

LAWS OF BOTSWANA

MINES AND MINERALS

CHAPTER 66:01

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CHAPTER 66:01

MINES AND MINERALS

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SCHEDULE

An Act to regulate the law relating to Mines and Minerals; to provide for the granting, renewal and termination of mineral concessions; to provide for the payment of royalties; and for matters incidental to and connected with the foregoing Act 30, 1976,
S.L 175, 1976.

[Date of Commencement: 1st January, 1977]

PART I *Preliminary*

- 1. This Act may be cited as the Mines and Minerals Act. Short title
- 2. (1) In this Act, unless the context otherwise requires, – Inter-pretation
 - “authorized officer” means a person authorized by the Minister to exercise the powers conferred by section 6 (1);
 - “building and industrial minerals” mean barite, basalt, clay, dolomite, feldspar, granite, gravel, gypsum, laterite, limestone, mica, magnesite, marble, phosphate rock, sand, sandstone, slate and talc, when used for agricultural, building, roadmaking or industrial purposes in Botswana, and such other minerals as the Minister may from time to time declare, by notice published in the Gazette, to be building and industrial minerals;
 - “building and industrial minerals permit” means a permit issued under section 52;

- Cap. 44:02 “Chief Government Mining Engineer” means the Chief Government Mining Engineer appointed under section 3 of the Mines, Quarries, Works and Machinery Act;
- “diagram” means a document containing geometrical, numerical and verbal representations of a piece of land, which has been signed by a land surveyor and which has been approved or certified by the Director of Surveys and Lands or other officer empowered under the Land Survey Act, so to approve or certify a diagram;
- Cap. 33:01 “holder” means the holder of a mineral concession under this Act;
- “in default” means in breach of any of the provisions of this Act or of any of the provisions of a mineral concession;
- “lapse” means the extinguishment of a mineral concession for any reason;
- “mine”, when used as a noun, means any place, excavation or working wherein, whereon or whereby any operation connected with mining is carried on, together with all buildings, premises, erections and appliances belonging or appertaining thereto above and below the ground for the purpose of winning, treating or preparing minerals, obtaining or extracting any mineral or metal by any mode or method or for the purpose of dressing mineral ores;
- “mine”, when used as a verb, means intentionally to win minerals and includes any operations directly or indirectly necessary therefor or incidental thereto, and “mining” shall be construed accordingly;
- “mineral” means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth, formed by or subject to a geological process, but excluding public and private water when used for a primary, secondary or tertiary use, as defined in the Water Act;
- Cap. 34:01 “mineral concession” means a reconnaissance permit, a prospecting licence, a mining lease, a restricted prospecting licence, a restricted mining lease, or a building and industrial minerals permit;
- “mining area” means the land subject to a mining lease;
- “mining lease” means a right to mine required under Part VI;
- “ore” means a natural aggregate of one or more minerals which may be mined and sold at a profit or from which some part may be profitably extracted;
- “private land” means all land and all interests in land other than unalienated land or interests therein;
- “programme of mining operations” means such a programme approved on the granting or renewal of a mining lease and includes any amendment thereto made in pursuance of the provisions of this Act;

- “programme of prospecting operations” means such a programme approved on the granting of a prospecting licence and includes any amendment thereto made in pursuance of the provisions of this Act;
- “prospect” means intentionally to search for minerals and includes determining their extent and economic value;
- “prospepecting area” means the land subject to a prospecting licence;
- “prospepecting licence” means a right to prospect acquired under Part V;
- “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 the following –
- (a) monazite sand and other ores containing thorium;
 - (b) carnotite, pitchblende and other ores containing uranium;
- “reconnaissance” means the search for minerals by geophysical surveys, geochemical surveys and photo-geological surveys or other remote sensing techniques and surface geology in connexion therewith, but does not include drilling, excavation or other sub-surface techniques;
- “reconnaissance permit” means a right to search for minerals acquired under Part IV;
- “reconnaissance programme” means such a programme approved on the granting of a reconnaissance permit and includes any amendment thereto made in pursuance of the provisions of this Act;
- “restricted mining lease” means a right to mine acquired under Part VII;
- “restricted prospecting licence” means a right to prospect acquired under Part VII;
- “specially authorized officer” means an authorized officer specially authorized by the Minister to exercise the powers conferred by section 6 (2);
- “termination” means the lapse of a mineral concession whether by expiry of time, surrender or cancellation, and where any surrender or relinquishment is in respect of part only of the area covered by a mineral concession then the mineral concession shall be deemed to have lapsed in respect of that surrendered or relinquished area;
- “tribal territory” means –
- (a) tribal territory as defined in the Tribal Territories Act; Cap. 32:03
 - (b) the area of the Barolong Farms;
- “working for profit” means producing a mineral product with the intention of use or sale.
- (2) (a) Where in this Act provision is made for a matter to be referred to arbitration, the matter shall be referred to a single arbitrator appointed by the parties.

(b) In the event of the parties being unable to agree on a single arbitrator, each party shall choose an arbitrator, and the arbitrators so chosen shall choose an umpire.

Cap. 06:01

(c) Arbitration proceedings shall be conducted in accordance with the Arbitration Act.

(3) Where in this Act any application, report or other document is required to be submitted to the Minister, –

(a) in the case of a reconnaissance permit, prospecting licence or restricted prospecting licence, such application, report or document shall be submitted through the Director of Geological Survey; and

(b) in the case of any other mineral concession and in all other cases, shall be submitted through the Mining Commissioner.

PART II *Ownership of minerals and acquisition of mineral rights*

Ownership of
minerals
vested in
Republic
Cap. 66:02

3. Subject to the provisions of the Mineral Rights in Tribal Territories Act, all rights of ownership in minerals are vested in the Republic.

Acquisition
of mineral
concession

4. (1). Subject to the provisions of this Act, the right to conduct reconnaissance for, to prospect for and to mine, minerals may be acquired and held only under and in accordance with the provisions of this Act, notwithstanding any right of ownership or otherwise which any person may possess in and to the soil on or under which minerals are found or situate.

(2) No person may conduct reconnaissance for, prospect for or mine, minerals except as provided in this Act.

(3) Nothing in this Act shall prevent a member of any tribe from taking, subject to such conditions and restrictions as may be prescribed, minerals from any land from which it has been the custom of members of that tribe to take minerals and to the extent that this is permissible under the customary law of that tribe.

(4) Notwithstanding the provisions of this Act, the Minister may, subject to such conditions as he may determine, authorize any person to undertake investigation into the geological resources of Botswana.

Restriction
on
acquisition
of mineral
concession

5. No mineral concession shall be granted to or held by –

(a) an individual who –

(i) is under the age of 21 years;

(ii) is not a citizen of Botswana or has not been ordinarily resident in Botswana for a period of 4 years or such other period as may be prescribed;

(iii) is or becomes an undischarged bankrupt, having been adjudged or otherwise declared bankrupt, whether under the laws of Botswana or elsewhere; or

- (iv) has been convicted, within the previous 10 years, of any offence of which dishonesty is an element, or of any offence under this Act, the Employment Act, or any similar written law in force outside Botswana, and has been sentenced to imprisonment without the option of a fine or to a fine exceeding P300 or the equivalent thereof; Cap. 47:01
- (b) a company –
- (i) which has not established a *domicilium citandi et executandi* in Botswana;
 - (ii) unless, in the case of a mining lease, such company is incorporated under the Companies Act; or Cap. 42:01
 - (iii) which is in liquidation except where such liquidation is part of a scheme for the reconstruction or amalgamation of such company.

PART III Administration

- 6.** (1) An authorized officer may, at all reasonable times, enter upon any reconnaissance area, prospecting area or mining area, or any premises or workings thereon or thereunder, other than a dwelling house, for the purposes of – Power of certain officers to enter upon prospecting areas, etc.
- (a) generally inspecting any such area, premises or workings and examining reconnaissance, prospecting or mining operations or the treatment of minerals being performed or carried out thereon;
 - (b) ascertaining whether the provisions of this Act are being complied with;
 - (c) ascertaining whether any nuisance exists in such area, such premises or workings;
 - (d) giving directions and taking steps to enforce any provisions of this Act, or to abate or remove any nuisance;
 - (e) taking soil samples or specimens of rocks, ore, concentrates, tailings or minerals situated upon such area, premises or workings for the purpose of examination or assay;
 - (f) examining books, accounts, vouchers, documents or records of any kind; or
 - (g) obtaining such information as he may deem necessary.
- (2) A specially authorized officer may –
- (a) enter at all reasonable times upon any land with such persons, animals, vehicles, appliances, instruments and materials as are necessary;
 - (b) break up the surface of such land for the purpose of ascertaining the rocks or minerals within or under the same;
 - (c) take and carry away samples and specimens of the soil, rocks or minerals found therein or thereon;

- (d) fix any post, stone, mark or object to be used in the survey of any such land;
- (e) dig up any ground for the purpose of fixing any such post, stone, mark or object;
- (f) enter into or upon any land through which it may be necessary to pass for the purposes of such survey;

Provided that –

- (i) it shall not be lawful to fix any post, stone, mark or object within any walled or fenced garden or orchard without the consent of the owner or lawful occupier thereof;
- (ii) as little damage and inconvenience as possible shall be caused by the exercise of the powers conferred by this subsection and the owner or lawful occupier thereof shall be entitled to compensation for any damage sustained in the exercise thereof; and
- (iii) before abandoning any land all excavations shall be backfilled or otherwise made safe.

