

P.N.D.C.L. 153

MINERALS AND MINING ACT, 1986

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P.N.D.C.L. 153
MINERALS AND MINING ACT, 1986¹

Ownership of Minerals and Government Right of Pre-emption

1. Minerals the property of the Republic

A mineral in its natural state in, under or on a land in the Republic, rivers, streams, water-courses throughout the Republic, the exclusive economic zone and an area covered by the territorial waters or continental shelf is the property of the Republic and is, in accordance with clause (6) of article 257 of the Constitution, vested in the President on behalf of, and in trust for, the people of Ghana.

2. Compulsory acquisition of land

Where a land is required to secure the development or utilisation of a mineral resource, the President may acquire the land or authorise its occupation and use under the applicable enactment.

3. Exportation and disposal of minerals

(1) Except as otherwise provided in this Act or any other enactment, a person shall not export, sell or otherwise dispose of a mineral unless that person holds a licence granted by the Minister for that purpose.

(2) An application for the licence shall be made in writing to the Minister in accordance with the prescribed Regulations.

(3) The Minister may issue the licence in the form and on the conditions determined by the Minister.

(4) A licence issued under subsection (3) is not transferable.

4. Government's right of pre-emption

(1) The Government has the right of pre-emption of the minerals raised, won or obtained in the Republic and from an area covered by the territorial waters, exclusive economic zone, or the continental shelf and of products derived from the refining or treatment of those minerals.

(2) The President may, by executive instrument, appoint a statutory corporation to act as the agent of the Government for the exercise of the right of pre-emption conferred by subsection (1).

5. Price to be paid on pre-emption

(1) The price payable for minerals or products taken in the exercise of the right of pre-emption under section 4 is,

- (a) where it has been provided for in a written agreement, the price specified in the agreement; and

1. This Act was issued as the Minerals and Mining Law, 1986 (P.N.D.C.L. 153), made on the 4th day of July, 1986 and notified in the *Gazette* on 18th July, 1986.

- (b) where it has not been provided for in a written agreement, the publicly quoted market rate prevailing for the minerals or products as delivered at the mine or plant where the right of pre-emption in respect of the minerals or products was exercised.

(2) Where an agreement or a prevailing market rate does not exist the price shall be decided on by an arbitrator appointed under the Arbitration Act, 1961 (Act 38).

6. Right of pre-emption to extend to minerals already sold

(1) The right of pre-emption under section 4 extends to the minerals or products sold to any other customers by the person against whom the right is exercised, but which have not left the boundaries, territorial waters or air space of the Republic.

(2) The price payable for the minerals or products is the rate provided for in section 5 or the actual contract price at which the minerals or products were sold, whichever is less, together with

- (a) the actual cost of transportation from the mine or plant to the port, railway station or locality to which the minerals or products were taken in the exercise of the right of pre-emption,
- (b) the actual penalty or damage which the person against whom the right of pre-emption is exercised may have suffered by reason of a cancellation or an alteration of sea, rail, road or air transportation or of a charter of vessels or planes for the transportation of the minerals or products, and
- (c) the actual cost of insurance of the minerals or products.

(3) A penalty or cost of damage payable by virtue of paragraph of (b) of subsection (2), shall be paid only in respect of a charter or freight agreement entered into for a particular voyage or despatch by sea, air, rail or road, and not in respect of a general charter or freight agreement for a prospective voyage or despatch.

7. Obstruction to exercise of right of pre-emption

(1) A person who obstructs the Government or its agent from exercising its right of pre-emption in respect of minerals or products under this Act commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

(2) Where a person is convicted of an offence under subsection (1), that person is, in addition to any other punishment that the High Court may impose, liable to pay an amount of money equivalent to twice the value of the minerals or products and to the cancellation by the Minister of a mineral right held by that person under this Act.

8. Government participation

(1) Where a mineral right is for reconnaissance, prospecting or mining of minerals, the Government shall acquire a ten percent interest in the rights and obligations of the mineral operation in respect of which a financial contribution shall not be paid by Government.

(2) The Government has the option to acquire on the terms that are agreed on between the holder of a mining lease and the Government, a further twenty percent interest

in the rights and obligations in mining operations where a mineral is discovered in commercial quantities, but where the operation is for the mining of salt, the Government has the option to acquire a further forty-five percent interest in the salt operations.

(3) Where the parties fail to agree on the terms of the acquisition by Government of an interest in mineral operations under this section, the matter shall be referred to arbitration in accordance with section 31.

(4) Subsections (1) and (2) do not exclude the Government from further participation in mineral operations and a further participation shall be under the terms as agreed between the parties.

