

MALAWI GOVERNMENT

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Act

No. 8 of 2019

I assent

PROF. ARTHUR PETER MUTHARIKA
PRESIDENT
25th January, 2019

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Objective of the Act
4. Ownership of minerals

PART II—ADMINISTRATION

Division 1—Mineral Resources Committee

5. Establishment of the Mineral Resources Committee
6. Functions of the Mineral Resources Committee
7. Decisions of the Mineral Resources Committee
8. Meetings of the Mineral Resources Committee
9. Honorarium
10. Disclosure of interest
11. Prohibition of publication or disclosure

Division 2—Commissioner for Mines and Minerals

12. Commissioner for Mines and Minerals
13. Duties of the Commissioner
14. Registrar of Mineral Tenements
15. Functions of the Registrar
16. Central and regional offices
17. Posting on the website of the Commissioner
18. Documents to be lodged with the Commissioner
19. Commissioner's powers and authority

SECTION

20. Experts
21. Appointment of Inspectors of Mines
22. Powers and functions of Inspectors of Mines
23. Emergency suspension order

Division 3 — Director of Geological Survey

24. Director of Geological Survey
25. Duties of the Director of Geological Survey
26. Studies by Department of Geological Survey do not require mineral tenement

Division 4 — Registers

27. Register of mineral tenement applications and mineral tenements
28. Registration of grantees of mineral tenements
29. Public access to the register
30. Mistakes in records of the register
31. Liability for making false entries in the register

PART III—MINERAL TENEMENTS

Division 1 — General

32. Mineral tenement or artisanal mining permit required
33. Types of mineral tenements and artisanal mining permit
34. Obtaining a mineral tenement
35. Mineral tenement activities subject to other written laws
36. Certificates
37. Commissioner may require report from tenement holder
38. Submission and ownership of reports, data and information
39. Obligation of holder of terminated mineral tenement
40. Preservation of cores
41. Registered addresses
42. Attachment

Division 2 — Direct Application Process for Grant, Extension or Consolidation of Mineral Tenement

43. Application for a mineral tenement, term extension, expansion or artisanal mining permit
44. Preliminary examination of mineral tenement related applications
45. Duties of the Registrar where preliminary examination shows that requirements are not met

SECTION

46. Duties of the Registrar where preliminary examination shows that requirements are met
47. Reports on application
48. Priority of application
49. Granting process for non-exclusive prospecting, reconnaissance, small-scale mining licences and approval of tenement extensions
50. Granting process for exploration, retention, medium-and large-scale mining licences
51. Application notices
52. Objections to grant of medium-scale or large-scale mining licence
53. Grievances against decisions of the Mineral Resources Committee
54. Registrar to register licence grant, extension, expansion or application refusal

Division 3 — Mineral Tenement Tendering Process

55. Temporary reservation for tendering purposes
56. Competitive tender process for mineral tenement
57. Offence to unduly influence a competitive tender

Division 4 — Transfer and Creation of Legal Interests

58. Transfer without approval has no force or effect
59. Application to transfer a mineral tenement
60. Legal or equitable mineral tenement interest only by written instrument
61. Legal or equitable interest instrument to be registered
62. Liability of holder
63. Change in control requires notification

Division 5— Consolidation of Mineral Tenements

64. Application of this Division
65. Tenement types which cannot be consolidated
66. Application for mining licence consolidation
67. Grant of a consolidated mining licence
68. Term of a consolidated mining licence
69. Maximum area of a consolidated mining licence
70. Shape of area of consolidated mining licence
71. Effect of consolidation

SECTION

Division 6— Surrender of Mineral Tenements

- 72. Application of this Division
- 73. Application for surrender
- 74. Restrictions on surrender of mining licence area
- 75. Duties of Commissioner and Registrar on application to surrender
- 76. Effect of certificate of surrender
- 77. Rights of holder on surrender
- 78. Obligation to mark boundaries after partial surrender of mineral tenement area

Division 7—Suspension, cancellation and expiry of a tenement

- 79. Suspension or cancellation of mineral tenement
- 80. Duties of Registrar on cancellation
- 81. Duties of Registrar on expiry
- 82. Effect of cancellation or expiry on rights and liabilities

Division 8 — Removal of property

- 83. Removal of property from expired, abandoned, surrendered, cancelled mineral tenement area
- 84. Refusal to remove property
- 85. Consequences of failure to remove property
- 86. Deduction of proceeds for failure to remove property
- 87. Property removal costs incurred by Commissioner
- 88. Penalty for obstructing efforts to remove property

PART IV—NON-EXCLUSIVE PROSPECTING LICENCE

- 89. Eligibility for non-exclusive prospecting licence
- 90. Application for non-exclusive prospecting licence
- 91. Term of non-exclusive prospecting licence
- 92. Extension of non-exclusive prospecting licence term
- 93. Form and contents of a non-exclusive prospecting licence
- 94. Size and shape of non-exclusive prospecting licence area
- 95. Mineral tenement area is excised from non-exclusive prospecting licence area
- 96. Rights of non-exclusive prospecting licence holder
- 97. Obligations of non-exclusive prospecting licence holder
- 98. Non-exclusive prospecting licence reporting obligation
- 99. Transfer of non-exclusive prospecting licence

SECTION

PART V—RECONNAISSANCE LICENCE

100. Eligibility for reconnaissance licence
101. Application for a reconnaissance licence
102. Reconnaissance work programme
103. Term of reconnaissance licence
104. Extension of reconnaissance licence term
105. Form and contents of a reconnaissance licence
106. Size and shape of reconnaissance licence area
107. Restrictions on grant of reconnaissance licence area
108. No expansion of reconnaissance licence area
109. Mineral tenement area is excised from reconnaissance licence area
110. Rights of reconnaissance licence holder
111. Right to use airborne and remote sensing activities
112. Surface disturbance prohibited without permission
113. Obligations of reconnaissance licence holder
114. Reconnaissance licence reporting obligation
115. Transfer of reconnaissance licence

PART VI—EXPLORATION LICENCE

116. Eligibility for exploration licence
117. Application for an exploration licence
118. Term of exploration licence
119. Extension of exploration licence term
120. Form and contents of an exploration licence
121. Size and shape of exploration licence area
122. Overlapping licences may be allowed in limited circumstances
123. No expansion of exploration licence area
124. Restrictions on grant of exploration licence
125. Rights of exploration licence holder
126. Obligations of exploration licence holder
127. Annual minimum exploration expenditure requirement
128. Obligation of exploration licence holder to keep accurate records
129. Exploration licence reporting obligations
130. Automatic extension of term for administrative reason
131. Mining licence is excised from exploration licence area
132. Surrender of exploration licence area
133. Transfer of exploration licence

SECTION

PART VII—RETENTION LICENCE

134. Eligibility for retention licence
135. Application for retention licence
136. Justification and plans for a retention licence
137. Restrictions on grant of retention licence
138. Effect of grant of retention licence on exploration licence area
139. Term of retention licence
140. Form and contents of a retention licence
141. Size and shape of retention licence area
142. No expansion of retention licence area
143. Rights of retention licence holder
144. Obligations of retention licence holder
145. Retention licence reporting obligation
146. Transfer of retention licence

PART VIII—MEDIUM AND LARGE-SCALE MINING LICENCES

147. Agreements with respect to the grant of Medium and Large scale mining licences
148. When large-scale mining licence is required
149. Eligibility for medium-scale or large-scale mining licence
150. Application for medium-scale or large-scale mining licence
151. Restrictions on grant of medium- or large-scale mining licence
152. Mineral Resources Committee to assess proposed plans
153. Term of a medium or large-scale mining licence
154. Extension of medium-scale or large-scale mining licence term
155. Form and contents of a medium-scale or large-scale mining licence
156. Effect of grant of medium- or large-scale mining licence on exploration licence area
157. Size and shape of medium- or large-scale mining licence area
158. Application for expansion of medium-scale or large-scale mining licence area
159. Boundary survey required
160. Demarcation of medium-scale or large-scale mining licence area
161. Content of prefeasibility or feasibility study
162. Mining operations plan

SECTION

163. Employment and training plan
164. Goods and services procurement plan
165. Business development assistance plan
166. Mine site plan
167. Mine waste management plan
168. Resettlement management plan
169. Community development agreements
170. Revision of approved plans
171. Obligations of mining licence holder
172. Obligation of mining licence holder to keep accurate records
173. Mining licence reporting obligations
174. Obligation to commence mine development and maintain production
175. Obligation to designate a Resident Mine Manager
176. Obligation to submit independently prepared audit
177. Rights of medium- or large-scale mining licence holder
178. Notice of changes in production
179. Premature closure
180. Coordinated mining operations
181. Notice of poor or wasteful practices
182. Transfer of medium- or large-scale mining licence
183. Consolidation of medium-scale and large-scale mining licences

PART IX—SMALL-SCALE MINING LICENCE

184. Eligibility for small-scale mining licence
185. Application for small-scale mining licence
186. Restriction on grant of small-scale mining licence
187. Effect of grant of small-scale mining licence on other tenement area
188. Term of small-scale mining licence
189. Extension of small-scale mining licence term
190. Form and contents of small-scale mining licence
191. Size and shape of small-scale mining licence area
192. Expansion of small-scale mining licence area
193. Demarcation of small-scale mining licence area
194. Rights of small-scale mining licence holder
195. Obligations of small-scale mining licence holder
196. Small-scale mining licence reporting obligation

SECTION

- 197. Notice to remedy dangerous or defective mining operations
- 198. Transfer of small-scale mining licence

PART X—ARTISANAL MINING PERMIT

- 199. Limited power of Local Authorities to regulate artisanal mining
- 200. Artisanal mining permit not available in some areas
- 201. Commissioner may require a mineral tenement
- 202. Eligibility for artisanal mining permit
- 203. Restriction on granting of artisanal mining permit
- 204. Artisanal mining permit conditions
- 205. Cancellation of artisanal mining permit
- 206. Obligations of artisanal mining permit holder
- 207. Local government authority obligation to file permit with the Registrar
- 208. Transfer of artisanal mining permit
- 209. Right to inspect

PART XI—RESERVED MINERALS

- 210. Possession of reserved minerals
- 211. Possession by museums, educational or scientific establishments
- 212. Application for reserved minerals licence
- 213. Grant of reserved minerals licence
- 214. Cancellation of reserved minerals licence
- 215. Form and content of reserved minerals licence
- 216. Rights of reserved minerals licence holder to purchase reserved minerals
- 217. Obligations of reserved minerals licence holder
- 218. Inspection of premises and equipment
- 219. Records and information on reserved minerals licence holders
- 220. Discovery of reserved minerals by contractor

PART XII—RESTRICTIONS, SURFACE RIGHTS AND COMPENSATION

- 221. Interpretation of this Part
- 222. Exercise of right by holders
- 223. Disputes about land
- 224. Rights of surface owners and occupiers

SECTION

- 225. Compensation of lawful occupiers and owners of surface lands
- 226. Lawful occupier and owner of land to be given advance notice of intent
- 227. Liability and redress
- 228. Compensation dispute resolution
- 229. Mediation
- 230. Land access order

PART XIII—ENFORCEMENT

Division 1 — Inspections

- 231. Inspection programme
- 232. Conduct of inspections
- 233. Inspection results and reports
- 234. Lawful occupier and owners to cooperate

Division 2 — Powers of Authorized Officers

- 235. Powers, authority and duties of authorized officer
- 236. Power to require name and address
- 237. Power to require answers to questions
- 238. Power to arrest without warrant
- 239. Power to seize and sell minerals, etc.
- 240. Power to seize or destroy equipment at unauthorized mining site

Division 3 — Directions and Orders

- 241. Commissioner may direct appearance
- 242. Authorized Officer may direct provision of information
- 243. Search warrant for minerals
- 244. Police to assist authorized officers, etc.
- 245. Appeal of direction or order
- 246. Rescission or substitution of decisions

Division 4 — Offences

- 247. General penalty
- 248. Offences by body corporate
- 249. Offences by persons
- 250. Offence to refuse assistance or to obstruct authorized officer
- 251. Offence to obstruct mineral tenement holder's operations
- 252. Offence for authorized officer to trade
- 253. Offence to unlawfully possess minerals

SECTION

- 254. Offence to receive minerals unlawfully obtained
- 255. Offence to demand money for non-interference
- 256. Offences relating to annual ground rent and mineral royalty
- 257. Ground rent, mineral royalty and fees to be paid despite proceedings for penalties
- 258. Savings for criminal proceedings

Division 5- Administrative Penalties

- 259. Administrative penalties

PART XIV—FISCAL PROVISIONS

- 260. Mineral royalties shall be payable on the production of minerals
- 261. Failure to pay mineral royalty or tax
- 262. Sales to affiliated company
- 263. Determination of fees and annual ground rent
- 264. Annual ground rent
- 265. Payments related to mineral tenements are public debts
- 266. Responsible authorities for tax and royalty collection may inspect records
- 267. Automatic adjustment or periodic review of fees and annual ground rents
- 268. Compliance with fiscal transparency requirements and guidelines

PART XV—GOVERNMENT OWNERSHIP INTEREST

- 269. Government participation option

PART XVI—PROTECTION OF THE ENVIRONMENT

- 270. Environmental considerations
- 271. Mineral tenement application may require submissions required by other laws
- 272. Rehabilitation and mine closure plan
- 273. Contents of rehabilitation and mine closure plan
- 274. Financial assurance
- 275. Finalization of rehabilitation and mine closure plan
- 276. Use of financial assurance by the office of the Commissioner
- 277. Conditions for protection of the environment and health
- 278. Commissioner may issue environmental guidelines pertaining to mining

SECTION

- 279. Rehabilitation on surrender, cancellation or expiry
- 280. Rehabilitation by Commissioner at holder's expense
- 281. Environmental protection notice
- 282. Issuance of certificate of closure

PART XVII—DISPUTES

- 283. Commissioner to inquire and resolve disputes
- 284. Commissioner may refuse to decide dispute
- 285. Commissioner shall hear compensation dispute
- 286. No court action until Commissioner refuses to hear dispute
- 287. Commissioner may issue decision, direction or order to resolve dispute
- 288. Referral of directions and orders to High Court
- 289. Commissioner's decision, direction or order may be appealed
- 290. Where appeal not allowed
- 291. Authority of Mineral Resources Committee to decide appeal
- 292. Effect of appeals decision
- 293. Period of limitation regarding appeals to Mineral Resources Committee
- 294. Enforcement fees

PART XVIII—MISCELLANEOUS

- 295. Shape of a mineral tenement
- 296. Grant of right to enter land
- 297. Owner, occupier may request proof from holder
- 298. Reporting of resources and reserves
- 299. Cooperative mining society and mining partnership
- 300. Community engagement plan
- 301. Actions not subject to this Act
- 302. Authorization to take minerals from licence area
- 303. Disputes regarding taking of minerals
- 304. Scientific investigation
- 305. Geological samples for non-mining purposes
- 306. Export of minerals requires a permit
- 307. Permit to export minerals
- 308. Commissioner may prohibit mineral exports for non-payment of royalty
- 309. Authorization of President to acquire land
- 310. Information regarding minerals

SECTION

- 311. Service of documents, declarations, notices
- 312. Malawian citizen

PART XIX—REGULATIONS

- 313. Regulations
- 314. Exercise of authority to make regulations

PART XX—REPEAL AND TRANSITIONAL PROVISIONS

- 315. Interpretation of this Part
- 316. Repeals and savings and coming into force of transitional provisions
- 317. Transitional provisions and savings provisions come into force
- 318. Legal status of actions done under the repealed Act
- 319. Legal status of non-exclusive prospecting licence granted under the repealed Act
- 320. Legal status of exclusive prospecting licence granted under the repealed Act
- 321. Legal status of mining claim granted under the repealed Act
- 322. Legal status of mining licence granted under the repealed Act
- 323. Legal status of mineral permit granted under the repealed Act

An Act to make provision with respect to searching for and mining of minerals; and to provide for matters connected therewith and incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

- | | |
|------------------------------|---|
| Short title and commencement | 1. This Act may be cited as the Mines and Minerals Act, 2018, and shall come into force on such date as the Minister, by notice published in the <i>Gazette</i> , may appoint, and the Minister may appoint different dates for coming into force of different Parts of this Act. |
| Interpretation | 2. In this Act, unless the context otherwise requires—

“annual ground rent” means annual ground rent payable under section 264; |

“artisanal mining permit” means an artisanal mining permit issued pursuant to section 199;

“authorized officer” means the Commissioner, Inspector of Mines, and a person designated as such under this Act;

“building and industrial minerals” means basalt, clay, dolomite, granite, gravel, gypsum, laterite, limestone, marble, sand, sandstone, or salt, used for agricultural, building, road making or industrial purposes in Malawi, and includes such other minerals as may be prescribed;

“cadastre” means a system for defining, depicting and recording the location of mineral tenement areas and associated information;

“calendar days” means consecutive days, starting at midnight;

“calendar year” means the one year time period commencing on January 1 and concluding on December 31;

“Commissioner” means the Commissioner for Mines and Minerals appointed under section 12;

“cooperative mining society” means a cooperative mining society registered pursuant to section 299;

“customary land” shall have the meaning assigned by the Land Act;

Cap. 57:01

“Director of Environmental Affairs” means the Director of Environmental Affairs appointed under the Environment Management Act;

Act No. 19 of 2017

“Director of Geological Survey” means the Director of Geological Survey appointed under section 24;

“district” means one of the administrative districts into which Malawi is divided in accordance with the Regional and District Boundaries and Place Names Act;

Cap.18:04

“environment” shall have the meaning ascribed in the Environment Management Act;

Act No. 19 of 2017

“exploration” means any manner or method of exploring for the purpose of locating and evaluating mineral deposits and occurrences, to determine their characteristics, extent and economic value including bulk sampling, preparation of prefeasibility and feasibility studies and related laboratory

testing, and such other operations necessary to identify, evaluate and prepare to apply for a mining licence;

“exploration licence” means an exploration licence granted under section 50;

“exploration licence area” means the area of land subject to an exploration licence;

“exploration work” means work activities associated with an approved exploration work programme;

“exploration work programme” means an exploration work programme that was approved in the grant of an exploration licence or an approved amended programme, that its holder is obliged to carry out;

“Geological Survey Reserve Area” means an area designated as a study area reserved for possible tendering pursuant to section 55;

“holder” means a person whose name is recorded in the Register as the person granted rights pursuant to a mineral tenement;

“in default” means in breach of any provision of this Act, existing environmental laws or of any condition of a mineral tenement or an artisanal mining permit;

“Inspector” means an Inspector of Mines appointed under section 21 and includes the Commissioner;

“land” includes all lands within the territory of Malawi, including any land that is below water;

“large-scale mining licence” means a large-scale mining licence granted under section 50;

“large-scale mining licence area” means the area of land subject to a large-scale mining licence;

“lawful occupier”, in relation to any customary land, includes any person who rents, leases or has the legal right to occupy certain land and anyone who has user rights to such land by marriage or customary arrangements;

“medium-scale mining licence” means a medium-scale mining licence granted under section 50;

“medium-scale mining licence area” means the area of land subject to a medium-scale mining licence;

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

“mineral” means any substance, including a radioactive mineral of any type, whether in solid, liquid or gaseous form, occurring naturally in or on the earth, formed by or subject to a geological process, but does not include—

(a) water, not being water taken from a borehole, well, excavation or natural saltpan for the extraction there from of a substance in solution therein and of commercial value;

(b) soil which is not being taken from the earth for the extraction there from of a substance of commercial value contained therein or for the manufacture there from of a production of commercial value; or

(c) oil and gas, other than gas extracted from coal or shale deposits;

“Mineral Resources Committee” means the Mineral Resources Committee established pursuant to section 5;

“mineral royalty” means a mineral royalty imposed on a mineral tenement holder pursuant to section 260;

“mineral tenement” means a non-exclusive prospecting licence, a reconnaissance licence, an exploration licence, a retention licence, a small-scale mining licence, a medium-scale mining licence or a large-scale mining licence, as the context requires, but does not include an artisanal mining permit;

“mining” when used as a verb, means intentionally to extract and remove minerals and includes any operations directly or indirectly necessary for or incidental to mining operations;

“mining licence” means a small-scale mining licence, medium-scale mining licence or large-scale mining licence, as the context requires;

“mining licence area” means an area of land subject to a mining licence;

“mining operation” means operations carried out in the course of mining or otherwise removing minerals from the land, treating

and otherwise benefiting the minerals with the intent to sell the resulting mineral product and includes quarrying;

“the Minister” means the minister in charge of the Ministry responsible for mining and mineral resources and the “Ministry” shall be construed accordingly;

Cap.29:01 “monument” has the meaning assigned under the Monuments and Relics Act;

“non-exclusive prospecting licence” means a non-exclusive prospecting licence granted under section 49;

“non-exclusive prospecting licence area” means the area of land subject to a non-exclusive prospecting licence;

“non-mechanized mining methods” means mining by the use of hand tools, hand-held equipment and by small pumps with a hose diameter less than 75mm and such pumps’ associated machinery, but not by larger pumps or any large machinery driven by electric, diesel, petrol or gas-powered motors;

“owner of land” means the lawful occupier or owner of land;

“precious stones” means rough and uncut diamonds, emeralds, rubies and sapphires, not forming part of any tool or instrument or abrasive powder used in an industrial process, and includes any other stones which may be prescribed;

“prescribe” and “prescribed” means to prescribe in regulations or as prescribed in regulations;

Cap. 57:01 “private land” has the meaning assigned by the Land Act;

“prospect” or “prospecting”, when used as a verb, means intentionally to search for minerals and includes the determination of their extent and economic value;

“prospecting work programme” means a prospecting work programme that was approved in the grant of a non-exclusive prospecting licence that its holder is obliged to carry out;

“qualified community” means any community of more than three thousand (3,000) persons which by tradition or by circumstances constitute a social community and:

(a) that reside within twenty kilometres of any boundary defining a large-scale mining licence area; or

(b) that the Mineral Resources Committee has otherwise determined to be a qualified community;

Provided that where less than three thousand persons reside in the areas described in paragraphs (a) and (b), the persons

residing in the areas described in paragraphs (a) and (b) collectively constitute a qualified community;

“radioactive mineral” means a mineral that is a radioactive material as defined in the Atomic Energy Act;

Cap.61:03

“reconnaissance activities” means the search for minerals by geophysical surveys, geochemical surveys, photo-geological surveys or other remote sensing techniques and surface geology in connection therewith but does not include drilling or trenching;

“reconnaissance licence” means a reconnaissance licence granted under section 49;

“reconnaissance licence area” means an area of land subject to a reconnaissance licence;

“reconnaissance work programme” means a reconnaissance work programme that was approved in the grant of a reconnaissance licence that its holder is obliged to carry out;

“register”, when used as a verb, means to place legal instruments, including but not limited to any mineral tenement licence, in the official public records as required by this Act;

“register”, when used as a noun, means the register required by section 27;

“registered” means that a legal instrument or other written document has been placed on record in the official public records according to law from time to time;

“registered address” means the address of a mineral tenement applicant or holder that appears in the register as the address where all official notices and correspondence to that holder shall be sent;

“Registrar” means an officer designated as such under section 14;

“registration date” means the date on which a mineral tenement application was registered, or the date that a mineral tenement was issued under sections 27 and 54, as the case may require;

“regulations” means regulations promulgated under section 313;

“relic” has the meaning assigned by the Monuments and Relics Act;

Cap.29:01

“reserved mineral” means gold, silver, precious stones and any other mineral which may be prescribed;

“reserved minerals licence” means a licence granted under section 213;

“Resident Mine Manager” means the individual person who is in charge and responsible for managing the day-to-day mining operations at a mine who resides at or near to the mine;

“retention licence” means a retention licence granted under section 50;

“retention licence area” means the area of land subject to a retention licence;

“small-scale mining” means mining using non-mechanized mining methods or limited mechanized mining methods as authorized by a small-scale mining licence;

“small-scale mining licence” means a small-scale mining licence granted under section 49;

“small-scale mining licence area” means the area of land subject to a small-scale mining licence; and

“website” means the website established and maintained pursuant to section 13.

Objective of the Act

3. The objective of this Act is to regulate the development of the mineral resources of Malawi through adherence to sustainable development principles in order to—

(a) benefit the economy and promote the economic growth of Malawi;

(b) protect and improve the welfare of the present and future citizens of Malawi;

(c) provide an attractive and conducive environment for investment in the mining sector;

(d) minimize or prevent economic declines related to decreased mining activity by creating through training and other means a foundation for the future, social economic empowerment, uplifting and development of local communities and regions affected by mining; and

(e) manage environmental impacts for the benefit of all present and future generations of Malawians.

Ownership of minerals

4. —(1) The entire property in minerals in, under or upon any land or waters in Malawi are vested in the Republic; but without prejudice to the exercise of any right under or pursuant to this Act.

(2) Nothing in subsection (1) shall operate so as to affect a citizen of Malawi from taking minerals of any kind from customary land,

to the extent and in the manner which custom permits, and from which it has been customary to take minerals of that kind for customary use.

(3) For the avoidance of doubt, the customary taking of minerals under subsection (2) does not include the taking of minerals for the purpose of sale, for use in commercial activities or using mechanized mining methods but does include the taking of minerals by non-mechanized mining methods for personal, familial or community building purposes and for the production of handicraft.

(4) Subject to subsection (5), the ownership of minerals vests in a person who legally separates the minerals from the land, pursuant to an authorization under this Act, at the time that the mineral is separated from the land.

(5) Any mineral separated from the land other than in accordance with subsection (2) or under an authorization under this Act remains the property of the Republic.

PART II—ADMINISTRATION

Division 1 – Mineral Resources Committee

5.—(1) There is hereby established a committee to be known as the Mineral Resources Committee.

Establishment
of a Mineral
Resources
Committee

(2) The Mineral Resources Committee shall consist of—

- (a) the Commissioner;
- (b) the Secretary responsible for mining or his designated representative who shall be the Chairperson of the Committee;
- (c) the Secretary responsible for local government or his designated representative;
- (d) the Secretary responsible for water or his designated representative;
- (e) the Secretary responsible for lands or his designated representative;
- (f) the Secretary to the Treasury or his designated representative;
- (g) the Director of Environmental Affairs or his designated representative;
- (h) the Director of Geological Survey or his designated representative;

(i) the Director responsible for parks and wildlife or his designated representative;

(j) the Director responsible for forestry or his designated representative;

(k) the Inspector General of the Malawi Police Services or his designated representative; and

(l) the Solicitor General or his representative.

(3) The Chairperson of the Mineral Resources Committee may invite any person or representative of an institution who is not a member to any of its meetings depending on the subject matter to be discussed.

(4) The Commissioner shall serve as the secretary to the Mineral Resources Committee.

Functions of
the Mineral
Resources
Committee

6. The functions of the Mineral Resources Committee shall be to—

(a) examine the qualifications, experience and character of persons applying for exploration licences, retention licences, medium-scale mining licences and large-scale mining licences and determine their eligibility to be granted the type of licence applied for;

(b) recommend for granting, applications for exploration licences, retention licences, medium-scale mining licences and large-scale mining licences;

(c) recommend applications to expand the area of a medium-scale mining licence or large-scale mining licence;

(d) recommend, upon mandatory referral by the Commissioner, whether an exploration licence, retention licence or large-scale mining licence should be cancelled;

(e) determine, on appeal by a mineral tenement holder, whether an emergency suspension order, is reasonable;

(f) deal with complaints concerning the holders of exploration licences, retention licences, medium-scale mining licences and large-scale mining licences;

(g) determine whether any Geological Survey Reserve Area should be designated or revoked;

(h) determine whether a mineral tenement tendering process will be initiated with regard to any Geological Survey Reserve Area;

(i) advise the Minister on licensing matters relating to exploration and mining operations including quarries and quarry operations;

(j) recommend to the Minister measures necessary for the harmonization of activities, plans and policies concerned with sustainable development and utilization of mineral resources and ensure their consistency with the overall national development policy;

(k) provide technical advice and guidance in the administration of this Act and all policy matters pertaining to the mining industry;

(l) do all things required of the Committee under this Act; and

(m) carry out such other activities as are necessary or conducive for the performance of its functions under this Act.

7.—(1) The Minister shall not grant an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence, unless the Mineral Resources Committee has recommended the respective application, and any grant of a licence that contravenes this subsection shall be null and void.

Decisions of
the Mineral
Resources
Committee

(2) Where the Mineral Resources Committee recommends an application for an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence, the Minister shall, within forty-five (45) calendar days, grant such licence to the applicant subject to any and all conditions directed by the Committee.

(3) Any person who is aggrieved by the decision of the Minister under this section may apply to the High Court for review within thirty (30) days of the receipt of the notification of the Minister's decision.

(4) Where the Mineral Resources Committee determines that a mineral tenement tendering process should be applied to any Geological Survey Reserve Area, the Minister shall, within forty-five (45) calendar days, initiate the tendering process for the area.

8.—(1) The Mineral Resources Committee shall meet to transact its business at least once every two (2) months at such places and times as the Chairperson of the committee shall determine.

Meetings of
the Mineral
Resources
Committee

(2) The Mineral Resources Committee may determine its own procedures.

(3) The Chairperson—

(a) may, at any time, convene an extraordinary meeting of the Mineral Resources Committee; and

(b) shall, at the request of one third of the Committee members, in writing, convene an extraordinary meeting of the Committee,

to be held at a time and place determined by the Chairperson.

(4) The quorum of any meeting of the Mineral Resources Committee shall be a simple majority of the Committee members.

(5) The meetings of the Mineral Resources Committee shall be presided over by the Chairperson of the committee.

(6) The Secretary of the Mineral Resources Committee shall record accurate minutes of the proceedings of each meeting of the Committee and every meeting of an advisory committee of the Committee and such minutes shall be permanently stored for future reference.

(7) A decision of the Mineral Resources Committee on any matter shall be made by a simple majority of the members present and voting at the meeting.

(8) The Chairperson shall not cast a vote on any matter to be decided by the Mineral Resources Committee, but in the case that there is a tied vote, the Chairperson may cast the deciding vote.

(9) The Mineral Resources Committee may invite any person or expert to assist it on any matter if the Committee is satisfied that the person concerned has such qualifications, expertise or experience that he is likely to render useful assistance to the Committee.

(10) A person invited under subsection (9) in relation to a particular matter may take part in the proceedings of the Mineral Resources Committee concerning that matter, but shall not vote on that matter or take part in any other proceedings of the Committee.

(11) The Mineral Resources Committee may establish such advisory committees as may be necessary and appropriate for the conduct of its regulatory responsibilities.

(12) At the request of the Mineral Resources Committee, the Commissioner may engage experts from outside the permanent staff of the Commissioner's office as advisors, consultants, reviewers or technical experts to assist in the conduct of the Mineral Resources Committee's regulatory responsibilities.

(13) The use of advisory committees or outside experts shall not relieve the Mineral Resources Committee from its responsibilities under this Act.

(14) The Mineral Resources Committee shall ensure that technical support received from advisory committees or experts is provided in a manner that avoids any conflict of interest or improper influence on its regulatory decision-making.

9. Members of the Mineral Resources Committee shall be paid such allowances and other benefits as may be provided in Government Circulars. Honorarium

10.—(1) Where a member of the Mineral Resources Committee is present at a meeting of the Committee at which any matter is the subject of discussion and in which the member has sufficient interest, directly or indirectly, the member shall, as soon as is practicable, before the commencement or during the meeting, declare such interest and shall not, unless the Committee otherwise directs, take part in any discussion of, or vote on, any question pertaining to the matter. Disclosure of interest

(2) A declaration of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Mineral Resources Committee who fails to comply with subsection (1) commits an offence.

11. Unless otherwise allowed or required by this Act, a person who is an officer in the public service or an expert engaged according to section 8 (9), shall not, without a written consent given by the Commissioner, publish or disclose to any person or expert other than in the course of his duties, the contents of any document, communication, or information which relates to the business of the Mineral Resources Committee and which has come to the person's or the expert's knowledge in the course of the person's or the expert's duties under this Act. Prohibition of publication or disclosure

Division 2— Commissioner for Mines and Minerals

12. There shall be appointed in the Public Service an officer to be designated as a Commissioner for Mines and Minerals (in this Act, otherwise referred to as the "Commissioner") who shall be responsible for the implementation of this Act subject to any general and specific direction of the Minister. Commissioner for Mines and Minerals

13.—(1) The Commissioner shall be responsible for— Duties of the Commissioner

(a) providing technical advice and guidance in the administration of this Act and in policy matters pertaining to the mining industry;

(b) issuing mineral tenements, export permits and reserved mineral licences that have been granted approval by the respective authority;

(c) establishing and maintaining a website which shall be accessible by the public;

(d) in consultation with relevant authorities, inquiring and deciding on disputes between mineral tenement applicants and holders;

(e) inspecting mineral tenement operations;

(f) assisting in the orderly development of the small-scale mining sector;

(g) collaborating with educational institutions and non-governmental organizations to promote the education of Malawians, including women, about the mining sector;

(h) conducting mining engineering and mineral processing research;

(i) ensuring the safe use of explosives in compliance with the Explosives Act;

Cap.14:09

(j) liaising and cooperating with the Environmental Affairs Department in monitoring mineral tenement environment-related matters in accordance with the Environment Management Act;

Act No. 19
of 2017

(k) liaising and cooperating with the Ministry responsible for labour matters on safety, health and welfare under the Occupation Safety, Health and Welfare Act and other labour related laws; and

Cap.55:07

(l) performing such other functions as are assigned under this Act or by the Minister.

(2) The Commissioner, by instrument in writing, may delegate all or any of his functions, duties or powers (except this power of delegation) to any authorized officer.

Registrar
of Mineral
Tenements

14.—(1) Commissioner shall designate a suitably qualified officer as the Registrar of Mineral Tenements (in this Act otherwise referred to as the “Registrar”) who shall be providing the secretariat services for the Mineral Resources Committee.

(2) The Registrar shall, in exercising his powers and discharging his functions and duties under this Act, be under general and specific direction of the Commissioner.

(3) The Registrar shall report to the Commissioner who shall present each registered tenement application to the granting authority for that type of respective licence.

Functions of
the Registrar

15.—(1) The Registrar of Mineral Tenements shall—

(a) provide secretariat services for the Mineral Resources Committee;

(b) receive applications for the grant, transfer, extension, modification or consolidation of mineral tenements and applications for expansion or surrender of mineral tenement areas;

(c) maintain a chronological record of all applications received for mineral tenements;

(d) coordinate mineral tenement application processing;

(e) receive applications and coordinate the processing of applications for export permits and Reserved Minerals licences;

(f) maintain the cadastre of mineral tenements;

(g) maintain the register required under this Act;

(h) receive and maintain mineral tenement related records, reports and submissions;

(i) receive notices required to be submitted under this Act to the Minister, the Commissioner and the registrar, to note the receipt of such notices in the register if so required by this Act;

(j) accept payment of fees and annual ground rent required by this Act;

(k) update a mineral tenement database; and

(l) perform such other functions as are assigned under this Act or by the Commissioner.

16. The Commissioner shall maintain a central office and such number of regional offices reporting to, and under the authority of, the central office as are necessary for administrative convenience.

Central and regional offices

17. Where any provision of this Act requires the posting of any notice or other subject matter on the website—

Posting on the website

(a) such requirement shall only apply after such website is established and shall not be retroactive; and

(b) such notice or other subject matter shall be posted for a period of at least thirty (30) calendar days unless in the opinion of the Commissioner a longer period is useful or necessary.

18. Where any document is required to be lodged for registration under this Act, it shall be lodged with the Commissioner, unless otherwise expressly provided.

Documents to be lodged with the Commissioner

19.—(1) The Commissioner may approve applications—

Commissioner's powers and authority

(a) for the grant of non-exclusive prospecting licences, reconnaissance licences and small-scale mining licences, as provided for under section 49;

(b) to expand the area of a small-scale mining licence, as provided for under section 49;

(c) to extend the term of mineral tenements, as provided for under section 49;

(d) to consolidate mineral tenements, as provided for under section 67;

(e) for the grant of reserved mineral licences, as provided for under section 213; and

(f) for the grant of export permits, as provided for under section 306.

(2) The Commissioner shall require that the holder of a mineral tenement shall comply with his obligations under this Act and any written law that relates to its mineral tenement.

(3) The Commissioner shall act and exercise all the powers and authority of the Commissioner's office conferred upon him under this Act on behalf of and in the best interests of the citizens of Malawi.

Experts

20. An authorized officer, in exercising powers conferred upon him under section 235, may engage persons who have expert knowledge of any matter being inspected, tested or examined.

Appointment
of Inspectors
of Mines

21.—(1) The Minister, in consultation with the Commissioner, shall appoint in the Public Service such number of suitably qualified inspectors as are required to enforce compliance with the provisions of this Act.

(2) An inspector appointed under this section shall work under the direction of the Commissioner.

Powers and
functions of
Inspectors
of Mines

22.—(1) An inspector shall exercise his powers and functions and duties subject to any general and specific directions of the Commissioner.

(2) An inspector, for the purposes of monitoring or enforcing compliance with this Act, shall have access at any time, to any land or premises where any activity related to minerals has been, is or will be carried on, including any accessory works, or land to which any such operations or accessory works relate for the purposes of—

(a) verifying compliance with the provisions of this Act and conditions of licences;

(b) perusing all technical, accounting and financial records and data, including but not limited to, all maps, drill logs and other drilling data, core, pulps, reports, surveys, assays, analyses, production reports, operations, technical, and any other business information, whether in electronic, digital or traditional paper form, related to the operation;

(c) investigating any incident or accident related to mining operations;

(d) questioning any person who has duties which, in the view of an inspector may be pertinent to the inspection being carried out or an enquiry being conducted;

(e) taking books, records, data, samples of any material and any other information, and make such examinations and enquiries as may be necessary to ascertain whether the provisions of this Act, any other applicable written law, standards and guidelines are being complied with; or

(f) exercising such other powers of inspection as are necessary for carrying out the provisions of this Act into effect.

(3) An inspector shall have the power to take photographs, make video recordings and collect such other visual evidence of mining operations as is useful to document alleged transgressions, unsafe conditions or for any other reasonable purpose relating to inspection:

Provided that such visual evidence shall remain confidential and only accessible by officers of the Commission except as when entered as evidence in any court of law.

(4) An inspector shall have the power and authority to immediately order, in accordance with section 23, the temporary suspension, of mining operations if the Inspector in his sole and absolute discretion is convinced that the health and safety of those working at the mine, any member of the public or any aspect of the environment is seriously threatened.

(5) An inspector shall issue a receipt in respect of any books, records, data, samples or other things taken or removed by the Inspector under this section.

(6) Upon any claim received from the owner of any sample taken by an inspector, the inspector shall return such sample to such owner if it is not used within a reasonable period as evidence in connection with any offence in terms of this Act, or pay to such

owner an amount equal to the reasonable market value of such sample.

(7) An inspector shall return such books, records, data, samples or other things taken by the inspector to the owner of such thing if it is not used within a reasonable period in evidence in connection with any offence in terms of this Act.

Emergency
suspension
order

23.—(1) An inspector may immediately and at any time, in writing, issue an emergency suspension order directing that any operation which consists the subject of the order be temporarily suspended (whether such operations are the subject of a mineral tenement or not) until such arrangements are made that are in the inspector's opinion necessary to prevent danger to life or property.

(2) An inspector who issues an emergency suspension order pursuant to subsection (1) shall, within twenty-four (24) hours of the order being issued, inform the Commissioner.

(3) An inspector, in writing and with written agreement of the Commissioner, may cancel or vary the terms of any emergency suspension order issued under subsection (1).

(4) An emergency suspension order made under subsection (1) shall lapse after fourteen (14) calendar days of its issuance, unless it is confirmed and extended, in writing, by—

(a) the Minister, in the case of an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence; or

(b) the Commissioner, in the case of a reconnaissance licence, non-exclusive prospecting licence, small-scale mining licence or an operation not the subject of a mineral tenement.

(5) The Minister or Commissioner, as the case may require pursuant to subsection (4), shall have the power to confirm, modify and extend an emergency suspension order made under subsection (1) and shall not delegate this power.