Power to
require
production
of records

7. The Minister may direct the holder of a mineral concession to produce for inspection by an authorized officer any books, accounts, vouchers, documents or records of any kind concerning the mineral concession.

Indemnity of
officers

8. No public officer or other authorized officer shall be liable for anything done or omitted to be done *bona fide* in the performance or purported performance of any function vested in or delegated to him by or under this Act.

Public
officers
prohibited
from
acquiring
mineral
concessions

9. (1) No public officer shall, directly or indirectly, acquire any right or interest in any mineral concession, and any document or transaction purporting to confer any right or interest on any such officer shall be null and void.

(2) No public officer employed in the Ministry shall acquire or retain any share in a private company carrying on prospecting or mining operations in Botswana:

Provided that the Minister may authorize a departure from the provisions of this subsection where, in his opinion, the operations in Botswana of the company concerned form a negligible part of the total operations of that company.

Recovery of
fees, etc.

10. Any fees, dues, rents or payments which may become due in respect of any mineral right or under the provisions of this Act shall be a debt due to Government and recoverable in a court of competent jurisdiction.

Retention of
cores and
samples

11. (1) No core or sample obtained in the course of the exercise of powers conferred by a mineral concession shall be destroyed or otherwise disposed of except for the purposes of assay, identification

or analysis without the permission in writing of the Minister, who may grant such permission subject to such conditions as he may deem fit to impose.

(2) Where any core or sample is retained for the purpose of complying with subsection (1), there shall be maintained a record in such degree of particularity as the Minister may require sufficient for the identification of the core or sample and the location and geological horizon of its origin.

(3) Any person who destroys or disposes of a core or sample in contravention of subsection (1) or fails to maintain a record as required by subsection (2) shall be guilty of an offence.

12. (1) The holder of every mineral concession shall, in the conduct of his operations under such concession, and in the purchase, construction and installation of facilities, give preference, to the maximum extent possible consistent with safety, efficiency and economy, to -

Preference
for
Botswana
products,
etc.

- (a) materials and products made in Botswana; and
- (b) service agencies located in Botswana and owned by Botswana citizens or bodies corporate established under the Companies Act.

(2) The holder of a mineral concession shall, in all phases of his operations, give preference in employment to citizens of Botswana to the maximum extent possible consistent with safety, efficiency and economy.

(3) The holder of a mineral concession shall, in his operations, conduct training programmes in consultation with the Minister for the benefit of employees so that such employees may qualify for advancement.

PART IV *Reconnaissance permits*

13. (1) A person wishing to conduct reconnaissance in Botswana shall first obtain a reconnaissance permit as provided in this Part.

Right to
conduct
reconnaissance

(2) No reconnaissance permit shall be issued in respect of any area over which a prospecting licence or a mining lease is in existence.

(3) A reconnaissance permit shall not permit the holder thereof to enter on any land except with the consent of the owner or lawful occupier thereof.

(4) A reconnaissance permit shall not give an exclusive right to conduct reconnaissance over the area specified therein.

(5) A reconnaissance permit shall not carry any right to obtain a prospecting licence or a mining lease over the area covered thereby.

(6) A reconnaissance permit shall terminate, in respect of any area, if the holder thereof is granted a prospecting licence in respect of the same area.

Application
for reconnais-
sance permit

14. (1) A person wishing to obtain a reconnaissance permit shall make written application to the Minister, giving in his application –

- (a) his full name and nationality, and, in the case of an application by a partnership or other association of persons, the full names and nationalities of all partners or of all such persons, or, in the case of an application by a corporate body, the registered name of such body;
- (b) a description of the area for which the application is made, together with a plan thereof to such scale as may be prescribed;
- (c) a proposed reconnaissance programme, with details of the equipment expected to be used in connexion therewith, and the names of the persons to be responsible for the conduct thereof;
- (d) the period within which the reconnaissance programme is expected to be completed; and
- (e) such additional information as the Minister may require.

(2) A reconnaissance permit may be granted by the Minister, in his discretion, and may be made subject to such conditions as he may determine.

Duration of
reconnais-
sance permit

15. A reconnaissance permit shall be of such duration, not exceeding one year, as the Minister, in his discretion, may determine.

Form and
content of
reconnais-
sance permit

16. (1) A reconnaissance permit shall be in such form as may be prescribed and shall indicate –

- (a) the date of issue and the period for which it is issued;
- (b) the area covered thereby;
- (c) the conditions imposed by the Minister, and shall have attached thereto a plan of the reconnaissance area.

(2) A reconnaissance permit shall not be transferable.

(3) The holder of a reconnaissance permit may at any time relinquish all or any part of the area covered thereby.

Obligations
of holder of
reconnais-
sance permit

17. (1) The holder of a reconnaissance permit shall, within 3 months after the expiration thereof, submit a report to the Minister setting forth his evaluation of the mineral prospects in the area subject to the reconnaissance permit; such report shall be accompanied by the negatives of all aerial photographs taken in the course of the reconnaissance programme, together with –

- (a) all geological, geochemical and geophysical maps, profiles, diagrams and charts made by such holder;
- (b) copies of all tests and analyses made by such holder;
- (c) copies of all reports made by such holder, including interpretations concerning the mineral prospects in the area covered by such permit; and

(d) a statement of the direct costs incurred by the holder in the reconnaissance programme.

(2) The holder of a reconnaissance permit shall not, without the written permission of the Minister and subject to such conditions as he may determine, remove any mineral from a reconnaissance area except for the purpose of having such mineral analysed, determining its value, or conducting tests thereon.

PART V *Prospecting licences*

18. Subject to the provisions of Part VII, a person wishing to obtain a prospecting licence shall make written application to the Minister, giving in his application –

Application
for
prospecting
licence

- (a) his full name and nationality, and, in the case of an application by a partnership or other association of persons, the full names and nationalities of all partners or of all such persons, or, in the case of an application by a corporate body, the registered name of such body;
- (b) in the case of a corporate body, the full names and nationalities of the directors and the full name and nationality of any shareholder who is the beneficial owner of more than five per cent of the issued capital;
- (c) full information as to his financial status, technical competence and experience;
- (d) a description of the area over which a prospecting licence is sought, together with a plan thereof to such specification as may be prescribed;
- (e) the name of the mineral for which he wishes to prospect;
- (f) the period for which the prospecting licence is required;
- (g) a proposed programme of prospecting operations and the estimated cost thereof;
- (h) the applicant's proposals with regard to the employment and training of Botswana citizens;
- (i) numbers of any prospecting licences held within the preceding 10 years by the applicant or any person controlling, controlled by or under joint or common control with the applicant; and
- (j) such further information as the Minister may require.

19. (1) Subject to the provisions of subsection (2), the Minister may, in his discretion, grant a prospecting licence.

Consideration
of
application
for
prospecting
licence

(2) In considering an application for a prospecting licence, the Minister shall be satisfied that –

- (a) the applicant has adequate financial resources, technical competence and experience to carry on effective prospecting operations;
- (b) the proposed programme of prospecting operations is adequate;

- (c) the applicant's proposals for the employment and training of Botswana citizens are adequate;
- (d) the proposed prospecting area is not the same as or does not overlap an existing prospecting area or mining area unless the application is for a different mineral;
- (e) the applicant is not in default; and
- (f) the applicant is able and willing to comply with any term or condition applicable to a prospecting licence.

(3) The Minister may cause such investigations to be made or such negotiations or consultations to be carried on as he may deem necessary to enable him to decide whether or not to grant a prospecting licence.

Prospecting licences to be subject to terms and conditions

20. Subject to the provisions of this Act, a prospecting licence may be issued subject to such terms and conditions as the Minister may in each case determine.

Notification of grant or rejection

21. (1) The Minister shall cause the applicant to be notified in writing of his decision on the application and, if the grant of a prospecting licence is approved, such notification shall include the terms and conditions on which it is granted.

(2) If the applicant –

- (a) notifies the Minister, in writing, within 60 days of the date of notification or within such further period as the Minister may allow, that he accepts the terms and conditions to be attached to the prospecting licence, the Minister shall cause the prospecting licence to be issued;
- (b) fails to notify the Minister in accordance with the provisions of paragraph (a), the application shall lapse.

