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PART B

THE MINES AND MINERALS ACT, 2011 (Act No. 4 of 2011)



I ASSENT

MSWATI III
King of Swaziland

09th March, 2011

AN ACT ENTITLED

AN ACT to consolidate the law on mining and provide for the management and administration of minerals, mineral oils and incidental matters.

ENACTED by the King and Parliament of Swaziland.

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PART I
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Short title and Commencement

- 1. (1) This Act may be cited as the Mines and Minerals Act, 2011.

(2) This Act shall come into force on a date to be appointed by the Minister by notice in the Gazette.

Interpretation

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

“application” means an application for the grant, renewal, or surrender of a mineral right under this Act;

“Board” means the Minerals Management Board established under section 214 of the Constitution;

“body corporate” includes a company, firm, partnership, municipal corporation, or other legal person;

“building materials” includes all forms of rock, stones, gravel, sands, clay, volcanic ash or cinder, or other minerals used for the construction of buildings, roads, dams, aerodromes or similar works and includes such other minerals as the Minister may, by notice published in the Gazette, declare to be building materials;

“Commissioner” means the Commissioner of Mines appointed under section 17 of this Act;

“company” means a company incorporated in Swaziland;

“Constitution” means the Constitution of the Kingdom of Swaziland;

“Environment Authority” means the authority established under section 9 of the Environment Management Act, 2002;

“environment” has the same meaning as specified in the Environment Management Act, 2002;

“Environmental Compliance Certificate” has the same meaning as set out in the Environmental Audit, Assessment and Review Regulations, 2000;

“environmental laws and regulations” means the Environmental Management Act, 2002 and the Environmental Audit, Assessment and Review Regulations, 2000 and subsidiary legislation made thereunder;

“excavation” means a trench, pit, shaft or open-cast working relating to mining operations;

“financial difficulty” in respect of a company or body corporate, means that the company or body corporate -

(a) is in liquidation;

(b) is the subject of a subsisting court order for its winding up or dissolution; or

(c) has made a composition or arrangement with its creditors that remains in effect;

“goldsmith” means a manufacturer in gold or other precious minerals or a seller of articles manufactured of gold or other precious minerals;

“holder”, in respect of a mineral right that has been granted and registered in accordance with this Act -

(a) means the person to whom the right was granted; but

- (b) where such a right has been lawfully transferred or assigned, means the person to whom the right has been lawfully transferred or assigned;

“land” includes land covered by water;

“large-scale operation” means a reconnaissance operation, a prospecting operation, or a mining operation, which is a large-scale operation in accordance with this Act;

“lease” means a mining lease entered into under the Mining Act of 1958;

“mine” means -

- (a) when the word is used as a noun - an area where mining is carried out and includes an excavation or system of excavations made for the purpose of, or in connection with, the extraction of minerals, as well as an area where a mineral is won by dredging or other means; and

- (b) when the word is used as a verb - the carrying out of a mining operation;

“mine dump” means any area where mine waste and tailings are stored, placed, stockpiled or dumped;

“mineral” means a substance formed by, or subject to, a geological process whether in solid, liquid or gaseous form occurring naturally in or on the earth and includes any metalliferous ore, building materials and material that may be used to improve the quality of the soil for agriculture but does not include surface water or groundwater;

“mineral dealings” means -

- (a) buying minerals;
- (b) selling minerals;
- (c) bartering minerals; or
- (d) depositing or receiving minerals as a pledge or security; and

“mineral dealer” has the corresponding meaning;

“mineral deposit” means a mass of naturally occurring mineral or minerals;

“minerals agreement” means a minerals agreement referred to under section 77 of this Act;

“mineral oil” means a colourless, oily, almost tasteless, water-insoluble liquid, usually of either a standard light density or a standard heavy density, consisting of mixtures of hydrocarbons obtained from petroleum by distillation.

“mineral right” means a reconnaissance licence, a prospecting licence, a retention licence, a mining licence, a prospecting permit or a mining permit;

“mine waste and tailings” means the residue of mining operations and includes, gravel, sand, slime, and other substances discarded in the course of mining operations;

“Minister” means the Minister responsible for mines and minerals;

“mining area” means the area or areas of land covered by a mining licence or a mining permit;

“mining permit” means a permit granted in accordance with this Act that authorises small-scale mining operations;

“mining licence” means a licence granted in accordance with this Act that authorises large-scale mining operations;

“mining operations” means an operation carried out in connection with a mine -

- (a) to win a mineral from where it occurs;
- (b) to extract a mineral from its natural state;
- (c) to undertake minerals beneficiation; or
- (d) to dispose of a mineral or waste substances resulting from, such winning or extraction;

“precious minerals” include -

- (a) precious stones, namely agate, amber, amethyst, cat’s eye, chrysolite, diamond, emerald, garnet, ruby, sapphire, turquoise, and any other precious stones that are prescribed; and,
- (b) precious metals, namely gold, silver, or other metal of the platinoid group in an unmanufactured state and, any other rare earth metals that are prescribed;

“prescribed” means prescribed by this Act or by regulations made by the Minister under this Act;

“programme of mining operations”, in respect of a mining licence -

- (a) means a programme of intended mining operations prepared by the applicant or holder of the licence and approved on the grant or renewal of the licence; but,
- (b) where the programme is amended pursuant to this Act, means the programme as so amended;

“programme of prospecting operations”, in respect of a prospecting licence or a retention licence -

- (a) means a programme of intended prospecting operations prepared by the applicant or holder of the licence and approved on the grant or renewal of the licence; but,
- (b) where the programme is amended pursuant to this Act, means the programme as so amended;

“programme of reconnaissance operations”, in respect of a reconnaissance licence -

- (a) means a programme of intended reconnaissance operations prepared by the applicant or holder of the licence and approved on the grant or renewal of the licence; but,
- (b) where the programme is amended pursuant to this Act, means the programme as so amended;

“Project Brief” has the same meaning as specified in the Environmental Audit, Assessment and Review Regulations, 2000;

“prospecting area” means the area or areas of land covered by a prospecting licence or a prospecting permit;

“prospecting licence” means a licence granted in accordance with this Act that authorises large-scale prospecting operations;

“prospecting operations” means operations carried out to search for and to define the extent of a mineral deposit and to determine its economic value;

“prospecting permit” means a permit granted in accordance with this Act that authorises small-scale prospecting operations;

“public officer” means, subject to section 254 of the Constitution, the holder of a public office and includes a person appointed to act in a public office who, in either case, has been appointed for the purposes of this Act;

“radioactive mineral” means a mineral which contains by weight at least one-twentieth of one per cent (0.05 per cent) of uranium or thorium or any combination thereof, including, but not limited to, monazite sand and other ores containing thorium and carnotite, pitchblende and other ores containing thorium.

“reconnaissance area” means the area or areas covered by a reconnaissance licence;

“reconnaissance licence” means a licence granted in accordance with this Act that authorises large-scale reconnaissance operations;

“reconnaissance operations” means operations to search for minerals and mineral deposits or to test the mineral potential of land, or both, and includes geophysical surveys, geo-chemical surveys and photo geological or other like surveys;

“register” means the register of mineral rights required under section 138;

“registered address”, in respect of the holder of a mineral right, means the address for the time being registered by the holder with the Commissioner in accordance with this Act;

“regulations” except where otherwise indicated, means regulations made under this Act;

“retention area” means an area or areas of land that are subject to a retention licence;

“retention licence” means a licence granted in accordance with this Act that authorises the licence holder to exercise the rights set out in section 73;

“small-scale operation” means a prospecting or mining operation that is a small-scale operation in accordance with this Act;

“Swazi area” means any land held by the *iNgwenyama* in trust for the Swazi Nation.

“unrehabilitated insolvent” means a person who -

- (a) has been adjudged or otherwise declared a bankrupt and has not been discharged; or
- (b) has entered into an agreement or scheme of composition with his or her creditors and the agreement subsists; or

- (c) being an individual, has taken advantage of a law for the benefit of debtors and continues to do so.

Prohibition against carrying-on of reconnaissance, prospecting and mining operations without a licence

3. (1) A person shall not carry out reconnaissance operations unless that person -
 - (a) is the holder of a reconnaissance licence; and
 - (b) carries out the reconnaissance operations in accordance with this Act and the terms and conditions of the reconnaissance licence.
- (2) A person shall not carry out prospecting operations unless that person -
 - (a) is the holder of a prospecting licence or permit; and
 - (b) carries out the prospecting operations in accordance with this Act and the terms and conditions of the prospecting licence or prospecting permit and those of any minerals agreement.
- (3) A person shall not carry out mining operations unless that person -
 - (a) is the holder of a mining licence or permit; and
 - (b) carries out the mining operations in accordance with this Act and the terms and conditions of the mining licence or mining permit and those of any minerals agreement.

Restriction on acquisition of mineral rights

4. (1) A mineral right shall not be granted under this Act -
 - (a) to an individual who has not attained eighteen years of age; or
 - (b) to a person who is an un-rehabilitated insolvent.
- (2) A mineral right shall not be granted to any corporate or legal entity that -
 - (a) has not been registered to operate in Swaziland; or
 - (b) is in financial difficulties.

Duty to lodge mining licence for registration by registrar of deeds

5. A holder of a mining licence shall lodge a mineral right with the Registrar of Deeds to be registered as a real right.

Power to declare area reserved for small-scale operations

6. The Minister may, in consultation with the Land Management Board and the Board, by order published in the Gazette, designate any vacant area of land to be an area reserved exclusively for small-scale operations.

Power to declare an area reserved for tendering

7. (1) The Minister may, with the approval of the Ingwenyama, by order published in the Gazette, designate any vacant area of land to be an area reserved for applications by tender relating to large-scale operations.

(2) The Minister shall not designate an area under sub-section (1) that is the subject of a mineral right if such designation would be incompatible with the continued enjoyment of that right.

PART II ADMINISTRATION

Recognition of the Minerals Management Board

8. The Minerals Management Board as established by section 214 of the Constitution is recognised.

Disqualification for Membership

9. A person shall not qualify for appointment as a member of the Board, if that person -

- (a) is an applicant for, or the holder of, a mining right;
- (b) has a financial interest, either direct or indirect, in any mining operation or in an application for a licence;
- (c) is an un-rehabilitated insolvent; or
- (d) has been convicted by a court in respect of an offence involving dishonesty during the last ten years.

Meetings of the Board

10. (1) Meetings of the Board shall be held on such dates and at such times and places as the Board may from time to time determine.

(2) The Chairperson may at any time on reasonable notice convene an extraordinary meeting of the Board.

(3) The proceedings of the Board shall be determined by the Board.

(4) The quorum for a meeting of the Board shall be four members one of whom being the Commissioner of Mines.

(5) A decision of the Board shall be by a majority of the members present at a meeting of the Board, and in the event of an equality of votes on any matter, the Chairperson shall have a casting vote in addition to the deliberative vote of the Chairperson.

(6) A decision of the Board shall not be invalid by reason of a vacancy in the Board.

(7) If for any reason the Chairperson is unable to attend a meeting or session of the Board, the Chairperson shall designate another member to represent the Chairperson and such officer shall for all intents and purposes be deemed to be so appointed in terms of this section.

(8) The appointment under subsection (7) may not exceed five days of actual sittings in any one continuous period of sittings or of one continuous session unless the iNgwenyama, by notice published in the government gazette, so appoints such officer for the anticipated longer duration of the absence of the chairperson.

Functions of Minerals Management Board

11. (1) The Board shall -

- (a) advise the iNgwenyama on the overall management of minerals, the making of grants, leases or other dispositions conferring rights or interests in respect of minerals and mineral oils in Swaziland;
- (b) acting upon any delegated functions given as a result of that advice, may, grant, renew, amend, accept the surrender of, suspend or cancel a mineral right in accordance with this Act;
- (c) consider applications including applications for tender for mineral and mining rights; and
- (d) investigate or cause to be investigated allegations and determine complaints relating to mining licences or mining permits.

(2) A reference in this Act to the Board doing any of the things mentioned in sub-section (1)(b) means the Board doing it in accordance with that sub-section.

