

LAWS OF SOUTH SUDAN

MINING ACT, 2012

Act No. 36

TABLE OF CONTENTS

CHAPTER I: PRELIMINARY PROVISIONS

1. Title and Commencement
2. Repeal and Savings
3. Purpose
4. Authority and Application
5. Interpretations
6. Control and Ownership of Mineral Resources
7. Types of Mineral Titles

CHAPTER II: ADMINISTRATION

8. Powers
9. Directorate of Geological Survey
10. Functions of the Directorate of Geological Survey
11. Directorate of Mineral Development
12. Functions of the Directorate of Mineral Development
13. Execution and Delegation of Functions of the Director General
14. Inspectors
15. Mining Cadastre Office Officer
16. Powers and Duties of Authorised Officers
17. State Mineral Resources Advisory Coordination Committees

18. Emergency Suspension Order
19. Power to Summon
20. Power to Arrest without Warrant
21. Secondment

CHAPTER III: LAND FOR MINERAL TITLES

22. Land Open to Grant and Issue of Mineral Title
23. Restricted Areas or where Additional Consent is required
24. Power to Order Areas Closed to Mineral Title Application
25. Areas for Public Tender
26. Mining on Private and Community Land
27. Mineral Resource Reserve to Preserve Land for Mining Operations
28. Power to Declare Mineral Resource Reserve Area no Longer Reserved

CHAPTER IV: RECONNAISSANCE LICENCE

29. Person Qualified to Hold Reconnaissance Licence
30. Application for Reconnaissance Licence
31. Grant of Reconnaissance Licence
32. Reconnaissance Licence Duration
33. Reconnaissance Licence not Transferable
34. Reconnaissance Licence Area
35. Area not Subject to Reconnaissance Licence
36. Number of Reconnaissance Licences not limited
37. Rights Conferred by Reconnaissance Licence
38. Right to Surrender Reconnaissance Licence

39. Reconnaissance Licence Terms and Conditions
40. Reconnaissance does not constitute a Land Use

CHAPTER V: EXPLORATION LICENCE

41. Company Qualified to Hold or Apply for Exploration Licence
42. Application for Exploration Licence
43. Grant of Exploration Licence
44. Exploration Licence Duration
45. Exploration Licence Area
46. Right to Relinquish Exploration Licence Area
47. Rights Conferred by Exploration Licence
48. Airborne Surveys
49. Drilling
50. Exclusive Right to Apply for Mining Licence
51. Right to Surrender Exploration Licence
52. Obligations of a Title Holder of an Exploration Licence
53. Amendment of Exploration Programme
54. Exploration under Exploration Licence does not constitute Land Use

CHAPTER VI: SMALL-SCALE MINING LICENCE

55. Person Qualified to Hold a Small-Scale Mining Licence
56. Application for Small -Scale Mining Licence
57. Grant of Small-Scale Mining Licence
58. Small-Scale Mining Licence Duration
59. Small-Scale Mining Licence Area
60. Small-Scale Mining Licence Limits

61. Obligations of the Title Holder of a Small-Scale Mining Licence

CHAPTER VII: LARGE-SCALE MINING LICENCE

62. Company Qualified to Hold Large-Scale Mining Licence
63. Application for Large-Scale Mining Licence
64. Grant of Large-Scale Mining Licence
65. Large-Scale Mining Licence Duration
66. Large-Scale Mining Licence Area
67. Large-Scale Mining Licence Terms and Conditions
68. Community Development Agreements

CHAPTER VII: RETENTION LICENCE

69. Retention Licence Term
70. Retention Licence Term Review
71. Application
72. Criteria for Issuance
73. Rights and Obligations

CHAPTER IX: ARTISANAL MINING LICENCE

74. Maximum Production under an Artisanal Mining Licence
75. Application
76. Application Processing
77. Criteria for Issuance
78. Applicants Rights and Obligations
79. Authority to Exclude Users

CHAPTER X: MINING LICENCE GENERAL PROVISIONS

80. Mining not to Commence until Additional Conditions are Met
81. Mining Rights Conferred
82. Consolidation of Mining Licences
83. Right to Surrender Mining Licence
84. Certain Items not to be removed from Mining Licence Area
85. Permanent or Temporary Cessation of Mineral Production
86. Duty to Make Safe Mining Operations when Mining Ceases
87. Wasteful Practices
88. Employment of South Sudanese Personnel and Contractors
89. Restriction on Lien or Encumbrance
90. Mining Operations under Mining Licence do not constitute a Land Use

CHAPTER XI: RENEWAL AND REVOCATION OF MINERAL TITLE

91. Mineral Title to Remain in Force during Application for Renewal
92. Suspended Mineral Title Liable to Revocation
93. Minister may Grant Revocation Permission
94. Effect of Bankruptcy, Transformation and Dissolution
95. Notice of Revocation
96. Effect of Revocation on Joint Mineral Title Holders
97. Obligations of Mineral Title Holder upon Revocation
98. Duty to Remove or Make Safe
99. Prior Obligations Remain after Revocation

CHAPTER XII: EXPLORATION AND MINING AGREEMENT

100. Party Qualifying for an Exploration and Mining Agreement
101. Initiation of Exploration and Mining Agreement Process
102. Individual Application for Exploration and Mining Agreement Process
103. Priority of Individual Applications for Exploration and Mining Agreement
104. Minister may enter into Exploration and Mining Agreement after Consultation
105. Assignment and Transfer of Exploration and Mining Agreement
106. Content of Exploration and Mining Agreement
107. Right Title Holders may be granted in Exploration and Mining Agreements
108. Conflict between Applicable Law and Exploration and Mining Agreement
109. Exploration and Mining Agreement Area

CHAPTER XII: BOUNDARIES

110. Mining Licence Area Boundary to be Marked
111. Licenced Land Surveyor
112. Boundary of Reconnaissance Licence and Exploration Licence

CHAPTER XIV: RENTS, ROYALTIES AND TAXES

113. Minister to Prescribe Annual Rent
114. Annual Rent
115. Royalty
116. Sharing Rent Royalties and Taxes
117. Prohibition on Disposal of Minerals
118. Interest on Overdue Payments
119. Obligation to Participate in Fiscal Transparency Initiatives
120. Revocation for Failure to Pay Annual Rent or Royalty

CHAPTER XV: ENVIRONMENTAL AND SOCIAL PROVISION

- 121. Preservation of the Natural Environment and Pollution Prevention
- 122. Rehabilitation and Mine Closure Plan
- 123. On-going Rehabilitation
- 124. Dispute as to the Extent of the Measures Necessary
- 125. Failure to fulfil Obligation
- 126. Emergency
- 127. Financial Provisions
- 128. Community Development and Corporate Social Responsibility

CHAPTER XVI: GEOLOGICAL AND OTHER INVESTIGATIONS

- 129. Geological and Other Investigations
- 130. Investigation by Educational Institutions and other Government Agencies
- 131. Mineral Title not required in Some Cases

CHAPTER XVII: RADIOACTIVE MINERALS

- 132. Provisions relating to Radioactive Minerals
- 133. Notification of Discovery of Radioactive Minerals
- 134. Report of Operations Related to Radioactive Minerals
- 135. Export or Disposal of Radioactive Minerals

CHAPTER XVIII: NOTIFICATION OF DISCOVERIES

- 136. Time to Report

CHAPTER XIX: MINERAL RESOURCES FOR CONSTRUCTION

- 137. Extraction of Mineral Resources for Construction
- 138. Mineral Resources for Construction cannot be Sold or Transferred

CHAPTER XX: ACCESS, USE AND OCCUPATION OF LAND, COMPENSATION

- 139. Denial of Access may lead to Access Order Process
- 140. Existing Land Rights
- 141. Revocation, Expropriation or Extinguishment of Existing Rights
- 142. Director General may require Deposit or Reimbursement
- 143. Compensation to be Paid

CHAPTER XXI: ROADS

- 144. Permission to build Roads for Reconnaissance or Exploration
- 145. Right of Mining Licence Title Holder to build Roads
- 146. Construction of Roads on Land not Subject to Mining Licence

XXII. CHAPTER XXII: RECORDS AND REGISTRATION IN CADASTRAL REGISTERS AND MAPS

- 147. Cadastral Registers of Mineral Titles
- 148. Manner of Mineral Title and Agreement Registration
- 149. Memorials to be made in Cadastral Registers
- 150. Registration Fee is required
- 151. Registered Mineral Title to be Conclusive Evidence
- 152. Cadastral Maps
- 153. Inspection of Cadastral Registers and Cadastral Maps
- 154. Confidentiality

- 155. Prohibition on Abuse of Information Obtained in Official Capacity
- 156. Ownership of Submitted Information, Data, Samples and Reports
- 157. Samples and Core Preservation
- 158. Official Seal and Logo

CHAPTER XXIII: INQUIRY INTO ACCIDENTS

- 159. Accidents to be reported
- 160. Director General to Set Up Panel to Inquire into Accident
- 161. Powers of Panel of Inquiry
- 162. Calling of Witnesses
- 163. Privilege of Witness
- 164. Penalty for Refusal or Neglect to Attend of Witness
- 165. Fault leading to Serious Injury or Death is an Offence
- 166. Interpretation of this Chapter

CHAPTER XXIV: OFFENCES, PENALTIES AND PROCEDURES

- 167. Contravention of Unspecified Provisions
- 168. Seizure of Property the Subject of or Used in committing an Offence
- 169. Presumption that Mineral Product Belongs to Government
- 170. Unlawful Possession of Mineral Products
- 171. Failure to Comply with Lawful Directions
- 172. False Information
- 173. Penalty for Making Incorrect Annual Rent or Royalty Return
- 174. Penal Provisions Relating to Annual Rent and Royalty Fraud etc.
- 175. Sanction for Prosecution
- 176. Unauthorised Exploration, Mining, Removal and Disposal

- 177. Salting
- 178. Using False or Fraudulent Scales
- 179. Failure to Assist Authorised Officer
- 180. Injury to Boundary Marks
- 181. Interfering with Operations Authorised by this Act
- 182. Authorised Officer not to Trade
- 183. Member of Armed Forces not to Aid or Abet Illegal Acts
- 184. Offence to Unduly Influence a Public Tender
- 185. Penalties for Specified Offences
- 186. Penalties for Unspecified Offences
- 187. Sentencing Considerations
- 188. Double Penalty in Some Cases
- 189. Criminal Liabilities of Directors, Abettors etc.
- 190. Rent and Royalty to be Payable Notwithstanding and Proceedings for Penalties .86
- 191. Savings for Criminal Proceedings 192. Suit for Annual Rent or Royalty by Government

CHAPTER XXV: JUDICIAL PROCEEDINGS

- 193. Jurisdiction of Courts
- 194. Immunity of Officials
- 195. Appeal from a Decision of the Ministry
- 196. Forfeiture, Cancellation and other Orders

CHAPTER XXVI: SCHEDULES AND REGULATIONS

- 197. Schedules
- 198. Regulations

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LAWS OF SOUTH SUDAN

MINING ACT, 2012

In accordance with the provisions of Article 55(2) and 55(3b), read together with Article 85(J) of the Transitional Constitution of South Sudan, the National Legislative Assembly, with the assent of the President of the Republic of South Sudan, hereby enacts the following:

CHAPTER I

PRELIMINARY PROVISIONS

1. Title and Commencement

This Act shall be cited as the Mining Act, 2012 and shall come into force on the date of its assent and signature by the President.

2. Repeal and Savings

- (1) Any provisions of existing Applicable Law that are governed by this Act are hereby repealed; provided that, all proceedings, orders and regulations taken or made there under, except to the extent they are cancelled by or are otherwise inconsistent with the provisions of this Act, shall remain in full force or effect until they are repealed or amended in accordance with the provisions of this Act.
- (2) A Title Holder of a Licence for Exploration or Mining operations issued pursuant to the repealed legislation may apply on a priority basis within 60 days of the effective date of this Act for a Mineral Title under this Act, subject to all application requirements, processes, obligations, and Mineral Title maximum area restrictions under this Act, provided:
 - (a) when the Title Holder of any such pre-existing Licence is not in full compliance with all the terms and conditions of such Licence, including but

not limited to all reporting and work requirements as of the effective date of this Act, such pre-existing Licence is deemed non-compliant and is deemed to be revoked; and

- (b) when any application to convert a pre-existing Licence to a Mineral Title under this Act is received more than 60 days after the effective date of this Act such pre-existing Licence is deemed to be revoked.

3. Purpose

The purpose of this Act is to provide for, encourage, promote and facilitate reconnaissance, exploration, development and production of Minerals and Mineral Products in South Sudan, consistent with the principles of sustainable development which inter alia include the following:

- (1) that decisions respecting the economy and mining activities be integrated with decisions respecting protection and management of the Environment so that mining activity is commenced with due regard for its impact on the Environment and environmental programs or initiatives are instituted with proper regard for their economic impact;
- (2) that government and industry, in their respective policies and practices, acknowledge their stewardship of the Mineral Resources of the country, and work with local communities, so that the economy is developed and the Environment is preserved, for the benefit of present and future generations of South Sudanese;
- (3) that responsibility for sustaining a sound and healthy Environment alongside development of a sound and healthy mining industry is a responsibility that is shared by government and industry, working with local communities;
- (4) that hazards to the Environment and impediments to Mineral development be prevented or, if not prevented, minimised by avoiding policies, programs and decisions that have significant adverse environmental or economic impact;
- (5) that conservation policies and practices be applied to enable the extraction and production of Minerals in the country in a manner that is wise and efficient in both environmental and economic terms;

- (6) that the recycling of mining waste by-products be encouraged to enable re-use, reduction or recovery of the by-products;
- (7) that mining activities and economic development, as well as government regulation, be conducted with a view to protecting and enhancing the ecosystems of the country;
- (8) that land that, in environmental terms, is damaged or diminished by mining activity be rehabilitated;
- (9) that scientific and technological research in respect of the processes and methods of Mineral extraction and production continue, on the part of government and industry, with a view to improving the productivity, efficiency and competitiveness of the mining industry and to preventing or reducing adverse impact on the Environment;
and
- (10) that the ecological interdependence of the states of South Sudan and of the nations of the world increasingly requires integration of the decisions of government, industry and citizens, in respect of the Environment and the economy.

4. Authority and Application

This Act is drafted in accordance with the provisions of Articles 55, 171(4), 177(2m) and 177(2a) read together with Schedule A (17), B (7), B (27), C (25) and C (29) of the Transitional Constitution of the Republic South Sudan, 2011 or its successor constitution and Section 6 of the Land Act, 2009 or its successor legislation that gives the National and state Governments authority over subterranean natural resources.

5. Interpretations

In this Act, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them respectively:

"Agreement Area" means the area where a concession is awarded for an Exploration and Mining Agreement;

"Airborne Survey" means the operation of geophysical equipment from within an aircraft for the purpose of Mineral Exploration;

"Applicable Law" means the laws of the Government enacted by the National Legislature, with the assent of the President of the Republic of South Sudan;

"Artisanal Mining" means traditional and customary mining operations using traditional or customary ways and means;

"Artisanal Mining Area" means an area that is subject to an Artisanal Mining Licence;

"Artisanal Mining Licence" means an Artisanal Mining Licence as granted pursuant to Chapter IX of this Act;

"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 any officer of the Directorate of Mineral Development, or any government officer authorised by the Minister to be an Authorised Officer to discharge any function of an Authorised Officer under this Act;

"Borehole" means a hole that is made into the surface of the ground by drilling or boring and that, for the purpose of exploring for Minerals or gathering scientific information, penetrates rock but does not include a well;

"Closure Plan" means a plan that sets out a program for protection of the Environment during the life of a project and for rehabilitation of the project site upon closing of the project and

that includes the provision of security to the Government for performance of rehabilitation work;

"Community Development Agreement" means a Community Development Agreement between a Large-Scale Mining Licence Title Holder and a community entered into and in compliance with regulations made under this Act;

"Companies Law" means the Companies Act 2012 or its successor legislation;

"Constitution" means the Transitional Constitution of the Republic of South Sudan, 2011

"Director General" means the Director General of the Directorate of Mineral Development;

"Environment" means the physical factors of the surroundings of human beings, including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics, and includes both the natural and the man-made environment;

"Environmental Law" means the law or laws that regulate Pollution and provide for environmental protection and management of the natural and social environment;

"Exploration" means a search for Minerals by prospecting, by geological, geophysical or geochemical surveys, by trenching, stripping, excavating or drilling or by any other method;

"Exploration and Mining Agreement" means an agreement with regard to Exploration, Mine Development and Mining for Mineral Resources or any of the activities that the Government enters into under Chapter XII of this Act;

"Exploration Area" means area that is subject to an Exploration Licence;

"Exploration Licence" means the right to explore granted under Chapter V;

"Exploration Operations" means to intentionally search for Mineral Resources (including but not limited to Reconnaissance Operations) and to determine the characteristics, extent and economic value of a Mineral Resource;

"Exploration Programme" means a programme describing planned Exploration Operations approved on issuance of an Exploration Licence and includes any amendments made to it in pursuance of the provisions of this Act;

"Government" means the Government of the Republic of South Sudan;

"Individual" means a natural person and does not include a corporation, organisation, association, partnership or other entity having legal status as a person;

"Inspector" means

- (a) a designated Director or an authorized Officer; and
- (b) an Officer of the department who is acting as a Mining Cadastre Office Officer, mining engineer or geologist, or a person who, for purposes of this Act, is designated as an Inspector;

"Land Law" means the Land Act 2009 or its successor legislation;

"Large-Scale Mining Licence" means a Licence issued under Chapter VII of this Act;

"Large-Scale Mining Licence Area" means an area that is subject to a Large-Scale Mining Licence;

"Lessee or Occupant" means, in relation to a parcel of land, a person, other than an owner of the land, who is in actual and lawful possession of the land;

"Mine" means an opening or excavation in the ground that is established or maintained for the purpose of mining and includes:

- (a) a quarry;
- (b) machinery, plant, buildings, premises, stockpiles, storage facilities, waste dumps or tailings, whether below or above ground, that are used for, or in connection with, Mining;
- (c) a crusher, mill, concentrator, furnace, refinery, processing plant or place that is used for, or in connection with, washing, crushing, sifting, drying, oxidizing, reducing, leaching, roasting, smelting, refining, treating or conducting research on Mineral bearing substances; and
- (d) an abandoned Mine and abandoned Mine tailings

"Mine Development" means the work undertaken to prepare a Mineral Resource for Mining operations and Processing Operations including the construction and commissioning of necessary infrastructure and related facilities;

"Mine Manager" means the person who is in charge and responsible for managing the daily Mining Operations at Mine site;

"Mineral" means a non-living substance that is formed by natural processes and is found on or under the surface of the ground, irrespective of chemical or physical state and before or after extraction, and includes Mine tailings and substances that are prescribed as Minerals but does not include agricultural soil, oil, natural gas or any other gas except methane occurring

in or associated with coal, any surface or ground water or other substance that is not to be a Mineral;

"Mineral Development" means a proving or opening up of a Mineral deposit in preparation for Mining and, without restricting the generality of the foregoing, includes surface and underground diamond drilling, surface stripping, surface and underground excavation and the erection of buildings or structures appurtenant to a development that are used in the Mining or processing of Minerals;