Administration

9. Chief inspector of mines

The Minister shall, in consultation with the Minerals Commission, appoint a chief inspector of mines who shall perform the functions specified in relation to the chief inspector of mines under this Act, and who shall, under the direction of the Minister, generally supervise the proper carrying out of this Act.

10. Functions of the chief inspector of mines

(1) The chief inspector of mines or an authorised officer of mines may at a reasonable time enter a reconnaissance, prospecting or mining area or the premises in an area, other than a dwelling house, for the purposes of

- (a) breaking up the surface of land in the area for the purpose of ascertaining the rocks or minerals in or under the land;
- (b) taking samples or specimen of rocks, ore or concentrates, tailings or minerals situated in an area under a mineral right for inspection or assay;
- (c) inspecting the explosives magazine on a mine and direct in what manner explosives shall be stored;
- (d) inspecting the area of mineral operations to ascertain whether a nuisance is created in the area by the mineral operations;
- (e) examining documents and records required to be kept under this Act, the Regulations or the terms and conditions of a mineral right and take copies of the documents;
- (f) entering into or on a land through which it may be necessary to pass for the purpose of a survey; or
- (g) giving directions, and effect the acts that are incidental or conducive to the attainment of any of the functions of the chief inspector of mines under this Act.

(2) The chief inspector of mines may hold an inquiry where a fire or an occurrence resulting in serious injury happens on a land subject to a mineral right.

11. Mines manager

(1) The holder of a mineral right shall at all times have a responsible manager in charge of the mineral operations.

(2) The holder of a mineral right shall notify the chief inspector of mines in writing of the appointment of a manager and of every change of a manager.

12. Obstruction of chief inspector of mines

A person who, without reasonable excuse, hinders or obstructs the chief inspector of mines or an authorised officer from performing a function under this Act commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding twelve months or to both the fine and the imprisonment.

13. Indemnity of officers

The chief inspector of mines is not liable for a thing done or omitted to be done in good faith in the performance of a function under this Act.

*Mineral Rights and Other Licences***14. Mineral rights**

(1) Despite a right or title which a person has to a land in, on or under which minerals are situated, a person shall not conduct reconnaissance of, prospect for or mine a mineral in the Republic, unless that person has been granted a mineral right by the Minister in the form of a licence or lease.

(2) The Minister on behalf of the Republic may negotiate, grant, revoke, suspend or renew a mineral right under this Act subject to a power of disallowance exercisable by the President within thirty days of the grant, revocation, suspension or renewal.

(3) The powers of the Minister under subsection (2) shall be exercised on the advice of the Minerals Commission.

15. Qualification for the grant of mineral rights

Except for the persons who are exempted by the Minister on the advice of the Minerals Commission or except as otherwise provided in this Act, a person does not qualify for the grant of a mineral right unless it is a body corporate or an unincorporated body of persons registered or established in the Republic under an enactment.

16. Terms of a mineral right

(1) Subject to this Act, a mineral right shall be granted by the Minister on the terms and conditions determined by the Minister on the advice of the Minerals Commission.

(2) Without prejudice to subsection (1), a mineral right shall specify the shape, orientation and dimension, including diagram and plan of the area to which it relates and shall have appended to the right a programme of mineral operations approved by the Minister.

17. Application for a mineral right

(1) An application for the grant, revocation, suspension or renewal of a mineral right shall be submitted to the Minister in accordance with the Regulations.

(2) An application for the grant or renewal of a mineral right shall have appended to the application a statement giving

- (a) particulars of the financial and technical resources available to the applicant for the mineral operations,
- (b) an estimate of the amount of money proposed to be spent on the operation,
- (c) particulars of the programme of proposed mineral operations, and
- (d) particulars of the applicant's proposals with respect to the employment and training of citizens.

(3) Copies of an application shall, at the time of submission of the application to the Minister, be forwarded by the applicant to the Minerals Commission, the Lands Commission, the Forestry Commission in cases where forestry resources are to be affected by the mineral operations envisaged, and the Public Agreements Board.

18. Grant of mineral rights and notification of grant

(1) The Minister shall notify the applicant in writing of the decision on the application, and where the application is approved, the notification of the approval shall include the terms and conditions on which the mineral right will be granted.

(2) Where an application is approved and the applicant is notified under subsection (1), the applicant shall, within sixty days of the date of the notification or within a further period allowed by the Minister, notify the Minister in writing of the acceptance of the grant.

(3) The Minister shall, on receipt of the notification of acceptance under subsection (2), grant a mineral right to the applicant.

(4) Where an applicant who is notified under this section fails to notify the Minister of the acceptance in accordance with subsection (2), the application shall lapse.