Powers of the Board

12. The Board shall have the power to -

- (a) conduct any investigation, hearing or enquiry into any matter falling within the scope of the functions of the Board; and
- (b) enter upon any mining operation at such times and manner as the Board may deem necessary.

Immunity of Members of the Board

13. No civil or other proceeding shall be brought against a member of the Board in respect of an act or omission or anything done or omitted to be done in good faith in the performance of the functions of the Board under this Act.

Privilege from disclosure in legal proceedings

14. A member of the Board shall not in any legal proceedings be permitted or compelled to produce or disclose any communication, written or oral, which has taken place between the Board or any member of the Board and the Government or an officer of the Government in exercise of or in connection with the exercise of the functions of the Board if the Minister certifies that the production of that communication is not in the public interest.

Submission of Reports

15. (1) The Board shall, six months after the beginning of each financial year, submit a written report to the Minister in respect of the discharge of its functions during the past six months.

(2) The Board shall, as soon as possible after the end of each financial year, submit a report to the Minister in respect of the discharge of its functions during the past year and the Minister shall lay every such report before both Houses of Parliament.

Establishment of office of Commissioner of Mines

16. There is established an office of the Commissioner of Mines, which shall consist of an inspectorate, mine engineers, geoscientists, geologists, minerals valuers, a minerals marketing body and other officers as the Commissioner may consider necessary.

Appointment of Commissioner of Mines

17. (1) The iNgwenyama shall, subject to the law regulating the appointment of public officers, appoint a suitably qualified person to be the Commissioner of Mines.

(2) A person appointed to the position of Commissioner under sub-section (1) shall be a person who holds tertiary degree qualifications in mine engineering or in a related geo-scientific discipline and has considerable expertise and experience in the mining industry.

Functions of Commissioner of Mines

18. The Commissioner shall -

- (a) receive applications for the consideration, assessment and advice of the Board;
- (b) issue mineral licences that have been granted by iNgwenyama under this Act
- (c) ascertain whether the provisions of this Act and the terms and conditions of any mineral rights and minerals agreement are being complied with;
- (d) give directions and take steps necessary to enforce the provisions of this Act and the terms and conditions of mineral rights and minerals agreement and abate or remove nuisances;
- (e) maintain a Register of Mineral Rights;
- (f) obtain information necessary for the administration of this Act; and
- (g) perform such other functions and exercise such other powers as are specified in this Act.

Delegation of functions by Commissioner of Mines

19. (1) The Commissioner may delegate or assign to a public officer any of the functions of the Commissioner under this Act.

(2) Notwithstanding the delegation of a function under sub-section (1), the Commissioner may continue to exercise or perform the function.

PART III
MINERAL RIGHTS
GENERAL PROVISION ON MINERAL RIGHTS

Distinction between large-scale and small-scale operations

20. Schedule 1 to this Act shall have the effect to distinguish between small-scale and large-scale operations for the purposes of this Act.

Form and content of mineral rights

21. (1) A mineral right issued under this Act shall be in the prescribed form.

(2) The prescribed form shall include the -

- (a) name and registered address of the holder of the mineral right;
- (b) date of the grant of the mineral right;
- (c) term of the mineral right;
- (d) a description of the area over which the mineral right is granted;
- (e) the mineral or mineral deposit in respect of which the right is granted; and
- (f) the conditions subject to which the rights given by the mineral right may be exercised.

Restricted Areas

22. (1) Except after consultation with the appropriate Minister or authority, the Board shall not recommend the grant of a mineral right that authorises reconnaissance, prospecting or mining operations -

- (a) in an area dedicated or set aside for a public purpose, other than reconnaissance, prospecting or mining operations;
- (b) on any land that is dedicated as a place of burial;
- (c) on a place of religious significance; or
- (d) on a place that is the site of a public building.

(2) Except after consultation with the owner or lawful occupier of the area or, where applicable, after consultation with the Minister responsible for the administration of urban areas, the Board shall not recommend the grant of a mineral right that authorises reconnaissance, prospecting or mining operations on an area situated within any town or municipality declared to be such under the law regulating urban areas.

(3) Except after consultation with the authority or body regulating national trusts, the Board shall not recommend grant a mineral right that authorises reconnaissance, prospecting or mining operations on an area that has been proclaimed to be a national park or a national reserve under the law regulating national trusts.

(4) Except after consultation with the Minister responsible for the administration of game, the Board shall not recommend the grant of a mineral right that authorises reconnaissance,

prospecting or mining operations on an area that has been specified to be a game reserve or a sanctuary in terms of any law regulating game.

(5) Except after consultation with the Minister responsible for protection of flora, the Board shall not recommend the grant of a mineral right that authorises reconnaissance, prospecting or mining operations on an area that has been specified to be an indigenous flora reserve under the law protecting flora.

(6) Except after the consultation with the body regulating railways, the Board shall not recommend the grant of a mineral right that authorises reconnaissance, prospecting or mining operations on an area reserved for the purpose of a railway or situated within 100 metres of a railway under the law regulating railways.

Swazi Areas

23. Except after consultation with the Land Management Board and Chief or INdvuna of the local authority of the area where mining is to be carried out, the Board shall not recommend the grant of a mineral right that authorises reconnaissance, prospecting or mining operations in a Swazi area.

Tendering

24. (1) The Minister after consultation with iNgwenyama may designate, by notice published in the Gazette, an area of land for tender for mining operations.

(2) The Minister on the advice of the Commissioner may by notice published in the Gazette seek tenders for mineral rights connected with large-scale operations over the area of land specified in the notice.

Conditions attaching to mineral rights

25. (1) A mineral right may be granted subject to conditions that specify the provisions and obligations that the holder of the right shall comply with.

(2) The conditions referred to in sub-section (1) shall be determined by the Board.

(3) Conditions determined under this section may include the -

- (a) protection of the mineral interests;
- (b) protection of the environment;
- (c) provision for the safety of reconnaissance, prospecting and mining operations and of persons undertaking those operations; and
- (d) protection of the lawful interests of any other person who holds a mineral right.
- (e) period of commencement of operation after grant.

(4) Any condition imposed or conferred shall be endorsed on the licence and shall form part of the licence.

(5) Failure to endorse a condition upon a licence shall not relieve the holder from an obligation in respect of the condition.

Mineral rights to be exercised reasonably

26. The holder of a mineral right shall exercise the rights conferred under the mineral right reasonably and in accordance with its conditions and this Act.

Registered address

27. The holder of a mineral right shall keep and maintain a registered physical and postal address, which the holder shall register with the Commissioner, to which all communications and notices from the Commissioner or the Board to the licence or permit holder shall be sent.

Employment and training

28. (1) The holder of a mineral right shall give preference in employment to citizens of Swaziland to the maximum extent possible.

(2) The holder of a mineral right relating to large-scale operations shall -

- (a) conduct training programmes for the benefit of employees and locals; and
- (b) provide an adequate level of funding, having regard to all the circumstances, for the education of employees in mining related disciplines.

Local procurement

29. The holder of a mineral right shall, in the conduct of reconnaissance, prospecting and mining operations, give preference to the maximum extent possible to materials and products made in Swaziland and service agencies located in Swaziland and owned by citizens, corporations and other legal entities incorporated in Swaziland.

Transfer and assignment

30. (1) A purported transfer or assignment of a mineral right, or of a share of such a right, shall be void unless it has been approved by the iNgwenyama.

(2) The Board shall not unreasonably withhold or delay approval for the transfer or assignment of a mineral right, or of a share of a mineral right.

(3) A mineral right shall not be capable of being assigned or transferred to a person or to a legal entity to which it could not be validly granted under the provisions of this Act.

Preparation of reports

31. (1) Upon receipt of an application for a mineral right, or for the renewal of a mineral right made in accordance with this Act, the Commissioner shall, as soon as reasonably possible, submit the application together with a written report on it to the Board.

(2) A written report prepared for the purposes of sub-section (1) shall include the text of any minerals agreement that has been negotiated.

Requirement of additional information

32. (1) An applicant for a mineral right shall furnish such information as the Commissioner may reasonably require for an application to be considered by the Board.

(2) An application made under this Act shall be deemed to be incomplete until such information as is required by the Commissioner under sub-section (1) has been provided in the prescribed form or, in the absence of a prescribed form, in a form determined by the Commissioner by written notice to the applicant.

Priority of applications

33 (1) This section applies where two or more persons not acting together each make -

- (a) an application for the grant of the same category of mineral right over the same area of land, or over overlapping parts of the same area of land; or
- (b) an application for the grant of mineral rights conferring exclusive rights to carry out prospecting or mining operations over the same area of land, or over overlapping parts of the same area of land.

(2) The Commissioner shall assign priority to the application first received and registered with the Commissioner.

Treatment of pending applications

34. The Board shall extend the term of a mineral right that would otherwise expire through the efflux of time, where -

- (a) the mineral right is a prospecting licence and its holder is awaiting a decision on an application made in accordance with this Act for -
 - (i) the renewal of the licence; or,
 - (ii) a retention licence or a mining licence that applies to the whole, or a part, of the prospecting area;
- (b) the mineral right is a retention licence and its holder is awaiting a decision on an application made in accordance with this Act for -
 - (i) the renewal of the licence; or,
 - (ii) a mining licence that applies to the whole, or a part of the retention area;
- (c) the mineral right is a mining licence or a mining permit and its holder is awaiting a decision on an application for renewal made in accordance with this Act; or
- (d) an extension of the term of a mineral right in accordance with this section shall cease immediately if an application for any of the mineral rights specified in this section is refused.

LARGE-SCALE OPERATION

Categories of mineral rights relating to large-scale operations

35 The types of mineral rights that may be granted in respect of large-scale operations are -

- (a) a reconnaissance licence;
- (b) a prospecting licence;

- (c) a mining licence; and
- (d) a retention licence.

RECONNAISSANCE LICENCES

Application for Reconnaissance Licence

36. (1) An application for a reconnaissance licence shall be made to the iNgwenyama in the prescribed form.

(2) An application for a reconnaissance licence made under sub-section (1) shall be accompanied by -

- (a) a proposed costed work programme of reconnaissance operations
- (b) a costed Project Brief in the prescribed form;
- (c) a statement of the financial and technical resources available to the applicant to carry out the proposed reconnaissance operations under the licence and to comply with conditions of the licence;
- (d) a statement that specifies the proposal of the applicant with respect to employment and training of citizens of Swaziland;
- (e) a statement that specifies the proposal of the applicant with respect to the procurement of local goods and services; and
- (f) any other information that the Board may reasonably require for the consideration of the application.

Term of reconnaissance licence

37. A reconnaissance licence may be granted for a term not exceeding one year, which shall be specified in the licence and may be renewed.

Rights conferred by reconnaissance licence

38. (1) The holder of a reconnaissance licence shall enjoy non-exclusive rights to undertake reconnaissance operations in the reconnaissance area in accordance with the terms and conditions of the licence and the provisions of this Act.

(2) In the exercise of the rights granted under sub-section (1), the holder of a reconnaissance licence may, subject to this Act and the terms and conditions contained in the licence -

- (a) demarcate areas that fall within the licence area; and,
- (b) erect camps or temporary buildings, including installations in any waters that form part of the area covered by the licence.

(3) A person appointed by the holder of a reconnaissance licence to act as agent of the holder may exercise the rights of the holder of the licence specified in this section, subject to any limitations on the powers of the agent contained in the instrument of appointment.

Obligations under reconnaissance licence

39. The holder of a reconnaissance licence shall -

- (a) carry on the reconnaissance operations in accordance with the terms and conditions of the licence;
- (b) submit to the Commissioner quarterly, or at such other intervals as the Commissioner may determine, geological and financial reports and such other information relating to reconnaissance operations as may be prescribed;
- (c) report any mineral discovery or discoveries to the Commissioner in writing;
- (d) notify the Commissioner in writing of the discovery of any mineral deposit of potential commercial value;
- (e) notify the Commissioner in writing of any archaeological discovery;
- (f) remove on or before the end of the term of the licence, any camps or temporary buildings or installations that the holder erected to carry out reconnaissance operations; and
- (g) any other information that the Commissioner may reasonably require for the consideration of the application by the t Board.