"Mineral Exploitation" means operations and works related to the technical and economic utilisation of Mineral Resources, including on-going Exploration and Mine Development, extraction, Processing Operations and beneficiation of Mineral Products, as well as the activities necessary or related to the transportation and marketing of Mineral Products derived from such Mineral Resources;

"Mineral Product" means a product that is derived from a Mineral or group of Minerals or from Mineral bearing substances and includes ores, concentrates, coals, washed coals, methane occurring in or associated with coal, Minerals recovered from water, a product or substance that is milled, smelted, refined, recrystallized or otherwise processed to a state suitable for manufacturing;

"Mineral Resource" means any naturally occurring Mineral deposit of potential economic value forming part of or found on or within the earth's crust including subterranean resources, but does not include State Natural Resources, a reservoir of petroleum or natural gas, oil bearing shale, oil bearing sands, gasses associated with petroleum or gasses associated with shale, except methane occurring in or associated with coal;

"Mineral Title" means a Reconnaissance Licence, Exploration Licence, Small-Scale Mining Licence, Large-Scale Mining Licence, Retention Licence or Artisanal Mining Licence consistent with the context in which the term Mineral Title is used;

"Mineral Title Area" means the area subject to a Mineral Title;

"Minerals Title Coordinator" means the public officer of the Directorate of Mineral Development designated as Minerals Title Coordinator for the purpose of coordinating Mineral Title matters between States, communities, companies and the Ministry;

"Mining" means a mode, method or process whereby soil, earth, rock, stratum or a Mineral bearing substance is disturbed, removed, crushed, washed, sifted, dried, reduced, oxidized, leached, roasted, smelted, refined or otherwise dealt with for the purpose of extracting a Mineral or metal from it;

"Mining Cadastre Office" means the Mining Cadastre Office established pursuant to Section 12(1)(c) of this Act;

"Mining Licence" means a Small-Scale Mining Licence or Large-Scale Mining Licence granted under this Act, as the context requires;

"Mining Licence Area" means area that is subject to a Mining Licence;

"Mining Operations" means the operations and works carried out in the course of Mineral Exploitation;

"Minister" means the minister charged with the responsibility for regulating the development and exploitation of Mineral Resources;

"Operator" means a person, including a Government corporation, who, as the owner or lessee of Mineral rights or the Title Holder of a Mineral Title or registration certificate, operates a Mine, but does not include:

- (a) a person who receives only a royalty or rent from the person who operates the Mine;
- (b) an owner of a Mine that is subject to a Licence or grant in favour of the person who operates the Mine, where the owner does not participate in the operations of the Mine; and
- (c) an owner of land on which a Mine is operated or an owner of the surface rights pertaining to such land, where the owner has no right or title to Minerals situated in the land and does not participate in the operations of the Mine;

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

"Person" includes, where appropriate, a corporation, partnership, limited partnership or syndicate and the heirs, executors, administrators or other legal representatives of a person;

"Pollution" means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the environment by discharging, emitting or depositing wastes so as to affect any beneficial use adversely, to cause a condition that is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants;

"Processing Operations" means the operations and works carried out in the course of Mineral Exploitation in order to obtain any Mineral Product;

"Quarry" means a Mine that is an open excavation from which quarry Mineral up to 50,000 t/a is removed;

"Quarry Minerals" means Mineral substances of common occurrence, such as rock, stone, sand, gravel, clay, and fill, used as building materials or for the construction of roads, dams

and earthworks where the quarry Mineral does not contain any Mineral Resource in economically workable quantities, but does not include Minerals extracted from a Mineral Title Area that are used exclusively for construction purposes within that same Mineral Title Area;

"Radioactive Mineral" means a Mineral which contains by weight at least one twentieth of one per cent (0.05%) of thorium or uranium or any combination of them, and includes but is not limited to monazite sand and other ore containing thorium, and carnotite, pitchblende and other ores containing uranium;

"Reconnaissance" means the operations and works to carry out the nonintrusive search for Mineral Resources by geophysical surveys, geochemical surveys, photo geological surveys or other remote sensing techniques and surface geology in connection therewith, but excludes drilling and excavations;

"Reconnaissance Area" means area that is subject to a Reconnaissance Licence;

"Reconnaissance Licence" means a Licence granted under Chapter IV of this Act;

"Reconnaissance Programme" means a programme describing planned reconnaissance approved on the issuance of a Reconnaissance Licence and includes any amendments made to it in pursuance of the provisions of this Act;

"Rehabilitation" means, in respect of a project site or an aggregate Quarry, the actions to be taken for the purpose of:

- (a) protecting the environment against adverse effects resulting from operations at the site or Quarry;
- (b) minimizing the detrimental impact on adjoining lands of operations at the site or Quarry; and

- (c) minimizing hazards to public safety resulting from operations at the site or Quarry;

"Rehabilitation and Mine Closure Plan" means a Rehabilitation and Mine Closure Plan required by this Act;

"Retention Licence" means a right of retention over a licensed area granted under Chapter VIII of this Act;

"Small-Scale Mining Licence" means a Small-Scale Mining Licence granted under Chapter VI of this Act;

"Small-Scale Mining Licence Area" means an area that is subject to a Small-scale Mining Licence;

"Small-Scale Mining Operation" means Mining Operations that do not exceed any limit specified in Section 60(2) of this Act;

"State" refers to any of the 10 states of the Republic of South Sudan established by the Constitution;

"State Government" means the government of a State;

"State Mineral Resources Advisory Coordination Committee" means a committee established under the provisions of this Act whose purpose is to coordinate Mineral Title matters between the Government and a State Government;

"State Natural Resource" means any deposit or occurrences of Quarry Minerals and Surface Minerals, but does not include Mineral Resources;

"Surface Minerals" means Minerals that occur on or close to the surface of the earth that are recoverable using Artisanal Mining methods but does not include any Minerals occurring more than 10 metres below the surface, whose recovery requires the use of explosives or that overlies Mineral Resources;

"Title Holder" means an individual or entity in whose name a Mineral Title is held in accordance with this Act;

"User of Land" means owners, and holders of rights of occupancy or use.

6. Control and Ownership of Mineral Resources

- (1) In accordance with Article 71(4) and Schedule A (17) of the Transitional Constitution of the Republic of South Sudan, 2011, Minerals designated as natural resources and that are subject to a Mining Licence within the territory of the Republic of South Sudan are vested in the National Government on behalf of and for the benefit of the people of South Sudan and shall be subject to this Act.
- (2) Minerals designated as State Natural Resources in accordance with Schedule B (7) of Transitional Constitution of South Sudan, 2011, that are subject to a Small Scale Mining Licence or an Artisanal Mining Licence within a State are vested in the State Government on behalf of and for the benefit of the people of the State and shall be subject to state law.
- (3) The entire ownership of any Mineral Product extracted from any Mineral Resource from within a Mineral Title Area shall vest in the Title Holder of that Mineral Title upon severance from the ground.

7. Types of Mineral Titles

- (1) The following Mineral Titles may be granted under this Act:
 - (a) Reconnaissance Licence, that grants the non-exclusive right in the Licence Area to do Reconnaissance for Mineral Resources;
 - (b) Exploration Licence, that grants the exclusive right in the Licence Area to search for Mineral Resources;
 - (c) Small-Scale Mining Licence, that grants the exclusive right to do Small-Scale Mining Operations to obtain Mineral Resources in the Licence Area;
 - (d) Large-Scale Mining Licence, that grants the exclusive right to do Mining Operations to obtain Mineral Resources in the Licence Area;
 - (e) Retention Licence as provided for in Chapter VIII of this Act; and
 - (f) Artisanal Mining Licence as provided for in Chapter IX of this Act and which recognises the traditional rights to pan Minerals from the surface, streams, rivers and other areas
- (2) Subject to the provisions on Reconnaissance Licences, Exploration Licences, Retention Licences, Small- scale Mining Licences, Large-scale Mining Licences or Exploration and Mining Agreement, no Mineral Title shall be granted or held by
 - (a) an individual who is:
 - (i) under the age of 18 years;
 - (ii) not a citizen of South Sudan; or
 - (iii) has not been ordinarily resident in Southern Sudan for a period of four years or such other period as maybe prescribed;
 - (iv) is or becomes bankrupt, having been adjudged or otherwise declared bankrupt, whether under the laws of South Sudan or elsewhere; or
 - (v) has been convicted, within the previous 10 years, of any offence of which dishonesty is an element, or of any offence under this Act, any related Act or similar Act, or any similar written law in force outside

South Sudan, and has been sentenced to imprisonment without the option of a fine or to a fine exceeding 500 SSP or the equivalent thereof;

- (vi) any person, if that person has been convicted of an offence in money laundering, destruction of the environment in previous mining activities within or outside South Sudan or any stipulated offence under this Act punishable by imprisonment;
- (b) a company:
- (i) which has not established a domicilium citandi et executandi in South Sudan;
 - (ii) unless, in the case of a Large-scale Mining Licence, such company is incorporated under the Companies Act, and intends to carry on the sole business of mining under that Large-Scale 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 Section 7 (2) (a) (iii), (iv), (v) and (vi);
 - (v) of which any director of the company or any shareholder of the company holding a controlling interest in such company was convicted of an offence in money laundering, destruction of the environment in previous mining activities within or outside South Sudan or any stipulated offence under this Act punishable by imprisonment or was an officer or employee of the ministry responsible for this Act, at the time the company first applied for the grant or other acquisition of the licence.

CHAPTER 11

ADMINISTRATION

8. Powers

- (1) Mineral Titles for Reconnaissance, Exploration, Small Scale Mining, Large Scale Mining and Retention shall be authorised by the Minister on advice of the Director General.
- (2) Mineral Titles for Reconnaissance, Exploration, Small Scale Mining, Large Scale Mining and Retention shall only be suspended or revoked by the Minister where the Act requires such suspension or revocation.
- (3) The Minister may authorise in writing the Director General or any other personnel in the Ministry to exercise any of the powers conferred upon him or her by this Act, except the power to make regulations as provided by this Act.
- (4) The powers, duties and functions of the authorised personnel under this Act shall be those assigned to them by the Minister, this Act and any regulation made under this Act.

9. Directorate of Geological Survey

- (1) The Directorate of Geological Survey is hereby established
- (2) The Directorate is headed by a Director General.

10. Functions of the Directorate of Geological Survey

- (1) The objectives and functions of the Directorate of Geological Survey shall include:
 - (a) providing advice to the Minister on all geological matters;
 - (b) geological, geophysical, geochemical, seismological and hydrogeological mapping, studies, investigations and surveys;
 - (c) the search for mineralised areas and Minerals using geo-scientific methods;
 - (d) providing geological advice, information and recommendations to the Directorate of Mineral Development on the content of work programmes and

reports prepared in connection with Reconnaissance Licences, Exploration Licences Retention Licences, and Mining Licences;

- (e) providing engineering geological services for construction, infrastructure and exploration companies;
 - (f) undertaking geo-environmental studies and monitoring in connection with natural and man-made health issues, Pollution and damage to the physical Environment;
 - (g) the acquisition, compilation, management, publication and dissemination of geo-science databases and information concerning the geology and Mineral Resources and State Natural Resources of South Sudan;
 - (h) maintaining such laboratory, library and record keeping facilities as may be necessary for the discharge of these functions;
 - (i) advice and support to state and local governments in matters related to the functions of the Directorate of Geological Survey including the provision of technical advice and support to artisanal miners;
 - (j) implement training programmes to develop capacity in geological sciences; and
 - (k) performing such other functions as are assigned under this Act or as the Minister may assign to the Directorate of Geological Survey.
- (2) For the purposes of performing the functions set out in Subsection (1) of this, Section personnel of the Directorate of Geological Survey may:
- (a) enter any Reconnaissance Licence Area, Exploration Licence Area, Small-Scale Mining Licence Area, Large-Scale Mining Licence Area, Retention Licence Area or Artisanal Mining Licence Area;
 - (b) take soil samples or specimens of rocks, ore, concentrates, tailings, water or Minerals situated in any Reconnaissance Licence Area, Exploration Licence Area, Small-Scale Mining Licence Area, Large-Scale Mining Licence Area, Retention Licence Area or Artisanal Mining Licence Area for the purpose of examination or assay;

- (c) break up the surface of the land for the purpose of ascertaining the water, rocks or Minerals within or under them;
- (d) dig up any land and fix any post, stone, mark or object to be used in the survey of such land; and
- (e) enter into or upon any land without prior written permission, except land for military installations, through which it may be necessary to pass for the purpose of carrying out geological surveys.

11. Directorate of Mineral Development

- (1) The Directorate of Mineral Development is hereby established.
- (2) The Directorate is headed by a Director General.

12. Functions of the Directorate of Mineral Development

- (1) The functions of the Directorate of Mineral Development shall include:
 - (a) giving advice to the Minister on all Mineral Title matters;
 - (b) promoting sound management of Mines and Mineral Resources of the country;
 - (c) establishing, maintaining and administering a Mining Cadastre Office, Mines Inspectorate and other departments assigned to such Directorate by the Minister;
 - (d) designation of a public servant of the Directorate of Mineral Development as Minerals Title Coordinator, to coordinate Mineral matters between States, communities, companies and the Ministry
 - (e) exercising general supervision and monitoring over all Reconnaissance Operations, Exploration Operations and Mining Operations;
 - (f) determining that all conditions relating to Mineral Titles and the requirements of this Act are complied with;
 - (g) accessing books and records, and carrying out investigations, inspections and audits necessary to ensure compliance with the provisions of this Act;

- (h) making such lawful orders as may be necessary to enable the Directorate to effectually perform the functions imposed upon the Directorate under this Act;
- (i) creating and maintaining of a cadastre of all Mineral Title applications and Mineral Titles as prescribed by regulation under this Act;
- (j) preserving as confidential all confidential reports submitted under extant Mineral Rights and making these available to the public following termination of all or parts of such rights;
- (k) maintaining a Mines Inspectorate to ensure the health and safety of the public and all Mining Operations, including protection of staff and employees, and investigation of accidents; ensuring that all Mining Operations are carried out in full compliance with Environment Law and the environmental provisions of this Act and its regulations;
- (l) ensuring that all Mining Operations are carried out in full compliance with Environment Law and the environmental provisions of this Act and its regulations;
- (m) preparing and rendering records, reports and returns as prescribed by regulations made under this Act;
- (n) taking custody of any Mineral Product declared by any court to be forfeited to the Government, and with the prior approval of the Minister, disposing of any Mineral Product forfeited to the Government;
- (o) reviewing and recommending to the Minister programs for controlling Mining Operations and the rehabilitation of abandoned mined lands;
- (p) consulting with other agencies of Government, State and Local Government in the control and rehabilitation of mined land;
- (q) carrying out investigations and inspections necessary to ensure compliance with the provisions of this Act;
- (r) cooperating with Government, State and Local Government so as to minimise the duplication of inspection and administration of Mineral Titles under this Act and other Applicable Law;
- (s) maintaining such record facilities as may be necessary for the discharge of these functions;

- (t) implementing training programmes to develop capacity in the mining sector; and
- (u) performing such other functions as are assigned under this Act or as the Minister may assign to the Directorate of Mineral Development.

- (2) For the purposes of performing the functions set out in Subsection (1) of this Section, personnel of the Directorate of Mineral Development may seek geological advice, information, opinion and recommendations from the Directorate of Geological Survey.

13. Execution and Delegation of Functions of the Director General

- (1) Where the Director General due to absence or inability to act as a result of illness or other causes is unable to exercise and perform the functions of his office, the Mining Cadastre Office Officer shall exercise and perform the functions of the Director General during such absence or inability.
- (2) The Director General may subject to the approval of the Minister, delegate any of his functions and duties to such officer in the Ministry as he or she may deem fit.

14. Inspectors

- (1) Appointment of the Inspectors

The Minister may appoint persons, including persons who are employees of the Government, as Inspectors.

- (2) Powers of the Inspectors

An Inspector may,

- (a) at any reasonable time, enter a Mine or upon land that is subject to any type of Licence and make such inspection, examination or inquiry as the Inspector deems necessary to determine whether a Title Holder, Lessee or Operator is in compliance with the Act;

- (b) with the approval of the Director General order the cessation of work in, and the departure of persons from a Mine or portion of a Mine that the Inspector considers unsafe or allow persons to work in a Mine or portion of a Mine upon precautions being taken as the Inspector deems appropriate;
- (c) take ore or Mineral samples or carry out tests or examinations in respect of a Mine, Mineral Exploration Licence or any Mining Operation;
- (d) request that a Title Holder, Lessee or Operator provide information or documentation relating to the Exploration, development or production of Mineral Product by the Title Holder, Lessee or Operator or relating to rehabilitation, having due regard to the confidentiality of the information or documentation where the information or documentation might benefit a third party at the expense or loss of the person from whom the information or documentation is requested;
- (e) enter upon private land and use private roads free of tolls otherwise applicable;
- (f) be accompanied and assisted by persons having special, expert or professional knowledge of a matter under examination;
- (g) take photographs of Mineral locations and Mines; and
- (h) after giving a receipt for documentation referred to in Subsection (d) of this Section, remove the documentation for the purpose of making copies; as is necessary to carry out the duties of the inspector under the Act.

(3) Cooperation with the Inspectors

Where an Inspector, for purposes of an inspection, examination or inquiry, seeks to enter a Mine or onto land that is subject to a Licence or Mineral Exploration Licence, the Operator, including an employee or agent of the Operator, shall render assistance to and cooperate with the Inspector and shall answer all questions of the Inspector in respect of any matter relevant to the inspection, examination or inquiry.

(4) Notice by Inspector for non-compliance

Where an Inspector determines that a person is not in compliance with this Act, the Inspector may give the person notice of the non-compliance and may require the non-compliance to be remedied within a period specified in the notice.

(5) Stop orders

The Inspector may issue stop orders where the circumstances require immediate remedial action or a person served with a notice fails to remedy a non-compliance within the period specified in the notice, an Inspector may, with the approval of the Director General, issue a stop order requiring the person to stop some or all of the activities or operations of the person until the non-compliance is remedied to the satisfaction of the Inspector.

(6) Identification cards

An Inspector exercising a power shall, upon request by the Title Holder, Lessee or Operator against whom the power is exercised, produce the identification card of the Inspector.

15. Mining Cadastre Office Officer

- (1) The office of the Mining Cadastre Office Officer is hereby established and may be located at more than one location as the Minister considers appropriate and each location shall serve as the office of the Mining Cadastre Office Officer for the purposes of this Act. It is headed by the Mining Cadastre Office Officer.
- (2) The Mining Cadastre Office Officer shall be the chief administrative officer of the office of the Mining Cadastre Office and shall exercise general supervision of the operations of the office and perform such other duties and functions as may be required of the Mining Cadastre Office Officer under this Act.
- (3) If the Mining Cadastre Office Officer is absent or unable to perform his or her duties, the Director General may appoint a person as acting Mining Cadastre Office Officer, and that person has all the powers and the duties of the Mining Cadastre Office Officer.

