GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

R 19,50 WINDHOEK - 31 December 1992 No. 564

CONTENTS

Page

GOVERNMENT NOTICE

No. 199 Promulgation of Minerals (Prospecting and Mining) Act, 1992 (Act 33 of 1992), of the National Assembly 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 199 1992

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 33 of 1992: Minerals (Prospecting and Mining) Act, 1992.

ACT

To provide for the reconnaissance, prospecting and mining for, anddisposal of, and the exercise of control over, minerals in Namibia; and to provide for matters incidental thereto.

(Signed by the President on 16 December 1992)

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:

ARRANGEMENTOF SECTIONS

PART I
Introductory provisions

1. Definitions.

PART II
Rights in relation to minerals

2. Rights in relation to minerals.
3. Prohibition on carrying on certain operations without licence, and transfer of certain licences or grant, cession or assignment of interests in such licences, and joinder of persons as joint holders of such licences or interests.

PART III
Administration of Act

4. Appointment of Mining Commissioner, and designation of other officers.
5. General powers of Commissioner.
6. Preservation of secrecy.
7. Prohibition of certain officers on holding certain interests in mineral licences or in companies holding mineral licences.
8. Limitation of liability.

PART IV
Minerals Board of Namibia

9. Establishment of Minerals Board of Namibia.
10. Functions of board.
11. Constitution of board.
12. Term of office and conditions of service of members of board.
13. Vacation of office by members of board.
14. Meetings of board and decisions.
15. Performance of administrative functions of board.

PART V
Provisions relating to non-exclusive prospecting licences

16. Rights of holders of non-exclusive prospecting licenses.
17. Persons who may apply for non-exclusive prospecting licences.
18. Applications for non-exclusive prospecting licences.
19. Powers of Commissioner in respect of applications for non-exclusive prospecting licences.
20. Restrictions on grant of non-exclusive prospecting licences.
21. Issue of non-exclusive prospecting licences.
22. Duration of non-exclusive prospecting licences.
23. Transfer or renewal of non-exclusive prospecting licences, and grant, cession or assignment of interests in such licences, and joinder of persons as joint holders of such licences or interests.
24. Records to be kept and returns to be submitted by holders of nonexclusive prospecting licences.

PART VI
Pegging of claims

25. Persons who may peg claims.
26. Restrictions on pegging of claims.
27. Limitations on pegging of claims.
28. Manner of pegging of claims.
29. Effect of pegging of claims.
30. Powers of Commissioner in event of failure by holders to comply with provisions of this Part or disputes.

PART VII
Provisions relating to mining claims

31. Rights of holders of mining claims.
32. Persons who may apply for registration of claims.
33. Applications for registration of claims.
34. Powers of commissioner in respect of applications for registration of claims.

35. Restrictions on grant of applications for registration of claims.
36. Registration of claims.
37. Duration of mining claims.
38. Applications for renewal of registration of mining claims.
39. Transfer of mining claims, and grant, cession or assignment of interests in mining claims, and joinder of persons as joint holders of such mining claims or interests.
40. Directions to holders of mining claims.
41. General terms and conditions of registration of mining claims.
42. Work programmes of prospecting operations and mining operations.
43. Abandonment of mining claims.
44. Cancellation of registration of mining claims.
45. Records, maps, plans and financial statements to be kept, and information, reports and returns to be submitted, by holders of mining claims.

PART VIII
General provisions relating to mineral licences

46. Persons who may apply for, or for transfer of, mineral licences or for approval to grant, cede or assign interests in such licences or to be joined as joint holders of such licences or interests.
47. Applications for, or for renewal or transfer of, mineral licences, or for approval for grant, cession or assignment of interests in mineral licences or to be joined as joint holders of such mineral licences or interests.
48. Powers of Minister in respect of applications for, or for renewal or transfer of, mineral licences or for approval for grant, cession or assignment of interests in mineral licences, or to be joined as joint holders of such mineral licences or interests.
49. Mineral agreements.
50. General terms and conditions of mineral licences.
51. Register of mineral licences.
52. Restrictions on exercise of rights by holders of mineral licences.
53. Drilling of boreholes.
54. Abandonment of reconnaissance areas, prospecting areas, retention areas and mining areas.
55. Cancellation of mineral licences.
56. *Vis Major*
57. Directions to holders of mineral licences.

PART IX
Provisions relating to reconnaissance licences

58. Rights of holders of reconnaissance licences.
59. Exclusive rights to carry on reconnaissance operations.
60. Applications for reconnaissance licences.
61. Restrictions on grant of applications relating to reconnaissance licences.
62. Issue of reconnaissance licences.
63. Duration of reconnaissance licences.

64. Transfer of reconnaissance licences, and grant, cession or assignment of interests in such licences, and joinder of persons as joint holders of such licences or interests.
65. Work programmes of reconnaissance operations.
66. Records, maps, plans and financial statements to be kept, and information reports and returns to be submitted, by holders of reconnaissance licences.

PART X
Provisions relating to exclusive prospecting licences

67. Rights of holders of exclusive prospecting licences.
68. Applications for exclusive prospecting licences.
69. Exercise of powers by Minister to grant or refuse exclusive prospecting licences.
70. Issue of exclusive prospecting licences.
71. Duration of exclusive prospecting licences.
72. Applications for renewal of exclusive prospecting licences.
73. Applications for amendment of exclusive prospecting licences.
74. Obligations of holders of exclusive prospecting licences.
75. Work programmes of prospecting operations.
76. Records, maps, plans and financial statements to be kept, and information reports and returns to be submitted, by holders of exclusive prospecting licences.

PART XI
Provisions relating to mineral deposit retention licences

77. Rights of holders of mineral deposit retention licences.
78. Persons who may apply for mineral deposit retention licences.
79. Applications for mineral deposit retention licences.
80. Exercise of powers of Minister to grant or refuse mineral deposit retention licences.
81. Issue of mineral deposit retention licenses.
82. Duration of mineral deposit retention licences.
83. Effect of issue of mineral deposit retention licences on prospecting areas.
84. Applications for renewal of mineral deposit retention licences.
85. Application for amendment of mineral deposit retention licences.
86. Obligations of holders of mineral deposit retention licences.
87. Work programmes of operations carried on in terms of mineral deposit retention licences.
88. Directions by Minister to holders of mineral deposit retention licences to apply for mining licences.
89. Records, maps, plans and financial statements to be kept, and information reports and returns to be submitted, by holders of mineral deposit retention licences.

PART XII
Provisions relating to mining licences

90. Rights of holders of mining licences.
91. Applications for mining licences.
92. Exercise of powers of Minister to grant or refuse mining licences.
93. Issue of mining licences.
94. Duration of mining licences.
95. Effect of issue of mining licences on prospecting areas.
96. Applications for renewal of mining licences.
97. Applications for amendment of mining licences.
98. Obligations of holders of mining licences.
99. Notice of cessation of mining operations.
100. Directions by Minister in relation to mining of minerals or groups of minerals by holders of mining licences.
101. Records, maps, plans and financial statements to be kept, and information, reports and returns to be submitted, by holders of mining licenses.

PART XIII
Provisions relating to source material specified in Part 5 of Schedule 1

102. Possession, disposal, enrichment, reprocessing and export of source materials specified in Part 5 of Schedule 1.
103. Offences and penalties.

PART XIV
High value minerals

104. Prohibitions relating to dealing in or possession of high value minerals.
105. Applications for, and issue of, permits.
106. Obligations of persons authorized under section 105 to purchase, sell, deal in, receive or dispose of, or to be in possession of, high value minerals.

PART XV
Ancillary rights

107. Limitation of fundamental rights contemplated in Article 16 of Constitution.
108. Establishment of Minerals Ancillary Rights Commission.
109. Obtaining of rights by holder of non-exclusive prospecting licence, mineral licence or a mining claim.

110. Consideration of applications by Commission.
111. Costs incurred in respect of applications to Commission.
112. Compensation payable in respect of rights granted.
113. Right of appeal.

PART XVI
Financial matters

114. Royalties payable on minerals.
115. Penalties for late payments.
116. Remission and deferment of royalties or penalties.
117. Powers of Minister in case of failure by holders of licences or mining claims to pay royalties.
118. Security for payment of royalties.
119. Powers of Minister relating to pricing of minerals.
120. Proof of amounts payable in terms of this Part.

PART XVII
General provisions

121. Obligations of persons applying for, non-exclusive prospecting licences, registration of mining claims or mineral licences, and of holders of non-exclusive prospecting licences, mining claims or mineral licences, not resident in Namibia to appoint accredited agents.
122. Reservation of land from prospecting operations and mining operations.
123. Determination of application, licence and registration fees payable in terms of this Act.
124. Notice by Commissioner of applications made in terms of this Act.
125. Order in which applications made in terms of this Act are to be considered.
126. Reports to be submitted by purchasers and sellers of minerals.
127. Export of minerals or groups of minerals.
128. Removal of property from areas to which non-exclusive prospecting licences, mining claims or mineral licences relate on abandonment, cancellation or expiration, and remedying of damage caused to surface of, and environment on, land situated in such areas.
129. Powers of Minister to obtain further information in relation to reconnaissance operations, prospecting operations or mining operations or minerals won, mined, sold or otherwise disposed.
130. Liability of holders of licences or mining claims for pollution of environment or other damages or losses caused.
131. General right of appeal.
132. Service of documents.
133. Miscellaneous offences and penalties.
134. Jurisdiction of court in relation to offences under this Act committed at sea.
135. Evidence.
136. Forfeiture orders.

137. Exemptions.
138. Delegation of powers.
139. Repeal and amendment of laws, and savings.
140. Short title and commencement.

SCHEDULE 1
Groups of minerals, elements and rock

SCHEDULE 2
Laws repealed or amended

PART I
Introductory provisions

1. Definitions.

(1) In this Act unless the context indicates otherwise -

"accessory works" means any building, plant or other structure required for purposes of reconnaissance operations, prospecting operations or mining operations or for the disposal of any mineral or group of minerals won or mined in the course of any such operations, 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 plant, processing plant, smelter or refinery whether erected on land or constructed on any vehicle or vessel;

(g) any waste disposal site; or

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

"accredited agent" means a person designated in accordance with the provisions of section 121 as the accredited agent for the holder of a non-exclusive licence, mining claim or mineral licence, as the case may be;

"base and rare metals group" means, subject to the provisions of subsection (4), a group of minerals containing the elements specified in Part 1 of Schedule 1;

"board" means the Minerals Board of Namibia established by section 9;

"claim" means an area of land which has been pegged as a claim in accordance with the provisions of Part VI;

"claim area" means the area of land of a mining claim;

"Commission" means the Minerals Ancillary Rights Commission established by section 108;

"Commissioner" means the Mining Commissioner appointed under section 4(1);

"company" means–

(a) a company as defined in section 1 of the Companies Act 1973 (Act 61 of 1973) including an external company as so defined to which a certificate of registration has been issued in terms of section 322(2) of that Act; or

(b) a juristic person established by or under any law in force in Namibia;

"controlled mineral" means any mineral specified in the nuclear fuel minerals group, the precious metals group and the precious stones group, and any other mineral declared under subsection (3)(a) to be a controlled mineral;

"dimension stone group" means, subject to the provisions of subsection (4), a group of minerals containing rock material specified in Part 2 of Schedule 1;

"excavation" means any trench, pit, shaft or other open or underground working made in the course of prospecting operations or mining operations, as the case may be, excluding any superficial excavations made for purposes of geochemical soil and rock sampling;

"exclusive prospecting licence" means an exclusive prospecting licence issued under section 70 and includes the renewal of any such licence;

"good mining practices", "good prospecting practices" or "good reconnaissance practices" means any practices which are generally accepted by persons involved in mining operations, prospecting operations or reconnaissance operations, as the case may be, in other countries of the world as good, safe and necessary in carrying out any such operations in relation to a mineral or a group of minerals;

"group", in relation to minerals, means the precious metals group, the base and rare metals group, the precious stones group, the semi-precious stones group, the industrial minerals group, the dimension stone group, the non-nuclear fuel minerals group or the nuclear fuel minerals group;

"high value mineral" means an unwrought precious metal and a rough and uncut emerald, ruby or sapphire, and any other mineral declared under subsection (3)(b) to be a high value mineral;

"industrial minerals group" means, subject to the provisions of subsection (4), a group of minerals specified in Part 3 of Schedule 1;

"land" includes the sea and the seabed within the territorial sea referred to in section 2 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990), the exclusive economic zone referred to in section 4 of that Act and the continental shelf referred to in section 6 of that Act, and land beneath any other water, and the subsoil of land;

"mine" means -

(a) when used as a noun, any place where mining operations are or have been carried on, and includes any excavation or accessory works which is or are necessary for, or incidental to, such mining operations; or

(b) when used as a verb, means any operations calculated to win any mineral or group of minerals from a mine or from any ore won from a mine, and includes any operations which are necessary for, or incidental to, such operations, and "mining" shall have a corresponding meaning;

"mineral" means any substance, whether in solid, liquid or gaseous form, occurring naturally in, on or under any land and having been formed by, or subjected to, a geological process, excluding -

(a) water, not being water taken from land or from the sea for the extraction therefrom of a mineral or a group of minerals;

(b) petroleum, as defined in section I of the Petroleum (Exploration and Production Act), 1991 (Act 2 of 1991); or

(c) subject to the provisions of subsection (2), soil, sand, clay, gravel or stone (other than rock material specified in Part 2 of Schedule 1) if they are *bona fide* required for purposes of -

(i) agriculture, building works, fencing or road making;

(ii) the manufacture of bricks and tiles;

(iii) the construction of sports fields, airfields, railways, bridges, dams, reservoirs, weirs, canals or other irrigation works; or

(iv) any other purpose defined by the Minister by notice in the *Gazette;*

"mineral agreement" means an agreement entered into in terms of section 49;

"mineral deposit retention licence" means a mineral deposit retention licence issued under section 81 and includes the renewal of such licence;

"mineral licence" means a reconnaissance licence, an exclusive prospecting licence, a mining licence or a mineral deposit retention licence and includes the renewal of any such licence;

"mining area" means the area of land to which a mining licence relates;

"mining claim" means a claim registered under section 36 and includes the renewal of the registration of any such claim;

"mining licence" means a mining licence issued under section 93 and includes the renewal of any such licence;

"mining operations" means any operations carried on in connection with mining;

"Minister" means the Minister of Mines and Energy;

"non-exclusive prospecting licence" means a non-exclusive prospecting licence issued under section 21 and includes the renewal of any such licence;

"non-nuclear fuel minerals group" means, subject to the provisions of subsection (4), a group of minerals specified in Part 4 of Schedule 1;

"nuclear fuel minerals group" means, subject to the provisions of subsection (4), a group of minerals specified in Part 5 of Schedule 1;

"officer" means an officer or employee as defined in section 1 of the Public Service Act, 1980 (Act 2 of 1980);

"owner" means -

(a) the person in whose name any private land is registered in the Deeds Registry, and includes -

(i) if the owner of such land is deceased, the executor of his or her estate;

(ii) if the estate of the owner of such land has been sequestrated, the trustee of his or her estate;

(iii) if the owner of such land is a company which has been wound up, the liquidator of such company;

(iv) if the owner of such land is under a legal disability, his or her legal representative;

(v) if such land has been attached in terms of an order of a court of law, the sheriff or deputy sheriff; or

(vi) the person who has been authorized in writing by the owner to act on behalf of such owner for purposes of the provisions of this Act;

(b) a lessee of land owned by the State,

but does not include the holder of any grazing rights in, on or in respect of any such land;

"Permanent Secretary" means the Permanent Secretary: Mines and Energy;

"precious metals group" means, subject to the provisions of subsection (4), a group of minerals containing the elements specified in Part 6 of Schedule 1;

"precious stones group" means, subject to the provisions of subsection (4), a group of minerals specified in Part 7 of Schedule 1;

"private land" means land other than State land, including land leased from the State if the lessee of such land has exercised his or her option to purchase such land;

"prospecting" means intentionally searching, whether by way of excavations or otherwise, for any mineral or group of minerals with a view to delineating or evaluating deposits or concentrations of any such mineral or group of minerals, but does not include "mining";

"prospecting area" means the area of land to which an exclusive prospecting licence relates;

"prospecting operations" means any operations carried on in connection with prospecting, including any accessing, extraction or incidental winning of any mineral or group of minerals for the purposes of mineralogical examination, assaying, testwork or marketability surveys;

"reconnaissance area" means an area of land to which a reconnaissance licence relates;

"reconnaissance licence" means a licence issued under section 62 and includes the extension of such licence;

"reconnaissance operations" means any operations carried on in a general search for any mineral or group of minerals by means of aerial sensing techniques, including geophysical surveys, photogeological mapping or imagery carried on from the air, and "reconnaissance" shall have a corresponding meaning;

"retention area" means an area of land to which a mineral deposit retention licence relates;

"semi-precious stones group" means, subject to the provisions of subsection (4), a group of minerals specified in Part 8 of Schedule 1;

"unwrought precious metal" means any unmanufactured metal consisting of gold, silver, platinum, palladium, osmium, rhodium, iridium and ruthenium in the form of bars, ingots, buttons, wire, plate, granules or in solution or in any other form whatsoever, or any article or substance containing such precious metal, or any article consisting of or containing such precious metal which although manufactured is not as such an article of commerce or a work of art or an article of archaeological interest;

"waste" means any waste rock, tailings, slimes or other residue derived from any prospecting operations, mining operations or processing of any mineral or group of minerals.

(2) The Minister may, if he or she is on reasonable grounds satisfied that at any place or on any land in Namibia, soil, sand, clay, gravel or stone (other than rock material specified in Part 2 of Schedule 1) is won or mined by any person for purposes of the disposal of such soil, sand, clay, gravel or stone to any other person for profit or for use in the course of any business or undertaking, by notice in the *Gazette* declare that any provision of this Act specified in such notice shall apply, subject to such conditions, limitations or exceptions, if any, as may be specified in such notice, to such soil, sand, clay, gravel or stone at such place or on such land specified in such notice as if such soil, sand, clay, gravel or stone were a mineral.

(3) The Minister may, if he or she deems it desirable in the interests of the development or the protection of the mineral resources in Namibia, at any time by notice in the *Gazette* declare -

(a) any mineral other than a diamond to be a controlled mineral;

(b) any mineral other than a diamond to be a high value mineral.

(4) If for purposes of any provision of this Act any dispute arises as to the question whether any mineral falls within any group of minerals, the Minister shall have the power to determine in which group of minerals such mineral shall fall for such purposes, and any such determination shall be final.

PART II
Rights in relation to minerals

2. Rights in relation to minerals.

Subject to any right conferred under any provision of this Act, any right in relation to the reconnaissance or prospecting for, and the mining and sale or disposal of, and the exercise of control over, any mineral or group of minerals vests, notwithstanding any right of ownership of any person in relation to any land in, on or under which any such mineral or group of minerals is found, in the State.

3. Prohibition on carrying on certain operations without licence, and transfer of certain licences or grant, cession or assignment of interests in such licences, and joinder of persons as joint holders of such licences or interests.

(1) Subject to the provisions of this Act, no person shall–

(a) carry on any reconnaissance operations, prospecting operations or mining operations in, on or under any land in Namibia, except under and in accordance with a non-exclusive prospecting licence, a mining claim or a mineral licence, as the case may be; or

(b) transfer any mining claim, exclusive prospecting licence, mineral deposit retention licence or mining licence, or grant, cede or assign any interest in any such claim or licence to any other person, or be joined as a joint holder of such mining claim, licence or interest otherwise than in writing and with the approval in writing of the Minister.

(2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R 100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

PART III
Administration of Act

4. Appointment of Mining Commissioner, and designation of other officers.

(1) The Minister shall, subject to the laws governing the public service, appoint a person to be known as the Mining Commissioner who shall exercise or perform, subject to the direction and control of the Minister, the powers, duties and functions conferred or imposed upon the Commissioner by or under the provisions of this Act and such other functions as may be imposed upon the Commissioner by the Minister.

(2) The Commissioner shall he assisted by such other officers as may be designated by the Permanent Secretary for such purpose.

(3) The powers conferred and the duties and functions imposed upon the Commissioner by or under the provisions of this Act may be exercised or performed by the Commissioner personally or, except in so far as the Commissioner otherwise determines, by any officer referred to in subsection (2) engaged in carrying out such

provisions under the direction and control of the Commissioner.

5. General powers of Commissioner

(1) Subject to the provisions of subsection (2), the Commissioner or any officer who is engaged in carrying out the provisions of this Act and who has been authorized thereto by the Commissioner may, in order to exercise any power or perform any duty or function conferred or imposed by this Act -

(a) at all reasonable times enter any land or place where any reconnaissance operations, prospecting operations or mining operations have been, are or are to be carried on, including any accessory works, or land to which any such operations or accessory works relate;

(b) take or remove, for purposes of mineralogical examination, assaying, testwork or marketability surveys from -

(i) any land, place or accessory works referred to in paragraph (a), any sample of any mineral or group of minerals; or

(ii) any such land, place or accessory works, a sample taken of any sample, or taken of any mineral or group of minerals won or mined, in the course of any operations referred to in paragraph (a);

(c) seize any sample referred to in paragraph (b) or any book, record or document which may in his or her opinion be used in evidence in connection with any offence in terms of this Act;

(d) inspect, make extracts from, and make copies of any book, record or document in relation to any operations or accessory works referred to in paragraph (a);

(e) may make such investigations and inquiries as may be necessary to determine whether the provisions of this Act or any term and condition, direction or order determined, given or made under this Act is being complied with.

(2) The Commissioner or officer referred to in subsection (1) shall -

(a) before exercising any powers under that subsection, identify himself or herself to any holder of a non-exclusive prospecting licence, mining claim or mineral licence or the owner or occupier or other person in charge of the land, place or accessory works, any sample, mineral or group of minerals, or book, record or document in question;

(b) issue a receipt in respect of any sample taken or removed under paragraph (b) of that subsection or any sample, book, record or document seized under paragraph (c) of that subsection;

(c) upon any claim received from the owner of any such sample, return such sample to such owner if it is not used within a reasonable period in evidence in connection with any offence in terms of this Act, or pay to such owner an amount equal to the market value of such sample;

(d) return such book, record or document to the owner of such book, record or document if it is not used within a reasonable period in evidence in connection with any offence in terms of this Act.

(3) The Commissioner or officer referred to in subsection (1) may, in the exercise of his or her powers under that subsection, consult with, or be accompanied by any person who in the opinion of the Commissioner or such officer, has special or expert knowledge of any matter in relation to which such powers are to be exercised.

(4) (a) The holder of a non-exclusive prospecting licence, a mining claim or a mineral licence or the owner or occupier or other person in charge of any land, place, accessory works, mineral, group of minerals, book, record or document referred to in subsection (1) shall provide the Commissioner or officer so referred to with such reasonable facilities or assistance as may be necessary for the exercise of the powers or the performance of the duties and functions conferred or imposed upon the Commissioner or such officer in terms of that subsection.

(b) Any person who contravenes or fails to comply with the provisions of paragraph (a) shall be guilty of an offence and on conviction liable to a fine not exceeding R8 000 or to imprisonment for

a period not exceeding 12 months or to both such fine and such imprisonment.

6. Preservation of secrecy.

(1) The Commissioner, any other officer employed in the Ministry of Mines and Energy, whether or not engaged incarping out the provisions of this Ad, and any other person engaged in carrying out any provision of this Act shall preserve and aid in preserving secrecy in relation to all matters that may come to his or her knowledge in the exercise of the powers or theperformance of the duties and functions conferred or imposed upon the Commissioner or such officer or person in terms of any provision of this Act, and shall not communicate any such matter to any other person or permit any other person to have access toany documents in his or her possession or custody, except in so far as any such communication-

(a) is required by, or may be made in terms of, this Act or any other law, or is required by an order of a competent court;

(b) is effected with the prior permission in writing of the person concerned, or of the Minister granted in respect of any matter which in the opinion of the Minister is of a general nature and may be disclosed in the public interest;

(c) relates to any information submitted, whether by way of a report, return or otherwise, to the Minister or the Commissioner in terms of any provision of this Act in connection with any reconnaissance operations, prospecting operations or mining operations carried on under a non-exclusive prospecting licence, mining licence or claim or mineral licence, as the case may be, unless the holder of such of a mining claim has applied for any other mineral licence or the registration the mining claim in respect of the prospecting area, mining area or claim area, as case may be, in relation to which such information has been submitted or the secrecy of such information is required to be preserved in terms of any term and condition of such mineral licence or mining claim.

(2) Any personwho contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

7. Prohibition of certain officers on holding certain interests in mineral licences or in companies holding mineral licences.

(1) The Commissioner or any other officer employed in the Ministry of Mines and Energy, whether or not engaged in carrying out the provisions of this Act and any other officer engaged in carrying out the provisions of this Act, shall not-

(a) acquire, whether directly or indirectly, any right or interest in any non-exclusive prospecting licence, mining claim or mineral licence;

(b) acquire or hold any share, as defined in section 1 of the Companies Act, 1973 (Act 61 of 1973), or interest in a company which is the holder of a non-exclusive prospecting licence, a mining claim or a mineral licence.

(2) For the purposes of paragraph (b) of subsection (1), the acquisition or holding of a share, as defined in section 1 of the Companies Act, 1973 (Act 61 of 1973), or interest in a company by the husband or wife of the Commissioner or an officer referred to in that subsection, shall be deemed to be an acquisition or holding by the Commissioner or such officer, as the case may be.

(3) Any document or transaction purporting to grant any right or interest referred to in paragraph (a) of subsection (1) upon, or any share certificate or other document purporting to vest any shares or interest referred to in paragraph (b) of that subsection in, the Commissioner or such officer shall be null and void.

(4) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(5) In any prosecution for an offence referred to in paragraph (b) of subsection (1), it shall be a sufficient defence if the accused person proves that the share in question was acquired -

(a) by operation of law and that all reasonable steps necessary have been taken, and are being taken, to dispose of the share or interest; or

(b) before he or she became the Commissioner or an officer referred to in subsection (1) or before the company became the holder of the non-exclusive prospecting licence, mining claim or mineral licence, as the case may be, and that as from the date on which he or she was appointed as the Commissioner or designated as such officer or as from the date on which such company became such holder, all reasonable steps necessary have been taken, and are being taken to dispose of the share.

8. Limitation of liability.

No compensation shall be payable by the State or by the Commissioner or any other officer employed in carrying out the provisions of this Act in respect of any act done in good faith under this Act.

PART IV
Minerals Board of Namibia

9. Establishment of Minerals Board of Namibia.

There is hereby established a board to be known as Minerals Board of Namibia.

10. Functions of board.

(1) The functions of the board shall be to advise the Minister generally or in respect of a particular matter, and make recommendations to him or her, in relation to-

(a) the policy which is or may be followed in relation to the reconnaissance or prospecting for, and the mining and disposal of, and the exercise of control over, any mineral or group of minerals in Namibia, and the manner in which such policy is or may be implemented;

(b) the amendment or application of the provisions of this Act;

(c) any matter referred to the board by the Minister under subsection (2).

(2) Where the Minister is required to exercise or perform any power, duty or function or to take any decision under or for the purposes of this Act, the Minister may, before doing so, request the board to advise him or her in relation to the exercise or performance of such power, duty or function or the taking of such decision.

11. Constitution of board.

(1) The board shall consist of -

(a) the Minister or a person designated by him or her who shall be the chairperson of the board;

(b) two persons nominated by the Chamber of Mines of Namibia and appointed by the Minister of whom –

(i) one shall represent the interests of persons involved in prospecting operations; and

(ii) one shall represent the interests of persons involved in mining operations;

(c) two persons appointed by the Minister of whom -

(i) one in the opinion of the Minister represents he intends of persons involved in small scale prospecting operations;

(ii) one in the opinion of the Minister represents the interests of persons involved in small scale mining operations;

(d) one person appointed by the Minister who in the opinion of the Minister represents the interests of trade unions established in the interests of persons employed by holders of licences issued under this Act or holders of mining claims; and

(e) two persons employed in the Ministry of Mines and Energy designated by the Minister.

(2) For purposes of the constitution of the board in terms of subsection (1) or to fill any casual vacancies which may have occurred in the membership of the board, the Minister shall by notice in writing invite the Chamber of Mines of Namibia to make the required nominations within such period as may be determined by the Minister and specified in such notice.

(3) If the Chamber of Mines of Namibia ceases to exist or fails to comply with any invitation referred to in subsection (2) within the period referred to in that subsection, the Minister may, with due regard to the provisions of subsection (1), appoint as a member of the board a person who in his or her opinion represents the

interests of the persons referred to in paragraph (b)(i) or (ii), as the case may be.

(4) The board may co-opt, with the concurrence of the Minister, on such conditions as may be determined in writing by the Minister-

(a) not more than five persons of whomone each may be designated by-

(i) the Minister of Finance;

(ii) the Minister of Wildlife, Conservation and Tourism;

(iii) the Minister of Fisheries and Marine Resources;

(iv) the Minister of Health and Social Services; and

(v) the Minister of Agriculture, Water and Rural Development,

or, as the circumstances may require, by any one of the said Ministers;

(b) one person designated by any such other Minister or by each one of such other Ministers as the Minister may, after consultation with such other Minister or Ministers, determine;

(c) one or more other persons,

to assist it in the exercise or performance of its functions, but such person or persons shall not be entitled to vote on any matter before the board

12. Term of office and conditions of service of members of board.

(1) Subject to the provisions of section 13, a member of the boardreferred to in paragraph (b), (c) or (d) of subsection (1) of section 11 shall hold office for a period of three years, but may be reappointed at the expiration of that period.

(2) A member of the boardwho is not employed in the public service on a full-time basis shall be paid out of money, appropriated for such purpose by an Act of Parliament, such remuneration and allowances, if any, and in respect of a journey undertaken for purposes of the

business of the board, such subsistence and travelling allowances as the Minister may, with the concurrence of the Minister of Finance, determine.

(3) The remuneration and allowances determined under subsection (2) may differ according to the office on the boardheld by a member of the board concerned or the functions performed by him or her.

13. Vacation of office by members of board.

(1) A member of the boardshall vacate his or her omen if-

(a) the estate of such member is sequestrated, or such member compromises with his or her creditors;

(b) such member is according to thelaw detained as a mentally ill person;

(c) such member is convicted of an offence and sentenced to imprisonment without the option of a fine;

(d) such member, by writing under his or her hand adduced and delivered to the Permanent Secretary, resigns from his or her office as a member of the board;

(e) such member has absented himself or herself from two consecutive meetings of the board without the leave of the chairperson of the board;

(f) such person's nomination or designation, as the case may be, as a member of the board is withdrawn by notice in writing addressed and delivered to the Minister by the person who has nominated or designated him or her.

(2) Any casual vacancy on the boardcaused by the death or vacation of office by any member of the board shall, with due regard to the provisions of section 11, be filled for the unexpired portion of the period of office of the member of the board who has died or vacated his or her office, as the case may be.