Form and content of prospecting licence

22. (1) A prospecting licence shall be in such form as the Minister may determine and shall –

- (a) include the terms and conditions on which it is granted;
- (b) include a description and plan of the prospecting area and specify the mineral to which it relates; and
- (c) state the period for which it is granted.

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

Duration and renewal of prospecting licence

23. (1) Subject to the provisions of this Act, a prospecting licence shall be valid for such period, not exceeding 3 years, as may be specified therein

(2) The holder of a prospecting licence may, at any time not later than 3 months before the expiry of such licence, apply to the Minister for renewal thereof; subject to the provisions of this Act, a renewal may be granted for a period not exceeding 2 years and for a further period not exceeding 2 years thereafter.

(3) An application for renewal of a prospecting licence shall state the period for which renewal is sought and shall be accompanied by –

- (a) a report on prospecting operations so far carried out and the direct costs incurred thereby;
- (b) a proposed programme of prospecting operations to be carried out during the period of renewal and the estimated cost thereof; and
- (c) such other information as the Minister may require.

(4) Notwithstanding the provisions of subsection (2), the Minister may renew a prospecting licence for a period or periods in excess of the periods specified in that subsection where, in his opinion, special circumstances exist justifying such further period or periods.

(5) The Minister shall not renew a prospecting licence if –

- (a) the applicant is in default; or
- (b) he considers that the proposed programme of prospecting operations is inadequate:

Provided that –

- (i) before rejecting an application for renewal under paragraph (a), the Minister shall give notice of the default to the applicant and shall call upon the applicant to remedy such default within such time as he may allow; and
- (ii) before rejecting an application for renewal under paragraph (b), he shall give the applicant opportunity to make satisfactory amendments to the proposed programme of prospecting operations upon such terms as the Minister may determine.

(6) On the renewal of a prospecting licence the Minister shall cause such licence to be amended accordingly and there shall be appended thereto the programme of prospecting operations.

24. (1) If, in the course of exercising his rights under a prospecting licence, the holder thereof discovers any mineral not included therein, he may apply to the Minister for an amendment of his prospecting licence to include such mineral.

Discovery of minerals not included in prospecting licence

(2) An application for amendment to a prospecting licence under subsection (1) shall specify the mineral discovered, shall give particulars of the situation and circumstances of the discovery and shall have appended thereto a proposed programme of prospecting operations in connexion therewith.

(3) Subject to the provisions of subsection (4), the Minister may, in his discretion, permit the amendment of a prospecting licence to include the mineral concerned.

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

Size of
prospecting
area

25. (1) Subject to the provisions of this Act, a prospecting licence shall cover such area, not exceeding 1 000 km², as may be specified therein.

(2) Subject to the provisions of subsection (4), the prospecting area shall be reduced in size to eliminate therefrom –

- (a) at the end of the initial term of the prospecting licence, not less than half of the initial area; and
- (b) at the end of any period of renewal, half of the remaining area,

or such lower proportion as the Minister may in any case agree.

(3) The holder of a prospecting licence shall designate, prior to the end of each of the periods referred to in subsection (2), the area or areas to be eliminated from the prospecting area and, in default thereof, the designation shall be made by the Minister.

(4) Where a person holds 2 or more prospecting licences for the same mineral or minerals the Minister may, for the purposes of the elimination, under subsection (2), of part of the areas thereof, permit the areas covered thereby to be deemed to be one area; the subject of one such prospecting licence.

Rights of
holder of
prospecting
licence

26. Subject to the provisions of Part VIII, the holder of a prospecting licence may, in the exercise of his rights thereunder, enter upon any land to which his prospecting licence relates together with his servants and agents and may –

- (a) prospect thereon for the mineral to which his prospecting licence relates;
- (b) make boreholes and such excavations as may be necessary; and
- (c) erect camps and put up temporary buildings for machinery necessary for prospecting purposes.

Obligations
of holder of
prospecting
licence

27. (1) The holder of a prospecting licence shall –

- (a) commence prospecting operations within 3 months, or such further period as the Minister may allow, of the date of issue of his licence;
- (b) demarcate and keep demarcated the prospecting area in the prescribed manner;
- (c) carry on prospecting operations in accordance with the programme of prospecting operations;
- (d) notify the Minister of the discovery of the mineral to which his prospecting licence relates within a period of 30 days of such discovery;
- (e) notify the Minister of the discovery of any mineral deposit of possible economic value within a period of 30 days of such discovery;
- (f) backfill or otherwise make safe any borehole or excavation made during the course of his prospecting operations, to the satisfaction of the Chief Government Mining Engineer;

- (g) unless the Chief Government Mining Engineer otherwise stipulates, remove, within 60 days of the expiry of his prospecting licence, any camp, temporary buildings or machinery erected or installed by him, and repair or otherwise make good any damage to the surface of the ground occasioned by such removal, to the satisfaction of the Chief Government Mining Engineer;
- (h) subject to the conditions of his prospecting licence and to the provisions of section 28, expend on prospecting, in direct expenditure, not less than such amount as may be specified in his prospecting licence; and
- (i) submit to such persons at such intervals such reports and such affidavits containing such information and supported in such manner as may be prescribed.

(2) Any moneys required to be spent under the provisions of subsection (1) (h) and which are not so spent shall be a debt due to Government recoverable in a court of competent jurisdiction.

(3) The holder of a prospecting licence shall keep, to the satisfaction of the Minister, full and accurate records of his prospecting operations which shall show –

- (a) boreholes drilled;
- (b) strata penetrated, with detailed logs of such strata;
- (c) minerals discovered;
- (d) the results of any geochemical or geophysical analysis;
- (e) the results of any analysis or identification of minerals removed under section 30;
- (f) the geological interpretation of the records maintained under paragraphs (a) to (e) inclusive;
- (g) the number of persons employed;
- (h) other work done in connexion with the prospecting licence; and
- (i) such other matters as may be prescribed,

and shall supply, at least once in every 3 months, copies of such records to the Minister, together with any reports prepared as a result of such records:

Provided that the Minister may, in his discretion and on application being made to him in that behalf, dispense with or modify any or all of the requirements of this subsection.

(4) Any person who fails to keep any record required to be kept under subsection (3) or who fails to supply any record to the Minister or who supplies any false or misleading record shall be guilty of an offence.

28. (1) The holder of a prospecting licence may, from time to time, notify the Minister of amendments he wishes to make to his programme of prospecting operations and such amendments shall, unless the Minister rejects the same within 2 months after being so notified, have effect after such period.

Amendment
of programme
of prospecting
operations

(2) The Minister may, on application being made to him by the holder of a prospecting licence, limit or suspend the obligation to carry on prospecting as required by section 27 (1) (c), or to expend moneys as required by section 27 (1) (h), for such period and on such terms as he may specify.

Transfer of
prospecting
licence

29. (1) No prospecting licence shall be transferred without the approval of the Minister and any purported transfer without such approval shall be void and of no effect.

(2) In any application for the approval of a transfer, the applicant shall give to the Minister such details of the transferee as would be required in the case of an application for a prospecting licence, together with such other information as the Minister may require.

(3) Subject to the provisions of subsection (4), the Minister may, in his discretion, refuse to give approval to the transfer of a prospecting licence.

(4) The Minister shall give his approval where the proposed transferee of a prospecting licence is a person controlling, controlled by, or under joint or common control with, the holder of the prospecting licence, provided that such transferee is not disqualified under any provision of this Act from holding a prospecting licence and the Minister is satisfied in accordance with the provisions of section 19 (2).

(5) Where the Minister has given his approval to the transfer of a prospecting licence, the transferee shall assume and be responsible for all rights, liabilities and duties incurred by the transferor under the prospecting licence prior to the transfer.

Removal and
disposal of
minerals

30. The holder of a prospecting licence shall not, without the written permission of the Minister and subject to such conditions as he may determine, remove any mineral from a prospecting area except for the purpose of having such mineral analysed, determining its value or to conduct tests thereon.

PART VI *Mining leases*

Who may
apply for
a mining
lease

31. (1) Subject to the provisions of this Part, only the holder of a prospecting licence may apply for a mining lease and only for an area within his prospecting area and only in respect of the mineral covered by such prospecting licence.

(2) An application made under subsection (1) shall be made not less than 3 months prior to the expiry of the prospecting licence.

(3) Notwithstanding the provisions of subsection (2), the Minister may grant permission to an applicant for a mining lease to mine in the mining area for such period and subject to such conditions as he may determine.