(6) An emergency suspension order extended pursuant to subsection (5) shall remain in force until such time as the reason for imposing the suspension order is addressed to the satisfaction of the Minister or the Commissioner depending on who extended the order.

(7) Where a mineral tenement is subject to an emergency suspension order that has been confirmed and extended pursuant to subsection (5) and the holder of the mineral tenement is of the opinion that such order is not reasonably justified, he may appeal

the order to the Mineral Resources Committee and, if dissatisfied with the decision of the Committee, apply for the review of the decision in the High Court.

(8) A person, who fails to comply with an emergency suspension order issued under subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K30,000,000 and K1,000,000 for each day of default, and to imprisonment for ten (10) years.

Division 3 – Director of Geological Survey

24. There shall be appointed in the Public Service an officer to be designated as a Director of Geological Surveys.

Director of Geological Survey

25.—(1) The Director of Geological Surveys shall be responsible for—

Duties of the Director of Geological Survey

(a) advising the Minister, the Commissioner and Mineral Resources Committee on geological matters;

(b) promoting or carrying out systematic geological surveys, investigations, studies and mapping;

(c) determining characteristics of mineral occurrences and maintaining an inventory of such occurrences;

(d) acquiring, compiling, managing, publishing and disseminating geoscience databases and information concerning the geology and mineral resources of Malawi;

(e) recommending areas to be temporarily reserved pursuant to section 55 for the purpose of investigating their mineral potential prior to possible tendering;

(f) providing advice and recommendations to the Commissioner on proposed reconnaissance licence work programmes;

(g) providing advice and recommendations to the Mineral Resources Committee on proposed exploration licence work programmes;

(h) providing advice pertaining to geo-hazards;

(i) maintaining such laboratory, library and record keeping facilities as may be necessary for the discharge of these functions; and

(j) performing such other functions as are assigned under this Act.

(2) For the purposes of performing the functions set out under this section, the Director of Geological Survey may—

(a) pass through or enter into or upon any land, including land the subject of a mineral tenement, without prior written permission, except land for military installations, which it may be necessary to be on or pass through for the purpose of carrying out geological surveys;

(b) take soil samples or specimens of rocks, ore, concentrates, tailings, water or minerals situated in any form or place for the purpose of examination or assay;

(c) break up the surface of the land for the purpose of ascertaining the water, rocks or minerals within or under them; and

(d) fix any post, stone, mark or object to be used in the survey of such land.

(3) The Director of Geological Survey may authorize an agent to carry out any geology related activity described in subsection (2) on any land.

(4) No agent authorized under subsection (3) may be granted a mining licence on any land that such agent has investigated, studied or mapped on behalf of the Director of Geological Survey within two (2) years of performing that work.

(5) The Director of Geological Survey, by instrument in writing, may delegate all or any of his functions, duties or powers to any authorized officer of the Department of Geological Survey.

Studies by Department of Geological Survey do not require mineral tenement

26. Geological investigations, studies and mapping performed by the Department of Geological Survey do not require a mineral tenement.

Division 4— Registers

Register of mineral tenement applications and mineral tenements

27.—(1) The Commissioner shall keep and maintain a register of every application for a mineral tenement, every mineral tenement granted and of any dealings with, or affecting, a mineral tenement.

(2) The Register shall consist of a series of files and information comprising—

(a) a register of chronologically organized applications for mineral tenements;

(b) a register of non-exclusive prospecting licences;

(c) a register of reconnaissance licences;

(d) a register of exploration licences;

(e) a register of retention licences;

- (f) a register of medium-scale mining licences;
- (g) a register of large-scale mining licences;
- (h) a register of small-scale mining licences;
- (i) a register of reserved minerals licences;
- (j) a register of cooperative mining societies and mining partnerships; and
- (k) such other registers that are useful or necessary for the purpose of this Act.

(3) The register and its constituent parts shall be organized in such manner as is approved by the Commissioner and may consist of hard copy materials, electronic information or both.

28. Where a mineral tenement is granted, the Registrar shall cause the name of the person to whom the mineral tenement is granted to be recorded in the register as the registered holder of the mineral tenement. Registration of grantees of mineral tenements

29. The register shall, at all reasonable times, be accessed by the general public, and members of the public may obtain copies of any licence or entry in the register on payment of a prescribed fee. Public access to the register

30. Where the Commissioner is satisfied that there has been a mistake made in, or that some matter has been incorrectly entered in the register, the registrar shall rectify the register by correcting that mistake or incorrect entry. Mistakes in records of the register

31. A person who wilfully—

- (a) makes, or causes to be made or concurs in making, a false entry in the register; or
 - (b) produces or tenders in evidence a document falsely purporting to be a copy of or an extract from an entry in the register or from an instrument placed on record with the registrar, commits an offence and shall, on conviction, be liable to a fine of K10,000,000 and imprisonment for three (3) years.
- Liability for making false entries in the register

PART III—MINERAL TENEMENTS

Division 1—General

32.—(1) Except as otherwise provided in this Act, a person shall not carry on reconnaissance, prospecting, exploration or mining operations, except under and in accordance with a mineral tenement or an artisanal mining permit granted under this Act. Mineral tenement or artisanal mining permit required

(2) The Commissioner may direct a person whom the Commissioner suspects is carrying on unauthorized reconnaissance, prospecting, exploration or mining operations to provide any information required to enable the Commissioner to determine whether unauthorized operations are taking place.

(3) Where the Commissioner reasonably determines that a person is carrying on unauthorized operations, the Commissioner may—

(a) orally or in writing or by serving a notice, as the case may call for, direct that person to cease its unauthorized operations; and

(b) take whatever action is reasonably necessary to remove that person from the land on which the unauthorized operations are taking place.

(4) A person who—

(a) carries on reconnaissance, prospecting, exploration or mining operations on any land without being duly authorized under this Act;

(b) refuses to comply with a direction under subsection (2);

(c) refuses to comply with a direction under subsection (3)(a);

(d) fails, neglects or refuses to comply with any direction lawfully given under this Act;

(e) after being lawfully evicted or removed from land where unauthorized reconnaissance, prospecting, exploration or mining was taking place, re-enters or takes possession of such land;

(f) takes or removes from the mineral tenement area or artisanal mining permit area of another person any mineral without the authority of that person; or

(g) gives false or misleading information to an Authorized Officer with regard to an unauthorized reconnaissance, prospecting, exploration or mining operation,

commits an offence and shall, on conviction, be liable to a fine of K20,000,000 and to imprisonment for four (4) years.

(5) Where a person is convicted of an offence under this section, the Court may, in addition to imposing a penalty it determines, order the offender to rehabilitate any land which he has damaged to the satisfaction of the Commissioner within a specified time.

(6) Where a person fails to carry out an order made under subsection (5), the Court shall require the offender to pay the costs of rehabilitation of the land and such a sum determined is a debt to

the Government and may be recovered in any court of competent jurisdiction.

33.—(1) The following mineral tenements may be granted under this Act—

Types of
mineral
tenements
and artisanal
mining permit

(a) non-exclusive prospecting licence, that grants the holder the non-exclusive right in the licence area, which area is defined by district boundaries, to do prospecting for all minerals;

(b) reconnaissance licence, that grants the holder the non-exclusive right in the licence area to do reconnaissance;

(c) exploration licence, that grants the holder the exclusive right in the licence area to explore for all mineral deposits and an exclusive priority right to apply for a mining licence;

(d) retention licence, that grants the holder the right to maintain the exclusive right to apply for a mining licence in the licence area when exploration has been completed but other specified conditions preclude mining at the present time;

(e) small-scale mining licence, that grants the exclusive right to mine minerals in the licence area using only small-scale mining methods as defined in section 2;

(f) medium-scale mining licence, that grants the exclusive right to mine all minerals in the licence area provided the scale of operation does not exceed any limit specified in section 148; and

(g) large-scale mining licence, that grants the exclusive right to mine all minerals in the licence area.

(2) An artisanal mining permit, which is not a mineral tenement for the purposes of this Act, grants the right to the holder to temporarily mine for minerals used in local construction and handicraft, subject to restrictions on the scale of operation and manner in which the minerals can be mined.

34. A mineral tenement may be obtained by a direct application process, as provided for under Division 2, or as a result of a tendering process, as provided for in Division 3.

Obtaining a
mineral
tenement

35. Where any act or conduct is regulated or prohibited by a written law, other than this Act, nothing in this Act shall be construed as authorizing the holder of a mineral tenement to perform the activity—

Mineral
tenement
activities
subject to
other written
laws

(a) otherwise than in accordance with the written law that applies to the specific act being performed; and

(b) without first obtaining a licence, permit, authority, or other official instrument required under written law.

- Certificates
- 36.**—(1) The Commissioner may give a certificate with respect to any matter provided under this Act.
- (2) Without prejudice to the generality of subsection (1), the certificates granted may include—
- (a) a mineral tenement granted, transferred, suspended, cancelled or expired on, or with effect from, a date specified in the certificate;
- (b) any land, identified in the certificate which is, from time specified in the certificate, subject to a mineral tenement;
- (c) any condition which is, from the date specified in the certificate, a condition of a mineral tenement;
- (d) a certificate of surrender issued in respect of land identified, from a date specified in the certificate, given by the Commissioner; and
- (e) a person named in the certificate from the date specified in the certificate, as the holder of a mineral tenement.
- (3) A certificate of the Commissioner confirming the matters referred to in subsection (2) shall be received in proceedings before any court or tribunal as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.
- Commissioner may require report from tenement holder
- 37.**—(1) The Commissioner may require the holder of a mineral tenement to prepare a report on any subject matter related to the mineral tenement within such reasonable time as may be specified by the Commissioner.
- (2) Where a holder of a mineral tenement is required under this section to provide a report addressing the required subject matter by a specified date but refuses or substantially fails to do so, the holder commits an offence.
- Submission and ownership of reports, data and information
- 38.**—(1) Any person obligated under this Act to submit a report, data or other information, shall submit such report, data or information to the Registrar, unless the contrary is specified in the instrument that gives rise to the obligation.
- (2) Where a holder is required under this Act to submit a report, data or information to any ministry, department or agency of the Government, the report, data or information shall become the property of the Government:
- Provided that such submission shall not prevent the holder from using the report, data or information during the term of its tenement.

(3) Notwithstanding that the Government may be the owner of report, data and information submitted by the holder, the Government shall be restricted in the use of such report, data or information where such reports, data or information are to be treated on a confidential basis as provided in this Act.

(4) Unless otherwise specified in this Act, any information submitted by the holder shall remain confidential for as long as the licence is valid and two (2) years after the expiry or termination of the licence.

39.—(1) When a mineral tenement terminates, the person who was the holder of that tenement immediately before the termination shall deliver to the Registrar—

Obligation of holder of terminated mineral tenement

(a) all records which the former holder maintained pursuant to this Act with respect to his mineral tenement;

(b) all plans or maps of whatever nature, including maps of the area of land that was subject to the tenement, geological maps and cross sections, pit designs, tailings dam designs, geological reports including interpretations, mineral analyses, aerial photographs, core logs, sample analyses and tests, including those analyses and tests related to the production of minerals sold or sent for processing, production records, and other data obtained and compiled by the holder in respect of the tenement area, and which were prepared by or on the instruction of the former holder; and

(c) such other documents as the Commissioner, by notice given to the former holder, may require the former holder to deliver.

(2) Where a former holder required under this section to deliver information as specified in subsections 1(a), (b) or (c) by a specified date refuses or substantially fails to do so, the person commits an offence.

40.—(1) A holder shall preserve all drill cores and drilling samples, except such amounts as may be required for assaying and testing, and at such time as the holder no longer requires them, or upon the expiry, surrender or cancellation of the tenement, shall inform the Director of Geological Survey about them.

Preservation of cores

(2) On receiving the information under subsection (1), the Director of Geological Survey may request that the cores and drilling samples, or such of them as are required, and corresponding records and logs be provided to the Director of Geological Survey at such location as is specified by the Director of Geological Survey, and the holder shall comply with such a request at the holder's own cost.

(3) The obligation of the holder under subsection (1) shall cease three (3) months after the tenement expires, is surrendered or is cancelled.

(4) The holder may at any time request the Director of Geological Survey to grant him permission to dispose of cores and drilling samples, and the Director of Geological Survey may grant such permission.

Registered addresses

41.—(1) A holder, or an applicant for a mineral tenement shall—

(a) have, and keep established after the mineral tenement is granted, a legal address in Malawi which is referred to in this Act as its “registered address”; and

(b) provide notice to the Registrar within thirty (30) days of any change of the address.

(2) A holder or an applicant for a mineral tenement, may register an email and a facsimile address with the Registrar for the purpose of receiving notices and other information.

Attachment

42. The Commissioner may, request a holder, in writing, to provide a temporary training attachment within its operations to an authorized officer in the Commissioner’s office or the Department of Geological Survey for a period not exceeding thirty (30) calendar days, or such longer period as may be mutually agreed by the Commissioner and the holder, and all reasonable costs associated with such attachment, except the salary of the officer and related benefits, shall be responsibility of the holder.

Division 2 – Direct Application Process for Grant, Extension or Consolidation of Mineral Tenement

Application for a mineral tenement, term extension, expansion or artisanal mining permit

43.—(1) Except as otherwise provided in this Act, any person who intends to carry on prospecting, reconnaissance, exploration or mining operations shall apply in a prescribed manner—

(a) through the Registrar for a mineral tenement; or

(b) to the respective local government authority for an artisanal mining permit.

(2) An application under subsection (1) shall be made to the Registrar for—

(a) the consolidation of mining licence areas, in accordance with section 66;

(b) a non-exclusive prospecting licence, in accordance with section 90;

- (c) the extension of the term of a non-exclusive prospecting licence, in accordance with section 92;
- (d) a reconnaissance licence, in accordance with section 101;
- (e) the extension of the term of a reconnaissance licence, in accordance with section 104;
- (f) an exploration licence, in accordance with section 117;
- (g) a retention licence, in accordance with section 135;
- (h) a medium-scale or large-scale mining licence, in accordance with section 150;
- (i) the extension of the term of a medium-scale mining licence or large-scale mining licence, in accordance with section 154;
- (j) the expansion of a medium-scale or large-scale mining licence area, in accordance with section 158;
- (k) a small-scale mining licence, in accordance with section 185;
- (l) the extension of the term of a small-scale mining licence, in accordance with section 189; and
- (m) the expansion of a small-scale mining licence area, in accordance with section 192.

(3) An applicant may withdraw his application submitted under subsection (2) by a written notice to the Registrar.

(4) Subject to section 200, an application for an artisanal mining permit shall be made to a local government authority responsible for the area in which the proposed artisanal mining is located in such form and manner as the local government authority determines.

44.—(1) The Registrar, at the time of the submission of an application for a grant, extension, expansion or consolidation of a mineral tenement, shall verify to his reasonable satisfaction the following matters—

- (a) that a substantial part of the land over which the application is made is available for that type of mineral tenement;
- (b) in the case of an application for the grant of a mining licence or the expansion of a mining licence area, that the area applied for does not include or overlaps with any area which is the subject of an exploration licence or mining licence unless the applicant is the holder of such exploration or mining licence;
- (c) the application—

Preliminary
examination
of mineral
tenement
related
applications

- (i) if submitted in hard copy, is in the prescribed form: or
- (ii) if submitted electronically, is in the prescribed format using such system as is designated for such purpose by the Registrar, and contains all the required particulars;
- (d) the documents required under this Act to accompany an application have been submitted with the application;
- (e) the application fee and any late fee due have been included or paid; and
- (f) the application form, when submitted in a hard copy, has been submitted in triplicate and signed by or on behalf of the applicant.

(2) Where an application for the grant, extension, expansion or consolidation of a mineral tenement is not filed electronically, the Registrar shall do the verification required under subsection (2) in the presence of the applicant or his agent.

Duties of the Registrar where preliminary examination shows that requirements are not met

45.—(1) Where pursuant to section 44, the Registrar is not satisfied that all such matters have been verified and are complete, the Registrar shall—

- (a) not accept or register the application; and
- (b) immediately return all documents to the applicant or his agent, or delete them if such documents were filed electronically.

(2) For the avoidance of doubt, an application that is incomplete shall not be accepted or registered.

Duties of the Registrar where preliminary examination shows that requirements are met

46. Where pursuant to section 44, the Registrar is satisfied that all such matters have been verified, the Registrar shall—

- (a) immediately—
 - (i) accept and register the application in the register;
 - (ii) note the registration number on the application form or in the electronic registration system and in the register;
 - (iii) note the date and time when the application was accepted and registered in the register;
 - (iv) sign the application form, either manually or electronically;
 - (v) give one copy of the application form back to the applicant or provide an electronic verification that the application has been accepted and registered; and
- (b) as soon as possible but not later than five (5) days thereafter—

- (i) post the registered application on the website;
- (ii) publicize the application as may be specified by the Commissioner from time to time;
- (iii) give copies of the application form or provide equivalent electronic access to such officers of the office as the Commissioner determines to be responsible for the technical assessment of applications;
- (iv) where the application is for a reconnaissance licence, a non-exclusive prospecting licence or a small-scale mining licence, or the expansion of a small-scale mining licence area, or the extension of the term of a mineral tenement, or consolidation of mineral tenements, provide a copy of the application or provide equivalent electronic access to the Commissioner; or
- (v) where the application is for an exploration licence, retention licence, medium-scale mining licence, large-scale mining licence or expansion of a medium-scale mining licence area or large-scale mining licence area, provide a copy of the application or provide equivalent electronic access to the Mineral Resources Committee.

47. The officers given a copy of an application or equivalent electronic access under section 46(b)(iii), shall, as soon as practicable, give a report regarding the application to the respective approving authority. Reports on application

48.—(1) Subject to this section and to section 44, where two (2) or more applications are made for the grant of a mineral tenement over the same land or any part of the same land, the applicant, other than the applicant for a reconnaissance licence or non-exclusive prospecting licence, who first submits an application to the Registrar shall be given priority over every other applicant to have his application considered and determined. Priority of application

(2) Subject to subsection (1), where the Registrar is satisfied that two (2) or more applicants for a mineral tenement, other than a reconnaissance licence or non-exclusive prospecting licence, over the same land or any part of the same land were present in his office at the same time for the purpose of lodging applications for that mineral tenement, the determination by the Registrar as to which application was received earlier shall be *prima facie* evidence of that fact.

Granting
process for
non-exclusive
prospecting,
reconnaissance,
small-scale
mining
licences and
approval of
tenement
extensions

49.—(1) Subject to subsection (8), within—

(a) forty-five (45) calendar days from the registration date of an application for a non-exclusive prospecting licence or small-scale mining licence;

(b) sixty (60) calendar days from the registration date of an application for a reconnaissance licence or consolidation of mineral tenements pursuant to section 44;

(c) thirty (30) calendar days from the registration date of an application to—

(i) extend the term of a non-exclusive prospecting licence, reconnaissance licence, exploration licence or small-scale mining licence; or

(ii) expand the area of a small-scale mining licence; or

(d) ninety (90) calendar days from the registration date of an application to extend the term of a medium-scale or large-scale mining licence,

the Commissioner shall grant or refuse the approval of the application, and where he has refused to grant the application, give reasons in writing for the refusal.

(2) In the review of an application for a non-exclusive prospecting licence, reconnaissance licence or small-scale mining licence, or the extension of the term of a non-exclusive prospecting licence, reconnaissance licence, exploration licence, small-scale mining licence, medium-scale mining licence or large-scale mining licence, or to expand the area of a small-scale mining licence the Commissioner, by notice or otherwise—

(a) shall consider the environmental factors set forth in section 270; and

(b) may—

(i) request the applicant to correct any defects or omissions;

(ii) confirm the information provided in the application;

(iii) cause such investigations to be made or such negotiations as necessary;

(iv) consult with other specialists and other parties as necessary;

(v) consult other relevant Government entities; and

(vi) propose alterations in the application.

(3) The Commissioner shall not refuse an application to extend the term of a non-exclusive prospecting licence, reconnaissance licence, exploration licence, small-scale mining licence, medium-scale mining licence or large-scale mining licence without first giving the applicant prior notice of the intention to deny the application, including the reasons therefor and inviting the applicant, within thirty (30) calendar days, to take the appropriate remedial measures or to present a documented statement in defence of the default, where any is alleged.

(4) Where the Commissioner decides—

(a) to grant a licence, term extension or area expansion, the Commissioner shall—

(i) grant the licence, term extension or area expansion subject to such conditions as are required by this Act or are, in the opinion of the Commissioner, necessary; and

(ii) in the case of the grant of a licence, sign the licence and deliver the signed licence to the Registrar; or

(iii) in the case of the extension of the term of a licence or area expansion, inform the Registrar to endorse the licence with the extended term or expansion and any changed conditions;

(b) to deny the application, the Commissioner shall—

(i) provide the applicant with reasons in writing for the refusal; and

(ii) inform the Registrar of the refusal decision.

(5) The Commissioner shall not grant any licence with respect to a project for which an environmental and social impact assessment is required under the Environment Management Act, unless the Director of Environmental Affairs has certified, in writing, that the project has been approved or that an environmental and social impact assessment is not required under the Environment Management Act.

Act No. 19
of 2017

Act No. 19
of 2017

(6) The Commissioner may serve on the applicant a notice specifying a date on which the applicant may make appropriate proposals to cure or otherwise remove the grounds for refusal or, as the case may be, make representations in relation thereto and acceptable to the Commissioner.

(7) Where the Commissioner has refused the extension of the term of a mineral tenement, the holder may appeal to the Mineral

Resources Committee whose decision shall be subject to review by the High Court.

(8) Where circumstances relating to an application for a small-scale mining licence, small-scale mining area expansion or the extension of the term of an exploration licence, medium-scale mining licence or large-scale mining licence, in the Commissioner's opinion, require consideration by the Mineral Resources Committee, the Commissioner may refer the decision to approve the licence, extension or expansion to the Committee.

(9) Where an application to grant a small-scale licence or expand its area or an application to extend the term of an exploration licence, medium-scale mining licence or large-scale mining licence has been referred to the Mineral Resources Committee pursuant to subsection (8), the Committee shall advise the Commissioner, and the Commissioner shall grant or refuse the application according to the advice of the Committee.

Granting
process for
exploration,
retention,
medium- and
large-scale
mining licences

50.—(1) Within—

(a) seventy (70) calendar days from the registration date of an application for an exploration licence or retention licence;

(b) one hundred and thirty (130) calendar days from the registration date of an application for a medium-scale mining licence, or to expand the area of a medium-scale mining licence;
or

(c) one hundred and ninety (190) calendar days from the registration date of an application for a large-scale mining licence, or to expand the area of a large-scale mining licence,

the Mineral Resources Committee shall decide to approve or refuse the application.

(2) In the review of an application for the approval of an exploration licence, a retention licence, a medium-scale or large-scale mining licence, or the expansion of a medium-scale or large-scale mining licence area, the Mineral Resources Committee, by notice or otherwise—

(a) shall consider the environmental factors set forth in section 270; and

(b) may—

(i) request an applicant to correct any defects or omissions;

(ii) consider any objections made pursuant to section 52;

(iii) consider any rebuttals made pursuant to section 53;

- (iv) confirm the information provided in the application;
- (v) cause such investigations to be made or such negotiations to be conducted as necessary;
- (vi) consult with specialists and other parties as necessary;
- (vii) consult relevant government entities; and
- (viii) propose alterations in the application.

(3) Where the Mineral Resources Committee —

(a) approves an application for a licence or to expand the area of a licence, the Committee shall—

(i) approve the licence or licence area expansion subject to such conditions as are required by this Act or are, in the Committee's opinion, necessary; and

(ii) in the case of the approval of an application for an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence, inform the Minister and Registrar of its decision; or

(iii) in the case of the approval to expand the area the subject of a medium-scale or large-scale mining licence, require the Registrar to endorse the licence with the approved area and any changed conditions determined by the Committee; and

(b) rejects the application, the Committee shall—

(i) inform the Registrar of the refusal decision; and

(ii) notify the applicant, in writing, of the refusal and the reasons for its refusal.

(4) The Mineral Resources Committee may serve on the applicant a notice specifying a date on which the applicant may make appropriate proposals to cure or otherwise remove the grounds for refusal or, as the case may be, make representations in relation thereto and acceptable to the Committee.

(5) Subject to subsection (6), where the Minister is informed by the Mineral Resources Committee, as required under subsection (3)(a)(ii), that it has approved an application for an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence the Minister shall, within forty-five (45) calendar days, grant the licence subject to only conditions as the Committee has determined.

Act No. 19 of
2017

(6) The Minister shall not grant any licence with respect to a project for which an environmental and social impact assessment is required under the Environment Management Act, unless the Director of Environmental Affairs has certified, in writing, that the project has been approved or that an environmental and social impact assessment is not required under the Environment Management Act.

Act No. 19 of
2017

(7) For avoidance of doubt, the Minister shall not grant any application for an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence without a prior written approval of the Mineral Resources Committee.

Application
notices

51.—(1) Upon applying for a medium-scale mining licence or large-scale mining licence, the applicant shall—

(a) publish a public notice in a newspaper with wide circulation in Malawi that contains a summary of its proposed operations, the location, including a general description of the area in such detail that a person familiar with the area would have an understanding of its location, the cadastral coordinates defining the boundary of the applied for area; and

(b) provide a copy of the public notice to the Registrar.

(2) The Registrar shall, upon receipt of an application for a medium-scale mining licence or large-scale mining licence, post the application form, but not necessarily any attachments required to be attached to such form by the applicant—

(a) in a publically accessible area at the central headquarters of the Commissioner's office;

(b) on the website; and

(c) in a publically accessible place at the office of the District Commissioner of the district where land the subject of the application is located,

until such time as the application is determined.

(3) The Commissioner, by notice served on an applicant for the grant of a mineral tenement, may require the applicant to furnish the Commissioner, within such time as is specified in the notice—

(a) with such further information relevant to the application as may be described in the notice; and

(b) if the applicant is a body corporate, with such information as may be described in the notice to enable the Commissioner to ascertain to what extent the controlling power in the direction of

the affairs of the body corporate is a corporation incorporated outside Malawi, or an individual who resides outside Malawi.

52.—(1) Within thirty (30) calendar days of the date of the registration of an application for a medium-scale mining licence or large-scale mining licence or expansion of a medium-scale mining licence or large-scale mining licence area (the objection period), any party may submit to the Registrar an objection, in writing, addressed to the Mineral Resources Committee.

Objections
to grant of
medium-scale
or large-scale
mining
licence

(2) At the end of the objection period, the Registrar shall convey any objections which he has received to the Mineral Resources Committee.

53.—(1) An applicant aggrieved by a decision of the Mineral Resources Committee may appeal, in writing to the Minister within ten (10) calendar days of the date of the Committee's decision, setting out reasons for the appeal.

Grievances
against
decisions of
the Mineral
Resources
Committee

(2) Where the Minister is of the opinion that the reasons for the appeal submitted under subsection (1) include matters not adequately or previously considered by the Mineral Resources Committee, the Minister may, within twenty (20) calendar days of the Committee's decision, refer the decision back to the Committee for the Committee's reconsideration.

54.—(1) Where the Registrar is informed, pursuant to section 49 or 50 that an application for the grant of a mineral tenement, licence extension or licence area expansion is refused, the Registrar, not later than five (5) working days shall, note the refusal and the date of the refusal in the Register, notify the unsuccessful applicant of the refusal and post the notice of refusal, which shall include the reasons for the refusal, on the website.

Registrar to
register
licence grant,
extension,
expansion or
application
refusal

(2) Where the Registrar receives a licence that is granted and signed, from the Minister or the Commissioner, pursuant to section 49 or 50, the Registrar, not later than five (5) working days shall—

(a) inform the applicant indicating the place where the licence can be issued, or if it is to be issued electronically, how it can be accessed; and

(b) inform the applicant indicating the amount of annual ground rent that is payable before the licence can be issued, and upon payment of the required annual ground rent or receipt of proof that such rent has been paid, the Registrar shall—

- (i) issue the licence to the successful applicant;
- (ii) register in the register the date on which the licence was registered as issued; and
- (iii) post a copy of the licence on the website.

(3) Where a successful applicant granted a mineral tenement fails to collect his licence or to pay required annual ground rent within thirty (30) calendar days of being informed by the Registrar as per subsection (2), the licence shall be deemed null and void and the Registrar shall record this in the register.

(4) Where a holder of an exploration licence has applied for and been granted a retention or mining licence over land the subject of its exploration licence, the land shall be deemed surrendered on the date that the retention licence or mining licence is issued, and at the time that the retention licence or mining licence is issued, the exploration licence holder shall present its exploration licence to the Registrar who shall endorse on it the reduced licence area.

(5) Where the Registrar is informed by the Minister or the Commissioner, pursuant to section 49 or 50, that an application for the extension of the term of a licence or for the expansion of the licence area has been approved, or that an application by an exploration licence holder for a retention licence or mining licence has been approved on its area, the Registrar, not later than two (2) days shall—

(a) inform the applicant indicating the place where the licence can be endorsed, or if it is to be endorsed electronically, how it can be accessed;

(b) endorse the licence with its new term or area; and

(c) enter into the register the date on which the term of the licence was extended or the area expanded or reduced.

(6) Where a successful applicant for the extension of his licence or expansion of its licence area fails to present his licence for endorsement (and such endorsement is not done electronically) within thirty (30) calendar days of being informed by the Registrar as per subsection (5), the licence extension or expansion approval shall be deemed null and void, the Registrar shall record this in the register and shall not endorse the licence.

(7) Where the holder of an exploration licence is granted a retention licence or a mining licence over the land which is the subject of his exploration licence but he fails to present its

exploration licence for endorsement of the area to be excised (the area comprising the retention licence area or mining licence area) and such endorsement is not done electronically, within thirty (30) calendar days of being informed by the Registrar as per subsection (5), the retention licence or mining licence, as the case may be, shall be deemed null and void, and the Registrar shall record this in the register and shall not endorse the exploration licence.

Division 3—Mineral Tenement Tendering Process

55.—(1) The Director of Geological Survey may propose to the Mineral Resources Committee areas of known mineralization to be temporarily reserved from mineral tenement application for the purpose of allowing the Department of Geological Survey to further study the area's mineral potential for possible competitive tendering purposes.

Temporary
reservation
for tendering
purposes

(2) Subject to subsection (3), where the Mineral Resources Committee determines that an area proposed under subsection (1) should be reserved for further study, the Minister, within thirty (30) days of receiving the determination of the Committee, shall, by notice published in the *Gazette*, designate the area as a Geological Survey Reserve Area for a period of up to two (2) years and such reservation is effective on and from the date of publication of the notice.

(3) A Geological Survey Reserve Area shall not be designated over any land subject to a mineral tenement, except land the subject of a reconnaissance licence or non-exclusive prospecting licence, and where a Geological Survey Reserve Area purports to apply to land the subject of an existing mineral tenement other than a reconnaissance licence or non-exclusive prospecting licence, the area of that existing mineral tenement shall be deemed to be excised from the Geological Study Reserve Area.

(4) Where the Mineral Resources Committee determines that all or part of a Geological Survey Reserve Area should be revoked, the Minister, within thirty (30) days of receiving the determination of the Committee, shall, by notice published in the *Gazette*, revoke, in whole or in part as determined by the Committee, a reservation made under this section.

(5) A notice under subsection (2) or subsection (4) shall specify the area of land under reservation by reference to a description of the land in the prescribed manner.

(6) The Registrar shall not accept or register any application for a mineral tenement, other than a reconnaissance licence, located wholly or partly within a Geological Survey Reserve Area.

(7) A local government authority whose assembly has instituted by-laws for granting and regulating artisanal mining permits, with the prior permission of the Commissioner, may grant artisanal mining permits within a Geological Survey Reserve Area for such limited time period and place as may be directed by the Commissioner.

(8) On the coming into effect of a Geological Survey Reserve Area under this section any—

(a) registered application for a mineral tenement over land the subject of the reservation shall be null and void with regard to that part of the area applied for which is within the boundaries of the Geological Survey Reserve Area, and the application shall be amended accordingly; and

(b) area of land the subject of any non-exclusive prospecting licence shall be deemed to be adjusted so that any land the subject of the Geological Survey Reserve Area is excluded from the licence area.

(9) A mineral tenement, other than a reconnaissance licence, shall not be granted in any area located within a Geological Survey Reserve Area except under a competitive tendering process pursuant to section 56.

(10) At such time as a mineral tenement is granted pursuant to a competitive tendering process under section 56, such mineral tenement area is deemed excised from any Geological Survey Reserve Area in which it is located.

(11) Where a tendering process pursuant to section 56 is commenced on land which is the subject of a Geological Survey Reserve Area before the expiry date of the reservation, the reservation of the area shall be deemed extended until such time as the tendering process results in a mineral tenement being granted or the tendering process is terminated.

Competitive
tender process
for mineral
tenement

56.—(1) Any part of a Geological Survey Reserve Area shall be available for competitive tendering under this section.

(2) Subject to subsection (4), the Mineral Resources Committee

may approve a competitive tender process to allocate mineral tenement areas that are located within a Geological Survey Reserve Area.

(3) A mineral tenement area approved for a tendering process under this section shall be in conformity with the requirements of section 295.

(4) The terms and conditions of a competitive tender process shall include the following—

(a) a definition of a qualified bidder;

(b) a requirement for payment of a tender prequalification application fee;

(c) a description of the prequalification process;

(d) a requirement for payment of a bid processing fee;

(e) a requirement that a successful bidder of the tender shall offer at least the minimum bonus payment stated in the competitive tender invitation;

(f) a requirement that the winning bidder shall be selected solely on the basis of the qualified bidder pledging the highest bonus payment; and

(g) requirement that open bidding (to which a member or members of the press shall be invited and allowed to report on the bidding results) shall be used and will be done in three (3) rounds at only one (1) meeting of prequalified bidders.

(5) The terms and conditions of a competitive tender process shall be posted on the website.

(6) Before a tenement can be granted to the successful bidder of a tender process under this section, the bidder shall meet all requirements under this Act for the grant of that type of tenement.

(7) A bonus payment pledged by the winner of a tendering process under this section shall be payable upon the grant of the tenement to which the tendering process relates.

(8) Upon the grant of a mineral tenement under this section, a copy of the licence shall be posted on the website.

57. Any person, including a public officer, who influences or seeks to influence the outcome of a competitive bidding process initiated under this Division, other than on the terms and conditions

Offence
to unduly
influence a
competitive
tender

set out under section 56, commits an offence and shall, upon conviction, be liable to a fine of K30,000,000 and imprisonment for ten (10) years.

Division 4 – Transfer and Creation of Legal Interests

Transfer
without
approval
has no force
or effect

58. The transfer of a mineral tenement that is transferable, or an instrument by which an equitable interest in, or affecting, a mineral tenement that is transferable, shall be of no force or effect, unless the transfer has been approved pursuant to section 59.

Application
to transfer
a mineral
tenement

59.—(1) The holder of an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence may apply to transfer the licence to another party.

(2) An application under subsection (1) shall be submitted to the Registrar in the prescribed manner and shall include—

- (a) an instrument of transfer in the prescribed form;
- (b) a detailed statement describing the reasons for the requested transfer;
- (c) an attestation by the transferee that the transferee—
 - (i) has the financial and technical capability to perform all obligations under the tenement and documentation to support the attestation;
 - (ii) meets all the eligibility requirements of this Act to hold the type of mineral tenement to be transferred;
 - (iii) shall assume all liability for acts or omissions that arose out of the obligations of the mineral tenement before the transfer of such title to the transferee; and
 - (iv) upon transfer of the mineral tenement, shall assume all obligations imposed on the mineral tenement by this Act, the regulations and the conditions set out in the licence; and
- (d) the prescribed application fee or proof that such fee has been paid.

(3) Where any attestation provided pursuant to subsection (2) is found to be false—

- (a) the person who makes the attestation commits an offence and shall, upon conviction, be liable to a fine of K10,000,000; and
- (b) if so decided by the Mineral Resources Committee (in the case of a transfer of an exploration licence, retention licence,

medium-scale mining licence or large-scale mining licence) or if so decided by the Commissioner (in the case of a small-scale mining licence)—

(i) where the transfer decision is still pending, the mineral tenement transfer application shall be null and void; or

(ii) where the transfer application has been approved, any transfer of the mineral tenement shall be null and void and the mineral tenement obligations shall revert to the original mineral tenement licence holder and any instrument purporting to transfer or assign the mineral tenement shall be null and void.

(4) Upon receipt of an application to transfer a mineral tenement, the Registrar shall determine whether the application meets all the requirements set out in subsection (1) and if not, shall reject the application.

(5) Where the Registrar determines that an application submitted under subsection (1) meets all the requirements under subsection (2), the Registrar shall, within fourteen (14) calendar days, refer the application to the Mineral Resources Committee.

(6) Subject to subsection (7), in the case of an application to transfer an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence, the Mineral Resources Committee may approve or refuse to approve the application, and an approval may be subject to such conditions as the Committee considers necessary in the circumstances.

(7) The Mineral Resources Committee shall give its approval to the transfer of an exploration licence, a retention licence, a medium-scale mining licence or a large-scale mining licence where the transferee—

(a) is a person controlling, controlled by, or under common control with, the transferor;

(b) is a person eligible under this Act to hold that type of mineral tenement;

(c) has provided the attestations required under subsection (2) (c); and

(d) has demonstrated to the satisfaction of the Committee that transferee has the financial and technical capability to perform all obligations under the tenement.

(8) Where an application to transfer a mineral tenement is approved under subsection (6), the Registrar shall, within fourteen

(14) calendar days, notify the applicant of the approval and shall reissue to the transferee, with no change in its term, the mineral tenement licence with the new holder's name and any changed conditions specified by the Mineral Resources Committee in the licence being transferred and enter the details of the instrument of transfer in the register.

(9) An instrument of transfer of a mineral tenement shall not convey a legal or equitable interest in a mineral tenement unless and until it has been registered under subsection (8).

(10) Where an application to transfer a mineral tenement is refused under subsection (6), the Registrar shall, within fourteen (14) calendar days, notify the applicant that his application is refused and the reasons for the refusal.

Legal or
equitable
mineral
tenement
interest only
by written
instrument

60. A legal or equitable interest in, or affecting, a mineral tenement, shall not be created, transferred, assigned, effected or dealt with whether directly or indirectly, except by written instrument in writing.

Legal or
equitable
interest
instrument to
be registered

61.—(1) This section applies to—

(a) an instrument by which a legal or equitable interest (such as a right that is subleased, pledged, mortgaged, charged, hypothecated or subject to any security interest) in an existing or future mineral tenement is or may be created, partially assigned, or otherwise dealt with, whether directly or indirectly, which is not an instrument of transfer to which section 59 applies; and

(b) an instrument constituting a tribute agreement.

(2) For the purposes of this section, “tribute agreement” means an agreement made and entered into between the holder of a mining licence and another person where the person works the mining licence area on terms providing that the holder of the mineral tenement shall receive from that person a portion or percentage of the minerals won or the proceeds of their sale.

(3) A—(a) legal or equitable interest created, assigned or otherwise dealt with by an instrument, either directly or indirectly; or

(b) tribute agreement,

shall be valid unless and until the instrument or the agreement has been registered under subsection (4).

(4) The parties to an instrument to which this section applies shall submit the instrument, to the Registrar, in such form and manner as the Registrar may so instruct, and the Registrar upon such receipt shall register the instrument in the register.

(5) Subject to subsection (6), the register containing the registration of instruments under subsection (4) shall be open and available to the public.

(6) The contents of an instrument registered under subsection (4) shall be treated as confidential and its contents shall not be made available to any person other than an officer of the Commission, or as required for use in a court proceeding.

(7) The parties to an instrument registered under this section may jointly request the Registrar, in writing, and duly signed by the parties to deregister an instrument registered under this section, and upon such request, the Registrar shall deregister the instrument.

(8) Notwithstanding subsection (7), the Registrar may deregister an instrument registered under this section upon being served with a court order to deregister the instrument.

