

MINES AND MINERALS ACT 2005

Arrangement of sections

PART I – PRELIMINARY

Section

1. Short title and Commencement
2. Interpretation

PART II – OWNERSHIP OF MINERAL AND ACQUISITION OF MINERAL RIGHTS

3. Rights in minerals vested in the Basotho Nation
4. Acquisition of mineral rights
5. Restriction on acquisition of mineral rights

PART III – ADMINISTRATION

6. Establishment of the Commissioner of Mines and Geology
7. Functions of the Commissioner
8. Prohibition from holding interests in any mineral rights etc.
9. Recovery of fees
10. Retention of cores and samples
11. Preference to Lesotho goods and services
12. Establishment of the Mining Board
13. Tenure of office
14. Disqualification from being a member
15. Conduct of the Board member
16. Meetings of the Board
17. Functions of the Board
18. Allowances of the members of the Board
19. Disclosure of interest

PART IV – PROSPECTING LICENCES

20. Application for a prospecting licence
21. Consideration of application for a prospecting licence
22. Notification of approval or rejection of applications
23. Form and content of a prospecting licence
24. Duration and renewal of a prospecting licence
25. Discovery of other minerals
26. Size of the prospecting area
27. Rights of holder of prospecting licence
28. Obligations of the holder of a prospecting licence
29. Amendments to programme of prospecting operations
30. Transfer of a prospecting licence
31. Removal of minerals for purposes of assay

PART V – MINING LEASES

32. Application for a mining lease
33. Approval and issue of a mining lease
34. Government shares or investment
35. Form and content of a mining lease
36. Duration and renewal
37. Amendment of programme of mining operations
38. Rights conferred by a mining lease
39. Obligations of a holder of a mining lease
40. Wasteful mining or treatment practices
41. Suspension of production
42. Trading in mining areas
43. Transfer or assignment of a mining lease
44. Mining lease for diamonds
45. Government representatives at mining lease area for diamonds

PART VI – MINERAL PERMITS

46. Application for a mineral permit
47. Pegging of area covered by a mineral permit
48. Duration, renewal and termination of a mineral permit
49. Rights under a mineral permit
50. Duties of a holder of a mineral permit

51. Transfer or assignment of a mineral permit
52. Issue of a mineral permit
53. Restriction under a mineral permit

PART VII – MINERAL CONCESSION AND SURFACE RIGHTS

54. Restriction on exercise of rights under a mineral concession
55. Rights to graze in a prospecting area
56. Compensation for disturbance of rights
57. Compulsory acquisition of land

PART VIII – ENVIRONMENTAL OBLIGATIONS

58. Rehabilitation, Reclamation etc.

PART IX – FINANCIAL

59. Royalties
60. Remission of royalties
61. Deferred payment of royalty
62. Prohibition on disposal of minerals
63. Annual charges in respect of mineral rights
64. Interest on overdue payments
65. Security for compliance

PART X – WITHDRAWAL OF APPLICATIONS, SURRENDER AND TERMINATION OF MINERAL CONCESSION, etc.

66. Withdrawal of applications
67. Surrender of area or part thereof covered by a mineral concession
68. Minister's power to suspend or cancel a mineral concession
69. Assets on termination
70. Delivery of documents on termination
71. Pending applications

PART XI- MISCELLANEOUS

- 72. Regulations
- 73. Offences and penalties
- 74. Records to be maintained by the Commissioner
- 75. Certain records supplied to the Commissioner to be confidential
- 76. Repeals
- 77. Savings

SCHEDULE 1 APPLICATION FORMS IN RESPECT OF
MINERAL RIGHTS

SCHEDULE 2 THE ANNUAL CHARGES PAYABLE IN
RESPECT OF MINERAL RIGHTS

MINES AND MINERALS ACT, 2005

An Act to repeal and replace Mining Rights Act 1967¹.

PART I - PRELIMINARY

ENACTED BY THE PARLIAMENT OF LESOTHO

Short title and commencement

1. This Act may be cited as the Mines and Minerals Act, 2005 and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Interpretation

2. In this Act, unless the context otherwise requires –

“ accessory works” means any building, plant or structure required for purposes of prospecting and mining operations or for the disposal of any mineral or group of minerals won or mined in the course of any such operation, or is connected with such operations or disposal, including -

- (a) any power plant, transmission line or substation;
- (b) any water borehole, well, pipe line, drilling rig, pump station, tank or dam;
- (c) any airfield, helicopter landing-pad, road, gate, rail or railway siding;
- (d) any workshop, hangar, store or office;
- (e) any explosives magazine;

(f) any sampling or processing plant, smelter or refinery;

(g) any waste disposal site; or

(h) any camp site or temporary or permanent residential area;

“Appointed member” means a member appointed to the Board in terms of section 12(2) paragraphs (e) and (f);

“Authority” has the same meaning as in the Environment Act 2001²;

“Authorized officer,” means a public officer authorised by the Commissioner to exercise the functions under section 7;

“ Board” means the Mining Board established under this Act;

“Commissioner” means the Commissioner of Mines and Geology in the Ministry responsible for mining;

“ Company” means a company incorporated under the Companies Act of 1967³;

“default” means breach of mineral concession or any provision of this Act or relevant law;

“diagram (sketch)” means a document containing geometrical, numerical and verbal representation of a piece of land, which has been signed by a land surveyor and which has been certified by the Commissioner of Lands, Survey and Physical Planning or other officer empowered under the Land Act 1979⁴;

“drilling” means the process of making a circular hole with a drill or other cutting tool, for purposes such as blasting, exploration, prospecting, valuation or obtaining water, gas or oil;

“Government” means the Government of Lesotho;

“industrial mineral” may include dolerite, basalt, clay, dolomite, granite, gravel, gypsum, laterite, limestone, marble, rock, sand sandstone or salt used for agricultural, building, road making or industrial purposes and such other minerals as may be prescribed in the regulations to be industrial minerals;

“Local Authority” means the Local Authority as defined under the “Constitution of Lesotho

“mine” when used as a noun, means any place, excavation or working in or on which or whereby any operation connected with mining is carried on, together with all buildings, premises, erections and appliances belonging or pertaining thereto above or below ground for the purposes of winning, treating or preparing any mineral or metal by any mode or method or for the purpose of dressing mineral ores;

“mine” when used as a verb, means intentionally carrying out operations to win minerals or a group of minerals and includes any operations directly or indirectly necessary thereto, and mining shall be construed accordingly;

“mineral” means any substance, whether in liquid, gaseous or solid form, occurring naturally in or on the earth, formed by or subject to geological processes;

“mineral concession or agreement” means a prospecting licence, mining lease or mineral permit;

“mineral permit” means a permit issued pursuant to section 52;

“mineral permit area,” means land subject to a mineral permit;

“mineral right” means any type of licence or lease granted in accordance with this Act;

“mining area” means land subject to mining lease;

“mining lease” means a lease approved in accordance with section 33;

“Minister” means the Minister responsible for Mining;

“owner” has the same meaning as in the Deeds Registry Act 1967⁵;

“programme of mining operations” means a programme approved on the granting or renewal of mining lease and includes any amendments thereto made in pursuance of this Act;

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

“prospect” means to search for minerals and includes determining their extent and economic value;

“prospecting licence” means a licence issued under section 22;

“small scale mining” means the minning of minerals in operations involving the mining and processing in an area not exceeding 100m².

PART II - OWNERSHIP OF MINERALS AND ACQUISITION OF MINERAL RIGHTS

Rights in minerals vested in the Basotho Nation

3. (1) Subject to section 107 of the Constitution of Lesotho and without prejudice to any rights conferred by this Act, all rights of ownership in minerals are vested in the Basotho Nation.

(2) The Minister shall ensure, in the public interest, that the mineral resources are investigated and exploited in the most efficient, beneficial and timely manner.

Acquisition of mineral rights

4. (1) Any kind of rights in minerals may be acquired and held only in accordance with the provisions of this Act, notwithstanding any

right of ownership or legal interest which any person may possess on the land, in which minerals are found or situated.

(2) No person may prospect for or mine minerals except under the provisions of this Act.