Application
for mining
lease

32. Subject to the provisions of Part VII, a person wishing to obtain a mining lease shall make written application to the Minister, giving in his application –

-
- (a) his full name and nationality, or, in the case of an application by a partnership or other association of persons, the full names and nationalities of all partners or of all such persons, or, in the case of an application by a corporate body, the registered name of such body;
 - (i) in the case of a corporate body, the full names and nationalities of the directors and the full name and nationality of any shareholder who is the beneficial owner of 5% or more of the issued capital;
 - (c) full information as to his financial status, technical competence and experience;
 - (d) the number of his prospecting licence;
 - (e) the name of the mineral which it is intended to mine;
 - (f) details of the mineral deposit and a comprehensive report thereon which shall include details of all known minerals, proved, estimated and inferred ore reserves and mining conditions;
 - (g) details, illustrated by an approved plan, of the area in respect of which the application is made;
 - (h) the period for which the lease is sought;
 - (i) a technological report on mining and treatment possibilities and the intention of the applicant in relation thereto;
 - (j) a proposed programme of mining operations which shall include –
 - (i) the date by which the applicant intends to work for profit;
 - (ii) the capacity of production and scale of operations;
 - (iii) the estimated overall recovery of ore and mineral products;
 - (iv) the nature of the product;
 - (v) the marketing arrangements made for the sale of the mineral product; and
 - (vi) a detailed programme for the progressive reclamation and rehabilitation of lands disturbed by mining and for the minimization of the effects of such mining on adjoining land and water areas;
 - (k) a detailed forecast of capital investment, operating costs and sales revenues and the anticipated type and source of financing;
 - (l) a programme for the employment and training of Botswana citizens;
 - (m) a report of the goods and services required for the mining operations which can be obtained within Botswana and the applicant's intention in relation thereto;
 - (n) details of expected infrastructure requirements; and
 - (o) such further information as the Minister may require or as may be prescribed.

Consideration of application for mining lease

33. The Minister shall consider every application for a mining lease and shall, subject to sections 34 and 35, cause a mining lease to be issued.

Grounds to be considered in application for mining lease

34. (1) In considering an application for a mining lease the Minister shall be satisfied that –

- (a) the proposed programme of mining operations will ensure the most efficient and beneficial use of the mineral resources in the proposed mining area;
- (b) the proposed mining area is not the same as or does not overlap an existing prospecting area or mining area, unless the Minister is satisfied that the rights of the holder of any existing mineral right in respect of such area will not be prejudiced thereby;
- (c) the applicant has adequate financial resources, technical competence and experience to carry on effective mining operations;
- (d) the applicant is able and willing to comply with any term or condition applicable to a mining lease; and
- (e) the applicant is not in default.

(2) The Minister shall not reject an application on any of the grounds referred to in –

- (a) subsection (1) (a), unless the applicant has been so notified and has failed to propose amendments satisfactory to the Minister to his proposed programme of mining operations within such reasonable time as the Minister may allow; and
- (b) subsection (1) (e), unless the applicant has been given details of the default and has failed to remedy the same within such reasonable time as the Minister may allow.

(3) The Minister may cause such investigations to be made or such negotiations or consultations to be carried on as he may deem necessary to enable him to decide whether or not to grant a mining lease.

Mining lease subject to terms and conditions

35. Subject to the provisions of this Act, a mining lease shall be issued subject to such terms and conditions as the Minister may in each case determine, including in particular –

- (a) a condition requiring the applicant to agree to the Government or a person nominated on behalf of the Government acquiring or having an option to acquire an interest in the mining operations to be carried out in the proposed mining area; and
- (b) conditions concerning the processing, disposal or sale of the mineral.

Notification of approval, etc. of application

36. (1) The Minister shall cause the applicant to be notified of his decision on such application and, if the grant of a mining lease is approved, the notification shall include the terms and conditions upon which the mining lease will be issued.

- (2) If the applicant –
- (a) notifies the Minister in writing within 60 days of the date of the notification referred to in subsection (1) that he accepts the terms and conditions upon which the application is approved, the Minister shall issue a mining lease containing such terms and conditions;
- (b) fails to notify the Minister in accordance with paragraph (a), his application shall lapse.

37. (1) A mining lease shall be in such form as the Minister may determine and shall –

Form and
content of
mining lease

- (a) include a description and plan of the area and the name of the mineral to which it relates;
- (b) state the period for which it is granted; and
- (c) include the terms and conditions upon which it is granted.
- (2) There shall be appended to a mining lease the programme of mining operations.

38. (1) Subject to the provisions of this Act, a mining lease shall be valid for such period, not exceeding 25 years, as may be specified therein.

Duration and
renewal of
mining lease

(2) The holder of a mining lease may apply to the Minister for the renewal of his lease at any time not later than one year before the expiry of such lease and, subject to the provisions of subsections (4) and (7), the Minister may, in his discretion, grant a renewal of such lease.

(3) An application for renewal of a mining lease shall state the period for which renewal is sought and shall be accompanied by –

- (a) a proposed programme of mining operations to be carried on in the period of renewal; and
- (b) details of –
- (i) the latest proved, estimated and inferred ore reserves;
- (ii) the capital investment to be made in, and production costs and revenue forecasts in respect of, the period of renewal;
- (iii) any expected changes in methods of mining and treatment; and
- (iv) such further information as the Minister may require, and shall be presented in such a way as to give a clear indication of any expected increase or reduction in mining activities and the estimated life of the mine.

(4) The Minister shall reject an application for renewal if –

- (a) the applicant is in default;
- (b) the Minister is not satisfied that –
- (i) development of the mining area has proceeded with reasonable diligence;
- (ii) minerals in workable quantities remain to be produced;
- or

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

(5) The Minister shall not reject an application on the ground referred to in -

- (a) subsection (4) (a), unless the applicant has been given details of the default and has failed to remedy the same within such reasonable time as the Minister may allow;
- (b) subsection (4) (b) (i) or (ii), unless the applicant has been given reasonable opportunity to make written representations thereon to the Minister; or
- (c) subsection (4) (b) (iii), unless the applicant has been so notified and has failed to propose amendments to his proposed programme of mining operations satisfactory to the Minister within such time as the Minister may allow.

(6) The period of renewal of a mining lease shall be for such period, not exceeding 25 years, as the Minister may determine.

(7) The renewal of a mining lease shall be subject to such terms and conditions as the Minister may determine.

(8) On the renewal of a mining lease, the Minister shall amend the lease accordingly and append thereto the programme of mining operations to be carried out in the period of renewal.

Amendment
of
programme of
mining
operations

39. The holder of a mining lease may, from time to time, notify the Minister of amendments he wishes to make to his programme of mining operations and such amendments shall, unless the Minister rejects them within 2 months after being so notified, have effect after such period.

Rights
conferred by
mining lease

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

- (a) take all reasonable measures on or under the surface to mine the mineral to which his mining lease relates;
- (b) erect the necessary equipment, plant and buildings for the purposes of mining, transporting, dressing, treating, smelting or refining the mineral recovered by him during mining operations;
- (c) dispose of any mineral product recovered;
- (d) prospect within his mining area for the mineral for which he holds a mining lease and for any other mineral except one for which a prospecting licence is held over the same area by another person; and
- (e) stack or dump any mineral or waste product in a manner approved by the Chief Government Mining Engineer.

(2) If, in the course of exercising his rights thereunder, the holder of a mining lease discovers any further deposits of the mineral for

which he holds a mining lease or any mineral not included in such lease, he shall, within 30 days after such discovery, notify the Minister thereof, giving particulars of the mineral discovered and the site and circumstances of the discovery, and may apply to the Minister to have the mining of such deposit or such mineral included in his mining lease, giving in his application a proposed programme of mining operations in respect of that mineral.

(3) If the Minister is satisfied with a proposed programme of mining operations submitted under subsection (2), he may approve such application on such terms and conditions as he thinks fit and shall amend the mining lease accordingly.

(4) The holder of a mining lease may apply to the Minister to have his mining area enlarged and the Minister may, subject to the provisions of subsection (5), approve of such application if he is satisfied that such approval will ensure the most efficient and beneficial use of the mineral resources of Botswana.

(5) A mining area shall not be enlarged so as to include any area over which a person other than the applicant is the holder of a prospecting licence or a mining lease in respect of the same mineral.

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

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

Provided that the Minister may, on application being made to him by the holder of a mining lease, limit or suspend such programme for such period and on such terms as he may specify if he is satisfied that, in the circumstances, it is fair and reasonable so to do;

- (c) demarcate and keep demarcated the mining area in such manner as may be prescribed and, within 3 months of the date referred to in paragraph (a), submit to the Minister a diagram of the mining area;
- (d) keep and maintain an address in Botswana, full particulars of which shall be registered with the Minister, to which all communications and notices may be addressed; and
- (e) notify the Minister as soon as he begins to work his mining area for profit.