62. The creation of a legal or equitable interest in, or affecting, a mineral tenement, shall not affect the liability of the holder of the mineral tenement for any breach of the conditions of the mineral tenement or of any of the provisions of this Act. Liability of holder

63. Where a mineral tenement is held by a company and there is a change in the control the company occasioned by a sale of a majority a majority ownership interest or a majority of its shares, the holder of the mineral tenement shall, within fourteen (14) calendar days, notify the Commissioner. Change in control requires notification

Division 5— Consolidation of Mineral Tenements

64. This Division applies to the consolidation of existing mining licences (in this Division referred to as “existing mining licences”) into one tenement (in this Division referred to as “consolidated mining licence”). Application of this Division

65. The following tenement types shall not be consolidated— Tenement types which can not be consolidated

- (a) non-exclusive prospecting licence;
- (b) reconnaissance licence; or
- (c) exploration licence.

66. An application for the consolidation of existing mining licences shall— Application for mining licence consolidation

(a) be submitted to the Registrar in the prescribed form and manner;

(b) be accompanied by a schedule in the prescribed form describing the corners of the boundary of the area in conformity with the requirements of section 295;

(c) include a sketch map showing the boundary of the area to be consolidated and such other natural features and the location of villages, if any, in order to correctly locate the area;

(d) be accompanied by the applicant's proposed plans for the consolidated mining licence;

(e) be accompanied by any environmental and social impact assessment report or certification of approval required by the Environment Management Act; and

(f) be submitted in triplicate, unless submitted electronically, and payment of the prescribed application fee, not later than four(4) months prior to the expiry of the earliest expiring existing mining licence.

Act No. 19 of
2017

Grant of a
consolidated
mining
licence

67.—(1) Subject to subsection(4), on the application in the prescribed form and manner by the holder of two (2) or more adjoining existing mining licences and in conformity with the recommendation of the Mineral Resources Committee, the Commissioner may grant to the applicant a consolidated mining licence.

(2) A consolidated mining licence—

(a) will be one of the existing mining licences, as prescribed, amended accordingly; and

(b) subject to subsection (3), may contain—

(i) such conditions as were attached to the existing mining licences; and

(ii) such other conditions as the Commissioner may determine.

(3) Subject to subsection (4), where an application for the consolidation of existing mining licences is submitted pursuant to subsection (1) and the conditions attached to the existing mining licences are not the same, the Commissioner, in conformity with the recommendation of the Mineral Resources Committee, shall determine the conditions to be attached to the consolidated mining licence.

(4) In the case of an application for the consolidation of two (2) or more small-scale mining licences, the recommendation of the Mineral Resources Committee shall not be required.

- | | |
|--|--|
| <p>68. The term of a consolidated mining licence shall expire on the expiry date of the existing mining licence with the latest expiration date.</p> | <p>Term of a consolidated mining licence</p> |
| <p>69. The area of land over which a consolidated mining licence may be granted shall not exceed the maximum area specified under this Act for a mining licence of its type.</p> | <p>Maximum area of a consolidated mining licence</p> |
| <p>70. Where one or more mining licences are consolidated, the resulting mining licence shall be in conformity with the requirements under section 295.</p> | <p>Shape of area of consolidated mining licence</p> |
| <p>71. Where an existing tenement is consolidated, the liability of the holder of that existing tenement—</p> <p style="margin-left: 20px;">(a) to pay annual ground rent fee, royalties, penalty, compensation or other money or any other account, that is payable;</p> <p style="margin-left: 20px;">(b) to perform any obligation required to be performed; or</p> <p style="margin-left: 20px;">(c) for any act done or default made,</p> <p>before the grant of the consolidated mining licence, shall not be affected.</p> | <p>Effect of consolidation</p> |

Division 6—Surrender of Mineral Tenements

- | | |
|--|-------------------------------------|
| <p>72. This Division applies to the voluntary surrender of a mineral tenement area in whole or in part.</p> | <p>Application of this Division</p> |
| <p>73.—(1) The holder of a mineral tenement who wishes to surrender all or part of the land subject to his licence shall apply to the Commissioner for a certificate of surrender, in respect of the land, not less than three (3) months before the date on which the holder wishes the surrender to have effect.</p> <p style="margin-left: 20px;">(2) An application for the surrender of all or part of a mineral tenement shall be submitted to the Registrar in the prescribed form and manner.</p> <p style="margin-left: 20px;">(3) An application under subsection (1) shall—</p> <p style="margin-left: 40px;">(a) state the date on which the applicant wishes the surrender to have effect;</p> <p style="margin-left: 40px;">(b) include the particulars of the operations carried on in respect of the land to be surrendered; and</p> <p style="margin-left: 40px;">(c) be supported by such records and reports in relation to those operations as the Commissioner may reasonably require.</p> | <p>Application for surrender</p> |

(4) Where a mineral tenement holder is applying to surrender only part of its tenement area, except in the case of a non-exclusive prospecting licence, the application shall include—

(a) a schedule in the prescribed form describing the corners of the boundary of the area to remain part of its tenement area, which shall be in conformity with the requirements under section 295; and

(b) a sketch map, in the prescribed form, showing the boundary of the area to remain part of its tenement area and such other natural features and the location of principal villages, if any, as will allow the area to be correctly located.

Restrictions
on surrender
of mining
licence area

74.—(1) Application for the surrender of any part of a mining licence area where any part of the area sought to be surrendered is attached by a court of competent jurisdiction shall not be considered as long as such attachment remains in force.

(2) An application for the surrender of any part of a mining licence area shall not be considered, unless the written consent to the application of all persons having interests registered against the mining licence shall have been delivered to the Registrar.

(3) The Commissioner shall not approve a certificate of surrender—

(a) to an applicant that is substantially in default;

(b) to an applicant who fails to comply with any requirement of the Commissioner for the purposes of section 73 (3) (c); or

(c) if the Commissioner is not satisfied that the applicant will leave the land to be surrendered and on which the operations of the applicant have been carried on in a condition which is safe and which complies with good mining practice.

Duties of
Commissioner
and Registrar
on application
to surrender

75.—(1) As soon as practicable, after an application for surrender has been submitted under section 73, the Commissioner shall determine whether the mineral tenement holder has complied with any conditions of the tenement and this Act which relate to the cessation of operations, restoration of the land and surrender, on the area being surrendered.

(2) Without limiting the generality of subsection (1), the Commissioner shall determine in the case of an application to surrender the whole of a mineral tenement area that—

(a) annual ground rent, mineral royalty and fees relating to the mineral tenement have been paid;

(b) environmental, rehabilitation and closure obligations relating to the mineral tenement have been met;

(c) compensation payable to occupiers of land and landowners has been paid;

(d) reports required to be submitted under this Act have been submitted in compliance with this Act; and

(e) in the case of a reconnaissance licence, exploration licence, retention licence, medium-scale or large-scale mining licence, the Commissioner shall consult with the Mineral Resources Committee.

(3) Where the Commissioner is satisfied that the applicant for a mineral tenement surrender has complied with the conditions of his licence and obligations under this Act, he shall approve and sign a certificate of surrender in the prescribed form, either unconditionally or subject to such conditions as are specified in the certificate, in respect of the land to which the application relates.

(4) Where the Commissioner has signed a certificate of surrender pursuant to subsection (3), the Commissioner shall provide the signed certificate of surrender to the Registrar, and the Registrar shall—

(a) register the surrender or partial surrender of area in the register;

(b) in the case of a partial surrender, endorse the surrender of partial area on the mineral tenement licence;

(c) notify the applicant that the certificate of surrender has been approved and where the applicant can be issued the certificate or how it can be accessed electronically; and

(d) post the notice of the surrender or partial surrender continuously on the website for a period of thirty (30) calendar days.

(5) In the case of the surrender of the whole of a mineral tenement and on the satisfaction of the conditions and obligations under subsection (3), the Commissioner shall cancel the licence and the Registrar shall, after deducting from the security if any—

(a) any fee, annual ground rent, royalties, production levy, compensation, penalty or other money or any other account that is payable on or before the date of surrender; and

(b) any costs incurred by the Commissioner in ensuring that any other liabilities are met,

remit the balance, if any, to the former holder of the tenement.

(6) Where the Commissioner is satisfied that the holder of the mineral tenement has not complied with any condition of the tenement under subsection (1) or (2) or any provision of this Act, the

Commissioner shall inform the Registrar of his determination, and the Registrar shall notify the holder, in writing, accordingly.

Effect of
certificate of
surrender

76.—(1) Land in respect of which a certificate of surrender is issued shall be treated as having been surrendered with effect from the date on which notice of the surrender is given pursuant to section 75 (4) (c).

(2) The surrender of any land under a certificate of surrender shall not affect any liability incurred before the date on which the surrender has effect in respect of the land, and any legal proceedings that might have commenced or continued in respect of the liability against the applicant for the certificate of surrender may be commenced or continued against the holder of the certificate.

(3) For avoidance of doubt, where a holder surrenders its mineral tenement in whole or in part, the liability of the holder—

(a) to pay annual ground rent, fee, royalties, penalty, compensation or other money or any other account, that is payable;

(b) to perform any obligation required to be performed; or

(c) for any act done or default made,

on or before the surrender takes effect, shall not be affected.

Rights of a
holder on
surrender

77. Notwithstanding anything to the contrary in this Act, where a holder surrenders his mineral tenement in whole or in part, every right, title and interest held (but not any liability) under the tenement in respect of the whole of the land or that part of the land which is surrendered, as the case may be, shall cease and terminate on the date on which the surrender is effective.

Obligation
to mark
boundaries
after partial
surrender
of mineral
tenement area

78.—(1) Where a holder of a medium-scale or large-scale mining licence has been granted a partial surrender of his tenement area, within thirty (30) calendar days of the effective date of surrender, the holder shall—

(a) survey the area of land to be retained as provided under section 159; and

(b) mark the boundaries of the remaining licence area as provided under section 160, and remove all markers from that area of land surrendered.

(2) Where a holder of a small-scale mining licence has been granted a partial surrender of his tenement area, within thirty (30) calendar days of the effective date of surrender, he shall mark the boundaries of the remaining licence area as provided under section 193.

(3) Where a holder of a mining licence has been granted a surrender of the whole of its mineral tenement, the holder shall, not later than thirty (30) calendar days of the effective date of surrender, remove all boundary markers it previously placed to mark the tenement boundary.

Division 7—Suspension, cancellation and expiry of a tenement

79.—(1) Subject to this section, where a holder of a mineral tenement—

Suspension or
cancellation
of mineral
tenement

(a) fails to use, in good faith, the land the subject of its licence for the purpose for which the licence was granted;

(b) uses that land subject of its licence for any purpose other than the purpose for which its licence was granted;

(c) fails to comply with any requirement of this Act (not being exempted under this Act from doing so) with which it is bound to comply;

(d) fails to comply with a condition of its licence (not being exempted under this Act from doing so);

(e) fails to comply with a direction lawfully given under this Act or with a condition on which any certificate of surrender is issued or on which any exemption or consent is given under this Act;

(f) fails to comply with the conditions, relating to the exercise of its rights under its licence;

(g) fails to pay any amount payable by the licence holder under this Act within two (2) months of the amount becoming due; or

(h) does or fails to do anything specified in this Act where the respective provision of this Act requires suspension or cancellation,

the Commissioner, on that ground, may, subject to subsections (3), (4) and (5), by notice in writing served on the holder of the mineral tenement licence, suspend or cancel the licence.

(2) The Commissioner, without delay, shall provide a copy of any notice served pursuant to subsection (1) to the Registrar.

(3) The Commissioner shall not, under subsection (1), suspend or cancel a licence, other than an emergency suspension order as provided under section 23, unless—

(a) the Commissioner has, by notice in writing served on the holder of the licence, not giving less than thirty (30) days notice of the Commissioner's intention to suspend or cancel the licence on that ground;

(b) the Commissioner has, in the notice, specified a date before which the holder of the licence, in writing, may submit any matter which he wishes the Commissioner to consider; and

(c) the Commissioner has taken into account—

(i) any action taken by the holder of the licence to remove that ground or to prevent the recurrence of similar grounds; and

(ii) any matters submitted to the Commissioner by the holder of the mineral tenement pursuant to paragraph (b).

(4) The Commissioner shall not, under subsection (1)(g), suspend or cancel a licence on a ground referred to in the subsection, if, before the date specified in a notice referred to in subsection (3), the holder of the licence pays the amount of money concerned together with an amount of interest, if any, which the Commissioner considers reasonable in all the circumstances of the case.

(5) The Commissioner shall not, under subsection (1), cancel an exploration licence, retention licence or large-scale mining licence, unless the Commissioner has first referred the matter to the Mineral Resources Committee and the Committee has approved the cancellation.

(6) Where the Commissioner refers an exploration licence for cancellation to the Mineral Resources Committee because the licence holder failed to meet its annual minimum exploration expenditure obligation under section 127(1)—

(a) the Committee in making its decision shall consider whether the licence holder failed to do so through no fault of his own, such as its inability to access the licence area because of landowner or permission issues, or whether his failure was due to inadequate financial resources or a fault within his control; and

(b) where the Committee determines that the failure of an exploration licence holder to meet its annual minimum exploration expenditure obligation was due to a fault of the licence holder or that the licence holder has inadequate financial resources to meet the obligation, the Committee shall, without exception, determine that the Commissioner shall cancel the licence.

(7) The Commissioner may, by notice in writing served on the holder of a mineral tenement, cancel the holder's licence—

(a) if the holder (being an individual) is—

(i) adjudged bankrupt; or

(ii) enters into any agreement or scheme of composition with his creditors or takes advantage of any law for the benefit of debtors in satisfaction of his debts; or

(b) if the holder that is a body corporate, an order is made or a resolution is passed winding up the affairs of the corporation, unless the winding-up is for the purpose of amalgamation or reconstruction and the Commissioner has been given notice thereof.

(8) Where two or more persons constitute the holder of a mineral tenement, the Commissioner shall not, under subsection (7), cancel the licence on the occurrence, in relation to one or only some of the persons constituting the holder, of an event entitling the Commissioner to so cancel the licence, unless the Commissioner is satisfied that any other person or persons constituting the holder are unwilling, or would be unable, to carry out the duties and obligations of the holder of the licence.

(9) A person, who fails to comply with a suspension order issued under this section commits an offence and shall, upon conviction, be liable to a daily fine of K1,000,000 commencing on the date that the suspension order was to be effective, and to imprisonment for ten (10) years.

80.—(1) The Registrar shall, immediately after the cancellation of a mineral tenement—

Duties of the
Registrar on
cancellation

(a) register the cancellation in the register;

(b) post a notice of the cancellation in a publicly accessible area at the central headquarters of the Commissioner for a period of thirty (30) calendar days; and

(c) post a notice of cancellation on the website for a period of thirty (30) calendar days.

(2) After registering the cancellation in accordance with subsection (1) but only after any certificate of closure required under section 282 has been issued, the Registrar, after deducting from the security, if any, provided by the mineral tenement holder—

(a) any fee, annual ground rent, royalties, compensation, penalty or other money or any other account that is payable on or before the date of cancellation; and

(b) any costs incurred by the Commissioner in ensuring that any other liabilities are met,

shall remit the balance, if any, to the former holder of the mineral tenement.

81.—(1) The Registrar shall, immediately after the expiry of a mineral tenement, register the expiry in the register.

Duties of
the Registrar
on expiry

(2) After registering the expiry and after any certificate of closure required under section 282 has been issued, the Registrar shall, after deducting from any security, if any, provided by the mineral tenement holder—

(a) any fee, annual ground rent, royalties, compensation, penalty or other money or any other account, that is payable on or before the date of expiry; and

(b) any costs incurred by the Commissioner in ensuring that any other liabilities are met,

remit the balance of that security, if any, to the former holder of the mineral tenement.

Effect of
cancellation
or expiry on
rights and
liabilities

82. On cancellation or expiry of a mineral tenement or artisanal mining permit—

(a) all rights conferred by or enjoyed under the mineral tenement or permit shall cease as from the date of the cancellation or expiry;

(b) any obligation or liability incurred before the cancellation or expiry shall not be affected; and

(c) any legal proceedings commenced or continued against the former holder of the mineral tenement or permit holder may be commenced or continued.

Division 8 – Removal of Property

Removal
of property
from expired,
abandoned,
surrendered,
cancelled
mineral
tenement area

83. Where a mineral tenement area has been wholly or partly surrendered, abandoned, cancelled, or expired, the Commissioner may, by notice served on the person who is or was the holder of the mineral tenement, direct the person to remove or cause to be removed from the area, all property brought into that area by any person engaged or concerned in the activities authorized by the mineral tenement, or to make arrangements that are satisfactory to the Commissioner with respect to the area.

Refusal to
remove
property

84. A person to whom a written notice is given under section 83 who refuses or fails to comply with the directions required by the notice within the period specified in the notice by which the direction was given, commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 for each day of noncompliance.

Consequences
of failure to
remove
property

85. Where a person who has been given a direction under section 83 has failed to comply with the direction, the Commissioner may—

(a) do or cause to be done all or any of the things required by the notice;

(b) remove or cause to be removed, in such manner as the Commissioner thinks fit, all or any of the property from the area removed from a mineral tenement area; and

(c) dispose of, sell or cause to be sold by public auction, as the Commissioner thinks fit, all or any of the property referred to in paragraph (b) that belongs, or that the Commissioner reasonably believes to belong, to the person to whom the direction was given.

86. The Commissioner may deduct from the proceeds of a sale of property under section 85 that belongs, or that the Commissioner believes to belong, to a particular person—

Deduction of proceeds for failure to remove property

(a) all or any part of any costs and expenses incurred by the Commissioner under section 85 in relation to the property;

(b) all or any part of any costs and expenses incurred by the Commissioner in relation to the doing of anything required by a direction under section 85 to be done by the person; and

(c) all or any part of any fees or amounts due and payable under this Act by the person.

87. The costs and expenses incurred by the Commissioner under section 85 shall be those in relation to—

Property removal costs incurred by the Commissioner

(a) the removal, disposal or sale of property, and are a debt due by the owner of the property to the Commissioner; and

(b) the doing of anything required by notice under section 83 to be done by a person who is or was the holder of a mineral tenement, are a debt that is owed by that person to the Commissioner, and to the extent to which the costs and expenses are not recovered under section 86 are recoverable in a court of competent jurisdiction, as a debt due to the Commissioner.

88. Any person who, without reasonable excuse, obstructs, molests, hinders or prevents the—

Penalty for obstructing efforts to remove property

(a) holder or previous holder of a mineral tenement from removing his property from any area he has surrendered or otherwise had removed from his mineral tenement area; or

(b) Commissioner from removing property pursuant to section 85,

commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and K1,000,000 for each day of default and to imprisonment for two (2) years.

PART IV—NON-EXCLUSIVE PROSPECTING LICENCE

Eligibility for non-exclusive prospecting licence

89.—(1) A non-exclusive prospecting licence holder shall be—

(a) an individual who is a Malawian citizen;

(b) a cooperative mining society registered pursuant to section 299;

(c) a mining partnership registered pursuant to section 299;

Cap. 46:03

(d) a company registered under the Companies Act, that is one hundred per cent owned by Malawian citizens; or

Cap. 46:03

(e) a company duly incorporated under the Companies Act, that is one hundred per cent owned by Malawian citizens; or

Cap. 5:03

(f) an association incorporated under the Trustees Incorporation Act, that comprises only Malawian citizens.

(2) The maximum number of non-exclusive prospecting licences a person can hold is two (2).

(3) A non-exclusive prospecting licence shall not be issued to a person unless that person intends, within the limits of the person's competence and resources of the person, in good faith and fact, to undertake and commit to perform prospecting activities.

(4) Where it is determined after a non-exclusive prospecting licence been issued to a holder who does not meet the eligibility requirements of this section, the Commissioner shall declare the licence null and void, the holder shall be so informed and the determination shall be recorded by the Registrar in the register.

(5) Any person who knowingly and falsely attests in an application for a non-exclusive prospecting licence that the applicant meets the eligibility requirements of subsection (1) commits an offence and shall, upon conviction be liable, to a fine of K5,000,000 and to imprisonment for twelve (12) months.

Application for non-exclusive prospecting licence

90.—(1) An application for the grant of a non-exclusive prospecting licence shall be submitted to the Registrar in the prescribed form and manner and shall—

(a) in the case of an application by—

(i) an individual, provide the full name, address (which shall be the registered address upon the grant of the licence) and nationality of the individual;

(ii) mining cooperative society or mining partnership, provide the name of each member of the society or the partnership and his nationality, and the address (which shall be the registered address upon the grant of the licence) to which

all correspondence relating to the licence shall be sent; or

(iii) a company, provide the names and nationalities of all its members or directors and, if a corporation with share capital, the name and nationality of any person who is the beneficial owner of more than five per cent (5%) of the issued share capital, and the company's address (which shall be the registered address upon the grant of the licence);

(b) identify up to three contiguous districts wherein the approved prospecting work programme will be executed;

(c) be accompanied by—

(i) in the case of a company, a copy of the company's certificate of registration;

(ii) a statement describing in reasonable detail the prospecting work programme proposed to be carried out in the area of land over which the licence is sought, including an estimate of the cost of performing the programme;

(iii) a statement describing the potential effect of the prospecting work programme on the environment, and on any known monument, shrine or relic in the requested licence area, and including a description of the applicant's plans for environmentally responsible prospecting activities;

(iv) a description of any circumstances that may require the licence to be granted subject to particular conditions;

(v) other materials as may be prescribed;

(vi) any other material addressing matters that the applicant wants to be considered; and

(vii) the prescribed application fee or proof that such fee has been paid.

(2) An application for a non-exclusive prospecting licence shall be processed in accordance with Part III, Division 2.

91.—(1) The term of a non-exclusive prospecting licence shall be twelve (12) months.

Term of
non-exclusive
prospecting
licence

(2) A non-exclusive prospecting licence may be extended, under section 90, once for an additional term of one (1) year.

(3) The term of a non-exclusive prospecting licence commences on the date on which the licence is granted.

92.—(1) A holder of a non-exclusive prospecting licence may, not later than thirty (30) calendar days prior to the expiry of his licence, apply to extend the term of the licence in respect of all or any of the districts to which it relates.

Extension of
non-exclusive
prospecting
licence term

(2) An application to extend the term of a non-exclusive prospecting licence shall—

(a) be submitted in the prescribed form and manner;

(b) be accompanied by a brief summary report on prospecting activities carried out to the present time and an explanation of why the time extension is justified;

(c) describe in reasonable detail the prospecting work programme proposed to be carried out in the area of land over which the licence is sought, including an estimate of the cost of performing the programme;

(d) include an attestation, signed by the applicant, that he represents and promises to undertake and perform in good faith the proposed prospecting work programme;

(e) describe the potential effect of the prospecting work programme on the environment, and on any known monument, shrine or relic in the requested licence area, and including a description of the applicant's plans for environmentally responsible prospecting activities;

(f) describe any circumstances that may require the licence to be amended subject to particular conditions—

(i) address other matters as may be prescribed;

(ii) include other material addressing matters that the applicant wants to be considered; and

(iii) be accompanied by the prescribed application fee or proof that the fee has been paid.

(3) Subject to subsections (4) and (5), the Commissioner—

(a) may approve the application to extend the term of the licence with or without variation of the conditions of the licence, for a period that when added to the original term of the licence shall not exceed twenty-four (24) months; and

(b) if not satisfied, shall refuse to extend the term.

(4) A term of a non-exclusive prospecting licence shall not be extended unless the applicant—

(a) has undertaken and performed prospecting activities, in good faith, within the limits of his competence and resources during the initial term of the licence; and

(b) represents and promises in a written attestation to undertake and perform in good faith further prospecting activities as required by this Act.

(5) The term of a non-exclusive prospecting licence shall not be extended or otherwise amended or modified in any way if the applicant is in default of his obligations under this Act or the conditions of the licence.

(6) Except as otherwise provided in this section, an application for the extension of a non-exclusive prospecting licence shall be processed in accordance with Part III, Division 2.

93. A non-exclusive prospecting licence shall—

- (a) be in the prescribed form;
- (b) state the date of the grant of the licence and the period for which it is granted;
- (c) include a description of the districts over which the licence is granted;
- (d) state the minimum amount that shall be spent annually on prospecting work in the licence area;
- (e) include the conditions that the holder shall not—
 - (i) extract minerals for sale;
 - (ii) use heavy machinery; or
 - (iii) use explosives;
- (f) specify mineral types, if any, that the holder may not prospect for;
- (g) state the other conditions under which the licence is granted as determined by the Commissioner and this Act;
- (h) be signed by the Commissioner; and
- (i) contain such other information as may be prescribed or requested by the Commissioner.

Form and contents of a non-exclusive prospecting licence

94. A non-exclusive prospecting licence may authorize the holder of the licence to prospect in up to three (3) contiguous districts, or in any district.

Size and shape of non-exclusive prospecting licence area

95.—(1) Where a mineral tenement, other than a reconnaissance licence or a non-exclusive prospecting licence, is granted to any person and that tenement's area overlaps all or a portion of a non-exclusive prospecting licence area, the area of overlap shall be deemed to be excised from the non-exclusive prospecting licence area.

Mineral tenement area is excised from non-exclusive prospecting licence area

(2) For avoidance of doubt, the holder of a non-exclusive prospecting licence shall not prospect on land subject to an—

- (a) exploration licence;
- (b) retention licence; or

(c) mining licence.

Rights of
non-exclusive
prospecting
licence holder

96.—(1) A holder of a non-exclusive prospecting licence shall have the non-exclusive right to conduct prospecting activities in his licence area subject to the conditions of its licence, this Act and all other applicable law.

(2) Without limiting the generality of subsection (1), the holder of a non-exclusive prospecting licence shall have the right in his licence area, to—

(a) prospect for any mineral, except those mineral types, if any, specifically excepted in the licence;

(b) use prospecting methods, other than methods that use heavy machinery such as recalculating drills and excavators (unless use of heavy machinery is specially allowed in the licence);

(c) enter upon any part of the land for prospecting, subject to first obtaining permission from lawful occupiers and landowners, if any (or where land is customary land, from the local government authority or traditional authority as the case may require) in that part of the land entered upon;

(d) request a land access order pursuant to section 230;

(e) take and remove specimens and samples not exceeding such limit as is required for prospecting and to analyse the said specimens;

(f) erect camps and temporary buildings and installations including installations in any water;

(g) remove any camps, temporary buildings or installations the holder erected; and

(h) surrender all or part of the licence area subject to meeting requirements of the surrender imposed under this Act.

Obligations of
non-exclusive
prospecting
licence holder

97.—(1) A holder of a non-exclusive prospecting licence shall in his licence area—

(a) within the limits of his competence and resources, carry on in good faith, prospecting operations in accordance with the conditions of his licence, this Act and applicable law;

(b) expend annually at least the minimum amount specified in his licence;

(c) furnish the Commissioner with such information relating to his prospecting as the Commissioner may reasonably require or as may be prescribed;

(d) carry out promptly any directives relating to his prospecting operations which may be given to the holder by the

Commissioner or an inspector for the purposes of ensuring safety or good prospecting practices;

(e) not mine for minerals;

(f) not use heavy machinery such as recalculating drills and excavators, unless use of such heavy machinery is specially allowed in the licence conditions;

(g) pay compensation for damages caused by his work as required by section 225;

(h) submit reports required under section 98; and

(i) do all other things required by this Act and as prescribed.

(2) Where the Commissioner determines that the holder of a non-exclusive prospecting licence has failed to substantially comply with—

(a) any obligation arising under subsection(1) (a), (b), (c),(d) or (i), the Commissioner, at his discretion, may commence the process to suspend or cancel the licence; or

(b) any obligation arising under subsection 1(e), (f), (g) or (h), the Commissioner, without delay, shall commence to cancel the licence pursuant to section 79.

98.—(1) A holder of a non-exclusive prospecting licence shall submit to the Registrar, semi-annual progress reports.

Non-
exclusive
prospecting
licence
reporting
obligation

(2) A holder of a non-exclusive prospecting licence shall submit the reports required under subsection (1) at such time, in such form and manner, as are prescribed.

(3) A semi-annual progress report as required under subsection (1) shall include at least the following information pertaining to the prescribed reporting period—

(a) a summary of the prospecting work undertaken in connection with the licence during the six (6) month reporting period;

(b) descriptions of any mineral occurrence discoveries; and

(c) such other information as is prescribed.

(4) Subject to subsection (5), until a non-exclusive prospecting licence expires or is cancelled or surrendered, a report submitted under subsection (1) shall not be made available to any person outside the office of the Commissioner nor shall its content be revealed, except to the extent necessary to publish statistical information concerning the geology and mineral resources in Malawi or for the Commissioner to give advice to the Mineral Resources Committee or the Minister on a confidential basis.

(5) A holder of a non-exclusive prospecting licence may consent for a report which the holder has submitted under subsection (1) to be disclosed prior to the expiry or cancelation or surrender of the licence subject to such conditions as the holder may specify, in writing, to the Registrar.

(6) Nothing in this section precludes a holder of a non-exclusive prospecting licence from disclosing any report he has submitted pursuant to subsection (1) to any party.

(7) Subject to subsection (4), a report submitted under subsection (1) shall be available for perusal and copying by members of the public.

Transfer of
non-exclusive
prospecting
licence

99. A non-exclusive prospecting licence shall not be transferred or assigned to another party.

PART V—RECONNAISSANCE LICENCE

Eligibility for
reconnaissance
licence

100.—(1) A reconnaissance licence holder shall be—

(a) a company, duly incorporated; or

(b) registered as a foreign company,

Cap. 46:03

under the Companies Act, that has the technical competence and financial ability to fulfil the licence obligations.

(2) A reconnaissance licence shall not be granted to a company—

(a) if any director of the company or any major shareholder of the company holding a controlling interest in such company has been convicted of an offence under this Act and sentenced to imprisonment without an option of a fine, or was an officer or employee of the Commissioner, at the time the company first applied for the grant of the licence; or

(b) if the company is a former reconnaissance licence holder whose former licence was cancelled and that company has applied for a reconnaissance area that in whole or in part overlaps the former licence reconnaissance area, if such application is made within two (2) years of the date of such licence cancellation.

Application
for a
reconnaissance
licence

101.—(1) An application for the grant of a reconnaissance licence shall be submitted to the Registrar in the prescribed form and manner and shall have attached to it—

(a) a schedule, in the prescribed form, describing the corners of the proposed reconnaissance licence area as prescribed in section 295;

(b) a sketch map, in the prescribed form, showing the boundary of the proposed reconnaissance licence area;

(c) a copy of the company's certificate of registration in Malawi;

(d) a proposed reconnaissance work programme giving particulars of the work proposed to be carried out in the area of land over which the licence is sought, that—

(i) describes in detail the activities to be performed;

(ii) gives an estimate of the cost of the activities to be performed;

(iii) gives the time period required for completion of the programme; and

(iv) contains such other information as may be prescribed;

(e) a statement giving particulars of the technical and financial resources available to the applicant;

(f) a statement describing the potential effect of the reconnaissance work programme on the environment, including a description of the applicant's plans for environmentally responsible reconnaissance activities;

(g) a description of any circumstances that may require the licence to be granted subject to particular conditions; and

(h) the prescribed application fee or proof that the fee has been paid.

(2) An application for a reconnaissance licence shall be processed in accordance with Part III, Division 2.

102.—(1) When assessing a proposed reconnaissance work programme submitted pursuant to an application for the grant or extension of the term of a reconnaissance licence, the Commissioner—

Reconnaissance work programme

(a) shall consider whether the proposed reconnaissance work programme submitted by the applicant—

(i) provides for a substantial increase in the acquisition and interpretation of reconnaissance data from the area of the reconnaissance licence; and

(ii) meets all prescribed content requirements; and

(b) may request the applicant to provide further information and amend the application or reconnaissance work programme.

(2) The content of a reconnaissance work programme may be prescribed.

103.—(1) A term of a reconnaissance licence shall be twelve (12) months.

Term of reconnaissance licence

(2) A reconnaissance licence may be extended, under section 104, once only, for an additional term of twelve (12) months.

(3) A term of a reconnaissance licence shall commence on the date on which the licence is granted.

Extension of
reconnaissance
licence term

104.—(1) A holder of a reconnaissance licence may, not later than sixty (60) calendar days prior to the expiry of its licence, apply to extend the term of its licence in respect of all or any part of the reconnaissance licence area.

(2) An application to extend the term of a reconnaissance licence shall—

- (a) be submitted in the prescribed form and manner;
- (b) state the period for which the term extension is being sought;
- (c) be accompanied by a brief summary report on reconnaissance activities carried out to the present time and an explanation of why the time extension is justified;
- (d) be accompanied by a proposed reconnaissance work programme giving particulars of the work proposed to be carried out;
- (e) provide an estimate of the cost of carrying out the proposed programme;
- (f) describe any significant effect which the carrying out the reconnaissance work programme would be likely to have on the environment, and include a description of the applicant's plans for environmentally responsible reconnaissance activities;
- (g) include such other materials as may be prescribed; and
- (h) be accompanied by the prescribed application fee.

(3) An applicant applying to extend the term of a reconnaissance licence who wishes to reduce the size of its licence area shall submit in its application—

- (a) a schedule, in the prescribed form, describing the corners of the boundary of the reduced reconnaissance licence area as prescribed in section 295; and
- (b) a sketch map, in the prescribed form, showing the boundary of the reduced area.

(4) Upon receipt of an application duly made to extend the term of a reconnaissance licence, the Commissioner—

- (a) may approve the application to extend the term of the licence with or without variation of the conditions of the licence, for a period that when added to the original term of the licence shall not exceed twenty-four (24) months; and
- (b) if not satisfied, shall refuse to extend the term.

(5) Except as otherwise provided in this section, an application for the extension of a reconnaissance licence shall be processed in accordance with Part III, Division 2.

105. A reconnaissance licence shall—

- (a) be in the prescribed form;
- (b) state the date of the grant of the licence and the period for which it is granted;
- (c) state the condition that the holder shall implement the appended reconnaissance work programme;
- (d) state the minimum amount that shall be spent to implement the approved reconnaissance work programme;
- (e) state the other conditions under which the licence is granted as determined by the Commissioner and this Act;
- (f) be signed by the Minister;
- (g) have appended to it—
 - (i) the approved reconnaissance licence work programme;
 - (ii) a description, as prescribed, of the area of land over which the licence is granted; and
- (h) contain such other information as may be prescribed.

Form and contents of a reconnaissance licence

106. The area of land over which a reconnaissance licence is granted or its term extended shall be—

- (a) no more than one hundred (100,000) square kilometres;
- (b) no less than one (1) hectare; and
- (c) in conformity with the requirements of section 295.

Size and shape of reconnaissance licence area

107.—(1) A reconnaissance licence shall not be granted over any land—

- (a) subject to a mineral tenement, except land the subject of a reconnaissance licence or a non-exclusive prospecting licence; or
- (b) closed to mineral tenements under this Act or any applicable law.

Restrictions on grant of reconnaissance licence area

(2) Where a reconnaissance licence purports to apply to land closed to the grant of a mineral tenement or that is subject to an exploration licence, retention licence or mining licence, that area shall be deemed to be excised from the reconnaissance licence area.

108. Land that was not part of a reconnaissance licence area, at the time the licence was granted, shall not be added to the licence area after the date on which the licence was granted.

No expansion of reconnaissance licence area

109. Where a mineral tenement, other than a reconnaissance licence or a non-exclusive prospecting licence, is granted to any person and that tenement's area overlaps with all or a portion of a reconnaissance licence area, the area of overlap shall be deemed to be excised from the reconnaissance licence area as of the date the other tenement is granted.

110.—(1) A holder of a reconnaissance licence shall have the non-exclusive right to conduct reconnaissance activities in, on and over the reconnaissance licence area in accordance with its approved reconnaissance work programme.

(2) Without limiting the generality of subsection (1), where the holder's approved reconnaissance work programme so allows, the holder of a reconnaissance shall have the right in its licence area, subject to environmental and all other applicable law, to—

- (a) erect camps and temporary buildings and installations;
- (b) erect installations in any waters;
- (c) remove any camps, temporary buildings or installations the holder erected;
- (d) fly over the area for the purpose of performing geophysical or aerial surveys;
- (e) use remote sensing to gather data and useful information to understand the area's geological, environmental and geographical attributes;
- (f) enter upon any part of the land for the purpose of carrying out reconnaissance on that land, subject to first obtaining permission of lawful occupiers and landowners, if any, in that part of the land;
- (g) request a land access order pursuant to section 230;
- (h) take and remove specimens and samples not exceeding such limit as is required for reconnaissance and to analyse said specimens;
- (i) surrender part or all of the licence area subject to meeting the requirements of the surrender imposed under this Act; and
- (j) do all other things necessary or expedient for the undertaking of reconnaissance on the land.

111.—(1) Where it is necessary to fly over any land for the purpose of the exercise of any right under section 110, a reconnaissance licence holder shall have the right to do so.

(2) The right to fly over land as provided under subsection (1) does not exempt a reconnaissance licence holder from the need

arising under any other applicable law to obtain prior over-flight permission.

(3) Where the holder of a reconnaissance licence uses remote sensing methods in its reconnaissance work and it would be impractical to avoid gathering information on areas bordering or surrounded by its reconnaissance licence area, the holder shall be permitted to gather such information even though it may pertain to such areas not included in its licence area.

(4) A reconnaissance licence holder that has obtained information on land not the subject of its reconnaissance licence area as permitted under subsection (3), shall not report or share with any other person that information, other than information of a general nature, obtained on that area except with the prior written permission of the mineral tenement holder.

(5) For the purposes of subsection (4), information of a general nature, includes data other than data specific to determining the specific attributes of a mineral occurrence.

112.—(1) A holder of a reconnaissance licence shall not engage in drilling, trenching or excavation, or any other activity that substantially disturbs the surface of the land covered by the reconnaissance licence, except when authorized to do so by the Commissioner. Surface disturbance prohibited without permission

(2) A holder of a reconnaissance licence may apply to the Commissioner to disturb the surface of the land which is the subject of its licence, and, in exceptional and limited circumstances, the Commissioner may, by written consent, allow a limited exception to the restrictions under subsection (1).

(3) For the avoidance of doubt, nothing in this section shall prohibit the holder of a reconnaissance licence from collecting surface samples, chipped samples, stream sediment samples and other samples of a similar nature.

113.—(1) A holder of a reconnaissance licence shall—

(a) conduct reconnaissance activities in accordance with its approved reconnaissance work programme, the conditions of its licence, this Act and applicable written law, in a professional manner consistent with good practice in the mining industry; Obligations of reconnaissance licence holder

(b) commence reconnaissance fieldwork, if the fieldwork is part of its approved reconnaissance work programme, within ninety (90) calendar days of the licence granting date and notify the Registrar, no later than ninety (90) days after the licence granting date, whether fieldwork has commenced, in the prescribed form and manner;

(c) expend annually at least the minimum amount specified in its licence;

(d) provide any attachment required or agreed under section 42;

(e) pay the prescribed annual ground rent required under section 264;

(f) pay compensation for damages caused by its work as required under section 225;

(g) submit reports required under section 114; and

(h) do all other things required by this Act and as prescribed.

(2) Where the Commissioner determines that a holder of a reconnaissance licence has failed to substantially comply with—

(a) any obligation arising under subsection (1) (a), (b), (c), (d) or (h), the Commissioner, at his discretion, may commence the process to suspend or cancel the licence; or

(b) any obligation arising under subsection (1) (e), (f) or (g), the Commissioner, without delay, shall commence the process to cancel the licence pursuant to section 79.

Reconnaissance
licence
reporting
obligation

114.—(1) A holder of a reconnaissance licence shall submit to the Registrar the following reports—

(a) semi-annual progress reports; and

(b) termination report.

(2) A holder of a reconnaissance licence shall submit the reports required under subsection (1) at such time, in such form and manner as are prescribed.

(3) A semi-annual progress report required under subsection (1) shall include at least the following information pertaining to the prescribed reporting period—

(a) a summary of the reconnaissance work undertaken in connection with the licence during the six (6) month reporting period;

(b) such other information as is prescribed.