(3) Notwithstanding the provisions of this Act, the Minister may, in the public interest and subject to such conditions as he may determine, authorize any person attached to a research institute or accredited university to undertake non commercial investigations into the geological or mineral resources of Lesotho.

Restriction on acquisition of mineral rights

5. (1) No mineral right shall be granted to or held by –

(a) an individual who –

(i) is not a citizen of Lesotho;

(ii) is under the age of 18 years;

(iii) is declared insolvent;

(iv) has been convicted of an offence and sentenced to imprisonment without the option of a fine;

(b) a company which-

(i) has not been established and registered in Lesotho;

(ii) is in liquidation or under judicial management except where such liquidation or judicial management is part of a scheme for the reconstruction or amalgamation of such company; or

- (iii) has among its directors or shareholders a person who would be disqualified in terms of paragraph (a).(ii),(iii) or (iv).

(2) Nothing in a mineral right or in this Act shall be construed as absolving the holder of the mineral right from any requirements of doing or avoiding anything prescribed by law, or from applying for and obtaining rights by any permit, licence, consent or other document prescribed by law.

PART III - ADMINISTRATION

Establishment of the Commissioner of Mines and Geology

6. There shall be the Commissioner who shall be a public officer.

Functions of the Commissioner

7. (1) The Commissioner or an authorised officer may, in order to exercise any power or perform any duty conferred by this Act, enter upon any mineral right area or any premises thereon, other than a dwelling house, for the purposes of –
- (a) inspecting the area or premises, examining the prospecting or mining operations or the treatment of minerals being exploited in the area or premises;
 - (b) giving directions and taking steps to enforce any provision of this Act;
 - (c) ascertaining whether any nuisance or breach of environmental obligations exists in the area, premises, buildings or workings;
 - (d) taking samples or breaking of the soil, rock, ore, concentrate, tailings or minerals situated upon the area, premises or workings for the purposes of examination or assay;
 - (e) examining books, accounts, documents or records of any kind concerning a mineral right;

(f) obtaining information he may deem necessary.

(2) The Commissioner or an authorised officer may –

(a) enter any land or premises with any person, vehicle, equipment or material provided he causes as little damage as possible to land, movable, or any immovable property in the exercise of powers conferred by this section;

(b) break up the surface of any land or premises for the purpose of examining the rocks or minerals within such land or premises;

(c) fix any post, stone, cairn to be used in the survey of any land;

(d) dig up any ground for the purpose of fixing the post, stone or cairn referred to in paragraph (c);

(e) direct the holder of a mineral concession to produce for inspection any books, accounts, vouchers, documents or records concerning a mineral right.

(3) A person who lawfully occupies land or premises being entered for purposes of this section is entitled to compensation for any damage sustained thereby.

(4) In the exercise of his functions under this section, the Commissioner or the authorised officer shall -

(a) identify himself to the holder of a prospecting licence, mining lease or mineral permit or occupier or any other person in possession of the land;

(b) issue a receipt in respect of any book, record or document removed or taken under section 7(1)(e);

- (c) return the book, record or document produced in accordance with subsection (2)(e) to the owner if it is not in connection with any offence in terms of this Act;
- (d) ascertain whether any nuisance or breach of environment obligations exists in the area, premises or workings;
- (e) take and carry away specimens and samples of the soil, rocks or mineral found for the purposes of examination or assay.

(5) The holder of a mineral right shall provide the Commissioner or authorized officer with such facilities or assistance as may be necessary to exercise the powers or to perform the duties conferred under this Act.

(6) Before abandoning any land, all excavations shall be backfilled and made safe.

Prohibition from holding interests in any mineral rights etc.

8. (1) The Commissioner, a Board member or any authorised officer shall not-

- (a) acquire whether directly or indirectly any right or interest in any mineral right;
- (b) acquire or hold any share or interest in a company, which is the holder of a mineral right.

(2) For the purposes of subsection (1), the acquisition or holding of a share or interest in a company by the husband or wife of the Commissioner, Board member or authorised officer shall be deemed to be an acquisition or holding of a share or interest by the Commissioner, Board member or authorised officer.

(3) Nothing in this part shall have effect so as to prevent the participation of the State to enter into a mineral agreement, any joint venture or production sharing or other joint arrangement.

Recovery of fees

9. Any fees, dues, rent, royalties or payments which may become due in respect of any mineral right or under the provisions of this Act shall be payable to the Government through the Ministry responsible for mining.

Retention of cores and samples

10. (1) Any drill core obtained in the exercise of rights conferred by a mineral right shall not be destroyed or otherwise disposed of except for purposes of assay, identification or analysis, without the written permission of the Commissioner.

(2) Where any core is retained for purposes of complying with subsection (1), there shall be maintained a record specifying the coordinates and geological horizon of the core.

(3) A person who-

(a) destroys or disposes of drill core contrary to subsection (1); or

(b) fails to maintain a record as required by subsection (2)

commits an offence and is liable on a conviction to a fine not less than M50 000 or to imprisonment for a period not less than twelve months or both.

Preference to Lesotho goods and services

11. (1) The holder of a mineral right shall -

(a) in the employment of staff, give preference to the citizens of Lesotho who possess the required

qualifications for purposes of the operations to be carried out in terms of the mineral right;

- (b) carry out training programmes in order to encourage and promote the development of Lesotho citizens in the holder's employment;
- (c) with due regard to the need to ensure safety, technical and economic efficiency, make use of –
 - (i) products and equipment manufactured or produced in Lesotho;
 - (ii) services which are available in Lesotho.

Establishment of the Mining Board

12. (1) There is established a Board to be known as the Mining Board.
- (2) The Board shall consist of the following:
- (a) the Principal Secretary of the Ministry responsible for mining who shall be chairman;
 - (b) the Commissioner;
 - (c) the Legal Officer of the Ministry responsible for mining who shall be the Secretary;
 - (d) a representative of the Ministry of Finance;
 - (e) two other members who shall have knowledge and experience in financial, environmental, mining engineering or geological matters who shall be appointed by the Minister;
 - (f) a representative of the chamber of commerce, nominated by the Chamber of Commerce, who shall be appointed by the Minister.

(3) The Board shall, invite a representative of the Local Authority to the meetings of the Board, where deliberations of the Board relate to land within the jurisdiction of a particular Local Authority, but such representative shall not have power to vote.

Tenure of office

13. (1) An appointed member shall hold office for a period of three years from the date of appointment and is eligible for reappointment for a further period of three years.

(2) An appointed member shall vacate office if he

- (a) is unable to exercise the functions of his office;
- (b) is unfit by reason of physical or mental disability to carry out the functions of his office;
- (c) has been convicted of a criminal offence and sentenced to imprisonment without the option of a fine;
- (d) has been absent from three consecutive meetings of the Board without the permission of the Chairman;
- (e) is charged with misconduct.

(3) An appointed member may resign his office by writing to the Minister.

Disqualification from being a member

14. (1) A person is disqualified from being a member of the Board if

- (a) is an unrehabilitated insolvent;
- (b) has been convicted of criminal offence and sentenced to imprisonment without the option of a fine;

- (c) is declared insolvent;
- (d) has any pecuniary interest, direct or indirect, in an undertaking by a mineral right holder.

(2) The Minister may terminate the appointment of a member, other than the chairman, secretary or Commissioner if it is necessary in the interest of the effective performance of the functions of the Board.

Conduct of the Board member

15. Members of the Board shall conduct themselves in accordance with rules of conduct to be prescribed by the Minister.

Meetings of the Board

16. (1) The Board shall meet as often as the business of the Board may require but, not less than two times in each calendar year.

(2) The chairman shall preside at all meetings of the Board.

(3) Any question before the Board at a meeting shall be decided by the majority of votes of the members present and voting.

(4) The chairman shall have a deliberative vote and in the event of an equality of votes he shall have a casting vote.

(5) The quorum at a meeting of the Board shall be five members.

(6) Subject to this section, the Board may regulate its own procedure

(7) The validity of any act or proceedings of the Board shall not be affected by any vacancies among the members or by any defect subsequently discovered in the appointment of a member.

Functions of the Board

17. The Mining Board shall-

- (a) perform the functions conferred or imposed upon it by this Act;
- (b) advise the Minister with respect to the exercise of his powers under this Act;
- (c) make annual report to the Minister;
- (d) investigate, negotiate or consult in all mineral right concessions.