- (4) The Mining Cadastre Office Officer may, in writing, delegate to any person any power, authority, duty or function of the Mining Cadastre Office Officer under this Act, and for the purpose of exercising the delegated power, authority, duty or function, that person is deemed to be the Mining Cadastre Office Officer.

16. Powers and Duties of Authorised Officers

Authorised officers shall have the powers and duties attributed to them under this Act and as assigned to them by the Minister.

17. State Mineral Resources Advisory Coordination Committees

- (1) There is hereby established for each State a State Mineral Resources Advisory Coordination Committee whose costs shall be the responsibility of the Ministry.
- (2) The State Mineral Resources Advisory Coordination Committee for each State shall consist of:
- (a) the following 7 permanent members, or their representatives
- (i) the Director General, who shall be its permanent chairperson;
 - (ii) the State Minister responsible for Investment;
 - (iii) the State Minister with primary responsibility for environmental matters;
 - (iv) the State Minister of Finance;
 - (v) State Director of Lands;
 - (vi) State Director of Agriculture; and
 - (vii) State Director of Mines.
- (b) the respective County Executive Director(s) (or their representatives) when a Mineral Title application includes any land within the said county (-ies).
- (2) Where any of the offices listed in Subsection (2) of this Section is non-existent, the Committee shall select an appropriate office of Government to be the permanent member, but where the non-existent office would have been an office of the state the permanent member shall also be an established office of the state.

- (4) The Director General shall designate a public officer in the Mining Cadastre Office as the Mineral Title Coordinator, who shall coordinate with States, companies and communities on Mineral Resources and be the secretary to all State Mineral Resources Advisory Coordination Committees.
- (5) The functions of a State Mineral Resources Advisory Coordination Committee are to
- (a) consider and advise the Minister generally on issues affecting Mineral Titles in the respective state;
 - (b) advise the Minister on the grant or denial of any application for a Mineral Title in the respective state other than a Reconnaissance Licence, Exploration Licence or a Mining Licence emergent from an Exploration Licence;
 - (c) advise the Minister on any application for an Exploration and Mining Agreement in the respective state;
 - (d) advise the Minister on illegal mining activities and options for their control;
 - (e) advise the Minister on land to be closed to Mineral Title applications;
 - (f) advise the Minister on areas to be offered for Mineral Title on a competitive public tender basis;
 - (g) advise the Minister on areas to be designated as Mineral Resource reserve areas;
 - (h) consider issues affecting compensation procedures and make recommendations to the Minister;
 - (i) advise the Minister on matters affecting Pollution and degradation of any land on which any Mineral Resource was or is being extracted;
 - (j) consider and discuss such other matters relating to Mineral Resources within the respective state as may arise, or as the Minister may refer to the Committee;
 - (k) submit a report after each Committee meeting to the Minister;
 - (l) advise local government and communities on the implementation of this Act;
- and

- (m) advise Mineral Title applicants and Title Holders in their interaction with State Governments and local governments.
- (6) A State Mineral Resources Advisory Coordination Committee shall meet as and when convened by the Chairperson, but no later than 60 calendar days after the registration of any Mineral Title application for an area within the State (except an application for a Reconnaissance Licence, Exploration Licence or a Mining Licence emergent from an Exploration Licence) and at such times as the Minister may deem necessary, and
- (a) the Chairperson and 3 other members (or their representatives) shall form a quorum at a meeting of the Committee;
 - (b) every meeting of the Committee shall be presided by the Chairperson (or his representative);
 - (c) if on any question to be determined there is a tie of votes, the Chairperson shall have a casting vote;
 - (d) the Committee, shall forward its report to the Minister within 5 calendar days after each meeting; and
 - (e) subject to this Act, the procedures of the Committee shall be determined by the Committee.

18. Emergency Suspension Order

- (1) An Authorised Officer may immediately, in writing, issue an emergency suspension order instructing Reconnaissance, Exploration Operations, Small-scale, Large-scale and Artisanal Mining Operations to be temporarily suspended, whether such operations are the subject of a Mineral Title or not, until such arrangements that are in the officer's opinion necessary to prevent danger to life or property are made.
- (2) An Authorised Officer may in writing and with the signed concurrence of another Authorised Officer, cancel or vary the terms of any emergency suspension order issued under Subsection (1) of this Section.
- (3) The Director General shall have the power to confirm an emergency suspension order made under Subsection (1) of this Section and may not delegate this power.

- (4) An emergency suspension order made under Subsection (1) of this Section, shall lapse after 14 calendar days of its issuance, unless it is confirmed in writing by the Director General.

19. Power to Summon

The Director General may by notice in writing summon a Title Holder or any person employed by such Title Holder to appear before him or her at a reasonable time and place to give information regarding Exploration or Mining Operations in the Mineral Title or Agreement Area, and the person so summoned shall comply with the notice.

20. Power to Arrest without Warrant

- (1) Subject to the current Penal Code, a police officer may without warrant arrest any person who is reasonably suspected to have committed an offence relating to Minerals that is punishable by imprisonment for a period of one or more months. The officer shall make an arrest where such person refuses to give his or her name and residence or where the person gives a name and residence which the officer reasonably believes to be false or where there is reasonable probability that such person may abscond.
- (2) Every officer making an arrest under this Section shall take or send the person arrested to the officer in charge of the nearest police station without unnecessary delay.

21. Secondment

The Director General may direct any Title Holder to provide secondment for officers of the Ministry for a period specified by the training needs and in accordance with Civil Service Act, 2011 or its successor legislation. All reasonable costs associated with such secondment, except the officer's salary, related benefits and transportation shall be the Title Holder's responsibility.

CHAPTER III

LAND FOR MINERAL TITLES

22. Land Open to Grant and Issue of Mineral Title

Except as provided in applicable Law and subject to this Act, a Mineral Title may be granted or issued over any area within the lands of South Sudan.

23. Restricted Areas or where Additional Consent is required

(1) No Mineral Title shall exercise any right without written consent from the relevant competent authority on or in any land

- (a) set apart for, or used for or appropriated or dedicated exclusively to any military purpose, except with the prior consent of the appropriate authorities;
- (b) within 100 metres of an oil pipeline, without the consent of the minister responsible for the regulation of that pipeline;
- (c) occupied by or within 250 metres of any city, town, township, village, market;
- (d) within 50 metres of any community burial ground or community cemetery, except with the prior consent of the competent authority;
- (e) that is the site of or within 100 metres of any Government or public building, reservoir, dam or public road, except with the prior consent in writing of the responsible minister for such infrastructure, subject to such conditions as that minister may specify;
- (f) that is declared by applicable Law a wildlife sanctuary exclusively reserved for the preservation of animals, birds, reptiles or fish;
- (g) that is declared by applicable Law a national park wherein Mining Operations are specifically banned;
- (h) that is declared by applicable Law a protected forest area in which Mining Operations are specifically banned; and

- (i) that is within 250 metres of an international border, without first obtaining the written permission of the Minister.

- (3) Any person exploring for or Mining Mineral Resources on or under any lands specified in Subsection (1) of this Section without the requisite consent or authority commits an offence.

24. Power to Order Areas Closed to Mineral Title Application

The Minister, in consultation with the National Council of Ministers and the respective State Mineral Resources Advisory Coordination Committee(s), may by order published in the Gazette, declare any area in South Sudan specified in such order to be an area where no Mineral Title application shall be granted or issued, and may define or alter the limits of any such area in such manner as may be prescribed.

25. Areas for Public Tender

- (1) The Minister, in consultation with the National Council of Ministers and the respective State Mineral Resources Advisory Coordination Committee(s) may, by order published in the Gazette, declare any area in South Sudan specified in such order where an Exploration Licence, Large-Scale Mining Licence or Exploration and Mining Agreement may be granted based on a competitive public tender process in compliance with the current legislation.

- (2) The Minister shall in consultation with the National Council of Ministers and the respective State Mineral Resources Advisory Coordination Committee(s) decide the winning bid of a public tender process for an Exploration Licence, Large-Scale Mining Licence or Exploration and Mining Agreement based on which bid is most likely to promote the expeditious and beneficial development of the Mineral Resources taking into account

- (a) the value of an initial bonus payment to be paid to Government on the grant of the Licence or agreement;
- (b) the Exploration Programme and/or Mining Operations that the bidder proposes to carry out and the commitments as regards expenditure that the bidder is prepared to make;
- (c) the bidder's access to technical expertise and previous experience in the conduct of Exploration Operations and/or Mining Operations;
- (d) establishment of proof of the bidder's financial ability, to implement the proposed Exploration Operations and/or Mining Operations; and
- (e) Citizens economic empowerment as defined in the Regulations before issuance of such Licence or agreement.

26. Mining on Private and Community Land

No Mineral Resources shall be mined from any private land or community land except under and in accordance with the terms and conditions of a Mining Licence granted pursuant to this Act.

27. Mineral Resource Reserve to Preserve Land for Mining Operations

- (1) The Minister, in consultation with the National Council of Ministers and the respective State Mineral Resources Advisory Coordination Committee(s) may, by declaration published in the Gazette, declare any area in South Sudan specified in such declaration to be a Mineral Resource Reserve. The declaration shall specify the types of activity not allowed in the reserved area, for purposes of preserving such land for Mineral Title application, and shall define the limits of any such area in such manner as may be prescribed.
- (2) Unless closed to Mineral Exploitation by any other Applicable Law, any area declared a Mineral Resource Reserve under Subsection (1) of this Section, shall be open to Mineral Title application.
- (3) Declaration of land as a Mineral Resource Reserve under Subsection (1)(1) of this Section shall not prejudice any Mineral Title previously acquired.

- (4) When any area part of a Mineral Resource reserve area becomes subject to a Small-Scale Mining Licence or Large-Scale Mining Licence, such area shall be deemed to no longer be part of the Mineral Resource Reserve.

28. Power to Declare Mineral Resource Reserve Area no Longer Reserved

The Minister, in consultation with the National Council of Ministers and the respective State Mineral Resources Advisory Coordination Committee(s), may by order published in the Gazette, declare any Mineral Resource Reserve area in South Sudan, or any portion thereof, as no longer reserved.

CHAPTER IV

RECONNAISSANCE LICENCE

29. Person Qualified to Hold Reconnaissance Licence

A Reconnaissance Licence Title Holder may be any person or body corporate, national or foreign, with legal capacity, who is able to carry out the operations required by such licence and who is not disqualified under Section 7(2) or who has not been convicted of any other offence under this Act punishable by imprisonment.

30. Application for Reconnaissance Licence

(1) An application for the grant of a Reconnaissance Licence shall be submitted to the Mining Cadastre Office, in the prescribed form and manner, and shall

- (a) if the applicant is a company, contain the registered name and place of incorporation of the company, its certificate of incorporation and certified copy of its memorandum and articles of association, the names and nationalities of its directors and the name of every shareholder who is the beneficial owner of 10% or more of the issued share capital;

- (b) attest that the applicant meets the qualifications set out in the Regulation of the ticketing system for the certification of competent persons;
- (c) contain the applicant's profile and history of Reconnaissance and Exploration Operations in South Sudan and elsewhere;
- (d) identify the name and qualifications of the person responsible for supervising the Reconnaissance Programme;
- (e) identify the proposed Reconnaissance Area delineated in such manner as may be prescribed that shall be considered definitive should there be any discrepancy with the plan submitted under Subsection (t) of this Section;
- (f) be accompanied by a plan of the proposed Reconnaissance Area over which the licence is sought, drawn in such a manner and showing such particulars as prescribed;
- (g) be accompanied by a statement giving particulars of the technical and financial resources available to the applicant, and a certified copy of its audited accounts for the year immediately preceding the application;
- (h) be accompanied by a proposed Reconnaissance Programme setting the work intended over the term of the licence, with details of the equipment expected to be used in connection with it and the names and particulars of the persons to be responsible for the conduct thereof;
- (i) state the period applied for which shall be no longer than 2 years;
- (j) provide details of any significant adverse effects that the carrying out of the Reconnaissance Programme will likely have on the Environment and on any monument or relic in the proposed Reconnaissance Area, measures to be taken to mitigate such effects and an estimate of the cost of combating such effects;
- (k) provide a description of how, on an on-going basis, local government, traditional authorities and communities will be informed and consulted about those Reconnaissance operations that require physical entry onto the land within their jurisdiction;

- (l) be accompanied by a written programme specifying particulars of the applicant's plans to employ or contract South Sudanese nationals as employees or contractors;
- (a) address any matter as may be prescribed; and
- (n) may set out any other matter that the applicant wishes the Director General to consider.

31. Grant of Reconnaissance Licence

- (1) The Minister upon advice of the Director General shall, upon receipt of the application in the prescribed form that satisfies the qualification requirements in the Regulation of the ticketing system for the certification of competent persons and other requirements as may be prescribed, grant a Reconnaissance Licence in such manner and form as may be prescribed.
- (2) Issuance of a Reconnaissance Licence shall have force and effect commencing on the day the licence is registered as issued in the prescribed manner.
- (3) The Minister shall grant a Reconnaissance Licence if
 - (a) the applicant has, or has secured access to, adequate financial resources, technical competence and experience to carry on effective Reconnaissance operations;
 - (b) the proposed program of the Reconnaissance operations is adequate and makes proper provision for environmental protection;
 - (c) the proposed Reconnaissance Area is not the same as, nor does it overlap an existing Reconnaissance Area, Retention Area, Mining Area or Minerals Licence Area in respect of the same Mineral or associated Mineral; and
 - (d) the applicant is not in default.

32. Reconnaissance Licence Duration

The duration of a Reconnaissance Licence shall be construed as the period for which the Licence is granted which shall not exceed two (2) years, and shall not be extendable.

33. Reconnaissance Licence not Transferable

A Reconnaissance Licence shall not be transferable.

34. Reconnaissance Licence Area

The area of land in respect of which anyone Reconnaissance Licence may be granted shall not exceed 25,000 square kilometres nor be less than 10 square kilometres and such Reconnaissance Area shall be contiguous and delineated in such manner as may be prescribed.

35. Area not Subject to Reconnaissance Licence

Any area closed to Mining Operations as stated in Chapter III of this Act or other Applicable Law, and any area which is the subject of an Exploration Licence, Small-Scale Mining Licence, Large-Scale Mining Licence, Retention Licence, or a State authorisation to Mine State Natural Resources, that is within the boundaries of the Reconnaissance Area, shall be deemed not part of the Reconnaissance Area regardless of whether such closure, Licence or authorisation was granted or issued prior to or after the issuance of the Reconnaissance Licence.

36. Number of Reconnaissance Licences not limited

Any number of Reconnaissance Licences may be granted to a person meeting the qualifications required in the Regulation of the ticketing system for the certification of competent persons.

37. Rights Conferred by Reconnaissance Licence

Subject to this Act, a Reconnaissance Licence, confers on the Licence Title Holder the non-exclusive right within the Reconnaissance Area to

- (1) obtain access and to enter on the area to carry on Reconnaissance;

- (2) flyover the area to carry on Reconnaissance, in compliance with Applicable Law;
- (3) implement a Reconnaissance Programme approved in such manner as may be prescribed;
- (4) take and remove specimens and samples not exceeding such limit as is reasonably required for Reconnaissance with the prior written permission of the Director General and to analyse said specimens and samples;
- (5) erect camps and temporary buildings, including installations in any water forming part of the area, provided that the erection of any camp or building under this Subsection shall not be construed as conferring any right, title or interest in the land; and
- (6) remove any camps, temporary buildings or installations the Title Holder erected.

38. Right to Surrender Reconnaissance Licence

A Reconnaissance Licence Title Holder may, upon application in the prescribed form and manner and upon meeting prescribed conditions, surrender the Licence.

39. Reconnaissance Licence Terms and Conditions

(1) In addition to any conditions as may be prescribed, every Reconnaissance Licence shall be deemed to be granted subject to the terms and conditions that the Title Holder thereof shall

- (a) within the Reconnaissance Area carry out Reconnaissance according to an approved Reconnaissance Programme;
- (b) commence field Reconnaissance in accordance with the approved reconnaissance program;
- (c) submit geological samples, information and such periodical reports as may be prescribed to such Authorised Officers as may be prescribed;
- (d) not engage in drilling, trenching, excavation or other subsurface techniques;

- (e) inform and consult, on an on-going basis, with local government, traditional authorities and communities about those Reconnaissance operations that require physical entry onto the land within their respective jurisdictions;
 - (f) compensate owners and Users of Land for damage to land and property resulting from Reconnaissance in the Reconnaissance Area; and
 - (g) maintain and restore from any damage resulting from Reconnaissance the land that is subject to the Licence to a safe state and in compliance with Environmental Law and standards.
- (2) A Reconnaissance Licence Title Holder, who fails to comply with the provisions of Subsection 1 of this Section, commits a breach of a provision, which is punishable under this Act.
- (3) A Reconnaissance Licence shall become liable to revocation where the Title Holder thereof has failed to comply with Subsection 1 (a), (b), (c), (d), (e), (f) or (g) of this Section, or where a Reconnaissance Licence Title Holder has breached a term or condition that has been prescribed by regulation and such term or condition states that a breach may cause revocation of the Licence.

40. Reconnaissance does not constitute a Land Use

Reconnaissance activity authorised by a Reconnaissance Licence shall not constitute a land use for the purposes, objectives, rents, fees and other requirements of the current Land Act.

CHAPTER V

EXPLORATION LICENCE

41. Company Qualified to Hold or Apply for Exploration Licence

- (1) Subject to Subsection (2) of this Section, an Exploration Licence Title Holder shall be a company, duly incorporated, or registered as a company, under the Companies Act 2012 or its successor legislation that has the technical competence and financial

ability to fulfil the Licence obligations and which is not disqualified under Section 7(2).

- (2) A company is ineligible to apply for an Exploration Area, if the company is a former Exploration Licence Title Holder whose former Licence has been revoked and who has applied for an Exploration Area that in whole or in part overlaps the former Licence Exploration Area and where such application is made within two (2) years or less from the date of revocation of the former Exploration Licence.

42. Application for Exploration Licence

An application for the grant of an Exploration Licence for a particular Mineral shall be submitted to the Mining Cadastre Office, in the prescribed form and manner, and shall

- (1) contain the registered name and place of incorporation of the company, its certificate of incorporation and certified copy of its memorandum and articles of association, the names and nationalities of its directors and the name of every shareholder who is the beneficial owner of 10% or more of the issued share capital;
- (2) attest that the applicant meets the qualifications set out in Section 7(2) of this Act;
- (3) contain the applicant's profile and history of Exploration Operations in South Sudan and elsewhere;
- (4) identify the key personnel responsible for the implementation of the Exploration Programme and their qualifications;
- (5) identify the proposed Exploration Area delineated in such manner as may be prescribed that shall be considered definitive should there be any discrepancy with the plan submitted under Subsection (6) of this Section;
- (6) be accompanied by a plan of the proposed Exploration Licence area over which the Licence is sought, drawn in such a manner and showing such particulars as prescribed;
- (7) be accompanied by a written document specifying particulars of the technical and financial resources available to the applicant, and a certified copy of its audited accounts for the year immediately preceding the application;

- (8) be accompanied by a proposed Exploration Programme setting out the intended Exploration Operations work over the duration of the Licence and indicating the names and particulars of the persons to be responsible for the conduct of such work;
- (9) state the period applied for that shall in any event not exceed five years;
- (10) provide details of any significant adverse effects that carrying out the Exploration Programme will likely have on the Environment and on any monument or relic in the proposed Exploration Area, measures to be taken to mitigate such effects and an estimate of the cost of combating such effects;
- (11) provide a description of how, on an on-going basis, local government, traditional authorities and communities will be informed and consulted about those Exploration Operations that require physical entry onto the land within their jurisdiction;
- (12) be accompanied by a written document specifying particulars of the applicant's plans to employ or contract South Sudan nationals as employees or contractors;
- (13) address any matter as may be prescribed; and
- (14) may set out any other matter that the applicant would wish the Minister to consider.