(4) The termination report required under subsection (1) shall include at least the following information—

(a) a summary of all work undertaken in connection with the licence;

(b) such additional information as is required to give full details of all work undertaken in connection with the licence so as to convey accurately and comprehensively the aims of the work, the procedures adopted and the conclusions reached, and

containing all data which may be of relevance to the geology and mineral resources in the reconnaissance licence area including—

- (i) images of all aerial photographs taken in the course of carrying out the reconnaissance programme;
 - (ii) all geological, geochemical and geophysical maps, profiles, tapes, diagrams and charts made by or for the licence holder;
 - (iii) copies of all tests and analyses made by or for the licence holder; and
 - (iv) copies of all reports made by or for the licence holder, including interpretations concerning the mineral prospects in the reconnaissance area;
- (c) statement of the total costs incurred by the licence holder in the performance of the reconnaissance programme; and
- (d) such other information as is prescribed.

(5) Subject to subsections (6) and (7), until a reconnaissance licence expires or is cancelled or surrendered, a report submitted under subsection (1) shall not be made available to any person outside the office of the Commissioner nor shall its content be revealed except to the extent necessary to publish statistical information concerning the geology and mineral resources in Malawi or for the Commissioner to give advice to the Mineral Resources Committee or the Minister on a confidential basis.

(6) A holder of a reconnaissance licence may consent for a report which it has submitted under subsection (1) to be disclosed prior to the expiry or cancellation or surrender of the reconnaissance licence subject to such conditions as the holder may specify, in writing, to the Registrar.

(7) Nothing in this section shall preclude a holder of a reconnaissance licence from disclosing any report which it has submitted pursuant to subsection (1) to any party.

(8) Subject to subsection (5), a report submitted under subsection (1) shall be available for perusal and copying by the general public.

115. A reconnaissance licence shall not be transferred or assigned to another party.

Transfer of
reconnaissance
licence

PART VI — EXPLORATION LICENCE

116.—(1) An exploration licence holder shall be—

- (a) a company, duly incorporated; or
- (b) registered as a foreign company,

Eligibility for
exploration
licence

Cap. 46:03

under the Companies Act, that has the technical competence and financial ability to fulfil the licence obligations.

(2) An exploration licence shall not be granted or transferred to—

(a) a company—

(i) if any director of the company or any major shareholder of the company holding a controlling interest in such company has been convicted of an offence under this Act and sentenced to imprisonment without an option of a fine, or was an authorized officer at the time the company first applied for the grant or transfer of the licence; or

(ii) if the company is a former exploration licence holder whose former licence was cancelled and has applied for an exploration area that in whole or in part overlaps the former licence exploration area, if such application is made within two (2) years from the date of such licence cancellation; or

(b) a registered foreign company, unless it has designated a legal practitioner, licensed to practice law in Malawi and who is a resident in Malawi, as its registered agent for purposes of accepting notices under this Act and legal service of process under the laws of Malawi.

Application for
an exploration
licence

117.—(1) An application for the grant of an exploration licence shall be submitted to the Registrar in the prescribed form and manner and shall have attached to it—

(a) a schedule, in the prescribed form, describing the corners of the proposed exploration licence area as prescribed in section 295;

(b) a sketch map, in the prescribed form, showing the boundary of the proposed exploration licence area;

(c) a copy of the company's certificate of registration in Malawi, and a statement that provides the name and place of incorporation, the names and nationalities of the directors or equivalent officers and, if the company has share capital, the name of any person who is the beneficial owner of more than five percent (5%) of the issued share capital;

(d) a proposed exploration work programme giving particulars of the work proposed to be carried out in the area of land over which the licence is sought, that—

(i) describes in detail the activities to be performed;

(ii) identifies the minerals of primary interest;

(iii) gives an estimate of the cost of the activities to be performed;

(iv) gives the time period required for completion of the programme; and

(v) contains such other information as may be prescribed;

(e) a detailed description of any infrastructure requirements;

(f) a statement giving particulars of the technical and financial resources available to the applicant, including proof of adequate funds to pay for the first two (2) years of the proposed exploration work;

(g) a statement describing the potential effect of the exploration work programme on the environment, including a description of the applicant's plans for environmentally responsible exploration;

(h) a description of any circumstances that may require the licence to be granted subject to particular conditions;

(i) any other material addressing matters that the applicant wants to have considered; and

(j) the prescribed application fee or proof that such fee has been paid.

(2) Except as otherwise provided in this section, an application for the grant of an exploration licence shall be processed in accordance with Part III, Division 2.

118.—(1) The initial term of an exploration licence shall be three (3) years.

Term of
exploration
licence

(2) A term of an exploration licence shall commence on the date the licence is granted.

(3) A holder of an exploration licence may apply for an extension of the term of its licence for a period of up to two (2) years.

(4) An application under subsection (3) for an extension of the term of exploration licence may be made on not more than two (2) occasions.

119.—(1) Where a holder of an exploration licence, pursuant to section 118, wishes to extend his exploration licence, he shall not later than ninety (90) calendar days prior to the expiry of the licence, apply for extension of the term of the licence.

Extension of
exploration
licence term

(2) An application to extend the term of an exploration licence shall—

(a) be submitted to the Registrar in the prescribed form and manner;

- (b) state the period for which the term extension is sought;
 - (c) be accompanied by a brief summary report on exploration work carried out to the present time and an explanation of why the time extension is needed;
 - (d) be accompanied by a proposed exploration work programme meeting prescribed requirements giving particulars of the work to be carried out;
 - (e) provide an estimate of the cost of carrying out the proposed exploration work programme;
 - (f) describe any significant effect which the carrying out of the exploration work programme will likely have on the environment and measures that will be taken to mitigate harm;
 - (g) include such other materials as may be prescribed; and
 - (h) be accompanied by the prescribed application fee or proof that the fee has been paid.
- (3) An applicant applying to extend the term of its exploration licence shall in its application reduce the size of its last approved licence area by at least half and shall submit in its application—
- (a) a Schedule, in the prescribed form, describing the corners of the boundary of the reduced exploration licence area as prescribed in section 295; and
 - (b) a sketch map, in the prescribed form, showing the boundary of the reduced area.
- (4) Where application of the requirement in subsection (3) to reduce the licence area would result in a licence area of less than twenty-five (25) square kilometres, the applicant may request and have approved an area of up to twenty-five (25) square kilometres.
- (5) The Commissioner shall approve an application to extend the term of an exploration licence if the licence holder has—
- (a) complied with the application requirements under this section;
 - (b) substantially complied with the terms and conditions of its licence;
 - (c) met the minimum annual expenditure requirements under section 127;
 - (d) submitted all reports required under section 129;
 - (e) paid all compensation required under section 225;
 - (f) paid all annual ground rent as required under section 264;

and

(g) submitted a reasonable exploration work programme for the period of extension.

(6) Where the Commissioner has determined that all required conditions set out in subsection (5) are met, the Commissioner shall inform the Registrar to endorse the licence with the extended term and may vary the conditions of the licence, in light of the new exploration work programme and other changed circumstances.

(7) Where the Commissioner has determined that one or more of the requirements set out in subsection (5) have not been met, the Commissioner shall refer the application to the Mineral Resources Committee for determination.

(8) Where the Mineral Resources Committee has determined that an application referred to it pursuant to subsection (7) is approved, the Registrar shall endorse the licence with the extended term and any changed conditions specified by the Mineral Resources Committee.

(9) Where the Mineral Resources Committee has determined that an exploration licence extension application should not be approved, the Registrar shall, within fourteen (14) calendar days of the determination, so inform the applicant including the Committee's reasons for the refusal.

(10) Where a holder of an exploration licence has registered an application to extend the term of its licence and the Mineral Resources Committee has refused to approve the application, the holder may appeal the decision, within thirty (30) calendar days of being notified of the refusal, to the High Court.

(11) Where the High Court has determined on appeal that all the requirements of subsection (5) were met by the applicant, the Registrar shall endorse the licence with the extended term and any changed conditions specified by the Court.

(12) Except as otherwise provided in this section, an application for the extension of an exploration licence shall be processed in accordance with Part III, Division 2.

120. An exploration licence shall—

- (a) be in the prescribed form;
- (b) state the date of the grant of the licence and the period for which it is granted;
- (c) state the condition that the holder shall implement the appended exploration licence work programme;

Form and
contents of an
exploration
licence

(d) state the other conditions under which the licence is granted as determined by the Mineral Resources Committee and this Act;

(e) be signed by the Minister;

(f) have appended to it—

(i) the approved exploration licence work programme; and

(ii) a description, as prescribed, of the area of land over which the licence is granted; and

(g) contain such other information as is prescribed.

Size and shape
of exploration
licence area

121. An area of land over which an exploration licence is granted or its term extended shall be—

(a) no more than two thousand five hundred (2,500) square kilometres;

(b) no less than one hectare; and

(c) in conformity with the requirements of section 295.

Overlapping
licences may
be allowed
in limited
circumstances

122.—(1) The Commissioner may, with the prior written permission of the holder of an exploration licence and subject to such conditions and limitations as the holder may determine, grant one or more small-scale mining licences within that holder's exploration licence area.

(2) A holder of an exploration licence that has granted the Commissioner permission to grant one or more small-scale mining licences in its licence area under subsection (2) may—

(a) at any time rescind its permission, or change the conditions and limitations of such permission; or

(b) direct that any or all small-scale mining licences granted in its licence area not be extended past their current term,

by informing the Commissioner in writing.

(3) Where the permission of the exploration licence holder given under subsection (1) is a general permission, the Commissioner, without delay, shall inform the holder upon the registration of any small-scale mining licence application made in its exploration licence area, and the holder may withdraw permission for that licence to be granted.

(4) Any small-scale mining licence granted pursuant to subsection (1) shall—

(a) be deemed to expire on the date that any mining licence is granted to a holder of an exploration licence over land the subject of its exploration licence; and

(b) include, as a condition in the licence, that the term of the licence shall end on the date that a mining licence is granted to a holder of an exploration licence over land the subject of its small-scale mining licence.

(5) The expiry of a small-scale mining licence by application of subsection (4) shall not provide grounds for any compensation claim by the holder of the expired small-scale mining licence.

123. Land that was not part of an exploration licence area, at the time the licence was granted, shall not be added to the licence area after the date on which the licence was granted.

No expansion
of exploration
licence area

124.—(1) An exploration licence shall not be granted over land which—

Restrictions
on grant of
exploration
licence

(a) constitutes an existing mineral tenement, other than land the subject of a non-exclusive prospecting licence or reconnaissance licence;

(b) is the subject of a registered mineral tenement application that predates the exploration licence application, other than an application for a reconnaissance licence or non-exclusive prospecting licence; or

(c) which is otherwise closed to mining under this Act or any other written law.

(2) Where an exploration licence purports to apply to any land closed to the grant of an exploration licence or that is subject to a pre-existing mineral tenement other than a reconnaissance licence or non-exclusive prospecting licence, that closed or pre-existing tenement area is deemed to be excised from the exploration licence area.

(3) An exploration licence shall not be granted to an applicant unless—

(a) the applicant meets all the eligibility requirements under section 116;

(b) the applicant has demonstrated adequate and available access to financial resources, technical competence and experience to carry on effective exploration including proof of adequate finances to carry-out the first two (2) years of its proposed exploration work programme; and

(c) the proposed exploration work programme is sufficient in scope and scientific content that it can be expected to produce information that will result in additional exploration and

advance the likelihood that the exploration licence area will be developed.

Rights of
exploration
licence
holder

125.—(1) Subject to this Act, the conditions stipulated in the licence and applicable law, an exploration licence, while it remains valid and in effect, confers on the holder of the licence the exclusive right to conduct exploration in the licence area in accordance with its approved exploration work programme.

(2) Without limiting the generality of subsection (1), a holder of an exploration licence shall have the right, within its licence area, to—

- (a) search for all types of minerals and mineral occurrences;
- (b) apply on an exclusive first-come, first-considered basis for retention licence or mining licence;
- (c) erect camps and temporary buildings;
- (d) erect installations in any waters for exploration purposes;
- (e) remove any camps, temporary buildings or installations the holder erected;
- (f) fly over the area for the purpose of performing geophysical or other aerial surveys;
- (g) use remote sensing to gather data and useful information to understand the area's geological, environmental and geographical attributes;
- (h) enter upon any part of the licence area for the purpose of carrying out exploration on that land;
- (i) request a land access order pursuant to section 230;
- (j) conduct drilling, trenching and pitting works;
- (k) take and remove specimens and samples not exceeding such limit as is required for exploration and to analyse said specimens;
- (l) surrender part or all of the licence area subject to meeting the surrender requirements imposed under this Act; and
- (m) do all other things necessary or expedient for the undertaking of exploration on the land.

(3) For avoidance of doubt, the right of an exploration licence holder to apply on an exclusive first-come first-considered basis for retention licence or mining licence as provided in subsection (2) (b) means that a retention licence or mining licence shall not be granted to any party other than the holder of the exploration licence, except

with the prior written permission of the exploration licence holder, for any land the subject of the exploration licence as long as the exploration licence remains valid for that area of land.

126.—(1) A holder of an exploration licence shall—

Obligations
of exploration
licence holder

(a) conduct exploration in accordance with its approved exploration work programme, the conditions of its licence, this Act and applicable law, in a good and professional manner consistent with good practice in the mining industry;

(b) commence exploration fieldwork, where the fieldwork is part of its approved exploration work programme, within one hundred and eighty (180) calendar days of the fieldwork has commenced;

(c) provide any attachment required or agreed under section 42;

(d) notify the Commissioner when there is change in the control of the company that holds the licence, such as a sale of a majority ownership interest or a majority of its shares, as required under section 63;

(e) pay compensation for damages caused by its work as required under section 225;

(f) pay the prescribed annual ground rent required under section 264;

(g) submit all reports required under section 129 and otherwise by this Act;

(h) expend in, on, or in relation to the exploration licence area the minimum annual amount required under section 127; and

(i) do all other things required by this Act and as prescribed.

(2) Where the Commissioner determines that the holder of an exploration licence failed to substantially comply with—

(a) any obligation arising under subsection (1) (a), (b), (c), (d) or (i), the Commissioner, at his discretion, may commence the process to suspend or cancel the licence; or

(b) any obligation arising under subsection (1) (e), (f), (g) or (h), the Commissioner, without delay, shall commence to cancel the licence pursuant to section 79.

127.—(1) The minimum expenditure required to be spent annually in connection with an approved exploration work programme shall be as prescribed.

Annual
minimum
exploration
expenditure

(2) Acceptable expenditures to meet the requirements of section 126 (1) (h) are those directly connected with the acquisition and interpretation of exploration data from the area of the exploration licence, including related laboratory and prefeasibility and feasibility work and such other activities as are prescribed.

(3) Without limiting subsection (2), acceptable expenditures for the purposes of this section shall not include expenditures in respect of the purchase of—

- (a) a mineral tenement; or
- (b) land or buildings.

Obligation of
exploration
licence holder
to keep
accurate
records

128.—(1) A holder of an exploration licence shall keep at its registered address full and accurate records of all its exploration licence work.

(2) Without prejudice to subsection (1), a holder of an exploration licence shall keep records of—

- (a) number of persons currently employed by it;
- (b) costs incurred;
- (c) location of trenches, drill holes, and where any samples were obtained;
- (d) strata penetrated, with detailed logs of the strata;
- (e) mineral occurrences discovered;
- (f) results of any geophysical survey;
- (g) results of any analysis of samples removed from land the subject of the licence;
- (h) geological interpretations of the records maintained under paragraphs (c) to (g);
- (i) reports prepared using data and information resulting from the exploration work programme; and
- (j) other work done in connection with the licence area; and such other information as may be prescribed.

(3) Where any of the information listed in subsection (2) is not otherwise required to be submitted to the Registrar, a holder of an exploration licence shall include that information in its annual technical report submitted pursuant to section 129.

Exploration
licence
reporting
obligations

129.—(1) A holder of an exploration licence shall submit to the Registrar, the following reports—

- (a) annual exploration expenditure report;

- (b) mid-year progress report;
- (c) annual end of year technical report; and
- (d) termination report.

(2) A holder of an exploration licence shall submit the reports required under this section at such time, in such form and manner as are prescribed.

(3) The annual exploration expenditure report required under this section shall include at least the following information pertaining to the prescribed annual reporting period—

(a) information sufficiently detailed to determine the total amount of expenditure by the licence holder that qualifies to meet annual minimum work obligations of the exploration licence under section 127 and for the Commissioner to verify such amounts; and

(b) such other information as is prescribed.

(4) The Commissioner may require a holder of an exploration licence to provide to the Commissioner an independent audit of an annual exploration expenditure report required by subsection (1), when any matter in the report is suspicious.

(5) The mid-year progress report required under this section shall include at least the following information pertaining to the prescribed reporting period—

(a) a summary of the exploration work undertaken in connection with the licence;

(b) description of mineral occurrence discoveries which may have mining potential; and

(c) such other information as is prescribed.

(6) The annual end of year technical report required under this section shall include, at least the following information pertaining to the prescribed annual reporting period—

(a) a summary of all work undertaken in connection with the licence;

(b) such additional information as is required to give full details of all work undertaken in connection with the licence so as to convey accurately and comprehensively the aims of the work, the procedures adopted and the conclusions reached, and containing all data which may be of relevance to the geology and mineral resources in the exploration licence area;

(c) any incidents of non-compliance by the licence holder with the requirements of this Act, including the conditions of the exploration licence, and, in respect of each such incident—

(i) the cause of the non-compliance; and

(ii) the actions taken, or proposed to be taken, by the licence holder to remedy the non-compliance and prevent its recurrence; and

(d) such other information as is prescribed.

(7) The termination report required under subsection (1) shall—

(a) be submitted not later than sixty (60) calendar days from the date of surrender, expiry or cancellation of the exploration licence; and

(b) include—

(i) a summary of all exploration work and results obtained during the entire term of the licence;

(ii) the subject matter referred to in subsection (6) in respect of the period commencing at the end of period covered in the previous annual end of year technical report up to the date of licence expiry, surrender or cancellation; and

(iii) such other information as is prescribed.

(8) Subject to subsection (9), until an exploration licence expires or is cancelled or surrendered, or if an exploration licence area has been converted to a mining licence area, until such mining licence has expired or been cancelled or surrendered, a report submitted under subsection (1) shall not be made available to any person outside the office of the Commissioner nor can its content be revealed except to the extent necessary to publish statistical information concerning the geology and mineral resources in Malawi or for the Commissioner to give advice to the Mineral Resources Committee or Minister on a confidential basis.

(9) A holder of an exploration licence, or if the exploration licence area has been converted to a mining licence area, the holder of such mining licence, may consent for a report which it has submitted under subsection (1) to be disclosed prior to the expiry or cancellation or surrender of the exploration licence or mining licence to which it relates subject to such conditions as the holder may specify in writing to the Registrar.

(10) Nothing in this section shall preclude a holder of an exploration licence from disclosing any report which it has submitted pursuant to subsection (1) to any party.

(11) Subject to subsection (8), a report submitted under subsection (1) shall be available for perusal and copying by the general public.

130.—(1) Where a holder of an exploration licence applies for the grant of a mining licence over all or part of land in the exploration licence area and the processing of the mining licence application has not been completed by the date on which the exploration licence expires, the exploration licence shall not terminate and its term shall automatically extend until—

Automatic extension of term for administrative reason

(a) notice is given to the applicant of the refusal to grant the mining licence; or

(b) the date the mining licence is registered.

(2) Land not the subject of the mining licence application shall be deemed surrendered from the exploration licence area on the date the exploration licence would have expired if this section had not applied.

131.—(1) In accordance with sections 138 and 156, where a retention licence or mining licence is granted and that licence's area overlaps all or a portion of an exploration licence, the area of overlap is deemed to be excised from the exploration licence.

Mining licence is excised from exploration licence area

(2) Notwithstanding that an area of overlap may be deemed excised from an exploration licence under subsection (1), the exploration licence shall remain in force for any land the subject of the exploration licence that was not part of the overlapping area.

132.—(1) A holder of an exploration licence may apply under section 73 to surrender all or part of its licence area.

Surrender of exploration licence area

(2) An exploration licence may continue to have effect notwithstanding the fact that the exploration licence area has ceased to have the same shape, dimensions or area as originally described as the exploration licence area due to land being surrendered.

133. A holder of an exploration licence may apply to transfer its licence pursuant to Part III, Division 4.

Transfer of exploration licence

PART VII—RETENTION LICENCE

134.—(1) A retention licence applicant shall be a holder of a valid exploration licence whose exploration licence area includes the entire area to which the retention licence application relates.

Eligibility for retention licence

(2) A retention licence holder shall be a company—

(a) duly incorporated; or
 (b) registered as an external company,
 Cap. 46:03 under the Companies Act, that has the technical competence and financial ability to fulfil the licence obligations.

Application for retention licence **135.—**(1) An application for the grant of a retention licence shall be submitted to the Registrar in a prescribed form and manner and shall have attached to it—

(a) a schedule, in the prescribed form, describing the coordinates of the proposed retention licence area as prescribed in section 295;

(b) a sketch map, in the prescribed form, showing the boundary of the proposed retention licence area;

(c) a copy of the company's certificate of registration in Malawi;

(d) a copy of the applicant's exploration licence to which the retention licence area relates;

(e) a statement justifying the application that provides all the information required to meet the assessment requirements under section 136;

(f) a proposed retention work plan meeting the assessment requirements under section 136, including the estimated cost of implementing the plan;

(g) a statement describing the potential effect of the retention work plan on the environment, including a description of the applicant's plans for environmentally responsible activities;

(h) a description of any circumstances that may require the licence to be granted subject to particular conditions;

(i) any other material addressing matters that the applicant wants to have considered; and

(j) the prescribed application fee or proof that such fee has been paid.

(2) An application for a retention licence shall be processed in accordance with Part III, Division 2.

Justification and plans for a retention licence **136.—**(1) In assessing an application for a retention licence, the Mineral Resources Committee shall consider whether—

(a) it has been demonstrated that the applicant has located a mineral deposit which is of commercial significance;

(b) the mineral deposit cannot justifiably be mined at the present time utilizing proven technology for one of the following reasons—

(i) adverse current mineral market conditions, which are, or may be, of a temporary nature;

(ii) adverse current financing conditions, which are, or may be, of a temporary nature;

(iii) adverse current infrastructure conditions, which are, or may be of a temporary nature;

(iv) a feasibility study (but not a pre-feasibility study) has been commissioned which has a firm delivery date but which has not yet been completed;

(v) difficulties in obtaining requisite Government approvals are involved before mining can commence or that prevent mining or restrict it in a manner that is, or subject it to conditions that are, for the time being impracticable; or

(vi) agreement or resettlement or compensation arrangements with lawful occupiers or owners of land have not successfully progressed;

(c) exploration work has progressed as far as is practicable at the time and therefore a retention licence is necessary; and

(d) the proposed plan submitted by the applicant—

(i) provides for annual assessments that determine whether any condition underlying the statement required by section 135(1)(e) justifying the application for the licence has changed; and

(ii) is appropriate to the circumstances, and

may request the applicant to provide further information or to amend the application or the submitted proposed plan.

(2) The statement required by section 135 (1) (e) justifying the application for a retention licence shall contain expert assessments by qualified persons acceptable to the Mineral Resources Committee relating to—

(a) the commercial significance of the mineral deposit;

(b) the relevant market conditions and trends; factors;

(c) economic factors; and

(d) such other information as the Committee may reasonably require to be included in the application proposal of the applicant.

(3) The Commissioner, acting upon the advice of the Mineral Resources Committee, may, from time to time, issue guidelines on the required content of proposed retention work plans, and any proposed plan submitted under section 135 (1) (f) shall conform to such guidelines.

Restrictions on grant of retention licence

137.—(1) A retention licence shall not be granted over any land that was not the subject of a current and valid exploration licence on a date that the retention licence application was registered.

(2) A retention licence shall not be approved, unless the holder of the exploration licence applying for the retention licence—

(a) at the time the retention licence is applied for, has fully satisfied its obligations under this Act, to pay annual ground rent pursuant to section 264, spent in all years, except the present year, at least the minimum annual exploration expenditure required under section 127 and submitted all reports required by section 129; and

(b) has, to the satisfaction of the Mineral Resources Committee demonstrated that—

(i) it has located a mineral deposit which is of commercial significance;

(ii) one or more of the reasons justifying the licence set out in section 136 (1) (b) reasonably apply; and

(iii) exploration work has progressed as far as is practicable at the time.

Effect of grant of retention licence on exploration licence area

138. Once the Mineral Resources Committee grants a retention licence, the retention licence area shall cease to be part of exploration licence area to which it related.

Term of retention licence

139.—(1) A retention licence may be granted for a term based on the justification provided by the applicant but must not exceed five (5) years; and

(2) A term of a retention licence shall—

(a) commence on the date on which the licence is granted; and

(b) not be extended.

Form and contents of a retention licence

140. A retention licence shall—

(a) be in a prescribed form;

(b) state the date of the grant of the licence and the period for which it is granted;

(c) state the condition that the holder shall implement an appended approved plan;

(d) state the minimum amount that shall be spent annually on implementing the approved plan;

(e) state the conditions under which the licence is granted as determined by the Mineral Resources Committee and this Act;

(f) be signed by the Minister;

- (g) have appended to it—
 - (i) the approved plan; and
 - (ii) a prescribed description, of the area of land over which the licence is granted; and
- (h) contain such other information as is prescribed.

141. The area of land over which a retention licence is granted shall be—

- (a) not be more than twenty-five (25) square kilometres;
- (b) not less than one hectare; and
- (c) in conformity with the requirements of section 295.

Size and shape of retention licence area

142. Land that was not part of a retention licence area at the time the licence was granted shall not be added to the licence area after the date on which the licence was granted.

No expansion of retention licence area

143. A holder of a retention licence—

- (a) may apply to implement his approved plan for the licence area;
- (b) may request a land access order pursuant to section 230; and
- (c) has the exclusive right to apply for a mining licence, in respect of the retention licence area.

Rights of retention licence holder

144.—(1) A holder of a retention licence shall—

- (a) conduct its activities in accordance with its approved plan, the conditions of its licence, this Act and applicable law, in a good and professional manner consistent with good practice in the mining industry;
- (b) expend annually the minimum amount specified in its licence to implement its approved plan;
- (c) prepare, implement and update the community engagement plan required under section 300;
- (d) notify the Commissioner when there is change in the control of the company that holds the licence, such as a sale of a majority ownership interest or a majority of its shares, as required under section 63;
- (e) provide any attachment required or agreed under section 42;
- (f) pay the prescribed annual ground rent required under section 264;
- (g) submit the annual report required under section 145; and
- (h) do all other things required by this Act and as prescribed.

Obligations of retention licence holder

(2) Where the Commissioner determines that a holder of a retention licence has failed to substantially comply with—

(a) any obligation arising under subsection (1) (a), (b), (c), (d) or (e), the Commissioner, at his discretion, may suspend or cancel the licence; or

(b) any obligation arising under subsection (1) (f) or (g), the Commissioner, within fourteen (14) calendar days from the date of the determination, shall cancel the licence pursuant to section 79.

Retention
licence
reporting
obligation

145.—(1) A holder of a retention licence shall submit an annual report to the Registrar.

(2) The holder of a retention licence shall submit the report required by subsection (1) at such time and in such form and manner as are prescribed.

(3) The annual report required under this section shall include at least the following information pertaining to the prescribed reporting period—

(a) a detailed update on the situation which justified the grant of the retention licence including why the retention licence is still needed;

(b) efforts undertaken by the retention licence holder to ensure that it will apply for a mining licence before its retention licence expires; and

(c) such other information as may be prescribed.

(4) Subject to subsection (5), until a retention licence expires or is cancelled or surrendered, a report submitted under subsection (1) shall not be made available to any person outside the office of the Commissioner nor shall its content be revealed, except to the extent necessary to publish statistical information concerning the geology and mineral resources in Malawi or for the Commissioner to give advice to the Mineral Resources Committee or Minister on a confidential basis.

(5) A holder of a retention licence may consent for a report which it has submitted under subsection (1) to be disclosed prior to the expiry or cancellation or surrender of the retention licence subject to such conditions as the holder may specify in writing to the Commissioner.

(6) Nothing in this section shall preclude a holder of a retention licence from disclosing any report which it has submitted pursuant to subsection (1) to any party.

(7) Subject to subsection (4), a report submitted under subsection (1) shall be available for perusal and copying by the general public.

Transfer of
retention
licence

146. A holder of a retention licence may apply to transfer its licence pursuant to Part III, Division 4.

PART VIII—MEDIUM AND LARGE SCALE MINING LICENCES

147. The Minister may, on behalf of the Republic, enter into an agreement (not inconsistent with this Act or any prevailing law) with any person with respect to all or any of the following matters, namely—

Agreements with respect to the grant of Medium and Large scale mining licences

(a) the grant to that person, or to any person (including as any body corporate to be formed) identified in the agreement, of a Medium or Large Scale Mining Licence on the condition, if any, specified in the agreement;

(b) condition or the conditions to be included in the Medium or Large Scale Mining Licence as granted or renewed; or

(c) any matter incidental to or connected with the foregoing.

148. A large-scale mining licence shall be required for any mining operation that does or will exceed any of the following limits—

When large-scale mining licence is required

(a) in the case of extraction of minerals from primarily alluvial mineral deposits, if annual throughput is more than one million (1,000,000) cubic meters per year;

(b) in the case of underground mining operations, where annual combined run-of-mine ore and waste production is more than 500,000 tonnes per year (waste material not exiting mine mouth to be excluded);

(c) in the case of open-cast mining operations extracting minerals from primarily non-alluvial deposits, where annual combined run-of-mine ore, rock, waste and overburden production is more than five million (5,000,000) tonnes per year; or

(d) where after construction is complete, the licence holder employs or contracts more than one thousand (1,000) employees or workers within Malawi on a typical working day (including all shifts) that are in some way involved with the mining project;

(e) where capital investment in the mining project over its first ten (10) year will or does exceed two hundred fifty million (250,000,000) United States Dollars.

149.—(1) A medium-scale mining licence holder or large-scale mining licence holder shall—

Eligibility for medium-scale or large-scale mining licence
Cap. 46:03

(a) be a company duly incorporated under the Companies Act; and

(b) have the technical competence and financial ability to fulfil the licence obligations.

(2) A large-scale mining licence holder shall be legally constituted in such a way that the Government may elect to acquire

a free ownership equity interest in the company as provided for under section 269.

(3) A medium-scale mining licence or large-scale mining licence shall not be granted or transferred to a company—

(a) if any director of the company or any major shareholder of the company holding a controlling interest in such company has been convicted of an offence under this Act, or was an officer or employee of the Commission, at the time the company first applied for the grant or transfer of the licence; or

(b) if the company is a former mining licence holder whose former licence has been cancelled and it has applied for a mining licence area that in whole or in part overlaps its former mining licence area, if such application is made within two (2) years from the date of such licence cancellation.

(4) A person shall only be eligible to apply for a medium-scale mining licence or large-scale mining licence over an area that is the subject of an exploration licence if he is a holder of the exploration licence or any person authorized by the holder of the exploration licence to apply.

(5) Any medium-scale mining licence or large-scale mining licence initially granted to a person that does not meet the eligibility requirements under this section shall be null and void.

Application for
medium-scale
or large-scale
mining licence

150.—(1) An application for the grant of a medium-scale mining licence or large-scale mining licence shall be submitted to the Registrar in the prescribed form and manner and shall have attached to it—

Cap. 46:03

(a) proof of the company's incorporation or registration under the Companies Act;

(b) the names and nationalities of the directors or equivalent officers and, if the company has share capital, the name of any person who is the beneficial owner of more than five percent (5%) of the issued share capital;

(c) evidence that the applicant has the technical competence to fulfil the licence obligations;

(d) evidence that the applicant has the financial ability or a credible plan to obtain adequate financing to fulfil the licence obligations;

(e) an attestation that the applicant is not barred under subsection (3) from being granted the mining licence;

(f) documentation proving that the project has received approval by the Environment Management Act and a copy of the

Act. No. 19 of
2017

environmental and social impact assessment report that supported such approval;

(g) a schedule, in the prescribed form, describing the corners of the proposed mining licence area as prescribed under section 295;

(h) a sketch map, in a prescribed form, showing the boundary of the proposed mining licence area;

(i) a boundary survey, as required under section 159, or a waiver as provided by the Commissioner under section 159;

(j) an attestation that the area applied for has been marked out as required under section 160;

(k) a justification for the period for which the licence is sought;

(l) where the area applied for is subject to an exploration licence that is held by the applicant, a copy of the applicant's exploration licence;

(m) a report, which may be part of a prefeasibility or feasibility study, prepared by a geologist giving details of the mineral deposits in the area of land over which the licence is sought—

(i) including details of all known mineral resources, minerals proved, estimated or inferred, and ore reserves in accordance with section 298; or

(ii) where the nature of the operation, because of the mineral to be mined, the scale of operation or other circumstance, does not warrant the estimation of mineral resources and reserves (such as a quarry for aggregate), a statement justifying why the applicant should not be required to submit mineral resource and reserve estimates;

(n) a detailed justification for the requested licence area taking into account the restriction set out in section 151 (2) and the requirement that such area shall be justified, in the case of a medium-scale mining licence, by the required pre-feasibility study or in the case of a large-scale mining licence, by the required feasibility study, and shall not include any area where mineral potential has not been proved or inferred other than land essential for mining plant and operations;

(o) a report providing the name of each lawful occupier and landowner of lands located in, or partly in, the licence area applied for and, in the case of more than one such holding, the boundaries of each holding within the area of the proposed mining licence;

(p) a description of plans and initiatives for planned, sustained economic and social development in the region and local communities affected by the mining operation, and in the case of a large-scale mining licence, any community development agreements that have already been approved;

(q) in the case of an application for a medium-scale mining licence—

- (i) a community engagement plan pursuant to section 300;
- (ii) a prefeasibility study pursuant to section 161;
- (iii) a mining operations plan pursuant to section 162;
- (iv) a mine site plan pursuant to section 166;
- (v) a mine waste management plan pursuant to section 167;
- (vi) a rehabilitation and closure plan pursuant to section 272;
- (vii) a resettlement management plan pursuant to section 168;
- (viii) an employment and training plan pursuant to section 163; and
- (ix) a goods and services procurement plan pursuant to section 164;

(r) in the case of an application for a large-scale mining licence—

- (i) an attestation that the company has been legally constituted pursuant to subsection (2);
- (ii) a community engagement plan pursuant to section 300;
- (iii) a feasibility study (not a pre-feasibility study) pursuant to section 161;
- (iv) a mining operations plan pursuant to section 162;
- (v) an employment and training plan pursuant to section 163;
- (vi) a goods and services procurement plan pursuant to section 164;
- (vii) a mine site plan pursuant to section 166;
- (viii) a mine waste management plan pursuant to section 167;
- (ix) a rehabilitation and closure plan pursuant to section 272;

- (x) a resettlement management plan meeting the requirements of section 168; and
- (xi) a business development assistance plan pursuant to section 165;
- (s) any other materials required to be included in the application by this Act or as prescribed;
- (t) a description of any circumstances that may require the licence to be granted subject to particular conditions;
- (u) any other material addressing matters that the applicant wants to have considered; and
- (v) a prescribed application fee or proof that the fee has been paid.

(3) Except as otherwise provided under this Part, an application for a medium-scale mining licence or large-scale mining licence shall be processed in accordance with Part III, Division 2.

151.—(1) A medium-scale mining licence or large-scale mining licence shall not be granted over land which—

Restrictions
on grant of
medium- or
large-scale
mining
licence

(a) constitutes any part of an existing mining licence, unless the applicant is the holder of that existing mining licence, and the application includes an application to surrender that portion of the existing mining licence that overlaps the area applied for;

(b) constitutes any part of a retention licence or exploration licence, unless the applicant is the holder of the retention or exploration licence or the holder of such licence has given its written consent to allow the application to be granted;

(c) is the subject of a registered application for the grant of a mineral tenement that predates the medium-scale mining licence or large-scale mining licence application, other than an application for a reconnaissance licence or non-exclusive prospecting licence; or

(d) is otherwise closed to mining under this Act or any other applicable law.

(2) A medium-scale mining licence or large-scale mining licence shall not be granted to an applicant unless—

(a) the applicant meets all the eligibility requirements under section 149;

(b) the applicant has demonstrated adequate and available access to financial resources, technical competence and experience to carry out its proposed operations; and

(c) all required plans have been submitted and such proposed plans are to the satisfaction of the Mineral Resources Committee.

Mineral Resources Committee to assess proposed plans

152.—(1) In assessing an application for a medium-scale mining licence or large-scale mining licence, the Mineral Resources Committee shall consider whether—

(a) the proposed plans submitted by the applicant—

(i) is in the interest of Malawi, taking into account any objections received under section 52;

(ii) provide for the development of the mineral deposits situated on the land in accordance with good mining industry practice for the particular mineral or minerals to be mined, produced, beneficiated and sold;

(iii) will ensure the efficient production of the mineral resources concerned;

(iv) provide clear evidence that the area of land over which the licence is sought is not in excess of the area reasonably required to carry out the proposed plans;

(v) objectively evaluate and take into account due consideration of internationally recognized standards of care and practice when addressing environmental, social and safety factors;

(vi) provide adequately for the protection of the environment, in which case evidence that the applicant has complied with the requirements of the relevant environmental laws, policies and regulations will be conclusive of adequate protection under this section;

(vii) meet the content requirement for such plans as set forth in this Act and as are prescribed; and

(b) the consents and permissions required by applicable law have been obtained.

(2) In assessing required plans supporting an application for a medium-scale mining licence or large-scale mining licence, the Mineral Resources Committee may request an applicant to provide further information and proposals.

(3) When the Mineral Resources Committee considers that an applicant has reasonably satisfied the requirements of subsections (1) and (2), the Committee shall approve the applicant's proposed plans as approved plans.

(4) When the Mineral Resources Committee is dissatisfied with an applicant's proposed plans or a plan, before refusing the application, the Committee shall notify the applicant and such notice shall—

- (a) contain details of the Committee's dissatisfaction; and
- (b) specify a date on or before which the applicant shall, if it wishes to pursue the application—
 - (i) make such alterations or comply with such conditions as are specified; or
 - (ii) submit, for the consideration of the Committee, any matters including new proposed plans generally or in respect of a particular matter; and
 - (iii) contain a statement to the effect that the application will be refused if the applicant fails to satisfactorily respond to the Mineral Resources Committee's concerns.

(5) Where, pursuant to Part III, Division 2, the Mineral Resources Committee approves an application for a medium-scale mining licence or large-scale mining licence, the plans approved by the Committee shall be made a condition of the licence.

153.—(1) The term of a medium-scale mining licence or large-scale mining licence shall be for a period of up to twenty-five (25) years or for the life of the mine, whichever is shorter.

Term of a medium or large-scale mining licence

(2) The term of a medium-scale mining licence or large-scale mining licence commences on the date on which the licence is granted.

(3) A holder of a medium-scale mining licence or large-scale mining licence may apply, pursuant to section 154, for an extension of up to fifteen (15) years to the term of its licence.

(4) There shall not be a limit on the number of term extensions that may be granted to the holder of a medium-scale mining licence or large-scale mining licence.

154.—(1) A holder of a medium-scale mining licence or large-scale mining licence may, not later than one (1) year prior to the expiry of its licence, apply to extend the term of its licence for a period of up to fifteen (15) years past the date the licence was granted or last extended.