Allowances of the members of the Board

18. An appointed member of the Board shall be paid such expenses and allowances as may be determined by the Minister after consultation with the Minister responsible for Finance.

Disclosure of interest

19. A member of the Board who has any direct or indirect interest in any matter being considered or dealt with by the Board shall, as soon as possible after the commencement of the meeting, disclose to the Board the nature of the interest, and such disclosure shall be recorded in the minutes of the Board and such member shall not take part in any deliberation or decision of the Board.

PART IV - PROSPECTING LICENCES

Application for a prospecting licence

20. (1) A person who wishes to obtain a prospecting licence shall apply in writing to the Board through the Commissioner.

(2) An application made pursuant to subsection (1) shall be as specified in Form A of Schedule I.

Consideration of application for prospecting licence

21. (1) The Board shall, in its deliberation on applications for a prospecting licence, take due regard to the following:

- (a) that applicant has secured access to adequate financial resources, technical competence and experience to carry out effective prospecting operations;
- (b) the proposed work programme to be carried out during the licenced period and estimated costs of the proposed work programme;
- (c) that the proposed programme of prospecting is adequate and makes proper provisions for environmental protection;
- (d) that the proposed prospecting area is not the same or does not overlap with an existing prospecting area or minerals permit area in respect of the same mineral or associated minerals; and
- (e) that the applicant is not in default.

(2) The Board may cause such investigations to be made or such negotiations to be carried out as it may deem necessary to enable it to assess whether or not the criteria in subsection (1) have been satisfied.

(3) Where an area has been prospected for a period of six years, no new prospecting licence shall be issued for the same area.

(4) The Minister shall, in the event of competing applications, issue a prospecting licence to the applicant who has the best proposed work programme.

Notification of approval or rejection of applications

22. (1) The Minister shall have the power to approve, issue, renew, cancel or suspend a prospecting licence.

(2) The Board shall cause the applicant to be notified, in writing, of the Minister's decision on the application.

Form and content of prospecting licence

23. (1) A prospecting licence shall be as specified in Form B of the Schedule I.

(2) There shall be appended to the prospecting licence a work programme for the prospecting operations.

Duration and renewal of prospecting licence

24. (1) Subject to this Act, a prospecting licence shall be valid for a period not exceeding two years from the date of issue of the prospecting licence or any such period as the applicant has sought which period shall not exceed two years.

(2) The holder of a prospecting licence may, at any time not later than three months before expiry of his licence, apply for renewal of his prospecting licence to the Board through the Commissioner by completing Form A as specified in the First Schedule.

(3) A renewal shall be valid for a period not exceeding one year.

(4) An application made pursuant to subsection (2) shall be accompanied by the following:

(a) a report on prospecting so far carried out and the direct costs incurred thereby; and

(b) a proposed work programme to be carried out during the period of renewal and estimated costs thereof.

(5) Subject to this Act, the application made pursuant to this section shall be renewed if -

(a) the applicant is not in default; and

- (b) the proposed work programme is adequate.
- (6) If the applicant is in default or the programme is inadequate, the Minister shall, with the advice of the Board -
- (a) give notice of default and call upon applicant to remedy the default before rejecting application for renewal under this section; or
 - (b) give applicant opportunity to make satisfactory amends to proposed work programme before rejecting application for renewal under this section.

(7) Notwithstanding the provisions of subsection (3), the Minister may renew a prospecting licence for a period in excess of a period specified in the application, where a discovery has been made and evaluation work has not been completed, despite proper efforts being made.

Discovery of other minerals

- 25 (1) If in the course of exercising his rights under a prospecting licence, the holder discovers any other mineral not included in his licence, he may apply to the Board for an amendment of his prospecting licence to include such mineral.
- (2) An application for an amendment of a prospecting licence shall
- (a) specify the mineral discovered;
 - (b) give particulars of the situation and circumstances of the discovery; and
 - (c) be accompanied by a proposed work programme of prospecting operations provided that the applicant is not in default.

(3) The Board shall permit the amendment of the prospecting licence to include the mineral concerned if subsection (2) has been complied with.

(4) An amendment of a prospecting licence under this subsection shall not be permitted if any person other than the applicant is the holder of the prospecting licence or mineral permit or mining lease in respect of the mineral or an associated mineral over the area in which it was discovered.

Size of the prospecting area

26. (1) A prospecting licence shall not be issued for an area exceeding 25km²

(2) Subject to subsection (1), the prospecting area shall be reduced in size at the end of the initial term of the prospecting licence, by not less than half of the initial area.

(3) The holder of a prospecting licence shall designate, prior to the end of the period referred to in subsection (2), the area to be reduced from the prospecting area and, in default thereof, the designation shall be made by the Board.

(4) Where reduction is made pursuant to subsection (2), there shall be no compensation payable to the holder of the prospecting licence.

Rights of holder of prospecting licence

27. (1) Subject to the provisions of section 54, the holder of a prospecting licence may, in the exercise of his rights under this Act, enter upon any land to which his prospecting licence relates together with his agents and may –

(a) prospect thereon for the mineral to which his prospecting licence relates;

(b) drill boreholes and make such excavations as may be necessary; and

(c) erect camps and put up temporary structures for machinery necessary for prospecting purposes.

Obligations of the holder of prospecting licence

28. (1) The holder of a prospecting licence shall –
- (a) commence prospecting operations within three months or such further period as the Minister may allow, from the date of issue of the licence;
 - (b) carry out prospecting operations in accordance with the approved prospecting work programme;
 - (c) notify the Commissioner of the discovery of the mineral to which the prospecting licence relates within 14 days of such discovery;
 - (d) notify the Commissioner of the discovery of any other mineral deposit of economic value within a period of 14 days of such discovery;
 - (e) make safe any excavations made during the course of his prospecting operations to the reasonable satisfaction of the Commissioner and the Authority;
 - (f) take all reasonable steps necessary to secure the safety, welfare and health of persons employed for the purposes of his prospecting operations;
 - (g) permanently preserve or otherwise make safe any borehole in the manner directed by the Commissioner and surrender to the Government without compensation all such boreholes and any water rights in respect of the boreholes on termination of the prospecting operations;
 - (h) unless the Commissioner directs otherwise, remove, within 60 days of the expiry of the prospecting licence, any camp, temporary structures or machinery erected or installed by him and make good any damage done to the land occasioned by

such removal to the satisfaction of the Commissioner and the Authority;

- (i) subject to the conditions of his prospecting licence and the provisions under section 29, expend on prospecting, in accordance with his approved work programme, not less than such amount as may be specified in his prospecting licence;
- (j) submit to the Commissioner, every financial year, audited report and statement of the expenditure directly incurred under the licence.

(2) Any monies required to be spent pursuant to this Act for purposes of prospecting operations which are not spent shall be a debt due to the Government.

(3) The holder of a prospecting licence shall, at an address in Lesotho, keep a full and accurate record of his prospecting operations in relation to –

- (a) any geochemical or geophysical data;
- (b) borehole data with detailed logs of such data;
- (c) results of all analytical, metallurgical and mineralogical work incidental to his prospecting operations;
- (d) geological interpretation and assessment of the studies and surveys;
- (e) minerals discovered;
- (f) nature, weight or volume and results of any analysis or identification of minerals removed;
- (g) the number of persons employed by him for purposes of prospecting operations, including their full names, addresses, nationalities, ages, their

remuneration and other benefits paid or granted to such persons;

(h) any other prospecting work not listed above.

(4) The holder of a prospecting licence shall submit, at the end of each quarter during the currency of the prospecting licence, copies of such records to the Commissioner.

(5) The holder of a prospecting licence who fails to keep or supply any record or information required under this section or keeps or supplies false or misleading record or information commits an offence and is liable on conviction to a fine not less than M50 000 or to imprisonment for a period not less than twelve months or both.

Amendments to programme of prospecting operations

29. (1) The holder of a prospecting licence may, from time to time, notify the Board in writing of amendments he wishes to make to his programme of prospecting operations.

(2) The Board shall make recommendations to the Minister on the amendments referred to in subsection (1).