43. Grant of Exploration Licence

The Minister shall grant an Exploration Licence, if

- (1) the applicant has, or has secured access to, adequate financial resources, technical competence and experience to carry on effective Exploration operations;
- (2) the proposed program of Exploration operations is adequate and makes proper provision for environmental protection;
- (3) the proposed Exploration Area is not the same as, nor does it overlap an existing Exploration Area, Retention Area, Mining Area in respect of the same Mineral or associated Mineral; and
- (4) the applicant is not in default.
- (5) The grant of an Exploration Licence shall have force and effect commencing on the day the licence is registered as issued in the prescribed manner.

44. Exploration Licence Duration

- (1) Subject to Subsection (2) of this Section, the duration of an Exploration Licence shall be five (5) years, and may, subject to fulfilment of all requirements prescribed by this Act, be extended for two (2) additional periods each not exceeding five (5) years.
- (2) The Minister may renew an Exploration Licence for a period or periods in excess of the periods specified in Subsection 1 where a discovery has been made and evaluation work has not, despite proper efforts, been completed

45. Exploration Licence Area

- (1) The area of land in respect of which anyone Exploration Licence may be granted shall not exceed 2,500 square kilometres nor shall it be less than 10 square kilometres and such Exploration Area shall be contiguous and delineated in such manner as may be prescribed.
- (2) The Exploration Area of a Licence Title Holder who is granted a renewal shall be reduced in size by 50% at each renewal unless such reduction would result in an Exploration Area less than 10 square kilometres.
- (3) The Title Holder 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 Exploration Area and in default thereof, the designation shall be made by the Minister.
- (4) Where one Title Holder holds two or more contiguous Exploration Licences covering the same period and the same Mineral or Minerals the Minister shall, for purposes of the elimination, under Subsection (2), or part of any of the areas thereof, permit the areas covered thereby to be deemed to be one area, the subject of one Exploration Licence.

46. Right to Relinquish Exploration Licence Area

- (1) An Exploration Licence Title Holder may, upon application in the prescribed form and manner and upon meeting prescribed conditions, relinquish the Exploration Area in whole or in part.
- (2) The Exploration Area remaining after any Exploration Area is relinquished shall not be less than 10 square kilometres.

47. Rights Conferred by Exploration Licence

Subject to this Act, an Exploration Licence, while in effect, shall confer upon the Title Holder within the Exploration Area the rights to

- (1) conduct Exploration Operations on an exclusive basis for the concerned Mineral and to carry out the operations and work necessary to the achievement of this objective;
- (2) obtain access and to enter upon the land;
- (3) inform, on an on-going basis, local government, traditional authorities and communities about those Exploration Operations that require physical entry onto the land within their jurisdiction;
- (4) take, remove and export specimens and samples not exceeding such limit as is reasonably required for Exploration Operations purposes with prior written permission of the Director General;
- (5) do bulk sampling and trial processing of Mineral Resources not exceeding such limit as is reasonably required for determining Mining potential with prior written permission of the Director General;
- (6) occupy the land and erect temporary installations, camps, or structures necessary to the carrying out of Exploration Operations in consultation with local authorities;
- (7) construct temporary access roads, subject to Applicable Law;
- (8) sink shafts or drill holes or wells and dig holes and trenches; and
- (9) apply to transfer the Licence to a qualified party in the prescribed manner.

48. Airborne Surveys

- (1) A person who has an Airborne Survey conducted over land in South Sudan shall, in accordance with the regulations, notify the Director General
 - (a) before a survey is started; and
 - (b) after the survey has been completed.
- (2) The person who has conducted an Airborne Survey over any land in South Sudan in accordance with Subsection (1) of this Section shall submit a report to the Director

General within three years after the survey is completed. The report must include the information required in the regulations.

- (3) Subject to Subsections (5) and (6) of this Section, the public may not inspect a report for five years after the Airborne Survey was completed.
- (4) If the person who submits the report in accordance with Subsection (2) of this Section makes a written request to the Director General for a renewal of the confidentiality period, the public may not inspect a report for 10 years after the Airborne Survey was completed.
- (5) The Director General may order that the public may not inspect a report for 15 years after the Airborne Survey was completed if:
 - (a) the person who submitted the report makes a written request to the Director General setting out the reasons why the confidentiality period should be extended; and
 - (b) the Director General determines that it is appropriate to extend the confidentiality period.
- (6) Notwithstanding the provisions of Subsections (1) to (5) of this Section, the public may inspect the report of an Airborne Survey at any time if the person who had the survey conducted gives written notice to the Director General requesting that the public have access to the report.

49. Drilling

- (1) Where, in the opinion of the Director General, the drilling of a diamond drill hole is likely to create a hazard to an oil, gas or water-bearing formation or to cause unreasonable injury or damage to the Environment, the Director General may impose conditions upon the drilling of the hole.
- (2) A person who fails to abide by the provision of Subsection (1) of this Section commits an offence.
- (3) Where a person drills a diamond drill hole through a body of water, the person shall, upon completion of the drilling, plug the hole in accordance with the regulations.
- (4) No person shall drill a Borehole, undertake operations preparatory or incidental to the drilling of a Borehole or drill an extension of a Borehole without a Borehole Licence

as defined under the Regulations and issued by the Director General in respect of the proposed Borehole or extension.

- (5) An application for a Borehole Licence shall be made in accordance with the regulations.
- (6) The holder of a Borehole Licence shall not drill a Borehole other than at a location permitted under the Borehole Licence.
- (7) Where, in the opinion of the Director General, the drilling of a proposed Borehole is likely to cause damage, inconvenience or nuisance to a person or to property or to cause unreasonable injury or damage to the Environment, the Director General may refuse to issue a Borehole Licence in respect of the proposed Borehole.
- (8) The holder of a Borehole Licence shall drill and abandon a Borehole in accordance with the regulations and in compliance with such other provisions and conditions that the Director General may reasonably specify.
- (9) The Director General may cancel a Borehole Licence at the request of the holder or where drilling is not commenced within six months of the date of issue of the Licence.
- (10) Where, after a hearing on the matter, the Director General finds that a holder of a Borehole Licence has contravened a provision of this Act or a term or condition of the Borehole Licence, the Director General may, with notice to the holder, suspend the Borehole Licence for such period as the Director General considers appropriate in the circumstances.
- (11) Where the circumstances, giving rise to a suspension under Subsection
- (10) are not, at the end of the period of suspension, resolved to the satisfaction of the Director General, the Director General may
 - (a) reinstate the Licence subject to such terms and conditions as the Director General considers appropriate; or
 - (b) revoke the Licence.
- (12) Where a Borehole Licence is suspended under Subsection (10) or revoked under Subsection (11), the holder may, no later than 30 days after the day on which the

suspension or revocation comes into force, appeal the suspension or revocation by application to the Board as defined in the Regulations.

- (13) The suspension or revocation of a Borehole Licence continues in effect while an appeal under Subsection (12) is pending.

50. Exclusive Right to Apply for Mining Licence

- (1) An Exploration Licence Title Holder shall have the exclusive right to apply for a Small-Scale Mining Licence or Large-Scale Mining Licence for the concerned Mineral Resource over any part of the Exploration Area.
- (2) An application pursuant to Subsection (1) of this Section shall be made in accordance with the provisions of this Act and not later than 90 calendar days before expiration of the Exploration Licence.
- (3) An application by the Title Holder of an Exploration Licence for a Small-Scale Mining Licence or Large-Scale Mining Licence whose area is located entirely within the Exploration Area shall be granted by the Minister provided that all requirements and qualifications under this Act and as may be prescribed by regulations are met.
- (4) When an Exploration Licence Title Holder is granted a Mining Licence, any part of the Mining Licence Area overlapping the Exploration Area shall be deemed relinquished from the Exploration Area.
- (5) For the purposes of Subsection (1), the expression Exploration Licence Title Holder shall include a company formed between the Exploration Licence Title Holder and any person (or company) invited by the Exploration Licence Title Holder for the purposes of applying for a Mining Licence

51. Right to Surrender Exploration Licence

An Exploration Licence Title Holder may, upon application in the prescribed form and manner and upon meeting prescribed conditions, surrender the Licence.

52. Obligations of a Title Holder of an Exploration Licence

- (1) In addition to any conditions as may be prescribed, every Exploration Licence shall be deemed to be granted subject to the terms and conditions that the Title Holder shall
 - (a) carry out Exploration Operations within the Exploration Licence area in accordance with its approved Exploration Programme;
 - (b) commence Exploration Operations in the Exploration Area within 90 calendar days from the date the Exploration Licence is issued;
 - (c) comply with such annual work program expenditure requirements and land area relinquishment requirements as is approved in the work program;
 - (d) The Title Holder of an Exploration 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)(c) and which are not so spent shall be a debt due to Government recoverable in a court of competent jurisdiction.
 - (e) On application by the Title Holder of a Mineral Exploration Licence, the Minister may refund a cash payment under Subsection (d) of this Section, in whole or in part, where the Title Holder satisfies the Director General that, in the year or years since the year in which the deficiency arose, the Title Holder has performed required work or has incurred expenditures for the performance of required work the value of which exceeds the prescribed required work minimum value applicable in the subsequent year or years and that no deficiency or a reduced deficiency remains in respect of required work.
 - (f) submit geological samples, information and such periodical reports as may be prescribed to such Authorised Officers as may be prescribed;
 - (g) inform and consult, on an on-going basis, with local government, traditional authorities and communities about those Exploration Operations that require physical entry onto the land within their respective jurisdictions;
 - (h) compensate owners and Users of Land for damage caused to land and property resulting from Exploration Operations in the Exploration Area;

- (i) maintain and restore land and the Environment, from any damage resulting from Exploration Operations, including but not limited to:
 - (i) filling up any shafts, wells, holes or trenches made by the Title Holder; and
 - (ii) restoring the land subject to the right to a safe and secure Environment and in compliance with Environmental Law and standards;
- j) relinquish any area required by government for a public purpose other than for any activity related to Mineral Exploitation;
- (k) not divert water from any watercourse without the consent in writing of the relevant competent authority after consultation with the local communities and authorities and subject to Subsection (h) of this Section; and
- (l) if intending to conduct Exploration Operations on land occupied under National Government, state government or local government Licence, or land subject to another right of occupancy including occupancy under customary law, give notice to the Lessee or occupant before commencing Exploration Operations on the land.

(2) Any Exploration Licence Title Holder who fails to comply with the provision of Subsections l(a), l(b), l(c), l(d), l(f), l(g), l(h), 1 (i), 1 (j), l(k) or 1 (j) of this Section commits an offence

(3) An Exploration Licence shall be liable to revocation where the Title Holder has

- (a) failed to comply with Subsections l(a), l(b), l(c), l(d), l(h) or 1 (i) of this Section; or
- (b) breached a term or condition that has been prescribed by regulation or in an Exploration and Mining Agreement where such term or condition states that breach may subject the Licence to revocation.

53. Amendment of Exploration Programme

An Exploration Licence Title Holder may from time to time, notify the Director General of amendments it wishes to make to its Exploration Programme and such amendments shall be effected after the approval by the Minister

54. Exploration under Exploration Licence does not constitute Land Use

Exploration Operations authorised by an Exploration Licence do not constitute a land use for the purposes, objectives, rents, fees and requirements of the Land Act.

CHAPTER VI

SMALL-SCALE MINING LICENCE

55. Person Qualified to Hold a Small-Scale Mining Licence

- (1) An individual or community cooperative involved in Small-scale Mining; provided that they cooperate and respect the exclusive rights granted to Licence Title Holders in the Exploration and Mining Areas.
- (2) Subject to Subsection (1) of this Section, a Small-Scale Mining Licence Title Holder shall be an individual or company duly incorporated under the Companies Act 2012 or its successor legislation who are citizens of South Sudan or all shareholders of the company being citizens of South Sudan with the technical competence and financial ability to fulfil the Licence obligations and who are not disqualified under Section 7(2).

56. Application for Small-Scale Mining Licence

An application for the grant of a Small-Scale Mining Licence shall be submitted to the Mining Cadastre Office, in the prescribed form and manner, and shall

- (1) if the applicant is a company, contain the registered name and place of incorporation of the company, its certificate of incorporation and certified copy of its memorandum and articles of association, the names and nationalities of its directors and the name of

every shareholder who is the beneficial owner of 10% or more of the issued share capital;

- (2) attest that the applicant and its Directors meets the qualifications set out in Section 7(2) of this Act;
- (3) contain the applicant's profile and history of Exploration Operations and Mining Operations in South Sudan and elsewhere;
- (4) identify the name and qualifications of the person who will be the Mine Manager responsible for supervising Mining Operations;
- (5) identify the proposed Small-Scale Mining Licence Area delineated in such manner as may be prescribed and that shall be considered definitive should there be any discrepancy in the plan submitted under Subsection (6) of this Section;
- (6) be accompanied by a plan of the proposed Small-Scale Mining Licence Area over which the Licence is sought, drawn in such a manner and showing such particulars as prescribed;
- (7) be accompanied by a written document specifying particulars of the technical and financial resources available to the applicant, and a certified copy of its audited accounts for the year immediately preceding the application;
- (8) be accompanied by a business plan and containing such information as may be prescribed;
- (9) state the period applied for which shall not exceed ten (10) years;
- (10) provide details of any significant adverse effects that carrying out of the programme of Small-Scale Mining Operations might have on the Environment and on any monument or relic in the proposed Exploration Area, including measures to be taken to mitigate such effects and an estimate of the cost of combating such effects;
- (11) provide a description of how, on an on-going basis, local government, traditional authorities and communities will be informed and consulted about Mining Operations within or near their jurisdiction;
- (12) address any matter as may be prescribed; and
- (13) may set out any other matter that the applicant wishes the Minister to consider;

57. Grant of Small-Scale Mining Licence

- (1) Subject to Subsection (2) of this Act, the Minister, upon receipt of an application under Section 56 of this Act that satisfies all qualification and other requirements of this Act, shall grant a Small-Scale Mining Licence in accordance with such processes and in such manner and form as may be prescribed by regulation.
- (2) In accordance with Section 50 of this Act, where an applicant under Section 56 of this Act is the Title Holder of an Exploration Licence and has applied for a Small-Scale Mining Licence located entirely within its Exploration Area, the Minister shall grant the Small-Scale Mining Licence to the applicant provided that all application requirements and qualifications under this Act or as may be prescribed by regulations are met.
- (3) Small-Scale Mining Licences for Minerals designated as State Natural Resources within a State are vested in the State Government and shall be subject to state law
- (4) The grant of a Small-Scale Mining Licence shall have force and effect commencing from the date of its registration.

58. Small-Scale Mining Licence Duration

- (1) The initial duration of a Small-Scale Mining Licence is the period for which the Licence is issued based on the economic life of the Mine which shall not exceed ten (10) years and is renewable.
- (2) Upon application in the prescribed form and manner and upon meeting prescribed conditions, a Small-Scale Mining Licence Title Holder may apply for renewal of the Licence not exceeding 10 years.

59. Small-Scale Mining Licence Area

- (1) The area of land in respect of anyone Small-Scale Mining Licence
 - (a) shall not exceed approximately one square kilometre, as adjusted to such cadastral grid system as may be prescribed;

- (b) shall not be less than such minimum area as may be prescribed; and
 - (c) shall be contiguous and delineated in such manner as may be prescribed.
- (2) Upon application in the prescribed form and manner and upon meeting prescribed conditions, a Small-Scale Mining Licence Title Holder, may relinquish its Small-Scale Mining Licence Area in whole or in part.
- (3) A Small-Scale Mining Licence Title Holder may not apply for an enlargement of its Small-Scale Mining Licence Area, but may apply for a Large-Scale Mining Licence, including its Small-Scale Mining Licence Area plus adjoining area on a priority basis.

60. Small-Scale Mining Licence Limits

- (1) Subject to Subsection (2)(2) of this Section, a Small-Scale Mining Licence confers on the Title Holder all the rights conferred in Section 81 of this Act.
- (2) A Small-Scale Mining Licence Title Holder has the right to conduct a Small-Scale Mining Operation
- (a) that does not exceed any of the following production limits
 - (i) for extraction of Mineral Resources from primarily alluvial deposits, an annual throughput of 75, 000 cubic metres; or
 - (ii) for open-cast Mining Operations extracting Mineral Resources from primarily non-alluvial deposits, an annual combined run-of-mine ore waste and overburden production of 100,000 cubic metres per year; and
 - (b) that does not have underground workings; and
 - (c) that does not use any of the following Mining Operations practices:
 - (i) use of explosives; or
 - (ii) use of toxic chemicals or agents.
 - (d) that does not employ or use more than 25 workers in a typical work day.

- (3) A Small-Scale Mining Licence Title Holder has the right to apply for a Large-Scale Mining Licence on a priority basis in such manner and form as may be prescribed by regulation.
- (4) A Small-Scale Mining Licence may be revoked when any term, condition or limitation specified in Subsection (2) of this Section is violated.

61. Obligations of the Title Holder of a Small-Scale Mining Licence

- (1) In addition to any terms and conditions as may be prescribed by regulation, every Small-Scale Mining Licence is granted subject to the terms and conditions that the Title Holder shall
 - (a) commence Mine Development or processing plant development, where the Mining Licence Area is for Mineral processing operations in accordance with the approved program;
 - (b) commence Mineral production no later than approved in the program
 - (c) maintain continuous commercial production, as may be prescribed, after Mineral Product extraction has commenced;
 - (d) cause to be kept true and sufficient books of account of the Mining Operations and other business carried on the Licence Area, and of the sale or other disposal of the Mineral Product obtained; and to produce such books upon request by the duly Authorised Officers;
 - (e) submit geological and Mineral Product samples, information and such periodical reports, as may be prescribed;
 - (f) maintain the safety standards of the Licence area and Mining Operations in accordance with all Applicable Law concerning health and safety and comply with such other health and safety requirements that may be prescribed by regulations;
 - (g) comply with all requirements for assessments, plans or programmes for the protection of the Environment and to manage pollution under this Act and any Applicable Law;

- (h) comply with its approved Rehabilitation and Mine Closure Plan, and update it as may be prescribed;
 - (i) not mine Radioactive Minerals without a written authorization granted by the Minister;
 - (j) maintain, update and submit a plan of Mining Operations, as may be prescribed;
 - (k) allow scientific surveys by educational institutions and government agencies as provided for in Chapter XVI of this Act provided that such activities shall not unduly interfere with Mining Operations;
 - (l) allow access through the Licence area to any adjoining land as shall not in the opinion of the Director General interfere with Mining Operations;
 - (m) allow the construction and use on the Licence Area, such waterways canals, pipelines, sewers, drains, wires, transmission lines, public roads, and public utilities as shall not in the opinion of the Director General interfere with Mining Operations;
 - (n) compensate Users of Land for damage to land and property resulting from Mining Operations; and mark and maintain the boundaries of the Licence Area as prescribed;
- (2) A Small-Scale Mining Licence Title Holder who fails to comply with the provision of Subsections (1) (a) to (1) 0) or (1) (I) to (1) (0) of this Section commits of an offence.
- (3) A Small-Scale Mining Licence shall become liable to revocation where the Title Holder has
- (a) failed to comply with the provision of Subsections (1) (a) to (1)0), (1) (n) or (1) (o) of this Section;
 - (b) has breached a term or condition that has been prescribed by regulation and such term or condition states that breach may result in revocation of the Licence.