14. Meetings of board and decisions.

(1) Subject to the provisions of subsection (2), a meeting of the boardshall be held at such time and place as may be determined by the chairperson of the board.

(2) The chairperson of the boardshall, if he or she is not the Minister, at the request of the Minister or on a reasoned request in writing of at least four members of the board convene a special meeting of the board.

(3) The majority of the members of the boardshall form a quorum for a meeting of the board.

(4) The chairperson of he boardshall preside at all meetings of the board at which he or she is present.

(5) When the chairperson of the boardis absent from a meeting of the board the members of he board present shall elect a person from among their number to act as chairperson at that meeting, and while such member so acts he or she shall have all the powers and shall perform 11 the duties of the chairperson.

(6) The decision of a majority of the members of the boardpresent at the meeting of the board shall be a decision of the board: Provided that in the event of an equality of votes the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(7) The person presiding at a meeting of the boardshall, if such person is not the Minister, cause –

(a) any decision of the boardand the reasons for such decision; and

(b) upon the request of any member who has voted against such decision, his or her reasons for voting against such decision,

to be conveyed to the Minister.

(8) No decision taken by the boardor act performed under the authority of the board shall be invalid by reason only of a vacancy on the board, or by reason only of the fact that any person who is not entitled to sit as a member of the boardsat as a member of the board when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members of the board who were present at the time and entitled to sit as such members.

(9) The board shall cause a record to be kept of the proceedings of the meetings of the board.

(10) The board may make rules in relation to the holding of, and procedure at, meetings of the board.

15. Performance of administrative functions of board

(1) The administrative and clerical work involved in the performance of the functions of the board shall be performed by officers in the Ministry of Mines and Energy made available by the Permanent Secretary for that purpose.

(2) The Permanent Secretary may designate an officer referred to in subsection (1) as secretary of the board

(3) Subject to the provisions of the State Finance Act, 1991 (Act 31 of 1991), the board may, after consultation with the Permanent Secretary and on such conditions as may be mutually agreed upon, obtain the services of such persons as it may deem necessary to advise it in connection with the performance of its functions.

PART V
Provisions relating to non-exclusive prospecting licences

16. Rights of holders of non-exclusive prospecting licences.

(1) Subject to the provisions of subsections (2) and (3), the holder of a non-exclusive prospecting licence shall be entitled-

(a) to carry on prospecting operations on any land for any mineral or group of minerals;

(b) to remove any mineral or group of minerals other than a controlled mineral or sample of such mineral or group of minerals, for any purpose other than she or disposal, from any place where it wasfound or incidentally won in the course of prospecting operations referred to in paragraph (a) to any place within Namibia;

(c) with the permission of the Commissioner previously obtained generally or in every particular case in writing and subjectto such conditions as may be determined by the Commissioner or subject to be conditions of an exemption granted under section 137 -

(i) to remove any mineral or group of minerals referred to in paragraph (b) for any purpose other than sale or disposal, from any place where it was found or incidentally won in the course of prospecting operations referred to in paragraph (a) to any place outside Namibia;

(ii) to remove any controlled mineral or sample of such mineral, for any purpose other than sale or disposal, from any place where it was found or incidentally won in the course of prospecting operations referred to in paragraph (a) to any place, whether within or outside Namibia;

(iii) to remove any mineral or group of minerals, for purposes of sale or disposal, from any place where it was found or incidentally won in the course of such prospecting operations;

(iv) to sell or otherwise dispose of any such mineral or group of minerals.

(2) The holder of a non-exclusive prospecting licence shall not exercise any rights conferred upon such holder by subsection (1)–

(a) in, on or under any private land until such time as such holder has by way of an endorsement on such licence or otherwise obtained the permission in writing of the owner of such land to exercise such rights on such land without the payment of any compensation to such owner, or has complied *mutatis mutandis* with the provisions of section 52(1)(a)(i) or has been granted an ancillary right as provided in section 110(4) to exercise such rights on such land;

(b) unreasonably and in such manner that the rights and interests of the owner of any land to which such licence relates are adversely affected, except to the extent to which such owner is compensated;

(c) in respect of any mineral or group of minerals, in, on or under any land forming part of -

(i) any land in relation to which an application by any other person for a reconnaissance licence and an exclusive right referred to in section 59 in respect of such mineral or group of minerals, submitted to the Commissioner and posted on the notice board in the office of the Commissioner, is pending;

(ii) a reconnaissance area in relation to which an application by any other person for an exclusive right referred to in section 59 in respect of such mineral or group of minerals, submitted to the Commissioner and posted on the notice board in the office of the Commissioner, is pending; or

(iii) a reconnaissance area in relation to which an exclusive right referred to in section 59 has been conferred upon any person in respect of such mineral or group of minerals;

(d) in, on or under any land in a claim area, a prospecting area, a retention area or a mining area or, subject to the provisions of section 29, in, on or under any claim;

(e) in, on or under any land in respect of which an application by any other person for an exclusive prospecting licence, a mineral deposit retention licence or a mining licence, submitted to the Commissioner in accordance with the provisions of section 47 and posted on the notice board in the office of the Commissioner, is pending;

(f) in, on or under any land in respect of any source material specified in Part 5 of Schedule 1.

(3) The provisions of sections 52(1)(b), (c), (d), (e) and (f), (2), (3), (4), (5), (6) and (7) and 53 shall apply *mutatis mutandis* in relation to the holder of a non-exclusive prospecting licence.

(4) An application for the permission referred to in subsection (1)(c), shall be made to the Commissioner in such form as may be determined in writing by the Commissioner and shall be accompanied by such application fee, if any, as may be determined under section 123, together with such documents and information as may be required by the Commissioner.

(5) The holder of a non-exclusive prospecting licence who has removed, as contemplated in paragraph (b) of subsection (1), any mineral or group of minerals other than a controlled mineral or any sample of such mineral or group of minerals from the place where it was found or incidentally won, for any purpose other than for sale or disposal, to any place within Namibia, shall, except to the extent to which such holder has been exempted under the provisions of section 137 from the provisions of this subsection, inform the Commissioner in writing of such removal, not later than 14 days or such longer period after such removal as the Commissioner may allow, and provide particulars of the nature of such sample, mineral or group of minerals and the place to which it has been so removed.

(6) (a) The holder of a non-exclusive prospecting licence who has contravened or failed to comply with the provisions of subsection (1)(c) or (5) shall be guilty of an offence and on conviction liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(b) If in any prosecution in terms of paragraph (a) of this subsection for the contravention or failure to comply with the provisions of subsection (1)(c)(iii), it is proved -

(i) that the holder referred to in that paragraph has removed any mineral or group of minerals from the area to which the non-exclusive prospecting licence relates;

(ii) that such holder has not obtained the permission of the Commissioner for the removal of such mineral or group of minerals as required by subsection (1)(c); and

(iii) that such holder has failed to inform the Commissioner of the removal of such mineral or group of minerals as provided in subsection (5),

it shall be presumed until the contrary is proved that such holder has removed such mineral or group of minerals for purposes of sale or disposal.

17. Persons who may apply for non-exclusive prospecting licences.

Any person may apply for a non-exclusive prospecting licence, provided, in the case of a natural person, such person has reached the age of 18 years.

18. Applications for non- exclusive prospecting licences.

(1) Subject to the provisions of this Act, an application for a non-exclusive prospecting licence shall be made to the Commissioner in such form as may be determined in writing by the Commissioner and shall be accompanied by such application fee and such licence fee in respect of the licence period of such licence as may be determined under section 123.

(2) An application referred to in subsection (1)-

(a) shall contain -

(i) in the case of a natural person -

(aa) the full names, nationality, date of birth, postal and residential address of such person; and

(bb) particulars, if any, of any convictions by a court of law in respect of which he or she was sentenced to imprisonment, whether suspended or not, without the option of a fine; or

(ii) in the case of a company, the name of such company, particulars of its incorporation and registration as a company, the registered address and principal place of business of such company in Namibia and the names and nationality of the directors of the company; and

(iii) in the case of any, such person represented by an accredited agent, the full names and address of such accredited agent;

(b) shall be accompanied by such documents as the Commissioner may require in relation to any particulars referred to in this section; and

(c) may contain any other matter which in the opinion of the person concerned is relevant to the application.

(3) Subject to the provisions of this Act, the Commissioner may grant on such terms and conditions as may be determined in writing by him or her, or refuse to grant, an application referred to in subsection (1).

19. Powers of Commissioner in respect of applications for non-exclusive prospecting licences.

(1) The Commissioner may at any time after receipt of any application for a non-exclusive prospecting licence referred to in section 11 require the person concerned by notice in writing to furnish him or her within such reasonable period as may be specified in such notice, with -

(a) such information specified in such notice as the Commissioner may in his or her discretion deem necessary to enable him or her to determine who, in the case of a company, has the controlling interest in the affairs of the company; or

(b) such other information so specified as the Commissioner may in his or her discretion deem necessary for purposes of considering such application.

(2) In order to enable the Commissioner to consider any application referred to in subsection (1) the Commissioner may cause such investigations to be made or undertaken as the Commissioner may in his or her discretion deem necessary.

20. Restrictions on grant of non-exclusive prospecting licences.

The Commissioner shall not grant an application for a non-exclusive prospecting licence to any natural person, unless such person is a person referred to in section 17 and is in the opinion of the Commissioner a fit and proper person to hold such licence.

21. Issue of non-exclusive prospecting licences.

(1) The Commissioner shall, upon the granting of an application for a non-exclusive prospecting licence, issue to the person who applied for such licence a non-exclusive prospecting licence in such form and on such terms and conditions as may be determined by the Commissioner.

(2) Subject to the provisions of subsection (1), a non-exclusive prospecting licence shall –

(a) contain the full names and address of the holder of the non-exclusive prospecting licence and, in

the case of such a holder who is resident outside Namibia, the full names and address of such holder's accredited agent;

(b) state the date on which and the period for which such non-exclusive prospecting licence is issued;

(c) state, whether or not by way of an annexure to such licence, the terms and conditions subject to which such licence is issued;

(d) contain a reference to the place where the issue of such licence has been recorded in the register kept in terms of section 51, as applied by subsection (3) of this section; and

(e) contain such other particulars as the Commissioner may, either generally or in any particular case, determine.

(3) The provisions of section 51 shall apply in relation to every non-exclusive prospecting licence issued in terms of this section.

22. Duration of non-exclusive prospecting licence.

Subject to the provisions of this Act, a non-exclusive prospecting licence shall be valid for a period of 12 months.

23. Transfer or renewal of non-exclusive prospecting licences, and grant, cession or assignment of interests in such licences, and joinder of persons as joint holders of such licences or interests.

A non-exclusive prospecting licence shall not be transferred or renewed, and the holder of any non-exclusive prospecting licence shall not grant, cede or assign any interest in such licence to any other person, and no person shall be joined as the joint holder of such licence or interest.

24. Records to be kept and returns to be submitted by holders of non-exclusive prospecting licences.

(1) The holder of a non-exclusive prospecting licence -

(a) shall keep at an address in Namibia a proper record in such form as may be determined in writing by the Commissioner in relation to-

(i) the nature and mass or volume of any mineral or group of minerals found or incidentally won in the course of such prospecting operations; and

(ii) the nature, mass or volume and value of any mineral or group of minerals sold or otherwise disposed of and the full names and address of any person to whom such mineral or group of minerals has been sold or otherwise disposed of,

and shall retain such records for a period of not lessthan three years as from the expiry of such licence;

(b) shall submit in respect of the period of such licence's currency to the Commissioner in such form as the Commissioner may determine a statement of income and expenditure derived or incurred inrelation to the information contemplated in paragraph (a);

(c) shall upon the request of the Commissioner produce the record referred to in paragraph (a) or any copies of such records to the Commissioner for inspection.

(2) Any person referred to insubsection (1) who contravenes or fails to comply with the provisions of that subsection shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

PART VI
Pegging of claims

25. Persons who may peg claims.

(1) No person shall peg any claim, unless such person is the holder of a non-exclusive prospecting licence or, with the permission of the Minister referred to in subsection (2), an exclusive prospecting licence, and such person-

(a) is a Namibian citizen; or

(b) is, in the case of a company referred to in paragraph (a) of the definition of "company" in section 1, a company whose articles of association contain a provision providing -

(i) that only Namibian citizens may own shares in such company;

(ii) that only another company whose articles of association contain such a provision may own shares in such first-mentioned company; or

(iii) that only Namibian citizens and a company referred to in subparagraph (ii) may own shares in such first-mentioned company; or

(c) is a company referred to in paragraph (b) of the definition of "company" in section 1.

(2) (a) The Minister may, upon an application made by the holder of an exclusive prospecting licence contemplated in subsection (1) and if the Minister deems it desirable in the interests of the development of the mineral resources of Namibia, grant such holder permission to peg a claim.

(b) An application referred to in paragraph (a) shall be made to the Minister in such form as may be determined in writing by the Minister and shall be accompanied by such application fee, if any, as may be determined under section 123, together with such documents as may be required by the Minister.

(3) Notwithstanding the provisions of subsection (1), the Minister may, upon an application made to him or her in such form as may be determined in writing by the Minister and if the Minister deems it desirable in the interests of the development of the mineral resources of Namibia, declare by notice in the *Gazette* that any company other than a company referred to in paragraph (b) or (c) of subsection (1) shall, for purposes of this section, be deemed, either generally or in respect of any particular claim, to be a company referred to in the said paragraph (b).

26. Restrictions on pegging of claims.

(1) No person shall peg any claim in respect of source material specified in part 5 of Schedule 1.

(2) Subject to the provisions of subsection (3), no person shall peg-

(a) any claim if such person is the holder of 10 or more mining claims;

(b) more than 10 claims; or

(c) such number of claims which would, together with any other claims pegged by him or her or any mining claims of which he or she is the holder, amount to more than 10 claims,

without the prior permission in writing of the Minister.

(3) An application for the permission of the Minister referred to in subsection (2) shall be made to the Minister in such form as may be determined in writing by the Minister and shall be accompanied by such application fee, if any, as may be determined under section 123, together with such documents as may be required by the Minister.

(4) The Minister shall in considering an application referred to in subsection (3) have regard to the interests of the development of the mineral resources of Namibia and the technical and financial resources of, or available to, such person to carry on mining operations or prospecting operations on the claim to which such application relates.

27. Limitations on pegging of claims.

(1) No claim shall, be pegged by a person referred to in section 25-

(a) between sunset and sunrise or on a Sunday or on any public holiday specified in the Schedule to the Public Holidays Act, 1990 (Act 26 of 1990); and

(b) unless such person or any other person authorized thereto by him or her in writing, is present and in possession of such licence or a copy of such first-mentioned person's non-exclusive prospecting licence or the exclusive prospecting licence the case may be, certified as a true copy by a commissioner of oaths, on the land on which such claim is pegged.

(2) The person referred to in subsection (1) shall allot to each claim pegged by him or her in accordance with the provisions of this section an ordinal number in consecutive order commencing from the number one.

(3) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

28. Manner of pegging of claims.

(1) Subject to the provisions of subsection (2), a claim -

(a) shall be of rectangular shape of which the dimensions of its longer an shorter sides shall measure horizontally 600 and 300 metres, respectively;

(b) shall not include portions of land which are not contiguous to each other.

(2) The provisions of subsection (1) shall not apply in relation to a claim in respect of which the proximity of existing claims or mining claims or existing mining areas, prospecting areas or retention areas or the application of the provisions of section 16(2) renders such shape and dimensions impossible: Provided that the area of such claim shall not exceed 18 hectares.

(3) Subject to the provisions of subsection (5), a claim referred to in subsection (1) shall be pegged by erecting–

(a) two middle beacons 300 metres horizontally apart, each at the middle point of the long sides of such claim;

(b) four corner beacons, each on one of the four corners of such claim; and

(c) such line beacons between any of the beacons referred to in paragraphs (a) and (b) as may be necessary to ensure that the two beacons adjoining any beacon on the boundary of such claim are clearly visible from such last-mentioned beacon.

(4) Subject to the provisions of subsection (5), a claim referred to in subsection (2) shall be pegged by erecting–

(a) a corner beacon at each point where each line on the boundary of such claim changes direction on a horizontal level; and

(b) such line beacons between any of the beacons referred to in paragraph (a) as may be necessary to ensure that the two beacons adjoining any beacon on the boundary of such claim are clearly visible from such last-mentioned beacon.

(5) If the place at any point where a beacon is in terms of the provisions of this section required to be erected is not reasonably accessible, one indicatory beacon shall be erected on each one of he boundary lines which meet at such point as near as possible to such point indicating the position of such point.

(6) Every beacon contemplated in this section shall consist of -

(a) a peg, consisting of -

(i) a metal rod in diameter of not less than 20 millimetres or a metal fencing pole of any diameter; or

(ii) a wooden pole in diameter of not less than 50 millimetres,

fixed, having regard to the nature of the surface of the land, firmly in an upright position projecting at least one metre above the surface of the ground;

(b) a beacon plate at the uppermost end of the peg referred to in paragraph (a), consisting of a rectangular metal or strong wooden plate, the long and short sides of which shall measure not less than 300 millimetres and 230 millimetres, respectively;

(c) a cairn of stones of conical shape having a diameter at its base of not less than one metre and is apex rising to at least 300 millimetres in height up the peg from the surface of the ground or, in an area where sufficient stones are not available, a heap of sand or gravel of such shape having a diameter at its base of not less than two metres and its apex rising to at least 300 millimetres in height up the peg from the surface of the ground;

(d) where the nature of the surface of land permits, a trench of 300 millimetres deep and 300 millimetres wide surrounding the base of the cairn of stones or heap of sand or gravel referred to in paragraph (c); and

(c) a trench of 300 millimetres deep and 300 millimetres wide or, where the nature of the surface of the land does not permit the digging of any such trench, a line of stones, extending outward from the base of the cairn a stones or heap of sand or gravel referred to in paragraph (c) for a distance of not less than two metres in the direction of the two beacons adjoining such beacon on the boundary of such claim.

(7) Each beacon plate referred to in subsection (6) shall display in legible block letters of at least 25 millimeters in height -

(a) the name of the holder of the licence in question;

(b) the nature and number of the licence in question;

(c) the ordinal number allotted by such holder to such claim in terms of section 27(2);

(d) the date on which such claim was pegged in accordance with the provisions of subsection (3) or (4), as the case may be;

(e) a description of the type of beacon as being a middle beacon, a corner beacon, a line beacon or an indicatory beacon, as the case may be; and

(f) in the case of an indicatory beacon, the distance expressed in metres from the peg of such beacon to the point to which such indicatory beacon relates.

(8) If a claim adjoining any existing claim is pegged and any beacon of such existing claim is situated on a point where a beacon for he first-mentioned claim is, in terms of the provisions of this section, required to be erected, the holder of the licence in question pegging such claim may, in erecting a beacon at such point, make use, without causing any damage to such first-mentioned beacon, of any part of such beacon other than the peg or beacon plate thereof.

29. Effect of pegging of claims.

Subject to the provisions of' this Act, no person other than the holder of the licence in question who has pegged a claim as provided in section 28(3) or (4) shall carry on any prospecting operations, and no person shall peg any claim or carry on any mining operations on any such first-mentioned claim -

(a) during a period of 21 days as from the date on which such claim was so pegged; or

(b) if application has been made to the Commissioner for the registration of such claim in terms of section 33, during a period as from the date onwhich such application has been so made until such application is refused or the application is withdrawn or has lapsed, whichever occurs first, or, if such application is granted, until such time as the registration of such claim is entered in the register referred to in section 36(2).

30. Powers of Commissioner in event of failure by holders to comply with provisions of this Part or disputes.

(1) If the Commissioner has at any time, whether before or after the registration of a claim, reason to believe that the holder of the licence in question who has pegged a claim, has contravened or failed to comply with any provision of this Part, or if any dispute arises between any such holder and any other person who has a direct and substantial interest in any matter relating to such pegging whether such holder has contravened or has failed to comply with any such provision, the Commissioner shall make such investigations in such manner and in accordance with such procedure as he or she may deem necessaryor expedient.

(2) If after any investigation referred to in subsection (1), the Commissioner finds that the holder referred to in that subsection has contravened or failed to comply with any provision of this Part, the Commissioner–

(a) may by noticein writing addressed and delivered to such holder inform such holder of his or her findings and the reasons for such finding and

(i) direct such holder to take, within the period specified in such notice such steps as the Commissioner may determine and specified in such notice, to give effect to the provisions of this Act; or

(ii) declare the pegging of such claim to be null and void, whereupon such claim shall, for purposes of the provisions of this Act, be deemed to have been abandoned; and

(b) may direct such holder or the other person referred to in subsection (1) to pay-

(i) for the benefit of the State Revenue Fund the costs or any part of such costs incurred by the Commissioner in connection with such investigation;

(ii) to the holder or such person, as the case may be, the coos or any part of such costs incurred by such holder or person in connection with any dispute between them which gave rise to such investigation.

(3) A direction referred to in paragraph (b) of subsection (2) shall be executable as if such direction were a judgement of a magistrate's court.

(4) Any person who contravenes or fails to comply with a direction referred to in subsection (2) shall be guilty of an offence and on conviction liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 monks or to both such fine and imprisonment.

(5) If the holder referred to in subsection (1) fails to take to the satisfaction of the Commissioner the steps specified in the notice referred to in paragraph (a) of subsection (2) within the period specified in such notice or such further period as the Commissioner may on good cause shown allow, the Commissioner may cause such sops to be taken and recover in a competent court the costs incurred thereby from such holder.

PART VII
Provisions relating to mining claims

31. Rights of holders of mining claims.

(1) Subject to the provisions of this Act and the terms and conditions subject to which any mining claim has been registered, he holder of a mining claim shall be entitled -

(a) to carry on mining operations on such mining claim for any mineral or group of minerals in respect of which such mining claim has been registered;

(b) to carry on on such mining claim–

(i) in lieu of any mining operations referred to in paragraph (a), any prospecting operations in relation to any mineral or group of minerals for a period not exceeding six months as from the date on which such mining claim is registered or, upon the expiry of such period, such further period as the Commissioner may, on application to the Commissioner by the holder of such mining claim in such form as may be determined in writing by the Commissioner and on good cause shown, approve in writing;

(ii) in conjunction with any mining operations referred to in paragraph (a), any prospecting operations in relation to any mineral or group of minerals;

(c) to remove any mineral or group of minerals other than a controlled mineral or sample of such mineral or group of minerals, for any purpose other than sale or disposal, from any place where it was won or mined in the course of mining operations referred to in paragraph (a) or found or incidentally won in the course of prospecting operations referred to in paragraph (b) to any other place within Namibia;

(d) with the permission in writing of the Commissioner previously obtained generally or in every particular case and subject to such terms and conditions as may be determined by the

Commissioner or subject to the conditions of an exemption granted under section 137 -

(i) to remove any mineral or group of minerals referred to in paragraph (c) for any purpose other than sale or disposal, from any place where it was won or mined in the course of mining operations referred to in paragraph (a) or found or incidentally won in the course of prospecting operations referred to in paragraph (b) to any place outside Namibia;

(ii) to remove from the claim area, for any purpose other than sale or disposal, any controlled mineral or sample of such mineral won or mined in the course of mining operations referred to in paragraph (a) or found or incidentally won in the course of prospecting operations referred to in paragraph (c) to any other place, whether within or outside Namibia;

(iii) to remove from the claim area, for purposes of sale or disposal, any mineral or group of minerals, won or mined in the course of mining operations referred to in paragraph (a) or found or incidentally won in the course of prospecting operations referred to in paragraph (b)(i);

(iv) to sell or otherwise dispose of any such mineral or group of minerals;

(e) to carry on such other operations, including the erection or construction of accessory works, as may be reasonably necessary for, or in connection with, any mining operations, prospecting operations, removal, selling or disposal contemplated in paragraph (a), (b), (c) or (d).

(2) The provisions of sections 52(1)(a), (b), (c), (d), (e) and (f), (2), (3), (4), (5), (6) and (7) and 53 shall apply *mutatis mutandis* in relation to the exercise by the holder of a mining claim of the right to carry on mining operations or prospecting operations referred to in this section.

(3) (a) The holder of a mining claim shall not erect or construct any accessory works referred to in subsection (1)(c) without the prior permission in writing of the Commissioner.

(b) The Commissioner shall not grant the permission referred to in paragraph (a) in respect of a mining claim situated on private land, unless the holder of the mining claim -

(i) has entered into an agreement in writing with the owner of such land containing terms and conditions relating to the payment of compensation and has submitted a copy of such agreement to the Commissioner; or

(ii) has been granted an ancillary right as provided in section 110(4) to exercise such rights on such land.

(4) An application -

(a) to carry on prospecting operations in accordance with the provisions of subsection (1)(b)(i) for a period longer than six months;

(b) for the permission referred to in subsection (1)(d) or (3), shall be made to the Commissioner in such form as may be determined in writing by the Commissioner and shall be accompanied by such application fee, if any, as may be determined under section 123, together with such documents and information as may be required by the Commissioner.

(5) The holder of a mining claim who has removed, as contemplated in paragraph (c) of subsection (1), any mineral or group of minerals other than a controlled mineral or any sample of such mineral or group of minerals from the place where it was found or won, for any purpose other than for sale or disposal, to any other place within Namibia, shall, except to the extent to which such holder has been exempted under the provisions of section 137 from the provisions of this subsection, inform the Commissioner in writing of such removal, not later than 14 days or such longer period after such removal as the Commissioner may allow, and provide. particulars of the

nature of such sample, mineral or group of minerals and the place to which it has been so removed.

(6) (a) The holder of a mining claim who has contravened or failed to comply with the provisions of subsection (1)(b)(i) or (d), (3) or (5) shall be guilty of an offence and on conviction liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(b) If in any prosecution in terms of paragraph (a) of this subsection for an offence referred to in subsection (1)(d)(iii), it is proved -

(i) that the holder referred to in that paragraph has removed any mineral or group of minerals from the claim area to which the mining claim relates;

(ii) that such holder has not obtained the permission of the Commissioner for the removal of such mineral or group of minerals as required by subsection (1)(d); and

(iii) that such holder has failed to inform the Commissioner of the removal of such mineral or group of minerals as provided in subsection (5),

it shall be presumed until the contrary is proved that such holder has removed such mineral or group of minerals for purposes of sale or disposal, as the case may be.

32. Persons who may apply for registration of claims.

A person who has pegged a claim in accordance with the provisions of Part VI may apply for the registration of such claim.

33. Applications for registration of claims.

(1) Subject to the provisions of this section, an application for the registration of a claim shall be made to the Commissioner in such form as may be determined in writing by the Commissioner within 21 days as from the date on which such claim has been pegged as provided in section 28, and shall be accompanied by such application fee and such claim fee in respect of the first registration period of such mining claim as may be determined under section 123.

(2) An application referred to in subsection (1)-

(a) shall contain -

(i) in the case of a natural person-

(aa) the full names, nationality, date of birth, postal and residential address of such person; and

(bb) particulars, if any, of any convictions by a court of law in respect of which he or she was sentenced to imprisonment, whether suspended or not, without the option of a fine; or

(ii) in the case of a company, the name of such company and particulars of its incorporation and registration as a company, the registered address and principal place of business of the company in Namibia, the full names and nationality of the directors of the company, the share capital of the company and the full names and nationality of any person who is the beneficial owner of more than five per cent of the shares issued by such company; and

(iii) in the case of any person represented by an accredited agent, the full names and address of such accredited agent;

(b) shall contain particulars of -

(i) any licences issued in terms of this Act or any law repealed by this Act held by such person alone or jointly with any other person; and

(ii) any prospecting operations and mining operations carried on by such person alone or jointly with any other person outside Namibia, on the date of such application and during a period of 10 yews immediately preceding such date; and

(c) shall contain -

(i) particulars of the mineral or group of minerals which such holder intends to mine on such claim;

(ii) the date on which such claim was pegged in accordance with the provisions of section 28(3) or (4), as the case may be;

(iii) the ordinal number allotted by such holder to such claim in terms of section 27(2);

(iv) the number and, if any, the name of the property on, and the magisterial district in, which the claim has been pegged, and the name and postal address of the owner of such property;

(v) particulars, substantiated by documentary proof or such other proof as may be required by the Commissioner, of the technical and financial resources of, or available to, such person to carry on mining operations or prospecting operations on the claim to which the application relates; and

(vi) particulars of -

(aa) the condition of, and any existing damage to, the environment in the area to which the application relates; and

(bb) an estimate of the effect which the proposed prospecting operations and mining operations may have on the environment and the proposed steps to be taken in order to minimize or prevent any such effect;

(d) shall contain, in the case of an application for the renewal of the registration of a mining claim, particulars of -

(i) mining operations carried on on the mining claim in question and the amount expended in respect of such mining claim during the period as from the date on which it was registered or, if such registration was previously

renewed, the date on which it was so renewed, to a date not later than 14 days prior to such application; and

(ii) any mineral or a group of minerals mined on such mining claim and sold or otherwise disposed of during such period as the Commissioner may require;

(e) shall be accompanied by a sketch-plan in quadruplicate, together with such certificate as the Commissioner may require verifying the accuracy of such sketch-plan and confirming that the beacons of such claim have been erected in accordance with the provisions of Part VI-

(i) drawn as near as possible to scale in ink on strong or durable paper;

(ii) showing the direction of either the true or magnetic north pointing towards the top edge of such paper;

(iii) showing the relative position of every middle beacon, corner beacon, line beacon or indicatory beacon erected on the boundaries of such claim, and the length of each boundary line of such claim;

(iv) showing the position of all adjoining claims, mining claims or mining areas, exclusive prospecting areas or retention areas which are marked by beacons, the names of holders of such licences and the ordinal numbers appearing on such beacons;

(v) showing the position of such claim relative to -

(aa) the boundaries of, and any buildings on, the property on which such claim is pegged and the approximate angle of direction to, and distance from, at least one of the corner beacons of the claim to the nearest corner beacon or peg of such property;

(bb) any building, water supply, road, railway, river-bed, fence, trigonometrical beacon, claim, mining claim, mining area, exclusive prospecting area or retention area which is marked with beacons within such claim or within 500 metres of any boundary of such claim; and

(vi) showing any other particulars so as to enable the claim to be located on the land where it is situated and to be plotted on a topocadastral map;

(f) shall be accompanied by such other documents as the Commissioner may require in relation to any particulars referred to in this section; and

(g) may contain any other matter which in the opinion of the person concerned is relevant to the application.

(3) Subject to the provisions of this Act, the Commissioner may grant on such terms and conditions as may be determined in writing by him or her, or refuse to grant, an application referred to in subsection (1).

34. Powers of Commissioner in respect of applications for registration of claims.

(1) The Commissioner may at any time after the receipt of any application referred to in section 33 for the registration of a claim, require the person concerned by notice in writing to furnish him or her within such reasonable period as may be specified in such notice with -

(a) such information specified in such notice as the Commissioner may in his or her discretion deem necessary to enable him or her to determine who, in the case of a company, are the shareholders of such company; and

(b) such other information so specified as the Commissioner may in his or her discretion deem necessary for purposes of considering such application.