(5) A mineral right granted under this section is a requisite and sufficient authority over the land in respect of which the right is granted.

19. Transfer or assignment of mineral rights

A mineral right or an interest in a mineral right shall not be transferred, assigned or dealt with in any other manner without the prior approval in writing of the Minister.

20. No removal of minerals without permission

(1) The holder of a mineral right shall not remove or destroy a mineral obtained in the course of the mineral operations of the holder without the permission in writing of the chief inspector of mines.

(2) A permission granted under subsection (1) shall be on the conditions determined by the chief inspector of mines.

(3) Despite a provision in subsection (1), cores and samples may be retained by a holder for the purpose of assay, identification or analysis of the mineral.

(4) Where a core or sample is retained under subsection (3), the holder shall maintain in respect of the core or sample the particulars determined by the chief inspector of mines, in consultation with the Director of Geological Survey, sufficient for the identification of the core or sample and the location and geological horizon of its origin.

21. Licence for diverting water

(1) A person shall not obtain, divert, impound or convey water from a river, stream or watercourse for mining or any other industrial purposes without a licence granted by the Minister for that purpose.

(2) An application for a licence under subsection (1) shall be made in writing to the Minister in accordance with the Regulations.

(3) A licence for the obtaining, diverting, impounding or conveying of water from a river, stream or watercourse for mining or any other industrial purposes shall be issued by the Minister in the form and on the conditions determined by the Minister.

(4) A licence issued under subsection (3) shall not be transferred without the prior approval in writing of the Minister.

Taxes, Incentives and Benefits

22. Royalties

(1) The holder of a mining lease shall pay to the Republic royalty in respect of minerals obtained by the holder from mining operations.

(2) The Minister shall, on the advice of the Minerals Commission, determine the rate of royalty payable under subsection (1) by the holder of a mining lease.

(3) The rate of royalty payable under subsection (2) shall not be more than twelve percent or less than three percent of the total revenue of minerals obtained by the holder from the mining operations.

23. Payment of tax

(1) The holder of a mining lease shall pay income tax at the rate of forty-five percent.

(2) The holder of a mining lease is liable to pay additional profit tax as provided under the Additional Profit Tax Act, 1985.²

24. Rental charges

The holder of a mineral right shall pay the prescribed annual rental charges in respect of the area to which the licence or lease of the holder relates.

2. P.N.D.C.L. 122.

25. Recovery of debts

(1) Royalties, fees, rents or any other payments which fall due in respect of a mineral right or otherwise under this Act are a debt due to the Republic and recoverable in the High Court.

(2) The Minister may make appropriate arrangements to ensure that the holders of mineral rights comply with this Act, and in addition may accept guarantees, whether from shareholders or otherwise, in respect of the compliance.

26. Capital allowances

The holder of a mining lease is, where qualified, entitled to the following capital allowances:

- (a) depreciation or capital allowances of seventy-five percent of the capital expenditure incurred in the year of investment and fifty percent in subsequent years;
- (b) losses in each financial year not exceeding the value of capital allowances for the year may be carried forward;
- (c) investment allowance of five percent;
- (d) capitalisation of the expenditure on reconnaissance and prospecting approved by the Minister on the advice of the Minerals Commission where the holder starts development of a commercial find.

27. Additional benefits

The holder of a mineral right shall be granted, as appropriate,

- (a) an exemption from payment of customs import duties in respect of plant, machinery, equipment and accessories imported specifically and exclusively for the commencement of the mineral operations, and may after establishment receive additional relief from payment of customs and excise duties as provided in the mining lease;
- (b) an exemption of staff from payment of income tax relating to furnished accommodation at the mine site;
- (c) an immigration quota in respect of the approved number of expatriate personnel;
- (d) a personnel remittance quota for expatriate personnel free from a tax imposed by an enactment for the transfer of external currency out of the Republic;
- (e) an exemption from the selective alien employment tax under the Selective Alien Employment Tax Decree, 1973 (N.R.C.D. 201).

28. Deferment of stamp duty

The Minister responsible for Finance and Economic Planning in consultation with the Minister may defer wholly or in part the payment of registration and stamp duties for a period not exceeding five years, where the Minister is satisfied that the circumstances prevailing at the time of the application for the benefit justify the deferment.

29. Transferability of capital

(1) Where the holder of a mining lease earns foreign exchange from the mining operations, the holder may be permitted by the Bank of Ghana to retain in an external account a portion of the foreign exchange earnings for use in acquiring spare parts and any other inputs required for the mining operations which would otherwise not be readily available without the use of those earnings.