Extension of medium-scale or large-scale mining licence term

(2) An application to extend the term of a medium-scale mining licence or large-scale mining licence shall—

- (a) be submitted in the prescribed form and manner;
- (b) state the period for which the term extension is sought;

Act No. 19 of
2017

(c) include documentation proving that the project term extension has received approval under the Environment Management Act;

(d) if the extension of the licence term is sought in respect of only a portion of the mining licence area, be accompanied by—

(i) a Schedule, in the prescribed form, describing the coordinates of the boundary of the reduced licence area as prescribed under section 295; and

(ii) a sketch map, in the prescribed form, showing the boundary of the reduced area;

(e) be accompanied by a report, prepared by a geologist, giving details of the mineral deposits in the area of land over which the licence term extension is sought—

(i) including details of all known mineral resources, minerals proved, estimated or inferred, and ore reserves in accordance with section 298; or

(ii) where the nature of the operation, because of the mineral to be mined, the scale of operation or other circumstance, does not warrant the estimation of mineral resources and reserves; (such as a quarry for aggregate), a statement justifying why the applicant should not be required to submit mineral resource and reserve estimates;

(f) be accompanied by a report including—

(i) a summary of mining activities carried out to the present time;

(ii) why the time extension is needed and the justification for the length of the term extension requested;

(iii) the capital investment to be made in, and estimated production costs and revenue forecasts in respect of the period of extension;

(iv) any expected changes in methods of mining and treatment;

(v) any expected increase or reduction in mining operations and the estimated life of the mine; and

(vi) a summary of rehabilitation and reclamation work done on the applicant's mined out areas;

(g) be accompanied by all the latest plans that the licence holder is required to implement and update which may include—

(i) a community engagement plan meeting the requirements of section 300;

- (ii) a mining operations plan pursuant to section 162;
 - (iii) an employment and training plan pursuant to section 163;
 - (iv) a goods and services procurement plan pursuant to section 164;
 - (v) a mine site plan pursuant to section 166;
 - (vi) a mine waste management plan pursuant to section 167;
 - (vii) a rehabilitation and closure plan pursuant to of section 272;
 - (viii) a resettlement management plan pursuant to section 168; and
 - (ix) in the case of a large-scale mining licence, a business development assistance plan pursuant to section 165;
- (h) include such other materials as may be prescribed; and
- (i) be accompanied by the prescribed application fee or proof that the fee has been paid.

(3) Subject to subsection (2), the Commissioner shall approve an application to extend the term of a medium-scale mining licence or large-scale mining licence, if the licence holder has—

- (a) complied with the application requirements under this section;
- (b) substantially complied with the terms and conditions of its licence and its obligations under this Act and any other written law;
- (c) periodically updated those of its plans that the Act requires to be periodically updated;
- (d) submitted all reports required under section 173;
- (e) paid all compensation required under section 225;
- (f) paid all annual ground rent as required under section 264;
- (g) submitted a reasonable justification for why the licence term should be extended; and
- (h) submitted reasonable plans for the period of extension.

(4) The Commissioner shall not extend the term of a medium-scale mining licence or large-scale mining licence pursuant to an application made under subsection (1) if—

- (a) the term extension is not justified by the quantity and quality of the mine's reserves or the land area is not required to support mining operations on other lands;

(b) the development of the mining licence area has not proceeded with reasonable diligence;

(c) the licence holder has not implemented all the plans that it is required to implement under this Act and updated those plans that it is required to update;

(d) the applicant is in default of any obligation that would require the licence to be cancelled; or

(e) the Commissioner is of the opinion that the mining project is of such importance to the economy of Malawi that the decision of whether to approve the term expansion should be referred to the Mineral Resources Committee for its decision, in which case the Commissioner shall request the Committee to provide its decision on the application.

(5) Where the Commissioner has determined that all required conditions set out in subsection (3) are met and none of the reasons prohibiting an extension under subsection (4) apply, the Commissioner shall approve the application and shall inform the Registrar to endorse the extension on the licence and may reasonably vary the conditions of the licence in light of the licence holder's updated plans and other changed circumstances.

(6) Where the Commissioner has determined that one or more of the requirements set out in subsection (3) have not been met, the Commissioner shall refer the application to the Mineral Resources Committee for determination.

(7) Where the Mineral Resources Committee has determined that an application referred to it pursuant to subsection (6) is approved, the Registrar shall endorse the licence with the extended term and any changed conditions specified by the Mineral Resources Committee.

(8) Where the Mineral Resources Committee has determined that a medium-scale or large-scale mining licence extension application should not be approved, the Registrar, within fourteen (14) calendar days of the determination, shall so inform the applicant and state the reasons for the refusal.

(9) Where a holder of a medium-scale or large-scale mining licence has registered an application to extend the term of its licence and the Mineral Resources Committee has refused to approve the application, the holder may appeal the decision to the High Court, within thirty (30) calendar days of being notified of the refusal.

(10) Where the High Court has determined on appeal that all the requirements of subsection (3) were met by the applicant, the Registrar shall endorse the licence with the extended term and any changed conditions specified by the Court.

(11) Except as otherwise provided in this section, an application for the extension of a medium-scale or large-scale mining licence shall be processed in accordance with Part III, Division 2.

155.—(1) A medium-scale mining licence or large-scale mining licence shall—

Form and contents of a medium-scale or large-scale mining licence

(a) be in a prescribed form;

(b) state the date of the grant of the licence and the period for which it is granted;

(c) state the condition that the holder shall implement the appended approved plans;

(d) state the other conditions under which the licence is granted as determined by the Mineral Resources Committee and this Act;

(e) be signed by the Minister;

(f) have appended to it—

(i) the approved plans including—

(A) Environmental and Social Impact Assessment Certificate;

(B) mine site plan;

(C) mining operations plan;

(D) community engagement plan;

(E) employment and training plan;

(F) goods and services procurement plan;

(G) resettlement management plan;

(H) mine waste management; and

(I) rehabilitation and mine closure plan; and

(ii) a description, as prescribed, of the area of land over which the licence is granted; and

(g) contain such other information as is prescribed.

(2) The licence under this section may include references to requirements under written laws regarding the processing, disposal or sale of minerals.

156. When a medium-scale mining licence or large-scale mining licence is granted and the mining licence area overlaps with any land the subject of an exploration licence, the area of such overlap shall be deemed to be excised from the exploration licence area on the date that the mining licence is registered.

Effect of grant of medium- or large-scale mining licence on exploration licence area

Size and shape of medium- or large-scale mining licence area

157.—(1) The area of land over which a mining licence is granted—

(a) shall be necessary for the purpose of mining the known minerals and shall be justifiably established as necessary in the applicant's prefeasibility study, in the case of a medium-scale mining licence, or feasibility study, in the case of a large-scale mining licence;

(b) shall be at least one (1) hectare; and

(c) shall have the shape as prescribed in section 295.

(2) For the avoidance of doubt, land thought to be prospective for minerals but where mineral reserves have not been identified, measured and confirmed, except in the case of quarry operations; and such land has not been shown reasonably necessary for the purpose of mining operations in the applicant's pre-feasibility or feasibility study shall not be included in a mining licence area.

Application for expansion of medium-scale or large-scale mining licence area

158.—(1) An application for the grant of expansion of a medium-scale or large-scale mining licence area shall be submitted to the Registrar in a prescribed form and manner and shall have attached to it—

(a) a detailed justification for the requested new licence area taking into account that the requested area shall not include any area where mineral potential has not been proved other than land essential for mining plant and operations;

(b) a schedule, in a prescribed form, describing the coordinates of the new boundary of the mining licence area as prescribed in section 295;

(c) a sketch map, in a prescribed form, showing the boundary of the new area and other natural features and the location of principal villages, if any, as will enable the area to be correctly located;

(d) a survey of the new boundary as required under section 159, or a waiver as provided by the Commissioner under section 159;

(e) a statutory declaration that the proposed new boundary has been marked out in accordance with section 160;

(f) revised plans where any previously approved plan required by this Act will be affected by the area expansion;

(g) a copy of the required plan;

(h) documentation proving that the project has received approval under the Environment Management Act and a copy of

the Environmental and Social Impact Assessment report that supported such approval;

(i) a report providing the name of each lawful occupier and landowner of lands located in, or partly in, the new area applied for and, in the case of more than one such holding, the boundaries of each holding within the new proposed mining licence area;

(j) any other materials required to be included in the application by this Act or as prescribed;

(k) a description of any circumstances that may require the licence expansion to be granted subject to particular conditions;

(l) any other material addressing matters that the applicant wants to have considered; and

(m) the prescribed application fee or proof that such fee has been paid.

(2) An application for a medium-scale mining licence or large-scale mining licence area expansion shall be processed in accordance with Part III, Division 2.

159.—(1) Subject to subsection (2), prior to the grant of a medium-scale mining licence or large-scale mining licence or the expansion of the area of a medium-scale or large-scale mining licence the boundary of the land the subject of the licence application shall be surveyed as provided for in subsection (3). Boundary
survey
required

(2) Upon a written application, the Commissioner may waive the requirements under this section relating to a boundary survey and instead may allow surface demarcation points to be established using global positioning system (GPS) coordinates based on the transformation of Cadastral Coordinates to GPS coordinates, and the Commissioner shall provide, for free, the parameters for the transformation between Cadastral Coordinates and GPS coordinates.

(3) A boundary survey under this section shall—

(a) be made by a registered land surveyor or under the direction of a registered land surveyor;

(b) be at the cost of the applicant;

(c) conform to any survey guidelines issued from time-to-time by the Commissioner, but if no such guidelines have been issued, to the class of survey permitted under the general survey directions of the Government department responsible for land survey matters; and

(d) conform to the schedule in the licence application form describing the corners of the boundary of the land as prescribed in section 295.

(4) A copy of the boundary survey made under this section shall be submitted to the Registrar at—

(a) the time of submission of the licence application or licence area expansion application; or

(b) subject to subsection (6), any time thereafter but before the grant of the licence.

(5) When a boundary survey is submitted under subsection (5), the Registrar shall immediately register the survey in the register and—

(a) if the survey confirms that all the land the subject of the application is available for the purposes for which the application was made, cause a summary copy of the survey schedule to be published as a public notice in a newspaper with wide circulation in Malawi and post a copy on the website of the Commissioner; or

(b) if only part of the land is available—

(i) prepare a schedule of the land that is available for the licence in the prescribed form in substitution of the schedule submitted with the survey;

(ii) cause a copy of the revised schedule to be published in a newspaper with wide circulation in Malawi; and

(iii) send a copy of the revised schedule to the applicant.

(6) When, at the time of submission of an application, a boundary survey is not available, the application may proceed, and if the Mineral Resources Committee or the Commissioner (whichever is the granting authority for that application) is prepared to grant the tenement subject to the survey confirming the availability of a substantial portion of the land applied for, the respective granting authority shall give to the applicant notice to submit a survey within thirty (30) calendar days which shall be dealt with by the Registrar under subsection (5).

(7) Where, in a case to which subsection (6) applies, the applicant submits a boundary survey and the land is available for the purposes for which the application was made, the granting authority may grant the application.

(8) Where an applicant fails to submit a boundary survey under this section and no waiver has been granted by the Commissioner or the survey reveals that none of the land the subject of the application is available for the purposes for which the application was made, the application shall be refused.

(9) Where there is a dispute as to the location of a boundary of a tenement, the Registrar shall arrange for the disputed boundary to be surveyed and the costs shall be met by the party or parties claiming a location of the boundary different from that surveyed.

(10) Where the Registrar considers that any party may default on the payment for a survey under subsection (9), the Registrar, prior to arranging the survey, may require each party to submit a bond sufficient to cover the cost of the boundary survey.

(11) The Commissioner may, when a land surveyor is denied access to land which is the subject of the boundary survey, grant to a land surveyor the right to enter upon land in accordance with section 296.

(12) A person carrying out a boundary survey under this section shall not interfere with the activities undertaken on the land the subject of the survey.

(13) Any person interfering with a boundary survey being made pursuant to this section commits an offence and shall, upon conviction, be liable to a fine of five million Kwacha (K5,000,000) and one hundred thousand Kwacha (K100,000) for each day of default and to imprisonment for twelve (12) months.

160.—(1) The boundaries of a mining licence area shall be consistent with the requirements in section 295.

Demarcation
of medium-
scale or large-
scale mining
licence area

(2) Subject to subsection (7), an applicant for the grant of a medium-scale mining licence or large-scale mining licence or for an expansion of the area of a medium-scale or large-scale mining licence, before submitting its application, shall—

(a) mark out each corner of the land over which the tenement is sought by erecting a distinctively coloured metal or concrete post standing at least one metre above the surface or such survey marks as are permitted under the survey directions of the Surveyor General; and

(b) either—

(i) clear lines along the boundaries of the land or place distinctively coloured metal or concrete markers at sufficiently close spacing to indicate clearly the boundaries of the land; or

(ii) to the satisfaction of the Commissioner, comply substantially with the requirements of paragraph (a) and subparagraph (b) (i) to the extent that the land has been sufficiently identified to be located in the field.

(3) Until such time as the application for the grant of the licence or area expansion has been determined, an applicant shall maintain the posts and markers or cleared lines established in accordance with subsection(1).

(4) A holder of a medium-scale mining licence or large-scale mining licence tenement shall maintain posts and markers or cleared lines established in accordance with subsection (1) and as prescribed during the term of its licence.

(5) The Commissioner, pursuant to section 296, may grant to a person not otherwise authorized under this Act, the right to enter land for the purposes of marking out and maintaining posts or markers or cleared lines as required under this section.

(6) A person carrying out any work as required or authorized by this section shall not interfere with the activities undertaken on the land over which the licence is sought.

(7) The requirements under subsection (1) do not apply to any part of the boundary of the land the subject of the application or licence that is under water.

(8) Any person damaging, destroying or removing any marker placed pursuant to this section without the prior written permission of the applicant for or the holder of the respective mining licence commits an offence and shall, upon conviction, be liable to a fine of five hundred thousand Kwacha (K500,000), to imprisonment for one (1) month, and cost of repairing the destroyed, damaged or removed marker.

Content of
prefeasibility
or feasibility
study

161.—(1) A pre-feasibility study shall contain such information as is prescribed.

(2) A feasibility study shall contain such information as is prescribed and shall be prepared by an expert in preparing such studies.

Mining
operations
plan

162.—(1) An application for a medium-scale or large-scale mining licence shall be accompanied by a mining operations plan.

(2) A mining operations plan shall be based on the applicant's prefeasibility study, in the case of an application for a medium-scale mining licence, or feasibility study, in the case of an application for a large-scale mining licence, and shall include, covering the first ten (10) years of the licence period—

(a) a detailed description of how the site will be developed;

(b) a detailed description how the mine will be constructed;

(c) a detailed description of the infrastructure;

(d) a detailed description of the mining method to be used;

(e) the production schedule; and

(f) such other information that demonstrates that the mining operations constitute good mining practice.

(3) A holder of a medium-scale mining licence or large-scale mining licence shall periodically, as prescribed, update its mining operations plan.

163.—(1) An application for a medium-scale or large-scale mining licence shall be accompanied by the applicant's proposed employment and training plan, which shall contain such information as is prescribed with respect to the recruitment of foreigners and the employment and training of Malawian citizens.

Employment
and training
plan

(2) A holder of a medium-scale mining licence, and the holder of a large-scale mining licence shall comply with its approved employment and training plan.

(3) A holder of a mining licence shall give employment preference to Malawian citizens—

(a) to the maximum extent practicable consistent with efficient operations, and

(b) in so far as such Malawian citizens are qualified to perform corresponding work and without hazard to the safety of mining operations.

(4) A holder of a mining licence shall implement a non-discriminatory employment policy that gives training preference to both men and women that are lawful occupiers and owners of the mining licence area and to other persons customarily resident in neighbouring communities who have the aptitude to acquire the necessary skills and expertise.

(5) A holder of a large-scale mining licence shall take into account employment and training provisions, if any, set out in its community development agreements, if any, when recruiting and training employees.

(6) An employment and training plan shall—

(a) comply with the Gender Equality Act and provide measures to create a working environment that is free of sexual harassment and any form of discrimination on the basis of sex;

Cap. 25:06

(b) seek to promote the participation of women in employment and training opportunities, targeting a percentage of the jobs for women including management, technical professionals, clerical, skilled labourers and unskilled labourers; and

(c) seek to promote the inclusion of people with disability in accordance with the Disability Act.

Cap. 33:06

(7) A holder of a mining licence shall not—

(a) import from outside Malawi unskilled labour for the carrying out of any of its mining operations undertaken under the licence;

(b) employ or in any way use child labour or forced labour; or

(c) promote trafficking in persons by recruiting trafficked persons.

(8) A holder of a mining licence shall not be hindered from employing employees of its own selection for technical and specialized work that, to the satisfaction of the Commissioner, requires specialised training or long experience.

(9) Subject to other written law, the holder of a mining licence may employ a reasonable number of non-Malawian workers who have specialized skills, knowledge or experience.

(10) For the purpose of subsection (9), a “reasonable number of non-Malawian workers” means with regard to—

(a) initial mine development, no more than fifty percent (50%) of the mining licence holder’s workforce;

(b) after the mining has commenced on a commercial scale, no more than seventy-five percent (75%) of the mining licence holder’s related workforce; and

(c) after mining minerals on a commercial scale for ten (10) years, no more than ten percent of the mining licence holder’s related workforce.

(11) The holder of a mining licence required to have an approved employment and training plan shall—

(a) annually submit an employment and training plan report in such form and manner and containing such information as may be prescribed; and

(b) periodically, as prescribed, update its employment and training plan.

Goods and
services
procurement
plan

164.—(1) An application for a medium-scale mining licence or large-scale mining licence shall be accompanied by the applicant’s proposed goods and services procurement plan, which shall contain such information as is prescribed.

(2) A holder of a medium-scale mining licence, and the holder of a large-scale mining licence shall comply with its approved goods and services procurement plan.

(3) A holder of a mining licence required to have an approved goods and services procurement plan shall give preference to procuring goods and services from supplier and contractor entities owned by Malawian citizens, including equal opportunities to entities owned by Malawian women, provided such supplier and

contractor entities offer terms as to prices, quantities, qualities and delivery schedules that are at least comparable to terms offered by non-Malawian contractors and suppliers to the maximum extent practicable consistent with efficient operations.

(4) A holder of a mining licence required to have an approved goods and services procurement plan shall demonstrate in its goods and services procurement plan how it intends to assist Malawian suppliers and contractors, including those owned or operated by women, to build the capacity to supply a greater part of its project's goods and services needs over time.

(5) A holder of a large-scale mining licence shall take into account goods and services provisions, if any, set out in its community development agreements, if any, when procuring goods and services.

(6) A holder of a mining licence shall not be hindered from procuring goods and services from providers outside Malawi that, to the satisfaction of the Commissioner, are available from only specialized suppliers and contractors.

(7) A holder of a mining licence required to have an approved goods and services procurement plan shall—

(a) annually submit a goods and services procurement plan report in such form and manner as prescribed; and

(b) periodically, as prescribed, update its goods and services procurement plan.

165.—(1) An application for a large-scale mining licence shall be accompanied by the applicant's proposed business development assistance plan, which shall contain such information as prescribed.

Business
development
assistance
plan

(2) A business development assistance plan shall describe how a holder of a large scale mining licence intends to assist business entities owned or operated by—

(a) lawful occupiers or owners of land in the licence area;

(b) persons in neighbouring communities;

(c) women resident in the vicinity of the mining operations;
and

(d) other Malawian citizens,

to build the capacity to own and operate sustainable businesses.

(3) A holder of a large-scale mining licence shall comply with its approved business development assistance plan.

(4) For the purpose of subsection (2), a sustainable business need not be, but can be, associated with mining operations.

(5) A holder of a large-scale mining licence shall, in its operations, take into account business development provisions, if any, set out in its community development agreements, if any.

(6) A holder of a large-scale mining licence shall—

(a) annually submit a business development assistance plan report in such form and manner as are prescribed; and

(b) periodically, as prescribed, update its business development assistance plan.

Mine site
plan

166.—(1) An application for a medium-scale mining licence or large-scale mining licence shall be accompanied by the applicant's proposed mine site plan, which shall contain such information as is prescribed.

(2) A holder of a medium-scale mining licence or large-scale mining licence shall comply with its approved mine site plan.

(3) A holder of a medium-scale mining licence or large-scale mining licence shall, at all times, maintain an up-to-date mine site plan.

(4) Whenever a mine site plan is updated, a copy of the up plan shall be sent to the Registrar.

(5) A copy of a mine site plan shall, at all times, be available at the mine site.

(6) A holder of a medium-scale mining licence or large-scale mining licence who fails to comply with subsection (3), (4) or (5), commits an offence.

Mine waste
management
plan

167.—(1) An application for a medium-scale mining licence or large-scale mining licence shall be accompanied by the applicant's proposed mine waste management plan, which shall contain such information as is prescribed.

(2) A holder of a medium-scale mining licence or large-scale mining licence shall comply with its approved mine waste management plan.

(3) A holder of a medium-scale mining licence or large-scale mining licence shall periodically, as is prescribed, update its mine waste management plan.

(4) An applicant for a medium-scale mining licence or large-scale mining licence and the holder of mining licence that submits a revised mine waste management plan shall consult with lawful

occupiers and owners of land, if any, regarding the disposition of mine wastes on their lands with the objective to facilitate the sustainable and safe future use of their lands.

(5) Where a holder of a medium-scale mining licence or large-scale mining licence fails to comply with subsection (2) or (3) the Commissioner shall initiate the process provided under section 79 to suspend or cancel the licence.

168.—(1) Where the operations of a holder of a mineral tenement, other than a medium-scale mining licence or large-scale mining licence, require the resettlement of persons resident on the tenement area—

Resettlement
management
plan

(a) the holder shall notify the Commissioner before affecting any resettlement of such persons; and

(b) the Commissioner, upon the advice of the Mineral Resources Committee, may require the holder to prepare and to implement a resettlement management plan in accordance with this section or to take such other actions or refrain from such actions as the Commissioner may direct.

(2) An applicant for a medium-scale mining licence or large-scale mining licence shall submit a resettlement management plan as a proposed plan attached to its mining licence application.

(3) A holder of a mining licence shall manage any displacement of persons caused by its operations through—

(a) resettlement processes, if acquiring or gaining access to land causes any physical displacement; or

(b) compensation processes, as provided for under section 225, if acquiring or gaining access to land causes economic displacement but no physical displacement.

(4) A proposed resettlement management plan shall contain such information as is prescribed in the Lands Acquisition and Compensation Act and any other written law.

Cap. 58:04

(5) The holder of a mining licence required to have a resettlement management plan shall implement its approved resettlement management plan and may apply in the prescribed manner for approval to revise its plan.

169.—(1) A holder of a large-scale mining licence shall assist in the development of qualified communities affected by its operations to promote sustainable development, enhance the general welfare and the quality of life of the inhabitants and shall recognize and respect the rights, customs and traditions of local communities that are consistent with the Constitution.

Community
development
agreements

(2) Subject to subsection (5), a holder of a large-scale mining licence shall implement a community development agreement with each community that meets the definition of a “qualified community” as defined in section 2 that is willing and able to enter into a community development agreement.

(3) Subject to subsection (5), a commercial production shall not commence on a large-scale mining licence area until the mining licence holder has all community developments agreement required by this section—

(a) ratified and endorsed by the qualified community and the large-scale licence holder; and

(b) subsequently approved by the Mineral Resources Committee.

(4) The Mineral Resources Committee shall approve any community development agreement that has been ratified and endorsed by a qualified community and the holder of a large-scale mining licence where all prescribed community development agreement mandatory content requirements are satisfied.

(5) Where a community that meets the requirements to be a qualified community is unwilling or unable to ratify a community development agreement pursuant to the prescribed procedures and the prescribed requirements have been otherwise met, the respective large-scale mining licence owner shall be relieved of its obligation to enter into a community development agreement with that qualified community until such time as the qualified community ratifies the agreement.

(6) A community development agreement shall come into force twelve (12) calendar months after commencement of commercial production.

(7) A holder of large-scale mining licence and a qualified community may submit a revised and ratified community development agreement for approval by the Mineral Resources Committee in such form and manner and containing such content as are prescribed.

(8) Where a qualified community that is entitled to a community development agreement believes that it lacks the capacity to effectively negotiate a community development agreement, the qualified community may request the holder of a large-scale mining licence to collaborate with community or non-governmental organisations or local authority find appropriate expertise in order to build the capacity for the community to effectively negotiate the agreement, including provision of such funds to the qualified

community for capacity-building as are reasonable in the circumstances.

(9) A holder of a large-scale mining licence shall be required to comply with its approved community development agreements.

(10) A copy of any community development agreement approved under this section, including an updated community development agreement, shall be—

(a) available to the public at the office of the Registrar and a local authority; and

(b) posted by the Registrar on the website of the Commissioner until such time as the agreement is no longer in effect.

(11) A holder of a large-scale mining licence shall—

(a) expend on community development no less than zero point four-five percent (0.45%) of its annual gross sales revenues, in such manner, at such time and on such activities as are prescribed;

(b) submit annually, at such time and in such form and manner as are prescribed, a community development expenditure report;

(c) submit semi-annually, at such time and in such form and manner as are prescribed, a community development agreement report for each community development agreement associated with its mining licence; and

(d) periodically, as is prescribed, update its community development agreement(s).

(12) A holder of a tenement who fails to substantially comply with subsection (11) (b) or (11) (c) commits an offence and shall, upon conviction, be liable to a fine of ten million Kwacha (K10,000,000) and a daily fine of five hundred thousand Kwacha (K500,000) for every day of default until the day on which the report is accepted, as prescribed.

(13) Where a large-scale mining licence is transferred to another party, the transferee shall assume all rights and obligations of the transferor under any community development agreements entered into by the transferor relating to that large-scale mining licence.

(14) The Mineral Resources Committee may suspend, without limit a large-scale mining licence if the licence holder fails to substantially comply with prescribed requirements—

(a) to identify all qualified communities;

(b) to have and implement approved and ratified community development agreements with all qualified communities; or

(c) to expend the minimum annual amount on community development.

(15) A holder of a large-scale mining licence may appeal to the Minister the decision by the Mineral Resources Committee to suspend its licence pursuant to subsection (14), and the decision by the Minister regarding the suspension may be subject to review by the High Court.

(16) A holder of an authorization to conduct large-scale mining operations that is in force but that was granted prior to the adoption of this Act is required to comply with this section and shall be in compliance with this section no later than one (1) year from the effective date of this Act.

(17) For avoidance of doubt—

(a) a holder of a large-scale mining licence shall annually expend, pursuant to its approved community development agreements, the amount required by subsection (11) (a) but may voluntarily spend on community development in excess of this amount; and

(b) a community development agreement is a legally binding contract between a qualified community and the holder of large-scale mining licence, and any party to the agreement may bring an action before the High Court to enforce terms of the agreement.

Revision of
approved
plans

170.—(1) A holder of a medium-scale mining licence or large-scale mining licence may, at any time, apply for a revision of its approved plans.

(2) A holder of a medium-scale mining licence or large-scale mining licence that is required to periodically update any plan specified under this Act shall submit its proposed updated plan for approval in conformity with this section.

(3) An application under this section shall —

(a) be made in writing in the prescribed form;

(b) be submitted to the Registrar;

(c) specify the grounds on which a revision is sought, which may include, but are not limited to the following—

(i) an updated plan is required by this Act or by the regulations;

(ii) events beyond the reasonable control of the holder of the mining licence have prevented the holder from carrying out the approved plan;

(iii) experience has demonstrated that the plan is not succeeding;

(iv) the holder of the mining licence wishes to develop the mine or conduct mining operations or conduct operations ancillary to mining in a manner different from that originally proposed; or

(v) the holder of mining licence who wishes to reduce or suspend production because—

(A) at the time, economic or marketing conditions are such that the mining operation is not economically viable; or

(B) difficulties in obtaining requisite approvals prevent mining or restrict it in a manner that is, or subject it to conditions that are, for the time being impracticable;

(d) include the proposed varied plan; and

(e) be accompanied by the prescribed application fee or proof that the fee has been paid.

(4) The Commissioner—

(a) shall consider any application for revision submitted under this section in accordance with this Act and as prescribed;

(b) may require the applicant to provide further information or to amend any revised plan submitted with the revision; and

(c) shall approve or refuse the revision, or where in the Commissioner's opinion the application should be decided by the Mineral Resources Committee, refer the application to the Committee for its determination.

(5) An applicant, whose application for the revision of an approved plan has been twice refused by the Commissioner, may appeal against the decision to the Mineral Resources Committee whose decision on the application shall be subject to review by the High Court.

(6) Where the Commissioner has referred an application to the Mineral Resources Committee under subsection (4) (c) or an applicant has made an appeal under subsection (5), the Commissioner shall, without delay, approve or refuse the revision according to the determination of the Committee.

(7) Where the Commissioner—

(a) has approved a requested revision of an approved plan, the Registrar, without delay, shall register in the register the approved revision which shall—

(i) be in the prescribed form;

(ii) be substituted for the previously approved plan; and

(iii) include on the mining licence such further conditions as the Commissioner considers necessary; or

(b) refuses a requested revision of an approved plan, the Registrar shall notify the applicant that the revision has been refused including the reasons for the refusal.

Obligations
of a mining
licence
holder

171.—(1) A holder of a medium-scale mining licence or large-scale mining licence shall—

(a) conduct mining operations during the term of its licence as described in its approved plans, according to the conditions of its licence and in accordance with this Act;

(b) notify the Commissioner when there is change in the control of the company that holds the licence, such as a sale of a majority ownership interest or a majority of its shares, as required under section 63;

(c) provide any attachment required or agreed under section 42;

(d) demarcate, and keep demarcated, the area the subject of the licence as required under section 160;

(e) submit all reports required under section 173 and otherwise by this Act;

(f) give notice of commencing development and commercial production as required under section 174;

(g) pay the prescribed annual ground rent required under section 264;

(h) pay compensation for damages caused by its work as required under section 225;

(i) within six months of any export, submit to the Registrar, a sales account in respect of the minerals exported; and

(j) do all other things required under this Act and as prescribed.

(2) Subject to subsection (3), where the Commissioner determines that the holder of a medium-scale mining licence or large-scale mining licence has failed to substantially comply with any obligation arising under this Act, whether it be set out in this Act, the regulations or as a condition to the licence, and a specific fine or penalty is not provided for that breach, the Commissioner, at his discretion, may commence the process provided under section 79 to suspend or cancel the licence.

(3) Where the Commissioner determines that a holder of a medium-scale mining licence or large-scale mining licence has failed substantially to comply with—

(a) subsection (1) (a), (e), (f), (g), (h) or (i); or

(b) with any obligation arising under this Act, and the Act specifies that a breach of that obligation requires the licence to be cancelled,

the Commissioner shall commence the process provided under section 79 to cancel the licence.

(4) The Minister, on application made to him by the holder of medium-scale mining licence or large-scale mining licence, may, after approval by the Mineral Resources Committee, vary or suspend any obligation arising pursuant to subsection (1)(a) or (1)(i).

172.—(1) A holder of a medium-scale mining licence or large-scale mining licence shall keep at its registered address full and accurate records of all its mining activities.

Obligation
of mining
licence
holder to
keep accurate
records

(2) Without prejudice to the generality of subsection (1), a holder of a medium-scale mining licence or large-scale mining licence shall keep the following information—

(a) number of persons currently employed by it and their nationalities;

(b) copies of all maps, geological reports including interpretations, mineral analyses, aerial photographs, core logs, sample analysis and tests, including those analyses and tests related to the production of minerals sold or sent for processing such information;

(c) mineral production records;

(d) systematic financial records and such other books of account and financial records as the Commissioner may require, and if the holder is engaged in any other activity not connected with its mining operation it shall maintain separate books of account in respect of its mining operations on the licence area;

(e) reports, statements, returns or submissions required by the Companies Act;

Cap. 46:03

(f) accident and injury reports;

(g) information on work done in connection with the licence area; and

(h) such other information as may be prescribed.

173.—(1) A holder of a medium-scale mining licence or large-scale mining licence shall submit to the Registrar, the following reports—

Mining
licence
reporting
obligations

(a) in respect of each calendar year, a report giving full details of all work undertaken on or in connection with the licence, including particulars of production of minerals, development work and exploration;

(b) in respect of the period from the date when the licence was registered up to the date of surrender of the whole or any portion of the mining licence, or expiry or cancellation of the licence a final summary report which summarizes all work undertaken on and all production from—

(i) in the case of the surrender of a portion of the mining licence area—that portion; and

(ii) otherwise from the whole of the mining licence area, and which also meets the requirements of paragraph (a) in relation to the period since the last report was submitted under that paragraph; and

(c) in respect of each calendar month, a monthly statement of operations.

(2) A holder of a medium-scale mining licence or large-scale mining licence shall submit the reports required under subsection (1) at such time, in such form and manner and containing such information as are prescribed.

(3) Subject to subsection (4), until a mining licence expires or is cancelled or surrendered, a report submitted under subsection (1) shall not be made available to any person outside the office of the Commissioner nor can its content be revealed except—

(a) to the extent necessary to publish statistical information concerning mining in Malawi;

(b) for the Commissioner to give advice to the Mineral Resources Committee or Minister on a confidential basis; or

(c) to any Government department responsible for the collection of taxes or royalties.

(4) A holder of a mining licence may consent for a report which it has submitted under subsection (1) to be disclosed prior to the expiry, cancellation or surrender of its licence subject to such conditions as the holder may specify, in writing, to the Registrar.

(5) Nothing in this section shall preclude a holder of a mining licence from disclosing any report it has submitted pursuant to subsection (1) to any party.

(6) Subject to subsection (3), a report submitted under subsection (1) shall be available for perusal and copying by general public.

174.—(1) Subject to subsections (4) and (6), a holder of a large-scale mining licence shall—

(a) commence substantial on-site mine development within eighteen (18) months measured from the date that the mining licence is registered;

Obligation to
commence
mine
development
and maintain
production

(b) commence substantial mineral production no later than sixty (60) months measured from the date that the mining licence is registered;

(c) maintain continuous commercial production, as is prescribed, after mineral production has commenced; and

(d) notify, with reasons, the Commissioner—

(i) no later than thirty (30) calendar days after temporarily ceasing mineral production; and

(ii) at least one (1) year prior to permanently ceasing mineral production.

(2) Subject to subsections (4) and (6), the holder of a medium-scale mining licence shall—

(a) commence substantial on-site mine development within six (6) months measured from the date when the mining licence has been registered;

(b) commence substantial mineral production no later than twelve (12) months measured from the date that the mining licence has been registered;

(c) maintain continuous commercial production, as is prescribed, after mineral production has commenced;

(d) notify the Commissioner no later than thirty (30) calendar days after temporarily ceasing mineral production; and

(e) notify the Commissioner at least ninety (90) calendar days prior to permanently ceasing mineral production.

(3) A holder of a medium-scale mining licence or large-scale mining licence shall notify the Registrar at the prescribed times and in the prescribed forms and manner of—

(a) the date on which on-site mine development commenced;

(b) the date on which commercial mineral production commenced; and

(c) the design capacity of the mine and any processing plants located in the licence area.

(4) The time limits set out in subsections (1) (a) and (1) (b) or (2) (a) and (2) (b) shall be the maximum time limits allowable but if lesser time limits have been approved in the mining licence holder's approved plans, such lesser time limits apply.

(5) A mining licence proposal shall not provide for time limits greater than those set out in subsections (1) (a) and (1) (b), or (2) (a) and (2) (b), and any time limit in an approved plan that exceeds such time limits shall be null and void, and in such case, the respective

time limits in subsections (1) (a) and (1) (b), or (2) (a) and (2) (b), shall apply.

(6) Where a holder of a mining licence is unable to meet a deadline specified in this section because it has not been able to acquire a permission or authorization required under the applicable law, and the Commissioner is of the opinion that—

(a) the holder has made a good faith effort to acquire such permission or authorization; and

(b) by providing the holder additional time, there is a reasonable expectation that the permission or authorization is obtainable,

the Commissioner may extend the deadline and any such new deadline shall be recorded by the Registrar in the register.

(7) Upon application by the holder of a medium-scale mining licence or large-scale mining licence, the Mineral Resources Committee may grant an extension or exception, of a definite period, to any deadline specified or obligation imposed under subsections (1) or (2).

(8) The Commissioner shall promptly commence, as provided for in section 79, to cancel a mining licence when its holder has failed to comply with any provision of subsection (1) or has not obtained an extension pursuant to subsection (6).

Obligation to designate a Resident Mine Manager

175. A holder of a medium-scale mining licence or large-scale mining licence shall provide to the Registrar a notice containing the name, qualifications and contact details of the holder's Resident Mine Manager responsible for supervising mining operations—

(a) before commencing commercial mineral production; and

(b) within fourteen (14) calendar days of the date that the holder's previously identified Resident Mine Manager is replaced.

Obligation to submit independently prepared audit

176. A holder of a large-scale mining licence shall annually submit to the Commissioner, in duplicate, an audited financial report on its mining operation prepared by an independent auditor.

Rights of medium- or large-scale mining licence holder

177.—(1) Subject to this Act and any conditions contained in the licence, a medium-scale mining licence or large-scale mining licence, so long as it is valid and in effect, confers on the holder of the licence the exclusive right to conduct exploration, development and mining operations in the mining licence area in accordance with its approved plans.

(2) Without limiting the generality of subsection (1), the holder of a medium-scale mining licence or large-scale mining licence,

subject to environmental and any other written law, shall have the right in its licence area to—

(a) implement all measures in the mining licence area, including the use of necessary equipment and erecting necessary structures and installations, plants and buildings for mining, and transporting, dressing, treating, smelting or refining any mineral recovered in accordance with its approved plans;

(b) hire employees;

(c) retain consultants, independent contractors and other agents;

(d) request a land access order pursuant to section 230;

(e) develop and utilize water for mining purposes;

(f) sell and otherwise market any mineral product recovered from or beneficiated or otherwise treated in the licence area; and

(g) surrender part or all of the licence area subject to meeting the surrender requirements imposed under this Act.

178.—(1) A holder of a medium-scale mining licence or large-scale mining licence shall give notice to the Commissioner whenever its production in a calendar quarter is less than twenty percent (20%) of its planned production for that quarter and such notice shall explain the reason for the lower production levels.

Notice of
changes in
production

(2) Where production from a medium-scale or large-scale mining licence area ceases, is suspended or curtailed, the holder shall, within thirty (30) days of the cessation, suspension or curtailment, give written notice thereof to the Commissioner.

(3) A holder of a medium-scale mining licence or large-scale mining licence that fails to comply with subsections (1) or (2) commits an offence and liable on conviction, to a fine of ten million Kwacha (K10,000,000) plus one million Kwacha (K1,000,000) for every day of default.

179.—(1) Where a holder of a medium-scale mining licence or large-scale mining licence permanently ceases mining operations on its licence area before the expiry date of its licence, it shall apply to cancel the licence no later than twelve (12) months before ceasing operations on the land.

Premature
closure

(2) A mining licence holder who fails to comply with subsection (1) commits an offence.

180. Where the holders of two or more mineral tenements have entered into an agreement to jointly build, operate, share or coordinate infrastructure or mining facilities they shall before doing

Coordinated
mining
operations

so, inform the Commissioner, in writing, describing the nature of the arrangement.

Notice of poor or wasteful practices

181.—(1) Where the Commissioner considers the holder of a mining licence is using poor or wasteful mining or treatment practices, the Commissioner shall—

(a) notify the holder in writing, describing in detail the poor or wasteful practices; and

(b) require the holder to show cause, by submitting a written response to the Commissioner within such period as the Commissioner shall specify in the notice, that the practices are not poor or wasteful and describing why the mining operation should continue to be conducted using the practices.

(2) Where, within the period specified in a notice given to the holder of a mining licence pursuant to subsection (1), the holder fails to satisfy the Commissioner that poor or wasteful practices are not being used, that the alleged practices are not poor or wasteful, or the use of those practices is justified, the Commissioner may give notice to the holder directing the holder to either cease using any or all of those practices by such date as is so specified or, in the alternative, the Commissioner may proceed to cancel the mining licence as provided under section 79.

(3) Before giving any direction under subsection (2) or initiating the process to cancel the mining licence, the Commissioner shall provide the holder of a mining licence reasonable opportunity to submit written descriptions of the holder's concerns, defences and comments.

Transfer of medium- or large-scale mining licence

182. A holder of a medium-scale mining licence or large-scale mining licence may apply to transfer its licence to another party pursuant to Part III, Division 4.

Consolidation of medium-scale and large-scale mining licences

183. A holder of two or more contiguous mining licences may apply, under section 66, to consolidate such licences into a single mining licence.