(2) In order to enable the Commissioner to consider any application referred to in subsection (1) the Commissioner may cause such investigations to be made or

undertaken as the Commissioner may in his or her discretion deem necessary, and may, in consequence of any such investigations, give such directions in writing to the person referred to in subsection (1) in relation to such application as the Commissioner may deem reasonably necessary or expedient.

(3) In considering any application referred to in subsection (1) and the terms and conditions subject to which such application may be granted, the Commissioner shall take into account the need to conserve and protect the natural resources in, on or under the land to which the application relates and in, on or under adjoining or neighbouring land.

35. Restrictions on grant of applications for registration of claims.

The Commissioner shall not grant an application for the registration by any person of a claim -

(a) unless such person is a person referred to in section 32;

(b) unless such person hascomplied with the provisions of Part VI;

(c) if, at the time of the application, such person is contravening any provision of this Act or any term and condition, direction or order determined, given or made under any provision of this Act or is failing to comply with any such provision, term and condition, direction or order;

(d) unless such claim is situated in an area of land in which, and relates to any mineral or group of minerals in respect of' which, such person was entitled, at the time of the pegging of such claim, to carry on prospecting operations;

(e) unless the Commissioner is on reasonable grounds satisfied–

(i) that such claim contains a mineral or a group of minerals to which the application relates which in the Commissioner's opinion may be mined and sold or otherwise disposed of on a profitable basis;

(ii) that such person intends to carry on mining operations in good faith and has the technical and financial resources to do so; and

(iii) that in the course of any such mining operations or any prospecting operations which may be carried on in lieu of' such mining operations appropriate measures will be taken to minimize or prevent any pollution of the environment.

36. Registration of claims.

(1) The Commissioner shall, upon the granting of an application for registration of a claim -

(a) register such claim, subject to such terms and conditions as may be determined in writing by the Commissioner.

(b) enter such registration in the register of mining claims kept in terms of subsection (2);

(c) issue, in such form as may be determined in writing by the Commissioner, a registration certificate to the person concerned which shall-

(i) state the full names and address of the holder of the mining claim and, in the case of such a holder who is resident outside Namibia, the full names and address of such holder's accredited agent;

(ii) state the date on which and the period for which such mining claim is registered;

(iii) contain a copy of the sketch-plan referred to in section 33(2)(e) or a diagram, prepared by an officer employed in the Ministry of Mines and Energy and designated by the Permanent Secretary for that purpose, of the claim area in question containing geometrical or numerical depictions or any combination of such depiction and a description in words or symbols of such mining claim;

(iv) state the mineral or group of minerals in respect of which such mining claim is registered;

(v) state, whether or not by way of an annexure to such registration certificate, the terms and conditions subject to which such mining claim has been registered; and

(vi) contain such other particulars as the Commissioner may, either generally or in any particular case, determine; and

(d) forthwith inform the owner of the land on which the claim is situated by notice in writing of the registration of such claim and furnish such owner of such particulars of the holder and the location of such claim as the Commissioner may deem appropriate.

(2) The Commissioner shall keep and maintain a register of mining claims in which shall be recorded -

(a) the full names and such other particulars of the holder and jolt holder of a mining claim or interest in such mining claim in whose name such mining claim or interest has been registered or to whom such claim has been transferred or to whom an interest in such mining claim has been granted, ceded or assigned as may be determined in writing by the Commissioner and, in the case of a holder or joint holder of a mining claim who is resident outside Namibia, the full names and address of his or her accredited agent;

(b) the date on whichsuch mining claim has been registered or transferred or any interest in such mining claim has been granted, ceded or assigned or a person has been joined as joint holder of such mining claim or interest and the date on which such mining claim will lapse in terms of section 37;

(c) the date on which the registration of such claim has been renewed in terms of section 38 and the date on which such registration will lapse after such renewal;

(d) a description of the location of such mining claim, including, if furnished or otherwise acquired in terms of section 40(3)(a) or 41(3), the longitude and latitude co-ordinates of any beacons of such claim;

(e) the minerals or group of minerals in respect of which such mining claim has been registered;

(f) particulars of any permissions granted under any provision of this Act in relation to such mining claim;

(g) the date on which the registration of such mining claim has been cancelled in terms of section 44;

(h) particulars of' any agreement or ancillary right referred to in section 52, as applied by section 3 121 and

(i) such other particulars as may in the opinion of the Commissioner be necessary for purposes of carrying out the provisions of this Act to effect an efficient system of registration of mining claims and any interests in such mining claims.

(3) A copy of the registration certificate issued in terms of paragraph (c) of subsection (1) and the register referred to in subsection (2) shall during ordinary office hours be open forinspection by any person free of charge, and any person may on payment of such fee as may be determined under section 123 obtain copies of such registration certificate or extracts from such register.

37. Duration of mining claims.

(1) Subject to the provisions of this Act, the registration of a mining claim shall lapse -

(a) on a date three years as from the date on which such mining claim has been registered;

(b) on such later date or dates not exceeding two years at a time as from the date on which such registration has from time to time been renewed in terms of section 38; or

(c) on the date on which a mineral deposit retention licence or a mining licence is issued to the holder of such mining claim in respect of the claim area.

(2) Notwithstanding the provisions of subsection (1), but subject to the other provisions of this Act, where an application is made by the holder of a mining claim for-

(a) the renewal of the registration of' such mining claim; or

(b) a mineral deposit retention licence or a mining licence in relation to the claim area of such mining claim,

the registration of such mining claim shall not lapse until such application is refused or the application is withdrawn or has lapsed, whichever occurs first or, ifsuch application is granted, until such time as a registration certificate is issued in respect of such renewal or, as the case may be, a mineral deposit retention licence or mining licence is issued in consequence of such application.

38. Applications for renewal of registration of mining claims.

(1) Subject to the provisions of subsection (2) of this section, the provisions of sections 33, 34, 35 and 36 shall apply *mutatis mutandis* in relation to an application for the renewal of the registration of a mining claim.

(2) An application for the renewal of the registration of a mining claim shall be made not later than 90 days before the date on which the registration of such mining claim will lapse if it is not renewed or such later date, but not later than the date on which such registration will lapse, as the Commissioner may on good cause shown allow.

39. Transfer of mining claims, and grant, cession or assignment of interests in mining claims, and joinder of persons as joint holders of such mining claims or interests.

(1) An application for the approval of the Minister for the transfer of a mining claim to any other person or for the grant, cession or assignment of an interest in any mining claim, or to be joined as a joint holder of a mining claim or such interest, shall be made to the Commissioner in such form as may be determined in writing by him or her and shall be accompanied by-

(a) an agreement in writing entered into between the holder of the mining claim and the person to whom such mining claim is to be transferred or, to whom any interest in such mining claim is to be granted, ceded or assigned or the person to be joined as a joint holder of such mining claim or interest in which it is agreed to the satisfaction of the Minister that such transfer, grant, cession or

assignment is, subject to the approval of the Minister, final;

(b) the registration certificate issued to the holder of such mining claim and a sketch-plan, in quadruplicate, of such mining claim bearing its ordinal number; and

(c) such application In if any, as may be determined under section 123.

(2) Subject to the provisions of this Act, the Minister may grant on such terms and conditions as may be determined in writing by him or her, or refuse to grant an application referred to in subsection (1).

(3) The Minister shall not grant an application referred to in subsection (1)-

(a) if, at the time of the application, the holder of the mining claim is contravening any provision of this Act or any term and condition, direction or order determined, given or made under any provision of this Act or is failing to comply with any such provision, term and condition, direction or order;

(b) unless the person to whom the mining claim is to be transferred or an interest in such mining claim .is to be granted, ceded or assigned or the person to be joined as a joint holder of such mining claim or interest is a person contemplated in paragraph (a), (b), (c) or (d) of subsection (1) of section 25.

(4) The Commissioner shall, upon the granting of an application referred to in subsection (1) -

(a) register the transfer of the mining claim or the grant, cession or assignment of an interest in a mining claim or joinder of a person as joint holder of such mining claim or such interest *mutatis mutandis* in accordance with the provisions of section 31 and shall thereupon issue *mutatis mutandis* in accordance with the provisions of section 36(1)(c) a new or other appropriate registration certificate in which such transfer, grant, cession, assignment or joinder is reflected; and

(a) notify *mutatis mutandis* in accordance with the provisions of section 36(1)(d) the owner of the

land on which such mining claim is situated of the transfer of such mining claim or the grant, cession or assignment of an interest in such claim or the joinder of a joint holder of such mining claim or interest.

(5) The person to whom a mining claim has, in terms of the provisions of this section, been transferred shall, within 30 days as from the date on which a registration certificate has been issued to him or her, with due regard to the provisions of Part VI, substitute on every claim beacon of such mining claim his or her own peg for the peg of the person from whom such mining claim was transferred bearing, in addition to the particulars referred to in section 28(7), words indicating from whom and the date on which such claim was transferred.

(6) The transfer of a mining claim or the grant, cession or assignment of any interest in a mining claim or the joinder of a person as joint holder of such mining claim or interest shall not affect any legal proceedings instituted against the holder of such claim, and such legal proceedings shall be continued as if such transfer, grant, cession, assignment or joinder had not taken place.

(7) Where -

(a.) any mining claim is transferred in accordance with the provisions of this Act;

(b) any interest in any mining claim is so granted, ceded or assigned; or

(b) any person is so joined as joint holder of such mining claim or interest,

all the rights, liabilities and obligations which vested in the holder of such mining claim on the date immediately before such transfer, grant, cession, assignment or joinder shall vest, as from the date of such transfer, grant, cession, assignment or joinder, in the person to whom such mining claim was so transferred or such interest was so granted, ceded or assigned or who was so joined, in so far as such mining claim was so transferred or such interest was so granted, ceded or assigned or such person was so joined.

(8) The provisions of subsection (7) shall not be construed as-

(a) limiting the right of, or preventing, any person to whom private land on which a mining claim is situated is transferred from, requiring from the holder of any such mining claim to enter into a new agreement contemplated in section 52(1)(a)(i); or

(b) in the absence of any such agreement, limiting the right of, or preventing, such holder to obtain an ancillary right as provided in section 110(4).

(9) Any holder of a mining claim who contravenes or fails to comply with the provisions of subsection (5) shall be guilty of an offence and liable upon conviction to a fine not exceeding R 1 000 or to imprisonment for a period not exceeding six months.

40. Directions to holders of mining claims.

(1) The provisions of section 57 shall apply *mutatis mutandis* in relation to a mining claim.

(2) in the application of the provisions of section 57 –

(a) any reference to the Minister, shall be construed as a reference to the Commissioner;

(b) any reference to the holder of a mineral licence, shall be construed as a reference to a holder of a mining claim; and

(c) any reference to reconnaissance operations shall be deemed to have been deleted.

(3) (a) The Commissioner may at any time-

(i) by notice in writing addressed and delivered to the holder of a mining claim require such holder to furnish the Commissioner within such period as may be determined by him or her in such notice of the longitude and latitude co-ordinates of each corner beacon of such claim; or

(ii) cause the beacons of any mining claim to be surveyed and the longitude and latitude co-ordinates of such beacons to be determined,

and may enter such co-ordinates into the register referred to in section 36(2).

(b) Any holder of a mining claim referred to in paragraph (a) who fails to comply with a notice referred to in that paragraph shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

41. General terms and conditions of registration of mining claims.

(1) It shall be a term and condtion of the registration of a mining claim that the holder of such mining claim shall -

(a) exercise any right granted to him or her in terms of the provisions of this Act reasonably and in such manner that the rights and interests of the owner of any land to which such mining claim relates are not adversely affected, except to the extent to which such owner is compensated;

(b) carry on, in accordance with the provisions of section 31, mining operations or prospecting operations in the claim area in accordance with good mining practices or good prospecting practices;

(c) maintain all beacons erected on such mining claim in such a condition that they at all times comply with the provisions of section 28(6) and (7);

(d) at the request of -

(i) the Commissioner;

(ii) the owner of the land on which such mining claim is situated;

(iii) the holder of a licence who desires to peg in terms of Part VI a claim adjoining such mining claim; or

(iv) the holder of an exclusive prospecting licence, a mineral deposit retention licence or a mining licence in respect of a prospecting area, a retention area or mining area, as the case may be, adjoining such mining claim,

point out all beacons erected on such mining claim upon payment of any expenses to be incurred by the holder of such mining claim or, if such beacons as shown on the sketch-plan referred to in section 33(2)(e) cannot readily be located on the land, free of charge;

(c) take all reasonable steps necessary to secure, in accordance with any applicable law, the safety, welfare and health of persons employed in such claim area, and to prevent or minimize any pollution of the environment;

(f) maintain, in accordance with any applicable law, in good condition and repair all accessory works in such claim area;

(g) remove from such claim area all structures, equipment and other goods not used or intended to be used in connection with mining operations and prospecting operations;

(h) take, in accordance with any applicable law, reasonable steps to warn persons who may from time to time be in the vicinity of any accessory works of the possible hazards resulting therefrom;

(i) give to the Commissioner notice of -

(i) the discovery of any mineral or group of minerals other than a mineral or group of minerals to which such mining claim relates;

(ii) the discovery, as defined in section 1 of the Petroleum (Exploration and Production) Act, 1991 (Act 2 of 1991), of petroleum,

within 30 days after such discovery; and

(j) in the case of a company, give to the Commissioner notice of any change of -

(i) the name of such company;

(ii) the registered address and principal place of business of the company in Namibia;

(iii) the directors of the company;

(iv) the share capital of the company;

(v) the beneficial owner of more than five per cent of the shares issued by such company,

within 30 days as from such change.

(k) in the case of a natural person, give to the Commissioner notice of any change of the address of such person within 30 days as from such change.

(2) (a) If the holder of a mining claim referred to in subsection (1) fails to comply with the provisions of that subsection, the Commissioner may at any time by notice in writing addressed and delivered to such holder, direct such holder to take, within the period specified in such notice, such steps as may be so specified.

(b) A holder referred to in paragraph (a) who contravenes or fails to comply with a direction given under that paragraph shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(c) If the holder referred to in paragraph (a) fails to take to the satisfaction of the Commissioner the steps specified in the notice so referred to within the period specified in such notice or such further period as the Commissioner may on good cause shown allow, the Commissioner may cause such steps to be taken, and recover in a competent court the costs incurred thereby from such holder.

(3) The Commissioner may cause any beacons pointed out in terms of paragraph (d) of subsection (1) to be surveyed and may enter the longitude and latitude co-ordinates of such beacons so determined into the register referred to in section 36(2).

42. Work programmes of prospecting operations and mining operations.

(1) The holder of a mining claim who is, by virtue of the terms and conditions of registration of such mining claim, required to carry on, within a particular period and in accordance with a work programme, certain mining operations, prospecting operations or other operations referred to in paragraph (c) of subsection (1) of section 31, or to expend certain expenditure, shall furnish the Commissioner on such date or dates as may be determined by the Commissioner and made known by notice in writing addressed and delivered to such holder, with particulars of such mining operations, prospecting operations, other operations or expenditure.

(2) The Minister may, on application made to him or her by the holder of a mining claim, by notice in writing addressed and delivered to such holder, amend any work programme or expenditure referred to in subsection (1) in accordance with proposals contained in such application or to such extent as the Minister may deem appropriate.

(3) The holder of a mining claim who contravenes or fails to comply with the requirements of a work programme referred to in subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

43. Abandonment of mining claims.

(1) The holder of a mining claim may abandon such mining claim by notice in writing addressed and delivered to the Commissioner and shall together with such notice return the registration certificate of such claim, whereupon-

(a) the Commissioner shall-

(i) cancel such registration certificate;

(ii) make an entry to that effect in the register of mining claims referred to in section 36(2);

(iii) notify the person who was the holder of such mining claim that such registration certificate has been cancelled; and

(iv) notify the owner of the land on which such claim was situated of such abandonment and provide such owner with a sketch plan of such mining claim referred to in section 33(2)(e); and

(b) such mining claim shall be deemed to have been abandoned on the date on which such registration certificate has been cancelled as provided in subparagraph (i) of paragraph (a).

(2) If a mining claim is abandoned as contemplated in subsection (1), the holder of such such mining claim shall-

(a) within 30 days as from the date of the cancellation of the registration certificate as provided in subsection (1), remove all beacons erected by him or her on such claim and, in the case of a beacon used as a joint beacon, his or her peg and beacon plate without causing damage to any other part of such beacon;

(b) demolish any accessory works erected or constructed by such person in the claim area to which the mining claim related, except in so far as the owner of the land retains such accessory works on such terms and conditions as may mutually be agreed upon between such owner and person, and remove from such land all debris and any other object brought onto such land; and

(c) take all such steps as may be necessary to remedy to the reasonable satisfaction of the Minister any damage caused by any prospecting operations and mining operations carried on by such holder to the surface of, and the environment on, the land in the claim area in question.

(3) The abandonment of a mining claim shall not affect any legal proceedings instituted against such holder or any obligation or liability of such holder in terms of the provisions of this Act.

(4) Any person who contravenes or fails to comply with the provisions of subsection (2) shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

44. Cancellation of registration of mining claims.

(1) The provisions of section 55 shall apply *mutatis mutandis* in relation to the cancellation of the registration of any mining claim.

(2) For purposes of the application of section 55, as applied by subsection (1) of this section -

(a) any reference to the Minister, shall be construed as a reference to the Commissioner;

(b) any reference to the holder of a mineral licence, shall be construed as a reference to the holder of a mining claim; and

(c) any reference to a mineral licence, shall be construed as a reference to the registration of a mining claim.

45. Records, maps, plans and financial statements to be kept, and information, reports and returns to be submitted, by holders of mining claims.

(1) The holder of a mining claim –

(a) shall keep at an address in Namibia a proper record in such form as may be determined in writing by the Commissioner in relation to-

(i) any mining operations referred to insection 31 (1)(a) -

(aa)the nature, appraisal and results of all mining operations carried on in the claim area to which such mining claim relates;

(bb)the nature and mass or volume of any mineral or group of minerals won or mined on such mining claim and treated or stockpiled on such mining claim or elsewhere;

(cc)the nature, mass or volume and value of any mineral or group of minerals so won or mined, sold or otherwise disposed of and the full names and address of any person to whom such mineral or group of minerals was sold or otherwise disposed of;

(dd)the nature and mass or volume of any waste removed from such mining claim and the manner in which it was disposed of;

(ee) the persons employed by such holder for purposes of such mining operations, including the full names, addresses, nationality and ages of, and remuneration and other benefits paid and granted to such persons;

(ff) the unit operating and off-mine costs incurred;

(gg) the expenses incurred by such holder in the course of such mining operations; and

(hh) such other work carded on in the course of such mining operations as may be determined by the Commissioner and specified by notice in writing addressed and delivered to such holder; and

(ii) any, prospecting operations referred to in section 31(1)(b)-

(aa) the nature, location and results of all prospecting operations carried on by such holder, and the interpretation and assessment of such operations;

(bb) the nature and mass or volume of any mineral or group of minerals found or incidentally won in the course of such prospecting operations;

(cc) the persons employed by such holder for purposes of such prospecting operations, including the full names, addresses, nationality and ages of, and remuneration and other benefits paid and granted to such persons;

(dd) the expenses incurred by such holder in the course of such prospecting operations; and

(ee) such other work carried on in the course of such prospecting operations as may be determined by the Commissioner and specified by notice in writing addressed and delivered to such holder,

and shall retain such records for a period of not less than three years;

(b) shall prepare or cause to be prepared and maintain at all times plans and maps in respect of the claim area;

(c) shall prepare, in respect of each year of assessment, as defined in section 1 of the Income Tax Act, 1981 (Act 24 of 198 1), of such holder during the registration of such mining claim, a statement of income and expenditure derived or incurred in connection with any prospecting operations and mining operations on such mining claim, including a balance sheet and profit and loss account, and such other financial statements as the Commissioner may require in such form as the Commissioner may determine;

(d) shall submit within 15 days after the end of each month or such longer period as the Commissioner may, on good cause shown, determine in writing during the currency of the registration of such mining claim to the Commissioner in such form as may be so determined by the Commissioner a return or returns containing in relation to such month or period-

(i) such summary of the particulars and information contained in the records referred to in paragraph (a)(i), excluding item (ff) thereof, as may be required by the Commissioner and indicated in such form or requested by the Commissioner by notice in writing addressed and delivered to such holder; and

(ii) such other particulars as the Commissioner may require in relation to the prospecting operations and mining operations carried on by such holder on such mining claim;

(e) shall submit within 60 days after 31 December in each year to the Commissioner in such form as may be determined in writing by the Commissioner -

(i) a return containing in relation to such year-

(aa) a summary of the particulars and information contained in the records referred to in paragraph (a)(i) as may be required by the Commissioner and indicated in such form or otherwise requested by the Commissioner by notice in writing addressed and delivered to such holder;

(bb) an estimate of the remaining mineral reserves in such mining claim properly illustrated by way of plans and maps according to an appropriate scale;

(cc) particulars of any proposed mining operations during the succeeding year, together with a forecast of the source of such mining operations in terms of delineated mineral reserves; and

(dd) such other particulars as the Commissioner may require in relation to the prospecting operations and mining operations carried on by such holder on such mining claim;

(ii) the statement of income and expenditure and financial statements referred to in paragraph (c); and

(f) shall submit, together with an application referred to in section 31(l)(b)(i) or an application for the renewal of the registration of a mining claim referred to in section 38 in respect of the whole of the claim area or an application for a mineral deposit retention licence or a mining licence in respect of the whole or any portion of the mining claim, to the Commissioner in such form as may be determined in writing by the Commissioner-

(i) a report in duplicate or, in the case where application is made for a mineral deposit retention licence or a mining licence in respect of a portion of the mining claim, separate reports in duplicate in respect of such portion and the remainder of such claim area, containing in relation to the period immediately before the date of such application, reckoned from the date of registration of such mining claim or the date of renewal of such registration, as the case may be–

(aa) all information in the records referred to in paragraph (a) and the plans and geological maps referred to in paragraph (b);

(bb) an estimate of the remaining mineral reserves in such mining claim properly illustrated by way of plans and maps according to an appropriate scale; and

(cc) such other particulars as the Commissioner may require in relation to the prospecting operations carried on by such holder; and

(ii) the statement of income and expenditure and financial statements referred to in paragraph (c) in relation to the period, immediately before the date of such application, reckoned from the date of registration of such mining claim or the date on which the last such statements have been submitted in terms of paragraph (e)(ii).

(2) In the event of the cancellation of the registration of a mining claim under section 44 or the lapsing of such registration, the person who was the holder of such mining claim immediately before such cancellation or lapsing shall on a date not later than one month after the date of such cancellation or lapsing deliver to the Commissioner–

(a) all records kept in terms of the provisions of subsection (1)(a);

(b) all maps and plans referred to in subsection (1)(b);

(c) all reports, photographs, tabulations, tapes and discs prepared by or on behalf of such person in the course of any prospecting operations and mining operations carried on in such mining claim; and

(d) such other books, documents, records and reports as the Commissioner may require by notice in writing addressed and delivered to such person,

or copies of such records, maps, plans, reports, photographs, tabulations, tapes, discs, books and documents, unless a mineral deposit retention licence or a mining licence is issued to such person in relation to the area to which such mining claim related with effect from the date following on the date of such cancellation or lapsing or such later date as the Commissioner may on good cause shown allow.

(3) If the holder referred to in subsection (2) fails to comply with the provisions of that subsection the Commissioner may *mutatis mutandis* in accordance with the provisions of Chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977) -

(a) enter upon any premises whatsoever and search for the records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents referred to in paragraphs (a) to (d) of subsection (2);

(b) seize any such records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents,

as if he or she were a police official referred to in that Act and such records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents were concerned in the commission of any offence.

(4) Any person referred to in subsection (1) or (2) who contravenes or fails to comply with the provisions of that subsection shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

PART VIII
General provisions relating to mineral licences

46. Persons who may apply for, or fortransfer of, mineral licences or for approval to grant, cede or assign interests in such licences or to be joined as joint holders of such licences or interests.

Subject to the provisions of this Act, a mineral licence shall not be granted or transferred or any interest in such mineral licence be granted, ceded or assigned to any person other than -

(a) a company; or

(b) a Namibian citizen who has reached the age of 18 years and who, in the opinion of the Minister, is a fit and proper person to holdsuch licence,

and no person other than such person shall be joined as a joint holder of any such mineral licence or interest.

47. Applications for, or for renewal or transfer of, mineral licences, or for approval tot grant, cession or assignment of interests in mineral licences, or to be joined as joint holders of such mineral licences or interests.

(1) Subject to the provisions of this Act, an application for–

(a) a mineral licence or the renewal thereof;

(b) the amendment of a mineral licence; or

(c) the approval of the Minister for the transfer of a mineral licence, or the grant, cession or assignment of any interest in any mineral licence, or to be joined as a joint holder of a mineral licence or such interest,

shall be made to the Minister in suchform as may be determined in writing by the Commissioner and shall be accompanied by such application fee and such licence fee as may be payable in respect of the licence period or first licence period, as the case may be, of such licence as my be determined under section 123.

(2) Subject to the provisions of this Act, the Minister–

(a) may grant on such terms and conditions as may be determined in writing by him or her, or refuse to grant an application referred to in subsection (1); or

(b) shall grant an application for the transfer of' it mineral licence referred to in paragraph (c) of subsection (1) where such mineral licence is to be transferred from a company which is the holder of such mineral licence to a company which is controlling, controlled by or under common control with such holder, if the Minister is on reasonable grounds satisfied that such holder is not contravening or failing to comply with the terms and conditions of such licence or any other mineral licence held by it or any provision of this Act.

(3) The provisions of section 39(6), (7) and (8) shall apply *mutatis mutandis* in relation to the transfer of a mineral licence or the granting, cession or assignment of any interest in a mineral licence or the joinder of a person as a joint holder of such mineral licence or interest.

48. Powers of Minister in respect of applications for, or for renewal or transfer of, mineral licences or for approval for grant, cession or assignment of interests in mineral licences, or to be joined as joint holders of such mineral licences or interests.

(1) The Minister may at any time after the receipt of any application referred to in section 47 require the person concerned by notice in writing–

(a) to furnish him or her within such reasonable period as may be specified in such notice with -

(i) such information specified in such notice as the Minister may in his or her discretion deem necessary to enable him or her to determine who, in the case of a company, has the controlling interest in the affairs of the company; and

(ii) such other information so specified as the Minister may in his or her discretion deem necessary for purposes of considering such application;

(b) to publish particulars of the application in relation to –

(i) the full names of such person; and

(ii) the area, the kind of mineral licence and the mineral or group of minerals to which such application relates,

in such manner as may be specified in such notice;

(c) to give the particulars of the application -

(i) referred to in paragraph (b);

(ii) relating to the condition of, and any existing damage to, the environment in the area to which the application relates;

(iii) relating to an estimate of the effect which the proposed prospecting operations or mining operations, as the case may be, may have on the environment and the proposed steps to be taken in order to prevent or minimize such effect,

in such manner and to such person or persons as may be specified in such notice.

(3) In order to enable the Minister to consider any application referred to in section 47 the Minister may –

(a) cause such investigations to be made or undertaken as the Minister may in his or her discretion deem necessary;

(b) require the person concerned by notice in writing –

(i) to carry out or cause to be carried out such environmental impact studies as may be specified in the notice;

(ii) to furnish the Minister within such period as may be specified in such notice with such proposals, by way of alteration to or in addition to proposals set out in the application, as may be so specified.

(3) In considering any application referred to in section 47 and the terms and conditions subject to which such application may be granted, the Minister shall take into account the need to conserve and protect the natural resources in, on or under the land to which the application relates and in, on or under adjoining or neighbouring land.

(4) If the Minister is, after having considered an application referred to in section 47, prepared to grant the application subject to certain terms and conditions, he or she shall direct that notice be given to the person concerned in which the terms and conditions, in addition to he term and conditions referred to in section 50, are set out on which he or she is prepared to grant such application.

(5) The person referred to in subsection (4) may, within one month as from the date of that notice or such further period as the Minister may on good cause shown allow in writing, agree in writing to accept such terms and conditions or such other terms and conditions as may be agreed upon.

(6) If the person making an application referred to in section 47 fails-

(a) to comply with the requirements of any notice referred to in subsection (1) or (2)(b); or

(b) to agree as contemplated in subsection (5),

within the period specified in such notice or such further period as the Minister may on good cause shown allow in writing, the application in questionshall lapse on the expiration of such period.

49. Mineral agreements.

(1) The Minister may, before a mineral licence is issued and at the request of the person making an application referred to in section 47, enter into an agreement not inconsistent with the provisions of this Act with such person containing the terms and conditions agreed upon as provided in section 48(4) and (5) on which such mineral licence will be issued.

(2) A mineral agreement–

(a) shall contain the full names and address of the person concerned and, in the case of a company, particulars of its incorporation and registration as a company, the registered address and principal place of business of the company in Namibia, the full names and nationality of the directors of the company, the share capital of the company and the full names and nationality of any person who is the beneficial owner of more

than five per cent of the shares issued by such company; or

(b) may include terms and conditions relating to-

(i) minimum reconnaissance operations, prospecting operations or mining operations to be carried on and the time table determined for purposes of such operations;

(ii) the minimum expenditure in respect of reconnaissance operations, prospecting operations or mining operations;

(iii) the formation of joint ventures or the operation of production sharing or other joint arrangements;

(iv) the participation, including the acquisition of equity share capital, by the State or any other person in any ventures or arrangements referred to in subparagraph (iii);

(v) the manner in which reconnaissance operations, prospecting operations or mining operations shall be carried out;

(vi) the processing, whether wholly or partly, within Namibia of any mineral or group of minerals found, won or mined by the holder of a mineral licence in the course of any prospecting operations or mining operations;

(vii) the basis on which the market value of any mineral or group of minerals in question may from time to time be determined;

(viii) the utilization of any profits derived by the holder of a mineral licence from any reconnaissance operations, prospecting operations or mining operations carried on under such mineral licence;

(ix) guarantees to ensure the due and proper performance of the liabilities and obligations under a mineral licence;

(x) financial and insurance arrangements;

(xi) the application of any of the fiscal laws in force in Namibia;

(xii) arbitration in the event of any dispute which may arise in the application of any term and condition contained in such agreement, whether in terms of the provisions of the Arbitration Act, 1965 (Act 42 of 1965) or by way of any international arbitration tribunal specified in such agreement;

(xiii) co-ordination of prospecting operations or mining operations to be carried on by the person concerned in terms of a mineral licence with any prospecting operations or mining operations carried on by any other holder of a mineral licence in any neighbouring prospecting area or mining area.

(3) Any term and condition contained in an agreement referred to in subsection (1) which is inconsistent with any provision of this Act shall, to the extent it is so inconsistent, be null and void.

(4) Nothing contained in an agreement referred to in subsection (1) shall be construed as absolving any party thereto from any requirement laid down by law or from applying for, and obtaining, any permit, licence, approval, permission or other document required by law.