Record-keeping and reporting

40. (1) The holder of a reconnaissance licence shall keep at the registered address complete and accurate records of reconnaissance operations relating to the licence in the manner prescribed.

(2) The records to be kept by the holder of a reconnaissance licence for the purposes of subsection (1) shall include -

- (a) details of all minerals discovered;
- (b) results of geo-chemical or geo-physical analysis obtained and compiled by the holder;
- (c) results of studies, surveys, tests and other work undertaken in the area or areas of land covered by the retention licence including any interpretation and assessment of those tests and surveys;
- (d) financial statements and such other books of account as the Commissioner may require; and,
- (e) such other reports and information as may be prescribed or, where no such requirements are prescribed, as determined by the Commissioner.

(3) The licence holder shall submit the records referred to in this section to the Commissioner at such intervals and in such form as may be prescribed, or where no such form is prescribed, as determined by the Commissioner.

Minerals obtained during reconnaissance

41. Minerals acquired in the course of undertaking reconnaissance operations vests in the iNgwenyama in trust for the Swazi Nation including such quantity as may be prescribed for sampling, assaying, analysis or other similar examination, shall not be disposed of by the holder of the reconnaissance licence without the consent of the iNgwenyama.

Renewal of reconnaissance licence

42 (1) The holder of a reconnaissance licence may apply for a renewal of a licence.

(2) The holder of a licence shall lodge an application form for the renewal of a licence at least three months prior to the expiry of the licence.

(3) An application for the renewal of a reconnaissance licence under sub-section (1) shall be made to the Board in the prescribed form and shall be accompanied by the prescribed fee.

(4) An applicant for a renewal of a reconnaissance licence shall provide such information as the Board may determine to enable the application to be considered.

(5) An application for the renewal of a reconnaissance licence shall not be taken to have been validly made unless and until the requirements of this section have been complied with.

Term of renewal

43. (1) The term of renewal of a reconnaissance licence shall not exceed six months.

(2) A reconnaissance licence shall not be renewed more than twice.

PROSPECTING LICENCES***Term of prospecting licence***

44 The term of a prospecting licence shall not exceed one year and shall be subject to a renewal.

Application for Prospecting Licence

45. (1) An application for a prospecting licence shall be made to the iNgwenyama in the prescribed form.

(2) An application for a prospecting licence made under sub-section (1) shall be accompanied by -

- (a) a proposed costed work programme of prospecting operations;
- (b) a costed Project Brief in the prescribed form;
- (c) a statement of the financial and technical resources available to the applicant to carry out the proposed prospecting operations under the licence and to comply with conditions of the licence;
- (d) a statement that specifies the proposals of the applicant with respect to employment and training of citizens of Swaziland;

- (e) a statement that specifies the proposals of the applicant with respect to the procurement of local goods and services; and
- (f) any other information that the Board may reasonably require for the consideration of the application by the Board.

Rights conferred by prospecting licence

46. (1) The holder a prospecting licence shall enjoy exclusive rights to carry out prospecting operations in the prospecting area covered by the licence in accordance with the terms and conditions of the licence and the provisions of this Act.

(2) In the exercise of the rights provided under sub-section (1), the holder of a prospecting licence may, subject to this Act and the conditions contained in the licence -

- (a) demarcate areas that fall within the prospecting area; and
- (b) erect camps or temporary buildings, including installations in any waters that form part of the prospecting area.

(3) A person appointed by the holder of a prospecting licence to act as agent of the holder may exercise the rights of the holder of the licence specified in this section, subject to any limitations on the powers of the agent contained in the instrument of appointment.

Obligations under prospecting licence

47 The holder of a prospecting licence shall -

- (a) commence prospecting operations within three months of the date of the grant of the prospecting licence or such other period as may be agreed with the Board in writing;
- (b) undertake prospecting operations in accordance with a programme of prospecting operations approved by the Commissioner;
- (c) ensure that the amounts specified in the prospecting licence are expended in the course of undertaking prospecting operations;
- (d) notify the Commissioner of the discovery of any mineral deposit of potential commercial value;
- (e) comply with the conditions contained in any applicable Environmental Compliance Certificate;
- (f) comply with the terms and conditions of the licence and any applicable minerals agreement;
- (g) notify the Commissioner of any archaeological discovery; and,
- (h) repair or make good any damage caused to the surface of the land to the satisfaction of the Commissioner.

Minerals obtained during prospecting

48. Minerals acquired in the course of undertaking prospecting operations vests in the *iNgwenyama* in trust for the Swazi Nation including such quantity as may be prescribed for sampling, assaying,

analysis or other similar examination, shall not be disposed of by the holder of the prospecting licence without the consent of the iNgunyama.

Record-keeping and reporting

49. (1) The holder of prospecting licence shall keep at the registered address, complete and accurate records of prospecting operations relating to the licence.

(2) The records that shall be maintained by the holder for the purposes of sub-section (1) shall include details of -

- (a) cores and samples obtained in the exercise of rights conferred under the prospecting licence;
- (b) the minerals discovered;
- (c) the results of geochemical or geophysical analysis obtained and compiled by the holder;
- (d) financial statements and such other books of account as the Commissioner may require; and
- (e) such other reports and information as may be prescribed or otherwise determined by the Commissioner.

Amendment of programme of prospecting operations

50. The holder of a prospecting licence may seek amendments to the approved programme of prospecting operations by application in the prescribed form to the Board.

Renewal of prospecting licence

51. (1) The holder of a prospecting licence may apply for a renewal of a licence.

(2) The holder of a licence shall lodge the application for the renewal of a licence at least three months prior to the expiry of the licence.

(3) An application for the renewal of a prospecting licence shall be made to the Board in the prescribed form and shall be accompanied by the prescribed fee.

(4) An application made in accordance with sub-section (2) shall be accompanied by -

- (a) a statement of the term for which renewal is sought;
- (b) a report on the progress of prospecting operations up until that date;
- (c) a revised costed Project Brief in the prescribed form;
- (d) a statement of costs so far incurred in the course of undertaking prospecting operations;
- (e) a statement of the financial and technical resources available to the applicant to carry out the proposed prospecting operations during the renewal period and to comply with conditions of the licence;

(f) particulars of the programme of prospecting operations that the applicant proposes to carry out during the renewal period; and

(g) a plan identifying the area of land in respect of which renewal of the licence is sought.

(5) An applicant for the renewal of a prospecting licence shall provide such further information as the Board may reasonably require for the application to be considered.

(6) An application for renewal of a prospecting licence shall not be regarded as having been validly made unless and until all of the requirements identified in this section have been complied with.

Term of Renewal

52. (1) The term of renewal of a prospecting licence shall not exceed one year and shall be specified in the licence.

(2) A prospecting licence may not be renewed more than twice.

Relinquishment

53. (1) Unless the Board agrees that a smaller area may be relinquished, the size of the prospecting area specified in a licence shall be reduced upon renewal by -

(a) fifty percent (50%) of the prospecting area upon first renewal; and

(b) twenty-five percent (25%) of the remaining prospecting area upon the second renewal, and any area of land that is covered by a retention licence or a mining licence shall be omitted from the prospecting area upon renewal of the licence.

(2) The holder of a prospecting licence shall designate the area or areas to be relinquished in the application for renewal made under sub-section (1).

(3) If the applicant for a renewal of a prospecting licence fails to designate the area or areas to be relinquished, the Board shall determine the area or areas to be relinquished, having regard to the recommendations made by the Commissioner.

(4) The Board may on the recommendation of the Commissioner, in considering an application for the renewal of a prospecting licence, waive the requirement to relinquish part of the area specified in the licence.

(5) Compensation shall not be payable under this Act in respect of the relinquishment of an area or areas of land that is required in accordance with this section.

MINING LICENCES

Application for mining licence

54. (1) An application for a mining licence shall be made to the iNgwenyama in the prescribed form.

(2) An application made in accordance with sub-section (1) shall be accompanied by the following -

- (a) a proposed programme of mining operations, that shall outline mine forecasts and operation plans;
- (b) a proposed programme of options for minerals beneficiation or value addition;
- (c) a costed Project Brief in the prescribed form;
- (d) a statement regarding the mineral deposits in the area of land over which the licence is sought that includes details of all known minerals as well as possible mineral resources;
- (e) a statement of the financial and technical resources available to the applicant to carry out the proposed mining operations and to comply with conditions of the licence and the requirements of this Act;
- (f) a statement that specifies the proposal of the applicant with respect to employment and training of citizens of Swaziland;
- (g) a statement that specifies the proposal of the applicant with respect to community development;
- (h) a statement that specifies the proposal of the applicant with respect to the procurement of local goods and services; and
- (i) any other information that the Board may reasonably require for the consideration of the application.

Restrictions in respect of mining licence

55. The Board shall not recommend the grant or grant a mining licence in respect of land that is the subject of a subsisting prospecting licence, a retention licence, or a mining licence unless –

- (a) the applicant is the holder of that licence; or,
- (b) the applicant is applying for a licence to work a mine dump in or on the areas or areas covered by an existing mineral right but not to undertake any other mining operation on the land.

Consideration of applications

56. (1) The Board shall not recommend the grant of a mining licence unless it is satisfied that -

- (a) the area of land over which the mining licence is sought is reasonable having regard to the proposed programme of mining operations of the applicant;
- (b) the applicant has adequate financial resources, technical competence and mining industry experience to carry on the proposed programme of mining operations;
- (c) the applicant has submitted a project brief in the prescribed form;
- (d) the proposal of the applicant with respect to the procurement of local goods and services are acceptable;
- (e) the proposal of the applicant with respect to community development is acceptable;

- (f) the proposal of the applicant with respect to employment and training of citizens of Swaziland is acceptable;
 - (g) any other information that the Commissioner may reasonably require for the consideration of the application by the Board; and
 - (h) the proposal of the applicant with respect to the local beneficiation and value addition of minerals is acceptable.
- (2) The Board shall not recommend the granting of a mining licence that would confer a right to work a mine dump on land that is the subject of another mineral right unless -
- (a) the holder of that other mineral right has been given a reasonable opportunity to comment on the application; and,
 - (b) the Board has satisfied itself that the holder of the other mineral right would not be substantially disadvantaged if the mining licence were to be granted.
- (3) Where sub-section (2) applies, the Board may -
- (a) impose special conditions in a mining licence to work a mine dump; and
 - (b) amend the existing mineral right to impose new terms and conditions, for the purpose of ensuring that the operations permitted under the mineral rights concerned can proceed with the minimal disturbance to the operations of the other.

Treatment of application by holder of prospecting licence

57. Where an applicant otherwise fulfils the requirements for the granting of a mining licence specified in this Act, the Board shall recommend the grant a mining licence to an applicant who -

- (a) is the holder of a prospecting licence or a retention licence; and,
- (b) has given notice to the Commissioner of the discovery of minerals in or on land that is the subject of the prospecting licence, or in respect of minerals to which the prospecting licence relates.

Notices of refusal of grant of mining licence

58. (1) An applicant for the grant of a mining licence shall not be refused on the ground that the applicant has failed to fulfil a requirement of this Act for the grant of the licence, unless -

- (a) the Commissioner has given notice to the applicant of the intention of the Board to refuse to recommend the granting of the licence, specifying the grounds for refusal and, specifying a period within which the applicant may make an appropriate proposal to correct or remedy the ground for the intended refusal, and
- (b) the applicant has not, within the period specified in the notice made a proposal to the satisfaction of the Board.

(2) Where the ground or grounds for the intended refusal is incapable of being remedied, the applicant may, instead of making an appropriate proposal within the specified period, show cause, to the satisfaction of the Commissioner, why the application should not be refused.

Form of mining licence

59. A mining licence issued under this Act shall be in the prescribed form and shall include -

- (a) the minerals deposits in respect of which the licence is granted;
- (b) a plan of the mining area;
- (c) the conditions to be complied with by the holder of the licence;
- (d) the programme of mining operations approved by the Board;
- (e) the plan approved by the Board in respect of the procurement of local goods and services;
- (f) the plan approved by the Board in respect of proposals for community development; and,
- (g) the plan approved by the Board in respect of the employment and training of citizens of Swaziland.