PART IX—SMALL-SCALE MINING LICENCE

Eligibility for small-scale mining licence

184. A small-scale mining licence holder shall be—

(a) an individual who is a Malawian citizen;

(b) a mining cooperative society registered pursuant to section 299;

(c) a mining partnership registered pursuant to section 299;

(d) a company registered or incorporated under the Companies Act, that is one hundred percent (100%) owned by Malawian citizens; or Cap. 46:03

(e) an association incorporated under the Trustees Incorporation Act that comprises only Malawian citizens. Cap. 5:03

185.—(1) An application for the grant of a small-scale mining licence shall be submitted to the Registrar in the prescribed form and shall— Application
for
small-scale
mining
licence

(a) in the case of an application by—

(i) an individual, provide the full name, address (which shall be the registered address upon the grant of the licence) for notifications and nationality of the individual;

(ii) a mining cooperative society or mining partnership, provide the registration number assigned pursuant to a registration obtained under section 299, and the address, which shall be the registered address upon the grant of the licence, to which all notifications shall be sent; or

(iii) a company, provide the names and nationalities of all its members or directors and, if a corporation with share capital, the name and nationality of any person who is the beneficial owner of more than five percent of the issued share capital, and the company's address which, shall be the registered address upon the grant of the licence, for notifications;

(b) state the period applied for and the justification for that length of period; and

(c) be accompanied by—

(i) if the applicant is a company, a copy of the company's certificate of registration;

(ii) a schedule, in a prescribed form, describing the coordinates of the proposed small-scale mining licence area as prescribed under section 295;

(iii) a sketch map, in a prescribed form, showing the boundary of the proposed small-scale mining licence and such other natural features and the location of principal villages and neighbouring mineral tenements, if any, as will enable the area to be correctly located;

(iv) a statement giving particulars of the proposed mining operations, including—

(A) a description of the mining method;

(B) the potential effect of the proposed mining operations on the environment, and on any known monument, shrine or relic in the requested licence area, and including a description of the applicant's plans for environmentally responsible mining ;

(C) the potential impact on the local population, if any, and proposals for mitigation and compensation measures;

(D) any particular risks, whether to health or otherwise, involved in mining the minerals and proposals for their control or elimination; and

(E) the proposed marketing arrangements for the sale of the mineral production;

(v) a description of any circumstances that may require the licence to be granted subject to particular conditions;

(vi) documentary evidence that consent to use the land for mining purposes has been given to the applicant by lawful occupiers or landowners of the land the subject of the application, if any;

(vii) any other material addressing matters that the applicant wants to be considered;

(viii) other materials as may be prescribed; and

(ix) the prescribed application fee or proof that such fee has been paid.

(2) An application for a small-scale mining licence shall be processed in accordance with Part III, Division 2.

Restriction on grant of small-scale mining licence

186. A small-scale mining licence shall not be granted to an applicant in an area that is subject to—

(a) a small-scale mining licence, a medium-scale mining licence, or a large-scale mining licence;

(b) an exploration licence, except as provided for under section 122, unless the applicant is the holder of the exploration licence; or

(c) a retention licence, unless the applicant is the holder of the retention licence.

Effect of grant of small-scale mining licence on other tenement area

187. At the time that a small-scale mining licence is granted to the holder of a reconnaissance licence, non-exclusive prospecting licence or exploration licence, the land which is the subject of the small-scale mining licence ceases to be part of the reconnaissance licence, non-exclusive prospecting licence or exploration licence area to which it was related.

188.—(1) A small-scale mining licence shall be valid for an initial period of two years and the term may be extended, pursuant to section 187, for further periods not exceeding two (2) years at a time. Term of small-scale mining licence

(2) The term of a small-scale mining licence shall commence on the date on which the licence is granted.

(3) There shall be no limit on the number of term extensions that may be granted to the holder of a small-scale mining licence.

189.—(1) A holder of a small-scale mining licence, not later than thirty (30) calendar days prior to the expiry of its licence may apply to extend the term of its licence for a period of up to two (2) years. Extension of small-scale mining licence term

(2) An application to extend the term of a small-scale mining licence shall—

- (a) be submitted in a prescribed form and manner;
- (b) state the period for which the term extension is sought;
- (c) be accompanied by a brief summary report on mining activities carried out to the present time and an explanation of why the extension is justified;
- (d) describe rehabilitation and reclamation work done on the applicant's mined out areas;
- (e) include an updated statement giving particulars of the proposed mining operations, including-
 - (i) a description of the mining method;
 - (ii) the potential effect of the proposed mining operations on the environment, and on any known monument, shrine or relic in the requested licence area, and including a description of the applicant's plans for environmentally responsible mining;
 - (iii) the potential impact on the local population, if any, and proposals for mitigation and compensation measures;
 - (iv) any particular risks, to health or otherwise, involved in mining the minerals and proposals for their control or elimination;
 - (v) the proposed marketing arrangements for the sale of the mineral production; and
- (f) include such other materials as may be prescribed; and
- (g) be accompanied by the prescribed application fee or proof that the fee has been paid.

(3) Subject to subsection (4), the Commissioner shall approve an application to extend the term of a small-scale mining licence if the licence, holder has—

(a) complied with the application requirements under this section;

(b) substantially complied with the terms and conditions of its licence and its obligations under this Act and any other written law;

(c) submitted all reports required under section 196;

(d) paid all annual ground rent as required by section 264;

(e) paid all compensation required by section 225;

(f) submitted a reasonable justification for why the licence should be extended; and

(g) submitted a reasonable work programme for the period of extension.

(4) The term of a small-scale mining licence shall not be extended pursuant to an application made under subsection (1)—

(a) unless the Commissioner is satisfied that the applicant has carried on, in good faith, within the limits of its competence and resources, mining operations in the small-scale mining licence area and intends to continue doing so; or

(b) if the applicant has not carried out effective rehabilitation and reclamation of the applicant's mined out areas to the satisfaction of the Commissioner.

(5) Where the Commissioner has determined that all required conditions set out in subsection (3) are met and none of the reasons prohibiting an extension under subsection (4) apply, the Commissioner shall inform the Registrar to endorse the extension on the licence and may reasonably vary the conditions of the licence in light of the new mining work programme and other changed circumstances.

(6) Where a holder of a small-scale mining licence has registered an application to extend the term of its licence and the Commissioner has refused to approve the application, the holder may, within fourteen (14) days of being notified of the refusal, appeal to the Mineral Resources Committee whose decision on whether to approve the extension shall be final.

(7) Where the Mineral Resources Committee has determined that an application referred to it under subsection (6) should be approved, the Commissioner, as soon as is possible after being so informed by the Committee, shall approve the term extension subject to such conditions as the Committee may determine.

(8) Where a holder of a small-scale mining licence has registered an application to extend the term of his licence and the Commissioner has approved the application but has imposed new conditions on the licence, the licence holder may appeal any or all of the new conditions, within fourteen (14) days of being notified of the approval, to the Mineral Resources Committee whose decision on whether to change the condition or conditions shall be final.

(9) Where the Mineral Resources Committee has determined that conditions to a licence referred to it in subsection (8) are not reasonable, the Commissioner, as soon as is possible after being so informed by the Committee, shall amend the licence subject to such conditions as the Mineral Resources Committee may determine.

(10) Except as otherwise provided in this section, an application for the extension of a small-scale mining licence, shall be processed in accordance with Part III, Division 2.

190.—(1) A small-scale mining licence shall—

- (a) be in a prescribed form;
- (b) state the date of the grant of the licence and the period for which it is granted;
- (c) state the conditions under which the licence is granted as determined by the Commissioner;
- (d) be signed by the Commissioner;
- (e) have appended to it a description, as prescribed, of the area of land over which the licence is granted; and
- (f) contain such other information as is prescribed.

Form and
contents of
small-scale
mining
licence

(2) Where the land which is the subject of a small-scale mining licence is lawfully occupied or owned, there shall be appended to a small-scale mining licence, a copy of an agreement signed by the lawful occupiers or owners of the land over which the small-scale mining licence is granted, which agrees to the mining operation and such agreement shall form part of the conditions of the small-scale mining licence.

191. An area of land over which a small-scale mining licence is granted or its term extended shall —

- (a) be not more than two (2) hectares;
- (b) be not less than one (1) hectare; and
- (c) conformity to the requirements of section 295.

Size and
shape of
small-scale
mining
licence area

192.—(1) Any approval of an application to grant the expansion of a small-scale mining licence area shall conform to the maximum area restriction set out in section 191.

Expansion of
small-scale
mining
licence area

(2) An application for the grant of a small-scale mining licence area expansion shall be submitted to the Registrar in a prescribed form and manner and shall be accompanied by—

(a) a schedule, in the prescribed form, describing the corners of the proposed small-scale mining licence expanded area as prescribed in section 295;

(b) a sketch map, in the prescribed form, showing the boundary of the proposed small-scale mining licence expanded area and such other natural features and the location of principal villages and neighbouring mineral tenements, if any, as will enable the area to be correctly located; and

(c) a statement giving particulars of the proposed expanded mining operations, including—

(i) the justification for expanding the licence area;

(ii) description of the mining method;

(iii) the potential effect of the proposed expanded mining operations on the environment, and on any known monument, shrine or relic in the requested licence area, and including a description of the applicant's plans for environmentally responsible mining;

(iv) the potential impact on the local population, if any, and proposals for mitigation and compensation measures;

(v) any particular risks, whether to health or otherwise, involved in mining the minerals and proposals for their control or elimination;

(vi) the proposed marketing arrangements for the sale of the mineral production;

(vii) a description of any circumstances that may require the licence conditions, if any, to be changed;

(viii) documentary evidence that consent to use the expanded land area for mining purposes has been given to the applicant by lawful occupiers or landowners of the land the subject of the application, if any;

(ix) any other material addressing matters that the applicant wants to be considered;

(x) other materials as may be prescribed; and

(xi) the prescribed application fee or proof that such fee has been paid.

(3) An application for a small-scale mining licence area expansion shall be processed in accordance with Part III, Division 2.

193.—(1) A holder of a small-scale mining licence shall mark out the boundary of its licence area with markers at least one (1) metre high from the ground level each visible from its two (2) neighbouring markers.

Demarcation
of small-scale
mining
licence area

(2) A holder of a small-scale mining licence shall at all times maintain visible markers marking out the boundaries of its licence area.

(3) Where a holder of a small-scale mining licence has failed to comply with the requirements of subsection (1) or (2), the Commissioner may proceed to cancel the licence under section 79.

(4) When there is a dispute as to the location of any small-scale mining licence boundary marker, a party challenging the location may, in writing, request the Commissioner to determine the correct location.

(5) When the Commissioner in exercising his powers under subsection (4), he may, where necessary—

(a) establish the boundary marker locations through the use of a global positioning system device; or

(b) arrange for the disputed boundary to be surveyed and boundary markers to be located accurately,

and the costs shall be met by the party or parties claiming a location of the boundary different from that marked.

(6) Notwithstanding that boundary marker locations established under subsection (5) may be less accurate than locations established by a survey, boundary marker locations established pursuant to subsection (5) deemed to be accurate and boundaries defined by such markers shall be the boundaries of the mineral tenement.

(7) Where the Registrar considers that any party may default on the payment for a survey under subsection (5) (b), the Registrar, prior to arranging the survey, may require the party to submit a deposit sufficient to cover the cost of the survey.

(8) Where the results of a boundary survey arranged by the Registrar pursuant to subsection (5) (b) indicate that boundary markers have been located in substantial error, the Registrar shall serve on the holder of the small-scale mining licence that placed the markers erroneously a notice of demand to pay to the Registrar the costs of the survey, and the Registrar shall refund any deposit made under subsection (7).

(9) Where a holder of a small-scale mining licence fails to reimburse the Registrar for the amount specified in a notice of demand within thirty (30) days of the notice, the Commissioner shall proceed to cancel the licence under section 79.

(10) The Commissioner, when a land surveyor is denied access to land the subject of a survey to be made under this section, may grant to a land surveyor the right to enter upon land in accordance with section 296.

(11) A person carrying out a survey under this section shall not interfere with the activities undertaken on the land which is the subject of the survey.

(12) Any person interfering with a survey being made or markers being relocated pursuant to this section commits an offence and shall, upon conviction, be liable to a fine of five hundred thousand Kwacha (K500,000) and to imprisonment for a period for one (1) month.

(13) Any person not authorized by this Act who damages, destroys or removes any marker placed pursuant to this section without the prior written permission of a holder of the mining licence commits an offence and shall, upon conviction, be liable to a fine of five hundred thousand Kwacha (K500,000), to imprisonment for one (1) month and cost of repairing for the damage.

Rights of
small-scale
mining
licence
holder

194.—(1) Subject to this Act and any condition of its licence, a holder of a small-scale licence shall have the exclusive right to carry on mining operations in its licence area.

(2) Without limiting the generality of subsection (1), a holder of a small-scale mining licence, subject to environmental and any other written law, shall have the right in its licence area, to—

(a) enter and occupy the land for the purpose of—

(i) mining all types of minerals specified in the licence and carry on such operations and undertake such works as may be necessary or expedient; or

(ii) treating any minerals found in the licence area;

(b) apply for and be granted permission, by endorsement of the Commissioner on the licence, to mine minerals other than those originally specified in the licence;

(c) use only non-mechanised mining methods, as defined in section 2, or such limited mechanised mining methods as are specified in the licence by the Commissioner;

(d) sell and otherwise market and dispose of any mineral product recovered from or beneficiated or otherwise treated in the mine area;

(e) stack or dump any mineral or waste products in a manner approved by the Commissioner;

(f) request a land access order pursuant to section 230; and

(g) surrender part or all of the licence area subject to meeting the surrender requirements imposed under this Act.

(3) For avoidance of doubt, a limited mechanised mining method shall not include the use of backhoes, bulldozers, excavators, dredges and similar large equipment.

195.—(1) A holder of a small-scale mining licence shall—

Obligations
of small-scale
mining
licence holder

(a) within the limits of its competence and resources, carry on in good faith, mining operations in the licence area in accordance with the conditions of its licence, this Act and any other written law;

(b) mark out the licence area in accordance with section 193;

(c) commence mining within one hundred and eighty (180) calendar days from the registration date of its licence;

(d) furnish the Commissioner with such information relating to its mining operations as the Commissioner may reasonably require or as may be prescribed;

(e) if not personally supervising the mining operations under the licence, employ a competent person for the purpose of supervising its mining operations provided that all such competent persons shall be approved by the Commissioner and shall carry with them such means of identification as the Commissioner may direct;

(f) carry out rehabilitation and reclamation of mined out areas;

(g) keep accurate records of winnings from the licence area and such records shall be produced for inspection on demand by the Commissioner or a duly authorised officer;

(h) carry out promptly any directives relating to its mining operations which may be given to the holder by the Commissioner or an Inspector of Mines for the purposes of ensuring safety or good mining practices;

(i) not employ in the licence area more than fifty (50) labourers;

(j) sell the minerals obtained in accordance with such restrictions as may be prescribed;

(k) submit reports required under section 196;

(l) not use mechanised mining methods, except such limited mechanisation as specified in the licence by the Commissioner; and

(m) do all other things as required by this Act .

(2) Where the Commissioner determines the holder of a small-scale mining licence has failed to substantially comply with—

(a) any obligation arising under subsection (1) (a), (b), (c), (d), (e), (f), (g) or (m), the Commissioner, at his discretion, may suspend or cancel the licence;

(b) any obligation arising under subsection (1) (h), (i), (j), (k); or (l), the Commissioner, without delay, shall cancel the licence pursuant to section 79.

Small-scale
mining
licence
reporting
obligation

196.—(1) A holder of a small-scale mining licence shall submit semi-annual reports to the Registrar.

(2) A holder of a small-scale mining licence shall submit the reports required by subsection (1) at such time, in such form and manner as are prescribed.

(3) A semi-annual report required by subsection (1) shall include at least the following information pertaining to the prescribed reporting period—

(a) a summary of the mining work undertaken in connection with the licence during the six (6)-month reporting period;

(b) the type and quantity of any minerals mined;

(c) a description of how the minerals mined were disposed of including the total value of all mineral sales;

(d) a summary of all royalties paid;

(e) a description of any accidents that occurred that led to death or significant bodily harm and what steps have been taken to avoid a recurrence;

(f) a summary of rehabilitation and reclamation work; and

(g) such other information as is prescribed.

(4) Subject to subsection (5), until a small-scale mining licence expires or is cancelled or surrendered, a report submitted under subsection (1) shall not be made available to any person outside the office of the Commissioner nor shall its content be revealed except to the extent necessary to publish statistical information concerning mining in Malawi or for the Commissioner to give advice to the Mineral Resources Committee or Minister on a confidential basis.

(5) A holder of a small-scale mining licence may consent for a report which he has submitted under subsection (1) to be disclosed prior to the expiry or cancellation or surrender of the licence subject to such conditions as the holder may specify, in writing, to the Registrar.

(6) Nothing in this section shall preclude a holder of a small-scale mining licence from disclosing any report which it has submitted pursuant to subsection (1) to any party.

(7) Subject to subsection (4), a report submitted under subsection (1) shall be available for perusal and copying by the general public.

197.—(1) Where an authorized officer considers any mining operation under a small-scale mining licence or anything, matter or practice in or connected with, any such mining operation to be so dangerous or defective that in his opinion is likely to cause bodily injury to any person, the officer may give notice of it, in writing, to the holder of the licence.

Notice to
remedy
dangerous
or defective
mining
operations

(2) A notice issued pursuant to subsection (1) may require the danger or defect to be remedied or removed, either immediately or within such time as may be specified, and if the authorized officer considers it necessary, order the mining operations to be suspended until the danger is removed or the defect remedied to his satisfaction.

(3) A holder of a small-scale mining licence to whom notice has been given under subsection (1), shall comply with the notice.

(4) Where a holder of a small-scale mining licence intends to object to any requirement or order given by the authorized officer, the holder shall forthwith cease the mining operations or that part of the operations affected by the notice and appeal to the Commissioner against the order.

(5) On an appeal made to the Commissioner pursuant to subsection (4), the Commissioner shall inquire into the matter and his decision thereon shall be appealable before the Mineral Resources Committee and later subject to review before the High Court.

198. A small-scale mining licence shall not be transferred or assigned to another party.

Transfer of
small-scale
mining
licence

PART X—ARTISANAL MINING PERMIT

199.—(1) Subject to the Constitution, the Local Government Act and subsection (4), this Act confers the power on a local authority to grant and regulate artisanal mining permits and to make by-laws for this purpose.

Limited
power of
local
authorities
to regulate
artisanal
mining
Cap. 22:01

(2) Without limiting the generality of subsection (1), a local authority may in its by-laws provide for artisanal mining permit application and granting processes, fees, enforcement and all other matters as are reasonably required to grant and regulate such permits.

(3) The Minister, upon the advice of the Mineral Resources Committee, from time to time, may issue guidelines on the required minimum content of by-laws to regulate artisanal mining permits.

(4) Any by-laws made by a local government authority to grant and regulate artisanal mining permits shall conform to such guidelines as are issued under subsection (3) and shall not conflict with any provision of this Act, and if any provision of any by-law does so conflict, that provision is of no effect to the extent of the conflicting matter.

(5) Subject to subsection (6), any local government authority that grants artisanal mining permits shall annually, not later than 28th February, submit to the Commissioner a report summarizing the number of artisanal mining permits it issued in the previous year, their purpose, the minerals mined and the amounts, and any enforcement issues that arose and how they were resolved.

(6) The Commissioner, from time to time, may issue guidelines on the required minimum content of annual local authority artisanal mining permit reports and any such report submitted by a local government authority shall conform to such guidelines.

Artisanal mining permit not available in some areas

200. An artisanal mining permit shall not be granted in any area where the local authority responsible for that area has not made by-laws for the purposes of granting and regulating artisanal mining permits.

Commissioner may require a mineral tenement

201. The Commissioner may in consultation with the local government authority, direct the holder of an artisanal mining permit to suspend its mineral production and apply for a mineral tenement where, in the Commissioner's opinion, the nature, circumstances or size of the operation requires a mineral tenement, and any artisanal mining permit holder so directed shall comply with the Commissioner's direction or permanently cease mining in its permit area.

Eligibility for artisanal mining permit

Cap. 46:03

Cap. 46:03

202.—(1) An artisanal mining permit holder shall be—

(a) an individual who is a Malawian citizen;

(b) a company registered under the Companies Act, that is one hundred percent owned by Malawian citizens; or

(c) a company duly incorporated under the Companies Act, that is one hundred percent (100%) owned by Malawian citizens.

Restriction on granting of artisanal mining permit

203.—(1) An artisanal mining permit shall only be granted to an applicant who meets the requirements for eligibility under section 202

(2) An artisanal mining permit may only be granted to mine minerals used in local area construction, such as sand, gravel, stones; clay, aggregate, earth and minerals used for the customary making of pottery and bricks :

Provided that an artisanal mining permit operation—

- (a) is temporary, for a period not exceeding one (1) year;
- (b) shall not have a significant impact on the environment;
- (c) shall not significantly impact on existing land use;
- (d) shall produce minerals only for local use near to the artisanal mining permit area;
- (e) shall not use mechanized means to extract the minerals;
- (f) shall not conduct underground mining or have any pit in excess of five (5) meters from the natural contour of the land;
- (g) except in the case of clay for bricks, shall not produce over one thousand (1,000) tonnes of minerals during the entire term of the permit; and
- (h) in the case of clay for bricks, shall not produce in excess of such amount of clay that can be used to manufacture one hundred thousand (100,000) standard bricks during the entire term of the permit.

(3) An artisanal mining permit shall not be used for the purpose of mining precious stones, rare earth minerals, coal or any metallic mineral.

204.—(1) An artisanal mining permit shall contain conditions that require a permit or licence holder—

Artisanal
mining permit
conditions

- (a) to keep a copy of the permit at the mine site whenever mining is taking place;
- (b) to use safe practices whenever mining;
- (c) to use only non-mechanised mining methods, as defined in section 2;
- (d) not to use any powered machinery in its mining operations except for the purpose of loading material in, or moving material from, the area where those operations are performed;
- (e) not to employ or use child labour or forced labour;
- (f) not to undertake underground mining;
- (g) not to mine in any open-pit deeper than five (5) metres below the natural surface of the ground;
- (h) not to use explosives;
- (i) not to discharge water from any sluice, pump or other equipment, that qualifies as non-mechanised mining equipment as per the definition provided in section 2, except into a holding pond, settlement dam or similar structure or apparatus designed

to protect any waterway from the discharge of silt, solids and other suspended matter;

(f) to keep the licence area free of alcohol and illicit drugs and make sure that miners are not intoxicated or under the influence of illicit drugs or alcohol; and

(k) to comply with any other conditions as the granting authority may determine.

(2) Any artisanal mining permit holder who fails to comply with the conditions set out in subsection (1), whether or not such condition is set out in its permit, commits an offence and shall, upon conviction; be liable to a fine of five million Kwacha (K5,000,000) and to imprisonment for twelve (12) months.

Cancellation
of artisanal
mining permit

205.—(1) Notwithstanding any provisions made by a local authority to grant and regulate artisanal mining permits, including cancellation provisions, the Commissioner may, in consultation with the local authority, cancel an artisanal mining permit if in the Commissioner's opinion it is in the public interests to do so.

(2) When the Commissioner cancels an artisanal mining permit, the Commissioner shall inform the permit holder the reasons why the permit was cancelled.

(3) Any party aggrieved by a decision of the Commissioner to cancel an artisanal permit may, within thirty (30) days of the permit being cancelled, appeal against the cancellation decision to the Mineral Resources Committee whose decision on the matter may be appealed to the Mineral Resources Committee and later for review by the High Court.

(4) The provisions of section 79 shall not apply to the cancellation of an artisanal mining permit.

Obligations
of artisanal
mining permit
holder

206. A holder of an artisanal mining permit shall, within the limits of its competence and resources, carry on, in good faith, mining operations in its permit area in accordance with the conditions of its permit, this Act and any other written law;

Local
government
authority
obligation to
file permit
with the
Registrar

207. A local authority that issues an artisanal mining permit shall, within thirty (30) days of issuing the permit, provide a copy of the permit to the Registrar, who shall maintain a record of all artisanal mining permits currently in force.

Transfer of
artisanal
mining permit

208. An artisanal mining permit or any interest therein shall not be transferred, assigned or dealt with in any other way, unless such act is done in accordance with a by-law made for that purpose by the local authority that granted the permit.

209. The Commissioner or any authorized officer shall have the right to inspect any artisanal mining permit area, record or other matter relating to an artisanal mining permit in the same manner as if the artisanal mining permit were a mineral tenement.

Right to
inspect

PART XI—RESERVED MINERALS

210.—(1) Subject to this Part, a person shall not—

Possession
of reserved
minerals

(a) possess any reserved mineral in its raw state, unless the possessor is—

(i) a holder of a mineral tenement and the reserved mineral was extracted from, or on, its licence area;

(ii) a reserved minerals licence holder or is an authorized agent acting on that licence holder's behalf; or

(iii) a person who has acquired the reserved mineral from a holder of a reserved minerals licence;

(b) purchase in Malawi any reserved mineral in its raw state, unless the purchaser—

(i) has a reserved minerals licence or is an authorised agent of such a licence holders; or

(ii) purchased the reserved mineral from a holder of a reserved minerals licence;

(c) sell or otherwise dispose of reserved minerals in their raw form, unless the seller—

(i) is a holder of a mineral tenement and the reserved mineral was extracted from its licence area or was recovered from materials processed on its licence area;

(ii) has a reserved minerals licence; or

(iii) is a person who has acquired the reserved mineral from a holder of a reserved minerals licence.

(2) Any person, including—

(a) a jeweller, refiner or other commercial enterprise in Malawi who buys reserved minerals in a raw state for a manufacturing process (such as cutting, polishing, setting or refining) or for reselling;

(b) an educational institution which buys reserved minerals for the purpose of training persons to cut, polish, set or otherwise prepare such minerals; or

(c) the holder of a mineral tenement who buys or acquires reserved minerals in a raw state or allows others to use its facilities for processing reserved minerals,

shall possess a reserved minerals licence.

(3) A person who possesses, purchases or sells any reserved mineral in its raw state, in contravention of subsection (1), commits an offence and shall, upon conviction be liable on conviction to a fine of ten million Kwacha (K10,000,000) to imprisonment for two (2) years.

Possession
by museums,
educational
or scientific
establishments

211. Nothing in section 210 shall operate to prevent a museum, educational or scientific establishment registered under any written law from possessing or purchasing reasonable amounts of reserved minerals for the purpose of display, teaching or scientific study.

Application
for reserved
minerals
licence

212. An application for a reserved minerals licence or licence extension shall be made to the Commissioner in a prescribed form and shall be accompanied by the prescribed application or extension fee.

Grant of
reserved
minerals
licence

213.—(1) The Commissioner may grant a reserved minerals licence to—

(a) any licensed bank in Malawi;

(b) a company, duly incorporated under the Companies Act; or

(c) any individual person who—

(i) is eighteen years of age or older;

(ii) is a fit and proper person to hold such a licence and who, in the opinion of the Commissioner, appears to understand the provisions of this Act, to such an extent so as to enable him carry out the obligations imposed under this Act; and

(iii) has not been convicted of an offence under this Act or an offence involving dishonesty or fraud.

(2) A reserved minerals licence shall be valid for twelve (12) months from the date of issue and may be renewed on payment of the prescribed fee.

(3) A reserved minerals licence shall not be transferable.

(4) Notwithstanding subsections (1) and (2), the Commissioner may grant a reserved minerals licence to a government agency on such terms and conditions as the Commissioner determines.

Cancellation
of reserved
minerals
licence

214. The Commissioner may, by notice in writing to a holder of a reserved minerals licence, cancel the licence if, after inquiry, the Commissioner is satisfied that—

(a) the holder is not a fit and proper person to hold a reserved minerals licence;

(b) the holder is in breach of its obligations under this Act or the conditions of its licence; or

Cap. 46:03

(c) the holder has been convicted of an offence which renders him unfit to hold the licence.

215.—(1) A reserved minerals licence shall be in a prescribed form and shall specify—

Form and content of reserved minerals licence

(a) the number and date of issue;

(b) the name of the licence holder and the address, which shall be the registered address upon the grant of the licence, of the dealer's place of business;

(c) the period for which it is granted; and

(d) the terms and conditions upon which it is granted.

216. A reserved minerals licence holder shall have the right to purchase and sell raw reserved minerals from and to any mineral tenement holder and from and to any other reserved minerals licence holder.

Rights of reserved minerals licence holder to purchase reserved minerals

217. A reserved minerals licence holder—

(a) is prohibited from purchasing any reserved minerals in their raw form from any person, unless that person is the holder of a mineral tenement or is a reserved minerals licence holder;

Obligations of reserved minerals licence holder

(b) shall at all times keep at its registered premise for business in Malawi its licence and shall produce the licence upon request by an authorized officer;

(c) shall deal in reserved minerals in such manner as is prescribed; and

(d) shall report on his dealings in the prescribed manner.

218.—(1) A reserved minerals holder's premises and register may be inspected at any time during regular business hours by an authorized officer, and any such person may test the balances for accuracy and take extracts from and make copies of any part of the dealings register.

Inspection of premises and equipment

(2) Any person who obstructs any such inspection made pursuant to this section commits an offence and shall, upon conviction be liable to a fine of five million Kwacha (K5,000,000) and to imprisonment for twelve (12) months.

219. The Registrar shall keep a register of reserved minerals licence holders in which at least the following information shall be recorded—

Records and information on reserved minerals licence holders

(a) the registration number of each licence;

(b) the name, and address of the place of business of each dealer; and

(c) such other particulars as the Commissioner may require.

Discovery of reserved minerals by contractor

220.—(1) Any contractor who is undertaking works but inadvertently discovers reserved minerals in the course of his work shall inform the Commissioner of his discovery within thirty (30) calendar days of the discovery:

Provided that—

(a) the land where the discovery is made shall not be subject to an exploration licence, retention licence or mining licence or the land is closed to mining under this Act or any other written law; and

(b) a contractor who has informed the Commissioner of a discovery pursuant to this subsection may apply for a mineral tenement on an exclusive priority basis for a period of sixty (60) calendar days from the date when the Commissioner was so informed.

(2) Where a contractor that is constructing the works under this section discovers reserved minerals that a person not familiar with mining would reasonably consider to have commercial mining potential and fails to report such discovery as required under subsection (1), that contractor commits an offence and shall, upon conviction, be liable to a fine of one million Kwacha (K1,000,000).

PART XII—RESTRICTIONS, SURFACE RIGHTS AND COMPENSATION

Interpretation of this Part

221. In this Part, “Authority” means—

(a) a mineral tenement; or

(b) an artisanal mining permit.

Exercise of right by holders

222.—(1) Where a mineral tenement granted under this Act includes public land already reserved for a public purpose, the holder shall not enter upon that land until such time as it has met the requirements of section 35 (b).

(2) A holder of a mineral tenement or artisanal mining permit shall not enter upon the land which is the subject of its tenement or permit, except with the written consent of—

(a) the Minister, in respect of any land dedicated as a place of burial or which is a place of religious significance after consultation with the appropriate responsible authorities; and

(b) the lawful occupier thereof, in respect of—

(i) any land which is the site of, or which is within one hundred (100) metres of, any inhabited, occupied or temporarily unoccupied permanent house or building;

(ii) any land within fifty (50) metres of land which has been cleared or ploughed or otherwise in good faith prepared for the growing of, or upon which there are growing, agricultural crops, including orchards or fuel-wood, plantations;

(iii) any land from which, during the year immediately preceding, agricultural crops have been harvested; or

(iv) any land which is the site of, or within one hundred (100) metres of, any cattle dip-tank, dam, or other body of water, not being public water as defined in the Water Resources Act.

Cap. 72:03

(3) Notwithstanding the generality of subsection (1), a holder of a mineral tenement or artisanal mining permit shall not enter upon the land which is the subject of its tenement or permit, except with the written consent of—

(a) the responsible railway administration, in respect of any land reserved for the purpose of any railway track, or which is within fifty (50) metres of the boundaries of any land so reserved;

(b) the local government authority having control over the township, in respect of any land within, or within two hundred (200) metres of the boundaries of, any township;

(c) the Minister, after consultation with the authority having control thereof, in respect of any land comprising a street or road reserve as defined in the Public Roads Act, or airport or airfield;

Cap. 69:02

or
(d) a holder of the petroleum production licence concerned, in respect of a production area as defined in section 3 of the Petroleum (Exploration and Production) Act.

Cap. 61:02

(4) Where any consent required under subsection (2) (b), in the opinion of the Mineral Resources Committee, is being unreasonably withheld, the Minister, on such conditions (if any) as the Committee may determine, may direct in writing that the need for the consent be dispensed with and, in that event, subsection (2) (b) shall not have effect so far as it requires the consent of the lawful occupier concerned to be given.

(5) Any consent under this section may be given unconditionally or subject to such conditions as are specified in the instrument of consent.

223.—(1) Any dispute as to whether or not section 222 (2) (b) applies in respect of any land or as to whether any person is a lawful occupier of that land shall be decided by the Mineral

Disputes
about land

Resources Committee whose decision may be subject to review by the High Court.

(2) Once a decision is made by the Mineral Resources Committee or the High Court, the Commissioner shall notify the parties in dispute without delay.

Rights of surface owners and occupiers

224.—(1) A lawful occupier or owner of any land in a reconnaissance licence area, non-exclusive prospecting licence area, exploration licence area or retention licence area retains all its rights including any right to graze livestock upon, to cultivate the surface of the land, to occupy and otherwise use the land to the extent of the lawful occupier's or owner's right.

(2) The rights conferred by a reconnaissance licence, non-exclusive prospecting licence, exploration licence or retention licence shall be exercised reasonably and in good faith so as to minimize any adverse effect on the interests of a lawful occupier and owner of land, or adversely affect the land subject to the licence, or on which rights under the licence are exercised, consistent with the reasonable and proper conduct of operations pursuant to the licence.

(3) A holder of a mining licence shall have an exclusive right to use both the surface and the subsurface of the land which is the subject of its licence but may allow lawful occupiers and owners of the land to do such things on the surface of its licence area that do not unduly interfere with its operations.

Compensation of lawful occupiers and owners of surface lands

225.—(1) A holder of a mineral tenement shall be liable to pay compensation to lawful occupiers and owners of land the subject of its tenement, adjoining its tenement and in the vicinity of its tenement for all loss or damage suffered or foreseen to be suffered by them as a result of the holder's activities.

(2) Where a mineral tenement holder's activities are carried out by a person other than the mineral tenement holder, such as an agent or independent contractor, all losses or damage resulting from activities carried out on the holder's behalf shall be compensated by the holder as if such activities had been carried by the holder.

(3) The amount and type of the compensation payable to a lawful occupier or owner of land, as the case may be, pursuant to this section may be determined by the mutual agreement of the lawful occupier or owner of land and the mineral tenement holder or, if not so agreed, may be determined by the Commissioner pursuant to section 228.

(4) Where compensation is being assessed or negotiated, women shall be consulted in their individual capacities in order to arrive at

a fair compensation for loss of property, land or income, which shall be paid directly to them.

(5) Where the holder of a mineral tenement and the party to be compensated are able to agree on the amount and manner of compensation to be paid, the mineral tenement holder shall submit to the Registrar, a copy of a compensation agreement signed by the holder and the party to be compensated.

(6) A compensation agreement submitted pursuant to subsection (5) shall be treated by the Registrar and other relevant authorities involved as confidential and any such agreement shall not be disclosed to any person outside the office of the Commissioner without the prior written permission of the parties to the agreement.

(7) Subject to subsection (8), compensation to which lawful occupiers and owners of land are entitled includes but is not limited to compensation for—

(a) the deprivation of the possession or use of the natural surface of the land due to resettlement, destruction or damage to the natural surface of the land;

(b) any damage to the natural surface of the land;

(c) the severance of land or any part thereof from other land held by the lawful occupier or owner of land;

(d) any loss or restriction of a right of way, easement or other right;

(e) the loss of, or damage to, buildings, livestock, crops, perennial and fruit trees, forests and natural resources that sustain livelihoods, that economic trees, fences, gates, equipment, water wells, infrastructure or other improvements;

(f) in the case of productive land or impacted business or any income generation activity, loss of earnings, including that arising from unreasonable delay of resettlement; and

(g) disruption of agricultural activities on the land, including loss of food crops where resettlement is unduly delayed.

(8) In determining the amount of compensation for any of the circumstances referred to in subsection (7), regard shall be made to the following—

(a) whether or not the circumstance is permanent;

(b) if a circumstance is not permanent, the actual or anticipated period of time of the circumstance;

(c) whether the asset is moveable or immovable;

(d) costs of physical relocation;

(e) all related transactions costs;

(f) the effect of a circumstance not only on the present generation of people but also on future generations of people; and

(g) if compensation has been paid or is payable under any other law.

(9) Compensation shall not be payable and a claim for compensation shall not lie, whether under this Act or otherwise—

(a) in consideration of permitting entry on to the land of a mineral tenement;

(b) in respect of the value of any mineral which is or may be on or in the land; or

(c) for the use of public infrastructure or waters, other than as provided for in this Act.

Lawful occupier and owner of land to be given advance notice of intent

226. A holder of a non-exclusive prospecting licence, reconnaissance licence, exploration licence or retention licence, before entering upon the ground to commencing reconnaissance, prospecting, exploration or retention work in any private land, shall inform any lawful occupier and owner of land, where known, a minimum of thirty (30) days in advance of the holder's intention to commence activities on the land in which the lawful occupier and owner of land has an interest.

Liability and redress

227.—(1) A holder of a mineral tenement or artisanal mining permit shall be strictly liable for any harm or damage caused by mining operations or mineral processing operations and shall compensate any person to whom the harm or damage is caused.

(2) Liability shall attach to the person who directly contributes to the act or omission which results in the harm or damage.

(3) Where two or more persons constitute, or constituted, the holder of a mineral tenement or artisanal mining permit, those persons are jointly and severally liable for the payment of any costs and expenses which may be recovered under this section from the person who is, or was, the last holder of the mineral tenement or artisanal mining permit, but without prejudice to any right of contribution existing between them.

(4) Where any harm or damage is caused to the environment or biological diversity beyond that provided for in a mineral tenement holder's approved plans, compensation shall include the cost of reinstatement, rehabilitation or clean up measures which are incurred and where applicable, the cost of preventive measures.

Compensation dispute resolution

228.—(1) Where there is a dispute on the amount of compensation to be paid by a holder of a mineral tenement to—

(a) a lawful occupier or owner of land which is the subject of the holder's mineral tenement; or

(b) a person affected by the holder's project,

the parties to the dispute shall first attempt to resolve the disputed matter by negotiation between themselves.

(2) Where the parties to a compensation dispute are unable to resolve the disputed matter by their own negotiation, any party to the dispute may refer the matter to the Commissioner who shall arrive at a determination in consultation with the Ministry responsible for lands.

(3) Where a compensation dispute has been referred to the Commissioner for determination under subsection (2), the Commissioner may—

(a) require a hearing to determine the amount of compensation; or

(b) refer the matter for mediation under section 229,

and shall determine the amount of compensation to be paid within sixty (60) calendar days from the date on which the compensation dispute was first referred to the Commissioner.

(4) Where the Commissioner requires a hearing under subsection (3), the Commissioner shall notify—

(a) the affected parties;

(b) the Ministry responsible for lands; and

(c) other such persons, traditional leaders, local authorities, and valuation experts as the Commissioner deems are appropriate, of the place, date and time of the hearing.

(5) Any person, whether or not the recipient of a notice under subsection (4), that is a lawful occupier or owner of land which is the subject of the hearing has the right to attend the hearing and to be heard.

(6) The Commissioner may determine whether a hearing convened under this section may be open to the public.

(7) Where the Commissioner, in consultation with the Ministry responsible for lands, has made a determination of the amount of compensation to be paid by the holder of a mineral tenement under this section, the Commissioner shall provide a copy of the determination to all parties the subject of the determination and to the Registrar.

(8) Any party the subject of a compensation determination made by the Commissioner under this section who is dissatisfied with the determination may appeal the determination to the High Court.

Mediation

229.—(1) The Commissioner may refer any dispute arising between a mineral tenement holder and—

(a) a lawful occupier or owner of land which is the subject of the holder's mineral tenement; or

(b) a person affected by the holder's project, or a qualified community,
for mediation.

(2) The Commissioner may refer a dispute for mediation on the Commissioner's own initiative or at the request of a party to the dispute.