CHAPTER VII

LARGE-SCALE MINING LICENCE

62. Company Qualified to Hold Large-Scale Mining Licence.

A Large-Scale Mining Licence Title Holder shall be a company, duly incorporated or registered as a company under the Companies Act 2012 or its successor legislation, which has the technical competence and financial ability to fulfil the Licence obligations and which is not disqualified under Section 7(2).

63. Application for Large-Scale Mining Licence

An application for the grant of a Large-Scale Mining Licence shall be submitted to the Mining Cadastre Office, in the prescribed form and manner, and shall:

- (1) contain the registered name and place of incorporation of the company, its certificate of incorporation and certified copy of its memorandum and articles of association, the names and nationalities of its directors and the name of every shareholder who is the beneficial owner of 10% or more of the issued share capital;
- (2) attest that the applicant meets the qualifications set out in Section 7(2) of this Act;
- (3) contain the applicant's profile and history of Exploration Operations and Mining Operations in South Sudan and elsewhere;
- (4) identify the name and qualifications of the person who will be the Mine Manager responsible for supervising the Mining Operations;
- (5) identify the proposed Large-Scale Mining Licence Area delineated in such manner as may be prescribed that shall be considered definitive should there be any discrepancy with the plan submitted under Subsection (6) of this Section;
- (6) be accompanied by a plan of the proposed Large-Scale Mining Licence Area over which the Licence is sought, drawn in such a manner and showing such particulars as prescribed;
- (7) be accompanied by a written document specifying particulars of the technical and financial resources available to the applicant, and a certified copy of its audited accounts for the year immediately preceding the application;
- (8) be accompanied by a business plan including a feasibility study and containing such information as may be prescribed;
- (9) state the period applied for which shall be no longer than 25 years;
- (10) provide details of any significant adverse effects that the carrying out of the programme of Mining Operations would likely have on the Environment and on any monument or relic in the proposed Exploration Area outlining measures to be taken to mitigate such effects and an estimate of the cost of combating such effects;

- (11) provide a description of how, on an on-going basis, local government, traditional authorities and communities will be informed and consulted about Mining Operations within or near their jurisdiction;
- (12) be accompanied by a written document specifying particulars of the applicant's plans to employ or contract South Sudan nationals;
- (13) address any matter as may be prescribed; and
- (14) may set out any other matter that the applicant wishes the Minister to consider.

64. Grant of Large-Scale Mining Licence

- (1) Subject to Subsection (2) of this Section, the Minister on the application of an applicant under Section 63 of this Act, after being satisfied that all qualification and other requirements under this Act have been complied with, shall grant a Large-Scale Mining Licence to the applicant in such manner and form as prescribed by regulation.
- (2) In accordance with Section 50 of this Act, where an applicant under Section 63 of this Act is the Title Holder of an Exploration Licence and has applied for a Large-Scale Mining Licence whose area is located entirely within its Exploration Area, the Minister shall grant the Large Scale Mining Licence to the applicant provided that all application requirements and qualifications under this Act have been complied with.
- (3) Upon the issuance of a Mining Licence, the Government shall have the right to acquire up to a maximum of 15% working interest participation in the proposed Mine in the following manner:
 - (a) upon its exercise of its option the Government shall be issued a USD\$ 1.00 (or equivalent of South Sudanese Pound) special share at par which shall carry the right to appoint up to 2 directors, with alternatives, and
 - (b) to receive all dividends or other distributions in respect of its working interest percentage.
- (4) The grant of a Large-Scale Mining Licence shall have force and effect commencing on the day the Licence is registered as issued in the prescribed manner.

65. Large-Scale Mining Licence Duration

- (1) The initial duration of a Large-Scale Mining Licence is the period for which the Licence is issued based on the economic life of the Mine and the Mineral Resources and shall not exceed twenty five (25) years but is renewable.

- (2) Upon application in the prescribed form and manner and upon meeting prescribed conditions, a Large-Scale Mining Licence Title Holder may apply for a renewal of his or her Mining Licence, but anyone renewal shall not exceed twenty (20) years.

66. Large-Scale Mining Licence Area

- (1) The area of land in respect of anyone Large-Scale Mining Licence shall not exceed the area reasonably necessary to carry out the Mining Operations and
 - (a) shall only extend to cover the proposed mining area reasonably required for surface mining and treatment facilities and also to cover the proven, indicated and inferred resources;
 - (b) shall not be less than such minimum area as may be prescribed under regulations; and
 - (c) shall be contiguous and delineated in such manner as may be prescribed by regulations.
- (2) A Large-Scale Mining Licence Title Holder, upon application in the prescribed form and manner and upon meeting prescribed conditions, may relinquish his or her Large-Scale Mining Licence Area in whole or in part.
- (3) Subject to Subsection (1) of this Section, a Large-Scale Mining Licence Title Holder may apply for enlargement of his or her Large-Scale Mining Licence Area upon application in the prescribed form and upon meeting the prescribed conditions.

67. Large-Scale Mining Licence Terms and Conditions

- (1) In addition to the terms and conditions as may be prescribed by regulations or agreed upon in an Exploration and Mining Agreement to which the Licence relates, every Large-Scale Mining Licence shall be deemed to be granted subject to the requirements that the Title Holder shall:
 - (a) commence substantial on-site Mine Development or processing plant development, where the Mining Licence Area is for Mineral Processing Operations only, as specified in the approved programme;
 - (b) commence Mineral production no later than specified in the approved program;
 - (c) maintain continuous commercial production, as may be prescribed, after Mineral Product extraction has commenced;

- (d) cause to be kept true and sufficient books of account of the Mining Operations and other business carried on upon the Mining Licence Area, and of the sale or other disposal of the Mineral Product obtained; and to produce such books upon request by duly authorised Officers;
 - (e) submit geological and Mineral Product samples, information and such periodical reports as may be prescribed;
 - (f) maintain the safety standards of the Licence area and Mining Operations in accordance with all labour and occupational health and safety laws and comply with such other health and safety requirements that may be prescribed by regulations;
 - (g) comply with all requirements for assessments and maintain plans and programmes for the protection of the Environment and to manage pollution under this Act or as provided by Applicable Law;
 - (h) comply with its approved Rehabilitation and Mine Closure Plan, and update it as may be prescribed;
 - (i) not mine Radioactive Minerals without a written authorisation granted by the Minister;
 - (j) maintain, update and submit a plan of Mining Operations, as may be prescribed;
 - (k) allow scientific surveys by educational institutions and government agencies as provided for in Chapter XVI of this Act provided that such activities shall not unduly interfere with Mining Operations;
 - (l) allow through the Mining Licence Area access to any adjoining land as shall not in the opinion of the Director General interfere with Mining Operations;
 - (m) allow the construction and use on Mining Licence Area such waterways, canals, pipelines, sewers, drains, wires, transmission lines, public roads, and public utilities as shall not reasonably interfere with Mining Operations;
 - (n) compensate Users of Land for damage to land and property resulting from Mining Operations; and
 - (o) mark and maintain the boundaries of the Mining Licence Area as prescribed;
- (2) A Large-Scale Mining Licence Title Holder who fails to comply with the provision of Subsections 1(a) to 1(j) or 1(l) to 1(o) of this Section commits an offence.
- (3) A Large-Scale Mining Licence may be revoked where the Title Holder has

- (a) failed to comply with the provision of Subsections 1(e) to 1(j), 1(n) or 1(o) of this Section; or
- (b) has breached a term or condition that has been prescribed by regulation or in an Exploration and Mining Agreement to which the Mining Licence relates and such term or condition states that breach may result in revocation of the Licence.

68. Community Development Agreements

- (1) A Large-Scale Mining Licence Title Holder shall
 - (a) assist in the development of communities near to or affected by its operations to promote the general welfare and enhance the quality of life of the inhabitants living there; and
 - (b) enter into Community Development Agreements with such communities in cooperation with relevant government authorities.
- (2) A Large-Scale Mining Licence may be suspended due to substantial noncompliance with the requirements of community development under this Act where the regulations require engagement in community development by Large-Scale Mining Licence Title Holders.

**CHAPTER VIII
RETENTION LICENCE**

69. Retention Licence Term

A Retention Licence shall:

- (1) If issued to a Title Holder under an Exploration Licence, have a maximum term of five (5) years from the expiration of such Exploration Licence;
- (2) If issued to a Title Holder under a Mining Licence, have a maximum term of six (6) years from the expiration of such Exploration Licence; and
- (3) Not be extended.

70. Retention Licence Term Review

- (1) Any Retention Licence that has a term of more than one (1) year shall be subject to annual reviews by the Minister. During such an annual review, the Title Holder shall

provide the Minister with updated versions of the studies and assessments as required under the original Licence.

- (2) If, during such a review, the Minister reasonably determines that the relevant market conditions and/or other economic factors have changed such that the reasons for the Retention Licence are no longer present, the Minister may cancel the Retention Licence on ninety (90) days written notice to the Title Holder.

71. Application

An Exploration Title Holder may apply to the Minister for the grant of a Retention Licence if

- (1) He has identified a Mineral Resource as evidenced by a Resource estimate within the Exploration Area that is potentially of commercial significance; and
- (2) The Mineral Resource cannot be developed immediately because of adverse market conditions or other economic factors that are reasonably believed to be of a temporary character.
- (3) An application for a Retention Licence shall be accompanied by studies and assessments from qualified experts on:
 - (a) The prospects for a change of the adverse market conditions or other economic factors, the extent and commercial significance of the Mineral Resource under the relevant market conditions, trends and economic factors; and
 - (b) Such other relevant information as the Minister may reasonably require in the proposals of the applicant regarding the retention and development of the Mineral Resource.

72. Criteria for Issuance

- (1) If the Minister is satisfied that the commercial development of the concerned Mineral Resource is presently not feasible, but may become so within five (5) years, the Minister may issue a Retention Licence to the Exploration Title Holder over such part of the Exploration Area that the Minister, after consultation with the Director General and the Exploration Title Holder, reasonably believes will be necessary to mine such Mineral Resource.
- (2) Within three (3) months after receiving a complete application from an Exploration Title Holder, the Minister shall either issue the concerned Retention Licence or provide the Exploration Title Holder with a written explanation why he or she has decided not to issue the Retention Licence.

73. Rights and Obligations

- (1) The Retention Licence shall, during its validity period, entitle the Title Holder to apply for a Mining Licence for the concerned Mineral Resource within the Licence Area. Where such application is timely made, the provisions of the present Law relating to the granting of Mining Licences shall apply as if the Retention Title Holder were the Exploration Title Holder for that area.
- (2) The Minister may condition the issuance of a Retention Licence on the acceptance by the Retention Title Holder of obligations to
 - (a) Continue certain specified Exploration Operations,
 - (b) Actively preserve one or more Mineral Resources, and
 - (c) Undertake certain specified measures for the protection of the Environment.

Such conditions may be specified in the Retention Licence itself or in a related Mine Development Agreement.

CHAPTER IX

ARTISANAL MINING LICENCE

74. Maximum Production under an Artisanal Mining Licence

- (1) An Artisanal Mining Licence shall be subject to the same provisions as are applicable to a Small Scale Mining Licence pursuant to Chapter VI provided, however, that no Artisanal Mining Licence may authorise the exploitation of more than twelve thousand (12,000) cubic meters of raw ore in any calendar year.
- (2) Artisanal Mining shall have no time limits but the Licence must be renewed annually.

75. Application

- (1) Application shall be to respective relevant State Authorities.
- (2) The relevant State Authorities shall grant Artisanal Mining Licences.
- (3) An Artisanal Mining Licence shall only be issued to a South Sudanese citizen and who is not disqualified under Section 7(2).
- (4) A South Sudanese citizen desiring to undertake Artisanal Mining activities shall submit to the respective State Authorities a completed application for the issuance of an Artisanal Mining Licence. Such application shall specify the Minerals and the area for which such licence is sought. The area for which the Licence is sought must:
 - (a) Lie wholly within the boundaries of the respective State Authorities; and

- (b) Only involve or affect property that is being directly and lawfully administered by the respective State Authorities.

(5) The South Sudanese citizen shall submit the application in the prescribed format, together with the prescribed fee, and shall attach thereto the following:

- (a) His or her name and official address;
- (b) A map showing:
 - (i) The area under application, defined by coordinates;
 - (ii) The location of any existing building, infrastructure, agricultural activity or other significant manmade improvement or surface feature within such area or within one kilometre from any of its boundaries;
 - (iii) The proposed route of access by the applicant to such area; and
 - (iv) The boundaries of the parcels, if any, into which the area has been or will be divided;
- (c) All relevant cadastral documentation as prescribed by the respective State Authorities;
- (d) Completed applications for any approvals required from other Public Authorities as may be required under the Applicable Law;
- (e) Surface Rights Agreements, having a duration of not less than the duration of the proposed Artisanal Mining Licence, between the applicant and all third parties having lawfully registered property rights to the surface area that the applicant proposes to use during the conduct of the concerned Artisanal Mining Operations; or evidence of refusal or failure of such third parties to enter into such an agreement on reasonable terms;
- (f) The Artisanal Mining Program proposed to be undertaken by the applicant in the specified area, which shall:
 - (i) Include an updated Resource Estimate of the Minerals to which the Licence is to relate, an estimate of expected mine life and such other data and reports as may be reasonably required by the respective State Authorities;
 - (ii) Specify the maximum number of personnel permitted to use such site;
- (g) An Environmental Impact Assessment and all documents required under the Environmental Law in relation to the Artisanal Mining Program prepared in each case by suitably qualified and experienced experts;

- (h) A Mine Closure Plan and a rehabilitation program prepared in each case by suitably qualified and experienced experts; and
 - (i) Such other documentation or information as the respective State Authorities may reasonably require.
- (6) The respective State Authorities may, in the exercise of its reasonable discretion, exempt the applicant from all or part of one or more of the requirements under this Section.

76. Application Processing

- (1) Within six (6) months after receiving a complete Artisanal Mining Licence application from an applicant, the respective State Authorities shall either issue the concerned Licence or provide the applicant with a written explanation why the respective State Authorities has decided not to issue the concerned Licence.
- (2) At any time prior to the expiry of such six (6) month period, the respective State Authorities may in exceptional circumstances and in the exercise of its reasonable discretion extend such period for an additional six (6) months. In such case, the respective State Authorities shall immediately notify the applicant in writing of such extension and of the reasons therefor.

77. Criteria for Issuance

- (1) Upon receipt of a complete Artisanal Mining Licence application from an applicant, the respective State Authorities shall submit any documents relating to approvals that must be issued by other Public Authorities to such Public Authorities. The respective State Authorities shall issue the concerned Artisanal Mining Licence if the following criteria have been fulfilled:
 - (a) The requirements of Section 75 have been complied with;
 - (b) Reasonable evidence demonstrating the existence of sufficient deposits
 - (c) The area and term for which the Licence is sought are not in excess of the area and term reasonably required to carry out the applicants proposed Artisanal Mining Program;
 - (d) The application is otherwise in compliance with the present Law;
 - (e) The applicant is not in violation of the present Law; and
 - (f) Each Public Authority from which an approval is required under the Applicable Law has either issued such approval or the time limit for issuing

such approval has expired and the concerned Public Authority has not taken any action.

78. Applicants Rights and Obligations

- (1) An applicant shall not allow or authorize any Artisanal Mining activities within his or her borders except in strict compliance within the terms of an Artisanal Mining Licence that has been issued to such applicant by the respective State Authorities. Each applicant that has received an Artisanal Mining Licence shall be responsible for complying with the present Act and fulfilling all commitments made in its application for such Licence. Each Artisanal Mining site shall be maintained and operated by the concerned applicant under the supervision of, and in accordance with the instructions issued by, the respective State Authorities.
- (2) In addition to the requirements of Subsection 1 of this Section, each applicant having an Artisanal Mining Licence shall
 - (a) Impose such restrictions on the use of the site as may be required by the concerned Artisanal Mining Licence;
 - (b) Restrict the use of an Artisanal Mining Site to physical persons who
 - (i) Are primarily resident within the municipality; and
 - (ii) Have complied with the restrictions governing the use of the site;
 - (c) Ensure that aggregate monthly site production and the daily production of mineral ore and materials do not exceed the respective limits prescribed in Section 74;
 - (d) Ensure that the weight or volume of all mineral ore and materials is duly measured and recorded in writing;
 - (e) Establish and maintain full and accurate books and records, which shall be available at any time for inspection by the respective State Authorities; and
 - (f) Pay royalties in accordance with the present Act.
- (3) Within four (4) months from the end of each calendar year, every Title Holder that held an Artisanal Mining Licence during such calendar year shall submit to the respective State Authorities an annual report for such calendar year that
 - (a) Includes accounts for such calendar year;
 - (b) Describes the Artisanal Mining activities undertaken at each site covered by the Licence, including individual and aggregate production levels for each Mineral mined at the site;

- (c) Evaluates the environmental impact of mining at each site;
 - (d) Contains proposals, if any, for the establishment of new Artisanal Mining sites and modifications to existing sites or parcel boundaries; and
 - (e) Accounts for all costs paid or incurred and revenues received or accrued in relation to the operation of Artisanal Mining sites.
- (4) No Title Holder may undertake or have any commercial or other interest in any Artisanal Mining activity, except as otherwise specifically and explicitly provided for by the present Act.

79. Authority to Exclude Users

The respective State Authorities shall have the authority to issue an order excluding any Person from an Artisanal Mining Site if such Person intentionally or repeatedly fails to comply with the present Act, including instructions issued by the respective State Authorities.

CHAPTER X

MINING LICENCE GENERAL PROVISIONS

80. Mining not to Commence until Additional Conditions are Met

- (1) A Mining Licence Title Holder shall not commence any Mine Development or carry on Mining Operations on the area subject to such Licence until the Title Holder has
- (a) provided a notice of commencement of Mine Development to the Director General that specifies the date by when the company intends to commence substantial on-site Mine Development;
 - (b) extinguished, compensated, relocated or otherwise settled all land use rights held by third parties in the Mining Licence Area and, for a Large-Scale Mining Licence only; and
 - (c) has entered into approved Community Development Agreements in such form and manner as may be prescribed by regulations.
- (2) A Mining Licence Title Holder who fails to comply with the provisions of Subsection (1) of this Section commits an offence.