Term of mining licence

60. The term of a mining licence shall not exceed twenty five years or the forecasted life of the mine, whichever is the shorter, and shall be subject to a renewal and specified in the licence.

Rights conferred by mining licence

61. (1) The holder of a mining licence shall enjoy the exclusive right to mine the minerals specified in the licence in accordance with the terms and conditions of the licence.

(2) Notwithstanding sub-section (1) -

- (a) the enjoyment of the exclusive rights specified in sub-section (1) may be made subject to the rights to be exercised by the holder of another mining licence or a mining permit concerning the reworking of a mine dump on land specified in a mining licence; and
- (b) the holder of a mining licence may be granted the right to work a mine dump that is on land specified in another mineral right.

(3) Subject to the conditions of the licence and the terms of any relevant mining agreement, the holder of a mining licence may, in order to exercise the right mentioned in sub-section (1) -

- (a) enter the area of land specified in the licence and take all reasonable measures on or under the surface of the area to undertake the mining operations permitted by the licence;
- (b) erect equipment, plant and buildings to mine, transport, dress or treat the minerals recovered in the course of those operations;
- (c) dispose of any mineral recovered subject to the payment of the required fees and royalties; and
- (d) stack or dump any mine waste or tailings in the manner specified in the licence.

(4) The holder of a mining licence may appoint a person who may act as an agent of the holder and thereby undertake the operations specified in this section.

Obligations under mining licence

62. The holder of a mining licence shall -

- (a) conduct mining operations in accordance with standards of good mining practice and in compliance with the programme of mining operations approved by the Commissioner;
- (b) demarcate and keep demarcated the mining area in the prescribed manner;
- (c) comply with the terms and conditions specified in the licence;
- (d) comply with the terms and conditions contained in any applicable Environmental Compliance Certificate;
- (e) notify the Commissioner of the discovery of any mineral deposit; and,
- (f) notify the Commissioner of any archaeological discovery.

Record-keeping and reporting

63. (1) The holder of a mining licence shall keep full and accurate records of mining operations relating to the licence in the manner prescribed.

(2) The records to be kept by the holder of a mining licence for the purposes of sub-section (1) shall include -

- (a) details of all minerals discovered;
- (b) results of geo-chemical or geo-physical analysis obtained and compiled by the holder;
- (c) results of studies, surveys, tests and other work undertaken in the area or areas of land covered by the mining licence including any interpretation and assessment of those tests and surveys;
- (d) copies of all maps, geological reports, sample analyses, aerial photographs, cores, logs and tests and other data obtained and compiled by the holder; and

(3) The licence holder shall submit the records referred to in this section to the Commissioner at such intervals and in such form as may be prescribed, or where no such form is prescribed, as determined by the Commissioner.

(4) The holder of a mining licence shall also provide to the Commissioner, a copy of an audited annual financial report at the end of each financial year that shows -

- (a) the profit or loss of the holder for the financial year; and,
- (b) the state of the financial affairs of the holder.

Amendment of programme of mining operations

64. (1) Subject to the conditions contained in a mining licence, the licence holder may apply, in the prescribed form, to the Board for an amendment to the programme of mining operations approved in respect of the licence.

(2) The Commissioner shall, within two weeks of receipt of an application referred to in subsection (1), submit the application to the Board for consideration.

(3) If the Board rejects the application referred to in subsection (1), the Commissioner shall provide written reasons for refusal including whether the proposed amendment would substantially alter the programme of mining operations.

Mineral discoveries and amendment of programme of mining operations

65. (1) This section applies where the holder of a mining licence discovers minerals in the licence area which are not covered by the licence.

(2) The licence holder may make an application to the iNgwenyama in the prescribed form to have newly discovered minerals included in the licence.

(3) An application made under sub-section (2) shall include the documents and material identified in sub-section 47(2) of this Act, in so far as those documents and materials relate to the newly discovered minerals.

(4) Where the iNgwenyama grants the application it may do so subject to additional conditions being included in the licence.

Cessation, suspension or curtailment of production

66. (1) The holder of a mining licence shall give the Commissioner notice of any intention the holder has to cease, suspend or curtail production from mining operations carried out pursuant to the licence.

(2) The holder shall give notice of at least -

- (a) twelve months if cessation of production is intended; or
- (b) six months if suspension of production is intended; or
- (c) three months if curtailment in production is intended.

(3) A notice given under sub-section (2) shall be accompanied by a statement that sets the technical and economic basis for the proposed cessation, suspension or curtailment of production.

(4) Upon receipt of a notice given in accordance with this section, the Commissioner shall investigate within the prescribed time the circumstances leading to the holder taking the action intended and advise the Board of the action it may take.

(5) Subject to the conditions contained in the mining licence and any applicable minerals agreement, the Board may approve the action the holder intends to take subject to the holder complying with such conditions as the Board may reasonably determine.

Renewal of mining licence

67. (1) The holder of a mining licence may apply for the renewal of the licence not later than one year before the expiry of the term of a mining licence in respect of all, or a part, of the licence area.

(2) A mining licence shall not be renewed more than once.

Application for renewal

68. (1) An application for the renewal of a mining licence shall be made to the Board in the prescribed form and shall be accompanied by the prescribed fee.

(2) An application made under sub-section (1) shall be accompanied by -

- (a) a statement of the term for which renewal is sought;
- (b) a report on the progress of mining operations;
- (c) a revised costed Project Brief in the prescribed form;
- (d) a statement of costs so far incurred in course of undertaking mining operations;
- (e) a statement of the financial and technical resources available to the applicant to carry out the proposed mining operations during the renewal period and to comply with conditions of the licence;
- (f) particulars of the programme of mining operations that the applicant proposes to carry out during the period of renewal;
- (g) a plan identifying the area of land in respect of which renewal of the licence is sought; and
- (h) such additional information as the Commissioner may specify.

Term of renewal

69. The term of renewal of a mining licence shall not exceed fifteen years or the forecasted remaining life of the mine, whichever is the shorter and shall be specified in the licence.

RETENTION LICENCES***Eligibility for grant of retention licence***

70. (1) This section applies where -

- (a) the holder of a prospecting licence or a mining licence has identified a mineral deposit within the licence area that is of potential commercial significance; and
- (b) the deposit cannot be developed immediately by reason of temporary adverse market conditions, economic factors or other factors beyond the reasonable control of the holder of the prospecting or mining licence.

(2) Where the circumstances described in sub-section (1) exist, the licence holder may apply for a retention licence.

Application for retention licence

71. (1) An application for a retention licence shall be made to the Board in the prescribed form and shall be accompanied by the prescribed fee.

(2) An application made in accordance with sub-section (1) shall be accompanied by –

- (a) a full study and assessment by independent experts or consultants on the extent, prospects for recovery and the commercial significance of the mineral deposit and on the relevant adverse market conditions, economical factors, technical constraints or other factors that are stated as making it impossible to develop the minerals or mineral deposit immediately;
- (b) a costed Project Brief in the prescribed form; and
- (c) any additional information that the Board may reasonably require regarding the proposal of the applicant for prospecting, retention and development of the mineral deposit.

Term of retention licence

72. The term of a retention licence shall not exceed one year and renewable to a maximum of one year.

Rights conferred by retention licence

73. (1) The holder of a retention licence shall enjoy the exclusive right to engage in prospecting operations in the retention area and to apply for a mining licence in respect of the whole or parts of the retention area.

(2) In the exercise of the rights provided under sub-section (1), the holder of a retention licence may, subject to this Act and the conditions contained in the licence –

- (a) demarcate areas that fall within the retention area; and
- (b) erect camps or temporary buildings, including installations in any waters that form part of the retention area.

(3) A person appointed by the holder of a retention licence to act as agent of the holder may exercise the rights of the holder of the licence specified in this section, subject to any limitations on the powers of the agent contained in the instrument of appointment.

Obligations under retention licence

74. The holder of a retention licence shall –

- (a) demarcate the retention area in the prescribed manner;
- (b) in the prescribed manner or as otherwise directed by the Commissioner, backfill or otherwise make safe excavations made during the course of prospecting operations;
- (c) in the prescribed manner or as otherwise directed by the Commissioner, permanently preserve or otherwise make safe any borehole or mine;

- (d) remove any equipment, plant or building erected for prospecting operations in the area specified in the licence;
- (e) carry out studies and assessments of the prospects of the commercial exploitation of the mineral deposits concerned as may reasonably be required by the Commissioner;
- (f) comply with the terms and conditions contained in any applicable Environmental Compliance Certificate;
- (g) comply with the conditions of the licence and any applicable minerals agreement;
- (h) notify the Commissioner of any archaeological discovery; and
- (i) repair or make good any damage caused to the surface of the land to the satisfaction of the Commissioner.

Record-keeping and reporting

75. (1) The holder of a retention licence shall keep full and accurate records of prospecting operations relating to the licence in the manner prescribed.

(2) The records to be kept by the holder of a retention licence for the purposes of sub-section (1) shall include -

- (a) details of all minerals discovered;
- (b) results of geo-chemical or geo-physical analysis obtained and compiled by the holder;
- (c) results of studies, surveys, tests and other work undertaken in the area or areas of land covered by the retention licence including any interpretation and assessment of those tests and surveys;
- (d) financial statements and such other books of account as the Commissioner may require; and,
- (e) such other reports and information as may be prescribed or, where no such requirements are prescribed, as determined by the Commissioner.

(3) The licence holder shall submit the records referred to in this section to the Commissioner at such intervals and in such form as may be prescribed, or where no such form is prescribed, as determined by the Commissioner.

Requirement to apply for mining licence

76. (1) This section applies where the Board is satisfied that it has become technically possible and commercially viable for the mineral deposit that is the subject of a retention licence to be mined during the term of the licence.

(2) The Commissioner may, by written notice to the holder of a retention licence, require the licence holder to apply for a mining licence, where the Board is satisfied that the conditions specified in sub-section (1) exist or, require the holder to give good reasons, before such date as is specified in the notice, why the holder should not be required to apply for a mining licence.

(3) Where the holder of a retention licence fails to comply with a notice served in accordance with sub-section (2), the Board may recommend to iNgwenyama the cancellation of the licence.

(4) Compensation shall not be payable under this Act where a retention licence is cancelled in accordance with this section.

MINERALS AGREEMENTS

Negotiating minerals agreements

77. The Board may, negotiate a mineral agreement with an applicant or the holder of a reconnaissance licence, prospecting licence, a retention licence, or a mining licence.

Terms of mineral agreement

78. (1) A mineral agreement entered into under this Act may contain terms relating to the rights and obligations of the holder of one or more reconnaissance licences, prospecting licences, retention licences or mining licences, or any combination of such mineral rights.

(2) A mineral agreement may contain, in particular, provisions concerning -

- (a) the payment of royalties, taxes, fees and other fiscal impositions and state participation;
- (b) arrangements concerning participation in any mining operations by the iNgwenyama in trust for the Swazi nation;
- (c) the circumstances or the manner in which a discretion conferred under this Act may be exercised;
- (d) subject to any legislative requirements in respect of the environment, the environmental obligations and liabilities of the holder of a prospecting or mining licence; and
- (e) procedures for the settlement of disputes.

Minerals agreement to be consistent with Act

79. (1) A term or condition of a minerals agreement that is inconsistent with this Act shall, to the extent of the inconsistency, have no legal effect.

(2) Nothing contained in a mineral agreement shall be construed as absolving a party to the agreement from any requirement prescribed by law.

Liability under a mineral agreement

80. Where a mineral agreement relates to a prospecting or mining licence, the licence holder shall be bound by the terms and conditions of the agreement and they shall be enforced against that holder accordingly.

SMALL-SCALE OPERATIONS SUBDIVISION 1 – GENERAL PROVISIONS

Categories of mineral rights relating to small-scale operations

81. Mineral rights that may be granted in respect of small-scale operations are -

- (a) a prospecting permit; or
- (b) a mining permit.