50. General terms and conditions of mineral licences.

In addition to any term and condition contained in a mineral agreement and any term and condition contained in any mineral licence, it shall be a term and condition of any mineral licence that the holder of such mineral licence shall -

(a) exercise any right granted to him or her in terms of the provisions of this Act reasonably and in such manner that the rights and interests of the owner of any land to which such licence relates are not adversely affected, except to the extent to which such owner is compensated;

(b) in the employment of employees, give preference to Namibian citizens who possess appropriate qualifications, expertise and experience for purposes of the operations to he carried on in terms of such mineral licence;

(c) carry out training programmes in order to encourage and promote the development of Namibian citizens employed by such holder;

(d) with due regard to the need to ensure technical and economic efficiency, make use of products or equipment manufactured or produced, and services available, within Namibia;

(c) co-operate with other persons involved in the mining industry in order to enable such citizens to develop skills and technology to render services in the interest of that industry in Namibia;

(f) prepare in such form as may be determined in writing by the Commissioner for the approval of the Commissioner-

(i) an environmental impact assessment indicating the extent of any pollution of the environment before any prospecting operations or mining operations are being carried out and an estimate of any pollution, if any, likely to be caused by such prospecting operations or mining operations;

(ii) if any pollution is likely to be so caused, an environmental management plan indicating the proposed steps to be taken in order to minimize or prevent to the satisfaction of the Commissioner any pollution of the environment in consequence of any prospecting operations or mining operations carried on by virtue of such mineral licence;

(g) from time to time as circumstances change to revise such environmental management plan either out of his or her own motion or if required by the Commissioner;

(h) in the case of a company, give to the Commissioner notice of any change of-

(i) the name of such company;

(ii) the registered address and principal place of business of the company in Namibia;

(iii) the directors of the company;

(iv) the share capital of the company;

(v) the beneficial owner of more than five per cent of the shares issued by such company,

within 30 days as from such change.

(i) in the case of a natural person, give to the Commissioner notice of any change of the address of such person within 30days as from such change.

51. Register of mineral licences.

(1) The Commissioner shall keep and maintain a register of mineral licences in such form as may be determined in writing by the Commissioner in which shall be recorded in respect of every mineral licence issued -

(a) the full names and such other particulars of the holder and joint holder of a mineral licence or interest in such mineral licence in whose name such mineral licence has been issued or to whom such mineral licence or interest has been transferred or to whom an interest in such mineral licence has been granted, ceded or assigned as may be determined in writing by the Comissioner and, in the case of a holder or joint holder of a mineral licence who is resident outside Namibia, the full names and address of his or her accredited agent;

(b) the date on which such mineral licence has been issued or transferred or any interest in such mineral licence has been granted, ceded or assigned or a person has been joined as joint holder of such mineral licence or interest;

(c) the date on which such mineral licence has been renewed and the date on which such mineral licence will lapse in terms of the provisions of this Act;

(d) the nature of such mineral licence;

(e) particulars of the area of land to which such mineral licence relates;

(f) the mineral or group of minerals in respect of which such mineral licence has been issued;

(g) particulars of any permissions granted under any provision of this Act in relation to such mineral licence;

(h) the date on which such mineral licence is cancelled in terms of section 55;

(i) particulars of any agreement or ancillary right referred to in section 52(1)(a); and

(j) such other particulars as may in the opinion of the Commissioner be necessary for purposes of carrying out the provisions of this Act to effect an efficient system of registration of mineral licences and any interests in such mineral licences.

(2) A copy of any mineral licence issued in terms of this Act and the register referred to in subsection (1) shall during ordinary office hours be open for inspection by any person foe of charge, and any person may on payment of such fee as may be determined under section 123 obtain copies of such mineral licence or extracts from such register.

(3) A person who fraudulently-

(a) makes or causes to be made any entry in the register referred to in subsection (1) which is false;

(b) prepares or submits any extract of an entry in such register which is false or causes such an extract to be prepared or submitted,

shall be guilty of an offence and on conviction liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

52. Restrictions on exercise of rights by holders of mineral licences.

(1) The holder of a mineral licence shall not exercise any rights conferred upon such holder by this Act or under any terms and conditions of such mineral licence-

(a) in, on or under any private land until such time as such holder-

(i) has entered into an agreement in writing with the owner of such land containing terms and conditions relating to the payment of compensation, or the owner of such land has in writing waked any right to such compensation and has submitted a copy of such agreement or waiver to the Commissioner; or

(ii) has been granted an ancillary right as provided in section 110(4) to exercise such rights on such land;

(b) in, on or under any-

(i) town or village;

(ii) land comprising a proclaimed road, including such parts adjoining such road as may in terms of any law governing such road be regarded as the road reserve, aerodrome, harbour, railway or cemetery; or

(iii) land used or reserved for any governmental or public purpose,

and otherwise in conflict with any law, if any, in terms of which such town, village, road, aerodrome, harbour, railway, cemetery or land has been established, erected, constructed or is otherwise regulated, without the prior permission of the Minister granted, upon an application to the Minister in such form as may be determined in writing by the Commissioner, by notice in writing and subject to such conditions as may be specified in such notice;

(c) in, on or under any land in respect of which no person other than the holder of a reconnaissance licence is, by virtue of a notice issued in terms of section 122, entitled to carry on any prospecting operations or mining operations;

(d) in, on or under any private or State land-

(i) used as a garden, orchard, vineyard, nursery, plantation or which is otherwise under cultivation;

(ii) within a horizontal distance of 100 metres of any spring, well, borehole, reservoir, dam, dipping-tank, waterworks, perennial stream or pan, artificially constructed watercourse, kraal, building or any structure of whatever nature;

(iii) within a horizontal distance of 300 metres from any point on the nearest boundary of any erf, as defined in section 1 of the Townships and Division of Land Ordinance, 1963 (Ordinance 11 of 19631 if such erf has been surveyed for the purpose of inclusion in a township as defined in that section; or

(iv) on which accessory workswere erected or constructed under this Act and which existed at the time of the issue of the mineral licence in question,

without the prior permission in writing of the owner of such land, and, in the case of land referred to in subparagraph (iv), of the holder of a mineral licence who has erected or constructed such accessory works on which it is proposed to exercise such right;

(e) in, on or under any land subject to a production licence, as defined in section 1 of the Petroleum (Exploration and Production) Act, 1991 (Act 2 of 1991), which existed at the time of the issue of the licence in question, without the prior permission in writing of the holder of the production licence concerned; and

(f) which in any way will interfere with fishing or marine navigation, without he prior permission of the Minister granted, upon an application to the Minister in such form as may be determined in writing by the Commissioner, by notice in writing and subject to such conditions as may be specified in such notice.

(2) When, in the course of any prospecting operations or mining operations in any prospecting area, mining area or retention area, as the case may be, any damage is caused or done to the surface of any land or to any water source, cultivation, building or other structure therein or thereon as a result of such operations, the holder of the mineral licence in question shall be liable to pay compensation to the owner of the land, water source, cultivation, building or other structure, as the case may be, in relation to which such damage has been caused or done.

(3) When a dispute arises between the holder of a mineral licence and the owner referred to in subsection (2) in relation to the liability for, or the amount of, compensation payable under that subsection, such holder or owner, or such holder and owner, may make application in writing to the Commission to have the matter determined as provided in section 110.

(4) The provisions of subsection (3) shall not be construed as prohibiting an owner referred to in the said subsection (3) or an authority administering land from instituting civil proceedings in any competent court against the holder of a mineral licence for the payment of compensation in respect of any damage referred to in the said subsection (2).

(5) When the owner of land or any authority administering land on which prospecting operations or mining operations are being carried on in an application to the Minister -

(a) states that such operations prevent the proper use of the land wholly or partly for farming purposes; and

(b) requests that the holder of the mineral licence concerned carrying on such operations be required to purchase so much of the land as cannot be so used,

the Minister may, if he or she is on reasonable grounds satisfied that such operations prevent the land from being so used, by notice in writing addressed and delivered to such holder, direct such holder to purchase so much of the land as cannot be so used on such conditions as may be specified in such notice, and shall notify the owner of the land in question accordingly.

(6) When the holder of a mineral licence and the owner of land or an authority administering land are unable to ague on the price to be paid for land to which a direction under subsection (5) relates, the price and mode of payment shall be fixed by arbitration.

(7) Any person who contravenes or fails to comply with the provisions of subsection (1) or any direction referred to in subsection (5) shall be guilty of an offence and on conviction liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

53. Drilling of boreholes.

(1) Any holder of a mineral licence shall not drill in connection with any prospecting operations or mining operations any borehole or boreholes from the surface of any land or resume the drilling of any such borehole or boreholes which has been discontinued for a period of more than three months, unless such holder has given the Commissioner notice in such form as may be determined in writing by the Commissioner of such holder's intention to so drill any such borehole or boreholes.

(2) A holder of a mineral licence referred to in subsection (1) shall, at the request in writing of the Commissioner and within such period as may be so determined by him or her, furnish the Commissioner with a report in such form as may be so determined by the Commissioner, containing particulars relating to -

(a) the location, direction and depth of such borehole;

(b) the geological formations through which such borehole was drilled;

(c) the widths and assay values of any mineral or group of minerals intersected in such borehole; and

(d) such other information as the Commissioner may require.

(3) A holder of a mineral licence referred to in subsection (1) or a person who was at any time such a holder shall not destroy or dispose of or cause to be destroyed or disposed of any borehole core or other material derived from any borehole referred to in that subsection except-

(a) with the prior approval in writing of the Commissioner; or

(b) in so far as it is reasonably necessary to destroy such core or material in the course of any analytical or metallurgical testing.

(4) (a) The Commissioner may by notice in writing addressed and delivered to the holder or person referred to in subsection (3) require such holder or person to deliver to the Commissioner in such manner as may be specified in such notice at such holder's or person's own costs-

(i) in the case of any such holder, in the course of drilling operations, any borehole core or other material referred to in subsection (3) or any sample of such borehole core or other material; or

(ii) in the case of any such holder or person, after the completion of drilling operations any borehole core, other material or sample so referred to or any part thereof.

(b) The Commissioner shall -

(i) issue a receipt in respect of any borehole core, other material or sample thereof delivered in terms of paragraph (a); and

(ii) upon any claim received from the holder of a mineral licence or person referred to in paragraph (a) other than a holder or person who has applied for or obtained the approval contemplated in subsection (3)(a), return such borehole core, other material or sample to such holder or person, or pay to such holder or person an amount equal to the market value of any such borehole core, other material or sample.

(5) Any person who contravenes or fails to comply with the provisions of this section or any notice referred to in subsection (4) shall be guilty of an offence and on conviction liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

54. Abandonment of reconnaissance areas, prospecting areas, retention areas and mining areas.

(1) The holder of a mineral licence may abandon the reconnaissance area, prospecting area, retention area or mining area to which such licence relates by notice in writing addressed and delivered to the Commissioner and shall together with such notice return such mineral licence, whereupon –

(a) the Commissioner shall-

(i) cancel such mineral licence;

(ii) make an entry to that effect in the register of mineral licences referred to in section 51;

(iii) notify the person who was the holder of such mineral licence that such mineral licence has been cancelled; and

(iv) notify the owner of the land on which such area was situated of such abandonment; and

(b) such area shall be deemed to have been abandoned on the date on which such mineral licence has been cancelled as provided in subparagraph (i) of paragraph (a).

(3) If a reconnaissance area, prospecting area, retention area or mining area is abandoned as provided in subsection (1), the holder of the mineral licence to which such area relates shall –

(a) demolish any accessory workserected or constructed by such person in such area, except in so far as the owner of the land retains such accessory, works on such conditions as may mutually be agreed upon between such owner and person, and remove from such land all debris and any other object brought onto such land;

(b) take all such steps as may be necessary to remedy to the reasonable satisfaction of the Minister any damage caused by any prospecting operations and mining operations carried on by such holder to the surface of, and the environment on, the land in the area in question.

(3) The abandonment of a reconnaissance area, prospecting area, retention area or Suing area shall not affect any legal proceedings instituted against such holder or any obligation or liability of such holder in terms of the provisions of this Act.

(4) Any person who contravenes or fails to comply with the provisions of subsection (2) shall be guilty of' an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

55. Cancellation of mineral licences.

(1) Subject to the provisions of section 56 and subsections (2) and (3) ofthis section, the Minister may by notice in writing addressed and delivered to the holder of a mineral licence, cancel the mineral licence of such holder or, in the case of two or more persons who are the joint holders of such mineral licence or interest,cancel the mineral licence in respect of any one or more of such holders, if-

(a) any such holder fails to comply with the terms and conditions of such mineral licence or of the provisions of this Act;

(b) in the case of a company, such company is wound up in terms of the provisions of the Companies Act, 1973 (Act 61 of 1973), unless such company has been wound up for purposes of an amalgamation or reconstruction, as contemplated in that Act, and has obtained the prior approval of the Minister for such amalgamation or reconstruction;

(c) in the case of a natural person, such person's estate is sequestrated.

(2) The Minister shall not under subsection 1(a) cancel a mineral licence so referred to, unless -

(a) the Minister has by notice in writing informed the holder of such mineral licence of his or her intention to cancel such mineral licence -

(i) setting out particulars of the alleged failure; and

(ii) calling upon such holder to make such representations to the Minister as such holder may deem necessary or expedient within such period, but not less than 30 days as from the date of such notice, as may be specified in such notice;

(b) the Minister has considered-

(i) any steps taken by such holder to remedy the failure in question or to prevent any such failure from being repeated during the currency of the mineral licence; and

(ii) any other matters submitted to the Minister by way of the representations made under paragraph (a)(ii); and

(c) in the case of a holder of a mineral licence who has failed to pay any amount payable by such holder in terms of this Act or by virtue of the terms and conditions of the mineral licence in question, such holder has, before the date specified in the notice referred to in paragraph (a), paid any such amount, together with any interest payable in respect of such amount.

(3) The Minister may, on application in writing made to him or her by the holder of a mineral licence in such form as may be determined in writing by the Commissioner and on payment of such fee, if any, as may be determined under section 123, cancel by notice in writing any mineral licence.

(4) The cancellation of a mineral licence in terms of the provisions of this section shall not affect any liability or obligation incurred in relation to anything done under or by virtue of the terms and conditions of such mineral licence.

56. ***Vis Major***

(1) Any failure by the holder of a mineral licence to comply with any term and condition of such mineral licence or any provision of this Act shall not be regarded as being a failure to comply with such term and condition or provision in so far as such holder was prevented from complying with such term and condition or provision due to an am of war, hostility or insurrection or an act of God.

(2) The holder of a mineral licence who is prevented from complying with a term and condition or provision as contemplated in subsection (1) shall forthwith inform the Minister by notice in writing setting out particulars of the nature, extent and causes of such holder's failure to comply with the term and condition of provision specified in such notice.

(3) The Minister may, on application made to him or her by the holder of a mineral licence referred to in subsection (2) who has been prevented from exercising any rights under such mineral licence for any period in the circumstances contemplated in subsection (1), extend by notice in writing on such conditions as may be so determined by the Minister theperiod for which the mineral licence in question has been issued, by such period as may be so determined by the Minister with due regard to the provisions of this Act relating to the period after which mineral licences of the nature of the mineral licence in question expire.

(4) The Minister may refuse any application referred to in subsection (3) if the holder of the mineral licence concerned could, by taking such reasonable steps as may have been available to such holder, have exercised such rights during that period.

(5) The provisions of this section shall not he construed as absolving any holder of a mineral licence from complying with any liability or obligation under a mineral licence or this Act to pay any royalties, annual charges, rent or fees

57. Directions to holders of mineral licences.

(1) The Minister may, with due regard to good reconnaissance practices, good prospecting practices or good mining practices by notice in writing addressed and delivered to the holder of a mineral licence, give directions to such holder in relation to -

(a) the carrying on of reconnaissance operations, prospecting operations and mining operations, including the erection or construction of any accessory works;

(b) the protection of the environment;

(c) the conservation of any natural resources, including mineral resources, and the prevention of the waste of such resources;

(d) the construction, erection, maintenance, operation or use of accessory works;

(e) the removal of accessory works or other goods erected, constructed or brought on land in connection with the prospecting for, or the mining or conveyance of, any mineral or group of minerals which is not used or intended to be used in connection with such prospecting, mining or conveyance;

(c) the discovery of any mineral or group of minerals;

(g) the taking, preservation and furnishing to the Commissioner of cores, cuttings or samples of any mineral or group of minerals obtained or which may be obtained in the course of reconnaissance operations, prospecting operations and mining operations;

(h) the submission to the Commissioner of reports, returns and other information,

and the Minister may, if such holder fails to comply, within such period as may be specified in such notice or such further period as the Minister may on good cause shown allow in writing, with such directions to the satisfaction of the Minister, cause such steps to be taken as may be necessary to comply with such directions, and may recover from such holder in a competent court the costs incurred in connection with the taking of such steps.

(2) Any holder of a mineral licence who contravenes or fails to comply with a notice issued under subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

PART IX
Provisions relating to reconnaissance licences

58. Rights of holders of reconnaissance licences.

(1) Subject to the provisions of this Act, a reconnaissance licence shall authorize the holder of such licence -

(a) to carry on reconnaissance operations in the reconnaissance area to which such licence relates in respect of any mineral or group of minerals, whether or not a mineral licence has in terms of the provisions of this Act been issued to any other person or a mining claim has been registered in the name of any other person in respect of the land towhich such reconnaissance licence relates;

(b) to carry on such other operations, including the erection or construction of accessory works, in such reconnaissance area as may be reasonably necessary for, or in connection with, any recomaissance operations contemplated in paragraph (a).

(2) (a) The holder of a reconnaissance licence shall not erect or construct any accessory worksreferred to in subsection (1)(b) without the prior permissionin writing of the Commissioner.

(b) The Commissioner shall not grant the permission referred to in paragraph (a) in respect of accessory worksto be erected or constructed on private land, unless the holder of the reconnaissance licence has complied with the provisions of section 52(1)(a) in relation to any compensation to be paid to the owner of such private land.

(3) The provisions of subsection (1) shall not be construed as-

(a) conferring on the holder of a reconnaissance licence any preferential right to any other licence during the currency or on expiry of such reconnaissance licence;

(b) preventing the Minister from granting any other licence in respect of' any mineral or group of minerals or any area of land in the reconnaissance area to which such reconnaissance licence relates; or

(c) preventing any other person from pegging, and the Commissioner from registering, a mining claim in such reconnaissance area during the currency of such reconnaissance licence.

59. Exclusive rights to carry on reconnaissance operations.

(1) Subject to the provisions of subsection (2), the Minister may, on application by-

(a) a person applying for a reconnaissance licence, grant to such person a reconnaissance licence; or

(b) the holder of a reconnaissance licence, cause an endorsement to be made on such reconnaissance licence,

by virtue of which an exclusive right is conferred upon such person to carry on in the reconnaissance area to which such reconnaissance licence relates, reconnaissance operations in relation to any mineral or group of minerals specified in such licence, if the Minister is on reasonable grounds satisfied that the extent of the reconnaissance operations to be carried out and the expenditure to be incurred in or in relation to the reconnaissance area justifies the grant of such exclusive right.

(2) An exclusive right referred to in subsection (1) shall not be granted in respect of-

(a) any mining claim; or

(b) any area of land to which any other mineral licence, by virtue of which an exclusive right to carry on reconnaissance operations, prospecting operations o mining operations has been conferred, relates, to carry on reconnaissance operations for the same mineral or group of minerals.

60. Applications for reconnaissance licences.

An application by any person for a reconnaissance licence-

(a) shall contain -

(i) in the case of a natural person the full names, nationality, date of birth, postal and residential address of such person;

(ii) in the case of a company, the name of such company and particulars of its incorporation and registration as a company, the registered address and principal place of business of the company in Namibia, the full names and nationality of the directors of the company, the share capital of the company and the full names and nationality of any person who is the beneficial owner of more than five per cent of the shares issued by such company; and

(iii) in the case of any person represented by an accredited agent, the full names and address of such accredited agent;

(b) shall be accompanied by a detailed plan of the area to which the application relates drawn according to scale of such area which shall not exceed two contiguous squares, each of which does not exceed one degree in longitude and one degree in latitude, indicating -

(i) its location with reference to magisterial districts; and

(ii) the extent of such area defined by reference to co-ordinate reference points;

(c) shall contain a concise geological description of the area of land and, in the case of an application for an exclusive right referred to in section 59, the mineral or group of minerals to which such application relates;

(d) shall contain particulars of -

(i) any licences issued in terms of this Act or any law repealed by this Act held by such person alone or jointly with any other person; and

(ii) any prospecting operations and mining operations carried on by such person alone or jointly with any other person outside Namibia,

on the date of such application and during a period of 10 years immediately preceding such date;

(e) shall contain particulars, substantiated by documentary proof or such other proof as may be required by the Commissioner, of the technical and financial resources of, or available to, such person to carry on the reconnaissance operations to which the application relates;

(f) shall contain particulars of -

(i) the programme of reconnaissance operations proposed to be carried on, the estimated expenditure in respect thereof and the period within which such operations will be carried on and such expenditure will be expended;

(ii) in the case of an application for an exclusive right referred to in section 59, the reasons for such application;

(g) shall be accompanied by such documents as the Minister may require in relation to any particulars referred to in this section; and

(h) may contain any other matter which in the opinion of the person concerned is relevant to the application.

61. Restrictions on grant of applications relating to applications relating to reconnaissance licences.

The Minister shall not grant an application for a reconnaissance licence-

(a) unless such person is a person referred to in section 46;

(b) if, at the time of the application, such person is contravening any provision of this Act or any term and condition, direction or order determined, given or made under any such provision or is failing to comply with any provision of this Act, term and condition, direction or order;

(c) unless the Minister is on reasonable grounds satisfied-

(i) with the programme of reconnaissance operations to be carded on or the expenditure to be expended in respect of such reconnaissance operations;

(ii) that the person concerned has the technical and financial resources to carry on such reconnaissance operations;

(d) in respect of an area of land in relation to a mineral or group of minerals in respect of which an exclusive right has, in terms of section 59, been conferred on any other holder of a reconnaissance licence.

62. Issue of reconnaissance licences.

(1) Subject to subsections (4) and (5) of section 48, the Minister shall upon the granting of an application for a reconnaissance licence, direct the Commissioner to issue to the person who applied for such reconnaissance licence, a reconnaissance licence on such terms and conditions as may be agreed upon as provided in the said subsections.

(2) Subject to the provisions of subsection (1), a reconnaissance licence shall-

(a) state the full names and address of the holder of the reconnaissance licence and, in the case of such a holder who is resident outside Namibia, the full names and address of such holder's accredited agent;

(b) state the date on which and the period for which such reconnaissance licence is issued;

(c) contain a diagram prepared by an officer employed in the Ministry of Mines and Energy and designated by the Permanent Secretary for that purpose of the area of land to which such reconnaissance licence relates containing geometrical or numerical depictions or any combination of such depiction and a description in words or symbols of such land;

(d) state the terms and conditions other than the terms and conditions referred to in section 50

subject to which such reconnaissance licence is issued;

(e) state the mineral or group of minerals in respect of which such reconnaissance licence is issued; and

(f) contain such other particulars as the Minister may, either generally or in any particular case, determine.

63. Duration of reconnaissance licences.

(1) Subject to the provisions of this Act, a reconnaissance licence shall be valid for such period, not exceeding six months, as may be determined in writing by the Minister at the time of the granting of such licence.

(2) Subject to the provisions of subsection (3), a reconnaissance licence shall not be subject to renewal.

(3) The Minister may, on an application in writing made to him or her by the holder of a reconnaissance licence in such form as may be determined in writing by the Minister, extend such licence on one occasion for a period not exceeding six months if the Minister is on reasonable grounds satisfied that such holder has during the currency of such licence been prevented through no fault of such holder to fully carry on the reconnaissance operations authorized under such licence.

(4) Notwithstanding the provisions of subsection (1), but subject to the other provisions of this Act, a reconnaissance licence shall not expire during a period in which-

(a) an application referred to in subsection (3) by such holder;

(b) an application by such holder for an exclusive prospecting licence in respect of an area of, and in the reconnaissance area to which such reconnaissance licence relates or any mineral or group of minerals in respect of which an exclusive right has been conferred on such holder to carry on reconnaissance operations,

is being considered, until such application is refused or the application is withdrawn or has lapsed, whichever occurs first or, if such application is granted, until such time as the reconnaissance licence is extended or the exclusive prospecting licence is issued, as the case may be, in consequence of such application.

64. Transfer of reconnaissance licences, and grant, cession or assignment of interests in such licences, and joinder of persons as joint holders of such licences or interests.

A reconnaissance licence shall not be transferred and any interest in such licence shall not be granted, ceded or assigned to any other person, and no person shall be joined as a joint holder of such licence or interest.

65. Work programmes of reconnaissance operations.

The provisions of section 42 shall apply *mutatis mutandis* in relation to the holder of a reconnaissance licence, and in such application–

(a) any reference to the holder of a mining claim, shall be construed as a reference to the holder of a reconnaissance licence;

(b) any reference to prospecting operations or mining operations, shall be construed as a reference to reconnaissance operations; and

(c) any reference to the registration of a mining claim, shall be construed as a reference to the issue of a reconnaissance licence.

66. Records, maps, plans and financial statements to be kept, and information, reports and returns to be submitted, by holders of reconnaissance licences.

(1) The holder of a reconnaissance licence–

(a) shall keep at an address in Namibia a proper record in such form as may be determined in writing by the Commissioner in relation to

(i) the location and nature of all photogeological studies, imaging and geophysical and other surveys carried on by such holder in the course of the reconnaissance operations carried on by him or her in the reconnaissance area to which such reconnaissance licence relates, and the results, interpretation and assessment of such studies and surveys;

(ii) the persons employed by such holder for purposes of such reconnaissance operations, including the names, addresses, nationality and ages of, and remuneration and other benefits paid and granted to such persons;

(iii) the expenses incurred by such holder in the course of such reconnaissance operations; and

(iv) such other work as may be determined by the Commissioner and specified by notice in writing addressed and delivered to such holder,

and shall retain such records for a period of not less than three years as from the expiry of such licence;

(b) shall prepare or cause to be prepared and maintain at all times plans and maps in respect of such reconnaissance area;

(c) shall prepare in respect of the period of the currency of such reconnaissance licence a statement of income and expenditure derived or incurred in connection with such reconnaissance operations in such reconnaissance area and such other financial statements as the Commissioner may require in such form as the Commissioner may determine; and

(d) shall submit, within 60 days after the end of the currency of such reconnaissance licence in respect of the whole of the reconnaissance area, or together with an application referred to in section 63(3) or an application for an exclusive prospecting licence or mining licence in respect of the whole or any portion of the reconnaissance area, to the Commissioner-

(i) in such form as may be determined in writing by the Commissioner, a report in duplicate or, in the case where an application is made for an exclusive prospecting licence or mining licence in respect of a portion of the reconnaissance area, separate reports in duplicate in respect of such portion and the remainder of such reconnaissance area, setting out in relation to such period -

(aa) an evaluation of the prospects of the discovery of any mineral or group of minerals in such reconnaissance area;

(bb) all information, including photographs, tabulations, tapes and discs, in the records referred to in paragraph (a) and the plans and maps referred to in paragraph (b); and

(cc) such other particulars as the Commissioner may require in relation to the reconnaissance operations carried on by such holder; and

(ii) the statement of income and expenditure and financial statements referred to in paragraph (c).

(2) In the event of the cancellation of a reconnaissance licence under section 55 the person who was the holder of such licence immediately before such cancellation shall on a date not later than 30 days after the date of such cancellation deliver to the Commissioner -

(a) all records kept in terms of the provisions of subsection (1)(a);

(b) all maps and plans referred to in subsection (1)(b);

(c) all reports, photographs, tabulations, tapes and discs prepared by or on behalf of such person in the course of such reconnaissance operations; and

(d) such other books, documents, records and reports as the Commissioner may require by notice in writing addressed and delivered to such person, or copies of such records, maps, plans, reports, photographs, tabulations, tapes, discs, books and documents, unless an exclusive prospecting licence or a mining licence is issued to such person in relation to the area to which such reconnaissance licence related with effect from the date following on the date of such cancellation or lapsing or such later date as the Commissioner may on good cause shown allow.

(3) If the holder referred to in subsection (2) fails to comply with the provisions of that subsection the Commissioner may *mutatis mutandis* in accordance with the provisions of Chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977) -

(a) enter upon any premises whatsoever and search for the records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents referred to in paragraphs (a) to (d) of subsection (2);

(b) seize any such records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents, as if he or she were a police official referred to in that Act and such records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents were concerned in the commission of any offence.

(4) Any person referred to in subsection (1) or (2) who contravenes or fails to comply with the provisions of any such subsection shall be guilty of an offence and on conviction be liable to a fine no exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

PART X
Provisions relating to exclusive prospecting licences

67. Rights of holders of exclusive prospecting licences.

(1) Subject to the provisions of subsection (2) and the other provisions of this Act, the holder of an exclusive prospecting licence shall be entitled-

(a) to carry on prospecting operations in the prospecting area to which such licence relates in respect of such mineral or group of minerals specified in such licence;

(b) to remove any mineral or group of minerals other than a controlled mineral or sample of such mineral or group of minerals, for any purpose other than sale or disposal, from any place where it was found or incidentally won in the course of prospecting operations referred to in paragraph (a) to any other place within Namibia;

(c) with the permission of the Commissioner previously obtained generally or in every particular case in writing and subject to such conditions as may be determined by the Commissioner or subject to the conditions of an exemption granted under section 137 -

(i) to remove any mineral or group of minerals referred to in paragraph (b) for any purpose other than sale or disposal, from any place where it was found or incidentally won in the course of prospecting operations referred to in paragraph (a) to any place outside Namibia;

(ii) to remove any controlled mineral or sample of such mineral, for any purpose other than sale or disposal, from any place where it was found or incidentally won in the course of prospecting operations referred to in paragraph (a) to any place, whether within or outside Namibia;

(iii) to remove any mineral or group of minerals, for purposes of sale or disposal, from any place where it was found or incidentally won in the course of such prospecting operations;

(iv) to sell or otherwise dispose of any such mineral or group of minerals;

(d) to carry on such other operations, including the erection or construction of accessory works, as may be reasonably necessary for, or in connection with, such prospecting operations or selling or disposal contemplated in paragraph (a), (b) or (c).