81. Mining Rights Conferred

Subject to this Act, a Mining Licence, while in effect, confers on the Title Holder the right, within the Mining Licence Area, to

- (1) exclusively carry out exploitation of Mineral Resources, and to carry out necessary operations and works related thereto;
- (2) utilise the land and construct installations and infrastructure necessary to carrying out Mineral Exploitation;
- (3) stack or dump any Mineral or waste product in a manner approved by the Director General, in consultation with the health and environmental authorities;
- (4) store, transport, process, smelt and refine Mineral Resources and dispose of any waste in a prescribed manner;
- (5) sell or otherwise dispose of the Mineral Products resulting from the Mineral Exploitation; and
- (6) apply to transfer the Licence to a qualified party in the prescribed manner.

82. Consolidation of Mining Licences

A Title Holder of two (2) or more contiguous Mining Licences may apply in the prescribed form and manner to consolidate such Licences into a single Large-Scale Mining Licence.

83. Right to Surrender Mining Licence

Upon application in the prescribed form and manner and upon meeting prescribed conditions, a Mining Licence Title Holder, may surrender the Licence.

84. Certain Items not to be removed from Mining Licence Area

A Mining Licence Title Holder shall not remove from within the boundaries of the Mining Licence Area, any timber or other forest produce, plants, animals or fish obtained from or raised on the Mining Licence Area for commercial gain, unless authorised by Applicable Law.

85. Permanent or Temporary Cessation of Mineral Production

- (1) When a Mining Licence Title Holder intends to permanently cease Mineral production from its Mining Licence Area it shall notify the Director General and the Ministers responsible for labour and Environment at least one hundred and eighty (180) calendar days before the intended cessation of Mineral production.
- (2) When a Mining Licence Title Holder intends to temporarily cease Mineral production from its Mining Licence Area it shall notify the Director General at least thirty (30) calendar days before such intended cessation.

- (3) A notification provided pursuant to Subsection (1) of this Section shall be accompanied by an explanation giving details of the intended permanent cessation or temporary cessation and the reasons therefor.
- (4) Upon receiving notification under Subsection (1) of this Section or if the Director General independently becomes aware of the details of the permanent or temporary cessation of Mineral production, the Director General shall cause the matter to be investigated and:
 - (a) where the cessation has been caused by an event beyond the reasonable control of the Title Holder, shall approve the permanent or temporary cessation for a period not to exceed one year; and
 - (b) in any other case, subject to relevant stipulations in an Exploration or Mining Agreement, may:
 - (i) approve the temporary cessation of Mineral production for a period not to exceed one year if in his or her discretion it is fair and reasonable to do so; or
 - (ii) direct the Title Holder to continue Mining Operations in substantial compliance with its continuous production obligation; or
 - (iii) revoke the Mining Licence.

86. Duty to Make Safe Mining Operations when Mining Ceases.

Any Mining Licence Title Holder intending to permanently cease or temporarily cease Mineral production within its Mining Licence Area shall make the place safe to satisfaction of the Director General.

87. Wasteful Practices

Any Mining Operations and Processing Operations by a Mining Licence Title Holder shall be done in accordance with such generally accepted international practices as are customary and, pursuant to such practices, the Title Holder shall use all reasonable efforts to optimise the recovery of Mineral Products from Mineral Resources provided it is economically and technically feasible to do so.

88. Employment of South Sudanese Personnel and Contractors

- (1) A Mining Licence Title Holder shall give employment preference to South Sudanese nationals

- (a) to the maximum extent practicable consistent with efficient operations; and
 - (b) as long as such nationals are qualified to perform the work, will not be subjected to unnecessary hazards and would not compromise the safety of Mining Operations.
- (2) A Mining Licence Title Holder shall not
 - (a) import unskilled labour for the carrying out of any of its Mining Operations undertaken under the Licence; or
 - (b) in any way employ or use child labour.
- (3) A Large-Scale Mining Licence Title Holder shall take into account employment and training provisions that are set out in its Community Development Agreement(s) when recruiting employees.
- (4) A Large-Scale Mining Licence Title Holder shall, in his or her operations, conduct training programmes in consultation with the Minister for the benefit of employees so that such employees may qualify for advancement.
- (5) A Mining Licence Title Holder shall not be hindered from hiring employees of its own selection for technical and specialised work that, in its judgment, requires specialised training or long experience in Exploration Operations or exploitation of Minerals.
- (6) A Mining Licence Title Holder shall submit an annual employment and training report in such form and manner as may be prescribed.
- (7) A Mining Licence Title Holder shall give preference to competent South Sudanese contractors, provided such contractors offer terms as to price, quantity, quality and delivery schedules that are at least comparable to terms offered by non-South Sudanese contractors.
- (8) Any Mining Licence Title Holder who fails to comply with the provisions of this Section commits an offence.

89. Restriction on Lien or Encumbrance

No lien or encumbrance may be placed upon

- (1) any Mineral Resource; or
- (2) on a Small-Scale Mining Licence or Large-Scale Mining Licence or upon the facilities, installations or other fixtures which are part of the Mining Operations unless it is to secure financing for said activities.

- (3) Any act or transaction that violates the provisions of Subsections (1) or (2) of this Section shall be null and void .

90. Mining Operations under Mining Licence do not constitute a Land Use.

Mining Operations authorised by Small-Scale Mining Licence or Large-Scale Mining Licence do not constitute a land use for the purposes, objectives, rents, fees and requirements of the Land Law.

CHAPTER XI

RENEWAL AND REVOCATION OF MINERAL TITLE

91. Mineral Title to Remain in Force during Application for Renewal

When the Title Holder of an Exploration Licence, Small-Scale Mining Licence or Large-Scale Mining Licence applies for a renewal of his or her Licence during the term of that Licence, the current Licence shall remain valid and in force until the date of the renewal applied for or until the application is refused.

92. Suspended Mineral Title Liable to Revocation

When the Director General has suspended a Mineral Title pursuant to this Act and the Title Holder continues to undertake Exploration Operations or Mining Operations in disregard of the suspension, the Mineral Title shall be revoked.

93. Minister may Grant Revocation Permission

- (1) Subject to Subsections (2) and (3) of this Section, the Minister may permit the revocation of a Mineral Title where the Licence is subject to revocation pursuant to Sections 39(3), 52(3), 60(4), 61(3), 92, 94, 120 or 143(2) of this Act or where the Title Holder has breached a term or condition that has been prescribed by regulation or contained in an Exploration and Mining Agreement and such term or condition states that breach may result in revocation of the Mineral Title.
- (2) The Minister shall not permit the revocation of any Mineral Title unless
- (a) 60 calendar days' notice of intention to revoke the Licence and the grounds for revocation are given to the Title Holder and a period of not less than thirty (30) calendar days is fixed within which the Title Holder may submit a written response; or

- (b) a period of not less than sixty (60) calendar days is fixed, for the Title Holder to remedy any breach or requirement that may be remedied; or
 - (c) if during the time period fixed, the Title Holder has failed to remedy the breach or remove the ground for revocation.
- (3) A Mineral Title shall not be revoked pursuant to Subsection (1) of this Section on the ground only of non-payment of any fiscal charge owed to the Government under this Act if before the expiry of the time period referred to in Subsection 93(2) (a) and (b) of this Section, the Title Holder has paid such outstanding amount including interest, penalty and charges thereon.
- (4) Where the Minister has not permitted revocation of a Mineral Title when requested to do so by the Mining Cadastre Office according to such form and manner as may be prescribed the Minister's reason for such refusal shall be recorded in the relevant Mineral Title register.

94. Effect of Bankruptcy, Transformation and Dissolution

A Mineral Title held by a company may be revoked

- (1) if such company becomes insolvent or bankrupt or if it enters into an agreement or composition with its creditors, takes advantage of any enactment for the benefit of its debtors or goes into liquidation, unless the insolvency or bankruptcy is part of a scheme for an arrangement or amalgamation; or
- (2) upon the transformation or dissolution of the company, unless such transformation or dissolution is for purposes of amalgamation or reconstruction and after obtaining the prior consent of the Minister.

95. Notice of Revocation

A revocation notice sent to the last known address of a Title Holder in South Sudan or published in a nation-wide newspaper shall, for all intents and purposes, be sufficient notice to the Title Holder of the revocation of the Mineral Title.

96. Effect of Revocation on Joint Mineral Title Holders

Where a Mineral Title is held jointly by more than one person, the Licence will be revoked if the provisions of Section 94 of this Act apply to anyone of the joint Title Holders unless the other joint Title Holders are able to assume the obligations of the former and demonstrate the ability to adopt measures that will guarantee performance of the Mineral Title obligations.

97. Obligations of Mineral Title Holder upon Revocation

- (1) Upon revocation of a Mineral Title, the former Title Holder shall deliver to the Director General
 - (a) all reports and records that the Title Holder is obliged under the provisions of this Act to submit;
 - (b) all plans or maps of the area covered by the Mineral Title prepared by the Title Holder or at its instructions; and
 - (c) such other documents relating to the Mineral Title as the Director General may direct.
- (2) The Director General shall deliver a demand notice in the prescribed manner to any former Title Holder whose Mineral Title has been revoked, requesting the documents specified under Subsection (1) of this Section.
- (3) Any recipient of a demand notice as provided for in Subsection (2) of this Section, which fails to deliver any requested document specified under Subsection (1) of this Section to the Director General within thirty (30) calendar days of the delivery of the notice to the recipient, commits an offence.

98. Duty to Remove or Make Safe

- (1) When all or part of the Mineral Title Area becomes subject to relinquishment, surrender, expiration or revocation, unless the Director General otherwise agrees in writing
 - (a) all movable assets related to Reconnaissance, Exploration Operations, Mining Operations and Processing Operations located in the area no longer subject to the Mineral Title, shall be removed by the Title Holder; and
 - (b) all immovable assets of the Title Holder related to such operations and located in the area no longer subject to the Mineral Title shall be destroyed or otherwise made permanently safe by the responsible Title Holder and shall revert to the State.
- (2) If the Director General determines that a Title Holder has failed to remove movable assets as provided for in Subsection 1(a) of this Section or has failed to leave immovable assets in a permanently safe state as provided in Subsection 1(b) of this Section, the Director General shall cause to be served on the Title Holder a notice describing such failure and the actions necessary to remedy such failure.

- (3) If a Title Holder fails to substantially complete the actions specified pursuant to Subsection (2) of this Section within 60 calendar days from the date of notice
 - (a) the Title Holder commits an offence; and
 - (b) the Director General may remove the movable assets at the expense of such Title Holder which shall become a debt payable by the Title Holder to Government.

99. Prior Obligations Remain after Revocation.

Notwithstanding the revocation of a Mineral Title in accordance with this Act, the former Title Holder will remain liable for the performance of any obligations arising out of acts or contracts made in respect of the Mineral Title that were incurred prior to the date of revocation and for any claims for damages or injuries that are made by bona fide third parties.

CHAPTER XII

EXPLORATION AND MINING AGREEMENT

100. Party Qualifying for an Exploration and Mining Agreement

- (1) A party to an Exploration and Mining Agreement, other than the Government, shall be a company, duly incorporated or registered as a foreign company under the Companies Law, which shall have the technical competence and financial ability to fulfil all obligations of the agreement.
- (2) A company is ineligible to enter into an Exploration and Mining Agreement if any director or shareholder of that company is not in compliance with the requirements of Section 7(2).

101. Initiation of Exploration and Mining Agreement Process

- (1) An Exploration and Mining Agreement process may be initiated in response to an individual application or as a result of a competitive public tender process.
- (2) In addition to meeting any public tender process requirements as may be specified in such public tender, a company tendering a bid to initiate an Exploration and Mining Agreement process shall include in such bid an application form as is provided for in Section 102 of this Act but such application shall not be considered an individual application.

- (3) When any area is subject to a public tender for an Exploration and Mining Agreement process, that area is not available for Mineral Title application or for individual applications for an Exploration and Mining Agreement process.

102. Individual Application for Exploration and Mining Agreement Process

An individual application to commence an Exploration and Mining Agreement process shall be submitted in such form and manner as may be prescribed by regulation.

103. Priority of Individual Applications for Exploration and Mining Agreement

Where application for an Exploration and Mining Agreement process is received from two or more persons in respect of the same area or for overlapping areas, the application first received shall have priority.

104. Minister may enter into Exploration and Mining Agreement after Consultation

- (1) The Minister may determine the process by which an Exploration and Mining Agreement shall be negotiated but such agreement shall originate from a draft model agreement first initiated by the Government.
- (2) The Minister, in consultation with the National Council of Ministers and the State Mineral Resources Advisory Coordination Committee(s) where the Agreement Area is to be located, may on behalf of the Government enter, into an Exploration and Mining Agreement with a legal entity meeting the qualifications required under Section 7(2) of this Act.
- (3) Where a Small Scale Exploration or a Small Scale Mining Licence Agreement is to be entered into by the Minister, a written consent from the State Mineral Resources Advisory Coordination Committee(s) shall be obtained by the Minister.

105. Assignment and Transfer of Exploration and Mining Agreement

- (1) A non-government party to an Exploration and Mining Agreement shall not assign, pledge, convey, encumber or create security interests, transfer or otherwise dispose of its interests, Exploration Licence, Mining Licences or other rights and obligations under such agreement without the written permission of the Minister.
- (2) The process for applying for permission required in Subsection (1) of this Section may be set out in the Exploration and Mining Agreement.

106. Content of Exploration and Mining Agreement

- (1) An Exploration and Mining Agreement shall contain such content as shall be agreed between the Government and the non-government party but shall respect all qualifications, requirements, obligations, and restrictions in this Act, as prescribed, and in accordance with Applicable Law.
- (2) Where an Exploration and Mining Agreement provides an option for Government to acquire from the Large-Scale Mining Licence Title Holder a portion of the Mineral Product, such portion shall be paid for by the Government at a fair market price.
- (3) An Exploration and Mining Agreement shall contain dispute resolution methods including adjudication by the Board as defined in the Regulations and international arbitration.

107. Right Title Holders may be granted in Exploration and Mining Agreements

- (1) An Exploration and Mining Agreement may provide the non-government party to such agreement a right to be granted an Exploration Licence covering the whole area that is subject to the agreement and the right to be granted one or more Large-Scale Mining Licences in such Agreement Area.
- (2) A non-government party to an Exploration and Mining Agreement must meet the qualification and other requirements set out in this Act in order to be granted an Exploration Licence or a Large-Scale Mining Licence.

108. Conflict between Applicable Law and Exploration and Mining Agreement

- (1) Where any provision in an Exploration and Mining Agreement conflicts with a provision in this Act or Applicable Law, such provision of this Act or Applicable Law shall prevail.
- (2) An Exploration and Mining Agreement may not vary any fiscal matter specified in Applicable Law and may not alter for any period the tax rate, royalty rate, fee or duty or their method of calculation.

109. Exploration and Mining Agreement Area

The area of land in respect of which anyone Exploration and Mining Agreement may be granted shall not exceed 2,500 square kilometres nor be less than 10 square kilometres and such Agreement Area shall be contiguous and delineated in such manner as shall be prescribed by regulation.

CHAPTER XIII BOUNDARIES

110. Mining Licence Area Boundary to be marked

A Mining Licence Area boundary shall be marked in accordance with the methods prescribed by regulations under this Act and the cost of such boundary marking shall be paid by the Mining Licence Title Holder.

111. Licenced Land Surveyor

The placement of boundary marks referred to in Section 110 of this Act shall be carried out by a Licenced Land surveyor.

112. Boundary of Reconnaissance Licence and Exploration Licence

The area and boundaries of a Reconnaissance Licence or an Exploration Licence shall be established by cadastral coordinates in accordance with the methods prescribed by regulations under this Act.

CHAPTER XIV

RENTS, ROYALTIES AND TAXES

113. Minister to Prescribe Annual Rent

- (1) The Minister shall from time-to-time prescribe the rates of annual rent payable under this Chapter and such rates shall become effective on the date that they are published in the Gazette.
- (2) Annual rent rates shall be based on a rate per square kilometre, as per schedule.

114. Annual Rent

With exception of a Reconnaissance Licence Title Holder, a Title Holder shall pay annual rent to Government in such amount, at such time, in such manner and at such place as may be prescribed by regulations.

115. Royalty

- (1) A Title Holder shall pay royalty on any Mineral Products produced in respect of its Mineral Title and
 - (a) sold or intended for sale, or

- (b) utilised, or to be utilised, for any commercial or industrial purpose.
- (2) The royalties payable shall be calculated of the gross market value as defined under Subsection (3) of this Section and shall be in line with the Constitution. The Minister shall publish a schedule of Royalties in a Regulation.
- (3) For the purpose of calculation of royalties
 - (a) 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 arm's length transaction without discounts, commissions or deductions for the Mineral or Mineral Product on disposal; and
 - (b) "arm's length transaction" means 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, transfer price arrangement, marketing fee, restricted or distress transaction that is associated with special financial, off-take financing, commercial or other considerations.
- (4) Royalty shall be paid on a Mineral Product on receipt of each payment or other consideration for such Mineral Product, and each royalty payment shall be accompanied by full particulars of the Mineral Product sold or disposed of and the terms of payment thereof within 60 days of the month of the sale.
- (5) Where a Mineral Title is held in common by many, all those having an interest in the title shall be held jointly and severally liable for the payment of the royalty in respect of the Mineral Title.
- (6) The royalty payable under Subsection (1) of this Section shall be paid by the Title Holder in such manner, form and in such place as may be prescribed by agreement.
- (7) The Director General of the Directorate of Taxation appointed under the Taxation Act, the Director General, a state officer charged with the responsibility for royalty collection or any other person so authorised by them may inspect and examine any samples, books, records and accounts and obtain all information necessary to ascertain the quantity or value of Mineral Products produced or obtained from any Mineral Title and any information necessary to verify the amount of any royalty payable.

116. Sharing Rent Royalties and Taxes

Any rent, royalties, taxes, bonuses or any money, except fees, paid to the National and State governments as a result of Exploration and mining activities shall be shared as follows:

- (1) if Mining activity is governed by the National Government, 5% shall be paid to the States and communities as follows:
 - (a) 2% shall be paid to the State; and
 - (b) 3% to the communities.
- (2) if Mining activity is governed by State Government, 5% shall be paid to the counties and communities as follows:
 - (a) 2% shall be paid to the county; and
 - (b) 3% to the communities.

117. Prohibition on Disposal of Minerals

- (1) If a Title Holder fails to pay any royalty due in respect of its Mineral Title on or before the due date or any renewal thereof, or if the Minister has reason to believe that Mineral Products have been produced from any area and royalties have not been paid in respect thereof, the Minister may, by order served on the Title Holder concerned, prohibit the disposal of any Mineral Products from such area, or from any other area held by such Title Holder under a Mineral Title until all outstanding royalties have been paid or until an arrangement has been made that is acceptable to the Minister for the payment of such royalties.
- (2) Any Title Holder who contravenes or fails to comply with the provisions of an order given under Subsection (1) of this Section and any person who, knowing of such an order receives any Mineral Products from the area concerned, commits an offence.