Eligibility restrictions in respect of small-scale operations

82. (1) Mineral rights relating to small-scale operations shall not be granted to an applicant that is not -

- (a) in the case of an individual, a citizen of Swaziland; or
- (b) in the case of a body corporate, a body corporate in which citizens of Swaziland hold a simple majority of the beneficial ownership of the body.

(2) Where the holder of a prospecting or mining permit becomes a person to whom such a permit may not lawfully be granted under this Act, the permit shall be deemed to have been cancelled from the date on which the person became the holder of it.

(3) In this section 'citizen of Swaziland' means a citizen by descent as provided under section 41 of the Constitution of Swaziland Act, 2005.

Minerals Management Board exercises delegated powers of iNgwenyama

83. (1) The iNgwenyama shall be taken to have assigned to the Commissioner the responsibility to carry out the day-to-day administration of this Act in respect of small-scale operations.

(2) Subject to sub-section (1), the Board shall be responsible for the grant, renewal, suspension and cancellation of mineral rights relating to small-scale mining except for precious minerals, which shall be granted by iNgwenyama.

(3) Nothing in this section derogates from the performance of the constitutional functions and responsibilities of the Board.

PROSPECTING PERMITS

Application for prospecting permit

84. (1) An application for a prospecting permit shall be made to the Commissioner in the prescribed form and shall be accompanied by the prescribed fee.

(2) An application made under sub-section (1) shall be accompanied by the following -

- (a) the full name, citizenship, and address of the applicant;
- (b) details of the mineral or minerals in respect of which the permit is sought;
- (c) details of the area in respect of which the permit is sought;
- (d) particulars of the proposed prospecting operations to be carried out under the permit;
and
- (e) a Project Brief in the prescribed form.

Notice in respect of application for prospecting permit

85. (1) An application for a prospecting permit made by an applicant who is a citizen of Swaziland shall not be rejected unless -

- (a) the Commissioner has given notice to the applicant of the intention of the Board, specifying the ground(s) for refusal and, specifying a period within which the applicant may make an appropriate proposal to correct or remedy the ground for the intended refusal; and
- (b) the applicant has not, within that period made a proposal to the satisfaction of the Commissioner.

(2) Where the ground or grounds for the intended refusal is incapable of being remedied, the applicant may, instead of making an appropriate proposal within the specified period, show cause, to the satisfaction of the Board, why the application should not be refused.

Term of prospecting permit

86. (1) The term of a prospecting permit shall not exceed six months and shall be specified in the permit.

(2) The holder of a prospecting permit may apply for a renewal of the permit up to one month before the expiry of its term.

(3) A prospecting permit may not be renewed more than twice.

(4) An application for the renewal of a prospecting permit shall be made to the Board in the prescribed form and shall be accompanied by the prescribed fee.

(5) The term of renewal of a prospecting permit shall not exceed six months and shall be specified in the permit.

Rights conferred by prospecting permit

87. The holder of a prospecting permit enjoys the non-exclusive right to engage in prospecting operations for the minerals or mineral specified in the permit in the prospecting area.

Obligations under prospecting permit

88. The holder of a prospecting permit shall -

- (a) demarcate and keep demarcated the prospecting area in the prescribed manner;
- (b) comply with the terms and conditions imposed on the holder by the permit;
- (c) take all measures required to protect the environment in accordance with this Act; and,
- (d) comply with the record keeping obligations set out in this Act or otherwise prescribed.
- (e) notify the Commissioner for any minerals discovered.

MINING PERMITS

Applications for mining permit

89. (1) An application for a mining permit shall be made to the Commissioner in the prescribed form and shall be accompanied by the prescribed fee.

- (2) An application made under sub-section (1) shall also be accompanied by the following -
- (a) the full name, citizenship, and address of the applicant;
 - (b) details of the mineral or minerals in respect of which the permit is sought;
 - (c) details of the area in respect of which the permit is sought;
 - (d) particulars of the proposed mining operations to be carried out under the permit; and
 - (e) evidence of the experience and financial resources available to the applicant to conduct the mining operations to be carried out under the permit.

Notice in respect of application for mining permit

90. (1) An application made by a citizen in the prescribed form shall not be rejected unless -

- (a) the Commissioner has given notice to the applicant of the intention of the Board, specifying the ground(s) for refusal and, specifying a period within which the applicant may make an appropriate proposal to correct or remedy the ground for the intended refusal; and
- (b) the applicant has not, within that period made a proposal to the satisfaction of the Commissioner.

(2) Where the ground or grounds for the intended refusal is incapable of being remedied, the applicant may, instead of making an appropriate proposal within the specified period, show cause, to the satisfaction of the Commissioner, why the application should not be refused.

Term of mining permit

91. The term of a mining permit shall not exceed two years and shall be specified in the permit and shall be subject to renewal.

Rights conferred by mining permit

92. (1) Except where provided by sub-section (2), the holder of a mining permit shall enjoy the exclusive right to engage in mining operations in the permit area.

(2) Notwithstanding sub-section (1) -

- (a) the holder of a mineral right may be granted the right to work a mine dump on land specified in a mining permit; and
- (b) the permit holder may be granted the right to work a mine dump that is on land specified in another mineral right.

(3) Subject to the conditions of the permit, the permit holder may, in order to exercise the right mentioned in sub-section (1) -

- (a) enter the area specified in the permit and take all reasonable measures to carry out mining operations approved by the Board;
- (b) erect on the area temporary buildings and equipment to carry out mining operations;
- (c) dispose of any mineral recovered subject to the payment of the required fees and royalties; and
- (d) stack or dump any mine waste or tailings in the manner specified in the permit.

(4) The holder of a mining permit may appoint a person who is a Swazi citizen to act as agent of the permit holder to undertake the operations specified in this section.

Obligations under mining permit

93. The holder of a mining permit shall -

- (a) conduct mining operations in accordance with standards of good mining practice and in compliance with a plan approved by the Commissioner;
- (b) demarcate and keep demarcated the mining area in the prescribed manner ;
- (c) take necessary measures to protect the environment including compliance with the terms and conditions of any applicable Environmental Compliance Certificate; and
- (d) comply with the record keeping obligations prescribed by this Act or by regulations.

Renewal of mining permit

94. (1) The holder of a mining permit may apply for the renewal of the permit up to three months prior to the expiration of the permit.

(2) An application for the renewal of a mining permit shall be made to the Commissioner in the prescribed form and shall be accompanied by the prescribed fee.

(3) An application made under sub-section (2) shall also be accompanied by a revised Project Brief.

PART IV

SURRENDER, SUSPENSION AND CANCELLATION OF MINERAL RIGHTS

Withdrawal of application

95. An application for a mineral right or for the renewal of a mineral right may be withdrawn by written notice to the Commissioner at any time prior to the applicant receiving notification of the approval or rejection of the application.

Surrender of mineral right

96. (1) The holder of a mineral right may seek approval to surrender -

- (a) the licence or permit; or,

- (b) the licence or permit in respect of any part of the area specified in the licence or permit, by giving not less than three months written notice of surrender to the Board.

(2) A notice of surrender made under sub-section (1) shall include -

- (a) if it relates to part of the area specified in a prospecting or mining licence or a mining permit, a diagram of the area to be surrendered; and
- (b) in the case of the surrender of part of the area specified in any other mineral right, a plan of the area to be surrendered in a manner that is acceptable to the Board.

(3) A notice of surrender made under sub-section (1) shall also be accompanied by all records and reports with respect to reconnaissance, prospecting or mining operations -

- (a) in the area specified in the right; or
- (b) where only part of that area is to be surrendered, in respect of the area to be surrendered.

Approval of surrender

97. A notice of surrender shall have no effect under this Act unless and until the proposed surrender has been approved by the Board.

Effect of surrender

98. (1) This section applies where -

- (a) the surrender of a mineral right or part of the area specified in a mineral right is approved by the Board; and
- (b) the period of notice ends.

(2) Where the surrender is in respect of the licence or permit, the licence or permit shall be cancelled.

(3) Where the surrender is in respect of a part of the area specified in the licence or permit, the Board shall amend the licence or permit accordingly.

(4) The surrender of a licence or permit or of part of the area specified in a licence or permit does not affect any liability that the holder of the right has by virtue of the right that is outstanding at the time of the surrender.

Grounds for suspension or cancellation

99. (1) The Board may suspend or cancel a mineral right if the Commissioner advises the Board that the licence or permit holder -

- (a) failed to make a payment required under this Act on the date it was due and the payment has not been subsequently made;
- (b) failed to comply with a condition specified in the right and no action has been taken to remedy the failure;
- (c) failed to comply with an obligation imposed on the holder of such a right by this Act and no action has been taken to remedy the failure; or

(d) made a false statement to the Commissioner or to the Board that is, or was at the time it was made, material to the grant, transfer or renewal of the right, as the case may be.

(2) The Board may also suspend or cancel a mineral right if the Commissioner advises the Board that the licence or permit holder has -

- (a) committed an offence under this Act or any other law of Swaziland;
- (b) has died;
- (c) has become of unsound mind;
- (d) has financial difficulties or has become bankrupt; or
- (e) has otherwise become ineligible to be a holder of the right.

(3) The Board may cancel a prospecting or mining permit if the Board determines that its holder has not started the prospecting or mining operations permitted by the permit within three months of the grant of the permit.

Notice of intention to suspend or cancel mineral right

100. (1) This section applies where a mineral right may be suspended or cancelled because a licence or permit holder has either -

- (a) failed to make a payment required under this Act on the date it was due and the payment has not subsequently been made;
- (b) failed to comply with a condition specified in the licence or permit and no action has been taken to remedy the failure; or,
- (c) failed to comply with an obligation imposed on the holder of such a right by this Act and no action has been taken to remedy the failure.

(2) This section also applies where the Board has determined that the holder of a prospecting or mining permit has not started the prospecting or mining operations permitted by the permit within -

- (a) three months of the grant of the mining permit; or
- (b) one month of the grant of the prospecting permit.

(3) The Commissioner shall give one month written notice to the holder of the mineral right before taking any action to suspend or cancel the right.

(4) A notice issued under sub-section (3) shall require the holder of the right -

- (a) to make the payment, to comply with the condition or obligation or to start the operation, as the case may be, within a reasonable time; or,
- (b) where this is not possible, to satisfy the Commissioner why the right should not be suspended or cancelled.

(5) Where -

- (a) the holder of a mineral right has failed to comply with the requirement of a notice given to the holder in accordance with this section; or,
 - (b) this section does not otherwise apply in respect of a mineral right, the mineral right may be suspended or cancelled by the Commissioner giving the licence or permit holder written notice suspending or cancelling the right.
- (6) A notice issued under sub-section (5) shall state -
- (a) the reason or reasons for the suspension or cancellation;
 - (b) where it suspends a mineral right, the date when the suspension starts and the term of the suspension; and
 - (c) where it cancels a right, whether the right is cancelled forthwith or on some other date.

Effect of suspension

101. (1) Where a mineral right is suspended under this Act, the rights enjoyed by the holder of licence or permit shall cease for the period of suspension of the licence or permit.

(2) The suspension of a mineral right under this Act shall not affect any liability that the holder of the right has by virtue of the licence or permit that is outstanding at the time of the suspension.

Effect of cancellation

102. The rights conferred upon the holder of a mineral right in accordance with this Act will terminate upon the cancellation of a mineral right.

Assets on surrender, expiration or cancellation of a mineral right

103. (1) This section applies where a mineral right is surrendered, expired or is cancelled under this Act.

(2) Where a mineral right is surrendered in respect of part of the area specified in the right, this section applies in respect of that area.

(3) The former holder of a mineral right that is surrendered, expires or is cancelled shall provide a statement of assets to the Commissioner.

(4) A statement furnished for the purposes of sub-section (3) shall identify -

- (a) the buildings and fixed assets the former holder intends to remove from the area; and,
- (b) those buildings and fixed assets that the former holder intends to leave in the area.

(5) A former holder of a mineral right that is surrendered, expires or is cancelled shall also notify the Commissioner of any potentially hazardous substances, excavations and buildings erected in the licence area.