(3) Before the Commissioner refers a dispute for mediation, the Commissioner shall consult with the disputing parties and attempt to obtain a resolution of the matter and may request from the relevant persons a written statement of their concerns that resulted in the dispute.

(4) The purpose of the mediation under this section shall be limited to resolving the matters that are in dispute.

(5) Under this section, mediation—

(a) shall be conducted by—

(i) a mediator chosen by agreement of the parties to the mediation; or

(ii) if the parties are not able to agree on a mediator, the Commissioner shall appoint an independent person with suitable training, qualifications and experience; and

(b) may end at any time by decision of the mediator or by agreement of the parties to the mediation.

(6) Under this section, mediation shall include—

(a) the parties to the dispute;

(b) a representative of the Commissioner;

(c) a representative from the Ministry responsible for lands;
and

(d) such other persons as the mediator conducting the mediation considers appropriate.

(7) The mediator who conducted the mediation, as soon as practicable after the mediation is conducted or should have been conducted, shall prepare a report to the parties to the mediation and the Commissioner about—

(a) whether the mediation was conducted;

(b) if the mediation failed, the reasons for the failure; and

(c) if the mediation succeeded, the means of resolving the dispute, including any actions to be taken by the parties.

230.—(1) Where a mineral tenement holder is denied access to any area that is the subject of its tenement by a lawful occupier or owner of that land, the holder, after a reasonable effort to negotiate access, may—

Land access
order

(a) notify, in writing the Commissioner the details of the land access problem; and

(b) request a land access order.

(2) The Commissioner, as soon as is practicable after receiving a notification submitted pursuant to subsection (1), but in no case longer than thirty (30) calendar days, shall commence a land access order process in the prescribed manner.

(3) The Commissioner, in consultation with the Ministry responsible for lands, may issue a land access order, and any mineral tenement holder and lawful occupier or owner of land identified in the order shall act in accordance with such order.

(4) Any affected lawful occupier or owner of land aggrieved by the decision of the Commissioner to issue a land access order or with the terms of any such land access order made under this section, within thirty (30) calendar days of the date the order is made, may appeal in writing to the Minister, whose decision, in consultation with the Ministry responsible for lands on the matter shall be subject to review by the High Court.

(5) Any mineral tenement holder aggrieved by the decision of the Commissioner to refuse a land access order or with the terms of any land access order made under this section, within thirty (30) calendar days after the date the order is refused or made, may appeal, in writing to the Minister, whose decision, in consultation with the ministry responsible for lands on the matter shall be subject to review by the High Court.

(6) Where an appeal is lodged under subsection (4) or (5), the land access order shall have full effect until disposal of the appeal.

(7) Without affecting any proceeding that may be brought against a mineral tenement holder in respect of the contravention of a land access order, if the mineral tenement holder contravenes such an order, a lawful occupier or owner of land to which the order relates may deny the mineral tenement holder access to the land until—

(a) the mineral tenement holder ceases the contravention; or

(b) the contravention is remedied to the reasonable satisfaction of the lawful occupier or owner of land.

(8) Where a mineral tenement holder has been denied access to its tenement area by a lawful occupier or owner of land in contravention to a land access order issued by the Commissioner under subsection (3), the mineral tenement holder may appeal, in writing to the Commissioner for a determination of whether such denial was unreasonable or in contravention of the land access order.

(9) Where the Commissioner, in consultation with the Ministry responsible for lands, determines under subsection (8), that land access was denied by a lawful occupier or owner of land unreasonably or in contravention of a land access order, such lawful occupier or owner of land commits an offence and shall, upon conviction, be liable to a fine of five million Kwacha (K5,000,000) plus fifty thousand Kwacha (K50,000) for each day of default or to imprisonment for twelve (12) months.

PART XIII—ENFORCEMENT

Division 1 – Inspections

Inspection
programme

231. The Commissioner shall establish an inspection programme, including announced and unannounced inspections, to monitor compliance with the requirements of this Act, the regulations or conditions of a mineral tenement.

Conduct of
inspections

232.—(1) An authorized officer may conduct any inspections and carry out such other examination, as may be necessary, to confirm and verify compliance with the provisions of this Act, the regulations and conditions of a licence.

(2) Except for an unannounced inspection of a mineral tenement area, an authorized officer, before making an inspection of a mineral tenement, shall give reasonable notice to the licence holder that an inspection is to be carried out on a mineral tenement area.

(3) Before exercising any of his inspection powers, where there is any person who is, or appears to be in charge of the area, structure, vehicle, vessel, aircraft, building machinery, equipment or matter or thing in respect of which the power is about to be exercised, the authorized officer shall identify himself to that person and to any person to whom the Officer is about to give a direction.

Inspection
results and
reports

233.—(1) An authorized officer shall document the results of an inspection in a report, which the Officer shall submit to the Commissioner, within thirty (30) calendar days of the inspection.

(2) The Commissioner shall make inspection reports available to the person to whom the inspection report relates and any other entities as required or useful.

(3) The report referred to in subsection (1) shall be recorded and a copy of the inspection report shall be kept by the Commissioner and the Registrar.

234. Any person who is a lawful occupier, owner or person in charge of any land, building, structure or place, or the person in charge of any vehicle, trailer, vessel, barge, aircraft, machinery or equipment, shall provide an authorized officer with all reasonable facilities and assistance, including the provision of necessary means of transport for the effective exercise of the authorized officer's powers.

Lawful occupier and owners to cooperate

Division 2 – Powers of Authorised Officers

235.—(1) An authorized officer shall have the powers, authority and duties attributed to that officer pursuant to the officer's appointment under this Act and as attributed to an authorized officer under this Act.

Powers, authority and duties of authorized officer

(2) For the purposes of this Act, an authorized officer, at all reasonable times, may—

(a) enter any land, operations, mineral tenement area, artisanal mining permit area, structure, vehicle, vessel, aircraft, building or place that, in the authorized officer's opinion, has been, is being or may be used in connection with reconnaissance, prospecting, exploration or mining activities in the furtherance of any purpose or reason that is beneficial to such officer in the execution of the officer's assigned duties;

(b) do all things which are necessary to ascertain whether the provisions of this Act are being complied with;

(c) inspect and test any machinery or equipment that, in the authorized officer's opinion, has been, is being or may be used in connection with any of the activities referred to in paragraph (a);

(d) take or remove for the purpose of analysis or testing, for use in evidence in connection with an alleged offence against this Act, samples of soil, rocks, minerals or other substances from a mine or any area where any of the activities referred to in paragraph (a) are being carried;

(e) inspect, take extracts from, and make copies of, any document relating to any of the activities referred to in paragraph (a);

(f) examine books, accounts, vouchers or records of any kind (whether kept in hard copy or electronically), required to be kept under this Act, and taking copies of such books, accounts, vouchers, documents or records;

(g) make such measurements and tests, and take such photographs and video-graphic recordings, as the authorized officer considers necessary for the purposes of carrying out his or her duties and functions under this Act;

(h) with respect to the health and safety of persons employed or contracted by a holder of a mineral tenement or in connection with any of the activities referred to in paragraph (a), issue directions to and impose restrictions on the holder or any persons so employed, by instrument in writing order—

(i) the cessation of activities on or in, and the withdrawal of all persons from, any structure or building that is being used in connection with any of the activities referred to in paragraph (a); or

(ii) the discontinuance of the use of any machinery or equipment, which the authorized officer considers unsafe, unless and until such action as is necessary for safety and specified in the instrument is taken and complete; and

(j) make such examinations and inquires as are necessary to ensure that the provisions of this Act, and any directions issued, conditions imposed or orders made under this Act, are being complied with.

(3) Where the premises referred to in subsection (2) consist of a private dwelling-house, an authorized officer shall not enter unless he or she has previously obtained the permission of the owner or occupier of the private dwelling-house or has first obtained a search warrant pursuant to applicable law.

Power to
require name
and address

236.—(1) An authorized officer may direct a person to state the person's name and address, if the authorized officer—

(a) finds the person committing an offence against this Act; or

(b) has reasonable grounds to suspect that the person has committed an offence against this Act.

(2) A person, who fails to comply with a direction by an authorized officer under subsection (1), commits an offence and shall be liable, on conviction, to a fine of one million kwacha (K1,000,000) and to imprisonment for two (2) months.

237.—(1) When an authorized officer has reasonable grounds to believe that—

Power to require answers to questions

(a) an offence against the Act has been committed; and

(b) a person may be able to give information about the offence,

the authorized officer may direct the person to answer questions about the offence.

(2) A person, who fails to comply with a direction by an Authorized Officer under subsection (1), commits an offence and shall be liable, on conviction, to a fine of one million Kwacha (K1,000,000) and to imprisonment for two (2) months.

238.—(1) An authorized officer or police officer, without a warrant, may arrest any person reasonably suspected of being involved in a minerals related offence punishable with imprisonment for one month or upwards, if such person refuses to give his name and residence or gives a name and residence that there is reason to believe is false or if there is reason to believe that such person will abscond.

Power to arrest without warrant

(2) Every authorized officer or police officer making an arrest under this section, without unnecessary delay, shall take or send the person arrested to the officer in charge of the nearest police station.

239.—(1) An authorized officer may seize one or more of the following—

Power to seize and sell minerals, etc.

(a) minerals that, on reasonable grounds, the officer believes were mined, removed, sold or processed in contravention of—

(i) this Act; or

(ii) a term or condition of a mineral tenement or artisanal mining permit issued under this Act; or

(b) a boat, barge, vehicle or trailer in which is found or which is towing, minerals to which subsection (1) (a) applies.

(2) A boat, barge, vehicle or trailer seized under subsection (1) (b) shall be released from seizure when the minerals thereon or towed thereby is delivered to a location required by the authorized officer who made the seizure.

(3) When minerals are seized under subsection (1)—

(a) the authorized officer who made the seizure, without delay, shall provide a receipt to the person from whom the minerals were seized, if known, shall cause the minerals to be made safe and shall inform the Commissioner;

(b) the Commissioner shall cause an investigation to be made as to the owners of the minerals; and

(c) where the investigation is—

(i) able to reasonably determine the owner, the Commissioner shall inform the owner where the owner may take possession of the minerals; or

(ii) unable, after a reasonable effort, to determine the owner, the Commissioner may sell or auction the minerals with the proceeds to be treated in the same way as the payment of a penalty for a violation.

(4) An authorized officer who seizes minerals pursuant to the power granted under this section and who, with intent to personally benefit from the seizure, fails to inform the Commissioner, commits an offence and shall, upon conviction, be liable to a fine of ten million Kwacha (K10,000,000) plus five (5) times the value of the minerals seized and to imprisonment twelve (12) months.

(5) Where there is a dispute as to whether the grounds under which any mineral was seized and sold under this section were reasonable and in contravention of either this Act or a term or condition of a mineral tenement or artisanal mining permit, the net proceeds of the sale shall be held by the Commissioner pending determination by a court of competent jurisdiction.

Power to seize
or destroy
equipment at
unauthorized
mining site

240.—(1) At any site where mining activities are being done in contravention of this Act, the Commissioner may cause to be seized any and all equipment, both mobile and fixed and whether owned by the person illegally extracting minerals, by any person transporting them or by any other person, at the site, and the Government may sell such equipment by public tender with the proceeds to be treated in the same way as the payment of a penalty for a violation.

(2) A person, or that person's proxy, from whom the equipment was seized under subsection (1) may not participate in an auction for that equipment or be present at the auction.

(3) Where it is the Commissioner's opinion that the proceeds that could be obtained from a sale of equipment pursuant to subsection (1) would be inadequate to justify the direct and indirect costs of the auction process, the Commissioner may order the equipment destroyed or otherwise rendered inoperable.

(4) A seizure and sale of equipment or the destruction or rendering of equipment inoperable under this section is independent of any penalty that may apply to an individual or company that mines minerals without an authorization provided under this Act.

(5) In any legal action for damages brought by the owner of equipment sold, destroyed or rendered inoperable under this section, a court may dismiss the legal action where it can be shown that the equipment was located at any site where mining activities were being done in contravention of this Act.

Division 3 – Directions and Orders

241. The Commissioner, by notice in writing, may direct any mineral tenement holder, or any person employed or contracted by a tenement holder, to appear before him or her or any other officer of the office of the Commissioner at a reasonable time and place and give information regarding operations in the area of the tenement, and the tenement holder or other person shall comply with the notice.

Commissioner
may direct
appearance

242.—(1) An authorized officer may serve a written notice directing an individual, whether or not the holder of a mineral tenement, to provide to him or her for inspection any documents, reports, books, plans, maps or other records relating to—

Authorized
officer may
direct
provision of
information

(a) information required to be kept in accordance with this Act or the conditions of a mineral tenement;

(b) information necessary or useful for the enforcement of any provision of this Act; or

(c) the carrying out of any activity which is related to reconnaissance, prospecting, exploration, retention or mining.

(2) A notice under subsection (1) shall state—

(a) the individual to whom it is issued (which in the case of information required from a company may be a director, manager, senior officer, employee or contractor of the company);

(b) the information that is required;

(c) the time within which the information is to be provided;

(d) why the information is required; and

(e) the procedure by which review of or appeal from the notice may be made.

(3) A notice under subsection (1) may be directed to any individual the authorized officer believes on reasonable grounds has knowledge of a matter, or has possession or control of a document dealing with a matter, for which the information is required.

(4) An individual, who fails to comply with a direction made under subsection (1) within a reasonable time, commits an offence and shall, upon conviction be personally liable to a fine of one million Kwacha (K1,000,000) or to imprisonment for one (1) month, or to both such fine and imprisonment.

Search warrant for minerals **243.** On the complaint on oath of an Authorized Officer stating the officer's belief that any mineral liable to the payment of any mineral royalty is concealed or hidden in any place, a magistrate may issue a warrant to search for the mineral.

Police to assist authorized officers, etc. **244.** All members of the Malawi Police Service, when required by an authorized officer discharging the officer's duties under this Act, shall act in aid of the authorized officer in the exercise and discharge by the authorised officer of the officer's powers, functions and duties under this Act.

Appeal of direction or order **245.—**(1) Unless otherwise provided by the section of this Act giving rise to the matter, any person who is aggrieved by a decision, direction or order of—

(a) an authorized officer may appeal in writing to the Commissioner;

(b) the Commissioner may appeal to the Minister.

(2) The Commissioner or Minister, as the case may be, upon receipt of an appeal under subsection (1), shall, as soon as practicable, but in any event within sixty (60) calendar days of receiving the appeal, hear and dispose of the appeal.

(3) The Commissioner or Minister, as the case may be, shall within ninety (90) days of the last date of a hearing conducted as required under subsection (2), record his or her decision, in writing, and deliver it to the appealing party.

(4) The filing of an appeal under this section shall not affect the operation of the decision, direction or order appealed from while the disposition of the appeal is pending.

Rescission or substitution of decisions **246.** On an appeal under section 245, the Commissioner or the Minister, as the case may be, may rescind or affirm the decision, direction or order in substitution therefore, and that decision or direction shall be final.

Division 4 – Offences

General penalty **247.—**(1) A person who acts in contravention of or fails to comply in any respect with a provision of this Act commits an offence.

(2) A person who commits an offence against this Act for which no penalty is provided elsewhere in this Act or regulations made under this Act, shall, upon conviction, be liable to a fine of ten million Kwacha (K10,000,000) and imprisonment for five (5) years and, where applicable, a penalty not exceeding fifty thousand Kwacha (K50,000) for every day of continuation of the commission of the offence.

248. When an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or be attributed to any neglect on the part of a director, officer, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence, and he shall be personally liable for the offence.

Offences
by body
corporate

249. A person who—

(a) in, or in connection with, any application under this Act or in response to any invitation or requirement of the Minister, the Commissioner or an authorized officer under this Act, knowingly or recklessly gives information which is false or misleading in a material manner;

Offences by
persons

(b) in any report, return, affidavit or attestation submitted in pursuance of any provision of this Act, knowingly or recklessly includes or permits to be included any information which is false or misleading in a material manner;

(c) places or deposits, or is accessory to the placing or depositing, any mineral or substance in any place with the intention of misleading any other person as to the mineral possibilities of that place; or

(d) mingles or causes to be mingled, with samples or minerals or mineral products derived from minerals, any substances that may enhance the value or in any way change the nature of the sample, mineral or mineral product, with the intention to cheat, deceive or defraud,

commits an offence and upon conviction is, in the case of an individual, to imprisonment for two (2) years, or in the case of a body corporate, to a fine as prescribed.

250. Any person who is a lawful occupier, owner or person in charge of any land, building, structure or place, or the person in charge of any vehicle, trailer, vessel, barge, aircraft, machinery or equipment who, without reasonable excuse—

Offence to
refuse
assistance or
to obstruct
authorized
officer

(a) fails to provide an authorized officer with all reasonable facilities and assistance, including the provision of necessary

means of transport, for the effective exercise of the authorized officer's powers to inspect;

(b) obstructs, molests or hinders an authorized officer in the exercise of his powers;

(c) does not provide an authorized officer access for the purpose of being inspected or interferes with an inspection; or

(d) knowingly or recklessly makes a statement or produces a document that is false or misleading in a material particular to an authorized officer engaged in carrying out his or her duties and functions under this section,

commits an offence and shall, upon conviction, be liable to a fine of ten million Kwacha (K10,000,000) and to imprisonment for two (2) years.

Offence to obstruct mineral tenement holder's operations

251. Any person who, without reasonable excuse—

(a) obstructs, molests, hinders or prevents the holder of a mineral tenement, in or from the doing of any act which that holder is authorized to do by this Act; or

(b) unlawfully interferes with any machinery, plant, road, work or property on, in, under or over any mineral that is used in the exercise of a right conferred by or under this Act,

commits an offence and shall, upon conviction, to a fine of thirty million Kwacha (K30,000,000) and to imprisonment for ten (10) years.

Offence for Authorized Officer to trade

252. An authorized officer shall not, as principal or agent, trade in minerals or be or become interested in any mineral tenement or artisanal mining permit, and an officer that does so commits an offence and shall, upon conviction, be liable to a fine of ten million Kwacha (K10,000,000) and to imprisonment for two (2) years.

Offence to unlawfully possess minerals

253. A person who—

(a) has in his possession any mineral; and

(b) on being required to do so by an authorized officer, refuses or fails to give an account to the satisfaction of the authorized officer of the manner in which he or she came into possession of the mineral,

commits an offence and shall, upon conviction, be liable to a fine of five million Kwacha (K5,000,000) and to imprisonment for twelve (12) months.

Offence to receive minerals unlawfully obtained

254. A person, who receives any minerals knowing them to have been unlawfully obtained, commits an offence and shall, upon conviction, be liable to a fine as prescribed or to imprisonment for two (2) years, or to both such fine and imprisonment.

255. A person who demands a payment from a mineral tenement holder, other than a payment to which that person is entitled to receive under this Act, and who unlawfully interferes or threatens to interfere with—

Offence to demand money for non-interference

(a) or obstructs or threatens to obstruct any reconnaissance, prospecting, exploration, retention, mining or other operations authorized by or under this Act unless the tenement or licence holder agrees to such payment; or

(b) any machinery, plant, road, transmission line, work or property on, in, under or over any tenement that is used in the exercise of a right conferred by or under this Act unless, the tenement or licence holder agrees to such payment,

commits an offence and shall, upon conviction, be liable, to a fine of ten million Kwacha (K10,000,000) and to imprisonment for two (2) years.

256. A person who wilfully with intent to evade, or to assist any other person to evade, annual ground rent or royalties—

Offences relating to annual ground rent and mineral royalty

(a) makes an incorrect return by omitting or understating any matter used in the assessment of annual ground rent or mineral royalty;

(b) omits from a return made under this Act any land area, amount of mineral, value of mineral or any other information used in the assessment of annual ground rent or mineral royalty that should be included;

(c) makes any false statements or entry in any return made for the purposes of annual ground rent or mineral royalty;

(d) gives any false answer, whether verbally or in writing, to any question or request for information about annual ground rent or mineral royalty asked or made in accordance with the provisions of this Act;

(e) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of any books of account or records relating to annual ground rent or mineral royalty; or

(f) makes use of any fraud, art or contrivance whatsoever or authorizes the use of any such fraud, art or contrivance related to annual ground rent or mineral royalty,

commits an offence and shall, upon conviction, be liable to a fine of twenty million Kwacha (K20,000,000), and treble the amount of annual ground rent or mineral royalty which has been undercharged in consequence of each such offence, or would

have been undercharged if any such return, statement, accounts or information had been accepted as correct, or would have been undercharged if such fraud, art or contrivance had not been detected, and to imprisonment for five (5) years.

Ground rent,
mineral
royalty and
fees to be
paid despite
proceedings
for penalties

257. The institution of proceedings for, or the imposition of a penalty, fine or term of imprisonment under this Act does not relieve any person from liability to pay any annual ground rent, mineral royalty or fee for which that person is liable.

Savings for
criminal
proceedings

258. The provisions of this Act shall not affect any criminal proceedings under any other written law.

Division 5—Administrative Penalties

Administra-
tive penalties

259.—(1) Notwithstanding any penalties imposed under this Act or any written law for contravention of this Act, the Commissioner may impose administrative penalties in respect of the contravention.

(2) The administrative penalties imposed pursuant to subsection (1) may include—

- (a) giving the person a written warning;
- (b) directing that person to do a specified act or refrain from doing a specified act for one or more of the following purposes—
 - (i) to remedy the effects of the contravention;
 - (ii) to compensate persons who have suffered loss because of the contravention; or
 - (iii) to ensure that the person does not commit further contravention of this Act;
- (c) requiring the directors, officers or employees, or licence holder to pay a monetary penalty as may be prescribed in the regulations;
- (d) publication of non-compliant licence holders in the newspaper of widest circulation or website of the Commissioner where the holder persistently breaches this Act or regulations; or
- (e) recommend to relevant authorities or agencies of Government for sanctions under respective law governing that person as a professional employment of business misconduct.

PART XIV—FISCAL PROVISIONS

260. A holder of a mineral tenement shall pay mineral royalties.

Mineral royalties shall be payable on the production of minerals

261.—(1) Where a mineral tenement holder fails to pay any mineral royalty or tax related to its operations on or before the date due or any renewal thereof allowed by the government authority for the administration of mineral royalty and tax revenue collection, that government authority, by written notice served on the holder of the mineral tenement (and copied to the Commissioner), may prohibit the transport, sale, pledging or other transfer of any interest in minerals produced from the mineral tenement area, or from any other mineral tenement area held by the same holder, until all outstanding mineral royalty payments and taxes have been paid or until an arrangement has been made, acceptable to that government authority, for the payment of the mineral royalty, tax, or both.

Failure to pay mineral royalty or tax

(2) Any holder of a mineral tenement who contravenes or fails to comply with a notice issued under subsection (1) commits an offence and shall, upon conviction, be liable to a fine of ten million Kwacha (K10,000,000) plus double the value of the minerals transport, sale, pledging or other transfer and to imprisonment for two (2) years.

(3) Where a tenement holder that is required to pay mineral royalty in accordance with any written law has failed to do so, the government authority for the administration of mineral royalty shall inform the Commissioner of the identity of the tenement holder, the tenement registration number and the date on which—

(a) such mineral royalty payment was due; and

(b) the date, if ever, on which the mineral royalty due was paid, and the Registrar shall record such information in the register.

(4) Where a mineral tenement holder that is required to pay mineral royalty in accordance with any written law has not paid such mineral royalty as required under the Taxation Act, the Commissioner shall commence the process to cancel the licence pursuant to section 79.

Cap.41:01

262.—(1) Any mineral or mine product sale or disposal commitment by the holder of a mineral tenement to an affiliated company shall be made only at prices based on or equivalent to arm's length sales and in accordance with such terms and conditions at which such sale or disposal agreement would be made if the parties had not been affiliated.

Sales to affiliated company

(2) Where any mineral or mine product produced in a mineral tenement is sold or otherwise disposed of to an affiliated company the holder of the mineral tenement shall—

(a) report such sale or disposal to the Registrar at such time and in such form and manner as is prescribed; and

(b) provide to the Registrar, in such manner as is prescribed, a copy of all information, data, sales contracts, commissions, prices and receipts used in computing the prices pertaining to such sale or other disposal so that a determination can be made that the sale or disposal meets the requirement of subsection (1).

(3) Any information submitted pursuant to subsection (2) shall be treated as confidential and shall not be disclosed to any party outside the office of the Commissioner except information that may be shared with any department of Government that levies and collects taxes or royalties based in any way on the value of a mine product sale or disposal transaction.

(4) For the purpose of this section and any related regulations “affiliated company” means—

(a) any company in which the mineral tenement holder holds five percent or more of the shares or ownership;

(b) any company which holds five percent (5%) or more of the mineral tenement holder’s shares or ownership;

(c) any company affiliated by the same definition in paragraph (a) or (b) to an affiliated company of the mineral tenement holder is itself considered an affiliated company; or

(d) any company or entity that the head of the Government agency responsible for the collection of taxes or royalties has identified as an affiliated company, for any reason whatsoever, and has so informed the mineral tenement holder by official notice.

(5) Where the holder of a mineral tenement fails to comply with subsections (1) or (2), the Commissioner shall proceed to cancel its licence under section 79.

Determination
of fees and
annual ground
rent

263.—(1) The Minister, on the recommendation of the Mineral Resources Committee and subject to section 265, shall prescribe the level of any fee or ground rent required to be paid to the Government.

(2) The Registrar, subject to the prior approval of the Commissioner, may from time to time establish the manner in which any fee or annual ground rent payable under this Act is to be paid.

264.—(1) A holder of a reconnaissance licence, exploration licence, retention licence or mining licence shall pay ground rent annually in such form, manner and amount as are prescribed and to report such payment to the Registrar in the prescribed form. Annual ground rent

(2) A holder of a non-exclusive prospecting licence or artisanal mining permit is not required to pay annual ground rent.

(3) Subject to subsection (4), in respect of each tenement for which annual ground rent is payable, the annual ground rent is based on the mineral tenement area times the prescribed annual ground rent per unit area for that type of tenement and shall be paid annually before December 31 in advance of the calendar year for which the annual ground rent is being paid.

(4) In the year that a mineral tenement is granted, the ground rent payable is the annual ground rent amount for the tenement area prorated for the time period between the date on which the tenement was granted and December 31 and shall be paid at the time the tenement is issued.

(5) Where a mineral tenement is due to expire before the end of a calendar year, the annual ground rent payable for that year is based on a full calendar year, and no portion of the annual ground rent paid is refundable.

(6) Annual ground rent payments shall be submitted in whole, partial payments are not allowed and shall not be accepted.

(7) Except in the first year of a mineral tenement, when any annual ground rent payment required under subsection (1) is paid after the December 31 payment deadline, a late payment penalty, in addition to the annual ground rent payable, shall be paid by the tenement holder equal to the amount of annual ground rent payable.

(8) For the avoidance of doubt, the amount of annual ground rent payable when payment has not been affected by the December 31 payment deadline is twice the amount that would have been payable had the annual ground rent been paid by the payment deadline date.

(9) Where a mineral tenement holder that is required by subsection (1) to pay annual ground rent has failed to pay annual ground rent due for the calendar year and any late payment penalty required under subsection (7) by—

(a) January 31 of that calendar year, the Commissioner shall—

(i) notify the tenement holder, pursuant to section 264, that such payments are past due; and

(ii) provide a copy of the notice to the Registrar, who shall without delay, post the notice on the website of the Commissioner; and

(b) February 28th in that calendar year, the Commissioner shall commence the process to cancel the licence pursuant to section 79.

(10) The failure of a mineral tenement holder to receive a notice pursuant to subsection (9) (a) does not excuse non-payment.

(11) Where a mineral tenement is held in common by many, all those having an interest in the tenement are held jointly and severally liable for the payment of the annual ground rent in respect of the tenement.

Payments related to mineral tenements are public debts

265.—(1) Any annual ground rent, fee, security, financial assurance or other payment required to be paid under this Act to the Government of Malawi, are debts due to Malawi and are recoverable before a court of competent jurisdiction.

(2) The Commissioner shall give written notice to the party owing any debt described above in subsection (1) and demand payment of the debt within thirty (30) calendar days.

(3) In any proceeding, whether of a civil, criminal or legislative nature, pursuant to this section, a certificate of the Commissioner certifying that amounts of specified payments or payments due, those related to any payment or payment due of annual ground rent, fee or any other payment related to mineral tenements that have been paid or are payable, whether the persons who prepared the record of the information or received the payments are known, shall be received without prejudice as evidence of that fact, but subject to the right to investigate and produce evidence in rebuttal.

(4) Where two or more persons constitute the holder of a mineral tenement and any annual ground rent, fee, security, financial assurance or other payment related to the mineral tenement becomes payable, those persons shall be jointly and severally liable for each payment, but without prejudice to any contractual right of contribution existing between them.

(5) Fees payable to the Department of Mines shall attract an interest penalty for late payment as prescribed.

Responsible authorities for tax and royalty collection may inspect records

266. The Malawi Revenue Authority shall have—

(a) the same rights as the Commissioner to inspect the financial records of the holder of any mineral tenement; and

(b) the right to require the tenement holder to hire an independent auditor to perform the inspection and prepare an

independent report on such matters as the responsible authority may direct.

267.—(1) A method for automatically adjusting prescribed levels of fees and annual ground rents on an annual basis that is based on reference to a publicly accessible economic index may be prescribed.

Automatic adjustment or periodic review of fees and annual ground rents

(2) Any economic index prescribed pursuant to subsection (1) shall be prescribed by the Minister only after consultation and agreement with the Minister responsible for finance.

(3) Where an annual automatic fee and annual ground rent adjustment method has been prescribed pursuant to subsection (1), the Registrar shall make available to the public an annually updated table of the adjusted fee and annual ground rent levels based on that method.

(4) Where the Registrar has made available a table of updated fees and annual ground rents pursuant to subsection (3), the most recent such table of fees and annual ground rents are deemed to be the fees and annual ground rents that apply until such time as a subsequent table of fees and annual ground rents is made available by the Registrar.

(5) Where an annual automatic fee and annual ground rent adjustment method has not been prescribed pursuant to subsection (1)—

(a) the Commissioner shall review and recommend to the Minister, at least once in every three (3) years, changes to the prescribed levels of fees and annual ground rents taking into account inflation and other changed circumstances; and

(b) the Minister shall prescribe updated fee and annual ground rent levels at least once in every three (3) year period.

268.—(1) The Commissioner, in consultation with the Commissioner General of the Malawi Revenue Authority, may, from time to time, issue mandatory or voluntary guidelines with regard to the keeping of fiscal payment records, the submission of information relating to fiscal payments by mineral tenement holders to any authority of the Government and require any other information or reports that may be useful to provide fiscal related transparency for the extractive industries.

Compliance with fiscal transparency requirements and guidelines

(2) A holder of a mineral tenement shall conform to mandatory guidelines issued pursuant to subsection (1) with regard to fiscal transparency record keeping and reporting for the extractive industries.

(3) A holder of a mineral tenement that fails to substantially comply with subsection (2) commits an offence and shall, upon

conviction, be liable to a fine of ten million Kwacha (K10,000,000) plus one hundred Kwacha (K100,000) for each day of continued non compliance.

PART XV—GOVERNMENT OWNERSHIP INTEREST

Government participation option

269.—(1) Nothing contained in this section shall affect the entitlement of the Government to receive taxes, royalties, ground rents, fees or any levy or compensation payable to it under this Act or any other written law.

(2) The Government shall have the right, but not the obligation, to acquire, directly or through a Government nominee, without cost, a free equity ownership interest of up to ten percent (10%) in any mining project that will be subject to a large-scale mining licence.

(3) The Government shall have a limited-time option to exercise its right to a free equity ownership interest in a mining project commencing at the time that a large-scale mining licence application is submitted and terminating on the date that the mining licence application is granted or denied.

(4) At the time that the Mineral Resources Committee considers a large-scale mining licence application, but before it decides the application, it shall recommend in a notice to the Minister whether the Government should elect to require a ten percent (10%) free equity ownership interest in the associated mining project.

(5) The Minister shall, within twenty eight (28) days of a notice under subsection (4), decide, in consultation with the Minister responsible for finance, and notify the Mineral Resources Committee whether the Government shall exercise its right for up to a ten percent (10%) free equity ownership interest in the mining project, and if so, the percentage.

(6) Where the Minister has failed to notify the Mineral Resources Committee of his decision within the time period stipulated in subsection (5), it is deemed that the Government has elected to not exercise its right to a free equity ownership interest in the mining project.

(7) Within fourteen (14) days of receipt of a notice under subsection (5) the Mineral Resources Committee shall notify the mining licence applicant of the Minister's decision or that the deemed election of subsection (6) applies.

(8) A large-scale mining licence applicant receiving a notice under subsection (7) may withdraw its application but its application fee shall not be refunded.

(9) Where a large-scale mining licence applicant has been notified that the Government exercises its right to a free equity ownership interest in the mining project and of the percentage (which shall be ten percent (10%) or less) and the applicant does not withdraw its application pursuant to subsection (8), the applicant shall—

(a) provide to the Government such percent of equity ownership, in such form and manner as directed or agreed with the Commissioner, on a free, sustained, non-dilutable and non-contributing equity basis; and

(b) enter into a shareholder or other ownership agreement with the Government that clearly identifies the Government's rights as a minority shareholder or owner with regards to when and how profit, dividend and other distributions will be determined and made.

(10) Where the Government has elected to exercise its right to a free equity ownership interest, no large-scale mining licence may be issued to an applicant prior to the applicant meeting the requirements of paragraphs (a) and (b) of subsection (9).

(11) Nothing in subsection (9) shall be read or construed as authorizing the Government to enter in an agreement relating to the payment of any applicable tax, duty, fee or other fiscal impost, or to grant in respect thereof any exemption or reduction.

(12) Subject to any written agreement between the Government or the nominee of the Government made pursuant to subsection (9), the holder of a large-scale mining licence shall be free to deal with that free equity ownership interest as it deems fit pursuant to its constituent law.

(13) Any company that is a large-scale mining licence holder and that has provided a free equity ownership interest to the Government pursuant to subsection (9) shall have on its management committee or board, as the case may be, a committee or board member nominated by the Minister.

(14) The Government as the holder of a free equity ownership interest derived under this section is not responsible for meeting the past, present or future exploration, development, operating, reclamation or any other costs of the project to which the free equity ownership interest relates.

(15) Where the Government divests all or a portion of its free equity ownership interest derived under this section to another party, that party, from the date of divestment, shall be subject to all future liabilities of the project to which the equity ownership relates in proportion to the ownership interest it holds.

(16) Nothing in this section precludes the Government from any other or further participation in a mining project that may be agreed with the holder of a mining licence on a market value basis.

PART XVI—PROTECTION OF THE ENVIRONMENT

Environmental considerations **270.** The Mineral Resources Committee or the Commissioner, whichever is the approving authority, in deciding whether or not to approve any mineral tenement, shall take into account—

Act No. 19 of 2017 (a) environmental protection and management principles set out in the Environment Management Act;

(b) principles of sustainable development in order to ensure that exploitation of mineral resources serves present and future generations;

(c) effects on human health and environment; and

(d) where development of the proposed project may affect a neighbouring country, consultations with the respective relevant government authorities of the respective countries.

Mineral tenement application may require submissions required by other laws **271.—(1)** Where the Environment Management Act requires an Environmental and Social Impact Assessment report be prepared and approved for an activity or operation and the applicant for a mineral tenement is proposing that type of activity or operation, the mineral tenement applicant shall attach—

Act No. 19 of 2017 (a) a copy of its approved Environmental and Social Impact Assessment report to its application along with a certification from the Director of Environmental Affairs that the project has been approved by the Minister responsible for environmental matters; or

Act No. 19 of 2017 (b) a copy of its Environmental and Social Impact Assessment report along with an explanation that the report has been submitted under the Environment Management Act and is pending approval.

Act No. 19 of 2017 (2) For avoidance of doubt, a mineral tenement may be approved by the Mineral Resources Committee or Commissioner, as the case may be, prior to certification from the Director of Environmental Affairs that the project has been approved by the Minister responsible for environmental matters but the Minister or Commissioner, as the case may be, shall not grant a mineral tenement until such time as the required certification has been provided or it has been determined that project does not require approval under the Environment Management Act.

(3) Where the Atomic Energy Act requires a licence or licences be approved for an activity or practice and the applicant for a mineral tenement is proposing that type of activity or practice, the mineral tenement applicant shall attach a copy of its approved licence(s) or a copy of its licence application to its mineral tenement application. Cap. 61:03

(4) For avoidance of doubt, a mineral tenement may be granted prior to the grant of any licence required under the Atomic Energy Act, but the activity or practice permitted by such licence cannot be performed until such time as the licence is granted. Cap.61:03

(5) Where any other applicable law requires the completion of reports, studies, statements, evaluations and assessments with respect to the effect of an activity or operation prior to the grant of an authorization for that activity or operation, and the applicant for a mineral tenement is proposing that type of activity or operation, the applicant shall attach a copy of such reports, statements, evaluations and assessments to its mineral tenement application.

272.—(1) An application for a medium-scale or large-scale mining licence shall be accompanied by the applicant's proposed rehabilitation and mine closure plan, which shall contain such information as is prescribed. Rehabilitation and mine closure plan

(2) A holder of a medium-scale or large-scale mining licence shall comply with its approved rehabilitation and mine closure plan.

(3) A holder of a large-scale mining licence shall in its operations take into account rehabilitation and mine closure provisions, if any, set out in its community development agreements, if any.

(4) A holder of a mining licence required to have a rehabilitation and mine closure plan shall—

(a) submit an annual rehabilitation and mine closure plan report in such form and manner as are prescribed; and

(b) periodically update and have approved its rehabilitation and mine closure plan, in the prescribed manner.

273.—(1) A rehabilitation and mine closure plan proposal submitted with a mining licence application shall include— Contents of rehabilitation and mine closure plan

(a) a physical closure plan, which includes dismantling of infrastructure, machinery, equipment and buildings, underground workings and open pit workings;

(b) environmental rehabilitation of the land area affected by mining operations including rehabilitation throughout the life of the mine;

(c) a social mitigation plan for the workforce and affected communities from the beginning of mining operations up to and including post closure;

(d) mechanisms for consultation with affected and interested communities and mine workers from the commencement of operations up to and including mine closure;

(e) post closure monitoring to ensure the safety and health of affected environment and communities; and

(f) other matters which may be prescribed.

(2) Where a rehabilitation and mine closure plan submitted under this Act includes the provisions for a mine closure scheme under the provisions of the Environment Management Act, the proposed plan submitted under this Act shall be reviewed and approved by both the Mineral Resources Committee and the approving authority specified in the Environment Management Act.

Act No. 19 of
2017

Act No. 19 of
2017

Financial
assurance

274.—(1) This section shall not apply to the holder of a small-scale mining licence.

(2) A holder of a medium-scale or large-scale mining licence for which rehabilitation and mine closure plan has been approved shall—

(a) submit a financial assurance in accordance with the Regulations to support the performance of rehabilitation and mine closure plan obligations and to ensure that the Government will not be responsible for meeting the costs of performing those obligations should the holder fail to implement its approved plan; and

(b) adjust its financial assurance periodically in accordance with any updated rehabilitation and mine closure plan approved pursuant to section 272 (4) (b).

(3) Where the Commissioner, in consultation with the Director responsible for Environmental Affairs, is not satisfied with the amount of financial assurance proposed in a proposed reclamation and mine closure plan or in a proposed updated reclamation and mine closure plan, the Commissioner, in consultation with the Director responsible for Environmental Affairs, may appoint an independent assessor to conduct the assessment and determine the amount of financial assurance required.

(4) A holder of a mining licence required to provide a financial assurance shall not commence mining and ancillary operations pursuant to its mining licence until a financial assurance has been submitted in accordance with this section and the regulations.

(5) Where rehabilitation and mine closure plan is approved to satisfy both the provisions of this Act and the Environment Management Act, only one financial assurance is required to satisfy the requirements of both this Act and the Environment Management Act.