(2) The provisions of subsection (1) shall not be construed as-

(a) conferring on the holder of an exclusive prospecting licence any preferential right to any other licence in relation to any mineral or group of minerals, other than a mineral or group of minerals to which such exclusive prospecting licence relates, during the currency or on expiry of such exclusive prospecting licence;

(b) preventing the Minister from granting to-

(i) any other person in respect of' the prospecting area to which such exclusive prospecting licence relates -

(aa) a reconnaissance licence in respect of any mineral or group of minerals;

(bb) a reconnaissance licence by virtue of which an exclusive right is conferred upon the holder of such licence to carry on reconnaissance operations in respect of any mineral or group of minerals other than the mineral or group of minerals to which such exclusive prospecting licence relates;

(cc) an exclusive prospecting licence, mining licence or mineral deposit retention licence in respect of any mineral or group of minerals other than the mineral or group of minerals to which such first-mentioned exclusive prospecting licence relates;

(ii) any other holder of an exclusive prospecting licence approval to peg a claim in respect of any mineral or group of minerals to which such other holder's exclusive prospecting licence relates.

(3) (a) The holder of an exclusive prospecting licence shall not erect or construct any accessory works referred to in subsection (1)(d) without the prior permission in writing of the Commissioner.

(b) The Commissioner shall not grant the permission referred to in paragraph (a) in respect of accessory works to be erected or constructed on private land, unless the holder of such exclusive prospecting licence has complied with the provisions of section 52(1)(a) in relation to any compensation to be paid to the owner of such private land.

(4) An application for the permission referred to in subsection (1)(c) or (3) shall be made to the Commissioner in such form as may be determined in writing by the Commissioner and shall be accompanied by such application fee, if any, as maybe determined under section 123, together with such documents and information as may be required by the Commissioner.

(5) The holder of an exclusive prospecting licence who has removed, as contemplated in paragraph (b) of subsection (1), any mineral or group of minerals other than a controlled mineral or any sample of such mineral or group of minerals from the place where it was found or incidentally won, for any purpose other than for sale or disposal, to any place within Namibia, shall, except to the extent to which such holder has been exempted, under the provisions of section 137, from the provisions of this subsection, inform the Commissioner in writing of such removal, not later than 14 days or such longer period as the Commissioner may allow after such removal, and provide particulars of the nature of such sample, mineral or group of minerals and the place to which it has been so removed.

(6) (a) The holder of an exclusive prospecting licence who has contravened or failed to comply with the provisions of subsection (1)(c), (3) or (5) shall be guilty of an offence and on conviction liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(b) If in any prosecution in terms of paragraph (a) of this subsection for the contravention or failure to comply with the provisions of subsection (1)(c)(iii), it is proved -

(i) that the holder referred to in thatparagraph has removed any mineral or group of minerals from the prospecting area to which the exclusive prospecting licence relates;

(ii) that such holder has not obtained the permission of the Commissioner for the removal of such mineral or group of minerals as required by subsection (1)(c); and

(iii) that such holder has failed to inform the Commissioner of the removal of such mineral or group of minerals as provided in subsection (5),

it shall be presumed until the contrary is proved that such holder has removed such mineral or group of minerals for purposes of sale or disposal, as the case may be.

68. Applications for exclusive prospecting licences.

An application by any person for an exclusive prospecting licence

(a) shall contain -

(i) in the case of a natural person, the full names, nationality, date of birth, postal and residential address of such person;

(ii) in the case of a company, the name of such company and particulars of its incorporation and registration as a company, the registered address and principal place of business of the company in Namibia, the full names and nationality of the directors of the company, the share capital of the company and the full names and nationality of any person who is the beneficial owner of more than five per cent of the shares issued by such company; or

(iii) in the case of any person represented by an accredited agent, the full names and address of such accredited agent;

(b) shall state the period for which such exclusive prospecting licence is required and the mineral or group of minerals to which such application relates;

(c) shall be accompanied by a detailed plan of the area to which the application relates drawn according to scale of such area which shall not exceed 100 000 hectares in extent indicating

(i) its location with reference to magisterial districts;

(ii) the name and number of any farm situated therein; and

(iii) the extent of such area defined by reference to identifiable physical features or co-ordinate reference points;

(d) shall contain a concise geological description of the area of land and, in the case of an application by a person who is the holder of a reconnaissance licence in respect of the area to which the application relates, the report or separate reports referred to in section 66(1)(d);

(e) shall contain particulars of –

(i) any licence, including any mining claim, issued in terms of this Act or any law repealed by this Act held by such person alone or jointly with any other person and, in the case of the holder of a reconnaissance licence by virtue of which an exclusive right is conferred in section 59(2) in the area to which the application relates, the mineral or group of minerals to which such exclusive right relates; and

(ii) any prospecting operations and mining operations carried on by such person alone or jointly with any other person outside Namibia,

on the date of such application and during a period of 10 years immediately preceding such date;

(f) shall contain particulars of -

(i) the condition of, and any existing damage to, the environment in the area to which the application relates; and

(ii) an estimate of the effect which the proposed prospecting operations may have on the environment and the proposed steps to be taken in order to prevent or minimize any such effect;

(g) shall contain particulars, substantiated by documentary proof or such other proof as may be required by the Commissioner, of the technical and financial resources of, or available to, such person to carry on the prospecting operations to which the application relates;

(h) shall contain particulars of the programme of such prospecting operations, the estimated expenditure in respect thereof, the period within which such operations will be carried on and such expenditure will be expended;

(i) shall be accompanied by such documents as the Minister may require in relation to any particulars referred to in this section; and

(j) may contain any other matter which in the opinion of the person concerned is relevant to the application.

69. Exercise of powers by Minister to grant or refuse exclusive prospecting licences.

(1) Subject to the provisions of this section, the Minister-

(a) shall, in the case of an application for an exclusive prospecting licence by the holder of a reconnaissance licence to whom an exclusive right has been conferred in terms of section 59, subject to the provisions of sections 48(4) and (5) and 49, grant such application if such application relates to an area of land and a mineral or group of minerals to which such exclusive right relates; or

(b) may, in the case of any other application for an exclusive prospecting licence, subject to the provisions of sections 48(4) and (5) and 4, grant or refuse such application.

(2) Notwithstanding the provisions of subsection (1), the Minister shall not grant an application by any person for an exclusive prospecting licence–

(a) unless such person is a person referred to in section 46;

(b) if, at the time of the application, such person is contravening any provision of this Act or any condition, direction or order determined, given or made under any such provision or is failing to comply with any such provision, condition, direction or order;

(c) unless the Minister is on reasonable grounds satisfied-

(i) with the proposed programme of prospecting operations or the proposed expenditure to be expended in respect of such operations;

(ii) that the person concerned has the technical and financial resources to carry on such prospecting operations;

(d) in respect of an area of land in relation to a mineral or group of minerals in respect of which an exclusive right has, in terms of section 59, been conferred on any holder of a reconnaissance licence;

(e) in respect of any claim area or mining area;

(f) in respect of any area of land to which an exclusive prospecting licence or a mineral deposit retention licence relates in relation to a mineral or group of minerals to which such exclusive prospecting licence or such mineral deposit retention licence relates;

(g) in respect of any prospecting area or retention area in relation to a mineral or group of minerals other than the mineral or group of minerals to which the exclusive prospecting licence or mineral deposit retention licence issued in respect of such areas relates, respectively, unless -

(i) such person has given notice in writing, not later than on the date on which such application is made, to the holder of the exclusive prospecting licence or mineral deposit retention licence to which such prospecting area or retention area, as the case may be, relates of his or her application or intended application, as the case may be, for such exclusive prospecting licence and has provided the Minister of proof in writing of having done so;

(ii) the Minister has afforded the holder referred to in subparagraph (i) a reasonable opportunity to make representations in relation to such application;

(iii) the Minister deems it, with due regard to representations made in terms of subparagraph (ii), if any, desirable in the interests of the development of the mineral resources of Namibia, to grant such licence; and

(iv) the Minister is on reasonable grounds satisfied that prospecting operations carried on by virtue of such licence will not detrimentally affect the rights of any holder of an exclusive prospecting licence or a mineral deposit retention licence, as the case may be, in respect of any such area.

70. Issue of exclusive prospecting licences.

(1) Subject to subsections (4) and (5) of section 48, the Minister shall, upon the granting of an application for an exclusive prospecting licence, direct the Commisioner to issue to the person who applied for such licence, an exclusive prospecting licence on such terms and conditions as may be agreed upon as provided in the said subsections.

(2) The provisions of section 62 shall apply *mutatis mutandis* in relation to an exclusive prospecting licence.

71. Duration of exclusive prospecting licences.

(1) Subject to the provisions of this Act, an exclusive prospecting licence shall be valid -

(a) for such period, not exceeding three years, as may be determined by the Minister at the time of the granting of such licence; and

(b) for such further periods, not exceeding two years at a time, as may be determined by the Minister at the time of the renewal of such licence as from the date on which such licence would have expired if an application for its renewal had not been made.

(2) An exclusive prospecting licence shall not be renewed on more than two occasions, unless the Minister deems it desirable in the interests of the development of the mineral resources of Namibia that an exclusive prospecting licence be renewed in any particular case on a third or subsequent occasion.

(3) Notwithstanding the provisions of subsection (1), but subject to the other provisions of this Act -

(a) an exclusive prospecting licence shall not expire during a period during which an application for the renewal of such licence is being considered, until such application is refused or the application is withdrawn or has lapsed, whichever occurs first or, if such application is granted, until such time as the exclusive prospecting licence is renewed in consequence of such application; or

(b) where an application is made by the holder of an exclusive prospecting licence for a mineral deposit retention licence or a mining licence in relation to an area of land which forms part of the prospecting area and in respect of any mineral or group of minerals to which such exclusive prospecting licence relates, such exclusive prospecting licence shall not expire in relation to such area of land and such mineral or group of minerals, until such application is refused or the application is withdrawn or has lapsed, whichever occurs first or, if such application is granted, until such time as the mineral deposit retention licence is issued in consequence of such application.

72. Applications for renewal of exclusive prospecting licences.

(1) Subject to the provisions of subsection (2) of this section, the provisions of section 68 shall apply *mutatis mutandis* in relation to an application for the renewal of an exclusive prospecting licence.

(2) An application for the renewal of an exclusive prospecting licence shall -

(a) be made not later than 90 days before the date on which such licence will expire if it is not renewed or such later date, but not later than such expiry date, as the Minister may on good cause shown allow;

(b) not be made –

(i) in the case of a first application for the renewal of such licence, in respect of any land greater in extent than 75 per cent of the prospecting area in respect of which such licence has been issued; or

(ii) in the case of any other application for the renewal of such licence, in respect of any land greater in extent than 50 per cent of the prospecting area citing at the date of such application,

without the approval of the Minister, granted in the interest of the development of the mineral resources of Namibia and on good cause shown by the holder of the exclusive prospecting licence in question; and

(c) be accompanied by a report in duplicate containing the particulars contemplated in section 76(1)(e) prepared in respect of the immediately preceding period of the currency of such exclusive prospecting licence.

(3) Subject to the provisions of subsection (1), the Minister shall not grant an application for the renewal of an exclusive prospecting licence, unless the Minister is on reasonable grounds satisfied with the manner in which the programme of prospecting operations have been carried on or the expenditure expended in respect of such operation,

(4) The Minister shall not refuse to grant an application for the renewal of an exclusive prospecting licence -

(a) if the holder of such licence -

(i) has complied with all the terms and conditions of such licence;

(ii) has complied with the proposed programme of prospecting operations; and

(iii) has expended the expenditure in respect of such operations as in accordance with the terms of such mineral agreement;

(b) if the Minister is on reasonable grounds satisfied -

(i) with the proposed programme of prospecting operations or the proposed expenditure to be expended in respect of such operations;

(ii) that the person concerned has the technical and financial resources to carry on such prospecting operations;

(c) on the grounds thereof that such holder has contravened or failed to comply with any provision of this Act or any term and condition of such licence, unless the Minister has by notice in writing informed such holder of his or her intention to so refuse such application-

(i) setting out particulars of the contravention or failure in question; and

(ii) requiring such holder to make representations to the Minister in relation to such contravention or failure or to remedy such contravention or failure on or before a date specified in such notice,

and such holder has failed to so remedy such contravention or failure or make representations.

73. Applications for amendment of exclusive prospecting licences.

(1) Subject to the provisions of subsection (2), the holder of an exclusive prospecting licence may apply for the amendment of such licence-

(a) by the extension or reduction or the extension and reduction of the prospecting area to which such licence relates; or

(b) by the addition of any mineral or group of minerals to which such licence relates.

(2) The provisions of sections 68 and 69 shall apply *mutatis mutandis* in relation to an application referred to in subsection (1).

(3) If the Minister grants an application referred to in subsection (1) the Commissioner shall amend the licence in question accordingly.

74. Obligations of holders of exclusive prospecting licences.

The provisions of section 41(1) shall apply *mutatis mutandis* in relation to the holder of an exclusive prospecting licence, and in such application-

(a) any referenceto the registration of a mining claim, shall be construed as a reference to an exclusive prospecting licence;

(b) any reference to mining operations, shall be deemed to have been deleted;

(c) any reference to a claim area or a mining claim, shall beconstrued as a reference to a prospecting area; and

(d) the provisions of paragraphs (b) and (c) of section 41(1) shall be deemed to have been deleted.

75. Work programmes of prospecting operations.

The provisions of section 42 shall apply *mutatis mutandis* in relation to the holder of an exclusive prospecting licence, and in such application-

(a) any reference to the holder of a mining claim, shall he construed as a reference to the holder of an exclusive prospecting licence;

(b) any reference to mining operations, shall be deemed to have been deleted; and

(c) any reference to the registration of a mining claim, shall be construed as a reference to an exclusive prospecting licence.

76. Records, maps, plans and financial statements to be kept, and information, reports and returns to be submitted, by holders of exclusive prospecting licences.

(1) The holder of an exclusive prospecting licence–

(a) shall keep at an address in Namibia a proper record in such form as may be determined in writing by the Commissioner in relation to-

(i) the location and results of all photogeological studies, imaging, geological mapping, geochemical sampling, geophysical surveying, drilling, pitting and trenching, sampling and bulk sampling carried on by such holder in the course of the prospecting operations carried on by him or her in the prospecting area to which such exclusive prospecting licence relates;

(ii) the results of all analytical, metallurgical and mineralogical work incidental to such prospecting operations;

(iii) the interpretation and assessment of the studies, surveys and work referred to in subparagraphs (i) and (ii);

(iv) the persons employed by such holder for purposes of such prospecting operations, including the names, addresses, nationality and ages of, and the total remuneration and other benefits paid and granted to such persons;

(v) the nature, mass or volume and value of any mineral or group of minerals sold or otherwise disposed of and the full names and address of any person to whom such mineral or group of minerals was sold or otherwise disposed of;

(vi) the expenses incurred by such holder in the course of such prospecting operations; and

(vii) such other work as may be determined in writing by the Commissioner and specified by notice in writing addressed and delivered to such holder;

(b) shall prepare or cause to be prepared and maintain at all times plans and maps in respect of the prospecting area;

(c) shall prepare, in respect of each year of assessment, as defined in section 1 of the Income Tax Act, 1981 (Act 24 of 1981) of such holder during the currency of such exclusive prospecting licence and each period during which such exclusive prospecting licence is renewed, a statement of income and expenditure derived or incurred in connection with any prospecting operations in such prospecting area and such other financial statement, defined in section 1 of the Income Tax form as the Commissioner may determine;

(d) shall submit within 30 days after the end of each quarter during the currency of such exclusive prospecting licence to the Commissioner in such form as may be determined in writing by the Commissioner a return or returns containing in relation to such quarter -

(i) a summary of the particulars and information contained in the records referred to in paragraph (a) as may be required by the Commissioner and indicated in such form or requested by the Commissioner by notice in writing addressed and delivered to such holder; and

(ii) such other particulars as the Commissioner may require in relation to the prospecting operations carried on by such holder; and

(e) shall submit, within 60 days after the end of the currency of such exclusive prospecting licence and of each period during which such exclusive prospecting licence has been renewed in respect of the whole of the prospecting area, or together with an application for the renewal of such exclusive prospecting licence or an application for a mineral deposit retention licence or mining licence in respect of the whole or any portion of the prospecting area, to the Commissioner -

(i) in such form as may be determined in writing by the Commissioner, a report in duplicate or, in the case where an application is made for a mineral deposit retention licence or mining licence in respect of a portion of the prospecting area, separate reports in duplicate in respect of such portion and the remainder of such prospecting area containing in relation to such period -

(aa) an evaluation of the prospects of the discovery of any mineral or group of minerals in such prospecting area;

(bb) all information, including photographs, tabulations, tapes and discs, but excluding information contained in a report furnished in terms of section 53(2), in the records referred to in paragraph (a) and the plans and maps referred to in paragraph (b);

(cc) the nature, mass or volume and value of any mineral or group of minerals sold or otherwise disposed of and the full names and address of any person to whom such mineral or group of minerals has been sold or otherwise disposed of;

(dd) an estimate of the mineral reserves in the prospecting area properly illustrated by way of plans and maps according to an appropriate scale; and

(ee) such other particulars as the Commissioner may require in relation to the prospecting operations carried on by such holder; and

(ii) the statement of income and expenditure and financial statements referred to in paragraph (c).

(2) In the event of the cancellation of an exclusive prospecting licence under section 55 or the expiration of an exclusive prospecting licence, the person who was the holder of such licence immediately before such cancellation or expiration shall on a date not later than one month after the date of such cancellation or expiration deliver to the Commissioner -

(a) all records kept in terms of the provisions of subsection (1)(a);

(b) all maps and plans referred to in subsection (1)(b);

(c) all reports, photographs, tabulations, tapes and discs prepared by or on behalf of such person in the course of such prospecting operations; and

(d) such other books, documents, records and reports as the Commissioner may require by notice in writing addressed and delivered to such person,

or copies of such records, maps, plans, reports, photographs, tabulations, tapes, discs, books and documents, unless a mineral deposit retention licence or a mining licence is issued to such person in relation to the area to which such exclusive prospecting licence related with effect from the date following on the date of such cancellation or lapsing or such later date as the Commissioner may on good cause shown allow.

(3) If the holder referred to in subsection (2) fails to comply with the provisions of that subsection the Commissioner may *mutatis mutandis* in accordance with the provisions of Chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977) -

(a) enter upon any premises whatsoever and search for the records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents referred to in paragraphs (a) to (d) of subsection (2);

(b) seize any such records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents,

as if he or she were a police official referred to in that Act and such records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents were concerned in the commission of any offence.

(4) Any person referred to in subsection (1) or (2) who contravenes or fails to comply with the provisions of that subsection shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

PART XI
Provisions relating to mineral deposit retention licences

77. Rights of holders of mineral deposit retention licences.

(1) Subject to the provisions of subsection (2) and the other provisions of this Act, the holder of a mineral deposit retention licence shall be entitled-

(a) to retain the retention area to which such mineral deposit retention licence relates for future mining operations;

(b) to carry on, in order to determine from time to time the prospects of mining any mineral or group of minerals to which such mineral deposit retention licence relates on a profitable basis, prospecting operations in such retention area;

(c) to remove any mineral or group of minerals other than a controlled mineral or sample of such mineral or group of minerals, for any purpose other than sale or disposal, from any place where itwas found or incidentally won in the course of prospecting operations referred to in paragraph (b) to any other place within Namibia;

(d) with the permission in writing Of the Commissioner previously obtained generally or in every particular caseand subject to such conditions as may be determined by the Commissioner or subject to the conditions of an exemption granted under section 137 -

(i) to remove any mineral or group of minerals referred to in paragraph (c) for any purpose other than sale or disposal, from any, where it was found or incidentally won in course of prospecting operations referred to in paragraph (b) to any place outside Namibia;

(ii) to remove any controlled mineral or sample of such mineral, for any purpose other than sale or disposal, from any place where it was found or incidentally won in the course of prospecting operations referred to in paragraph

(b) to any place, whether within or outside Namibia;

(iii) To remove any mineral or group of minerals, for purposes of' sale or disposal, from any place where it was found or incidentally won in the course of such prospecting operations;

(iv) to sell or otherwise dispose of any such mineral or group of minerals;

(c) to carry on, in order to determine from time to time the prospects of mining any mineral or group of minerals to which such licence relates on a profitable basis, such other investigations and operations, including the erection or construction of accessory works, in such retention area as may be reasonably necessary for, or in connection with, any future mining operations or any prospecting operations contemplated in paragraph (b).

(2) The provisions of subsection (1) shall not be construed as -

(a) conferring on the holder of a mineral deposit retention licence any preferential right to any other licence in relation to any mineral or group of minerals, other than a mineral or group of minerals to which such mineral deposit retention licence relates, during the currency or on expiry of such mineral deposit retention licence;

(b) preventing the Minister from granting to any other person in respect of the retention area to which such mineral deposit retention licence relates -

(i) a reconnaissance licence in respect of any mineral or group of minerals;

(ii) a reconnaissance licence by virtue of which an exclusive right is conferred upon the holder of such licence to carry on reconnaissance operations in respect of any mineral or group of minerals other than the mineral or group of minerals to which such mineral deposit retention licence relates;

(iii) an exclusive prospecting licence, mining licence or mineral deposit retention licence in respect of any mineral or group of minerals other than the mineral or group of minerals to which such mineral deposit retention licence relates.

(3) (a) The holder of a mineral deposit retention licence shall not erect or construct any accessory works referred to in subsection (1)(c) without the prior permission in writing of the Commissioner.

(b) The Commissioner shall not grant the permission referred to in paragraph (a) in respect of accessory works to be erected or constructed on private land, unless the holder of such mineral deposit retention licence has complied with the provisions of section 52(1)(a) in relation to any compensation to be paid to the owner of such private land.

(4) An application for the permission referred to in subsection (1)(d) or (3) shall be made to the Commissioner in such form as may be determined in writing by the Commissioner and shall be accompanied by such application fee, if any, as may be determined under section 123, together with such documents and information as may be required by the Commissioner.

(5) The holder of a mineral deposit retention licence who has removed, as contemplated in paragraph (c) of subsection (1), any mineral or group of minerals other than a controlled mineral or any sample of such mineral or group of minerals from the place where it was found or incidentally won, for any purpose other than for sale or disposal, to any place within Namibia, shall, except to the extent to which such holder has been exempted, under the provisions of section 137, from the provisions of this subsection, inform the Commissioner in writing of such removal, not later than 14 days or such longer period as the Commissioner may allow after such removal, and provide particulars of the nature of such sample, mineral or group of minerals and the place to which it has been so removed.

(6) (a) The holder of a mineral deposit retention licence who has contravened or failed to comply with the provisions of subsection(1)(d), (3) or (5) shall be guilty of an offence and on conviction be liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(b) If in any prosecution in terms of paragraph (a) of this subsection for the contravention or failure to comply with the provisions of subsection (1)(d)(iii), it is proved -

(i) that the holder referred to in that paragraph has removed any mineral or group of minerals from the retention area to which the mineral deposit retention licence relates;

(ii) that such holder has not obtained the permission of the Commissioner for the removal of such mineral or group of minerals as required by subsection (1)(d); and

(iii) that such holder has failed to inform the Commissioner of the removal of such mineral or group of minerals as provided in subsection (5),

it shall be presumed until the contrary is proved that such holder has removed such mineral or group of minerals for purposes of sale or disposal, as the case may be.

78. Persons who may apply for mineral deposit retention licences.

Notwithstanding the provisions of section 46, no person shall apply for a mineral deposit retention licence, unless such person is the holder of an exclusive prospecting licence or a mining claim in relation to the area of land and the mineral or group of minerals to which his or her application relates.

79. Applications for mineral deposit retention licences.

An application by any person for a mineral deposit retention licence-

(a) shall contain -

(i) in the case of a natural person, the full names, nationality, date of birth, postal and residential address of such person;

(ii) in the case of a company, the name of such company and particulars of its incorporation and registration as a company, the registered address and principal place of business of the company in Namibia, the full names and nationality of the directors of the company, the share capital of the company

and the full names and nationality of any person who 1 the beneficial owner a more than five per cent of the shares issued by such company; and

(iii) in the case of any person represented by an accredited agent, the full names and address of such accredited agent;

(b) shall state the period for which such mineral deposit retention licence is required;

(c) shall be accompanied by a detailed plan of the area to which the application relates drawn according to an appropriate scale of such area, indicating-

(i) its location with reference to magisterial districts;

(ii) the name and number of any farm situated therein; and

(iii) the extent of such area defined by reference to identifiable physical features or co-ordinate reference points;

(d) shall contain a detailed geological description of the area of land to which the application relates -

(i) in which the mineral or group of minerals to which such application relates is set out;

(ii) which includes an estimate, substantiated by documentary proof or such other proof as may be required by the Commissioner, of the mineral reserves in such retention area and properly illustrated by way of' plans and maps drawn according to an appropriate seal; and

(iii) which, in the case of an application made consequent upon prospecting operations carried on in lieu of mining operations on a mining claim or prospecting operations carried on in terms of' an exclusive prospecting licence of which the person applying for the mineral deposit retention licence is

the holder, the report and the separate reports, if any, referred to in section 76(1)(e)(i);

(e) shall contain particulars of -

(i) any licence, including any mining claim, issued in terms of the provisions of this Act held by such person alone or jointly with any other person and the mineral or group of' minerals to which any such licence or mining claim relates; and

(ii) any prospecting operations and mining operations carried on by such person alone or jointly with any other person outside Namibia,

on the date of such application and during a period of 10 years immediately preceding such date;

(f) shall contain particulars of -

(i) the condition of, and any existing damage to, the environment in the area to which the application relates; and

(ii) an estimate of the effect which the proposed prospecting operations may have on the environment and the proposed steps to be taken in order to minimize or prevent any such effect;

(g) shall contain particulars, substantiated by documentary proof or such other proof as may be required by the Commissioner, of the technical and financial resources of, or available to, such person;

(h) shall be accompanied by a statement containing

(i) the reasons why any deposit of any mineral or group of minerals contained in the area of land to which the application relates cannot at the time of the application be won or mined on a profitable basis;

(ii) an indication of the circumstances in which, and the earliest date on which, such mineral or group of minerals can be won or ruined on a profitable basis; and

(iii) the reasons why no further prospecting operations can usefully be carried on in such prospecting area or on such mining claim or the portion thereof to which the application relates;

(i) shall be accompanied by such other documents and information as the Minister may require in relation to such application; and

(j) may contain any other matter which in the opinion of the person concerned is relevant to the application.

80. Exercise of powers of Minister to grant or refuse mineral deposit retention licences.

(1) The Minister shall not grant an application for a mineral deposit retention licence to a person who is, in terms of section 78, entitled to apply for such licence-

(a) in respect of an area larger than an area which in the opinion of the Minister would be required, having regard to the available minerals or groups of minerals in the area to which the application relates, to carry on the proposed future mining operations;

(b) if at the time of the application, such person is contravening any provision of this Act or any condition, direction or order determined, given or made under any such provision or is failing to comply with any such provision, condition, direction or order;

(c) in relation to any mineral or group of minerals, unless the Minister is on reasonable grounds satisfied-

(i) that the deposit of the mineral or group of' minerals in the area to which the application relates cannot, for the reasons set out in the application, be won or mined on a profitable basis at the time and can probably be so won or mined on the expiration of the period contemplated in section 82;

(ii) that no further prospecting operations can usefully be carried on in the area to which the application relates; and

(iii) that it is desirable, having regard to the future utilization of the mineral resources of Namibia, to grant such licence;

(d) in relation to the area of land to which such application relates in respect of any mineral or group of minerals, if at the time of such application -

(i) such area of land forms part of any prospecting area in relation to any mineral or group of minerals other than the mineral or group of minerals to which the exclusive prospecting licence issued in respect of that area relates, unless -

(aa) such person has given notice in writing, not later than on the date on which such application is made, to the holder of the exclusive prospecting licence to which such prospecting area relates of his or her application or intended application, as the case may be, for such mineral deposit retention licence;

(bb) the Minister has afforded the holder referred to in item (aa) a reasonable opportunity to make representations in relation to such application;

(cc) the Minister deems it, with due regard to any representations made in terms of item (bb), desirable, having regard to the future utilization of the mineral resources of Namibia, to grant such licence;

(dd) the Minister is on reasonable grounds satisfied that prospecting operations referred to in paragraph (b) of section 77(1) and any other investigations and operations referred to in paragraph (e) of that section to be carried on by virtue of such licence will not detrimentally affect the rights of any holder of an

exclusive prospecting licence in respect of any such area and that the prospecting operations carried on by the holder of the exclusive prospecting licence on that portion of the prospecting area to which the application relates have little or no prospects of success of discovering any mineral or group of minerals which may in the opinion of the Minister be won or mined on a profitable basis;

(ii) such area Of land forms part of any retention area in relation to any mineral or group of minerals other than the mineral or group of minerals to which the mineral deposit retention licence issued in respect of that area relates, unless -

(aa) the Minister deems it desirable, having regard to the future utilization of the mineral resources of Namibia, to grant such licence;

(bb) the Minister is on reasonable grounds satisfied that prospecting operations referred to in paragraph (b) of section 77(1) and any other investigations and operations referred to in paragraph (e) of that section to be carried on by virtue of such licence will not detrimentally affect the rights of any holder of the mineral deposit retention licence in respect of any such area;

(cc) the holder of the mineral deposit retention licence has consented to the mineral deposit retention licence being granted.

(2) The Minister shall not refuse to grant an application for a mineral deposit retention licence on any grounds contemplated in subsection (1)(b), unless the Minister -

(a) has by notice in writing informed such holder of his or her intention to so refuse such application -

(i) setting out particulars of the grounds on which his or her intention is based; and

(ii) requiring such holder to make representations to the Minister in relation to such grounds or to remedy any matter relating to such grounds specified in such notice, and such holder has failed to so remedy such matter or to make representations; and

(b) has taken into consideration any representations made by such person.

81. Issue of mineral deposit retention licences.

(1) Subject to subsections (4) and (5) of section 48, the Minister shall, upon the granting of an application for a mineral deposit retention licence, direct the Commissioner to issue to the person who applied for such licence, a mineral deposit retention licence on such terms and conditions as may be agreed upon as provided in the said subsections.

(2) The provisions of section 62 shall apply *mutatis mutandis* in relation to a mineral deposit retention licence.

82. Duration of mineral deposit retention licences.

(1) Subject to the provisions of this Act, a mineral deposit retention licence shall be valid -

(a) for such period, not exceeding five years, as may be determined by the Minister at the time of the granting of such licence; and

(b) for such further period, not exceeding two years, as may from time to time be determined by the Minister at the time of the granting of any application for the renewal of such licence.

(2) Notwithstanding the provisions of subsection (1), but subject to the other provisions of this Act

(a) a mineral deposit retention licence shall not expire during a period during which an application for the renewal of such licence is being considered until such application is refused or the application is withdrawn or has lapsed, whichever occurs first or, if such application is granted, until such time as the exclusive prospecting licence is renewed in consequence of such application;

(b) where an application is made by the holder of a mineral deposit retention licence for a mining licence in relation to an area of land which forms part of the retention area and in respect of any mineral or group of minerals to which such mineral deposit retention licence relates, such mineral deposit retention licence shall not expire in relation to such area of land and such mineral or group of minerals, until such application is refused or the application is withdrawn or has lapsed, whichever occurs first or, if such application is granted, until such time as the exclusive prospecting licence is renewed in consequence of such application.