(6) The obligations imposed under this section shall be complied with within such period, which may start before the termination of the right, as the Commissioner may direct.

(7) The Commissioner may direct the former holder of a mineral right -

- (a) not to remove a building or any item of fixed machinery the Commissioner considers is necessary for the continued care and maintenance of the area; and,
- (b) to remove a building or any other item of fixed machinery as specified by the Commissioner.

(8) The Commissioner may also direct the former holder to remove or make safe any potentially hazardous substances, buildings and excavations –

- (a) in accordance with a site closure plan approved by the Commissioner; or
- (b) in the absence of such a plan, in such manner as the Commissioner may direct.

(9) Where –

- (a) the former holder of a mineral right has stated an intention to remove a building or an item of machinery; and
- (b) the Commissioner has directed the former holder not to remove the building or item of machinery,

the former holder of the mineral right shall be entitled to such compensation as may be agreed or, failing agreement, such compensation as may be fixed by arbitration under this Act.

(10) A building or item of machinery referred to in subsection (9) shall vest in the Ingwenyama in trust for the Swazi nation.

Delivery of records and documents

104. (1) This section applies where a mineral right is surrendered expired, or is cancelled in accordance with this Act.

(2) Where a mineral right is surrendered, expired or is cancelled in respect of part of the area specified in the right, this section applies in respect of that area.

(3) The former holder of the mineral right shall deliver to the Commissioner within the prescribed period or, if no period is prescribed, within a reasonable period –

- (a) all records and reports which, prior to surrender, expiration or cancellation of the mineral right, the former holder was obliged to maintain or prepare under this Act; and,
- (b) all plans or maps of the area covered by the mineral right prepared by or for the former holder.

Performance of continuing obligations

105. (1) This section applies where a mineral right terminates because its term has come to an end or for any other reason and an obligation remains to be performed that has arisen –

- (a) by virtue of a condition specified in the mineral right; or
- (b) by virtue of an obligation imposed by this Act.

(2) Where a mineral right terminates for whatever reason in respect of part of the area specified in the right, this section applies in respect of that area.

(3) Performance of the obligation may be enforced as if the obligation -

- (a) arose under a contract made between the former holder of the right and the Board immediately before the termination of the right; and
- (b) due consideration had been given for its performance.

PART V POSSESSION, DEALINGS, IMPORT AND EXPORT OF MINERALS

Authorisation to deal in minerals

106. (1) A person shall not engage in mineral dealings, as either principal or agent, except with and in accordance with a licence of a mineral dealer granted under this Act.

(2) Sub-section (1) does not apply to the holder of a mineral right who engages in mineral dealings in minerals lawfully obtained in accordance with rights conferred under a mineral right.

(3) A person who contravenes sub-section (1) commits an offence and shall, on conviction, be liable to imprisonment to a term not exceeding ten years or to a fine not exceeding hundred thousand (E100,000) Emalangeni or to both.

Application for mineral dealer's licence

107. (1) An application for a licence of a mineral dealer shall be made to the Board in the prescribed form and shall be accompanied by the prescribed fee.

(2) An application made under sub-section (1) shall be accompanied by evidence sufficient to show that the applicant is in possession of, or commands, sufficient working capital to ensure that the applicant can carry on the business that would be permitted by the licence for which the application is being made.

Term of mineral dealer's licence

108. (1) The term of a licence of a mineral dealer shall not exceed twelve (12) months and shall be specified in the licence.

(2) A licence of a mineral dealer may be renewed on application being made to the Commissioner in the prescribed form and on payment of the prescribed fee.

Obligations under mineral dealer's licence

109. (1) The holder of a licence of a mineral dealer shall not -

- (a) engage in mineral dealings except in accordance with the terms and conditions set out in the licence;
- (b) engage in mineral dealings except with a person who has acquired a mineral or minerals lawfully or is otherwise lawfully entitled to deal in the minerals;
- (c) store minerals except at the place or in the premises specified in the licence;

(d) engage in mineral dealings, as either principal or agent, except at the place or in the premises specified in the licence; or

(e) fail to comply with any other terms and conditions specified in the licence.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment of a term not exceeding one year or to a fine not exceeding ten thousand (10,000) Emalangeni or to both.

Records and reporting

110. (1) The holder of a licence of a mineral dealer shall keep a register of mineral transactions in a form approved for the purpose by the Commissioner.

(2) The holder of a licence of a mineral dealer shall, within twenty four hours of a mineral transaction record in the register referred to in sub-section (1) in respect of that transaction -

(a) the nature, weight, and price of the minerals purchased or sold;

(b) the price paid or received for the minerals;

(c) the date of the purchase or sale;

(d) in the case of a purchase of minerals, details of the authority of the vendor to sell the minerals; or

(e) the name and address of the vendor or the purchaser or consignee.

(3) The holder of a licence of a mineral dealer shall deliver to the Commissioner at the end of each quarter, details of the information entered in the register by the holder during that quarter.

(4) The information delivered to the Commissioner under sub-section (3) shall be in the prescribed form or otherwise in the form determined by the Commissioner.

LICENCE OF A GOLDSMITH

Authorisation to work precious minerals

111. (1) A person shall not engage in work as a goldsmith or otherwise manufacture any article from any precious mineral or from any substance containing any precious mineral otherwise than in accordance with a licence of a goldsmith granted under this Act.

(2) A person who contravenes sub-section (1) commits an offence and shall, on conviction, be liable to imprisonment to a term not exceeding one (1) year or to a fine not exceeding ten thousand (10,000) Emalangeni or to both.

Application for licence of a goldsmith

112. An application for a licence of a goldsmith shall be made to the Board in the prescribed form and shall be accompanied by the prescribed fee.

Term of licence of a goldsmith

113. (1) The term of a licence of a goldsmith shall not exceed twelve (12) months and shall be specified in the licence.

(2) A licence of a goldsmith may be renewed upon an application being made to the Board on the prescribed form and on payment of the prescribed fee.

Obligations under licence of a goldsmith

114. (1) The holder of a licence of a goldsmith shall comply with the terms and conditions of the licence.

(2) The holder of a licence of a goldsmith shall keep a register in a form approved for the purpose by the Commissioner.

(3) The holder of a licence of a goldsmith shall, within 24 hours of each purchase or sale of articles of commerce containing precious minerals by the holder, record in the register referred to in sub-section (2) the following information in respect of that transaction -

- (a) the nature, weight, and price of the articles and precious minerals purchased or sold;
- (b) the price paid or received for precious minerals;
- (c) the date of the purchase or sale;
- (d) the name and address of the vendor or the purchaser or consignee.

(4) The holder of a licence of a goldsmith shall deliver to the Commissioner at the end of each quarter, details of the information entered in the register by the holder during that quarter in the prescribed form or otherwise in the form determined by the Commissioner.

(5) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment to a term not exceeding one (1) year or to a fine not exceeding ten (10,000) Emalangeni or to both.

Export and import of minerals

115. (1) A person shall not export a mineral than in accordance with an export certificate granted by the Commissioner.

(2) The holder of a mineral right or of a licence of a mineral dealer may apply for an export certificate.

(3) An application for an export certificate shall be made to the Board in the prescribed form and shall be accompanied by the prescribed fee.

(4) The grant of an export certificate to a person under this Act shall not have the effect of exempting the person from the obligation to comply with the requirements of any other law relating to the export of minerals.

(5) A person who contravenes sub-section (1) commits an offence and shall, on conviction, be liable to imprisonment to a term not exceeding one year (1) or to a fine not exceeding ten (10,000) Emalangeni or to both.

Import of minerals

116. (1) A person shall not import minerals except with and in accordance with an import certificate granted by the Board.

(2) An application for an import certificate to import precious minerals shall be made to the Board in the prescribed form and shall be accompanied by the prescribed fee.

(3) Where a person imports precious minerals in accordance with a certificate granted under this section -

- (a) the person shall make a declaration before a customs officer regarding the type and quantity of the minerals imported; and
- (b) the customs officer shall certify the import certificate accordingly.

(4) A person who contravenes sub-section (1) commits an offence and shall, on conviction, be liable to imprisonment to a term not exceeding one (1) year or to a fine not exceeding ten (10,000) Emalangeni or to both.

SUSPENSION AND CANCELLATION

Suspension and cancellation

117. (1) The Board may suspend or cancel a licence of a mineral dealer or a licence of a goldsmith if the holder -

- (a) fails to make any prescribed payment by the due date;
- (b) fails to comply with a condition specified in the licence or an obligation imposed on the holder by this Act and fails to take action to remedy the breach within a reasonable time;
- (c) commits an offence under this Act;
- (d) made a false statement or supplied false information to the Commissioner, or to a public officer exercising functions under this Act that was, material to the grant of the licence; or
- (e) dies, becomes of unsound mind, bankrupt, subject to financial difficulty or otherwise ineligible to hold the licence.

(2) Before suspending or cancelling a licence of a mineral dealer or a licence of a mineral broker the Board shall give the holder of the licence a written notice requiring the holder -

- (a) to comply with the condition or obligation within a reasonable period of time; or
- (b) where this is not possible, to show cause within that period, why the licence should not be suspended or cancelled.

(3) The cancellation of a licence of a mineral dealer or a licence of a goldsmith under this section shall not prejudice any liability or obligation incurred under or in relation to that licence by the licence holder prior to cancellation of that licence.

PART VI
SURFACE RIGHTS, COMPENSATION AND DISPUTES
OWNERS AND OCCUPIERS

Evidence of mineral right to be produced

118. (1) This section applies to a person who is exercising or is intending to exercise on any land the rights granted under a mineral right -

- (a) as the holder of the licence or permit; or
- (b) as the agent or employee of the licence or permit holder.

(2) The exercise of the rights under a licence or permit is subject to the obligation to produce the mineral right if required to do so by a person who appears to be the owner or occupier of the land or the agent or employee of that person.

Continuing rights of land owners and occupiers

119. A person who is the owner or occupier of land specified in a mineral right granted under this Act may -

- (a) graze stock on the land; or
- (b) cultivate the surface of the land,

provided that the grazing or cultivation does not unduly interfere with the operations that may be carried out on the land by the licence or permit holder in accordance with the licence or permit.

Compensation to be paid to owners and occupiers

120. (1) This section applies where -

- (a) a person exercises rights conferred by a mineral right; and,
- (b) the exercise of the right -
 - (i) disturbs the rights of the owner or lawful occupier of the land; or
 - (ii) damages the crops, trees, buildings, stock or works belonging to the owner or lawful occupier of the land.

(2) The person exercising the mineral right shall pay reasonable compensation to the owner or lawful occupier of the land.

(3) Any compensation payable in accordance with this section shall be reduced by an amount equal to the value of any improvements to the land made as a result of the exercise of the rights conferred under a mineral right.

(4) If the amount of compensation to be paid cannot be agreed by the parties either party may refer the question to the Commissioner who shall determine the amount to be paid in accordance with this Part.

(5) The making of a demand for compensation does not entitle the owner or occupier of land to prevent or hinder the exercise of a right conferred under a mineral right.

(6) The amount of compensation agreed or determined may be recovered as a debt due to the owner or lawful occupier of the land, as the case may be.

(7) The amount of compensation payable to an owner or occupier of land under this section shall not be reduced by virtue of sub-section (3) solely by reason of the existence or claimed existence of mineral resources on the land.

SETTLEMENT OF DISPUTES

Settlement of disputes in respect of mineral rights

121. (1) This section applies to a dispute -

- (a) between the holder of a mineral right and any other person other than the Government or an agency of the Government that concerns the exercise of rights conferred under the mineral right; or,
- (b) that relates to the amount of any compensation that is payable to a person by virtue of this Part.

(2) Subject to the terms of any mineral agreement to the contrary, the Commissioner may enquire into and settle any dispute to which this section applies that is referred to the Commissioner in accordance with this section.

(3) An application to the Commissioner to settle a dispute may be made by any party to the dispute and shall -

- (a) be made on the prescribed form; and,
- (b) be accompanied by a statement setting out a summary of the dispute.