118. Interest on Overdue Payments

All overdue payments due to the Government or a State Government under this Act shall bear interest at the commercial bank prime lending rate prevailing from time-to-time plus a premium of 5 percentage points.

119. Obligation to Participate in Fiscal Transparency Initiatives

A Title Holder is obligated to participate in disclosing any and all information related to its fiscal affairs in the production of Minerals and in accordance with Extractive Industries Transparency Initiative (EITI) guidelines when required to do so by any Government

initiative to provide Mineral Sector fiscal transparency, which the Minister shall make available to the public, both on the Ministry website and by any other appropriate means to inform interested persons.

120. Revocation for Failure to Pay Annual Rent or Royalty

A Mineral Title may be revoked if the Title Holder fails without justifiable cause to comply with Sections 114 or 115 of this Act.

CHAPTER XV

ENVIRONMENTAL AND SOCIAL PROVISION

121. Preservation of the Natural Environment and Pollution Prevention

- (1) The Title Holder of a Mineral Title shall, in accordance with the current Act and in accordance with good Mining industry practice, conduct his or her operations in such manner as to preserve in as far as is possible the natural Environment, minimise 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 Licence 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 and Social Impact Assessment as part of the business plan as required under Section 63(8) or, for an Exploration and Mining Agreement, as per Section 102.

122. Rehabilitation and Mine Closure Plan

- (1) Whenever practicable, a Mining Licence Title Holder shall have the duty to rehabilitate and restore the land disturbed, excavated, explored, developed, mined or covered with tailings arising from its operations to a natural-like state or to such safe state as may otherwise be approved pursuant to a Rehabilitation and Mine Closure Plan.

- (2) A Mining Licence Title Holder shall prepare, have approved and implement a Rehabilitation and Mine Closure Plan and provide financial assurance for proper implementation of such plan in accordance with prescribed regulations.
- (3) When any Mining Licence is renewed, no Mining Operations shall proceed on the Mining Licence Area following the expiry date of the original Licence term until after an amended Rehabilitation and Mine Closure Plan has been approved.
- (4) When the Mining Licence Area of any Mining Licence is enlarged, no Mining Operations shall proceed on the area that is added to the existing Mining Licence Area until after an amended Rehabilitation and Mine Closure Plan has been approved.

123. On-going Rehabilitation

Without prejudice to the generality of Section 122 above, during operations of any Mine, excavation, waste dump or pond, the Title Holder of a Mineral Title 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.

124. Dispute as to the Extent of the Measures necessary

If there is any dispute as to the extent of the measures necessary to comply with the requirements of this Chapter, the Title Holder of a Mineral Title may refer the question to arbitration.

125. Failure to fulfil Obligation

In the event that the Title Holder of a Mineral Title fails to fulfil his or her obligation under this Chapter and without prejudice to any other remedy available or other liability the Title Holder may otherwise incur, the Minister may, after having notified the Title Holder of his or her default and having given the Title 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 Title 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 shall be deducted from the sum payable or if paid, refunded from the sum paid.

126. Emergency

- (1) In the event of an emergency or extraordinary circumstances requiring immediate action, the Title Holder of a Mineral Title shall forthwith notify the Director General and shall take all immediate action in accordance with the reasonable directions of the Director General.
- (2) 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.

127. Financial Provisions

The Title Holder of a Mineral Title shall make adequate on-going financial provision for compliance with his or her obligations under this Chapter.

128. Community Development and Corporate Social Responsibility

- (1) The non-government party to an Exploration and Mining Agreement, in cooperation with relevant government authorities, shall assist in the development of communities near to or affected by its operations to promote the general welfare and enhance the quality of life of the inhabitants living there. Development of communities shall include but not restricted to provision of schools, clean drinking water, health centres, roads, police stations and other services in accordance with best Corporate Social Responsibility practice.
- (2) The Title Holder of a Mineral Title shall implement a Corporate Social Responsibility programme in conformity with Mining Cadastre Office guidelines or in the absence of such guidelines, in accordance with best international practice.

CHAPTER XVI

GEOLOGICAL AND OTHER INVESTIGATIONS

129. Geological and Other Investigations

- (1) For purposes of determining Mineral characteristics and undertaking an inventory of Mineral occurrences, the Director General of Geological Survey shall promote or carry out systematic geological studies and mapping of the national territory.
- (2) The Director General of Geological Survey may authorise an agent to carry out any activity described in Subsection (1) of this Section on any land within South Sudan.

- (3) No agent authorised under Subsection (2) of this Section may apply for a Small-Scale Mining Licence or Large-Scale Mining Licence on any land that such agent has explored on behalf of the Directorate of Geological Survey.

130. Investigation by Educational Institutions and other Government Agencies

Subject to this Act, educational institutions regulated under Applicable Law, may, with the prior written authorisation of the Director General of Geological Survey, carry out scientific studies on any land that is not closed by this or any other law to Mineral activities.

131. Mineral Title not required in Some Cases

Geological investigations and scientific studies performed pursuant to Sections 129 and 130 of this Act do not require a Mineral Title.

CHAPTER XVII

RADIOACTIVE MINERALS

132. Provisions relating to Radioactive Minerals

The provisions of this Act relating to the Exploration for and exploitation of Mineral Resources shall apply to Radioactive Minerals with such modifications as are provided in this Chapter and as may be prescribed by regulations.

133. Notification of Discovery of Radioactive Minerals

- (1) When any Radioactive Mineral is discovered in the course of exercising any right granted under this Act or under any other Applicable Law, the Mineral Title Holder or the holder of such other granted right shall immediately notify the Director General not later than 14 calendar days after the discovery.
- (2) Where any Radioactive Mineral is discovered on any land, other than land subject to a Mineral Title, the owner or lawful occupier of that land shall, soon after he or she becomes aware of such discovery, notify the Director General.

134. Report of Operations Related to Radioactive Minerals

Any Title Holder whose operations involve Radioactive Minerals shall, within the first week of every month, submit to the Mining Cadastre Office a report, containing such information as is directed by the Director General, of such operations in the immediately preceding month.

135. Export or Disposal of Radioactive Minerals

- (1) In addition to any other authorisation, including a Mineral Title that may be required under this Act or Applicable Law, no person shall mine, treat, possess, import, export or dispose of any Radioactive Mineral except under and in accordance with the terms and conditions of a written authorisation granted by the Minister.
- (2) The Minister may grant an authorisation to mine, treat, possess, import, export or dispose of any Radioactive Mineral and such authorisation may contain terms and conditions to protect the Environment, avoid hazards and promote Radioactive Mineral policies.
- (3) Any person mining, treating, possessing, importing, exporting or disposing of any Radioactive Mineral except under and in accordance with the terms and conditions of a written authorisation granted by the Minister pursuant to Subsection (1) of this Section, commits an offence.

CHAPTER XVIII

NOTIFICATION OF DISCOVERIES

136. Time to Report

- (1) Title Holders of any Licence shall notify the Director General of any discovered Mineral of value and which is not part of the Licence within 30 days.
- (2) Failure to report such find is an offence.

CHAPTER XIX

MINERAL RESOURCES FOR CONSTRUCTION

137. Extraction of Mineral Resources for Construction

The extraction of Quarry Minerals is permitted by a Title Holder for the purpose of construction of buildings, structures and earthworks relating to Mining Operations within its Mineral Title Area.

138. Mineral Resources for Construction cannot be Sold or Transferred

Mineral Resources for construction extracted pursuant to Section 137 of this Act may not be sold, transferred or disposed of for commercial gain.

CHAPTER XX

ACCESS, USE AND OCCUPATION OF LAND, COMPENSATION

139. Denial of Access may lead to Access Order Process

- (1) A Title Holder of a Licence shall respect the rights of any User of Land lawfully owning or occupying land in accordance with Applicable Law or customary law.
- (2) Where a Title Holder is denied access to any area that is the subject of the Title Holder's title by a User of Land, the Title Holder may
 - (a) notify in writing the Director General giving details of the access problem; and
 - (b) continue to negotiate access with the User of Land.
- (3) When a Title Holder is not able to successfully negotiate access to land that is the subject of his Mineral Title within 30 calendar days of providing the notice under Subsection (2) of this Section the Title Holder, may notify the Director General requesting an access order.
- (4) The Director General shall, as soon as is practicable after receiving the notification requesting an access order as provided in Subsection (3) of this Section but not later than 60 calendar days, commence an access order process in accordance with prescribed rules.
- (5) The Director General may issue an access order.
- (6) Any affected User of Land or Title Holder aggrieved by the decision of the Director General to issue or refuse an access order or with the terms of any such access order made under this Section, may within 30 calendar days after the date the access order is made or refused appeal in writing to the Minister whose decision shall be final.
- (7) Where an appeal is made under Subsection (6) of this Section, the access order shall have no effect until the appeal is disposed of.
- (8) Without prejudice to any proceeding that may be brought against a Title Holder in respect of the contravention of an access order, a User of Land in respect of which the access order has been contravened may deny the Title Holder access to the land until
 - (a) the Title Holder ceases the contravention, or
 - (b) the contravention is remedied to the reasonable satisfaction of the User of Land.
- (9) Where a Title Holder has been denied access to its Mineral Title Area by a User of Land and an access order has been issued pursuant to Subsection (5) of this Section, the Title Holder may appeal in writing to the Director General for a determination of whether such denial was unreasonable or was in contravention of the access order.

- (10) Where the Director General determines under Subsection (9) of this Section that land access was denied by a User of Land unreasonably or in contravention of an access order, such User of Land commits an offence.

140. Existing Land Rights

In the event that a Mining Licence is granted over community or private land, as defined in the Land Act, or land subject to a customary right to use, the Mining Licence Title Holder may

- (1) enter into a private Licence, compensation or resettlement agreement with the landowner or right holder; or
- (2) request the Minister to revoke, expropriate or otherwise extinguish such right of ownership or usage.

141. Revocation, Expropriation or Extinguishment of Existing Rights

- (1) When a Mining Licence Title Holder requests pursuant to Section 140 of this Act that the Minister revoke, expropriate or otherwise extinguish a right of land ownership or usage, the Minister shall do so in accordance with the provisions of the Land Act or according to such other authority as are appropriate under the circumstances.
- (2) For purposes of the Land Act the issuance of a Mining Licence Area constitutes reason for expropriation of the land in question for public interest.

142. Director General may require Deposit or Reimbursement

- (1) The Director General, if he or she so desires or when so requested by an interested party, before or after issuing a Mining Licence, may direct the Title Holder to
 - (a) provide financial assurance for mine closure and rehabilitation in such sum as approved in the Rehabilitation and Mine Closure Plan; or
 - (b) reimburse the Government for any compensation paid by the Government to any owner of private or customary land or to a person or community with a customary right to use in respect of the land on which the Mining Licence is granted.
- (2) An interested party under Subsection (1) of this Section may be a Government employee representing the interest of Government or an owner of private or customary land or a person or community with a customary right to use land over which the Mining Licence has been granted.

- (3) A Title Holder required to provide a financial assurance pursuant to Subsection (1) of this Section may do so in anyone or combination of the following forms:
- (a) surety bond;
 - (b) certificate of deposit;
 - (c) trust fund with defined pay-in period;
 - (d) irrevocable or stand0by letter of credit;
 - (e) insurance policy;
 - (f) certificate of self-insurance;
 - (g) cash account.

143. Compensation to be paid

- (1) Fair and reasonable compensation has to be paid as required by the current Land Act.
- (2) When a Title Holder is in default of payment of the compensation payable under Section (143) (1) of this Act and has been notified by the Director General of the amount to be paid and to whom it shall be paid but fails to do so within 60 calendar days from the date of such notice, the Mineral Title shall be revoked.

CHAPTER XXI

ROADS

144. Permission to build Roads for Reconnaissance or Exploration

No Title Holder of a Reconnaissance Licence or an Exploration Licence shall in the course of Reconnaissance or Exploration Operations under this Act, construct, or cause to be constructed a road, without obtaining the consent of the competent authority.

145. Right of Mining Licence Title Holder to build Roads

A Mining Licence Title Holder shall have the right to build roads, tramways, railroads, ditches, canals, pipelines and such other transportation infrastructure as may be required for the purposes of the Mining Operations upon or below the land which is the subject of the Mining Licence.

146. Construction of Roads on Land not subject to Mining Licence

No Mining Licence Title Holder shall construct, or cause to be constructed, a road, tramway, railway, ditch, canal, pipeline or other transportation infrastructure over, on or under public,

community or private land, in the course of Mining Operations under this Act, without first obtaining the permission to do so from the competent authority or owner.

CHAPTER XXII

RECORDS AND REGISTRATION IN CADASTRAL REGISTERS AND MAPS

147. Cadastral Registers of Mineral Titles

The Director General, in the Mining Cadastre Office, shall open and maintain cadastral registers and systems of records as may be prescribed for the recording of matters relating to Mineral Titles for the purposes of this Act.

148. Manner of Mineral Title and Agreement Registration

- (1) The registration of an Exploration Licence, Small Scale-Mining Licence, Large-Scale Mining Licence or Exploration and Mining Agreement shall bear authentication under the hand and seal of the Minister in such manner as may be prescribed or under the hand and seal of any person to whom the Minister or the Regulations have delegated the power to authenticate such title or agreement.
- (2) The registration of a Reconnaissance Licence shall bear authentication under the hand and seal of the Director General in such manner as may be prescribed or under the hand and seal of any person to whom the Director General has delegated the power to authenticate such title or agreement.
- (3) The date of registration of any Mineral Title shall be the date the Mineral Title is issued to its Title Holder and such date shall be inscribed thereon and in the cadastral register as provided for in Section 147 of this Act.

149. Memorials to be made in Cadastral Registers

The Director General shall enter in the cadastral registers provided for in Section 147 of this Act, a memorial of renewals, transfers, surrenders, revocations, forfeitures, orders, changes of address, changes of name, changes of area, submissions of reports, or any other matter as may be prescribed by regulation affecting the status of or any interest in any Mineral Title or Mineral Title application registered under this Act.

150. Registration Fee is required

When issuing a Mineral Title or Exploration and Mining Agreement, the Director General shall require payment of the registration fee and an acknowledgement of receipt of a copy of the Mineral Title or Agreement as the case may be from the person accepting such Mineral

Title or Agreement. The fees are to be paid in accordance with a schedule as set out in the Regulations.

151. Registered Mineral Title to be Conclusive Evidence

Every Mineral Title and Exploration and Mining Agreement duly registered under this Chapter shall, subject to the provisions of this Act, be conclusive evidence

- (1) that the right to use the land described therein is vested in the person or body for the time being named as the Title Holder; and
- (2) of the conditions and other circumstances pursuant to which the land is for the time being held by the person or body so far as the same are required by any provision of this Act to be specified in the document.

152. Cadastral Maps

The Director General shall organise and maintain current cadastral maps displaying such information as may be prescribed.

153. Inspection of Cadastral Registers and Cadastral Maps

- (1) The cadastral registers maintained pursuant to Section 147 and the cadastral maps required under Section 152 of this Act shall be readily accessible to the Public during the hours and upon the days designated by the Director General.
- (2) Upon payment of the prescribed fee, a member of the Public shall be entitled to obtain a certified copy of any part of any cadastral register established under Section 147, and, at their costs, are entitled to copies of any non-confidential document or record registered in the cadastral registers and a copy of any cadastral map prepared under Section 152 of this Act.

154. Confidentiality

All information, data and reports submitted or required by this Act shall be considered as non-confidential unless expressly described as confidential by the Minister in consultation with the Director General and in accordance to EITI guidelines.

155. Prohibition on Abuse Of Information Obtained in Official Capacity

Any officer responsible for the administration of this Act who has any confidential information that if generally known might reasonably be expected to affect materially an Exploration Operation, Mining Operation or Processing Operation that

- (1) such officer acquired by virtue of his or her official capacity or former official capacity; and
- (2) it would be reasonable to expect a person in his or her official capacity or former official capacity not to disclose except for the proper performance of the functions attached to that official capacity, shall not make improper use of such information to gain, directly or indirectly, an advantage for himself, herself or for any other person, and any officer or former officer contravening this requirement commits an offence.

156. Ownership of Submitted Information, Data, Samples and Reports

The ownership of all information, data, samples and reports submitted to the Government as required by this Act shall reside in the Government.

157. Samples and Core Preservation

- (1) A Mineral Right Title Holder shall preserve all drill cores and drilling samples (and their logs), except for such amounts permitted by the Director General as may be required for assaying and testing.
- (2) At such time as a Mineral Right Title Holder no longer needs or wants to preserve any or all drill cores or samples, or upon the expiry, surrender or revocation of the Mineral Title, the Title Holder shall request the permission of the Director of Geological Survey to discard or otherwise dispose of such drill core or drilling samples.
- (3) Within 30 days of receiving a request pursuant to Subsection (2) of this Section, the Director of Geological Survey shall approve such request or order that the drill core and drilling samples, or such of them as are required, be provided to him, and the Title Holder shall comply with such a request at its own cost.

158. Official Seal and Logo

- (1) The official seal and logo of the Mining Cadastre Office shall be in a form to be determined by the Director General.
- (2) The official seal when affixed to any Mineral Title or mining cadastre document or record shall be authenticated by the signature of the Director General or any other person whom he or she may authorise.

CHAPTER XXIII

INQUIRY INTO ACCIDENTS

159. Accidents to be reported

- (1) Where an accident occurs in any activity in connection with that Title Holder's Mineral Title involving loss of life or serious injury to a person, a Title Holder shall report the accident as soon as possible and shall disclose the full particulars of the accident to the Director General.
- (2) Upon receipt of the report made pursuant to Subsection (1) of this Section, the Director General shall carry out an investigation into the cause of the accident.

160. Director General to Set Up Panel to Inquire into Accident

Where it appears to the Director General or any other officer authorised in that behalf that there is reason to believe that the accident was due to

- (1) failure to comply with a provision of this Act, or of regulations made under it; or
- (2) neglect of any lawful order given by the Director General or any other Authorised Officer; or
- (3) neglect or dangerous practice, and
- (4) the Director General is satisfied that the accident might have been prevented if proper precautions were taken and observed in the Reconnaissance, Exploration Operations, Mining Operations or Processing Operations,

the Director General may as soon as convenient set up a panel of inquiry consisting of not more than five (5) members to inquire into the cause of the accident.

161. Powers of Panel of Inquiry

The panel of inquiry set up pursuant to Section 160 of this Act shall establish whether

- (1) the Title Holder or an agent of the Title Holder was guilty of negligence or took all reasonable and proper precautions to prevent the accident;
- (2) the person killed or injured worked in the Mine or in connection with Reconnaissance, Exploration Operations, Mining Operations or Processing Operations at the time of the accident; or
- (3) the accident resulting in the death or injury is attributable to the serious and wilful misconduct of the person killed or injured or of any other person working in common with the person killed or injured.

162. Calling of Witnesses

- (1) A panel of inquiry set up under Section 160 of this Act may, for the purpose of its investigations, summon any person as a witness, call for the production of books and documents and examine any witness and party concerned under oath.
- (2) The summons shall be in such form as the panel may decide and shall be served by a police officer or any other person authorised by the panel issuing the summons.
- (3) Unless otherwise ordered, the expenses of a witness called by the panel of inquiry on its own motion shall be deemed to be costs of the panel and may be paid in the first instance by the secretary of the panel or an officer authorised by the Director General in the same way as the expenses of Government's own witnesses and be recovered in the manner the panel directs.