(2) The holder of a mining lease shall –

- (a) maintain at the address kept in accordance with subsection (1) (d) –
 - (i) complete and accurate technical records of his operations in the mining area in such form as the Minister may approve;

Obligations
of holder of
mining lease

- (ii) copies of all maps, geological reports, including interpretations, mineral analyses, aerial photographs, core logs, analyses and tests and all other data obtained and compiled by the holder in respect of the mining area;
- (iii) accurate and systematic financial records of his operations in the mining area and such other books of accounts and financial records as the Minister may require; if such holder is engaged in any other activity not connected with his operations under the mining lease, he shall maintain separate books of accounts of his operations under such lease;
- (b) permit an authorized officer at any time to inspect the books and records maintained in pursuance of paragraph (a) and shall deliver to the Minister, without charge, copies of any part of such books and records as the Minister may from time to time require;
- (c) submit to the Minister such reports, records and other information as he may from time to time require concerning the conduct of his operations in the mining area; and
- (d) furnish the Minister with a copy of every annual financial report showing the profit or loss for such year and the state of financial affairs of the holder at the end of each year.

Wasteful
mining and
treatment
practices

42. (1) If the Minister considers that the holder of a mining lease is using wasteful mining or treatment practices he may notify such holder accordingly and require him to show cause, within such time as the Minister shall specify, why he should not cease to use such practices.

(2) If, within the time specified in any notice issued under subsection (1), the holder of a mining lease fails to satisfy the Minister that he is not using wasteful mining or treatment practices, or that the use of such practices is justified, the Minister may order the holder to cease using such practices within such time as he may specify.

(3) If the holder of a mining lease fails, after being ordered so to do, to cease using wasteful mining or treatment practices, the Minister may cancel the mining lease or may suspend such mining lease for such period as he deems fit.

Merger or
co-ordination
of mining
leases

43. (1) If the Minister considers that the public interest or the interests of the holders of mining leases covering neighbouring or contiguous mining areas would best be served with regard to the efficient and economic exploitation of minerals by the merger or co-ordination of all or part of the mining operations of such holders, he may direct such holders to effect such merger or co-ordination within such time and on such terms as he may specify.

(2) Before giving any directions under subsection (1), the Minister shall afford the holders of the mining leases concerned reasonable opportunity to make representations to him in writing.

44. (1) The holder of a mining lease shall notify the Minister -- Suspension of production

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

(b) 6 months in advance, if he proposes to suspend production from his mine;

(c) 3 months in advance, if he proposes to curtail such production, and shall, in all cases, give reasons for such cessation, suspension or curtailment.

(2) If, for reasons beyond his control, the holder of a mining lease terminates, suspends or curtails production from his mine, he shall, within 14 days of such termination, suspension or curtailment, notify the Minister thereof.

(3) On receiving notification under subsection (1) or (2), or if he otherwise becomes aware of any cessation, suspension or curtailment of production, the Minister shall cause the matter to be investigated and shall either --

- (a) give his approval to such cessation, suspension or curtailment :
or
- (b) direct the holder of the mining lease to resume full production at the mine by such date as he may specify.
- (4) Approval of cessation, suspension or curtailment may be given subject to such conditions as the Minister may impose.

45. (1) No person shall export any radioactive mineral except under and in accordance with the terms and conditions of a permit granted by the Minister. Export of radioactive minerals

(2) The grant of a permit under subsection (1) shall be in the discretion of the Minister.

(3) A permit issued under subsection (1) shall be in such form and shall be subject to the payment of such fee and such terms and conditions as the Minister may determine.

46. (1) No person shall, in any mining area, carry on any business for which a licence is required under the Trading Act without the consent of the Minister: Trading in mining areas
Cap. 43:02

Provided that such consent shall not entitle any person to carry on any such business except under and in accordance with the provisions of the Trading Act.

(2) No person shall, in any mining area, erect any building or other structure for the purpose of carrying on any such business without the consent of the holder of the mining lease.

47. (1) No mining lease or any interest therein shall be transferred, assigned, mortgaged or dealt with in any other way without the approval of the Minister, and any purported transfer, assignment, mortgage or dealing without such approval shall be void and of no effect. Transfer or assignment of mining lease

(2) In any application to the Minister for his approval under subsection (1), the applicant shall give such particulars concerning

the proposed transferee, assignee, mortgagee or other party concerned as the Minister may require.

(3) The Minister may, in his discretion, grant or refuse his approval to any transfer, assignment or mortgage or other dealing with any mining lease or interest therein, and may impose such conditions as he may deem fit.

Restriction
on transfer
of shares

48. Without the prior written approval of the Minister, no person shall dispose of and no person shall acquire, directly or indirectly, any interest in the holder of a mining lease which would confer a voting right or other financial interest exceeding 20% of the total or any right to appoint directors, and, in considering any application for such approval, the Minister may call for such information as he considers necessary.

PART VII *Building and industrial minerals*

A. *Restricted Prospecting Licences*

Restricted
prospecting
licence in
respect of
building or
industrial
minerals

49. (1) A person wishing to prospect for building or industrial minerals may, subject to the provisions of this Part, apply for a restricted prospecting licence.

(2) The provisions of Part V shall apply *mutatis mutandis* to a restricted prospecting licence, subject to the following variations and exceptions –

- (a) the prospecting area shall not be more than 10 km²;
- (b) the provisions of section 24 shall not apply; and
- (c) the obligations of section 27 shall apply subject to such variations and exceptions as the Minister may make in any particular case.

B. *Restricted Mining Leases*

Right to
mine
building or
industrial
minerals

50. (1) A person wishing to mine building or industrial minerals may, subject to the provisions of this Part, apply for a restricted mining lease.

(2) No person shall make application for a restricted mining lease unless he is the holder of a restricted prospecting licence or a prospecting licence in respect of the same area and the same mineral:

Provided that where the Minister is satisfied that the area over which such a lease is required has been sufficiently prospected, he may waive the requirements of this subsection.

Application
for
restricted
mining lease

51. The provisions of Part VI shall apply *mutatis mutandis* to a restricted mining lease subject to the following variations and exceptions –

- (a) the Minister shall not grant a restricted mining lease unless he is satisfied that the intended capital expenditure on plant, equipment and industrial buildings will be not less than P50 000 or such other sum as the Minister may, in any particular case, determine;

- (b) the period, not exceeding 15 years, for which a restricted mining lease may be granted or renewed shall be in the discretion of the Minister; and
- (c) the obligations under section 44 relating to the cessation, suspension or curtailment of production shall apply subject to such variations or exceptions as the Minister may make in any particular case.

C. Building and Industrial Minerals Permits

52. (1) Subject to the provisions of this Part, a person may apply for a building and industrial minerals permit to mine building or industrial minerals.

Application
for building
and
industrial
minerals
permit

(2) A person wishing to obtain a building and industrial minerals permit shall apply to the Minister, giving in his application –

- (a) his full name and nationality, or, in the case of an application by a partnership or association of persons, the full names and nationalities of all partners or of such persons, or, in the case of an application by a corporate body, the registered name of such body;
- (b) in the case of a corporate body, the full names and nationalities of the directors and shareholders;
- (c) details, illustrated by a sketch plan, of the area, not exceeding 0,5 km², for which the permit is sought;
- (d) particulars of the building or industrial minerals for which the permit is sought;
- (e) the proposed programme of working, with details of the employees to be employed; and
- (f) such other information as the Minister may require.

(3) An application for a building and industrial minerals permit relating to –

- (a) any area in respect of which consent is required under any written law shall be accompanied by evidence that such consent has been obtained;
- (b) land of which the applicant is not the owner shall be accompanied by evidence that the consent of the owner, or, in the case of tribal territory, the consent of the appropriate land board, has been obtained; or
- (c) a prospecting area or mining area or part thereof shall be accompanied by evidence that the consent of the holder of the prospecting licence or mining lease has been given, unless the Minister is satisfied that such holder will not be prejudiced by the issue of a building and industrial minerals permit.

(4) Subject to the provisions of section 53, the Minister may, in his discretion, grant or refuse to grant a building and industrial minerals permit.

(5) Subject to the provisions of this Part, a building and industrial minerals permit shall be in such form and shall contain such terms and conditions as the Minister may determine.

Who may hold building and industrial minerals permit

53. (1) Subject to the provisions of subsection (2), a building and industrial minerals permit shall not be granted to a person who is not a citizen of Botswana.

(2) The Minister may exempt any person from the provisions of subsection (1) if he is satisfied that –

- (a) it is in the public interest that a building and industrial minerals permit should be granted to such person; or
- (b) (i) the permit applied for is in respect of building or industrial minerals required for specific works; and
- (ii) the applicant has given an undertaking that the minerals concerned will not be sold or otherwise disposed of for profit.

(3) In this section “citizen of Botswana” means –

- (a) in relation to an individual, an individual who is a citizen of Botswana;
- (b) in relation to a partnership or association of individuals, a partnership or association which is composed exclusively of individuals who are citizens of Botswana; and
- (c) in relation to a corporate body, a corporate body which is incorporated under the Companies Act –
 - (i) which is certified by the Minister to be controlled by the Government; or
 - (ii) (aa) whose membership is composed exclusively of persons who are citizens of Botswana;
 - (bb) whose directors are exclusively citizens of Botswana; or
 - (cc) which is controlled by individuals who are citizens of Botswana.