(4) Following receipt of the application under subsection (3) the Commissioner shall invite the party against whom the dispute is made to set out in summary the response to the dispute as lodged.

(5) Following receipt of the statements referred to in sub-sections (3) and (4), the Commissioner shall serve written notices to the parties to the dispute -

- (a) stating the matter to be determined;
- (b) naming of the parties to the dispute;
- (c) setting a place where, and a date and time when, the Commissioner will hear and determine the dispute; and
- (d) inviting the parties to the dispute to attend either in person or through an agent who may, but need not, be legally qualified.

(6) At the hearing of the dispute evidence may be given on oath and witnesses may be cross-examined.

(7) Subject to the rules of natural justice, the Commissioner shall otherwise determine the procedure to be followed at the hearing.

(8) The Commissioner -

(a) shall give a determination in respect of a dispute in writing; and

(b) may make any order necessary to give effect to the determination.

(9) Any order made under subsection (8) (b) may be registered in a court of appropriate jurisdiction and shall then be enforced as an order of that court.

(10) Any order made under this section is subject to appeal to a court of competent jurisdiction in accordance with the laws of Swaziland.

(11) In the determination of the dispute the Commissioner shall have the jurisdiction of a magistrate's court regardless of the amount or subject matter involved.

PART VII

PROTECTION OF THE ENVIRONMENT

Application of environmental laws and regulations

122. (1) A person granted a mineral right shall comply with the environmental laws and regulations.

(2) Sub-section (1) shall not be interpreted as indicating that a right granted pursuant to a mineral right may be exercised without compliance to any other law relating to the exercise of that right and any such law shall be complied with unless a contrary intention is clearly shown.

Submission of project briefs

123. Where this Act requires the provision of a project brief, that project brief shall -

(a) be in the prescribed form; or

(b) if no form is prescribed, be in a form approved for the purpose by the Commissioner.

Duties of the commissioner in respect of the environment

124. Where the submission of a project brief is required under this Act, the Commissioner shall categorise the project in accordance with the relevant provisions of the environmental laws and regulations.

Requirement for environmental compliance certificate

125. A holder of a mineral right shall not commence large scale mining operations under this Act unless and until -

(a) the Swaziland Environmental Authority has issued an Environmental Compliance Certificate ('ECC'); and

(b) the ECC has been endorsed by the Commissioner where required under the environmental laws and regulations.

Site rehabilitation and mine closure

126. (1) A programme of prospecting operations and programme of mining operations approved under this Act shall include site rehabilitation and mine-closure plans.

(2) The site rehabilitation and mine closure plans shall -

- (a) be in the prescribed form; or
- (b) if no form is prescribed, be in a form approved for the purpose by the Commissioner.

Environmental bond

127. (1) The holder of a prospecting licence, a retention licence or a mining licence shall provide the Commissioner with -

- (a) a bond; or
- (b) some other form of financial security that is satisfactory to the Commissioner,

that shall be sufficient to cover the costs associated with the implementation of the environmental and rehabilitation obligations set out in the site rehabilitation and mine-closure plans of the holder of the licence.

(2) The form and amount of the bond or other security specified in sub-section (1) shall be determined by the Commissioner having regard to the characteristics of the particular project.

(3) The amount secured by the bond or other financial security may be reduced by an amount determined by the Commissioner if part of the environmental and rehabilitation obligations set out in the site rehabilitation and mine-closure plans are completed during the term of the licence.

(4) The bond or other financial security specified in sub-section (1) shall be released to the holder when all the environmental and rehabilitation obligations set out in the site rehabilitation and mine-closure plans have been completed to the satisfaction of the Commissioner.

(5) A prospecting licence, retention licence or mining licence may not be granted under this Act unless and until the applicant for that licence has provided a bond or other financial security to the Commissioner in accordance with this section.

Water rights

128. Nothing in this Act and no right conferred under a mineral right granted under this Act shall be construed as exempting a person from complying with the provisions of any law governing rights to use of water or water resources.

Environmental guidelines

129. (1) The Commissioner may, in consultation with the Swaziland Environmental Authority, publish environmental guidelines relating to reconnaissance, prospecting and mining operations.

(2) Guidelines published by the Commissioner under sub-section (1) may be used as evidence that the guidelines -

- (a) were complied with, which may be used to show compliance with any provision of this Act; and
- (b) were not complied with, which may be used to show non-compliance with any provision of this Act.

PART VIII
FINANCIAL PROVISIONS

Prohibition against the disposal of minerals while payments are outstanding

130. (1) The holder of a mineral right shall not dispose of any minerals recovered by virtue of that right unless -

- (a) fees, royalties, area rent and other charges imposed under this Act have been paid; or
- (b) payment arrangements in respect of any fees, royalties, area rent and other charges have been made and approved by the Board.

(2) Where the holder of a mineral right attempts to dispose of a mineral or minerals contrary to sub-section (1) -

- (a) a title in the property of the mineral shall not pass; and
- (b) a person shall not gain any title to the minerals in any circumstances.

Fees

131. The holder of a mineral right shall pay all fees prescribed in respect of the right at the prescribed times.

Royalties

132. (1) The holder of a mineral right shall pay to the iNgwenyama in trust for the Swazi Nation a royalty based on the gross sale value of any mineral or minerals obtained in operations under the mineral right and sold by the holder in the manner prescribed.

(2) Payment of royalty shall be accompanied by a statement in the prescribed form that includes details of the gross production figures, gross sale figures, when the minerals were sold, to whom they were sold and the price at which they were sold.

(3) A statement under sub-section (2) shall in addition contain details of all minerals that were disposed of otherwise than by sale.

(4) If the Commissioner is satisfied that any minerals were sold or disposed of otherwise than in an arms-length transaction, the Commissioner shall determine the gross sale value of the minerals so sold or disposed of and royalty shall be paid by reference to the amount so determined.

(5) This section does not apply to minerals or mineral samples that were acquired by the holder of a mineral right solely for the purpose of assay, analysis or technical examination.

(6) A different rate of royalty and a different royalty valuation method may be prescribed in the case of building materials to which this section applies, and shall be applied in respect of such material.

(7) The iNgwenyama may reduce or temporarily suspend the royalty payable by the holder of a mining right once mining has started in accordance with that right if an economic case is made by the holder, to the satisfaction of the Commissioner, to justify the relief being given.

(8) In this section -

- (a) "gross sales value" means the sale value receivable at the point of sale for the mineral on disposal in an arms-length transaction without discounts, commissions or deductions;
- (b) "point of sale" means -
 - (i) the mine gate for domestic sales when first extracted from the mine site;
 - (ii) the plant gate for minerals sold after beneficiation for the first saleable mineral product;
 - (iii) the point of export for minerals which are exported;
- (c) "arms-length transaction" means a sale transaction in the open market where the purchase price for the sale -
 - (i) is not influenced by any special relationship or other arrangement between the parties to the transaction; and
 - (ii) is not affected by any non-commercial considerations including, in particular, any barter, swap, exchange, or transfer price arrangements or restricted transaction that is associated with special financial, commercial or other considerations.

State participation

133. (1) The *iNgwenyama* in trust for the Swazi Nation shall acquire 25% shareholding without any monetary consideration in a large scale mining project for which a mining licence is granted.

(2) The share interest arrangement specified in sub-section (1) is without prejudice to the obligation that the Government shall acquire 25% shareholding without any monetary consideration in a large scale mining project for which a mining licence is granted.

(3) The share interest acquired by the Government under sub-section (2) shall be distributed as follows -

- (a) fifteen percent (15%) of the share interest shall be maintained in an appropriate fund or other financial mechanism established and administered by the Government for the purpose of providing investment opportunities to citizens; and
- (b) ten percent (10%) of the share interest shall be acquired by any person who is a citizen of Swaziland as defined in section 82 (3) or registered in Swaziland at a fair market value to be determined by the Minister in a manner prescribed by regulations.

(4) The Government may, from a fund under subsection (3),

- (a) acquire and supply minerals to local beneficiaries; or
- (b) acquire minerals from other mineral producing countries,

in a prescribed manner.

(5) A mining licence granted under this Act -

- (a) has no effect until the share interest arrangement provided for by sub-section (1) and
- (2) has been put into place; and

- (b) may be cancelled if the holder of the licence or any other person enters into an arrangement, agreement or understanding the intent or effect of which is to defeat the intention of sub-section (1) and (2) unless an alternative arrangement or agreement is entered into that will achieve the same result.

Area rental

134. (1) The holder of a prospecting, retention or a mining licence shall pay rent to the iNgunyama in respect of the area specified in the licence as prescribed.

(2) The rental payable under sub-section (1) shall become due upon the grant and on each anniversary of the grant of the licence.

PART IX

RECORDS AND REGISTRATION AND MINERAL RIGHTS

Register of mineral rights

135. (1) The Commissioner shall maintain a register called the Register of Mineral Rights.

(2) The Commissioner shall enter into the register details of all applications, grants, assignments, transfers, notices, surrenders, and any suspension and cancellation of mineral rights.

(3) Where the Commissioner is satisfied that a mistake has been made or that a matter has been incorrectly entered in the register, the Commissioner shall rectify the error by correcting the mistake or incorrect entry.

Replacement of originals

136. (1) This section applies where the Commissioner is satisfied that an original of a document or instrument that evidences a right granted under this Act has been lost or destroyed or has been rendered illegible.

(2) The Commissioner, at the request of the holder of the document or instrument referred to in subsection (1) and on payment of any prescribed fee, shall—

- (a) prepare a copy of that document or instrument;
- (b) certify the copy of that document or instrument to be a copy of the original;
- (c) send the copy of that document or instrument to the holder of the right; and,
- (d) enter details in the register.

Inspection of the register of mineral rights

137. The register of mineral rights shall be available for inspection by any member of the public at all reasonable times on payment of the prescribed fee.

Commissioner to issue evidentiary certificates

138. Upon the payment of the prescribed fee, the Commissioner may issue an evidentiary certificate certifying that -

- (a) a mineral right was granted, transferred, suspended or cancelled on the date specified in the certificate;
- (b) land was or was not specified in a mineral right on a date specified in a certificate;
- (c) a mineral specified in a certificate was the subject of a mineral right;
- (d) a person named in a certificate is the holder of a mineral right or was that holder on a date specified in the certificate;
- (e) a condition is specified in a mineral right or was so specified on a date shown in a certificate;
- (f) the land specified in the certificate that formed part of the land specified in a mineral right was on a date also specified in the certificate surrendered by the holder of the mineral right.

PART X

MONITORING, COMPLIANCE AND ENFORCEMENT

General powers of search and inspection

139. The Commissioner or a public officer or expert authorised by the Commissioner to do so, may as prescribed under regulations and at any reasonable time -

- (a) enter, inspect and examine any land on which reconnaissance, prospecting or mining operations are being conducted or land that is specified in a mineral right;
- (b) enter a registered address or any other area, structure, vehicle, vessel, aircraft or building that, in the opinion of the Commissioner or public officer has been or is being used for or in connection with reconnaissance, prospecting or mining operations;
- (c) examine, inspect and take copies of accounts, vouchers, documents, maps, drilling logs, or records of any kind relevant to the operations authorised by a mineral right;
- (d) exercise any powers necessary or expedient to the administration of this Part.

Power to search for evidence of offence

140. (1) This section applies where the Commissioner or a public officer authorised by the Commissioner has reasonable grounds to believe that evidence relating to the commission of an offence under this Act is located on any land, premises, vehicle or aircraft.

(2) The Commissioner or the public officer may pursuant to subsection (1) at any time enter the land, premises, vehicle or aircraft and search for and take control of the evidence.

OFFENCES AND PENALTIES

Unauthorised reconnaissance, prospecting or mining operations

141. (1) A person shall not engage in reconnaissance, prospecting or mining operations except with and in accordance with the provisions of this Act and the terms and conditions of a mineral right and any relevant minerals agreement.

(2) A person who contravenes sub-section (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten (10) years or to a fine not exceeding one hundred thousand (E100,000), Emalangeni or to both.

(3) Minerals obtained in the course of the commission of an offence under sub-section (1) shall be forfeited to the Government upon conviction of an offence under this section.