163. Privilege of Witness

A person summoned as a witness by a panel of inquiry under this Chapter shall not be excused from answering any question relating to an offence in connection with the accident on the grounds that the answer to the question may incriminate him or her or on grounds of privilege.

164. Penalty for Refusal or Neglect to Attend of Witness

Where a person is summoned under Section 162 of this Act to attend before a panel of inquiry or to produce books or documents before the panel and refuses or neglects to do so, or refuses to answer any question put to him or her by or with the concurrence of the panel, such person commits an offence.

165. Fault leading to Serious Injury or Death is an Offence

Where a panel of inquiry under this Chapter has determined that

- (1) a Title Holder or an agent of a Title Holder is guilty of negligence or failed to take reasonable and proper precautions to prevent an accident involving loss of life or serious injury to a person, the Title Holder commits an offence; or
- (2) if the accident involving loss of life or serious injury to a person was attributable to the wilful misconduct of a person working in common with the person killed or injured, such person commits an offence.

166. Interpretation of this Chapter

In this chapter "serious injury" means

- (1) a fractured skull, pelvis, arm, thigh, spine, forearm or leg;
- (2) a dislocated shoulder;
- (3) the amputation of an arm, a hand, one finger or more to the same hand, a leg or foot;
- (4) the loss of sight in one eye;
- (5) the loss of hearing; and
- (6) any other serious bodily injury, including internal haemorrhage or burns or asphyxia, if the injury is likely to endanger life, cause permanent incapacity or substantially impair efficiency.

CHAPTER XXIV

OFFENCES, PENALTIES AND PROCEDURES

167. Contravention of Unspecified Provisions

Any person who contravenes any of the provisions of this Act commits an offence.

168. Seizure of Property the Subject of or Used in committing an Offence

- (1) Where there is reason to believe that an offence has been committed in respect of any Mineral Product, such product together with all tools, boats, and conveyances used in the commission of such offence may be seized by any Authorised Officer or police officer.
- (2) Every officer seizing any property under this Section shall place on such property, or the receptacle, if any, in which it is contained, a mark indicating that the same has been seized and as soon as may be practical shall make a report of such seizure to the magistrate having jurisdiction to try the offence on account of which the seizure has been made.

169. Presumption that Mineral Product Belongs to Government

When in any proceeding taken under this Act or in consequence of anything done under this Act a question arises as to whether any Mineral Product is the property of the Government, such product shall be deemed to be the property of Government until the contrary is proved.

170. Unlawful Possession of Mineral Products

- (1) Any person found in possession of any Mineral Product upon which the due royalty to the Government in respect of such Mineral Product has not been paid commits an offence for which the penalty shall be a fine not exceeding Two Hundred Thousand (200,000 SSP) South Sudanese pounds or imprisonment not exceeding one year, or both.
- (2) In any prosecution under this Section the onus of proving that the royalty or other payment in respect of such Mineral Product has been paid shall be upon the person found in possession of such Mineral Product.

171. Failure to Comply with Lawful Directions

Any person who fails neglects or refuses to comply with any lawful directive given under this Act commits an offence.

172. False Information

Any person who

- (1) in making an application for a Mineral Title or for renewal of a Mineral Title under this Act knowingly makes a statement that is false or misleading in any material particular; or
- (2) knowingly gives any information that is false or misleading in any material particular, in any report, return, notice or attestation submitted in pursuance of the provisions of this Act, commits an offence.

173. Penalty for Making Incorrect Annual Rent or Royalty Return

- (1) Every person who wilfully
 - (a) makes an incorrect return by omitting or understating any matter used in the assessment of annual rent or royalty of which he or she is required by this Act to make; or
 - (b) gives any incorrect information in relation to any matter or thing affecting his or her liability to annual rent or royalty, commits an offence the penalty for which shall be a fine not exceeding Twenty five Thousand (25,000 SSP) South Sudanese pounds and double the amount of annual rent or royalty that has been undercharged in consequence of each such incorrect return of information, or the amount that would have been undercharged if the return or

information had been accepted as correct and, in default of payment, may be subject to imprisonment not exceeding 6 months.

- (2) The Director General of the Directorate of Taxation or the relevant taxation officer of the state responsible for enforcement of tax assessments as the case may be, may compound any offence under this Section and prior to rendering judgement, may stay or compound any proceedings, provided that proceedings commenced pursuant to sanctions of the Ministry of Justice, shall not be stayed or compounded without the consent of that Ministry.

174. Penal Provisions Relating to Annual Rent and Royalty Fraud etc.

- (1) Any person who, with intent to evade or assist another to evade annual rent or royalty
- (a) omits, from a return made under this Act, any land area, amount of Mineral Product, value of Mineral Product or any other information used in the assessment of annual rent or royalty that should be included; or
 - (b) makes any false statements or entry in any return made for the purpose of establishing annual rent or royalty; or
 - (c) gives false answers whether verbally or in writing to any question or request for information about annual rent or royalty required in accordance with provisions of this Act; or
 - (d) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records relating to annual rent and royalty; or
 - (e) makes use of any deception, art or contrivance whatsoever, or authorises the use of any such deception, art or contrivance related to annual rent and royalty, commits an offence for which the penalty shall be a fine not exceeding One Hundred Thousand (100,000 SSP) South Sudanese pounds and treble the amount of annual rent or royalty which has been undercharged in consequence of each such offence, or that would have been undercharged if any such return, statement, accounts or information had been accepted as correct, or would have been undercharged if such deception, art or contrivance had not been detected, and imprisonment not exceeding three (3) years.
- (2) The Director General of the Directorate of Taxation or the relevant tax officer of the state responsible for assessment or enforcement of tax as the case may be, may compound any offence under this Section and may, before judgement is rendered, stay

or compound any proceedings, provided that any proceedings commenced pursuant to sanctions of the Ministry of Justice shall not be stayed or compounded without the consent of that Ministry.

175. Sanction for Prosecution

No prosecution in respect of an offence under Sections 173 or 174 of this Act shall be commenced except at the direction of the Director General of the Directorate of Taxation or the relevant taxation officer of the state responsible for the enforcement of tax assessments.

176. Unauthorised Exploration, Mining, Removal and Disposal

Any person who

- (1) explores for or mines Mineral Resources otherwise than in accordance with the provisions of this Act, or
- (2) removes or disposes of any Mineral Product contrary to the provisions of this Act, commits an offence.

177. Salting

Any person who

- (1) places or deposits, or causes to be placed or deposited in a place, any Mineral with intention to mislead any other person as to the mining possibilities of the place, or
- (2) mingles or causes to be mingled with samples or Mineral Resources or Mineral Products derived from Mineral Resources any substances that may enhance the value or in any way change the nature of the resource or Mineral Product with the intention to cheat, deceive or defraud, commits an offence.

178. Using False or Fraudulent Scales

Any person who keeps or uses any false or fraudulent scale or weight for weighing Mineral Products or uses any false or fraudulent means or methods for ascertaining Mineral Product quality knowing them to be false or fraudulent, commits an offence.

179. Failure to Assist Authorised Officer.

Any person who

- (1) fails, neglects or refuses to allow or provide reasonable facilities and assistance to any Authorised Officer exercising power conferred under this Act, or

- (2) obstructs, hinders or delays an Authorised Officer in the performance of his or her duties under this Act, commits an offence.

180. Injury to Boundary Marks

Any person, who breaks, defaces or removes, or in any way interferes with any boundary mark erected for any of the purposes of this Act without approval of the relevant authority, commits an offence.

181. Interfering with Operations Authorised by this Act

Any person who

- (1) unlawfully interferes with or obstructs any Mineral Operations authorised by or under this Act; or
- (2) unlawfully interferes with any machinery, plant, work or property on, in, under or over any land in exercise of a right conferred by or under this Act, commits an offence.

182. Authorised Officer not to Trade

No Authorised Officer as defined under this Act shall trade in Mineral Product, as principal or agent or become interested in any Mineral Title or in any Exploration or Mining Agreement.

183. Member of Armed Forces not to Aid or Abet Illegal Acts

Any member of the armed forces or Law enforcement agency who aids, abets or is involved with the commission of an offence under this Act shall be guilty of an offence.

184. Offence to Unduly Influence a Public Tender

Any person, including a public servant, who influences or seeks to influence the outcome of a Mineral Title competitive bidding process other than on the criteria set-out under Section 25 of this Act, commits an offence.

185. Penalties for Specified Offences

- (1) Any person guilty of an offence under the provisions of Section 183 of this Act shall upon conviction be liable for a fine not exceeding Two Hundred Thousands (200,000

SSP) South Sudanese pounds, or imprisonment for a term not exceeding one year, or both.

- (2) Any person guilty of an offence under the provisions of Sections 67(2), 88(8), 98(3) or 165(1) of this Act shall upon conviction be liable for a fine not exceeding Two Hundred Thousand (200,000 SSP) South Sudanese pounds, or in default of payment of such fine, to imprisonment for a term not exceeding one year.
- (3) Any person guilty of an offence under the provisions of Sections 135(3), 155(2) or 165(2) of this Act shall upon conviction be liable to imprisonment for a period not less than one year.
- (4) Any person guilty of an offence under the provisions of Sections 61(2), 117(2), 139(10) or 164 of this Act shall upon conviction be liable for a fine not exceeding Fifty Thousands (50,000 SSP) South Sudanese pounds, or imprisonment for a period not exceeding three months, or both.
- (5) Any person guilty of an offence under the provisions of Sections 39(2), 52(2) or 97(3) of this Act shall upon conviction be liable for a fine not exceeding Twenty-five Thousands (25,000 SSP) South Sudanese pounds, or, in default of payment of such fine, to imprisonment for a period of 1 month.
- (6) Any person guilty of an offence under the provisions of Sections 23(2) or 80(2) of this Act shall on conviction be liable -
 - (a) at the first instance, to a fine not exceeding Five Hundred Thousands (500,000 SSP) South Sudanese pounds, or in default of payment of such fine to imprisonment not exceeding one year; and
 - (b) when the offence is a continuing one, whether or not it is a first offence, the person convicted shall, **in** addition, be liable to a fine not exceeding Ten Thousands (10,000 SSP) South Sudanese pounds in respect of each day or part of a day during which the offence continues.
- (7) Any person guilty of an offence under the provisions of Section 184 of this Act is liable on conviction to a fine of not less than Fifty Thousands (50,000 SSP) South Sudanese Pounds and not more than Two Hundred and Fifty (250,000 SSP) South Sudanese Pounds and to imprisonment for a term of not less than Five (5) years.

186. Penalties for Unspecified Offences

- (1) Any person who commits an offence against any provision of this Act or of any statutory instrument made hereunder for which no other penalty is specifically

provided, is liable on conviction to a fine of not less than Five Thousands (5,000 SSP) South Sudanese Pounds and not more than Ten Thousands (10,000 SSP) South Sudanese Pounds, or to imprisonment for a term of not less than six (6) months or both.

- (2) Any person who commits a breach of any regulation made under Section 198 of this Act, for which no penalty is expressly provided by said regulations, shall be guilty of an offence the penalty for which shall be a fine not exceeding Twenty Thousands (20,000 SSP) South Sudanese pounds.

187. Sentencing Considerations

In determining a penalty under this Chapter, the court of competent jurisdiction shall consider each of the following circumstances as aggravating factors:

- (1) the offence caused an adverse effect;
- (2) the defendant committed the offence intentionally or recklessly;
- (3) in committing the offence, the defendant was motivated by a desire to increase revenue or decrease costs;
- (4) the defendant committed the offence despite having been warned by the Ministry of circumstances that subsequently became the subject of the offence;
- (5) after the commission of the offence, the defendant:
 - (a) attempted to conceal the commission of the offence from the Ministry or Lead Agency;
 - (b) failed to co-operate with the Ministry;
 - (c) failed to take prompt action to mitigate the effects of the offence including action to compensate persons for loss or damage that resulted from the commission of the offence; or
 - (d) failed to take prompt action to reduce the risk of similar offences being committed in the future;
- (6) the defendant previously contravened legislation of South Sudan or another jurisdiction intended to regulate Mineral Titles; and
- (7) any other circumstance that is prescribed by the regulations as an aggravating factor.

188. Double Penalty in Some Cases

If a breach of any of the provisions of this Act or of any regulation made there under is committed

- (1) after preparation for resistance to the execution of any law or any legal process; or
- (2) after a previous conviction for a similar offence, the convicting court may impose double the penalty prescribed for such offence.

189. Criminal Liabilities of Directors, Abettors etc.

- (1) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, chief executive, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he or she, as well as the body corporate, shall be guilty of the same offence and may be prosecuted and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, then the terms of Subsection (1) of this Section applies to a member in connection with his or her functions of management as if he or she were a director.
- (3) Without prejudice to the generality of Subsections (1) or (2) of this Section, a person in the Ministry who knowingly or wilfully aids, abets, counsels, causes, procures or commands an offence under this Act may be prosecuted and punished as a principal offender.

190. Rent and Royalty to be Payable Notwithstanding and Proceedings for Penalties

The institution of proceedings for or imposition of a penalty, fine or term of imprisonment under this Act shall not relieve any person from liability to payment of any annual rent or royalty for which he or she may be liable.

191. Savings for Criminal Proceedings

The provisions of this Act shall not affect any criminal proceedings under other Applicable Law.

192. Suit for Annual Rent or Royalty by Government

- (1) Rent and royalty may be sued for and recovered in the court of competent jurisdiction by the Director General of the Directorate of Taxation or the state officer responsible for the enforcement of state tax assessments in such officer's official name with interest as the court may order and with the full cost of the suit from the party charged as a debt to government.

- (2) The Director General of the Directorate of Taxation or the state officer responsible for enforcement of state assessments may appear personally or through an advocate in any suit instituted under this Section.

CHAPTER XXV

JUDICIAL PROCEEDINGS

193. Jurisdiction of Courts

A conviction for any offence under the provisions of this Act or any subsidiary legislation made hereunder may be heard before any court of competent jurisdiction.

194. Immunity of Officials

No suit, prosecution or other legal proceeding may be instituted against the staff of the Ministry, in their personal capacities for anything done in good faith and in the course of performing their duties under this Act, subsidiary legislation, guidelines or standards made pursuant to this Act.

195. Appeal from a Decision of the Ministry

Except as expressly provided in this Act

- (1) where this Act empowers the Ministry or any of its organs to make a decision, the decision may be subject to appeal within the structure of the Ministry in accordance with such administrative procedures as may be established for such purpose and the decision shall not be called into question by any court; and
- (2) nothing in this Section is intended to impair or limit the court's power to exercise supervisory jurisdiction and review over administrative actions of Government.

196. Forfeiture, Cancellation and other Orders

- (1) A court of competent jurisdiction before which a person is prosecuted for an offence against this Act or any subsidiary legislation may, in addition to any other order that
 - (a) upon the conviction of the accused; or
 - (b) if satisfied that an offence was committed notwithstanding that no person has been convicted of the offence, make further orders that the substance, equipment and appliance used in the commission of the offence be forfeited to Government and be disposed of as the court directs.

- (2) In making an order under Subsection (1) of this Section, the court may also order that the cost of disposing of the substance, equipment and appliance referred to in that Subsection be borne by the accused.
- (3) The court may further order that any Licence or other authorisation given under this Act and to which the offence relates be revoked.
- (4) The court may also issue an Order against the accused to implement any Rehabilitation and Mine Closure Plan applying to a Mineral Title of which the accused is a Title Holder.

CHAPTER XXVI

SCHEDULES AND REGULATIONS

197. Schedules

The Minister may by order duly published, revoke, amend or add to any or all the Annexes or Schedules attached to this Act or attached to any regulations made under this Act.

198. Regulations

- (1) The Minister shall issue such regulations for effective implementation of the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, the Minister may make regulations
 - (a) prescribing delegation of the powers and duties of the Director General under this Act to specified officers of the department;
 - (b) prescribing a ticketing system for the certification of competent persons;
 - (c) Prescribing guidelines for Corporate Social Responsibility;
 - (d) Prescribing, in line with this Act, the schedules, processes, conditions and restrictions, including the payment of a fee, subject to which any Mineral Title or Agreement under this Act may be issued;
 - (e) prescribing a schedule of penalties or fines, not exceeding One Hundred Thousand (100,000 SSP) South Sudanese Pounds or a term of imprisonment not exceeding 6 months for contravention or failure to comply with any of the provisions of any regulation made under this Section or impose restrictions or conditions of any Mineral Title granted under such regulations;
 - (f) prescribing the cadastral registers and cadastral maps and their form

and content;

- (g) prescribing the form and content of applications and transfer documents used under this Act;
- (h) prescribing a permit system, which manages operational requirements;
- (i) prescribing the issuance and renewal of licences, permits and certificates under this Act, including provision for terms and conditions applicable on the issuance or renewal of a Licence, permit or certificate;
- (j) prescribing a mapping grid system to identify Mineral Title Areas;
- (k) prescribing schedules of annual rent payable under this Act;
- (l) prescribing schedules for payment of royalties under this Act in line with the constitution;
- (m) generally prescribe schedules of fees payable under this Act or under any regulation made under this Section;
- (n) prescribing forms to be used under this Act or under any regulation made under this Section;
- (o) respecting leasing or working arrangements or agreements in respect of Mineral land withdrawn from mining and Exploration activities;
- (p) defining reasonable work under the approved work plans which are to be performed in respect of Mineral Exploration Licences and their allowable, eligible expenditures and the form in which evidence of work performed and expenditures incurred is reported;
- (q) prescribing whether any data, information and reports are to be confidential or non-confidential in line with current legislation on data protection;
- (r) prescribing the required content of any plan, programme or report to be submitted under this Act;
- (s) defining the measures to be taken to protect the strata from infiltration and to protect or rehabilitate the surface of land affected by drilling;
- (t) prescribing the storage and disposal of drill cores, cuttings and samples;
- (u) prescribing requirements to protect the health and safety of workers and the public;
- (v) prescribing requirements for mining, processing, handling, shipping, selling, exporting or importing of all Minerals; and
- (w) designating areas within the country and prescribing them for Exploration and Mining.

- (3) The Minister shall prescribe community development mining regulations, including penalties for non-compliance, whose objectives shall be to
- (a) involve communities in decisions relating to the exploitation of Mineral Resources in their areas and promote a safe and healthy Environment;
 - (b) enhance the sustainable social, cultural and economic well-being of communities that may be positively or negatively impacted by Mining Operations;
 - (c) define when community development agreements are required and provide a framework for such agreements; and
 - (d) ensure accountability and transparency in mining-related community development.

Assent of the President of the Republic of South Sudan

In accordance with provision of article 85(1) of the Transitional Constitution of the Republic of South Sudan, 2011. I, Gen. Salva Kiir Mayardit, President of the Republic of South Sudan, hereby Assent to Mining Act, 2012, and sign it into Law.

Signed in Juba this _____ day of the month of _____ in the year 2012

Gen. Salva Kiir Mayardit
President
Republic of South Sudan
Juba