED by National Assembly this 5th day of July, 1999.

C.T.MOMPEI,
Clerk of the National Assembly.