Obstruction of holder of mineral right

142. (1) A person shall not, without reasonable or lawful excuse, prevent, obstruct or hinder the holder of a mineral right from carrying out an act that the holder is authorized to carry out -

- (a) under the terms of the mineral right; or
- (b) by virtue of being the holder of another mineral right.

(2) A person who contravenes sub-section (1) commits an offence and shall, on conviction, be liable to imprisonment to a term not exceeding one year or to a fine not exceeding ten (E10,000), Emalangeni or to both.

False or misleading statements

143. (1) An applicant for a mineral right or the holder of a mineral right shall not knowingly make a false or misleading statement made under this Act that is material to the assessment or approval of an application.

(2) An applicant or holder of a mineral right shall not knowingly include false or misleading information in a report, notice or other document submitted in accordance with this Act.

(3) A person who contravenes sub-section (1) or sub-section (2) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten (10) years or to a fine not exceeding one hundred thousand, (E100,000) Emalangeni or to both.

Salting

144. (1) A person shall not -

- (a) place or deposit material in a place with the intention of misleading another person as to the mineral possibilities of that place; or
- (b) manipulate a sample of ore so as to enhance the value of that ore or in any way change the nature of the ore with the intention of deceiving or defrauding another person or contravening a provision of this Act.

(2) A person who contravenes sub-section (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding fifteen (15) years or to a fine not exceeding one hundred and fifty thousand (E150,000) Emalangeni or to both.

Unauthorised disclosure of information

145. (1) A person shall not disclose information provided by an applicant for a mineral right or the holder of a mineral right in compliance with this Act except in accordance with this Act or with the consent of the applicant for or the holder of the mineral right.

(2) A person who contravenes sub-section (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one (1) year or to a fine not exceeding ten thousand (E10,000) Emalangeni or to both.

(3) Sub-section (1) does not apply to any disclosure for -

- (a) the administration of this Act;
- (b) monitoring or enforcement of this Act;
- (c) legal proceedings under this Act;
- (d) the preparation of Government statistics, tax; or,
- (e) making the information available to an officer or a consultant engaged by the Government who has been authorised to receive the information for the administration of this Act.

Criminal liability

146. A person who aids, abets, counsels or procures another person in the commission of an offence under this Act commits an offence and shall be liable in the same manner as the principal offender.

Liability of managers of bodies corporate

147. (1) Where a body corporate commits an offence under this Act, every director or partner and any other person concerned in the management of the body corporate commits the offence and that offender shall upon conviction, be liable in the same manner as the body corporate to the penalty provided for that offence.

(2) A person referred to under subsection (1) shall not be guilty of an offence where that person proves that -

- (a) the offence was committed without the knowledge, consent or connivance of that person; and
- (b) the person exercised all the diligence to prevent the commission of the offence as ought to have been exercised by that person having regard to the nature of the functions of that person in that capacity and to all of the circumstances.

(3) Every director, partner or any other person concerned in the management of, a body corporate to which a mineral right has been issued under this Act shall take all reasonable steps to prevent the body corporate from contravening or failing to comply with the terms and conditions of the mineral right.

(4) For the purposes of this Act, any act or thing done or omitted to be done by a director, officer, employee or agent of a body corporate in the course of exercising their powers, functions or duties is deemed to be an act or thing done or omitted to be done by the body corporate.

(5) Nothing in this section detracts from the liability or responsibility attached to any person under any other Act or law in force in Swaziland.

(6) In any proceedings regarding the failure of a body corporate to comply with the terms of a mineral right, the onus shall be on the director, partner or any other person concerned in the

management of that body corporate, to show that all reasonable steps were taken to prevent such failure to comply with the terms and conditions of a mineral right by the body corporate.

Defences

148. (1) Except as otherwise specified in this Act, in any prosecution under this Act, it is a defence for a person charged to prove that the person took all reasonable precautions and exercised all such diligence to prevent the commission of the offence as ought to have been exercised by that person having regard to the circumstances of the case.

(2) It is not a defence to a charge under this Act that the defendant was rendered unable to comply by an act or an omission of the defendant that would have constituted a contravention of this Act.

Documentary evidence

149. In any proceedings under this Act or the regulations, an official document that purports to be signed by the Minister or the Commissioner, including an evidentiary certificate, shall be received in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the document without proof of signature or position of the person appearing to have signed or certified the document.

Suspension and cancellation of mineral rights

150. Upon the application of the prosecutor, any court that convicts a person of an offence under this Act may suspend, amend or cancel any licence or permit issued to that person under this Act and reasons shall be given for that decision.

Deprivation of monetary benefits

151. A court that convicts a person of an offence under this Act shall summarily and without pleadings inquire into the monetary benefit acquired or saved by the person as a result of the commission of the offence, and may, in addition to any other penalty imposed, impose a fine in an amount equal to cover the estimation of that monetary benefit, notwithstanding any maximum penalty provided elsewhere.

Cost of investigation and prosecution

152. Upon the application of the prosecutor, a court that convicts a person of an offence under this Act shall summarily and without pleadings inquire into the costs of investigating and prosecuting the offence and may in addition to any other penalty imposed, order the person convicted to pay an amount equal to the cost to the person(s) who incurred the costs, notwithstanding any maximum penalty provided elsewhere.

PART XI MISCELLANEOUS PROVISIONS

Insurance cover

153. (1) The holder of a mineral right or a person acting as an agent of the licence or permit holder who is undertaking reconnaissance, prospecting or mining operations shall, with respect to those operations, maintain insurance in respect of the prescribed risks.

(2) The licence or permit holder or agent mentioned in sub-section (1) shall, where required to do so by the Commissioner, furnish the Commissioner with authenticated copies of certificates

of insurance that set out the insurance policy and any other documents that are required to demonstrate that the policy is valid, effective, and appropriate and covers the prescribed risks.

Radioactive minerals

154. (1) The holder of a mineral right shall notify the Commissioner of the discovery of any radioactive mineral.

(2) A person shall not sell or attempt to sell radioactive minerals except, in accordance with the authorisation of iNgwenyama in terms of this Act.

(3) A person who contravenes sub-section (1) or (2) commits an offence and shall be liable, on conviction, to imprisonment for a period not exceeding twenty five (25) years or ten million (E10,000,000) Emalangeni or to both.

Notices

155. Without prejudice to any other mode of service that is permitted under any rule of law, a notice to an applicant or holder of a mineral right shall be taken, for the purposes of this Act, to have been effectively delivered if it is delivered personally to the applicant or holder, or sent by registered post to the registered address of the applicant or holder.

Indemnity of officials

156. A member of the Board, the Commissioner and any public officer or expert or consultant appointed by the Commissioner shall not incur any liability in respect of the exercise or performance, or purported exercise or performance, in good faith of a function under and for the purposes of this Act.

Prohibition against public officers acquiring interests

157. (1) A public officer responsible for the administration of provisions of this Act shall not directly or indirectly acquire a right or interest in a mineral right.

(2) A public officer referred to in sub-section (1), shall not acquire or retain a share in a company carrying on reconnaissance, prospecting or mining operations.

(3) A document or other transaction that purport to confer a right or interest share to a public officer contrary to sub-section (1) or sub-section (2) is of no legal effect.

Commissioner to provide annual report

158. (1) Within three months of the expiration of each financial year the Commissioner shall prepare and present to the Minister an annual report giving full details of all activities undertaken under this Act during that financial year and such other information as the Minister may direct.

(2) The Minister shall cause the report to be laid before both chambers of Parliament.

Recovery of fees, royalty, rent and charges

159. A fee, royalty, area rent or other charge payable under this Act may be sued for and recovered by the Government as if it were a debt due to the Government.

Regulations

160. (1) The Minister may make regulations necessary or convenient for the proper administration of this Act and to facilitate the achievement of the purpose of this Act, and without limiting the generality of the foregoing, may make regulations -

- (a) relating to the fees, royalties, rent and other charges that are payable under this Act or the manner in which they are to be calculated;
- (b) in respect of the royalties that are payable for specific minerals and the manner in which they are to be calculated;
- (c) prescribing the manner in which an area referred to in a mineral right is to be demarcated;
- (d) prescribing the manner in which records, accounts, books and other documents shall be kept, retained and made available for inspection;
- (e) prescribing the manner in which confidential data provided under this Act is to be treated and the periods upon which such data ceases to be confidential;
- (f) procedures to be followed in any tender to be held under this Act;
- (g) providing the measures and procedures to be observed in respect of radioactive minerals and dispositions conferring rights and interests in respect of such minerals;
- (h) providing the measures and procedures to be observed in respect of petroleum and the disposition of rights and interests in respect of petroleum;
- (i) prescribing the measures to be included in approved programmes for reconnaissance, prospecting and mining operations;
- (j) prescribing measures to be observed to protect and rehabilitate the environment;
- (k) prescribing measures to be observed regarding the use of explosives for prospecting and mining operations;
- (l) prescribing the measures to be observed concerning health and safety connected to prospecting and mining operations;
- (m) specifying areas that are excluded areas under this Act;
- (n) prescribing the categories of mineral rights that are not to be granted in prescribed areas;
- (o) prescribing the form of any licence, permit, forms, return or other document to be used for the purposes of this Act.

(2) The Minister may also make regulations containing saving, transitional and consequential provisions including, amendments to other Acts and regulations consequent upon the enactment of this Act and the repeal of the Mining Act, 1958.

PART XII
REPEAL AND TRANSITIONAL PROVISIONS

Repeal of Mining Act, 1958

161. The Mining Act, 1958 is repealed.

Transitional Provisions

162. (1) Regulations or rules made under the Mining Act, 1958 and in force immediately before the coming into force of this Act shall continue in force until replaced or otherwise dealt with under this Act.

(2) A licence, permit, lease or special lease granted or issued under the Mining Act, 1958 and subsisting immediately before the commencement of this Act shall continue under the laws applicable immediately before the coming into force of this Act.

(3) The Minister may by regulation made under this Act, make such licences, permits, leases or special leases referred to in sub-section (2) subject to this Act or subject to specific provisions of this Act as shall be prescribed.

(4) Applications made under the Mining Act, 1958 and not determined before the commencement of this Act shall be determined in accordance with this Act as if they were made under this Act.

(5) A person who, immediately before the commencement of this Act held an office created by the Mining Act, 1958 that is an office of a type created by this Act shall continue to hold that office as if appointed in accordance with this Act.

(6) A person who, immediately before the commencement of this Act was employed in or held an appointment to a position created by the Mining Act, 1958 that is a position of a type created by this Act, shall be employed in or taken as having been appointed to that position on the same terms and conditions as applied to the person under the repealed Mining Act.

Precedence of this Act

163. Where there is an inconsistency between the provisions of this Act and any other law relating to minerals and mining, other than the Constitution, this Act shall take precedence unless a contrary intention is clearly indicated.

SCHEDULE
(Under Section 21)

**CRITERIA FOR DISTINGUISHING BETWEEN SMALL-SCALE AND
LARGE-SCALE PROSPECTING AND MINING OPERATIONS**

Small-scale prospecting and mining operations

1. (1) A prospecting or mining operation or a proposed prospecting or mining operation shall be classified as a small-scale operation for the purposes of this Act if -

- (a) in the case of prospecting operations, the proposed prospecting area does not exceed 5 km²;

(b) in the case of mining operations, the proposed mining area does not exceed 0.05km²;

(2) Notwithstanding sub-paragraph (1), a prospecting or mining operation may also be classified as a small-scale operation for the purposes of this Act if -

- (a) in the case of mining operations, the actual or estimated annual extraction of minerals or material bearing minerals does not or will not exceed 25,000 cubic meters; or,
- (b) the proposed prospecting or mining operations do not or will not employ specialised prospecting or mining technologies; or
- (c) the proposed prospecting or mining operations, do not or will not involve substantial expenditure.

Large-scale prospecting and mining operations

2. Proposed prospecting operations or mining operations that do not have or will not have any of the characteristics of a small-scale mining operation as specified in paragraphs 1 or 2 shall be classified as a large-scale operation.