(3) The Board shall notify the applicant of the Minister's decision within two months of the Minister's decision.

(4) Where the Board fails to notify the applicant of the Minister's decision within two months, the amendments shall be considered as accepted.

(5) The Board may, on application being made by the holder of prospecting licence, recommend to the Minister to limit or suspend the obligation to carry out prospecting operations as required by section 28.

Transfer of prospecting licence

30. (1) The holder of a prospecting licence may apply to the Board for a transfer of a prospecting licence to any person.

(2) The applicant shall give to the Board such details as the Board may require.

(3) Where the Minister is satisfied that the transferee is qualified under the provisions of this Act, the Board shall notify the applicant of the approval of the transfer of the prospecting licence or interests in the prospecting licence.

(4) Upon the transfer of the prospecting licence, the transferee shall assume all rights, obligations and liabilities under the prospecting licence.

Removal of minerals for purposes of assay

31. The holder of a prospecting licence shall not, without the written consent of the Commissioner, remove minerals from a prospecting area.

PART V – MINING LEASES

Application for a mining lease

32. A person who wishes to obtain a mining lease shall apply in writing to the Board through the Commissioner by completing Form C as specified in Schedule I.

Approval and issue of a mining lease

33. (1) The Minister shall approve and issue a mining lease only if satisfied that –

- (a) the proposed work programme ensures the efficient, beneficial and timely use of the mineral resources in question;
- (b) the proposed mining area is not within or does not overlap with an existing mining area unless the holder of that mining lease consents to the grant of a mining lease, by completing a deed of transfer regarding the overlapping area;

- (c) the applicant has secured access to adequate financial resources, technical competence and experience to carry out effective mining operations;
- (d) the proposed financing plan is in accordance with good financial practice;
- (e) in the case of an application to mine diamonds, an agreement has been reached following a negotiation under section 44;
- (f) the applicant is not in default; or
- (g) the applicant has obtained an environmental impact assessment licence from the Authority.

Government shares or investment

34. (1) The Government may, through the Ministry of Natural Resources, acquire not less than 20 % shareholding in a proposed mine.

(2) The Government shall, through the Ministry of Natural Resources, when a mineral lease is issued, inform the applicant whether it is taking the shareholding in a proposed mine.

(3) This section shall not apply to a lease to mine diamonds where extent of and terms of participation are agreed under section 44.

Form and content of a mining lease

35. (1) A mining lease shall be as specified in Form D of Schedule I.

(2) A lease to mine diamonds shall have annexed to it a copy of the agreement reached under section 44.

Duration and renewal

36. (1) Subject to the provisions of this Act, a mining lease shall be valid for a period not exceeding ten years.

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

(3) The lease may be renewed for further period of ten years.

(4) An application for renewal of a mining lease shall be as specified in Form C of Schedule I.

(5) The Minister may approve an application for renewal if satisfied that-

(a) the applicant is not in default;

(b) the development of the mining area has proceeded with reasonable diligence;

(c) the proposed programme of mining operations will ensure the most efficient and beneficial use of the mineral resources in the mining area; and

(d) in the case of an application for renewal of a licence to mine diamonds, agreement has been reached following negotiations under section 44.

(6) On the application for renewal of a mining lease, the applicant shall append the programme of mining operations to be carried out in the period of renewal.

Amendment of programme of mining operations

37. The holder of a mining lease may notify the Board of amendments he wishes to make to his programme of mining operations and the amendments shall, unless the Board rejects them in writing within three months of being so notified, have effect after such period.

Rights conferred by a mining lease

38. (1) Subject to the provisions of this Act or any other law the holder of a mining lease may, in the exercise of his rights under this Act, enter upon any land to which his mining lease relates with his agents and -

- (a) take all reasonable measures on or under the surface to mine the mineral to which his mining lease relates;
- (b) erect the necessary equipment, plant and buildings for the purposes of mining, transporting, dressing, treating, smelting or refining minerals recovered by him during mining operations;
- (c) dispose of any mineral product recovered;
- (d) prospect within his mining area for the mineral for which he holds a mining lease; and
- (e) stack or dump any waste product in a manner approved by the Authority.

(2) If, in the course of exercising his rights under this Act, the holder of a mining lease discovers any further deposits of the mineral for which he holds a mining lease or any mineral not included in such lease, he shall, within fourteen days of the discovery -

- (a) notify the Commissioner of such discovery;
- (b) give particulars of the mineral discovered and circumstances of the discovery;

- (c) apply to the Board to have the mining of such deposit or such mineral included in his mining lease; and
- (d) give in his application a proposed programme of mining operations in respect of that mineral.

(3) Subject to section 44, where the Minister is satisfied with the proposed programme of mining operations submitted under subsection (2), he shall approve such application and the mining lease shall be amended accordingly.

(4) An application may not be rejected under subsection (3) unless the applicant has been given prior opportunity to amend the programme in a manner satisfactory to the Minister.

(5) Subject to section 44, the holder of a mining lease may apply to the Board to have his mining area enlarged.

(6) The Minister may, subject to the provisions of section 44, approve the application if he is satisfied that such approval shall ensure the most efficient and beneficial use of the mineral resources of Lesotho.

(7) A mining area shall not be enlarged to include any area which is not contiguous to the mining lease.

Obligations of holder of a mining lease

39. (1) Subject to the provisions of this Act, the holder of a mining lease shall -

- (a) commence production on or before the date referred to in the programme of mining operations as the date by which he intends to work for profit;
- (b) develop and mine the mineral covered by his mining lease in accordance with the programme of mining operations and good mining and environmental practice;

(c) peg and fence the mining area in such manner as may be prescribed;

(d) submit to the Board a diagram of the mining area;

(e) keep and maintain an address in Lesotho, full particulars of which shall be registered with the Commissioner, to which all communications and notices may be addressed; and

(f) notify the Commissioner as soon as he begins to work his mining area for profit.

(2) The holder of a mining lease shall-

(a) maintain and keep at an address in Lesotho -

(i) a complete and accurate technical record of his operations in the mining lease area; or

(ii) a copy of all maps and geological reports, including interpretations, mineral analyses and test results obtained and compiled, accurate and systematic financial records of his operations in the mining area and such other books of accounts and financial records as the Board may require;

(b) permit an authorized officer at any time to inspect the books and records maintained pursuant to this subsection;

(c) deliver to the Board, without charge, copies of any part of the books and records as the Board may require;

(d) submit to the Board, through the office of the Commissioner, such reports, records or any other information that the Board may require concerning the conduct of his operations in the mining area; and

- (e) furnish the Board, through the office of the Commissioner, with a copy of his annual audited financial statements within six months of the end of each financial year.

Wasteful mining or treatment practices

40. (1) The holder of a mining lease shall not engage in wasteful mining or treatment practices or conduct his operations otherwise than in accordance with good mining practices.

(2) The Board may, where it considers that the holder of a mining lease is in breach of subsection (1), notify him accordingly and require him to show cause why he shall not discontinue such breach.

(3) Where within the time specified in any notice issued under subsection (2), the holder of a mining lease fails to discontinue the breach or to satisfy the Board that he is not in breach, the Board may direct the holder to discontinue the breach and the holder shall comply with such direction.

Suspension of production

41. (1) The holder of a mining lease shall notify the Board -

(a) one year in advance if he proposes to cease production from the mine;

(b) six months in advance, if he proposes to suspend production from the mine; or

(c) three months in advance if he proposes to curtail such production.

(2) The holder of a mining lease shall, where he notifies the Board pursuant to subsection (1), give reasons for the cessation, suspension or curtailment of production.

(3) If, for reasons beyond his control, the holder of a mining lease ceases, suspends or curtails production from his mine without giving

notice in accordance with subsection (1), he shall, within 14 days of such cessation, suspension or curtailment, notify the Board of such cessation, suspension or curtailment of the mining lease.

(4) The Minister may, on receiving notification under subsection (1) or if he otherwise becomes aware of any cessation, suspension or curtailment of production, cause the matter to be investigated or -

- (a) give approval of such cessation, suspension or curtailment; or
- (b) if this is not in accordance with the good mining practice, direct the holder of the mining lease to resume full production at the mine.