Fees for building and industrial minerals permit

54. There shall be payable in respect of a building and industrial minerals permit such fee as may be prescribed.

Demarcation of area covered by building and industrial minerals permit

55. The holder of a building and industrial minerals permit shall, within 3 months of the issue thereof, demarcate the area covered by such permit in such manner as may be prescribed.

Duration, renewal and termination of building and industrial minerals permit

56. (1) Subject to the provisions of subsection (3), a building and industrial minerals permit shall be valid for such period, not exceeding 5 years, as the Minister may determine and may, on application made to the Minister, be renewed for further periods not exceeding 5 years at a time.

(2) A building and industrial minerals permit shall not be transferable.

(3) The Minister may terminate a building and industrial minerals permit if he is satisfied that the holder thereof has entered into an arrangement with a person who is not a citizen of Botswana, as defined in section 52 (3), which arrangement has the effect of transferring to that person the benefit of such permit.

57. The holder of a building and industrial minerals permit may, subject to the provisions of this Act and to any other written law, enter upon the area covered by such permit with his servants and agents and –

Rights under a building and industrial minerals permit

- (a) mine the minerals to which his permit relates;
- (b) dispose of the minerals to which his permit relates; and
- (c) erect such temporary structures, other than residential buildings, as may be necessary for the purposes of mining.

58. The holder of a building and industrial minerals permit shall

Duties of holder of building and industrial minerals permit

- (a) notify the Minister of any change in his address;
- (b) mine the mineral to which his permit relates within the area covered by his permit in conformity with good mining practice;
- (c) submit a report to the Minister each year during the currency of his permit and any renewal thereof giving –
 - (i) the mineral production from the area covered by his permit in the preceding year and the value of such production;
 - (ii) the average number of employees during the preceding year; and
 - (iii) a brief description of his plant, vehicles and equipment; and
- (d) at the termination of his permit, clear and make safe the area covered by his permit, to the satisfaction of the Chief Government Mining Engineer.

D. Special Rights

59. (1) Nothing in this Act shall prevent –

- (a) a local authority on land owned by it;
- (b) the owner or lawful occupier of any land owned or occupied by him; or
- (c) the holder of a mineral concession on land the subject of such concession,

Special rights with regard to building and industrial minerals

prospecting for and mining building and industrial minerals to be used solely for building, roadmaking or agricultural purposes on such land, so long as the exercise of such powers is not inconsistent with or detrimental to the rights of any other mineral concession holder.

(2) For the purposes of subsection (1), a land board established under the Tribal Land Act shall be deemed to be a local authority. Cap. 32:02

PART VIII *Mineral concessions and surface rights*

Restriction
on exercise
of rights
under a
mineral
concession
Cap. 59:03

60. (1) No holder of a mineral concession shall exercise any right thereunder –

- (a) without the written consent of the President, upon
 - (i) any land dedicated as a place of burial;
 - (ii) any land containing any ancient monument or national monument, as defined in the Monuments and Relics Act; or
 - (iii) any land set aside or used for the purposes of Government;
- (b) without the written consent of the owner or lawful occupier thereof, –
 - (i) upon any land which is the site of or which is within 200 metres of any inhabited, occupied or temporarily unoccupied house or building;
 - (ii) within 50 metres of any land which has been cleared or ploughed or otherwise *bona fide* prepared for the growing of agricultural crops or upon which agricultural crops are growing;
 - (iii) upon any land from which, during the year immediately preceding, agricultural crops have been reaped; or
 - (iv) upon any land which is the site of or is within 100 metres of any cattle dip, tank, dam or private water, as defined in the Water Act, 1967:

Provided that where consent is unreasonably withheld the Minister may authorize the holder of a mineral right to exercise all or any of his rights thereunder on such land, subject to such conditions as he may deem fit;

Cap. 38:03.

- (c) in a national park, without permission obtained under section 16 of the National Parks Act;
- (d) upon any land reserved for the purposes of a railway track or within 50 metres of any railway track, without the written consent of the railway administration concerned;
- (e) upon any land within, or within 200 metres of, the boundaries of any township, without the consent of the local authority concerned;
- (f) upon any street, road, highway, public place or aerodrome, without the consent of the Minister or other authority having control thereof;
- (g) upon any land on which building and industrial minerals are being mined on behalf of Government or a local authority, or by any person holding a permit under Part VII, without the consent of the Minister, such local authority or the holder of such permit, as the case may be; or
- (h) upon land specified by the Minister, by notice published in the Gazette, to be land upon which reconnaissance, prospecting or mining is prohibited or restricted.

(2) A person exercising any right under a mineral concession shall produce evidence of the possession of such concession to the owner or lawful occupier of any land upon which such right is to be exercised upon demand being made to him in that behalf, and, in default of such production, such person may be treated as a trespasser.

(3) No person shall exercise any right under a mineral concession upon any land other than unalienated State land unless he has given at least 14 days' notice of his intention so to do in such manner as the Minister may approve, giving in such notice details of the area in which the right is to be exercised and the dates of expiry of his permit or licence.

(4) A notice given under subsection (3) shall be valid only for the period of validity of the mineral concession and the person giving such notice shall not exercise any right under such permit or licence in respect of the land to which the notice relates after the expiry thereof and, in the event of a renewal of such concession, he shall give fresh notice under subsection (3).

61. (1) The owner or lawful occupier of any land within the area of a mineral concession shall retain the right to graze stock upon or to cultivate the surface of such land insofar as such grazing or cultivation does not interfere with the proper working in such area for reconnaissance, prospecting or mining purposes.

Right to graze stock, etc.

(2) In the case of a mining area, the owner or lawful occupier of any land within such area shall not erect any building or structure thereon without the consent of the holder of the mining lease, or, if such consent is unreasonably withheld, the consent of the Minister.

(3) The rights conferred by a mineral concession shall be exercised reasonably and so as to affect as little as possible the interests of any owner or lawful occupier of the land to which such rights are exercised consistent with the reasonable and proper conduct of the operations concerned.

62. (1) The holder of a mining lease may, if he requires the exclusive use of the whole or any part of the mining area, and shall if so requested by the owner or lawful occupier of any part of such area, obtain a lease thereof or other rights to use the same upon such terms as to the rents to be paid therefor, the duration thereof or the extent or area of the land to which such lease shall relate as may be agreed between such holder and such owner or lawful occupier, or, failing such agreement, as may be determined by arbitration:

Acquisition of exclusive rights by holder of mining lease

Provided that —

- (i) the holder of a mining lease shall not obtain a lease of or other rights over any land specified in paragraphs (a) and (c) to (g) inclusive of section 67 (1) except with the consents of the persons specified in such paragraphs:

- (ii) in the case of tribal land, any rents payable under this subsection shall be payable to the land board within the area in which the land is situate; and
- (iii) an arbitrator appointed in pursuance of this subsection may, on application by any interested party, apportion any rent payable under this subsection between the owner and any lawful occupier.

(2) In assessing any rent payable under the provisions of this section, an arbitrator shall determine the matter in relation to values at the time of arbitration current in the area in which the mining lease is situate for land of a similar nature to the land concerned but without taking into account any enhanced value due to the presence of minerals.

Compen-
sation for
disturbance
of rights, etc.

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

Provided that –

- (i) payment of rent under the provisions of section 62 shall be deemed to be adequate compensation for deprivation of the use of land to which such rent relates;
- (ii) in assessing compensation payable under this section, account shall be taken of any improvement effected by the holder of the mineral right or by his predecessor-in-title, the benefit of which has or will enure to the owner or lawful occupier thereof;
- (iii) the basis upon which compensation shall be payable for damage to the surface of any land shall be the extent to which the market value of the land (for which purpose it shall be deemed saleable) upon which the damage has occurred has been reduced by reason of such damage, but without taking into account any enhanced value due to the presence of minerals; and
- (iv) no compensation shall be payable to the holder of a State Grant of land or his successors-in-title in respect of any operations under a mineral concession existing at the date of such Grant.

(2) If the holder of a mineral concession fails to pay compensation when demanded under the provisions of this section, or if the owner or lawful occupier of any land is dissatisfied with any compensation offered, the dispute shall be determined by arbitration.

(3) A claim for compensation under the provisions of subsection (1) shall be made within a period of 4 years from the date when such

claim has accrued, failing which, notwithstanding the provisions of any other written law, such claim shall not be enforceable.