83. Effect of issue of mineral deposit retention licences on prospecting areas.

When a mineral deposit retention licence is issued-

(a) to the holder of a mining claim in respect of the claim area to which that mining claim relates, the registration of such mining claim shall, for purposes of the provisions of Part VII, be deemed to have lapsed; or

(b) to the holder of an exclusive prospecting licence in respect of an area of land which forms part of the prospecting area and any mineral or group of minerals to which such exclusive prospecting licence relates –

(i) such exclusive prospecting licence shall cease to have effect in relation to such area of land as from the date on which such mineral deposit retention licence is issued;

(ii) any other exclusive prospecting licence shall so cease to have effect, unless the Minister has, subject to he provisions of section 80(1)(d)(i), determined otherwise on such conditions as may be determined in writing by him or her.

84. Applications for renewal of mineral deposit retention licences.

(1) Subject to the provisions of subsection (2) of this section, the provisions of sections 79 and 80 shall apply *mutatis mutandis* in relation to an application for the renewal of a mineral deposit retention licence.

(2) An application for the renewal of a mineral deposit retention licence shall be made not later than 90 days before the date on which such licence will expire if it is not renewed or such later date, but not later than such expiry dam, as the Minister may on good cause shown allow.

(3) Subject to the provisions of subsection (1), the Minister shall not refuse an application for the renewal of a mineral deposit retention licence on the grounds thereof that the holder of such licence has contravened or failed to comply with any provision of this Act or any term and condition of such licence, unless the Minister has by notice in writing informed such holder of his or her intention to so refuse such application-

(a) setting out particulars of the contravention or failure in question; and

(b) requiring such holder to make representations to the Minister in relation to such contravention or failure or to remedy such contravention or failure on or before a date specified in such notice,

and such holder has failed to so remedy such contravention or failure or make representations.

85. Application for amendment of mineral deposit retention licence.

The provisions of section 73(1) shall apply *mutatis mutandis* in relation to the amendment of a mineral deposit retention licence, and in such application-

(a) any reference to an exclusive prospecting licence, shall be construed as a reference to a mineral deposit retention licence;

(b) any reference to a prospecting area, shall be construed as a reference to a retention area; and

(c) any reference to sections 68 and 69 shall be deemed to be a reference to sections 79 and 80.

86. Obligations of holders of mineral deposit retention licences.

The provisions of section 41(1) shall apply *mutatis mutandis* in relation to the holder of a mineral deposit retention licence, and in such application–

(a) any reference to the registration of a mining claim, shall be construed as a reference to a mineral deposit retention licence;

(b) any reference to mining operations, shall be construed as a reference to work performed by virtue of a mineral deposit retention licence;

(c) any reference to a claim area or a mining claim, shall be construed as a reference to a retention area; and

(d) the provisions of paragraph(c) of section 41(1) shall be deemed to have been deleted.

87. Work programmes of operations carried on in terms of mineral deposit retention licence.

The provisions of section 42 shall apply *mutatis mutandis* in relation to the holder of a mineral deposit retention licence, and in such application-

(a) any reference to the holder of a mining claim, shall be construed as a reference to the holder of a mineral deposit retention licence;

(b) any reference to mining operations, shall be construed as a reference to work performed by virtue of a mineral deposit retention licence; and

(c) any reference to the registration of a mining claim, shall be construed as a reference to a mineral deposit retention licence.

88. Directions by Minister to holders of mineral deposit retention licences to apply for mining licences.

(1) Subject to the provisions of subsection (2), the Minister may, if he or she has reason to believe -

(a) that any mineral or group of minerals to which a mineral deposit retention licence relates may be won or mined, sold or otherwise disposed of on a profitable basis;

(b) that further prospecting operations may indicate the existence of any such mineral or group of minerals which may be won or mined, sold or otherwise disposed of on a profitable basis,

by notice in writing addressed and delivered to he holder of such licence, require such holder -

(i) to apply for a mining licence to carry on mining operations in respect of such mineral or group of minerals;

(ii) to carry on such further prospecting operations as may be specified in such notice in relation to such retention area within such reasonable period as may be specified in such notice; or

(iii) to abandon, if he or she so desires, such retention area in accordance with the provisions of section 54.

(2) The Minister shall not issue a notice under subsection (1) to the holder of a mineral deposit retention licence, unless the Minister-

(a) has by notice in writing addressed and delivered to such holder informed such holder of his or her intention to issue a notice contemplated in that subsection-

(i) setting out the reasons for such intention; and

(ii) requiring such holder to make within such period as may be specified in such notice representations to the Minister in relation to such reasons; and

(b) has taken into consideration any representations made by such person.

(3) Any holder of a mineral deposit retention licence who contravenes or fails to comply with a notice referred to in subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding R50 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

89. Records, maps, plans and financial statements to be kept, and information, reports and returns to be submitted, by holders of mineral deposit retention licences.

(1) The holder of a mineral deposit retention licence–

(a) shall keep at an address in Namibia a proper record in such form as may be determined in writing by the Commissioner in relation to-

(i) the investigations and operations, including the erection or construction of accessory works, in such retention area as may be reasonably necessary carried on by such

holder for, or in connection with, future mining operations contemplated in section 77;

(ii) the location and results of all photogeological studies, imaging, geological mapping, geochemical sampling, geophysical surveying, drilling, pitting and trenching, sampling and bulk sampling carried on by such holder in the course of the prospecting operations carried on by him or her in the retention area to which such mineral deposit retention licence relates;

(iii) the results of all analytical, metallurgical and mineralogical work incidental to such prospecting operations;

(iv) the interpretation and assessment of the studies, surveys and work referred to in subparagraphs (ii) and (iii);

(v) the persons employed by such holder for purposes of such investigations and operations, including the names, addresses, nationality and ages of, and remuneration and other benefits paid and granted to such persons;

(vi) the nature, mass or volume and value of any mineral or group of minerals sold or otherwise disposed of and the full names and address of any person to whom such mineral or group of minerals was sold or otherwise disposed of;

(vii) the expenses incurred by such holder in the course of such prospecting operations; and

(viii) such other work as may be determined by the Commissioner and specified by notice in writing addressed and delivered to such holder;

(b) shall prepare or cause to be prepared and maintain at all times plans and maps in respect of the retention area;

(c) shall prepare, in respect of each year of assessment, as defined in section 1 of the Income Tax Act, 1981 (Act 24 of 1981), of such holder during the currency of such mineral deposit retention licence W each period during which such mineral deposit retention licence is renewed, a statement of income and expenditure derived or incurred in connection with any operations in such retention area and such other financial statements as the Commissioner may require in such form as the Commissioner may determine;

(d) shall submit, within 60 days after the end of the currency of such mineral deposit retention licence in respect of the whole of the retention area, or together with an application for the renewal of such mineral deposit retention licence or an application for a mining licence in respect of the whole or any portion of the retention area, to the Commissioner-

(i) in such form as may be determined in writing by the Commissioner, a report in duplicate or, in the case where an application is made for a mining licence in respect of a portion of the retention area, separate reports in duplicate in respect of such portion and the remainder of such retention area, setting out in relation to such period -

(aa) an evaluation of the prospects of future mining operations in such retention area;

(bb) all information, including photographs, tabulations, tapes and discs, in the records referred to in paragraph (a) and the plans and maps referred to in paragraph (b);

(cc) such other particulars as the Commissioner may require in relation to the operations carried on by such holder;

(ii) the statement of income and expenditure and financial statements referred to in paragraph (c);

(e) shall submit within 90 days after the end of each year during the currency of such retention licence to the Commissioner in such form as may be determined in writing by the Commissioner the statement of income and expenditure and financial statements referred to in paragraph (c); and

(f) shall submit to the Minister such other reports, records and other information as the Minister may from time to time require in connection with the carrying on of investigations and operations in the retention area in question.

(2) In the event of the cancellation of a mineral deposit retention licence under section 55 or the expiration of a mineral deposit retention licence the person who was the holder of such licence immediately before such cancellation or expiration shall on a date not later than 180 days after the date of such cancellation or expiration deliver to the Commissioner -

(a) all records kept in terms of the provisions of subsection (1)(a); and

(b) such other books, documents, records and reports as the Commissioner may require by notice in writing addressed and delivered to such person,

or copies of such records, books, documents and reports, unless a mining licence is issued to such person in relation to the area to which such mineral deposit retention licence related with effect from the date following on the date of such cancellation or lapsing or such later date as the Commissioner may on good cause shown allow.

(3) If the holder referred to in subsection (2) fails to comply with the provisions of that subsection the Commissioner may *mutatis mutandis* in accordance with the provisions of Chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977) -

(a) enter upon any premises whatsoever and search for the records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents referred to in paragraphs (a) and (b) of subsection (2);

(b) seize any such records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents,

as if he or she were a police official referred to in that Act and such records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents were concerned in the commission of any offence.

(4) Any person referred to in subsection (1) or (2) who contravenes or fails to comply with the provisions of that subsection shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

PART XII
Provisions relating to mining licences

90. Rights of holders of mining licences.

(1) Subject to the provisions of subsection (2) and the other provisions of this Act, the holder of a mining licence shall be entitled -

(a) to carry on mining operations in the mining area to which such licence relates for such mineral or group of minerals as may be specified in such licence;

(b) to carry on in such mining area, in conjunction with any mining operations referred to in paragraph (a), any prospecting operations in relation to any mineral or group of minerals;

(c) to remove any mineral or group of minerals other than a controlled mineral or sample of such mineral or group of minerals, for any purpose other than sale or disposal, from any place where it was found or won or mined in the course of mining operations referred to in paragraph (a) or found or incidentally won in the course of prospecting operations referred to in paragraph (b) to any other place within Namibia;

(d) with the permission in writing of' the Commissioner previously obtained generally or in every particular case and subject to such conditions as may be determined by the Commissioner or subject to the conditions of' an exemption granted under section 137 -

(i) to remove any mineral or group of minerals referred to in paragraph (c) for any purpose other than sale or disposal, from any place where it was won or mined in the course of mining operations referred to in paragraph (a) or found or incidentally won in the course of prospecting operations referred to in paragraph (b) to any place outside Namibia;

(ii) to remove from the mining area, for any, purpose other than sale or disposal, any controlled mineral or sample of such mineral won or mined in the course of mining operations referred to in paragraph (a) or found or incidentally won in the course of prospecting operations referred to in paragraph (c) to any place, whether within or outside Namibia;

(iii) to remove from the mining area, for purposes of sale or disposal, any mineral or group of minerals won or mined in the course of mining operations referred to in paragraph (a) or found or incidentally won in the course of prospecting operations referred to in paragraph (b);

(iv) to sell or otherwise dispose of any such mineral or group of minerals;

(e) to carry on such other operations, including the erection or construction of accessory works, as may be reasonably necessary for, or in connection with, the mining operations, removal, selling or disposal or prospecting operations contemplated in paragraph (a), (b), (c) or (d).

(2) (a) The holder of a mining licence shall not erect or construct any accessory works referred to in subsection (1)(e) without the prior permission in writing of the Commissioner.

(b) The Commissioner shall not grant the permission referred to in paragraph (a) in respect of accessory worksto be erected or constructed on private land, unless the holder of the mining licence has complied*mutatis mutandis* with the provisions of section 52(1)(a) in relation to any compensation to be paidto the owner of such private land.

(3) An application for the permission referred to in subsections (1)(d) and (2) shall be made to the Commissioner in such form as my be determined in writing by the Commissioner and shall be accompanied by such application fee, if any, as may be determined under section 123, together with such documents and information as may be required by the Commissioner.

(4) The holder of a mining licence who has removed, as contemplated in paragraph (c) of subsection (1), any mineral or group of minerals other than a controlled mineral or any sample of such mineral or group of minerals from the place where it was found, won or mined, for any purpose other than for sale or disposal, to any place within Namibia, shall, except to the extent to which such holder has been exempted, under the provisions of section 137, from the provisions of this subsection, inform the Commissioner in writing of such removal, not later than 14 days or such longer period as the Commissioner may allow after such removal, and provide particulars of the nature of such sample, mineral or group of minerals and the place to which it has been so removed.

(5) (a) The holder of a mining licence who has contravened or failed to comply with provisions of subsection (1)(d) or (4) shall be guilty of an offence and on conviction be liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(b) If in any prosecution in terms ofparagraph (a) of this subsection for the contravention or failure to comply with the provisions of subsection (1)(d)(iii), it is proved -

(i) that the holder referred to in that paragraph has removed any mineral or group of minerals from the mining area to which the mining licence relates;

(ii) that such holder has not obtained the permission of the Commissioner for the removal of such mineral or group of minerals as required by subsection (1)(d); and

(iii) that such holder has failed to inform the Commissioner of the removal of such mineral or group of minerals as provided in subsection (4),

it shall be presumed until the contrary is proved that such holder has removed such mineral or group of minerals for purposes of sale or disposal.

91. Applications for mining licences.

An application by any person for a mining licence -

(a) shall contain -

(i) in the case of a natural person, the full names, nationality, date of birth, postal and residential address of such person;

(ii) in the case of a company, the name of such company and particulars of its incorporation and registration as a company, the registered address and principal place of business of the company in Namibia, the full names and nationality of the directors of the company, the share capital of the company and the full names and nationality of any person who is the beneficial owner of more than five per cent of the shares issued by such company; or

(iii) in the case of any person represented by an accredited agent, the full names and address of such accredited agent;

(b) shall state the period for which such mining licence is required;

(c) shall be accompanied by a detailed plan of the area to which the application relates drawn according to scale of such area indicating-

(i) its location with reference to magisterial districts;

(ii) the name and number of any farm situated therein; and

(iii) the extent of such area defined by reference to identifiable physical features or co-ordinate reference points;

(d) shall contain a detailed geological description of the area of land to which the application relates -

(i) in which the mineral or group of minerals to which such application relates is set out;

(ii) which includes an estimate, substantiated by documentary proof or such other proof as may be required by the Commissioner, of the mineral reserves in such mining area and properly illustrated by way of plans and maps drawn according to scale; and

(iii) which, in the case of an application made consequent upon prospecting operations or mining operations carried on in terms of an exclusive prospecting licence, mineral deposit retention licence or on a mining claim of which the person applying for the mining licence was the holder, the report and the separate report, if any, referred to in section 45(1)(f)(i), 76(1)(e)(i) or 89(1)(d)(i), as the case may be;

(e) shall contain particulars of -

(i) any licence, including any mining claim, held, whether alone or jointly with any other person, and the mineral or group of minerals to which such licence or mining claim relates; and

(ii) any prospecting operations and mining operations carried on by such person alone or jointly with any other person outside Namibia,

on the date of such application and during a period of 10 years immediately preceding such date;

(f) shall contain particulars of -

(i) the condition of, and any existing damage to, the environment in the area to which the application relates;

(ii) an estimate of the effect which the proposed prospecting operations and mining operations may have on the environment and the proposed steps to be taken in order to minimize or prevent any such effect; and

(iii) the manner in which it is intended to prevent pollution, to deal with any waste, to safe guard the mineral resources, to reclaim and rehabilitate land disturbed by way of the prospecting operations and mining operations and to minimize the effect of such operations on land adjoining the mining area;

(g) shall be accompanied by a complete technical report on the proposed development, mining and ore treatment activities, including-

(i) the dates of commencement of development, mining and ore treatment activities;

(ii) the capacity of production and scale of operations; and

(iii) the overall mining of ore and minerals or groups of minerals and the nature thereof;

(h) shall contain particulars, substantiated by documentary proof or such other proof as may be required by the Commissioner, of the technical and financial resources of, or available to, such person to carry on the prospecting operations to which the application relates;

(i) shall contain particulars of the programme of such mining operations, the estimated expenditure in respect thereof, the period within which such operations will be carried on and such expenditure will be made;

(j) shall be accompanied by a detailed forecast of capital investment, operating cost, income and profits and particulars of the means of financing;

(k) shall be accompanied by such documents as the Minister may require in relation to any particulars referred to in this section; and

(1) may contain any other matter which in the opinion of the person concerned is relevant to the application.

92. Exercise of powers of Minister to grant or refuse mining licences.

(1) The Minister -

(a) shall in the case of an application for a mining licence by-

(i) the holder of a reconnaissance licence to whom an exclusive right has been conferred in terms of section 59;

(ii) the holder of an exclusive prospecting licence;

(iii)the holder of a mineral deposit retention licence; or

(iv) the holder of a mining claim,

subject to the provisions of subsections (2) and (4) of this section, grant such application, if such application relates to an area of land and a mineral or group of minerals to which such exdusive right or mineral deposit retention licence or the claim area in question relates;

(b) may, in the case of any other application for a mining licence, subject to the provisions of subsections (3) and (4) of this section, grant or refuse such application.

(2) Notwithstanding the provisions of subsection (1)(a), the Minister shall not grant an application by any person for a mining licence-

(a) in respect of an area larger than an area which in the opinion of the Minister would be required, having regard to the available minerals or groups of minerals in the area to which the application relates, to carry on such mining operations;

(b) if, at the time of the application, such person is contravening any provision of this Act or any condition, direction or order determined, given or made under any such provision or is failing to comply with any such provision, condition, direction or order;

(c) unless the Minister is on reasonable grounds satisfied-

(i) that the area of land to which the application relates contains a mineral or group of minerals to which the application relates which in the opinion of the Minister may be won or mined, sold or otherwise disposed of on a profitable basis;

(ii) that the proposed programme of mining operations to be carried out and the expenditure to be expended in respect of such operations will ensure-

(aa) efficient, beneficial and timely use of the mineral or group of minerals to which the application relates;

(bb) adequate protection of the environment;

(iii) that the person concerned has the technical and financial resources to carry on such mining operations;

(d) in respect of an area of land in relation to a mineral or group of minerals in respect of which an exclusive right has, in terms of section 59, been conferred on any holder of a reconnaissance licence;

(e) in respect of any claim area or mining area;

(f) in respect of any area of land to which an exclusive prospecting licence or a mineral deposit retention licence relates in relation to a mineral or group of minerals to which such exclusive prospecting licence or such mineral deposit retention licence relates;

(g) in respect of any prospecting area in relation to any mineral or group of minerals other than the mineral or group of minerals to which the exclusive prospecting licence issued in respect of that area relates, unless–

(i) such person has given notice in writing, not later than on the date on which such application is made, to the holder of the exclusive prospecting licence to which such prospecting area relates of his or her application or intended application, as the case may be, for such mining licence and has provided the Minister of proof in writing of having done so;

(ii) the Minister has afforded the holder referred to in subparagraph (i) a reasonable opportunity to make representations in relation to such application;

(iii) the Minister deems it, with due regard to any representations made in terms of subparagraph (ii), if any, desirable in the interests of the development of the mineral resources of Namibia, to grant such licence; and

(iv) the Minister is on reasonable grounds satisfied–

(aa) that mining operations carried on by virtue of such licence will not detrimentally affect the rights of any holder of an exclusive prospecting licence in respect of any such area;

(bb)that the prospecting operations carried on by the holder of the exclusive prospecting licence on that portion of the prospecting area to which the application relates have little or no prospects of success of discovering any mineral or group of minerals which may in the opinion of the Minister be won or mined on a profitable basis;

(h) in respect of any retention area in relation to any mineral or group of minerals other than the mineral or group of minerals to which the mineral deposit retention licence issued in respect of that area relates, unless-

(i) the holder of the mineral deposit retention licence has consented in writing to the mining licence being granted; and

(ii) the Minister deems it desirable in the interests of the development of the mineral resources of Namibia to grant such licence.

(3) The Minister shall not grant an application referred to in subsection (1)(b), if at the time of the application –

(a) the area of land to which the application relates forms pan of a mining area or a claim area;

(b) the area of land to which the application relates forms part of the area to which a reconnaissance licence by virtue of which an exclusive right has been conferred in terms of section 59, an exclusive prospecting licence or a mineral deposit retention licence relates, unless -

(i) the holder of such licence has consented to such mining licence being granted; and

(ii) the Minister deems it desirable in the interests of the development of the mineral resources of Namibia to grant such mining licence;

(c) the person applying for such mining licence is contravening any provision of this Act or any condition, direction or order determined, given or made under any such provision or is failing to comply with any such provision, condition, direction or order.

(4) The Minister shall not, in the case of an application contemplated in subsection (1)(a), refuse to grant such application on any grounds contemplated in subsection (2)(b) or (c) or, in the case of an application referred to in subsection (1)(b), refuse to grant such application on any grounds contemplated in subsection (3)(c), unless the Minister-

(a) has by notice in writing informed such holder of his or her intention to so refuse such application -

(i) setting out particulars of the grounds on which his or her intention is based; and

(ii) requiring such holder to make representations to the Minister in relation to such grounds or to remedy any matter relating to such grounds specified in such notice, and such holder has failed to so remedy such matter or to make representations; and (b) has taken into consideration any representations made by such person.

93. Issue of mining licences.

(1) Subject to subsections (4) and (5) of section 48, the Minister shall, upon the granting of an application for a mining licence, direct the Commissioner to issue to he person who applied for such licence, a mining licence on such terms and conditions as may be agreed upon as provided in the said subsections.

(2) The provisions of section 62 shall apply *mutatis mutandis* in relation to a mining licence.

94. Duration of mining licences.

(1) Subject to the provisions of this Act, a mining licence shall be valid-

(a) for a period of 25 years or such shorter period which in the opinion of the Minister represents the estimated life of the mine and determined by the Minister at the time of the granting of the mining licence; or

(b) for such further periods, not exceeding 15 years at a time, which in the opinion of the Minister represents the remaining period of the estimated life of the mine and determined by the Minister at the time of the renewal of such licence, as from the date on which such licence would have expired if an application for its renewal had not been made or on the date on which the application for such renewal is granted, whichever date is the later date.

(2) Notwithstanding the provisions of subsection(1), but subject to the other provisions of this Act, a mining licence shall not expire until such application for renewal of the licence is refused or the application is withdrawn or has lapsed, whichever occurs first or, if such application is granted, until such time as the mining licence is renewed in consequence of such application.

95. Effect of issue of mining licences on prospecting areas.

When a mining licence is issued-

(a) to the holder of a mining claim in respect of the claim area to which that mining claim relates, the registration of such mining claim shall, for purposes of the provisions of Part VII, be deemed to have lapsed; or

(b) to the holder of an exclusive prospecting licence in respect of an area of land which forms part of the prospecting area and any mineral or group of minerals to which such exclusive prospecting licence relates -

(i) such exclusive prospecting licence shall cease to have effect in relation to such area of land as from the date on which such mining licence is issued;

(ii) any other exclusive prospecting licence shall so cease to have effect, unless the Minister has, with the concurrence of such holder to whom such mining licence is issued and subject to the provisions of section 92(2)(g), determined otherwise on such conditions as may be determined in writing by the Minister; or

(c) to the holder of a mineral deposit retention licence in respect of an area of land which forms part of the retention area and any mineral or group of minerals to which such mineral deposit retention licence relates-

(i) such mineral deposit retention licence shall cease to have effect in relation to such area of land as from the date on which such mining licence is issued;

(ii) any other mineral deposit retention licence shall so cease to have effect, unless the Minister has, with the concurrence of such holder to whom such mining licence is issued and subject to the provisions of section 92(2)(h), determined otherwise on such conditions as may be determined in writing by the Minister.

96. Applications for renewal of mining licences.

(1) Subject to the provisions of subsection (2) of this section, the provisions of section 91 shall apply *mutatis mutandis* in relation to an application for the renewal of a mining licence.

(2) An application for the renewal of a mining licence shall be made not later than 12 months before the date on which such licence will expire if it is not renewed or such later date, but not later than such expiry date, as the Minister may on good cause shown allow.

(3) Subject to the provisions of subsection (1), the Minister shall not grant an application for the renewal of a mining licence -

(a) unless the holder of such licence proves to the satisfaction of the Minister that the mineral or group of minerals to which such licence relates still exists in the mining area in such quantity that it can still be won or mined and sold or otherwise disposed of on a profitable basis;

(b) unless the Minister is on reasonable grounds satisfied with the proposed mining operations and expenditure to be carried out or expended during the renewal period.

(4) The Minister shall not refuse to grant an application for the renewal of a mining licence -

(a) if the holder of such licence has complied with-

(i) the terms and conditions of such licence;

(ii) the proposed programme of mining operations,

and has expended in respect of such operations the amount required to be expended in terms of such terms and conditions;

(b) if the Minister is on reasonable grounds satisfied -

(i) with the proposed programme of mining operations or the proposed expenditure to be expended in respect of such operations;

(ii) that the person concerned has the technical and financial resources to carry on such mining operations;

(c) on the grounds thereof that such holder has contravened or failed to comply with any provision of this Act or any term and condition of such licence, unless the Minister has by notice in writing informed such holder of his or her intention to so refuse such application -

(i) setting out particulars of the contravention or failure in question;

(ii) requiring such holder to make representations to the Minister in relation to such contravention or failure or to remedy such contravention or failure on or before a date specified in such notice,

and such holder has failed to so remedy such contravention or failed to make representations.

97. Applications for amendment of mining licences.

The provisions of section 73(1) shall apply *mutatis mutandis* in relation to the amendment of a mining licence, and in such application-

(a) any reference to an exclusive prospecting licence, shall be construed as a reference to a mining licence;

(b) any reference to prospecting operations, shall be construed as a reference to mining operations; and

(c) any reference to sections 68 and 69, shall be deemed to be a reference to sections 91 and 92.

98. Obligations of holders of mining licences.

The provisions of section 41(1) shall apply *mutatis mutandis* in relation to the holder of a mining licence, and in such application-

(a) any reference to the registration of a mining claim, shall be construed as a reference to a mining licence;

(b) any reference to a claim area or a mining claim, shall be construed as a reference to a mining area; and

(c) the provisions of paragraph (c) of section 41(1) shall be deemed to have been deleted.

99. Notice of cessation of mining operations.

(1) The holder of a mining licence shall –

(a) before he or she intends to cease permanently or temporarily or to reduce the rate of his or her mining operations give notice of his or her intentions to the Minister on a date not later than-

(i) in the case of an intended permanent cessation of mining operations, six months;

(ii) in the case of an intended temporary cessation of such mining operations, 30 days; or

(iii) in the case of an intended reduction of such mining operations, seven days, or such other period as the Ministermay on good cause shown allow before such intended permanent or temporary cessation or intended reduction;

(b) if he or she for any reason beyond his or her control at any time permanently or temporarily ceases or reduces his or her mining operations, notify the Minister of such permanent or temporary cessation or reduction as soon as possible after such cessation or reduction, and provide reasons for such intentions or cessation or reduction, as the case may be, and such particulars as the Minister may require in connection with the location, nature and extent of such mining operations.

(2) On receipt of a notice referred to in subsection (1), or if the Minister has otherwise reason to believe that the holder of any mining licence has ceased or reduced, whether permanently or temporarily, mining operations, the Minister may-

(a) cause the matter to be investigated;

(b) with due regard to any representations made by such holder, take such steps *mutatis mutandis* in accordance with provisions of section 55 or 100 as the Minister may deem necessary or expedient in the interests of the mineral resources of Namibia.

100. Directions by Minister in relation to mining of minerals or groups of minerals by holder of mining licences.

(1) Subject to the provisions of subsection (2), the Minister may–

(a) if any mineral or group of minerals to which a mining licence relates is not won or mined in the mining area to which such licence relates and the Minister is on reasonable grounds satisfied that such mineral or group of' minerals is capable of being won or mined in that area on a profitable basis;

(b) if the Minister is, having regard to good mining practices, the technical and financial resources of' such holder and the prevailing marketability of any such mineral or group of minerals, on reasonable grounds satisfied that any mineral or group of minerals is not won or mined at an optimal rate or in a manner calculated to effect such optimal rate, from time to time by notice in writing addressed and delivered to the holder of such mining licence, direct such holder -

(i) to take, within such reasonable period as may he specified in such notice and with due regard to good mining practices, such steps as may be necessary and practicable to mine any mineral or group of minerals in such mining area and so specified;

(ii) to increase or reduce, within such reasonable period as may be specified in such notice, the rate at which such mineral or group of minerals is won or mined in such area to such rate, not exceeding, in the case of an increase, the capacity of the mining facilities of the holder of the licence, as the Minister may specify in such notice; or

(iii) to abandon, if he or she so desires, such mining area in accordance with the provisions of section 54.

(2) The Minister shall not give a direction under subsection (1) to the holder of a mining licence, unless the Minister-

(a) has by notice in writing addressed and delivered to such holder informed such holder of his or her intention to give a direction contemplated in that subsection –

(i) setting out he reasons for such intention;

(ii) requiring such holder to make within such period as may be specified in such notice representations to the Minister in relation to such reasons;

(b) has taken into consideration any representations made by such person.

(3) Any holder of a mining licence who contravenes or fails to comply with a notice referred to in subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding R50 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

101. Records, maps, plans and financial statements to be kept, and information, reports and returns to be submitted, by holders of mining licences.