Trading in mining areas

42. (1) No person shall, in any mining area, carry on any business for which a trading licence is required without the consent of the Minister:

Provided that such consent shall not entitle any person to carry on any such business except in accordance with the provisions of a trader's licence.

Transfer or assignment of a mining lease

43. (1) No mining lease or any interest in the mining lease shall be transferred, assigned, encumbered or dealt with in any other way without the approval of the Minister.

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

(3) Subject to section 44, the Minister may approve the transfer, assignment, encumbrance or any other dealing with any mining lease or interest in the mining lease, provided the transferee is not disqualified under any provision of this Act from holding a mining lease and is satisfied in accordance with section 33.

(4) For the purposes of this section, “interest” in a mining lease means in the case of a holder who is a private company, a controlling interest in such private company.

Mining lease for diamonds

44. (1) Notwithstanding the provisions of this Act, the Board shall initiate negotiations with an applicant, in good faith, on an application for the issue, renewal, transfer or amendment of a mineral concession for diamonds, covering all technical, financial and commercial aspects of the proposed project, including the Government participation.

(2) Upon successful conclusion of the negotiation under subsection (1), the Minister may issue a lease and agreement reflecting the terms and conditions.

Government representatives at mining lease area for diamonds

45. (1) Each mining lease area for diamonds shall have a Government representative who shall be a public officer.

(2) A Government Representative shall be –

- (a) under the supervision of the Commissioner of mines;
- (b) responsible for overseeing mining operations in a mining lease area; and
- (c) on site at all times.

PART VI - MINERAL PERMITS

Application for a mineral permit

46. (1) A person who wishes to conduct small scale mining operations may apply for a mineral permit to conduct such operations for any mineral other than diamonds over an area not exceeding 100m².

- (2) A person who wishes to obtain a mineral permit shall apply to the Board by completing Form E as specified in Schedule I.
- (3) A company shall not hold a mineral permit.
- (4) A mineral permit shall be as specified in Form F of Schedule I.
- (5) No mineral permit shall be issued for the mining of precious stones.

Pegging of area covered by a mineral permit

47. The holder of a mineral permit shall, on being issued with the mineral permit, peg the area covered by such permit before commencing operations.

Duration, renewal and termination of a mineral permit

48. (1) Subject to the provisions of sub-section 2, a mineral permit shall be valid for one year from the date of issue, and may, on application made to the Board, be renewed for a further period not exceeding one year from the date of issue.

(2) The Minister may terminate a mineral permit issued if he is satisfied that the holder of a mineral permit has ceased to be a citizen of Lesotho or has entered into an arrangement with a person, which arrangement has the effect of transferring to that person any interest in such permit.

Rights under a mineral permit

49. The holder of a mineral permit shall, subject to the provisions of this Act and to any other law, enter any area covered by such permit with his agents and –

- (a) mine the mineral to which the permit relates;
- (b) dispose of the mineral to which the permit relates;
- and

- (c) erect such temporary structures, other than residential buildings, as may be necessary for purposes of mining.

Duties of a holder of a mineral permit

50. The holder of a mineral permit shall –

- (a) notify the Commissioner of any change of his address;
- (b) mine the mineral to which the permit relates within the area covered by his permit in conformity with good mining and environmental practice as may be prescribed by the Board and the Authority;
- (c) submit a report to the Commissioner each financial year during the currency of his permit;
- (d) submit a report of the mineral production from the area covered by the mineral permit in the preceding year and the value of such production;
- (e) when his permit expires, clear and make safe the area covered by his permit, to the satisfaction of the Authority;
- (f) submit a brief description of his plant, vehicles and equipment;
- (g) submit an average number of employees during the preceding year.

Transfer or assignment of a mineral permit

51. No mineral permit or any interest in the mineral permit shall be transferred, assigned or encumbered or dealt with, without the approval of the Minister.

Issue of a mineral permit

52. (1) The Minister may authorise any person, for the purposes of this section, to issue to any person a mineral permit on payment of a fee to be prescribed by the Minister by notice published in the Gazette.

(2) A person authorised by the Minister to issue a mineral permit pursuant to subsection (1) may request from the applicant such further information relating to the application as may be necessary to enable a determination to be made on the application.

(3) A person authorised by the Minister to issue a mineral permit pursuant to this section shall submit a copy of the permit to the Commissioner.

(4) A person authorised by the Minister to issue a mineral permit pursuant to this section shall maintain a record of all issued mineral permits.

(5) A person authorised by the Minister to issue a mineral permit pursuant to subsection (1) shall issue, with or without conditions, a mineral permit to an applicant within forty days of receipt of the application, if satisfied that the proposed work programme will ensure the efficient and beneficial use of the mineral resource in good mining practices and environmental issues.

(6) Where further information is required under subsection (2), the mineral permit shall be issued within forty days of receipt of that information.

Restriction under a mineral permit

53. The holder of a mineral permit shall not -

- (a) carry out mining operations beyond a depth of 2 meters;
- (b) use explosives; or

- (c) use any powered machinery in his mining operations except for the purpose of loading material in or moving material from the area where he carries on the operations.

PART VII – MINERAL CONCESSION AND SURFACE RIGHTS

Restriction on exercise of rights under a mineral concession

54. (1) The holder of a mineral concession shall not exercise any right -
- (a) on any land dedicated as a place of burial;
 - (b) on any land containing any ancient or national monument;
 - (c) on any land set aside or used for purposes of the Government;
 - (d) without the written consent of the owner or lawful occupier of the land -
 - (i) within 200 meters of any inhabited, occupied or temporarily unoccupied house or building;
 - (ii) within 50 meters of any land which has been cleared or ploughed or otherwise bona fide prepared for the growing of agricultural crops or upon which agricultural crops are growing;
 - (iii) upon any land which, during the year immediately preceding, agricultural crops have been reaped; or
 - (iv) within 100 meters of any cattle dip, tank or dam.
 - (e) in a national park;

- (f) upon any land reserved for the purposes of a railway track or within 50 meters of any railway track, without the written consent of railway administration concerned;
- (g) upon any or within 200 meters of any township, without the consent of the Local Authority having control thereof;
- (h) upon any street, road, highway, public place or aerodrome, without the consent of the Minister or other authority having control thereof;
- (i) upon any land on which industrial minerals are being mined on behalf of the Government or a local authority, without the consent of the Minister or such local authority as the case may be; or
- (j) upon land specified by the Minister to be land upon which prospecting or mining is prohibited or restricted.

(2) Where consent is unreasonably withheld, the Minister may authorize the holder of a mineral concession to exercise all or any of his rights on such land, subject to conditions as he may impose, including payments of reasonable compensation.

(3) A dispute over the level of compensation shall not preclude the exercise of the holder of a mineral concession while such dispute remains to be settled.

(4) A person exercising any right under a mineral concession shall produce evidence of the possession of such concession to the owner or lawful occupier of any land upon which such concession is to be exercised upon demand being made to him.

(5) A person who fails to produce evidence of possession of concession in accordance with subsection (4) may be treated as a trespasser.

(6) Consent applied for under this section shall not be unreasonably withheld.

Right to graze in a prospecting area

55. (1) The owner or lawful occupier of any land within the prospecting area shall retain the right to graze stock upon or to cultivate the surface of such land insofar as such grazing or cultivation does not interfere with the proper use of such area for prospecting purposes.

(2) In the case of a mining area, or minerals permit area, the owner or lawful occupier of any land within such area shall not erect any building or structure thereon without the consent of the holder of the mining lease or mineral permit, as the case may be, which consent shall not be unreasonably withheld.

(3) The right conferred by a mineral concession shall be exercised reasonably and so as to affect as little as possible the interests of any owner or lawful occupier of the land on which such rights are exercised.

(4) No holder of mineral concession shall create unprotected pits, hazardous waste dumps or other hazards such as to be likely to endanger the stock, crops or other lawful activity of the owner or lawful occupier of the land covered by such mineral concession.