64. (1) Where the President considers that any land is required to secure the development or utilization of the mineral resources of Botswana, he may compulsorily acquire such land. Compulsory acquisition of land

(2) Acquisition of land under this section shall be deemed to be for a public purpose in terms of the provisions of the Acquisition of Property Act and any acquisition under this section shall be effected in accordance with the provisions of that Act. Cap. 32. 11

PART IX *Financial*

65. (1) Subject to the provisions of this Part, the holder of a mineral concession shall be liable to pay royalties to the Government on any mineral obtained by him in the course of the exercise of his rights thereunder at the rates prescribed in the Schedule. Royalties

(2) The Minister may, by notice published in the Gazette, amend all or any of the provisions of the Schedule, including the manner in which the amount of royalty may be computed, whether in relation to the market value of such mineral, the profitability of any mining operations or otherwise, and, in particular and without prejudice to the generality of the foregoing, may amend the Schedule by reference to the source of any mineral or to the holder of any particular mineral concession.

(3) For the purposes of this Part "royalty" includes all sums, by whatever name called, payable by way of consideration for the right to mine any mineral.

66. (1) The Minister may, on behalf of the Government, enter into an agreement concerning royalties with any person who is or may become liable to the payment of royalties under this Act. Agreements regarding royalties

(2) No agreement entered into under this section shall have effect unless and until it is ratified by an Act of Parliament but upon ratification an agreement shall be deemed to have come into operation on the date specified in that agreement.

(3) An agreement entered into under this section may vary the provisions of this Act insofar as such provisions -

(a) impose liability to royalties; or

(b) regulate the imposition of such liability.

(4) If any agreement entered into under this section imposes any liability to royalties, such liability shall be deemed to be a liability imposed under this Act and the provisions of this Act shall apply thereto.

67. (1) The Minister may remit, in whole or in part, any royalty payable on any mineral, or on any mineral produced from any specified deposit, for such period as he may determine if he considers it expedient in the interests of the production of such mineral so to do. Remission of royalties

(2) The Minister may exempt from liability to royalty samples of minerals required for the purpose of assay, analysis or other examination.

Provisional
royalty

68. (1) Where, for any reason, it is impractical to assess the amount of any royalty due, the Minister may assess a provisional royalty.

(2) When any royalty due has been ascertained, the holder of the mineral concession concerned shall pay any sum which may be required to complete such ascertained royalty or be entitled to be repaid any sum paid in excess of the ascertained royalty.

Deferred
payment of
royalty

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

Prohibition
on disposal
of minerals

70. (1) If the holder of a mineral concession fails to pay any royalty or provisional royalty due in respect of that concession on or before the due date or any extension thereof, or if the Minister has reason to believe that minerals have been produced from any area and royalties have not been paid in respect thereof, the Minister may, by order served on the holder of the mineral concession concerned, prohibit the disposal of any mineral from such area, or from any other area held by such holder under a mineral concession until all outstanding royalties have been paid or until an arrangement has been made, acceptable to the Minister, for the payment of such royalties.

(2) Any holder of a mineral concession who contravenes or fails to comply with the provisions of an order given under subsection (1) and any person who, knowing of such an order and contrary thereto, receives any mineral from the area concerned, shall be guilty of an offence.

Annual
charges in
respect of
prospecting
licences

71. (1) There shall be due and payable to Government by every holder of a prospecting licence or restricted prospecting licence an annual charge in such amount as the Minister may determine or as may be prescribed.

(2) The annual charge payable under the provisions of subsection (1) shall be payable on the issue of a prospecting licence or restricted prospecting licence and thereafter annually on the anniversary thereof until the termination of such licence.

(3) Where a prospecting licence or a restricted prospecting licence is granted over land in a tribal territory, one-half of any moneys received under the provisions of this section shall be appropriated as a grant-in-aid to the district council within the area of which the land is situate.

Annual
charges
in respect of
mining leases

72. (1) There shall be paid by the holder of every mining lease or restricted mining lease an annual charge in such amount as the Minister may determine or as may be prescribed.

(2) The annual charge payable under the provisions of subsection (1) shall be payable on the issue of a mining lease or a restricted mining lease and thereafter annually on the anniversary thereof until the termination of such lease.

73. The Minister may, from time to time, make such arrangements as to him appear appropriate to secure that the holders of mineral concessions comply with the provisions of this Act, and, without prejudice to the generality of the foregoing, may accept guarantees, whether from shareholders or otherwise, in respect of such compliance.

Security for
compliance

PART X *Withdrawal of applications, surrender and termination of mineral concessions, etc.*

74. An applicant for a mineral concession or any renewal thereof may withdraw his application at any time before such application is approved or rejected by notifying the Minister, in writing, that he withdraws such application.

Withdrawal
of
applications

75. (1) Subject to the provisions of section 44 and of any condition in his mineral concession, the holder of a mineral concession may surrender the area covered by his mineral concession or part thereof by -

Surrender of
area or part
thereof
covered by
mineral
concession

- (a) giving the Minister not less than 3 months' notice of his intention to surrender the whole or part of the area concerned;
- (b) applying to the Minister for and obtaining a certificate of surrender; and
- (c) complying with such conditions as the Minister may determine.

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

- (a) in his application, -
 - (i) if it relates to a mining area, provide a diagram of the area to be surrendered;
 - (ii) in the case of any other mineral concession, provide a reliable plan, in a form acceptable to the Minister, of the area to be surrendered; and
 - (iii) in all cases, give the results of prospecting carried out; and

(b) if the application is approved, demarcate the remaining area in the prescribed manner.

(3) No surrender of any area covered by a mineral concession shall be effective until the Minister has issued a certificate of surrender in respect of that area.

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

- (5) On the issue of a certificate of surrender the Minister shall, –
- (a) if the surrender is in relation to the whole area covered by a mineral concession, cancel such concession; or
- (b) if the surrender is in respect of part only of the area covered by a mineral concession, amend the concession accordingly.

Minister's
power to
suspend or
cancel a
mineral
concession

- 76.** (1) Subject to the provisions of this section, the Minister may suspend or cancel a mineral concession if the holder thereof –
- (a) fails to make any of the payments required by or under this Act on the due date;
- (b) contravenes any provision of this Act or the conditions of his mineral concession or the provisions of any other written law relating to mines and minerals;
- (c) dies or becomes insolvent or commits any act of bankruptcy or enters into any agreement or scheme of composition with his creditors or takes advantage of any written law for the benefit of debtors or, in the case of a company, goes into liquidation, except as part of a scheme for the reconstruction or amalgamation of the holder thereof;
- (d) makes any statement to the Government in connexion with his mineral concession which he knows or ought to have known was false; or
- (e) for any reason becomes ineligible to apply for a mineral concession under the provisions of section 5.

(2) Before suspending or cancelling a mineral concession under paragraphs (a) and (b) of subsection (1), the Minister shall give the holder thereof notice in writing specifying the particular failure or contravention and calling upon the holder to remedy the same within such period, being not less than 30 days, as may be specified in such notice.

(3) If the holder of a mineral concession fails to remedy any failure or contravention specified in paragraphs (a) and (b) of subsection (1) within the period specified in a notice issued under subsection (2), or if there is an event specified in paragraphs (c), (d) and (e) of subsection (1), the Minister may, by notice to the holder thereof, cancel the mineral concession forthwith.

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

Assets on
termination

77. (1) Subject to the provisions of this Act and to any provision to the contrary in his mineral concession, the holder or former holder of a mineral concession may, within 6 months after the date of termination of his concession, remove from the mineral area any buildings, fixed machinery or other movable property.

(2) If the Chief Government Mining Engineer certifies that any buildings or fixed machinery are necessary for the care and maintenance of any mineral area, such buildings or fixed machinery shall not be removed without the consent of the Minister.

(3) If consent to remove any buildings or fixed machinery is refused under subsection (2), any person who acquires a mineral concession over the area concerned shall purchase such buildings or fixed machinery from the previous holder who shall sell the same to such person at such fair and reasonable price as shall be agreed upon, or, if the parties are unable to agree on a price, at such price as shall be fixed by arbitration.

(4) Any dam and the waters impounded thereby shall be left intact and any machinery or appliances connected therewith may be removed only with the consent of the Minister.

78. (1) Upon termination of any mineral concession the holder thereof shall deliver to the Minister –

Delivery of documents on termination

- (a) all records which the holder is obliged under the provisions of this Act to maintain;
- (b) all plans or maps of the area covered by the mineral concession prepared by the holder or at his instructions; and
- (c) such other documents relating to the mineral concession as the Minister may direct.

(2) Any person who fails to deliver any document required to be delivered under the provisions of subsection (1) within 14 days of being called upon so to do by the Minister shall be guilty of an offence.