(1) The holder of a mining licence –

(a) shall keep at an address in Namibia a proper record in such form as may be determined in writing by the Commissioner in relation to -

(i) any mining operations referred to in section 90(1)(a)-

(aa) the nature, appraisal and results of all mining operations carried on in the mining area to which such mining licence relates;

(bb) the nature and mass or volume of any mineral or group of minerals won or mined in such mining area and treated or stockpiled in such mining area or elsewhere;

(cc) the nature, mass or volume and value of any mineral or group of minerals so won or mined, sold or otherwise disposed of and the full names and address of any person to whom such mineral or group of minerals was sold or otherwise disposed of;

(dd) the nature and mass or volume of any waste removed from such mining area and the manner in which it was disposed of;

(ee) the persons employed by such holder for purposes of such mining operations, including the names, addresses, nationality and ages of, and remuneration and other benefits paid and granted to such persons;

(ff) the unit operating and off-mine costs incurred;

(gg) the expenses incurred by such holder in the course of such mining operations; and

(hh) such other work carried on in the course of such mining operations as may be determined by the Commissioner and specified by notice in writing addressed and delivered to such holder;

(ii) any prospecting operations referred to in section 90(1)(b)-

(aa) the nature, location and results of all photogeological studies, imaging, geological mapping, geochemical sampling, geophysical surveying, drilling, pitting and trenching, sampling and bulk sampling carried on by such holder in the course of such prospecting operations;

(bb) the results of all analytical, metallurgical and mineralogical work incidental to such prospecting operations;

(cc) the interpretation and assessment of the studies, surveys and work referred to in items (aa) and (bb);

(dd) the nature and mass or volume of any mineral or group of minerals found or incidentally won in the course of such prospecting operations;

(ee) the persons employed by such holder for purposes of such prospecting operations, including the names, addresses, nationality and ages of, and remuneration and otherbenefits paid and granted to such persons;

(ff) the expenses incurred by such holder in the course of such prospecting operations; and

(gg) such other work performed in the course of such mining operations as may be determined by the Commissioner and specified by notice in writing addressed and delivered to such holder;

(b) shall prepare or cause to be prepared and maintain at all times plans and maps in respect of the mining area;

(c) shall prepare, in respect of each year of assessment, as defined in section 1 of the Income Tax Act 1981 (Act 24 of 1981), of such holder during the currency of such mining licence, a statement of income and expenditure derived or incurred in connection with such mining operations, including a balance sheet and profit and loss account, and such other financial statements as the Commissioner may require in such form as the Commissioner may determine;

(d) submit within 15 days after the end of each month to the Commissioner in such form as may be determined in writing by the Commissioner a return or returns containing in relation to such month-

(i) such summary of the particulars and information contained in the records referred to in paragraph (a)(i) as may be required by the Commissioner and indicated in such form or requested by the Commissioner by notice in writing addressed and delivered to such holder; and

(ii) such other particulars as the Commissioner may require in relation to the mining operations and prospecting operations carried on by such holder in such mining area;

(e) shall submit within 60 days after 31 December in each year to the Commissioner -

(i) in such form as may be determined in writing by the Commissioner, a return or returns containing in relation to such year-

(aa) a summary of the particulars and information contained in the records referred to in paragraph (a)(i) as may be required by the Commissioner and indicated in such form or requested by the Commissioner by notice in writing addressed and delivered to such holder;

(bb) an estimate of the remaining mineral reserves in such mining area properly illustrated by way of plans and maps according to an appropriate scale;

(cc) particulars of any proposed mining operations and prospecting operations during the succeeding year, together with a forecast of the source of such mining operations in terms of delineated mineral reserves; and

(dd) such other particulars as the Commissioner may require in relation to the mining operations and prospecting operations carried on by such holder in such mining area;

(ii) the statement of income and expenditure and financial statements referred to in paragraph (c);

(f) submit, within 60 days after the end of every second year as from the granting of such mining licence -

(i) in such form as may be determined in writing by the Commissioner, a report in duplicate containing in respect of prospecting operations carried on in conjunction with its mining operations during such period -

(aa) all information, including photographs, tabulations, tapes and discs, in the records referred to in paragraph (a)(ii) and the plans and maps referred to in paragraph (b); and

(bb) such other particulars as the Commissioner may require in relation to the prospecting operations carried on by such holder;

(ii) the statement of income and expenditure and financial statements referred to in paragraph (c); and

(g) submit to the Minister such other reports, records and other information as the Minister may from time to time require in connection with the carrying on of mining operations in the mining area in question.

(2) In the event of the cancellation of a mining licence under section 55 or the expiration of a mining licence the person who was the holder of such licence immediately before such cancellation or expiration shall on a date not later than 180 days after the date of such cancellation or expiration deliver to the Commissioner -

(a) all records kept in terms of the provisions of subsection (1)(a);

(b) all maps and plans referred to in subsection (1)(b);

(c) all reports, photographs, tabulations, tapes and discs prepared by or on behalf of such person in the course of such prospecting operations; and

(d) such other books, documents, records and reports as the Commissioner may require by notice in writing addressed and delivered to such person,

or copies of such records, maps, plans, reports, photographs, tabulations, tapes, discs, books and documents.

(3) If the holder referred to in subsection (2) fails to comply with the provisions of that subsection the Commissioner may *mutatis mutandis* in accordance with the provisions of Chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977) -

(a) enter upon any premises whatsoever and search for the records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents referred to in paragraphs (a) to (d) of subsection (2);

(b) seize any such records, maps, and plans, reports, photographs, tabulations, tapes, discs, books and documents,

as if he or she were a police official referred to in that Act and such records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents were concerned in the commission of any offence.

(4) Any person referred to in subsection (1) or (2) who contravenes or fails to comply with the provisions of any such subsection shall be guilty of an offence and on conviction be liable to a fine no exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

PART XIII
Provisions relating to source material specified in Part 5 of Schedule 1

102. Possession, disposal, enrichment, reprocessing and export of source material specified in Part 5 of Schedule 1.

(1) Except with the permission in writing of the Minister and subject to such conditions as may be so determined by the Minister, no person shall–

(a) be in possession of any source material specified in Part 5 of Schedule 1, unless he or she -

(i) has come into possession of such source material as a result of prospecting operations or mining operations lawfully carried on by him or her;

(ii) is in possession of such source material on behalf of and authorized in writing by a person who-

(aa) has so come into possession of such source material;

(bb) has lawfully acquired such source material or is in possession of such source material on behalf of a person who has lawfully acquired such source material;

(b) dispose of any source material specified in Part 5 of Schedule 1;

(c) enrich or reprocess any such source material;

(d) import any suchsource material into, or export such source material from, Namibia.

(2) No person shall buy or otherwise receive from any other person any source material specified in Part 5 of Schedule 1, except upon production to him or her of the permission in writing referred to in subsection (1).

(3) Any person who wishes to obtain the permission referred to in subsection (1) shall apply in such form as may be determined in writing by the Minister for such permission, and shall submit together with such application such documents and other information as may be required by the Minister.

(4) For purposes of this section "enrich" shall mean to increase the ratio of an isotopic constituent of an element to the remaining isotopic constituents of that element relative to the naturally occurring ratio.

103. Offences and penalties.

Any person who contravenes or fails to comply with the provisions of subsection (1) or (2) of section 102 or contravenes or fails to comply with any conditions of any permission in writing referred to in the said subsection (1), shall be guilty of an offence and on conviction liable to a fine not exceeding R50 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

PART XIV
High value minerals

104. Prohibitions relating to dealing in or possession of high value minerals.

(1) Subject to the provisions of this section and any other law, no person-

(a) shall purchase, sell, deal in, receive or dispose of by way of barter, pledge or otherwise, either as principal or as agent or have in his or her possession, any high value mineral, unless -

(i) such person is -

(aa) in the case of a person who has won or mined such high value mineral on a mining claim registered in his or her name in respect of such high value mineral or in terms of a mining licence issued in respect of such high value mineral, granted the permission contemplated in section 31(1)(d) or 90(1)(d), as the case may be; or

(bb) in the case of a person who is in possession of such high value mineral on a claim area or mining area on which such high value mineral has been won or mined, is so in possession on the claim area so registered or on the mining area in respect of which such mining licence has been so issued;

(ii) such person is, in the case of a person who has found or incidentally won such high value mineral in terms of a non-exclusive prospecting licence, an exclusive prospecting licence or a mineral deposit retention licence issued in respect of such high value mineral, granted the permission contemplated in section 16(1)(c), 67(1)(c) or 77(1)(d), as the case may be;

(iii) such person is in possession of a permit issued in terms of section 105 authorizing such person to purchase, sell, deal in, receive or dispose of, or to be in possession of such high value mineral;

(iv) such person is in possession of an authorization in writing issued by a person referred to in subparagraph (i), (ii) or (iii) authorizing him or her to purchase, sell, deal in, receive or dispose of, or to be in possession of, such high value mineral on behalf of such person in the course of his or her duties as his or her agent or servant;

(v) in the case of an unwrought precious metal, such unwrought precious metal does not exceed 10 gramme in mass; or

(vi) such person has come into possession of such high value mineral in a lawful manner;

(b) shall purchase or otherwise receive any high value mineral from any other person without having satisfied himself or herself that such person is lawfully entitled to sell or otherwise dispose of, or to be in possession of, such high value mineral;

(c) shall deliver or cause to be delivered any high value mineral in payment of any debt due from him or her or any other person or in consideration of any service rendered or to be rendered to him or her or any other person.

(2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and on conviction be liable-

(a) in the case of an offence referred to in paragraph (a) or (b) of subsection (1), to a fine not exceeding R50 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment; or

(b) in the case of an offence referred to in paragraph (c) of subsection (1), to a fine not exceeding R20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

105. Applications for, and issue of, permits.

(1) An application for a permit referred to in section 104(1)(a)(iii) shall be made to the Commissioner in such form as may be determined in writing by the Commissioner and shall be accompanied by such application fee, if any, as may be determined under section 123.

(2) An application referred to in subsection (1) shall not be granted, except after consultation with the Inspector-General of he Namibian Police Force or a person designated by him or her.

(3) The Commissioner shall, upon the granting of an application referred to in subsection (1) and the payment of such fee, if any, as may be determined under section 123, issue in such form as may be determined in writing by him or her a permit for such period, not exceeding 12 months, as may be so determined by the Commissioner at the time

of the granting of such application authorizing the holder thereof to purchase, sell, deal in, receive or dispose of, or to be in possession of, such high value mineral.

106. Obligations of persons authorized under section 105 to purchase, sell, deal in, receive or dispose of, or to be in possession of, high value minerals.

(1) Any holder of a permit issued under section 105 who purchases or otherwise receives for purposes of sale or disposal any high value mineral shall keep a register in such form as may be determined in writing by the Commissioner in which shall be recorded in relation to any transaction by virtue of which any such high value mineral is so purchased orreceived within 24 hours after every such transaction-

(a) the date and time of such transaction;

(b) the nature of such transaction;

(c) the full names and address of the persons involved in such transaction;

(d) the nature and weight of the high value mineral so purchased or received;

(e) the price, if any, involved in such transaction;

(f) the number and date of the permit issued under section 105 and by virtue of which the high value mineral was sold or otherwise disposed of; and

(g) the manner in which such holder has dealt with any high value mineral.

(2) A holder referred to in subsection (1) shall-

(a) submit, within 15 days after the end of each quarter during the currency of such permit, by way of an affidavit or a solemn declaration to the Commissioner an extract in duplicate of the register referred to in subsection (1) containing the record of all transactions which have taken place during each month of such quarter;

(b) shall, upon the request of the Commissioner or any police officer, produce such register for inspection.

(3) Any holder referred to in subsection (1) who contravenes or fails to comply with the provisions of subsection (1) or (2) shall be guilty of an offence and on conviction be liable to a fine not exceeding R50 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment and the court convicting any such holder shall declare the permit issued to such holder to be forfeited.

PART XV
Ancillary rights

107. Limitation of fundamental rights contemplated in Article 16 of Constitution.

The provisions of this Part, in so far as they provide for a limitation on the fundamental rights contemplated in subarticle (1) of Article 16 of the Namibian Constitution in order to authorize, subject to an obligation to pay just compensation, the holder of a non-exclusive prospecting licence, a mineral licence or a mining claim to enter upon any land of any person for purposes of carrying on operations authorized by such licence, are enacted upon the authority conferred by subarticle (2) of that Article.

108. Establishment of Minerals Ancillary Rights Commission

(1) There is hereby established a commission to be known as the Minerals Ancillary Rights Commission which shall consist of a chairperson and two other members appointed from time to time by the President.

(2) A member of the Commission shall hold office at the President's pleasure.

(3) A member of the Commission who is not in the full-time service of the State may be paid such remuneration and allowances as may be determined in writing by the Minister with the concurrence of the Minister of Finance.

(4) (a) The Administrative and clerical work involved in the performance of the Commission's functions, shall be performed by officers in the public service made available by the Permanent Secretary for that purpose.

(b) The Commission may designate an officer referred to in paragraph (a) to be the secretary of the Commission.

(5) Any meeting of the Commission shall be held at a time and place determined by the chairperson of the Commission.

(6) Two members of the Commission shall form a quorum for a meeting of the Commission.

(7) The decision of a majority of the members of the Commission shall be a decision of the Commission: Provided that in the event of an equality of votes the chairperson shall have a casting vote in addition to his or her deliberative vote.

(8) The provisions of the Commissions Act, 1947 (Act 8 of 1947) shall apply *mutatis mutandis* in relation to the Commission as if it were a commission referred to in section 1 of that Act.

109. Obtaining of rights by holder of non-exclusive prospecting licence, mineral licence or a mining claim.

(1) When it is reasonably necessary for the holder of a non-exclusive prospecting licence, a mineral licence or a mining claim to obtain a right -

(a) to enter upon land in order to carry on operations authorized by such licence or mining claim on such land;

(b) to erect or construct accessory works on any land for purposes of such operations;

(c) to obtain a supply of water or any other substance in connection with such operations;

(d) to dispose of water or any other substance obtained during such operations;

(e) to do anything else in order to exercise any right conferred upon him or her by such licence or mining claim,

and who is prevented from carrying on such operations by reason thereof -

(i) that the owner of the land in question or any person competent to grant such right in relation to such land refuses to grant such right or demands, in return for such right, terms and conditions which are in the circumstances unreasonable, or has raised a dispute in relation to

the interpretation or application of an order made by the Commission in terms of section 110(4);

(ii) that, due to the number of owners or persons competent to grant such right involved or such owners or persons having conflicting interests, it is not possible to obtain any such right;

(iii) that any such owner or person is absent from Namibia or such owner or person's whereabouts is unknown or is a minor or of unsound mind or otherwise under any disability to grant any such right,

may apply in writing tothe Commission to grant any such right to him or her.

(2) An application in terms of subsection (1) shall set out by way of a statement under oath or affirmation or in such other form, d any, as may be determined in writing by the Commission particularsof the right required, the circumstances under which such right is required and the circumstances under which the holder of the non-exclusive prospecting licence, a mineral licence or mining claim is prevented from obtaining or exercising such right.

(3) The Commission shall as soon as possible after the receipt of an application referred to in subsection (2), cause -

(a) a notice to be published in the*Gazette* and in one newspaper circulating in the area in which the land in question is situated seting out the name of the holder of the non-exclusive prospecting licence, a mineral licence or mining claim concerned, the nature of the right required and a description of the land in respect of which it is so required;

(b) copies of such notice and application to be addressed and delivered to the owner or person competent to grant any such right, if known, calling upon such owner, person or other interested person to make representations, if he or she so wishes, in opposition to such application in such manner and within such period as may be specified in such notice.

110. Consideration of applications by Commission.

(1) The Commission shall inquire as soon as possible into any application made in terms of section 109.

(2) Any person whose interests are or may be prejudicially affected by the grant of an application referred to in subsection (1) shall be entitled to be heard either personally or by way of a legal representative, and to examine and cross-examine any person giving evidence before the Commission.

(3) The Commission, in considering whether any right to which an application relates should be granted and We term and conditions, if any, to be imposed if such a right is granted, shall have regard to the effect of the exercise ofsuch right on such land and the facilities thereon.

(4) (a) If the Commission is on reasonable grounds satisfied that it i reasonably necessary for the holder of the non-exclusive prospecting licence, a mineral licence or mining claim to obtain such a right in order to carry on operations authorized by such licence or mining claim the Commission shall by order in writing grant such right subject to such terms and conditions and for such period as the Commission may think fit or make such otherorder as it may deem necessary or expedient, whereupon such right shall, subject to the provisions of subsection (5), vest in the holder of the non-exclusive prospecting licence, a mineral licence or mining claim concerned.

(b) The chairperson ofthe Commission -

(i) may at any time before or after publication of the notice referred to in paragraph (a) of subsection (3) of section 109, at the request in writing of the holder of a non-exclusive prospecting licence who in terms of section 109(l) has made an application to the Commission to be granted any right referred to in that section, in writing grant to such person, subject to such terms and conditions (including terms and conditions relating to the payment of compensationor the giving of security) as may be determined by him or her, the right referred to in paragraph (a) of section 109(l), as an interim measure, until such time as the matter is considered by the Commission in accordance with the provisions of this section;

(ii) shall not grant any right under subparagraph (i), unless he or she is on reasonable grounds satisfied -

(aa) that the granting of such right ought not to be deferred until the Commission has dealt with the application; and

(bb) that the owner of the land in question or person competent to grant such right in relation to such land cannot be found timeously, or that he or she is absent from Namibia or that his or her whereabouts is unknown.

(c) Any right granted under paragraph (b)(i) shall lapse on the date on which the application made under section 109(1) is considered and decided upon by the Commission.

(5) No right granted under this section by the Commission shall confer any power or impose any obligation or liability upon the holder of a non-exclusive prospecting licence, a mineral licence or mining claim concerned other than such power, obligation or liability which would otherwise have been conferred or imposed upon him or her had such right been granted to such holder by the owner or other person concerned.

111. Costs incurred in respect of applications to Commission.

(1) The Commission shall be empowered to order any party to the proceedings to pay the costs of, any part of such costs incurred by any other party in relation to the application and proceedings field in consequence of such application m if such order were an order made by a magistrate's court.

(2) Any order made in terms of subsection (1) shall be executable as if such order were a judgement of magistrate's court.

112. Compensation payable in respect of rights granted.

(1) If any right is granted in terms of section 110 the Commission shall, if no amount of compensation is agreed upon between the holder of the non-exclusive prospecting licence, a mineral licence or mining claim concerned and the owner or other person concerned, determine an amount which in the opinion of the Commission represents just compensation for the right so granted which shall be paid by the holder concerned in respect of such right.

(2) If compensation is in terms of an order of the Commission to be paid in respect of any right granted by such order, it shall, unless the Commission determines otherwise, be a condition of such order that the compensation so payable shall be paid or that security for the payment thereof shall be given before the right is exercised.

113. Right of appeal.

(1) Any person who feels aggrieved by a decision of the Commission shall have the right to appeal to the High Court of Namibia.

(2) For purposes of an appeal referred to in subsection (1) and the procedure to be followed in connection with such appeal the decision of the Commission shall be deemed to be a judgement of a magistrate's court.

PART XVI
Financial matters

114. Royalties payable on minerals.

(1) The holder of a mining claim or a mining licence who has won or mined in the course of any prospecting or mining operations carried on by him or her, and the holder of any non-exclusive prospecting licence, exclusive prospecting licence or mineral deposit retention licence who has found or incidentally won in the course of any prospecting operations carded on by him or her, any mineral or group of minerals, shall be liable to pay to the Commissioner for the benefit of the State Revenue Fund a royalty -

(a) in the case of any such holder in respect of any rough and uncut mineral of the precious stone group won or mined by such holder in the course of any prospecting operations or mining operations carried on by such holder in terms of such

licence or on such mining claim, as the case may be, and sold or otherwise disposed of by such holder, at a rate of 10 per cent;

(b) in the case of any such holder in respect of any rough or unprocessed mineral of the dimension stone group won or mined by such holder in the course of any prospecting operations or mining operations carried on by such holder in terms of such licence or on such mining claim, as the case may be, and sold or otherwise disposed of by such holder, at a rate of five per cent;

(c) in the case of any such holder in respect of any other mineral or group of minerals so won or mined by such holder, levied by the Minister by notice in writing addressed and delivered to such holder in accordance with the provisions of subsection (2), at such rate, not exceeding five per cent, as may be determined by the Minister from time to time by notice in the *Gazette*, of the market value, determined as provided in subsection (3), of such mineral or group of minerals, on a date-

(i) in the case of a holder referred to in paragraph (a), not later than the date on which the sale or disposal of such mineral or group of minerals takes place;

(ii) in the case of a holder referred to in paragraph (b), not later than 30 days after the end of each period of six monks or pad of such period as from the date on which such licence is issued or such claim is registered, as the case may be;

(iii) in the case of a holder referred to in paragraph (c), determined by the Minister and specified in the notice so referred to in relation to any mineral or group of minerals sold or disposed of during a period so determined.

(2) (a) Subject to the provisions of paragraph (b), the Minister may, for purposes of the provisions of subsection (1)(c), levy, with due regard to any return submitted in terms of section 24, 45, 76, 89 or 101 by any holder of a licence or claim referred to in the said subsection and to any representations, if any, made by such holder in terms of

paragraph (b), by notice in writing addressed and delivered to any such holder, upon such holder a royalty in respect of any mineral or group of minerals referred to in subsection (1)(c) won or mined by such holder in the course of any prospecting operations or mining operations carried on by such holder during such period as may be determined in writing by the Minister, if the Minister is of the opinion -

(i) that, in the case of any mineral or group of minerals which has been or is about to be exported, any such mineral or group of minerals is of such a nature that it is capable of being increased in value by way of a practical and economical process which is available in Namibia;

(ii) that the amount received by, or accrued to, or received in favour of, such holder in respect of the sale or disposal of such mineral or group of minerals in a sale at arm's length was not in conformity with prices which were in the opinion of the Minister paid at the time in international markets; or

(iii) that the amounts deducted from the amount at which such mineral or group of minerals has been sold or disposed of in respect of fees, charges or levies were not in conformity with rates which were in the opinion of the Minister charged at the time in international markets.

(b) The Minister shall not issue a notice referred to in paragraph (a), unless the Minister -

(i) has by notice in writing addressed and delivered to the holder concerned, informed such holder of his or her intention to levy a royalty upon such holder in respect of any mineral or group of minerals won or mined by such holder and provided the grounds on which such intention is based;

(ii) has afforded such holder an opportunity within such reasonable period as may be specified in such notice to make representations and, if such holder so desires, proposals

in relation to any matter relating to such intention; and

(iii) has taken into account such representations and proposals.

(3) For purpose of subsection (1), the market value of any mineral or group of minerals shall be -

(a) determined in accordance with any term and condition, if any, of the licence of the holder concerned; or

(b) if no such term and condition exists, determined in writing by the Minister, having regard to the value agreed between the holder in question and the person to whom such mineral or group of minerals was sold or disposed of in anat arm's length sale and prices which were in the opinion of the Minister at the time paid on international markets for such mineral or group of minerals, less any amounts deducted in respect of fees, charges or levies which are in the opinion of the Minister charged on international markets.

115. Penalties for late payments.

(1) When any person has failed to pay an amount on or before the date determined by or under the provisions of section 114, an additional amount, calculated at the rate of one-third of one per cent per day, shall be payable on such amount or any part thereof as from the date on which such amount was payable until such time as such amount is paid.

(2) The provisions of paragraph (a) of section 116(1) shall apply *mutatis mutandis* in relation to an amount payable in terms of subsection (1).

116. Remission and deferment of royalties or penalties.

(1) Notwithstanding the provisions of the State Finance Act, 1991 (Act 31 of 1991), the Minister may, with the concurrence of the Minister of Finance, on application made to him or her by the holder of a licence or mining claim referred to in section 114-

(a) by notice in writing addressed and delivered to such holder-

(i) remit wholly or partly any royalty or penalty payable in terms of section 114 or 115;

(ii) deter payment of any such royalty or penalty;

(b) refund wholly or partly any royalty or penalty paid in terms of section 114 or 115, on such conditions as may be determined by the Minister and specified in such notice, or may refuse to so remit or refund such royalty or penalty or defer such payment.

(2) The Minister shall on or before 30 June in each year lay upon the Table of the National Assembly a report consisting of the full names of such holders in respect of whom royalties or penalties were remitted or refunded or of which payment of royalties or penalties were deferred during the financial year which ended in that year and the amounts involved and the reasons for such remission, refund or deferment.

117. Powers of Minister in case of failure by holders of licences or mining claims to pay royalties.

(1) If the holder of a licence or mining claim referred to in section 114 fails to pay any royalty payable in terms of that section by such holder on or before the date referred to in that section or such date to which the payment of such royalty has been remitted or deferred in terms of section 116, the Minister may by notice addressed and delivered to such holder prohibit -

(a) the removal of any mineral or group of minerals from the prospecting area, mining area, retention area, claim area or other area to which the licence in question relates;

(b) any dealings in connection with any mineral or group of minerals won or mined from such prospecting area, mining area, retention area, claim area or other area, until such time as such royalty has been paid, or the payment of such royalty has been remitted or deferred in terms of section 116.

(2) Any holder of a licence or mining claim referred to in this section who contravenes or fails to comply with a notice issued under subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

118. Security for payment of royalties.

(1) The Minister may, when he or she deems it necessary to secure the payment of a royalty, by notice in writing addressed and delivered to any holder of a licence or mining claim referred to in section 114 require such holder to provide the Minister with a guarantee given by a person approved by the Minister.

(2) Any holder referred to in subsection (1) who contravenes or fails to comply with a notice issued under that subsection shall be guilty of an offence and on conviction be liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

119. Powers of Minister relating to pricing of minerals.

(1) Subject to the provisions of subsection (2), the Minister may, if he or she has reason to suspect that any mineral or group of minerals won or mined in the course of any prospecting operations or mining operations by a holder referred to in section 114 has been sold or disposed of by such holder-

(a) at an amount which was intentionally fixed or agreed upon at an amount which is less than the price which was, in the opinion of the Minister, paid at the time on international markets;

(b) at an amount from which was deducted an amount in respect of fees, charges or levies which was intentionally fixed or agreed upon which is more than the rates which were, in the opinion of the Minister, charged at the time on international markets, direct such holder to pay to the benefit of the State Revenue Fund an amount equal to the difference between an amount referred to in paragraph (a) or (b) and an amount which in the opinion of the Minister is in conformity with an amount determined in accordance with the prices and rates paid and charged on international markets at the time of the sale or disposal of the mineral or group of minerals in question.

(2) The Minister shall not give a direction under subsection (1), unless he or she-

(a) has by notice in writing addressed and delivered to the holder concerned, informed such holder of his or her intention to give such direction and provided the grounds on which such intention is based;

(b) has afforded such holder an opportunity within such reasonable period as may be specified in such notice to make representations and, if such holder so desires, proposals in relation to any matter relating to such intention; and

(c) has taken into account such representations and proposals.

120. Proof of amounts payable in terms of this part.

In any proceedings to recover in a competent court any amount payable under any provision of this Part, a certificate purporting to be a certificate under the hand of the Minister certifying that an amount of money specified in such certificate is payable in terms of the provisions of this Part by any holder referred to in section 114 named in such certificate, shall be prima facie evidence of the facts stated in such certificate.

PART XVII
General provisions

121. Obligations of persons applying for, non-exclusive prospecting licences, registration of mining claims or mineral licences, and of holders of non-exclusive prospecting licences, mining claims or mineral licences, not resident in Namibia to appoint accredited agents.

(1) Subject to the provisions of this Act–

(a) no non-exclusive prospecting licence or mineral licence shall be issued to, and no mining claim shall be registered in respect of, any natural person who is not resident in Namibia;

(b) no grant, cession or assignment to any such person of any interest in a mining claim or mineral licence shall be approved;

(c) no such person shall be joined as the joint holder of any mining claim or mineral licence or any interest in such mining claim or mineral licence,

unless such person has designated in writing a person who is so resident and who is a person to whom any such licence may be granted or in whose name any such mining claim may be registered or to whom such interest may be granted, ceded or assigned or may be so joined, as his or her accredited agent for purposes of the provisions of this Act.

(2) Any holder of a non-exclusive prospecting licence, mining claim or mineral licence or any person to whom an interest in any such licence or claim has been granted, ceded or assigned or any person joined as joint holder of any such licence or claim or any interest in such licence or claim who takes up residence outside Namibia, shall, within 30 days after having so taken up residence, designate any person who is resident in Namibia and who is a person to whom any such licence may be granted or in whose name any such mining claim may be registered or to whom such interest may be granted, ceded or assigned or may be so joined, as his or her accredited agent for purposes of the provisions of this Act.

(3) An accredited agent shall be a person who has in writing accepted his or her designation in terms of subsection (1) or (2) and who is approved in writing by the Commissioner, and such accredited agent shall, upon such approval, for purposes of the provisions of this Act, be deemed to be the holder of the licence or claim in question or to be the person to whom such interest has been granted, ceded or assigned or who has been joined as the joint holder concerned, as the case may be.

(4) The provisions of this section shall not be construed as absolving the holder of the licence or claim in question of any liability or obligations imposed upon him or her by any provision of this Act.

(5) Any person who contravenes or fails to comply with the provisions of subsection (2) shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

122. Reservation of land from prospecting operations and mining operations.

(1) Subject to the provisions of this section, the Minister may at any time by notice in the *Gazette*, if he or she deems it necessary or expedient in the national interest, declare that no person other than the holder of a reconnaissance licence shall, notwithstanding anything to the contrary contained in this Act or any other law, but subject to any right conferred upon the holder of any mining claim, exclusive prospecting licence, mineral deposit retention licence or mining licence by this Act before the date of such notice and which exists on the date immediately before the date of such notice, carry on any prospecting operations or mining operations in, on or under any land or area described by the Minister in such notice.

(2) The Minister may in any notice referred to in subsection (1) or by like notice-

(a) if he or she deems it necessary or expedient in the interests of the development of the mineral resources of Namibia or for the better exercise of control over minerals in Namibia, invite applications in respect of the whole or any part of the land or area referred to in subsection (1) for any licence in respect of any mineral or group of minerals specified in such notice for consideration on or after a date so specified;

(b) if he or she deems it necessary or expedient for the protection of the environment or the natural resources of Namibia or the prevention of the pollution of such environment or damage to the natural resources, declare that any prospecting operations or mining operations may be carried on in, on or under any such land or area by any holder of a non-exclusive prospecting licence, mining claim, exclusive prospecting licence, mineral deposit retention licence or mining licence only with the special permission of the Minister and subject to such terms and conditions as may be determined by the Minister.

(3) An application for the special permission referred to in subsection (2)(b) shall be made to the Minister in such form as may be determined by the Minister and shall be accompanied by such application fee, if any, as may be determined under section 123, together with such documents and information as may be required by the Minister.

(4) Any person who contravenes or fails to comply with a notice issued under subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R50 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

123. Determination of application, licence and registration fees payable in terms of this Act.

(1) Subject to the provisions of section 22 of the State Finance Act, 1991 (Act 31 of 1991), the Minister may from time to time determine by notice in the *Gazette* the amount of -

(a) any fees to be paid in relation to any application for, or in connection with, a non-exclusive prospecting licence or mineral licence or for, or in connection with, the registration of any mining claim at the time of such application, or for any permit referred to in section 105;

(b) any licence fees, claim fees or other fees to be paid by the holders of any such licence or mining claim during the currency or renewal period, if any, at such dates, for such periods and on such basis as may be determined by the Minister in such notice;

(c) any inspection fees or other fees to be paid by any person in relation to any permit or permission required by any provision of this Act and the inspection of any register to be kept and maintained by the Commissioner or other function to be performed by him or her,

and may from time to time amend or withdraw any such notice by like notice.

(2) When an application referred to in paragraph (a) of subsection (1) is refused, three-quarters of any application fee and the full amount of any licence fee referred to in that paragraph which was paid at the time of such application shall be refunded to the person who has made such application.

(3) The provisions of section 115 shall apply *mutatis mutandis* in relation to the holder of any licence or mining claim referred to in subsection (1) who has failed to pay any licence fees or claim fees on or before the date determined under paragraph (b) of that subsection.

(4) One half of any licence fees or claim fees referred to in paragraph (b) of subsection (1) paid to the Commissioner in respect of -

(a) any mineral licence in terms of which prospecting operations or mining operations are carried on on private land; or

(b) any mining claim situated on private land,

shall be paid over by the Commissioner at the end of April and October in each year to the owner of such land or, in the case of such land or mining claim situated on private land which is owned by more than one owner, to such owners in such proportion as may be determined in writing by the Commissioner.