Act No. 17 of
2017

(6) For purposes of this Act, a financial assurance may include—

(a) an irrevocable, unconditional letter of credit issued to the Department responsible for Mines by a bank or a parent company;

(b) a security, guarantee or performance bond issued to the Department responsible for Environmental Affairs by a bank or a company legally able to do so;

(c) security interests in unencumbered assets, goods, documents of title, securities, chattels, instruments, monies, intangibles or interests arising from assignment of accounts including a pledge of assets;

(d) a trust fund held by and administered by a recognized and competent entity; or

(e) a combination of the foregoing securities in paragraphs (a) through (d).

(7) Where the holder of a mining right fails to fully implement its approved rehabilitation and mine closure plan, or is unable to manage its approved mitigation of environmental impacts, the Commissioner in consultation with the Director responsible for Environmental Affairs, may upon written notice to such a holder, use all or part of the financial assurance to rehabilitate or manage the negative environmental impacts in question.

(8) The requirement for the holder of a mining licence that is required to provide a financial assurance to maintain a financial assurance shall remain in force until the Commissioner, in consultation with the Director responsible for Environmental Affairs, issues a closure certificate to the holder under section 282:

Provided that—

(a) the Department of Mines may retain such portion of the financial assurance that is in the form of assets or funds as may be required to rehabilitate the closed prospecting, exploration or mining operation in respect of latent or residual environmental impacts; and

(b) any assets or funds that are in surplus of the requirement under paragraph (a) of this proviso shall be returned to the holder.

(9) For avoidance of doubt, the provision of a financial assurance made under this section does not relieve the holder of a mining licence from its obligation to rehabilitate its licence area.

Finalization of rehabilitation and mine closure plan

275.—(1) This section shall not apply to the holder of a small-scale mining licence or to the holder of a medium-scale mining licence that has obtained an exemption from the requirement to have an approved rehabilitation and mine closure plan.

(2) Two (2) years before the planned closure of a mine, a holder of a mining licence shall prepare and submit a final revision of its rehabilitation and mine closure plan for approval.

(3) A final rehabilitation and mine closure plan shall include the final end use of the mining licence area and the areas covered by any other tenements granted in connection with the mining project.

(4) A final rehabilitation and mine closure plan shall not be considered final until it is approved in the prescribed manner.

(5) Despite the expiry or cancellation of a mining licence, the prior holder of that licence shall remain liable to implement its approved final rehabilitation and mine closure plan until issued a closure certificate pursuant to section 282.

Use of financial assurance by office of the Commissioner

276.—(1) Where a mining licence is cancelled or expires, or a liquidator, receiver or similar insolvency official is appointed to the holder of the mining licence or the holder of the mining licence fails to implement mine rehabilitation and closure obligations which are not remedied within ninety (90) calendar days of receipt of notice by the Commissioner, the office of the Commissioner may draw upon any applicable financial assurance provided by the holder in accordance with its rehabilitation and mine closure plan.

(2) Where a financial assurance is drawn upon by the Department of the Mines, that financial assurance can only be used by the Department for the purposes of implementing the rehabilitation and mine closure obligations in the holder's last approved rehabilitation and mine closure plan.

(3) Upon being issued with a closure certificate pursuant to section 282, a holder of a mining licence shall be relieved from its obligation to provide a financial assurance, and where the financial assurance consists of funds or assets, such funds or assets remaining shall be returned to the holder, except as required under section 274 (8).

Conditions for protection of the environment and health

277.—(1) The conditions subject to which a mineral tenement is granted, its term extended or its area enlarged shall include such conditions relating to the environment as may be prescribed and as

determined by the Mineral Resources Committee or the Commissioner, whichever is the approving authority.

(2) The Mineral Resources Committee or the Commissioner, whichever is the approving authority, in consultation with relevant authorities for a particular mineral tenement, may determine conditions with respect to—

(a) the conservation and protection of the environment including;

(i) land, water, air, soil, flora and fauna;

(ii) features of cultural, archaeological, historical, geological, social and economic interest in or on the land subject to the mineral tenement; and

(iii) protection of human health, in consultation with the Ministry responsible for health;

(b) the minimization of the effects of mining on adjoining or neighbouring areas and their inhabitants;

(c) the rehabilitation, levelling, re-grassing, reforestation and contouring of any part of a non-exclusive prospecting licence area, exploration licence area or mining licence area that may be damaged, altered or adversely affected by exploration or mining operations; and

(d) the filling in, sealing or fencing off, of excavations, shafts and tunnels, as may be prescribed in the regulations, or as the Commissioner may in any particular case determine, provided that the methods utilized in implementing the remedial work shall, after due consideration of the geology, engineering requirements and other factors, use available technology common in the international mining industry involving similar remedial good practice, and the decision on what method to use shall be both practical and cost-effective.

(3) For avoidance of doubt, the holder of a mining licence operating an open-pit mine shall not be required to refill the pit unless failure to do so would result in an appreciable danger to the public.

278. The Commissioner, acting upon the advice of the Mineral Resources Committee and in consultation with the Director responsible for Environmental Affairs, may from time to time issue—

Commissioner
may issue
environmental
guidelines
pertaining to
mining

(a) environmental guidelines for the conduct of mining by the holders of small-scale mining licences, and the holder of a small-scale mining licence shall conform to such guidelines;

(b) environmental guidelines for the conduct of reconnaissance, prospecting and exploration work, and the holder

of a reconnaissance licence, non-exclusive prospecting licence or exploration licence shall use its best efforts to conform to such guidelines; and

(c) guidelines for the content of environmental plans to be submitted as part of an application for reconnaissance licences, non-exclusive prospecting licences and exploration licences.

Rehabilitation
on surrender,
cancellation or
expiry

279.—(1) When a mineral tenement over any land is partially surrendered, cancelled or expires, the Commissioner may, by written notice served on the person who is or was the last holder of the mineral tenement, direct the person to take such steps within such time as may be specified in the notice, to rehabilitate, in relation to any land included in the mineral tenement which is no longer subject to the mineral tenement, taking into account any obligations arising out of an approved rehabilitation and mine closure plan or under the Environment Management Act.

Act No. 19 of
2017

(2) A person who fails to substantially comply with directions served pursuant to subsection (1) commits an offence and shall, upon conviction, be liable to a fine of ten million Kwacha (K10,000,000) plus one hundred thousand Kwacha (K100,000) for each day of continued noncompliance and to imprisonment for twelve (12) months and shall be ineligible to be granted any mineral tenement.

Rehabilitation
by
Commissioner
at holder's
expense

280.—(1) Where a person to whom written notice is given under section 279 fails to comply with the notice, the Commissioner, after having notified the holder of the holder's default and having given the holder a reasonable period to carry out the necessary rehabilitation, shall cause the necessary steps to be taken to execute it, and the costs thereof and incidental thereto shall be a debt due to Government.

(2) Where a debt due to the Government under subsection (1) is not paid, the Commissioner shall, on behalf of Malawi, seek to recover the debt in a court of competent jurisdiction.

(3) In any proceedings instituted for the recovery from a person to whom a written notice was given under subsection (1) of a debt due, a certificate of the Commissioner that a specified amount is the amount of the debt due shall be received as evidence of that fact, but the debtor shall have the right to present evidence disputing both the existence of the debt and its amount.

(4) A debt due by any person to the Government under this section is recoverable notwithstanding that the person is convicted of an offence under section 279.

Environmental
protection
notice

281.—(1) The Director responsible for Environmental Affairs, in consultation with the Commissioner, may cause to be served on a

person who is the holder of a mining licence, a written notice directing the person to take specified steps within a specified time, for the protection of the environment.

(2) Any person to whom notice is given under subsection (1) who, without reasonable excuse, fails or neglects to comply with the direction commits an offence and shall, upon conviction, be liable to a fine of one million Kwacha (K1,000,000) to imprisonment for a term of not more than one (1) year, or to both such fine and imprisonment and shall be ineligible to be granted any mineral tenement.

(3) For avoidance of doubt, a legal action brought under this section against a person shall not absolve that person from prosecution under any other applicable law for a similar offence.

282.—(1) The holder of a medium-scale mining licence or large-scale mining licence shall remain responsible for any environmental liability, pollution or ecological degradation, and the management thereof, until the Commissioner has issued a certificate of closure to the holder.

Issuance of
certificate of
closure

(2) The holder of a medium-scale mining licence or large-scale mining licence, as the case may be, shall apply for a certificate of closure upon the—

- (a) surrender of any portion of its licence area; and
- (b) upon the expiry or cancellation of its licence.

(3) An application for a certificate of closure shall be made to the Commissioner no later than one hundred and eighty (180) calendar days from the date of the surrender or expiry or cancellation, as the case may be, in the prescribed form and shall be accompanied by an environment risk report.

(4) For the purposes of subsection (1), environment risk report means a report that identifies the environmental risks associated with the respective land area and closure of operations and the steps that have been taken to mitigate or manage those risks.

(5) The Commissioner shall not issue a certificate of closure upon the expiry or cancellation of a medium-scale mining licence or a large-scale mining licence until such time as the licence holder has completed the approved rehabilitation and closure plan required by this Act.

(6) The Commissioner shall consult with the Director responsible for Environmental Affairs and other relevant authorities before issuing a certificate of closure to ensure that impacts of potential health and safety and environmental matters have been addressed.

PART XVII —DISPUTES

Commissioner
to inquire and
resolve disputes

283. Except as otherwise provided in this Act, the Commissioner, in consultation with relevant authorities, may inquire into and decide disputes between persons engaged in reconnaissance, prospecting, exploration or mining activities, either among themselves, or in relation to themselves and parties with a legal interest, other than the Government, not so engaged, in connection with—

(a) the boundaries of any mineral tenement area;

(b) any act committed or omitted, or alleged to have been committed or omitted during the course of, or ancillary to, reconnaissance, prospecting, exploration or mining activities;

(c) the assessment and payment of compensation or any other consideration pursuant to this Act; or

(d) any other matter described in the regulations; or

(e) may refer the dispute for judicial determination.

Commissioner
may refuse to
decide dispute

284. Subject to section 285 the Commissioner may in the Commissioner's sole and absolute discretion, refuse to decide any dispute referred to the Commissioner under this Part and, if the Commissioner does so, the Commissioner shall notify the parties to the dispute, in writing, accordingly.

Commissioner
shall hear
compensation
dispute

285. The Commissioner shall not refuse to act under section 284 regarding any compensation to be assessed for the purpose of section 283.

No court
action until the
Commissioner
refuses to hear

286. A person shall not commence proceedings in a court in respect of any dispute of a kind referred to in section 283, unless the Commissioner has refused pursuant to section 284 to decide the dispute.

Commissioner
may issue
decision,
direction or
order to
resolve dispute

287. The Commissioner may issue any decision, direction or order which may be necessary for the purpose of the administration of this Part, and may order the payment, by any party to a dispute, of such compensation as may be reasonable, to any other person who is a party to the same dispute.

Referral of
directions and
orders to High
Court

288. The Commissioner may send a copy, certified under his or her hand, of any direction or order made by the Commissioner to the Registrar of the High Court, and the High Court shall enforce the direction or order of the Commissioner in the same manner in which it would enforce its own decrees or orders, but no such direction or order shall be so enforced until the period for an appeal under section 289 has passed or, if there is such an appeal within that

period, unless the Mineral Resources Committee rejects the appeal or the appeal is withdrawn.

289. Any person aggrieved by a decision, direction or order of the Commissioner made or given pursuant to this Part may appeal to the Mineral Resources Committee within a period of thirty (30) calendar days after the date on which notice of the decision, direction or order is given to that person.

Commissioner's decision, direction or order may be appealed

290. Where the Commissioner has, pursuant to section 284, refused to decide a dispute, the matter may be referred by the disputing parties or a disputing party to the Mineral Resources Committee, and the Committee, in its absolute discretion, may refuse or decide the dispute and shall notify the parties to the dispute, in writing, accordingly.

Where appeal not allowed

291. On an appeal made under section 289—

(a) the Commissioner shall recuse himself from the deliberations of the Mineral Resources Committee unless invited to provide testimony by the Committee; and

Authority of Mineral Resources Committee to decide appeal

(b) the Mineral Resources Committee may rescind or affirm the decision, direction or order appealed or make a new decision, determination or order, and that decision, determination or order may be subjected to review by the High Court.

292. Where on an appeal under section 289 the Mineral Resources Committee varies or alters any decision, direction or order of the Commissioner or makes a new decision, direction or order, the Commissioner's decision, direction or order shall be null and void and the decision, direction or order, as varied, altered or made, by the Mineral Resources Committee shall be enforced in accordance with section 291.

Effect of appeals decision

293. Where the Commissioner refuses, pursuant to section 284, to decide a dispute, the period of limitation of bringing an appeal to the Mineral Resources Committee with respect to the matter giving rise to the dispute commences on the date the Commissioner so refuses.

Period of limitation regarding appeals to Mineral Resources Committee

294. The fees payable upon the enforcement of a direction or order made by the Commissioner or Mineral Resources Committee under this Part shall be those which would be payable upon the enforcement of a similar decree or order made by the High Court.

Enforcement fees

PART XVIII—MISCELLANEOUS

295.—(1) For the purposes of this Act—

Shape of a mineral tenement

(a) a mineral tenement shape shall be rectilinear; and

(b) a mineral tenement shall consist only of one contiguous part.

(2) The boundaries of a mineral tenement shall be defined based on the coordinate reference system as required by the Government department responsible for land survey matters.

(3) Applications dealing with mineral tenement areas shall have attached a description of the area concerned in the prescribed form.

Grant of right
to enter land

296.—(1) The Commissioner, at any time, in the prescribed form, may grant the right to enter land to a person who has been denied access to enter land by any party where that person requires access to meet an obligation or to do work associated with a task required by this Act.

(2) Without limiting the generality of subsection (1), the Commissioner may grant a right to enter land to—

(a) a person or persons contracted by the office of the Commissioner, for the purpose of carrying out geological, geotechnical, safety or any other investigations;

(b) a person conducting a boundary survey required by section 159;

(c) a person marking a boundary required by section 160;

(d) a person conducting work for the purposes of developing or executing a community engagement plan under section 300;

(e) a person not otherwise authorized under this Act, the right to enter land for the purpose of conducting studies for infrastructure or other works relevant to a mining project; and

(f) any other person who has been denied access to land where the Commissioner is of the opinion that the person requires access for any purpose related to this Act.

(3) An application for the grant of a right to enter land shall be submitted in the prescribed form and manner.

(4) A person who has been granted the right to enter land the subject of a mining licence pursuant to subsection (2) shall report to the mine manager and is bound by any site rules that deal with health and safety.

(5) An officer of the office of the Commissioner or a person who is an employee or contractor of the office of the Commissioner has the inherent right to enter any land for the purpose of carrying out geological, geotechnical, safety or any other investigations and does not require a written permission to do so.

(6) Any person denying a person access to land where the denied person has been granted a right to enter that land under this section commits an offence and shall, upon conviction, be liable to a fine of one million Kwacha (K1,000,000) and to imprisonment for twelve (12) months.

297. A person exercising any right under a mineral tenement on any land, if requested to do so by any lawful occupier or owner of the land or a local government officer, shall produce evidence that the person is the holder, or an agent or employee of the holder, of such a mineral tenement, and if the person fails to do so, the person may be treated as trespasser.

Owner,
occupier may
request proof
from holder

298.—(1) Subject to subsection (2), where this Act requires the reporting of mineral resources or reserves, such reporting shall be based on a reporting standard in widespread use by the international mining community acceptable to the Commissioner.

Reporting of
resources and
reserves

(2) The Commissioner, upon the advice of the Director of Geological Survey, may issue guidelines on the reporting of resources and reserves and any reporting of resources or reserves required under this Act must conform to such guidelines.

299.—(1) Any group comprising individual persons, each of whom is a Malawian citizen, that desire to pool their technical, financial and other resources for the purpose of prospecting or small-scale mining may apply to the Registrar to register as a cooperative mining society or mining partnership.

Cooperative
mining
society and
mining
partnership

(2) The applicants applying to register a cooperative mining society or mining partnership shall provide such documentation as the Commissioner may require.

(3) The Commissioner may approve an application submitted pursuant to subsection (2), and upon the Commissioner's approval of the application, the Registrar shall register the cooperative mining society or mining partnership including the names of all its members in the register.

(4) A cooperative mining society or mining partnership registered pursuant to this section is eligible to apply for and be granted a non-exclusive prospecting licence or small-scale mining licence.

(5) Any non-exclusive prospecting licence or small-scale mining licence granted to a cooperative mining society or mining partnership shall include the name of the cooperative mining society or mining partnership and shall have appended to it a list of all the members of the cooperative mining society or partners, as may be the case.

(6) Members of a cooperative mining society or mining partnership that is granted a non-exclusive prospecting licence or small-scale mining licence may individually or in any group of its members or partners, prospect or mine according to the licence conditions and subject to all obligations imposed by this Act for that type of licence.

Community
engagement
plan

300.—(1) A holder of an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence shall develop a community engagement plan in collaboration with local government authorities, traditional leaders, communities, organizations, women and minority groups in the area in proximity to the tenement.

(2) Where more than one tenement is held by the same tenement holder in a localized area, the tenement holder may register a single community engagement plan that provides for community engagement in that area.

(3) A holder of an exploration licence, retention licence, medium-scale or large-scale mining licence shall update its community engagement plan at least once every three (3) years.

(4) A community engagement plan required under subsection (1) and an updated community engagement plan required under subsection (3) shall be submitted to the Registrar for verification and registration at such time, in such format and upon payment of such fee as is prescribed.

(5) A community engagement plan shall include at least the following—

(a) detailed strategies to conduct awareness programmes, community consultations and disseminate information;

(b) grievance mechanisms to address concerns and issues relating to the licence holder's operations and the process to be used in addressing these concerns and issues; and

(c) such other content as is prescribed.

(6) The Registrar shall register in the register a community engagement plan that substantially meets all subsection (5) requirements.

(7) The Registrar shall not register a community engagement plan that does not substantially contain all the content required under subsection (5).

(8) When a community engagement plan is registered, the Registrar shall post a copy of the plan, and any updated plan, on the

website for such time period as the mineral tenement to which it relates remains valid.

(9) The holder of a medium-scale mining licence or large-scale mining licence shall not commence mine development on its tenement area until its community engagement plan has been registered by the Registrar.

(10) A holder of an exploration licence, retention licence or mining licence shall execute its registered community engagement plan.

(11) The Commissioner may suspend the operations of the holder of an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence on its tenement area when the holder thereof has failed to—

(a) have its community engagement plan or updated plan registered; or

(b) has substantially failed to implement its community engagement plan,

and such suspension shall have effect until such time as the Commissioner is satisfied that the holder of the licence has remedied the reason for which the licence was suspended.

(12) A holder of a mineral tenement whose licence has been suspended pursuant to subsection (11) may appeal the suspension to the Mineral Resources Committee whose decision shall be final.

(13) The holder of an exploration licence, retention licence, medium-scale mining licence or large-scale mining licence shall annually submit a community engagement plan report to the Registrar at such time, in such manner and in such form as are prescribed.

(14) The Commissioner, pursuant to an application made under section 296, may grant a person the right to enter land for the purposes of developing or executing a community engagement plan.

(15) A person who has been granted the right to enter land the subject of a mining licence pursuant to subsection (14) shall report to the mine manager and is bound by any site rules that deal with health and safety.

(16) Any community engagement plan registered pursuant to subsection (6) and any community engagement plan report submitted under subsection (13) shall be made available to the public by the Registrar at the Registrar's office.

Actions not
subject to this
Act
Cap.63:01
Cap.66:07

301.—(1) In this section “forest” and forest “Officer” have the respective meanings assigned by section 2 of the Forestry Act; and “protected area” and national park “officer” have the respective meanings assigned by section 2 of the National Parks and Wildlife Act.

(2) Subject to this section and the Regulations, nothing in this Act shall operate to prevent—

(a) a person from removing from land, in respect of which the person is a lawful occupier or owner reasonable quantities of building and industrial minerals for the purpose of construction on any land of any dwelling house, factory, workshop or store, including the outbuildings or appurtenances thereof for use by that person:

Provided that the removal shall not unduly interfere with the activities of a mineral tenement holder and that the mineral removed shall not be sold or otherwise worked for profit;

(b) any forest officer, game control officer or national parks officer, in his or her official capacity, from removing in a protected area (national park, wildlife reserve or and forest reserve), as the case may be, building and industrial minerals for the purposes of building, bridge-building, road-making and other public and government construction purposes in the reserve or park, provided that the removal does not unduly interfere with the activities of a mineral tenement holder;

(c) the temporary mining of quarry and fill minerals taken from the right of way upon which a road is situated for use in the construction of that road (such as borrow pits); and

(d) the exercise, by the Minister or any authorized officer, of the rights under section 26 (a) of the Land Act.

Cap. 57:01

(3) A person who enters upon land the subject of a mining licence, pursuant to subsection (2) shall report to the mine manager and is bound by any site rules that deal with health and safety.

Authorization
to take
minerals from
licence area

302. Nothing in any Act referred to in section 301 shall be treated as authorizing a person to enter upon and take any mineral from an exploration licence area, a retention licence area or a mining licence area without the written consent of the holder of the exploration licence, retention licence or mining licence concerned.

Disputes
regarding
taking of
minerals

303. Any dispute to whether or not a person is entitled to take minerals pursuant to section 301 shall be decided by the Commissioner, whose decision shall be final.

304.—(1) The Director of Geological Survey, by instrument in writing, may consent to the carrying on, by any person or institution, of activities in the course of a bona fide scientific investigation (other than an investigation which is intended to locate minerals for the purpose of that person applying for a mining licence) with respect to the geology or mineral resources of Malawi.

Scientific
investigation

(2) An instrument of consent under this section shall specifically authorize the person or institution to whom it is issued to carry on the activities specified in the instrument—

- (a) in a certain, clearly described area;
- (b) for a time period with an expiration date; and
- (c) subject to certain conditions, if any.

(3) For the avoidance of doubt, a person or institution that has obtained an instrument of consent under this section is not required to also obtain a mineral tenement to do the things authorized in the instrument of consent.

(4) Subject to subsections (5) and (6), a person or institution that has been granted an instrument of consent under this section may enter onto any land specified in the instrument of consent to carry on any activities specified in the instrument of consent.

(5) A person or institution that has been authorized by an instrument of consent under this section to enter onto any land or place referred to in the instrument of consent shall before entry on that land first inform the owners or lawful occupiers of that land, if any.

(6) Where the commission or omission of any act is regulated or prohibited by a written law (other than this Act) nothing in this section shall be construed as authorizing the person or institution specified in the instrument of consent to perform the act—

- (a) other than in accordance with the written law; and
- (b) without first obtaining the licence, permit, authority or other instrument (if any), required under the written law to perform the act.

(7) Where an instrument of consent has been obtained by a person or institution under this section, that person or institution, or any company affiliated with that person or institution, is ineligible to apply for a mining licence over any land the subject of the instrument of consent for a period of one (1) year from the expiration date of the instrument of consent.

Geological samples for non-mining purposes

305.—(1) The Commissioner, by instrument in writing, may consent to the taking, by any person or institution, of geological and other mineral related samples not intended for determining mining potential.

(2) For the avoidance of doubt, a person or institution that has obtained an instrument of consent under this section is not required to also obtain a mineral tenement to take geological and other mineral related samples as authorized in the instrument of consent.

Export of minerals requires a permit

306.—(1) Subject to subsection (2), any person who exports any minerals that have commercial value from Malawi other than under and in accordance with a minerals export permit granted under section 307 commits an offence and shall, on conviction, be liable, in the case of—

(a) an individual, to a fine of ten million Kwacha (K10,000,000) plus double the value of minerals exported illegally and to imprisonment for a term of two (2) years, and if such individual is not a citizen of Malawi, to deportation from Malawi and a prohibition from returning to Malawi; or

(b) a body corporate, to a fine of twenty million Kwacha (K20,000,000) plus double the value of minerals exported illegally and with respect to individuals in management, to imprisonment for a term of two (2) years or a fine similar to that imposed under paragraph (a) and in accordance with section 248.

(2) The Minister may prescribe any type or class of minerals that do not require a permit prior to their exportation, and subsection (1) shall not apply with respect to such minerals.

Permit to export minerals

307.—(1) The Commissioner may grant to any person a minerals export permit, in the prescribed form, to export minerals from Malawi on conditions determined by the Commissioner and specified in the permit.

(2) A person granted a minerals export permit is not exempt from complying with the requirements of any other applicable law relating to the export of minerals.

(3) An application for a minerals export permit shall be—

- (a) on the prescribed form;
- (b) submitted with the prescribed application fee; and
- (c) submitted to the Commissioner.

(4) When the Commissioner pursuant to subsection (1) grants a minerals export permit, the signed permit shall be provided to—

- (a) the Registrar, who shall record the details of the permit in the register and issue the permit; and

(b) the government authorities responsible for the administration of mineral royalty, customs duty and tax revenues.

(5) An Inspector of Mines may, at any reasonable time, inspect any shipment of minerals destined for export.

308. Notwithstanding any permit granted pursuant to section 307, the Commissioner may—

Commissioner may prohibit mineral exports for non-payment of royalty

(a) prohibit the export of any mineral or mineral product consignments unless or until any and all royalties that are due and payable under applicable law with regard to the mineral or mineral product has been paid to or secured by Malawi; and

(b) provide for examination of mineral consignments.

309.—(1) Where the President considers that any land is required to secure the development or utilization of the mineral resources of Malawi, the President, in accordance with a recommendation of the Mineral Resources Committee, may direct the land be compulsorily acquired under the Lands Acquisition and Compensation Act.

Authorization of President to acquire land

Cap.58:04

(2) For the purposes of compulsory land acquisition, mining operations shall be deemed to be a purpose of public utility.

310.—(1) Except as otherwise provided under this Act, the Registrar shall maintain good and accurate records of the ownership of mineral tenements, all payments related to mineral tenements due under this Act, whether of annual ground rent or of any other nature, and such information shall be a matter of public record and available for legislative and public review.

Information regarding minerals

(2) The Registrar shall ensure that all records related to mineral tenements are accurate and not false or misleading.

(3) Any person who knowingly prepares, produces, releases or discloses false or misleading information regarding mineral tenements shall be prosecuted to the fullest extent of the law for such a wrongful act or acts.

(4) The Commissioner may direct the holder of a mineral tenement, at a reasonable time and place specified in the direction, to make available to, or produce for inspection by, the Commissioner or an authorized officer, all books, accounts, vouchers, documents or records of any kind, concerning the mineral tenement.

(5) Where the Commissioner has reason to believe that a person is capable of providing financial information or producing or making available books, documents, electronic data and information in any form relating to minerals obtained, or the value of minerals

obtained, he may, by instrument in writing served on that person, order that person—

(a) to furnish to him, in writing, within the period and in the manner specified in the instrument, any such information;

(b) to require the person or another person specified in the instrument to answer questions relating to minerals obtained, or the value of minerals obtained at such time and place as specified; or

(c) to produce or make available to the person or persons specified in the instrument, at such time and place as is so specified, books or documents in his or her custody, power or control relating to minerals obtained or the value of minerals obtained.

(6) Where books or documents are made available to the Commissioner pursuant to a requirement under subsection (4) or (5), the Commissioner and his administrative staff may make copies of, and take extracts from, the books, documents and other forms of data, including electronic data.

(7) A person shall not—

(a) refuse or fail to comply with a requirement under subsection (4) or (5) to the extent to which the person is capable of complying;

(b) purport to comply with such a requirement, but knowingly furnish information that is false or misleading in a material particular;

(c) when attending before the Commissioner or any person in pursuance of such a requirement to produce or make available books, documents or other information, knowingly make a statement or produce a document which is, or produce books which are, false or misleading in a material particular; or

(d) when producing or making available books or documents, knowingly produce any book or document which is, false or misleading in a material particular.

(8) Any person who contravenes subsection (7) commits an offence and shall, upon conviction, be liable to a fine of three million Kwacha (K3,000,000) or to imprisonment for two (2) years, or to both such fine and imprisonment.

(9) A person, whether a government employee or not, who has access to financial information provided under subsection (4) or (5) shall not—

(a) knowingly record, make a statement or produce a document which is false or misleading in a material particular; or

(b) when making books or documents available pursuant to such a requirement, knowingly make available, release or otherwise disclose information regarding mineral tenements, including but not limited to books, records or other financial information related to mineral tenements, which is false or misleading in a material way.

311.—(1) A document, declaration or notice required or permitted to be served on, or given to, a person under or for the purposes of this Act, may be served or given—

Service of documents, declarations, notices

(a) in the case of an individual (other than the Minister, Commissioner or Registrar)—

(i) by serving it personally upon the individual;

(ii) by sending it by courier service or registered mail to the person at the person's registered mailing address, as provided under section 41;

(iii) by transmitting it by electronic mail to the person's registered email address, as provided under section 41;

(iv) by transmitting it by facsimile to the person's registered facsimile address, as provided under section 41; or

(v) by sending or transmitting it to the address or email address provided in a prescribed form for the purpose of that notice;

(b) in the case of the Minister, Commissioner or Registrar, by serving it personally upon the Registrar, or by sending it by courier service or registered mail to the central office of the Commissioner, or by submitting it electronically to the Registrar using such system as the Registrar may maintain for this purpose; and

(c) in the case of a body corporate or other legal entity—

(i) by leaving it at the registered address of the body corporate with some individual employed by the body corporate and not less than eighteen (18) years of age;

(ii) by sending it by courier service or registered mail to the body corporate at the registered address, as provided under section 41 of the body corporate;

(iii) by transmitting it by electronic mail to the registered email address provided by the body corporate to the Registrar, as provided under section 41;

(iv) by transmitting it by facsimile to the registered facsimile address provided by the body corporate to the Registrar, as provided under section 41;

(v) by sending or transmitting it to the address or email address provided in a prescribed form for the purpose of that notice; or

(vi) by delivering it to some individual in the employment or acting on behalf of the body corporate that is authorized by the body corporate, or agrees to accept service of or to receive the document, declaration or notice.

(2) Where a person has more than one place of residence or business, a document or notice may be served or given to the person under this section at any of those places.

(3) Any notices, service, declarations and other communications given or made shall be deemed to have been given—

(a) where delivered personally on the day of personal delivery;

(b) where sent by registered post is deemed to have been effected or delivered under this section, unless the contrary is proved, seven days after the date it was deposited in the post, unless the deemed day is on a weekend or a national holiday, in which case the date of delivery shall be the next business day;

(c) where delivered by courier on the day of delivery confirmation;

(d) where sent by facsimile on day of receipt by the sender of a transmission control report from the dispatching machine showing the relevant facsimile machine number and the result of the transmission as "OK", or similar response; and

(e) where sent by email on day of receipt by the sender of a transmission control report from the dispatching server machine showing the receiving server identification and its confirmation of message received, or similar response.

Malawian
citizen

312.—(1) Where for the purposes of this Act, proof is required by an authority that a person is a Malawian citizen, the person claiming such citizenship shall provide such evidence as is directed by the concerned authority.

(2) Evidence that supports proof of citizenship, but which is not sufficient in itself to prove Malawian citizenship, may include—

(a) a letter from a traditional leader;

(b) a letter from the District Commissioner where the person resides;

(c) a passport; or

(d) an identification card issued under Malawian law.

PART XIX—REGULATIONS

313.—(1) The Minister, on the recommendation of the Mineral Resources Committee, shall make regulations prescribing all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations

(2) In particular, but without any limitation of the generality of subsection (1), the regulations may include provision for any and all aspects of this Act, but not be limited to—

(a) reconnaissance, prospecting and exploring for minerals and the carrying on of related activities, and for those purposes the conduct of activities, the methods which may or may not be used and the duties of specified persons in relation to reconnaissance, prospecting or exploration work;

(b) mining for minerals and the carrying on of related activities, and for those purposes the conduct of works, the methods which may or may not be used and the duties of specified persons in relation to mining operations;

(c) the functions of officers acting in the administration of this Act;

(d) the regulation of matters relating to, mine occupational safety, health and environment;

(e) the form, content and manner of submitting of applications for any matter related to mineral tenements;

(f) the form, content, time and manner of submitting reports and other information;

(g) the regulation regarding the training of citizens of Malawi and matters related to the environment and sustainable development;

(h) the reporting of cases of accident or death occurring in the course of reconnaissance, prospecting, exploration, retention or mining operations, or in any related activities, and the holding of inquiries into accidents;

(i) the demarcation of mineral tenement areas;

(j) the circumstances in which fees or annual ground rents may be charged and the amounts thereof;

(k) the conduct of searches in connection with mineral tenements, or interests created therein, the granting of certificates in connection therewith, and the effect of any such certificate;

(l) the content of by-laws for the purpose of granting and regulating artisanal mining permits;

(m) the system for defining shapes of mineral tenements;

(n) the location of mineral tenement areas on the ground;

(o) the registration of mineral tenements and other instruments;

(p) the exercise of rights in, and the obligations to be performed, including work and reporting obligations, in relation to, land subject to a mineral tenement;

(q) the transfer of, and the creation of shares in, a mineral tenement, and the respective rights of the transferor and transferee;

(r) the consolidation, expansion, extension, surrender or cancellation of mineral tenements; and

(s) penalties for contravening the provisions of this Act.

Cap.1:01

(3) Any regulation made under this Act, notwithstanding the provisions of section 21 (e) of the General Interpretation Act, may prescribe a fine of up to one billion Kwacha (K1,000,000,000) and imprisonment for up to fifteen (15) years for contravention of any provision of this Act or a regulation.

Exercise of
authority to
make
regulations

314. The power under this Part to make regulations may be exercised—

(a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases; and

(b) to draft and promulgate regulations which may be the same for all cases, different for different cases or classes of cases, or different with respect to the same case or classes of cases for different purposes.

PART XX—REPEAL AND TRANSITIONAL PROVISIONS

Interpretation
of this Part

315. For the interpretation of this Part, “the Effective Date” means the date that this Act shall come into force.

Repeals and
savings and
coming into
force of
transitional
provisions
Cap. 61:01

316.—(1) Subject to subsection (2), the Mines and Minerals Act is hereby repealed.

(2) Any subsidiary legislation made under the Mines and Minerals Act, repealed under subsection (1) (the “repealed Act”) in force immediately before the commencement of this Act—

(a) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(b) may be replaced, amended, revoked or repealed by subsidiary legislation made under this Act.

(3) The transitional provisions and savings in this Part shall have full force and effect from the Effective Date.

317. The transitional provisions and savings in this Part shall have full force and effect from the Effective Date.

Transitional provisions and savings provisions come into force

318. Except insofar as the context or subject matter otherwise indicates or requires, nothing in this Part effects—

Legal status of actions done under the repealed Act

(a) anything duly done or commenced under the repealed Act;

(b) any penalty, forfeiture or punishment incurred in respect of any offence committed against any provision of the repealed Act; or

(c) any investigation, inquiry, legal proceedings or remedy in respect of any such liability, penalty, forfeiture or punishment, and any such investigations may be continued or enforced, and any such penalty, forfeiture or punishment may be imposed and enforced, as if this Act had not been enacted.

319.—(1) A non-exclusive prospecting licence issued under the repealed Act, that is in force immediately before the Effective Date shall be—

Legal status of non-exclusive prospecting licence granted under the repealed Act

(a) deemed to be a non-exclusive prospecting licence under this Act, commencing on the Effective Date;

(b) subject to the conditions as stated in the licence;

(c) authorized to prospect in all areas covered by the licence for any mineral for which the holder is authorized by the licence to prospect for; and

(d) accorded all the rights granted, and subject to all the obligations imposed, under this Act on the holder of a non-exclusive prospecting licence.

(2) The Registrar shall cause the name of the person who, immediately before the Effective Date, was the holder of a non-exclusive prospecting licence granted under the repealed Act to be recorded as the registered holder of the non-exclusive prospecting licence under this Act.

Legal status
of exclusive
prospecting
licence
granted under
the repealed
Act

320.—(1) The holder of an exclusive prospecting licence granted under the repealed Act that shall have six (6) months from the Effective Date to apply for an exploration licence under subsection (3).

(2) Where the holder of an exclusive prospecting licence that was in force immediately before the Effective Date—

(a) fails to apply for an exploration licence prior to the current expiration date of its licence or before the deadline specified in subsection (1), whichever shall first occur; or

(b) its exploration licence application made pursuant to subsection (3) is denied,

the exclusive prospecting licence shall be deemed to be cancelled as of the date that the licence would have otherwise expired or six (6) months from the Effective Date, whichever occurs first.

(3) The holder of an exclusive prospecting licence granted under the repealed Act, that is in force immediately before the Effective Date that has substantially met the obligations and conditions of its licence—

(a) has an exclusive, priority right to apply for an exploration licence over the area of its exclusive prospecting licence; and

(b) is exempt from paying the application fee for such exploration licence.

(4) Where an exploration licence application is granted pursuant to an application made under this section—

(a) the boundaries of the prior exclusive prospecting licence shall be reasonably adjusted so that the exploration licence boundaries conform to the requirements of section 295; and

(b) its term and other matters under this Act that require a commencement date shall be measured from the date that the exclusive prospecting licence was granted.

(5) Any application for an exclusive prospecting licence or exclusive prospecting licence term extension that was pending immediately before the Effective Date of this Act shall be deemed null and void and shall not be considered for approval.

Legal status of
mining claim
granted under
the repealed
Act

321.—(1) A mining claim that was registered under the repealed Act and which was valid immediately before the Effective Date of this Act, shall remain in force and effect for the term stated in the mining claim, subject to the conditions of the mining claim.

(2) The period of validity of a mining claim granted under the repealed Act, shall be the same as if this Act had not been enacted, but the term of the mining claim shall not be extended.

(3) A holder of a mining claim granted under the repealed Act, shall have a priority right to apply for a small-scale mining licence over the area the subject of the mining claim provided such application is made—

(a) within ninety (90) calendar days from the date on which this Act came into force; and

(b) before the end of the mining claim's period of validity.

(4) Any application for a mining claim or mining claim term extension that was pending immediately before the Effective Date shall be null and void and shall not be considered for approval.

322.—(1) Subject to this section, a mining licence granted under the repealed Act, that was in force immediately before the Effective Date, shall be deemed to be a mining licence granted under this Act.

Legal status
of mining
licence
granted under
the repealed
Act

(2) A holder of a mining licence that was in force immediately before the Effective Date shall within sixty (60) calendar days from the Effective Date notify the Commissioner whether its operation, applying the criteria set out in section 148 and the restrictions on small-scale mining licence area limits and mining methods, is a small-scale, medium-scale or large-scale mining licence operation.

(3) When the holder of a mining licence that is required under subsection (2) to notify the Commissioner of the scale of its operation fails to do so by the deadline set out in that subsection, the Commissioner shall determine the scale of operation, inform the Registrar and notify the licence holder of his or her determination.

(4) Based on the notification provided under subsection (2) or the determination made under subsection (3) regarding a mining licence that was in force immediately before the Effective Date, the Registrar shall re-register and issue the licence as a small-scale mining licence, medium-scale mining licence or large-scale mining licence (if the mining licence has not since been surrendered, expired or cancelled) subject to all conditions of this Act.

(5) When a mining licence is registered pursuant to subsection (4)—

(a) the boundaries of the mining licence area shall be reasonably adjusted by the Commissioner to conform to the requirements of section 295; and

(b) the licence holder, within thirty (30) calendar days of the registration—

(i) where the licence is a medium- scale mining licence or a large-scale mining licence, shall demarcate the adjusted boundary as required under section 160 and survey the adjusted boundary as required by section 159; or

(ii) where the licence is a small-scale mining licence, shall mark the adjusted boundary as required under section 193.

(6) Unless otherwise provided under this Act, commencing no later than one hundred and eighty (180) calendar days from the registration of a licence under subsection (4), the holder of the licence shall meet all obligations imposed on holders of that type of mining licence under this Act.

(7) Where a holder of a mining licence has substantially failed to comply with the requirements of subsection (6), the Commissioner shall proceed to cancel the licence under section 79.

Legal status of mining permit granted under the repealed Act

323. A mineral permit issued under the repealed Act that is in force, immediately before the Effective Date shall be deemed to be an artisanal mining permit granted on the same conditions under this Act on the Effective Date, and the provisions of this Act shall apply accordingly.

Passed in Parliament this fourteenth day of December, two thousand and eighteen.

FIONA KALEMBA
Clerk of Parliament