79. Where the holder of –

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

Pending applications

PART XI Regulations

80. (1) The Minister may make regulations for the better carrying into effect of this Act and, in particular and without prejudice to the generality of the foregoing, regulations may provide for the following matters or purposes –

Regulations

- (a) prescribing anything which in terms of this Act is to or may be prescribed;
- (b) for making of returns of minerals won and for the valuation of such minerals, and the sampling, weighing and testing of any mineral;
- (c) the manner in which applications under this Act shall be made, and any additional information to be supplied by applicants;
- (d) the shape of the areas over which mineral concessions may be granted;

-
- (e) the manner in which areas and boundaries shall be marked, beacons and surveyed and the fees payable in respect of such survey;
 - (f) the grazing of cattle or other animals on the area covered by a mineral concession;
 - (g) the gathering of fuel and the cutting down and use of timber for the purposes of carrying on prospecting and mining operations;
 - (h) the renewal, transfer, assignment and surrender of mineral concessions;
 - (i) the returns to be rendered and the nature of the accounts, books and plans to be kept by the holders of mineral concessions;
 - (j) the method of calculation of the amount of royalties and the manner and time of payment thereof;
 - (k) the fees to be paid in respect of any matter or thing done under this Act;
 - (l) the amalgamation of mineral concessions;
 - (m) the contribution by parties benefited of a fair share of the cost of pumping in cases where pumping in one mine benefits other mines;
 - (n) the defiling or wasting of water, wherever situated and wherever obtained;
 - (o) the restriction or prohibition of prospecting operations in or near any river, pan, lake or stream; and
 - (p) the nature and adequacy of such sketch plan required for the purposes of this Act.
- (2) Regulations under subsection (1) (j) may
- (a) prohibit the export of any mineral unless or until the royalty payable thereon has been paid or secured;
 - (b) specify the person or persons by whom royalty shall be payable and may specify whether two or more persons are jointly and severally liable to pay such royalty;
 - (c) provide for the examination of mineral consignments and the issue of export permits in respect thereof;
 - (d) provide for the remission or refund of royalty or any part thereof in any case or class of case and the manner in which and conditions on which such remission or refund may be made;
 - (e) confer upon any public officer specified therein such powers of inspection and enquiry as may be reasonably necessary for the proper carrying out thereof.
- (4) Regulations made under this section may provide a penalty for the contravention thereof in any amount not exceeding P500 and to imprisonment for 6 months.

PART XII *Penalties and offences*

81. (1) If the Minister considers that the holder of a mineral concession is in breach of any of the provisions of this, or of any of the terms or conditions of such concession, he may, in lieu of proceeding under any other provision of this Act, notify the holder accordingly and require him to show cause, in writing, within such reasonable time as the Minister shall specify in the notification, why he should not incur a penalty for such breach.

Imposition
of penalty
on holder
of mineral
concession

(2) If, within the time specified in a notification, the holder of a mineral concession fails to satisfy the Minister that –

- (a) the alleged breach has not occurred;
- (b) the holder has taken all appropriate precautions, due care and reasonable alternative measures with the object of avoiding such breach; or
- (c) there was a reasonable excuse for the breach,

the Minister may order that there be imposed on the holder a penalty in such sum, not exceeding P5 000, as the Minister may deem appropriate having regard to the nature of the breach, its seriousness and the other occasions, if any, upon which the holder has been in breach of this Act or of the terms or conditions of his mineral concession.

(3) If the Minister makes an order under subsection (2), the penalty imposed may be recovered in any court of competent jurisdiction.

82. Any person who –

- (a) fails, neglects or refuses to allow or provide all reasonable facilities and assistance to an authorized officer;
- (b) fails, neglects or refuses to comply with any direction given under section 7;
- (c) obstructs, hinders or delays an authorized officer in the performance of his duties under this Act;
- (d) conducts reconnaissance, prospects or mines otherwise than in accordance with the provisions of this Act;
- (e) in making application for a mineral concession or any renewal thereof, knowingly makes any statement which is false or misleading in any material particular;
- (f) in any report, return or affidavit submitted in pursuance of the provisions of this Act, knowingly includes any information which is false or misleading in any material particular;
- (g) fails to notify the Minister in pursuance of the provisions of section 27 (1) (e) or 41 (1) (e);
- (h) removes or disposes of any mineral contrary to the provisions of section 30;
- (i) exports any radioactive mineral in contravention of section 45 or who fails to comply with the terms or conditions of a permit issued under that section;

Offences

- (j) carries on business in contravention of section 47 (1) or who erects any building or other structure in contravention of the provisions of section 47 (2);
- (k) removes any buildings, fixed machinery or other movable property contrary to section 77;
- (l) places or deposits, or is accessory to the placing or depositing of, any mineral in any place with the intention to mislead any other person as to the mineral possibilities of such place;
- (m) mingles or causes to be mingled with any sample of ore any substance which will enhance the value or in any way change the nature of such ore with the intention to cheat, deceive or defraud; or
- (n) being engaged in the business of milling, leaching, sampling, concentrating, reducing, assaying, transporting or dealing in ores, metals or minerals, keeps or uses any false or fraudulent scales or weights for weighing such ores, metals or minerals, or uses any false or fraudulent assay scales or weights or enriched fluxes used for ascertaining the assay value of minerals, knowing them to be false or fraudulent,

shall be guilty of an offence.

Penalties

83. (1) Any person guilty of an offence under this Act shall be liable, on first conviction, to a fine of P1 000 and to imprisonment for 12 months.

(2) On a second or subsequent conviction for an offence under this Act, a court may impose a penalty which does not exceed double the penalty referred to in subsection (1).

Summary
imposition of
penalties

84. (1) An authorized officer may, if satisfied that any person is guilty of an offence under this Act, summarily demand from such person the payment of a fine not exceeding P50 in respect of such offence.

(2) Any person from whom payment of a fine has been demanded under the provisions of subsection (1) shall have the right to elect to admit liability and pay the fine, or to dispute liability, and such person shall be informed of such rights at the time by the person making the demand.

(3) The payment forthwith or within such time as the person making the demand may specify of a fine shall operate as a bar to any further proceedings against the person making such payment in respect of the offence concerned.

(4) An authorized officer receiving payment of a fine shall cause a receipt to be given in such form as may be prescribed, and shall cause the fine to be paid into the general revenues of the Republic.

(5) An election made under subsection (2) shall be irrevocable.

PART XIII *Records and information*

Records to be
maintained
by Minister

85. (1) The Minister shall maintain records of all mineral concessions issued under this Act in sufficient details as to show -

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

(2) Records maintained under subsection (1) shall be open to inspection by members of the public during normal Government office hours, and members of the public shall be permitted to take copies thereof.

86. Records supplied to the Minister under section 27 (3) shall, so long as the person supplying the same or his successor-in-title retains a prospecting licence over the area to which the records relate, be treated as confidential and shall not be divulged without the consent of the person supplying the same or his successor-in-title:

Certain records supplied to Minister to be confidential

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

- (i) where such disclosure is necessary for the purposes of this Act;
- (ii) for the purposes of a prosecution under this Act;
- (iii) to any person being a consultant to or officer employed by the Government who is approved by the Minister to receive such confidential information.

87. Nothing in this Act shall affect the continued validity of any title to, interest in or right over, any minerals, of whatsoever nature, subsisting immediately prior to the coming into operation of this Act (hereinafter called “existing right”):

Saving

Provided that –

- (i) any grant or concession being or deemed to be –
 - (a) a State Grant of a Special Prospecting Licence issued under the provisions of section 8 of the Mines and Minerals Act (hereby repealed), shall be deemed for the purposes of this Act to be a prospecting licence issued under the provisions of Part V;
 - (b) a State Grant of a mining lease issued under the provisions of section 24 of the Mines and Minerals Act, shall be deemed for the purposes of this Act to be a mining lease issued under the provisions of Part VI, and insofar as it confers a right to peg claims for the purpose of acquiring a right to mine shall be deemed to confer a right to apply for a mining lease under the provisions of Part VI;

- (ii) in the event of any conflict between the terms and conditions of any existing right and the provisions of this Act, the terms and conditions of such existing right shall continue to be valid and enforceable notwithstanding the provisions of this Act and, where provision is made in the grant or concession conferring such existing right for its extension or renewal, such terms and conditions may be

incorporated in the grant or concession as extended or renewed under this Act notwithstanding that such extension or renewal is, in other respects, subject to the provisions of this Act.

SCHEDULE

(s. 65)

1. The royalties payable on –
 - (a) building and industrial minerals, shall be *three per cent* of the gross market value;
 - (b) coal, shall be *five per cent* of the gross market value;
 - (c) precious stones, shall be *ten per cent* of the gross market value;
 - (d) semi-precious stones, shall be *five per cent* of the gross market value;
 - (e) oil shale, shall be *three per cent* of the gross market value;
 - (f) petroleum and natural gas, shall be *ten per cent* of the gross market value;
 - (g) radioactive minerals, shall be *five per cent* of the gross market value;
 - (h) precious metals, shall be *five per cent* of the gross market value; and
 - (i) any other mineral or mineral product not otherwise mentioned, shall be *three per cent* of the gross market value.
2. The term “gross market value” shall, for the purposes of this scale of royalties, be defined as being the gross marketable value of the mineral or mineral products, less any costs incurred for transport of output prior to sale or disposal, for insurance and such other costs as the Minister may allow.