Compensation for disturbance of rights

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

Provided that -

- (a) payment of rent under the provisions of this section shall be adequate compensation for deprivation of the use of land to which such rent relates;
- (b) in assessing compensation payable under this section, account shall be taken of any improvement effected by the holder of the mineral concession or by his predecessor in title, which has or is to benefit lawful occupier thereof;
- (c) the basis upon which compensation shall be payable for damage to the surface of any land shall be the extent to which the market value of the land upon which the damage has occurred has been reduced by reason of such damage, but without taking into account any enhanced value due to the presence of minerals;
- (d) no compensation shall be payable to the holder of a State grant of land or his succession existing at the date of such grant; and
- (e) no demand made in terms of this subsection shall entitle the owner or lawful occupier to prevent or hinder the exercise by the holder of rights under his concession pending the determination of compensation to be paid.

Compulsory acquisition of land

57. (1) Where the Minister considers that any land is required to secure the development or utilisation of the mineral resources of Lesotho, he may compulsorily acquire such land.

(2) Acquisition of land under this section shall be deemed to be for a public purpose in terms of the provisions of the Land Act 1979 and any acquisition under this section shall be effected in accordance with the provisions of the Land Act 1979.

PART VIII - ENVIRONMENTAL OBLIGATIONS

Rehabilitation, Reclamation etc

58. (1) The holder of a mineral right shall, in accordance with this Act or any other law in force and good mining industry practices, conduct his operations in such manner as to –

- (a) preserve the natural environment;
- (b) minimise and control waste or undue loss of or damage to natural and biological resources;
- (c) prevent and where unavoidable, promptly treat pollution and contamination of the environment.

(2) The holder of a mineral right shall not take steps which may unnecessarily or unreasonably restrict or limit further development of the natural resources of the mineral right area or adjacent areas.

(3) An applicant for a mining lease or renewal of a mining lease shall, in accordance with good international mining industry standards, prepare and submit a comprehensive Environmental Impact Assessment as part of the project feasibility study report.

(4) The holder of a mineral right shall ensure that his mineral right area is rehabilitated and ultimately reclaimed in a manner acceptable to the Commissioner and the Authority.

(5) Without prejudice to the generality of subsection (2), during and at the end of operations in any mine, excavation, waste dump or pond, the holder of mineral right shall take such measures as are required 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.

(6) In the event of an emergency or extra-ordinary circumstances requiring immediate action, the holder of the mineral right shall –

- (a) forthwith notify the Commissioner and the Authority of the emergency or extra-ordinary circumstances requiring immediate action ; and
- (b) take all immediate action in accordance with directions of the Authority.

(7) 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.

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

PART IX - FINANCIAL

Royalties

59. (1) Subject to the provision of this section, the holder of the mineral concession shall be liable to pay royalties to the Government through the Ministry of Natural Resources on any mineral obtained by him in the course of exercise of his rights thereunder at the rates and in the manner prescribed under this section.

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

<u>Mineral type</u>	<u>Percentage</u>
Precious Stones	10%
Other Minerals or Mineral Products	3%

(3) The term royalty shall, for the purposes of calculation of royalties, be defined as the gross sale value receivable at the mine gate.

(4) Royalty shall be paid on a mineral or mineral product on receipt of each payment or other consideration for such mineral or mineral

product, and each royalty payment shall be accompanied by full particulars of the mineral or mineral product sold or disposed of and the terms of payment thereof:

Provided that any disposal other than monetary consideration or consideration deferred for a period beyond industry practice shall be referred to the Board for determination of a royalty.

(5) Where it appears to the Minister that minerals have been disposed of otherwise than in terms of subsection (3), the Minister shall determine the royalty payable on the basis of prices ruling in the industry, and the royalty so determined shall be payable on demand:

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

Remission of royalties

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

(2) The Minister may exempt a mineral required for purposes of assay, analysis or other examination.

Deferred payment of royalty

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

Prohibition on disposal of minerals

62. (1) Where –

(a) the holder of a mineral concession fails to pay any royalty due, in respect of the mineral right, on or before the due date; or

- (b) if the Board has reason to believe that minerals have been produced from any area and royalties have not been paid in respect thereof,

the Minister may, by order served on the holder of the mineral right concerned, prohibit the disposal of any mineral from such area, or from any other area held by the holder of a mineral right until all outstanding royalties have been paid.

- (2) The holder of a mineral right who fails to comply with the provisions of any order given under subsection (1) or a person who knowing of such an order and contrary to the order receives any mineral from the area concerned, commits an offence and is liable on conviction to a fine not less than M50 000.00 or imprisonment for a period not less than twelve months or both.

Annual charges in respect of mineral rights

63. (1) The holder of a mineral concession shall pay to the Government through the Ministry of Natural Resources a non-refundable annual fee prescribed in Schedule II.

(2) The annual charge payable under the provisions of subsection (1) shall be payable on the date of issue of a mineral concession and thereafter annually on the anniversary thereof until the termination of such mineral concession.

Interest on overdue payments

64. All overdue payments under this Act shall bear interest at the commercial bank prime lending rate ruling from time to time plus a premium of five percentage points.

Security for compliance

65. The Board may, through the Commissioner, make reasonable arrangements to secure that holders of mineral rights comply with the provisions of this Act, and without prejudice to the generality of the foregoing, may require or accept guarantees, whether from shareholders or otherwise, in respect of such compliance.

PART X - WITHDRAWAL OF APPLICATIONS, SURRENDER AND TERMINATION OF MINERAL CONCESSIONS, etc.

Withdrawal of applications

66. An application for a mineral concession or any renewal thereof may be withdrawn at any time before such application is approved or rejected by notifying the Board through the Commissioner, in writing, that the application is being withdrawn.

Surrender of area or part thereof covered by mineral concession

67. (1) Subject to the provisions of section 41 and of any condition in the mineral right, the holder of a mineral right may surrender the mineral right or part of the mineral right by -

- (a) giving the Commissioner not less than three month's notice of his intention to surrender the whole or part of the area concerned;
- (b) complying with any requirements of the Board as to the rehabilitation and reclamation of the concession area.

(2) If the application for surrender is only in respect of part of the area covered by the mineral right, the holder of a mineral right shall -

- (a) if it relates to a mining area, provide a diagram of the area to be surrendered;
- (b) in the case of any other mineral right, provide a reliable plan of the area to be surrendered;
- (c) give the results of prospecting carried out; and
- (d) peg the remaining area in the prescribed manner.

(3) A surrender shall be without prejudice to any liabilities or obligations incurred by the holder in relation to the area surrendered prior to the date of surrender.

(4) Where the holder has complied with subsection (1) (b), the Minister shall -

- (a) if the surrender is in relation to the whole area covered by a mineral right, cancel such concession; or
- (b) if the surrender is in respect of the area covered by part of a mineral concession, amend the concession accordingly.

Minister's power to suspend or cancel a mineral concession

68. (1) Subject to the provisions of this section, the Minister may suspend or cancel a mineral concession of the holder of a mineral right who -

- (a) fails to make any of the payments required by or under this Act on the due date;
- (b) contravenes any provision of this Act or the conditions of his mineral right or the provisions of any other written law relating to mines and minerals;
- (c) dies, becomes of unsound mind, becomes insolvent, enters into any agreement or scheme of composition with his creditors, takes advantage of any law for the benefit of debtors, or, in the case of a company, goes into liquidation, except as part of a scheme for its reconstruction or amalgamation; makes any statement to the Government in connection with his mineral right which he knows or ought to have known was false; or
- (e) for any reason is or becomes ineligible to hold a mineral right under the provisions of section 5.

(2) Before suspending or canceling a mineral right under paragraphs (a) and (b) of subsection (1), the Minister shall give the holder of a mineral rights notice, in writing, specifying the particular contravention and calling upon the holder to remedy the contravention

within such period, being not less than 30 days, as may be specified in such notice.

(3) If the holder of a mineral right fails to remedy contravention specified in paragraphs (a) and (b) of subsection (1) within the period specified in a notice issued under subsection (2), the Minister may, by notice to the holder thereof, suspend or cancel the mineral concession forthwith.

(4) On the cancellation of a mineral right under the provisions of this section, the rights of the holder thereof shall be extinguished but without prejudice to any liabilities or obligations incurred in relation thereto prior to the date of cancellation.

