GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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GOVERNMENT NOTICE

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 291 2008

PROMULGATION OF ACT
OF PARLIAMENT

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

No. 8 of 2008: Minerals (Prospecting and Mining) Amendment Act, 2008.

Act No. 8, 2008 MINERALS (PROSPECTING AND MINING) AMENDMENT ACT, 2008

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing provisions.

[ ] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To To amend the Minerals (Prospecting and Mining) Act, 1992, to ensure that the levying of certain royalties is authorised; to remove restrictions on maximum rates of royalties that may be charged; and to authorise the imposition of a windfall royalty and to provide for matters incidental thereto.

(Signed by the President on 14 December 2008)

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:

Amendment of section 114 of Act No. 33 of 1992

1. Section 114 of the Minerals (Prospecting and Mining) Act, 1992, (herein after referred to as "the principal Act") is amended –

(a) in subsection (1) by the substitution for paragraph (c) of the following paragraph:

"(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 addition to any royalty levied 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*,"

(b) in paragraph (a) of subsection (2) by the substitution for the words preceding subparagraph (i) of the following words:

"(2) (a) Subject to the provisions of paragraph (b), the Minister may, [**for purposes of**] in respect of minerals referred to in the provisions of subsection (1)(c), levy in addition to the royalty referred to in subsection (1), 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 –"

(c) by the addition of the following subsections after subsection (3):

"(4) (a) Subject to paragraph (b) the Minister may levy a windfall royalty on 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 on 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 carried on by him or her, any mineral or group of minerals, in addition to any other royalty in terms of this Act if in his or her opinion –

(i) the market prices that can be obtained for the mineral in question have increased to such an extent that the operations have become significantly more profitable than similar operations are in normal circumstances;

(ii) the deployment of new technology or any other unforeseen circumstances have made the operations in question significantly more profitable than they are under ordinary circumstances.

(b) The Minister may not impose a royalty referred to in paragraph (a), unless he or she –

(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 including proposals relating to the investment of such profits in new or improved operations or infrastructure; and

(iii) has taken into account such representations and proposals.

(c) Any person on whom a royalty has been levied in terms of paragraph (a), may at any time make representations to the Minister relating to such royalty if the circumstances have changed or new information has come to the knowledge of such person.

(5) When the Minister determines the rates as contemplated in subsection (1)(c), he or she may determine different rates in respect of different classes of minerals or holders on one or more of the following grounds (which grounds need not be specified in the notice concerned) –

(a) the value of the mineral concerned;

(b) the nature of the deposits concerned, including the concentration of minerals therein and the process required to extract the minerals from the ore;

(c) the duration of the operations concerned and the extent to which the holder concerned has recovered any capital investments made in the course of the operations concerned;

(d) the number of Namibian citizens employed in the operations concerned, the number of those employees who are Namibian citizens, and the extent to which such holder provides training to Namibian citizens;

(e) the impact of the operations on the environment;

(f) the extent to which the holder uses Namibian providers of goods or services, or the extent to which the operations otherwise benefit the Namibian economy or society;

(g) any other ground that, in the opinion of the Minister, is relevant."

Construction

2. The provisions of section 1 are not construed in such a manner that section 114 of the principal Act should be interpreted more restrictively than it would have been if that section had not been amended by section (1).

Short title

3. This Act is called the Minerals (Prospecting and Mining) Amendment Act, 2008.