124. Notice by Commissioner of applications made in terms of this Act.

The Commissioner shall give notice of any application for a mineral licence or the registration of a mining claim received in his or her office by posting a notice on the day after the date on which such application was received in which-

(a) it is made known for general information that such application has been received in his or her office; and

(b) is stated -

(i) the name of he person who submitted such application;

(ii) the nature of the licence, the area and the mineral or group of minerals to which such application relates;

(iii) the date on which such application was received; and

(iv) such other particulars as may be determined in writing by the Commissioner,

and shall keep such notice so posted until such date as such application has finally been disposed of.

125. Order in which applications made in terms of this Act are to be considered.

All applications made in terms of any provision of this Act and received in the office of the Commissioner, shall be considered by the Minister or the Commissioner, as the case may be, in the same order as such applications have been so made and received: Provided that all applications so received on the same date shall be deemed to have been received simultaneously.

126. Reports to he submitted by purchasers and sellers of minerals.

(1) Any person–

(a) who, whether as agent or principal, has purchased or otherwise acquired from any holder of a non-exclusive prospecting licence, a mining claim or a mineral licence, any controlled mineral;

(b) who has sold or otherwise disposed of any controlled mineral; or

(c) who deals, whether or not by virtue of a licence issued in terms of any law governing trading licences, in minerals or any group of minerals other than controlled minerals and who has sold any mineral or group of minerals to any person,

shall submit forthwith to the Commissioner in such form as may be determined in writing by the Commissioner a report in duplicate setting out-

(i) the mass or volume and nature of any such mineral or group of minerals purchased or acquired and the amounts paid or other remuneration exchanged, if any, in respect of the purchase or acquisition of such mineral or group of minerals;

(ii) the mass, volume, nature and value of any such mineral or group of minerals sold or otherwise disposed of and such particulars of the persons to whom such mineral or group of minerals has been so sold or disposed of and the places whereto such mineral or minerals have been removed.

127. Export of minerals or groups of minerals.

(1) No person shall export any mineral or group of minerals from Namibia, except with the permission of the Commissioner previously obtained generally or in every particular case in writing and subject to such conditions as may be determined by the Commissioner, unless he or she-

(a) is the holder of a non-exclusive prospecting licence, a mining claim or a mineral licence and has been granted the permission referred to in section 16(1)(c), 31(1)(d), 67(1)(c), 77(1)(d) or 90(1)(d) to remove any such mineral or group of minerals from Namibia; or

(b) is exempted from the provisions of this section in terms of section 137.

(2) An application for the permission referred to in subsection (1), shall be made to the Commissioner or any other person designated by him or her in such form as may be determined in writing by the Commissioner and shall be

accompanied by such application fee, if any, as may be determined under section 123, together with such documents and information as may be required by the Commissioner.

(3) Any person who has contravened or failed to comply with the provisions of subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

128. Removal of property from areas to which non-exclusive prospecting licences, mining claims or mineral licences relate on abandonment, cancellation or expiration, and remedying of damage caused to surface of, and environment on, land situated in such areas.

(1) If a non-exclusive prospecting licence or mineral licence or the registration of a mining claim has been cancelled or has expired or, if any area to which such licence or mining claim relates has been abandoned or has for any reason ceased to be part of the area to which such non-exclusive prospecting licence relates or of the prospecting area, mining area or claim area, as the case may be, the Minister may by notice in writing addressed and delivered to the person who was the holder of such licence or mining claim direct such person -

(a) to demolish any buildings, structures or any other thing erected or constructed by such person in such area and to remove from such area all debris and any other object brought into such area, except in so far as the owner of the land which is situated in such area retains such buildings, structures or other thing on such conditions as may mutually be agreed upon between such owner and person;

(b) to take all such steps as may be necessary to remedy to the satisfaction of the Minister any damage caused by any prospecting operations and mining operations carried on by such holder to the surface of, and the environment in, such area;

(c) to take such other steps as may be specified in such notice as the Minister may deem necessary or expedient to give effect to any direction referred to in paragraph (a).

(2) If the person referred to in subsection (1) contravenes or fails to comply with a direction given under that subsection, the Minister may -

(a) cause such goods to be removed or such steps to be taken and recover the cost thereof from such person;

(b) subject to the provisions of paragraph (c), dispose of, in such manner as he or she may deem fit, all or any of the goods referred to in paragraph (a);

(c) after having published a notice in the *Gazette* and in two newspapers circulating in the district in which the area from which the goods in question were removed setting out the Minister's intention to sell such goods and inviting any person who is the lawful owner of such goods to claim such goods-

(i) sell or cause to be sold by public auction or otherwise all or any of such property and recover the cost thereof from such person;

(ii) deduct from the proceeds of the sale-

(aa) the costs incurred by him or her in respect of the removal or steps referred to in subsection (1) and the sale referred to in subparagraph (i) of this paragraph;

(bb) any amounts due and payable under the provisions of this Act.

(3) Any person referred to in subsection (1) who contravenes or fails to comply with a direction issued under that subsection shall be guilty of an offence and liable on conviction to a fine not exceeding R 100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

129. Powers of Minister to obtain further information in relation to reconnaissance operations, prospecting operations or mining operations or minerals won, mined, sold or otherwise disposed of.

(1) Where the Minister has reason to believe that a person is capable of furnishing books, documents or any particulars of whatever nature in relation to reconnaissance operations, prospecting operations or mining operations or to minerals or groups of minerals won, mined, sold or otherwise disposed of, the Minister may by notice in writing addressed and delivered to such person, direct such person-

(a) to furnish him or her with such books, documents or particulars within such period and in such manner as may be specified in such notice;

(b) to appear before the Commissioner or such other person as my be authorized by the Minister and identified in such notice at such time and place as may be specified in such notice to answer questions relating to those books, documents or particulars;

(c) to furnish the Commissioner or such other person as may be authorized by the Minister and identified in such notice at such time and place as may be specified in such notice with such books, documents or particulars as may be in his or her possession or under his or hercontrol, as the case may be.

(2) Any person who-

(a) refuses or fails to comply with a notice issued under subsection (1);

(b) knowingly furnishes particulars which are false or misleading, shall be guilty of an offence and on conviction liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

130. Liability of holders of licences or mining claims for pollution of environment or other damages or losses caused.

(1) When in the course of any reconnaissance operations, prospecting operations or mining operations carried on under any non-exclusive prospecting licence, a mining claim or a mineral licence, any mineral or group of minerals is spilled in the sea or on land or in any water on or under the surface of any land or the sea or such land or water is otherwise polluted or any plant or animal life, whether in the sea, other water in, on or under land, is endangered or destroyed or any damage or loss is caused to any person, including the State, by such spilling or pollution, the holder of such licence or mining claim shall forthwith -

(a) report such spilling, pollution, loss or damage to the Minister;

(b) take at his or her own costs all such steps as may be necessary in accordance with good reconnaissance practices, good prospecting practices or good mining practices or otherwise as may be necessary to remedy such spilling, pollution, loss or damage.

(2) If the holder of a licence or mining claim referred to in subsection (1) fails to comply with the provisions of paragraph (b) of that subsection within such period as the Minister may deem in the circumstances to be reasonable, the Minister may direct by notice in writing addressed and delivered to such holder to take within such period as may be specified in such notice such sups as may be so specified in order to remedy the spilling, pollution or damage or loss, and the Minister may, if such holder fails to comply with such directions to the satisfaction of the Minister within the period specified in such notice or such further period as the Minister may on good cause shown allow in writing, cause such steps to be taken as may be necessary to remedy such spilling, pollution or damage or loss and recover in a competent court the costs incurred thereby from such holder.

131. General right of appeal.

Any person who feels aggrieved with any action or decision taken or made by the Commissioner in terms of any provision of this Act, may, within 30 days as from the date on which such action or decision was made known to such person, lodge an appeal against any such action or decision, and thereupon the Minister may confirm, set aside or amend any such action or decision.

132. Service of documents.

(1) Any document, notice or other communication required or authorized under the provisions of this Act to be glen or delivered to any person by the Minister the Commissioner or any officer authorized thereto be deemed to have been given or delivered -

(a) A delivered to such person personally;

(b) if despatched by registered post addressed to such person at his or her last known address which may be any such place or office as is referred to in paragraph (c) or his or her last known post office box number or private bag number or that of his or her employer or accredited agent, if any;

(c) if left with some adult person apparently residing at or occupying or employed at his or her last known abode or office or place of business; or

(d) in the case of a company-

(i) if delivered to the public officer of the company;

(ii) left with some adult person apparently residing at or occupying or employed at its registered address;

(iii) if despatched by registered post addressed to the company or its public officer at its or his or her last known address, which may be any such office or place as is referred to in subparagraph (ii) or its or his or her last known post office box number or private bag number or that of its or his or her employer; or

(iv) if transmitted by means of a facsimile transmission to the person concerned at the registered office of the company.

(2) Any document, notice or other communication referred to in subsection (1) which has been given or delivered in the manner contemplated in paragraph (b) or (d)(iii) of that subsection shall, unless the contrary is proved, be deemed to have been received by the person to whom it was addressed at the time when it would, in the ordinary course of post have arrived at the place to which it was addressed.

133. Miscellaneous offences and penalties.

Any person who-

(a) without reasonable excuse, obstructs, hinders or prevents the holder of any non-exclusive prospecting licence, mining claim or mineral licence, the Minister, the Commissioner or any other officer referred to in section 4(2) from exercising or performing any right, power, duty or function conferred or imposed upon him or her by or under any provision of this Act;

(b) makes or causes to be made in connection with any application made in terms of any provision of this Act any statement which is false or misleading knowing it to be false or misleading;

(c) submits or causes to be submitted in connection with any such application or any notice, report, return or statement issued or given under any provision of this Act or the terms and conditions of any non-exclusive prospecting licence, mining claim or mineral licence, any document, information or particulars which are false or misleading knowing them to be false or misleading;

(d) fraudulently and, with the intent to mislead any other person to believe that a mineral or group of minerals of a mineable nature exist at any place, places or deposits or causes to be placed or deposited any mineral or group of minerals in or at any such place;

(e) fraudulently and with the intent to defraud mingles or causes to be mingled with any sample of ore any substance which will increase the value or nature of such ore;

(f) intentionally or negligently transgresses the boundaries of his or her reconnaissance area, prospecting area, claim area, retention area or mining area while carrying on reconnaissance operations, prospecting operations or mining operations or such boundaries to be so transgressed; or

(g) without any lawful reason removes, destroys, disfigures or displaces any trigonometrical station or a beacon or boundary mark of any prospecting area, claim area, retention area or mining area,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

134. Jurisdiction of court in relation to offences under this Act committed at sea.

Notwithstanding the provisions of any law to the contrary, the High Court of Namibia or a magistrate's court which would otherwise have jurisdiction shall have jurisdiction to try any offence under this Act which is

committed or alleged to have been committed within the territorial sea referred to in section 2 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990), the exclusive economic zone referred to in section 4 of that Act and the continental shelf referred to in section 6 of that Act.

135. Evidence.

The production in any criminal or civil proceedings in any court of law or other proceedings instituted in terms of the provisions of this Act of-

(a) any certificate purporting to have been signed by the Commissioner certifying whether or not on a date specified in such certificate-

(i) a licence was issued, renewed or transferred to a person so specified;

(ii) a mining claim was registered or renewed in the name of, or transferred to, a person so specified;

(iii) any interest in such a licence or mining claim has been granted, ceded or assigned to a person so specified;

(iv) any person so specified has been joined as a joint holder of such a licence or claim or any interest in such licence or claim;

(v) any term and condition so specified is or was a term and condition of a licence or mining claim;

(vi) a person mentioned in such certificate is or was a holder of such a licence or mining claim;

(vii) a licence has been issued or mining claim registered in respect of any area of land so specified;

(b) an extract from the register referred to in section 36(2) or 51 certified by the Commissioner to be true and correct,

shall, unless the contrary is proved, be conclusive evidence of the facts mentioned therein.

136. Forfeiture orders.

If a person is convicted of an offence under this Act the court which has convicted the person may, in addition to any other penalty imposed or any forfeiture ordered under any other law, order any mineral or group of minerals won or mined in the course of the commission of such offence be forfeited to the State or, in the event of any such mineral or group of minerals having been sold or otherwise disposed of, an amount equal to the proceeds of the sate or the market value of such mineral or group of minerals, as determined by the court, be paid by such person for the benefit of the State Revenue Fund.

137. Exemptions.

(1) The Minister may, whenever he or she deems it necessary or expedient for the better administration of the provisions of this Act -

(a) from time to time by notice in the *Gazette* exempt, subject to such conditions as may be determined by him or her and specified in such notice, the holders of non-exclusive prospecting licences, mining claims or mineral licences from the provisions of section 16(1)(c) and (5), 31(1)(d) and (5), 67(1)(c) and (5), 77(1)(d) and (5), 90(1)(d) and (4) or 127 in relation to any mineral or group of minerals specified in such notice or any quantity or mass of such mineral or group of minerals so specified;

(b) upon an application made by the holder of a non-exclusive prospecting licence, mining claim or mineral licence in such form as may be determined in writing by the Minister, by notice in writing exempt, subject to such conditions as may be determined by him or her and specified in such notice, any such holder from the provisions of the said sections in relation to any mineral or group of minerals specified in such notice or any quantity or mass of such mineral or group of minerals so specified;

(c) upon an application made by any person in such form as may be determined in writing by the Minister, by notice in writing exempt, subject to such conditions as may be determined by him or her and specified in such notice, any such person from any provision of Part XIV in relation to any high value mineral specified in such notice or any quantity or mass of such high value mineral so specified, if the Minister is on reasonable grounds

satisfied that such person is a *bona fide* collector of such high value minerals referred to in that Part,

and may at any time by like notice amend or withdraw such notice.

(2) An application for the exemption referred to in subsection (1)(b) or (c), shall be made to the Minister in such form as may be determined in writing by the Comissioner and shall be accompanied by such application fee, if any, as may be determined under section 123, together with such documents and information as may be required by the Minister.

138. Delegation of powers.

(1) The Minister may delegate any power conferred upon him or her by this Act, excluding any power which is required to be exercised by notice in the *Gazette,* to the Permanent Secretary, the Commissioner or any other officer in the service of the Ministry of Mines and Energy.

(2) Any delegation under subsection (1) shall not prevent the Minister from exercising the power concerned personally.

139. Repeal and amendment of laws, and savings.

(1) Subject to the provisions of this section, the laws specified in column 2 of Schedule 2 are hereby repealed or amended to the extent shown in column 3 of that Schedule.

(2) On the date of commencement of this Act-

(a) the person appointed in terms of section 4(2) of the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968) (hereinafter referred to as the repealed Ordinance), in the office of the mining commissioner who was holding such office on the date immediately before such date of commencement, shall be deemed to have been appointed under section 4 of this Act as the Commissioner;

(b) subject to the provisions of subsection (8), any prospecting licence issued in terms of section 20 of the repealed Ordinance which was in force on the date immediately before such date of commencement, shall be deemed to be a non-exclusive prospecting

licence issued in terms of section 21 of this Act on the date of such commencement to the person who was the holder of such prospecting licence on the date immediately before such date of commencement for a period equal to the unexpired portion of the period for which it was issued in terms of the said section 20 on such terms and conditions as may have been determined in terms of the repealed Ordinance in respect of such prospecting licence;

(c) subject to the provisions of subsections (3), (7) and (8), any claim registered in terms of section 29 of the repealed Ordinance which was so registered on the date immediately before such date of commencement, shall be deemed to be a mining claim registered in terms of section 36 of this Act on such date of commencement in favour of the person who was the holder on such first-mentioned date of the certificate of registration issued in terms of subsection (3) of the said section 29, in respect of such area and such mineral or group of minerals in respect of which such claim was so registered as if such claim were in terms of the said section 36 registered on such date of commencement;

(d) subject to the provisions of subsections (4), (7) and (8), any prospecting grant embodied in a deed of grant and registered, or deemed to have been registered, in terms of section 60(1)(e) of the repealed Ordinance which was in force on the date immediately before such date of commencement, shall be deemed to be an exclusive prospecting licence issued in terms of section 70 of this Act on the date of such commencement to the person who was the holder of any such prospecting grant immediately before such commencement for a period equal to the unexpired portion of the period for which any such prospecting grant was granted or extended, and in respect of such area and such mineral or group of minerals and on such terms and conditions determined, in terms of the said section 60 in respect of such prospecting grant;

(e) subject to the provisions of subsections (5), (7), (8) and (9) -

(i) any mining title secured by way of a deed of conversion registered in terms of section 46(10) of the repealed Ordinance which was in force on the date immediately before such date of commencement; and

(ii) any mining grant embodied in a deed of grant and registered in terms of section 61(6)(b) of the repealed Ordinance,

shall be deemed to be a mining licence issued in terms of section 93 of this Act on the date of such commencement-

(aa) in the case of the mining title referred to in subparagraph (1), to the person who was the owner of the mining area to which such mining title relates immediately before such commencement for a period of 25 years as from the date of such commencement or such shorter period as in the opinion of the Minister represents the estimated life of the mine in question and determined *mutatis mutandis* in accordance with the procedure as provided in section 92(4) by notice in writing addressed and delivered to such person in respect of such mining area and such mineral or group of minerals and on such terms and conditions determined in terms of the provisions of the repealed Ordinance; or

(bb) in the case of the mining grant referred to in subparagraph (ii), to the person who was be holder of such mining grant immediately before such commencement for a period of 25 years as from the date of such commencement or such shorter period as in the opinion of the Minister represents the estimated life of the mine in question and determined *mutatis mutandis* in accordance with the procedure as provided in section 92(4) by notice in writing addressed and delivered to such person in respect of the mining area to which such mining grant relates and such mineral or group of minerals and on such terms and conditions determined in terms of section 61(1) of the repealed Ordinance;

(f) anything else done under any provision of the repealed Ordinance before its repeal under subsection (1) which may be done under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision;

(g) any reference in any law or document-

(i) to the mining commissioner appointed under section 4(2) of the repealed Ordinance, shall be construed as a reference to the Commissioner;

(ii) to a prospecting licence issued in terms of section 20 of the repealed Ordinance, shall be construed as a reference to a non-exclusive prospecting licence;

(iii) to a claim registered in terms of section 29 of the repealed Ordinance or the area or holder of such claim, shall be construed as a reference to a mining claim or the claim area or the holder of a mining claim, respectively;

(iv) to a prospecting grant referred to in section 60(1)(e) of the repealed Ordinance or the area or holder of such prospecting grant shall be construed as a reference to an exclusive prospecting licence, the holder of an exclusive prospecting licence or the prospecting area, respectively;

(h) any reference in any law or document-

(i) to any mining title referred to in section 44 of the repealed Ordinance or the owner of the mining area to which such mining title relates;

(ii) to any mining grant referred to in section 61 of the repealed Ordinance or the holder or the grant area of such grant,

shall be construed as a reference to a mining licence, the holder of a mining licence or a mining area, respectively.

(3) (a) Notwithstanding the provisions of section 123, the claim fees which were payable in respect of such claim in terms of section 30 of the repealed Ordinance immediately before the date of commencement of this Act, shall continue to be so payable as if the repealed Ordinance had not been repealed by subsection (1) and this Act had come into operation on a date 12 months as from such date of commencement.

(b) The holder of a mining claim referred to in paragraph (c) of subsection (2) shall on a date not later than 12 months as from such date of commencement-

(i) furnish the Commissioner with the particulars referred to in paragraphs (d), (e) and (f) of subsection (4) of section 26 of the repealed Ordinance;

(ii) submit to the Commissioner-

(aa) a sketch-plan of the claim area and a certificate prepared *mutatis mutandis* in accordance with the provisions of section 33(2)(e) of this Act;

(bb) a report in duplicate in such form as the Commissioner may determine on all prospecting operations and mining operations carried on on the area of such claim as from the date on which such claim was registered in terms of section 29 of the repealed Ordinance together with the results of all analytical, metallurgical and mineralogical work relating thereto.

(c) Any holder of a mining claim who contravenes or fails to comply with the provisions of paragraph (a) or (b) shall be guilty of an offence and on conviction liable to a fine not exceeding R8 000 or to imprisonment not exceeding 12 months or to both such fine and such imprisonment.

(4) Notwithstanding the provisions of-

(a) section 42, as applied by section 75, the holder of an exclusive prospecting licence contemplated in paragraph (d) of subsection (2) shall carry on the prospecting operations to whichsuch exclusive prospecting licence relates and incur such expenditure which are, in terms of the programme of prospecting operations specified in the deed of grant in question, required to be carried on and expended;

(b) section 123, the rental which was payable in respect of the prospecting grant referred to in paragraph (d) of subsection (2) in terms of section 60(2)(c) of the repealed Ordinance immediately before the date of commencement of this Act, shall continue to be so payable as if the repealed Ordinance had not been repealed by subsection (1) and this Act had come into operation on the date on which such grant is required to he extended as contemplated in section 60(1)(b) of the repealed Ordinance.

(5) Notwithstanding the provisions of -

(a) section 123 -

(i) in the case of the mining title referred to in paragraph (e) of subsection (2), the mining area fee payable in respect of the mining area to which the mining title so referred to relates immediately before thedate of commencement of this Act, shall, continue to be so payable as if the repealed Ordinance had not been repealed by subsection (1) and this Act had come into operation on the date on which the first half year contemplated in section 47(2) of the repealed Ordinance after the commencement of this Act had expired;

(ii) in the case of the mining grant referred to in paragraph (e) of subsection (2), the rental payable in respect of the grant area to which the mining grant so referred to relates immediately before the date of commencement of this Act, shall continue to be so payable as if the repealed Ordinance had not been repealed by subsection (1) and this Act had come into operation on the date on which such rentalwould have been payable after the date of commencement of this Act;

(b) section 78, the holder of a mining licence referred to in paragraph (e) of subsection (2) shall be entitled to apply *mutatis mutandis* in accordance with the provisions of Part XI of this Act for a mineral deposit retention licence as if such holder were the holder of an exclusive prospecting licence or a mining claim, except when a notice referred to in subsection (7) has been delivered to him or her.

(6) Subject to the provisions of subsection (7), the provisions of this Act shall not be construed as detracting from the validity of the agreement known as the Halbscheid Agreement in so far as it was in force on the date immediately before the commencement of this Act.

(7) The Minister may, if he or she deems it necessary in the interests of the development of the mineral resources of Namibia, by notice in writing addressed and delivered to the holder of a mining claim contemplated in paragraph (c) of subsection (2), the holder of an exclusive prospecting licence contemplated in paragraph (d) of that subsection, the holder of a mining licence contemplated in paragraph (e) of subsection (2) or any party to the agreement referred to in subsection (6), require such holder or party -

(a) to enter into negotiations with the Minister in relation to -

(i) the continuation or variation of the terms and conditions to which such mining claim, exclusive prospecting licence, mining licence or agreement, as the case maybe, relates;

(ii) the discontinuance of the registration of such mining claim or of such exclusive prospecting licence, mining licence or agreement or of any terms and conditions to which such mining claim, licence or agreement relates, and the registration of such mining claim or the issue of an exclusive prospecting licence or a mining license, in accordance with the provisions of this Act, in relation to any rights connected with such first-mentioned mining claim, exclusive prospecting licence, mining licence, or agreement;

(b) to furnish the Minister with copies of such documents or other information which is in the possession or under the control of such holder or party as the Minister may require for purposes of any negotiations contemplated in paragraph (a).

(8) (a) A person referred to in section 78(2) of the Petroleum (Exploration and Production Act), 1991 (Act 2 of 199 1), shall submit, within a period of 90 days as from the date of the commencement of this Act, particulars of any right granted to him or her under the repealed Ordinance in relation to natural oil, as defined in section 1 of the repealed Ordinance.

(b) Any person referred to in paragraph (a) who fails to comply with the provisions of that paragraph shall be deemed to have abandoned all rights so granted, unless the Minister determines on good cause shown otherwise by notice in writing addressed and delivered to such person.

(9) Notwithstanding the provisions of paragraph (e) of subsection (2), the Minister may -

(a) if he or she is on reasonable grounds satisfied that he person who was the owner of a mining area referred to in the said paragraph (e) or the holder of a mining grant so referred to, has no intention of carrying on any mining operations on the mining area to which such mining title or mining grant relates, *mutatis mutandis* in accordance with the procedure as provided in section 92(4) by notice in writing addressed and delivered to such person declare that such mining title or mining grant, as the case may be, has lapsed;

(b) if he or she is on reasonable grounds satisfied that the person who was the owner of a mining area referred to in the said paragraph (e) or the holder of a mining grant so referred to, is not carrying on any such mining operations on account of the fact that there exist grounds by virtue of which a mineral deposit retention licence can be issued to such person in terms of the provisions of this Act, grant, *mutatis mutandis* in accordance with the procedure as provided in section 92(4) and subject to the provisions of Part XI, a mineral deposit retention licence to such person;

(c) if he or she is on reasonable grounds satisfied that the person who was the owner of a mining area referred to in the said paragraph (c) or the holder of a mining grant so referred to, is not carrying on any such mining operations on account of the fact that the circumstances relating to the mining area to which such mining title or mining grant relates justify the granting of an exclusive prospecting licence, *mutatis mutandis* in accordance with the procedure as provided in section 92(4) by notice in writing addressed and delivered to such person declare that the provisions of paragraph (d) of subsection (2) of this section shall apply *mutatis mutandis* in relation to such person as if such person were on the date immediately before the commencement of this Act the holder of a prospecting grant referred to in that paragraph.

(10) Any licence issued under section 2 of the Dealing in Unwrought Precious Metals Proclamation, 1938 (Pro clamation 5 of 1938), which was in force on the date immediately before the date of commencement of this Act shall be deemed to be a permit issued under section 105 of this Act on the date of such commencement.

140. Short title and commencement

This Act shall be called the Minerals (Prospecting and Mining) Act, 1992, and shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.

SCHEDULE 1

GROUPS OF MINERALS, ELEMENTS AND ROCK
(Section 1)

Part 1
Base and rare metals group

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

Part 2
Dimension stone group

Rock material occurring naturally in, on or under the earth which is capable of being cut, shaped or used in blocks, slabs, sheets and tiles for the construction or cladding of buildings, pavings, monuments and memorials.

Part 3
Industrial minerals group

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

Part 4
Non-nuclear fuel minerals group

Coal and oil-shale and all substances related thereto or derived therefrom, but does not include petroleum as defined in section I of the Petroleum (Exploration and Production) Act, 1991 (Act 2 of 1991).

Part 5
Nuclear fuel minerals group

Source material containing –

(a) uranium, expressed as uranium oxide (U_3O_8), of more than 0.006 per cent;

(b) thorium, expressed as thorium oxide (ThO_2), of more than 0.5 per cent,

and of which the mass is more than a half kilogram.

Part 6
Precious metals group

Gold, silver, platinum, palladium, osmium rhodium, iridium and ruthenium, but does not include any such mineral if such mineral is incidentally included in a mineral falling in any other group of minerals.

Part 7
Precious stones group

Diamonds, emeralds, rubies and sapphires.

Part 8
Semi-precious stones group

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

SCHEDULE 2

LAWS REPEALED OR AMENDED
(Section 139)

Column 1	Column 2	Column 3
No. and year of law	Title	Extent of repeal or amendment
Proclamation 5 of 1938	Dealing in Unwrought Precious Metals Proclamation, 1938	The repeal of the whole
Proclamation 16 of 1941	Diamond Taxation Proclamation, 1941	(a) The repeal of section 3; (b) the amendment of section 12 by the deletion of the words "the diamond export duty and"; (c) the amendment of section 13 - (i) by the deletion of subsection (1); (ii) by the deletion in subsection (3) of the words "diamond export duty and"; (d) the amendment of section 16 by the deletion of the words "the diamond export duty,"; (e) the amendment of section 18 by the deletion in subsection (2) of the words "the diamond export duty,".
Act 43 of 1963	Nuclear Installations Act (Licensing and Security Systems), 1963	The repeal of the whole.
Act 39 of 1965	Atomic Energy and Nuclear Installations (Licensing and Security) Amendment Act, 1965	The repeal of the whole.
Act 89 of 1967	Nuclear Installations (Licensing and Security) Amendment Act, 1967	The repeal of the whole.
Act 90 of 1967	Atomic Energy Act, 1967	The repeal of the whole.
Ordinance 20 of 1968	Mines, Works and Minerals Ordinance, 1968	The repeal of the whole, except in so far as it relates to the appointment and powers, duties and functions of the Chief Inspector of Mines and an inspector of mines, and the safety and health of persons employed in or in connection with mines and works.
Proclamation R.87 of 1969	Dealing in Unwrought Precious Metals Amendment Proclamation, 1969	The repeal of the whole.

Proclamation R19 of 1969	Mines Works and Minerals Amendment Proclamation, 1969	The repeal of the whole.
Proclamation R.90 of 1969	Mining Titles Registration Proclamation, 1969	The repeal of the whole.
Act 34 of 1970	Atomic Energy Amendment Act, 1970	The repeal of the whole.
Act 73 of 1971	Atomic Energy Amendment Act, 1971	The repeal of the whole.
Act 47 of 1972	Mines, Works and Minerals in South-West Africa Amendment Act, 1972	The repeal of the whole.
Act 46 of 1973	Sea Birds and Seals Protection Act, 1973	The deletion of subsection (3) of section 15.
Act 62 of 1973	General Law Amendment Act, 1973	The repeal of section 33.
Act 38 of 1974	Nuclear Installations (Licensing and Security) Amendment Act, 1974	The repeal of the whole.
Act 39 of 1974	Atomic Energy Amendment Act, 1974	The repeal of the whole.
Act 63 of 1975	Expropriation Act, 1975	The repeal of sections 74 and 75.
Act 91 of 1976	Nuclear Installations (Licensing and Security) Amendment Act, 1976	The repeal of the whole.
Act 76 of 1977	Atomic Energy Amendment Act, 1977	The repeal of the whole.
Act 22 of 1978	Nuclear Installations (Licensing and Security) Amendment Act, 1978	The repeal of the whole.
Act 46 of 1978	Atomic Energy Amendment Act, 1978	The repeal of the whole.
Proclamation AG.57 of 1978	Mineral Rights Proclamation, 1978	The repeal of the whole.
Act 46 of l979	Atomic Energy Amendment Act, 1979	The repeal of the whole.
Act 26 of' 1980	Mine, Works and Minerals Amendment Act, 1980	The repeal of the whole.
Act 4 of 1981	Mines, Works and Minerals Amendment Act, 1981	The repeal of the whole.
Act 7 of 1981	Atomic Energy Amendment Act, 1981	The repeal of the whole.
Act 2 of 1991	Petroleum (Exploration and Production) Act, 1991	The amendment of- (a) section 4 by the deletion in paragraph (i) of subsection (1) of
		the words "*mutatis mutandis* in

		accordance with the provisions of sections 10 and 11 of the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968)"; (b) section 16 by the substitution in paragraph (c) of subsection (1) for the words "claim, grant area or mining area, as defined in section 1 of the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968)" of the words "mining area or claim area as defined in section 1 of the Minerals (Prospecting and Mining) Act, 1992"; and (c) section 78 by the deletion of subsection (1) in so far as it relates to the amendment of the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968).