Assets on termination

69. (1) Where the holder of a mineral concession intends to cease operations either during the period of or on termination of his licence or lease he shall, not less than three months before such cessation or termination, furnish the Board with a full register of assets showing those assets which he intends to remove and those which he intends to leave in the concession area, and shall further notify the Commissioner of any potentially hazardous substances, erections or excavations in the concession area.

(2) On the receipt of a notice in terms of subsection (1) above, the Minister shall on the advice of the Board, if he deems it necessary -

- (a) require that specified buildings and other items of fixed machinery be removed; or
- (b) require that potentially hazardous substances, erections and excavations be removed or made safe in such manner as he may direct.

(3) Upon cessation of operations by the holder of a mineral right in terms of this section, the mining area shall revert to the owner of the land provided that if the Minister determines that the area is to be retained, it shall be so retained by the Government subject to payment of compensation to the owner for such right of retention.

(4) Any fresh water dam and the water impounded thereby shall be left intact on cessation of operations or upon termination of a mineral right.

Delivery of documents on termination

70. (1) Upon termination of any mineral right the holder of a mineral right shall deliver to the Board -

- (a) all records which the holder is obliged under the provisions of this Act to maintain; and
- (b) all plans or maps of the area covered by the mineral concession prepared by the holder or at his instructions.

(2) A person who fails to deliver any document required to be delivered under the provisions of subsection (1) within 14 days of being called upon to do so commits an offence and is liable on conviction to a fine not less than M50 000.00 or imprisonment for a period not less than twelve months or both.

Pending applications

71. Where the holder of-

- (a) a prospecting licence has made application for a renewal thereof over part of the area covered by his prospecting licence; or
- (b) a mining lease or a mineral permit has made application for a renewal thereof, the Minister may extend the period of validity of such prospecting licence, mining lease or mineral permit, pending his decision on the application.

PART XI - MISCELLANEOUS

Regulations

72. (1) The Minister may make regulations for carrying the provisions of this Act into effect and without prejudice to the generality of this provision, the regulations may provide for the following :

- (a) prescribing anything which in terms of this Act is to or may be prescribed;
- (b) for the making of returns of minerals won and for the valuation of such minerals, and the sampling, weighing and testing of any mineral;
- (c) the shape of the areas over which mineral right, may be granted;
- (d) the manner in which areas and boundaries shall be marked, beacons and surveyed;
- (e) the gathering of fuel wood and cutting and use of timber for the purposes of carrying on prospecting and mining operations;
- (f) the returns to be rendered and the nature of the accounts, books and plans to be kept by the holders of mineral rights;
- (g) the fees to be paid in respect of any matter or thing done under this Act; and
- (h) the protection of the environment.

(2) Regulations made under this Act may provide a penalty for the contravention thereof in any amount not less than M50,000.00 or to imprisonment for a term not less than twelve months, or both.

(3) The Minister may by notice amend or replace any schedule to this Act.

Offences and penalties

73. (1) A person who –

- (a) fails, neglects or refuses to allow or provide all reasonable facilities and assistance to an authorized officer;
- (b) fails, neglect or refuses to comply with any direction given under section 7 (2) (e);
- (c) prospects or retains a mineral deposit or mines otherwise than in accordance with the provisions of this Act;
- (d) fails to notify the Minister in accordance with the provisions of section 28(1) (c) or (d), or 39 (1) (e);
- (e) carries on business in contravention of section 42 or erects any building or other structure in contravention of the provisions of section 42;
- (f) obstructs, hinders or delays an authorized officer in the performance of his duties under this Act;
- (g) in making application for a mineral right or any renewal to the mineral concession, makes any statement which is false or misleading in any material or makes material omission;
- (h) in any report, return or affidavit submitted pursuant to the provisions of this Act, includes any information which is false or misleading in any material fact or makes any material omission;
- (i) removes or fails to remove any building, fixed machinery or other movable property contrary to section 69;

- (j) removes or disposes of any mineral contrary to the provisions of section 31;
- (k) causes unlawful environmental damage contrary to section 58 or fails to rehabilitate an extraction site;
- (l) fails to deal with potentially hazardous substances, erections or excavations in accordance with directions given under section 69;
- (m) places or deposits, or causes to be placed or deposited, any mineral in any place with the intention to mislead any other person as to the mineral possibilities of such place;
- (n) mingles or causes to be mingled with any sample of ore any substance which will enhance the value or in any way change the nature of such ore with the intention to cheat, deceive or defraud; or
- (o) being engaged in the business of milling, leaching, sampling, concentrating, reducing, assaying, transporting or dealing in ores, metals or minerals, keeps or uses any false or fraudulent scales or weights for weighing such ores, metals or minerals, or weights or enriched fluxes used for ascertaining the assay value of minerals, knowing them to be false or fraudulent; or
- (p) assists another person to contravene the provisions of this Act

commits an offence and is liable on conviction to a fine not less than M50,000.00 or imprisonment for a period not less than twelve months or both.

(2) For the purpose of this section, “assists” means helping another person to commit an offence under this Act.

Records to be maintained by the Commissioner

74. (1) The Commissioner shall keep and maintain a register of all mineral concessions issued under this Act.

(2) The register kept and maintained pursuant to subsection (1) shall have the following information :

- (a) the name of the holder of the mineral concession;
- (b) the area subject to the mineral concession;
- (c) the date of issue and duration of the mineral concession; and
- (d) the mineral for which the concession is granted.

(3) A register kept and maintained pursuant to subsection (1) shall be open for inspection by members of the public during office hours, and members of the public may take copies of the records on payment of the prescribed fee.

Certain records supplied to the Commissioner to be confidential

75. (1) A register supplied under section 28 (3), 39 (2) or 50 (d) shall so long as the person supplying the information or his successor-in-title retains a mineral right over the area to which the records relate, be treated as confidential and shall not be divulged without the consent of the person supplying the information or his successor-in-title:

Provided that nothing in this section shall prohibit the disclosure of any confidential information-

- (a) where such disclosure is necessary or required for the purposes of this Act,
- (b) for the purposes of a prosecution under this Act or any other law;

- (c) to any person being a consultant to or officer employed by the Government who is approved by the Minister to receive such confidential information.

(2) Subject to subsection (1) all information supplied to the Commissioner or any officer under this Act shall be kept confidential.

Repeals

76. The Mining Rights Act of 1967 is repealed.

Savings

77. (1) All subsidiary legislation made under the repealed Act, and in force immediately before the coming into operation of this Act shall, in so far as such subsidiary legislation is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

(2) Nothing in this Act shall affect the continued validity of any title to, interest in or any existing right over, any minerals of whatsoever nature, subsisting immediately before the coming into operation of this Act.

SCHEDULE I

(Section 20)

Forms**Form A****Prospecting Licence Application Form (Issue/Renewal)**

This application is in terms of Section 20 of the Mines and Minerals Act

(attach additional sheets or annexures where necessary)

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

I being duly authorized, declare that the applicant and its partners/members/directors/shareholders are persons qualified in terms of Section 5 of the Mines and Minerals Act to hold a prospecting licence, and that the information contained herein is true and correct.

Signed Capacity

Date.....

Place

Form B

Prospecting Licence No:

Issued in terms of Section 22 of the Mines and Minerals Act.

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

AND WHEREAS provision is made under Section 21 of the Act for the conferring of such rights by means of a prospecting licence:

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

1. The Licence area shall be the area shown on the map annexed hereto, in extent km², located in District and more fully described in Annexure 1 hereto; and as reduced from time to time in accordance with the provisions of the Act.
2. In accordance with the provision of Section 63 of the Act, the holder shall, simultaneously with issuance of this licence and thereafter on each anniversary thereof, pay to the Government at the office of the Commissioner of Mines and Geology, an annual charge equal to multiplied

by the number of square kilometers in the Licence area subject to a minimum annual charge of

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

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

.....
Minister
Ministry of Natural Resources

Annexure 1

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

Point Longitude (east) Latitude (south)

Annexure II

Programme of prospective operations	
Programme of prospecting operations	Proposed minimum expenditure
Year 1	
Year 2	
Year 3	

Mining Lease Application Form (Issue/Renewal)

This Application is in terms of Section 32 of the Mines and Minerals Act

(attach additional sheets or documents where necessary)

1. Name of applicant (attach copy of certificate of incorporation)	Address in Lesotho
2. Full name (s) of Directors	Nationalities
3. Authorised share capital and issued capital	
4. Name (s) of Shareholder who is a beneficial owner of more than 5% of the issued Capital.	
5. Details of Financial Status (attach supporting documents, Bankers reference and most recent financial statements)	
6. Technical Competence (established mining track record is an advantage but is not essential)	
7. Prospecting/mining lease/number	
8. Description of area applied for (attach plan and coordinates)	
9. Name (s) of mineral which it is intended to mine	
10. Period for which lease/renewal is sought	
11. Attach parent company guarantee as in annexure 1	

12. Furnish copy of feasibility study as prescribed including (a) to (h) below

- (a) Details of mineral deposit (including all known, proven, indicated, inferred ore reserves and mining conditions)
- (b) Technical report on mining and treatment possibilities and the applicant's intention in relation thereto
- (c) Proposed programme of mining operations including
 - (i) estimated date by which applicant intends to work for profit
 - (ii) estimated recovery rate(s)
 - (iii) nature of product
 - (iv) envisaged marketing arrangements for sale of mineral product(s)
 - (v) environmental impact assessment study
 - (vi) environmental management programme
- (d) Forecast of capital investment, cash flow and details of anticipated financing plan
- (e) Outline of proposed employment level and training program
- (f) Outline of proposed sources of goods and services
- (g) Details of expected infrastructure requirements
- (h) Attach audited statement of relevant exploration and arms length acquisition expenditure incurred prior to this application on the area applied for

13. Disclose any other information material to this application.

14. Ibeing duly authorized, declare that the application and its partners/directors/members/shareholders are persons qualified in terms of Section 5 of the Mines and Minerals Act to hold a mining lease and that the information contained herein is true and correct.

SignedCapacity

Date..... Place

PARENT COMPANY GUARANTEE

WHEREAS X Ltd a company duly organized and existing under the laws of having its registered office at(hereinafter referred to as “the guarantor” which expression shall include its successors and permitted assignees) holds directly or indirectly a controlling interest in Y Ltd, a company duly incorporated and registered in Lesotho, with its registered office at(with company, including its successors and permitted assignees, is referred to hereinafter as “the company”):

AND WHEREAS the company is the applicant for/holder of a Mining Lease pursuant to the Mines and Minerals Act of Lesotho, by the Government of Lesotho represented by the Minister of Natural Resources (hereinafter referred to as “the Government”) in favour of the said company;

AND WHEREAS the guarantor agrees to guarantee the performance of the obligations of the company under the lease and its compliance with the Act;

NOW THEREFORE this Deed hereby provides as follows:

1. The guarantor hereby unconditionally and irrevocably guarantees to the Government that it will make available, or cause to be made available, to the company or its permitted assignees, such financial, technical, managerial and other resources as are required to ensure that the company and/or any such assignee is able to carry out the obligations of the company or any permitted assignee as set forth in the lease and under the Act.
2. The guarantor further unconditionally and irrevocably guarantees to the Government the due and punctual compliance with or performance by the company or its permitted assignees, of any obligations of the company or any permitted assignees under the lease and the Act.

3. The guarantor hereby undertakes to the Government that if the company, or any permitted assignees, shall, in any respect, fail to perform its obligations under the licence or commits any breach of such obligations under the lease or the Act, then the guarantor shall fulfill or cause to be fulfilled the said obligations in place of the company or any permitted assignees, and will indemnify the Government against all losses, damages, costs, expenses or otherwise which may result directly from such failure to perform or breach on the part of the company or any permitted assignees.
4. This guarantee shall take effect from the date of the issue of the lease and shall remain in full force and effect for the duration of the said lease and any renewal thereof and thereafter until no obligation remains outstanding and no sum remains payable by the company, or its permitted assignees, under the lease or the Act as a result of any decision or award made in any arbitration thereunder.
5. This guarantee shall not be affected by any change in the Articles of Association and byelaws or any change in the ownership or control of the company or the guarantor.
6. The liabilities of the guarantor shall not be discharged or affected by:
 - (a) any time indulgence, waiver or consent given to the company;
 - (b) any amendment to the lease or the Act or to any security or other guarantee or indemnity to which the company has agreed;
 - (c) the enforcement or waiver of any terms of the lease or the provisions of the Act or of any security, other guarantee or indemnity; or
 - (d) the dissolution, amalgamation, reconstruction or reorganization of the company.
7. This guarantee shall be governed by and constructed in accordance with the laws of Lesotho.

The seal of X Ltd was hereto duly affixed byin accordance with its articles this.....day ofin the yearin accordance with its byelaws and this guarantee was duly signed by.....andas required by the said bye-laws, they being duly authorized to represent X Ltd.

.....
Secretary

.....
Chairman and Director

.....
Witness

Form D

Mining Lease No.....

Issued in terms of Section 33 of the Mines and Minerals Act.

WHEREAS.....a company incorporated under the laws of Lesotho and the holder of prospecting/mining lease/number....., and hereinafter referred to as “the Holder”, has applied for a mining lease in respect of a deposit discovered under prospecting license number

AND WHEREAS provision is made under Part V of the Act for the issue or renewal of a Mining Lease.

NOW THEREFORE the Minister hereby grants to the Holder mining lease number.....to mine for.....in the mining lease area on the plan annexed hereto for a period ofyears

commencing on.....and ending on

.....subject to the provisions of the Act and to the terms and conditions of this lease.

1. The Holder shall upon issue of this lease and thereafter on each anniversary thereof, pay to Government at the office of the Commissioner of Mines and Geology a fee in accordance with Section 63 of the Act.
2. The Holder shall carry out its mining operations strictly within the mining lease area and in accordance with the approved programme of mining.
3. The Holder shall pay royalty to Government monthly in accordance with Section 58 of the Act.

GIVEN under my hand at Maseru thisday of
.....in the year.....

.....
*Minister,
Ministry of Natural Resources*

**delete where inapplicable*

Form E

Minerals Permit Application Form (Issue/Renewal)

This application is in terms of Section 52 of the Mines and Minerals Act

(attach additional sheets or documents where necessary)

1. Name of applicant (in case of company attach copy of certificate of incorporation)	Address in Lesotho
2. Full name (s) of partners/directors/members of	Nationalities

association	
3. Name (s) of shareholder	Nationalities
4. Description of area applied for (attached plan and co-ordinates)	
5. Particulars of the minerals for which permit is sought	
6. Period for which permit is sought	
7. Attach proposed programme of working as in Annexure 1	
8. Disclose any other information material to this application	
9. Ibeing duly authorized, declare that the applicant and its partners/directors/members/shareholders are persons qualified in terms of Section 5 of the Mines and Minerals Act to hold a minerals permit and that the information contained herein is true and correct.	
Signed: Capacity:	
Date: Place:	

Annexure 1

Proposed programme of working

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

Minerals Permit No.....

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

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

AND WHEREAS provision is made under Part VI of the Act for the issue/renewal of a mineral permit numberto mine for.....in the minerals permit area demarcated in the plan annexed hereto for period ofyears commencing on and ending onsubject to the provision of the Act and to the terms and conditions of this permit.

1. The Holder shall upon the issue of the permit and thereafter on each anniversary thereof, pay to Government at the office of the Commissioner a fee in accordance with Section 63 of the Act.
2. The Holder shall carry out its operations strictly within the minerals permit area and in accordance with the approved programme of working.
3. The Holder shall pay royalties to Government monthly in accordance with Section 59 of the Act.

GIVEN under my hand at Maseru thisday of.....in the year.....

.....
Minister
Ministry of Natural Resources

*Delete where inapplicable

SCHEDULE II (Section 63)

Fees

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

- (a) Prospecting Licence – M5.00 per km² or part thereof subject to a minimum of M~~100.00~~^{588.00} for industrial minerals and M1000.00 for all other minerals
- (b) Mining Lease – M0.05 per square meter
- (c) Mineral Permit – M100.

NOTE

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- ¹ . Act No. 43 of 1967
 - ² . Act No. 15 of 2001
 - ³ . Act No. 25 of 1967
 - ⁴ . Act No. 17 of 1979
 - ⁵ . Act No. 12 of 1967