(2) Where the net earning of a holder of a mining lease from the mining operations is in foreign exchange, the holder shall be permitted by the Minister responsible for Finance and Economic Planning, in consultation with the Minister acting on the advice of the Minerals Commission, to retain in an external account, not less than twenty-five percent of the foreign exchange earnings for acquiring machinery and equipment, spare parts and raw materials as well as for debt servicing, dividend payment and remittance in respect of quotas for expatriate personnel.

(3) An external account operated by virtue of subsection (2) shall be held in trust on behalf of the holder by a trustee appointed by the holder with the consent of the Bank of Ghana.

30. Transfer of dividends

Subject to this Act, the holder of a mining lease shall be guaranteed free transferability through the Bank of Ghana or in the case of a net foreign exchange earning holder, through the external account opened with the permission of the Minister responsible for Finance and Economic Planning in convertible currency of

- (a) dividends or net profits attributable to the investments of the convertible currency;
- (b) payments in respect of loan servicing where a foreign loan has been obtained by the holder for the mining operations;
- (c) the remittance of foreign capital in the event of sale or liquidation of the mining operations or an interest in the mining operations attributable to foreign investment.

31. Dispute settlement

(1) Where a dispute arises between the holder of a mineral right and the Government in respect of a matter under sections 22 to 30, efforts shall be made through mutual discussion to reach an amicable settlement.

(2) Where a dispute arises between the holder who is a citizen and the Government in respect of a matter under sections 22 to 30 which is not amicably settled as provided for in subsection (1), the dispute may be submitted to arbitration for settlement in accordance with the Arbitration Act, 1961 (Act 38).

(3) Where a dispute arises between the holder who is not a citizen and the Government in respect of a matter under sections 22 to 30 which is not amicably settled as provided for under subsection (1) the dispute may be submitted to arbitration

- (a) in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law,

- (b) within the framework of a bilateral or multilateral agreement on investment protection to which the Government and the country of which the holder is a national are parties, or
- (c) in accordance with any other international machinery for the settlement of investment disputes agreed to by the parties.

(4) The Minister on the advice of the Minerals Commission may specify the particular mode of arbitration to be resorted to in the case of a dispute relating to a matter under sections 22 to 30 and the specification constitutes the consent of the Government or the agency of the Government and of the holder to submit to that forum.

Reconnaissance and Prospecting

32. Reconnaissance licence

(1) A person shall not search for a mineral in the Republic by reconnaissance unless that person is granted a mineral right in the form of a reconnaissance licence by the Minister.

(2) The Minister may on application duly made and subject to this Act grant a reconnaissance licence.

(3) A reconnaissance licence may be granted for a period not exceeding twelve months.

(4) A reconnaissance licence may, in respect of a mineral to which the licence relates, confer on the holder an exclusive right to carry on reconnaissance for a specified mineral in the reconnaissance area.

33. Restriction on grant of reconnaissance licence

(1) A reconnaissance licence shall not be granted in respect of an area in or which constitutes

- (a) a prospecting area where another person holds in respect of the area a prospecting licence or a restricted prospecting licence in respect of a mineral to which the reconnaissance licence, if granted, would relate;
- (b) a mining area where another person holds, in respect of that area, a mining lease in respect of a mineral to which the reconnaissance licence, if granted, would relate;
- (c) a restricted mining area where another person holds in respect to that area a mining lease in respect of a mineral to which the reconnaissance licence, if granted, would relate.

(2) Where an area is subject to a reconnaissance licence which confers on the holder an exclusive right to carry on reconnaissance over that area, for a specified mineral, another reconnaissance licence shall not be granted over that area in respect of the mineral to which the exclusive right relates.

(3) Where an area to which a reconnaissance licence relates becomes a mining area or part of a mining area, the reconnaissance licence shall cease to have effect in relation to that mining area.

34. Right of holder of reconnaissance licence

(1) Subject to this Act, the Regulations and the conditions stated in the licence, a reconnaissance licence granted under this Act confers on the holder the right to carry on reconnaissance in the reconnaissance area.

(2) For the purposes of exercising the right conferred under subsection (1), the holder of a reconnaissance licence may enter the reconnaissance area and erect camps or temporary buildings including installations in the waters which form part of the reconnaissance area.

(3) The holder of a reconnaissance licence shall not engage in a drilling, an excavation or any other under surface operations, except where the operations are authorised by the licence granted to the holder.

35. Application for renewal of reconnaissance licence

(1) The holder of a reconnaissance licence may, not later than three months before the expiration of the licence, apply for a renewal of the licence in respect of all or part of the reconnaissance area.

(2) An application under subsection (1) shall be made in the form prescribed by the Minister.

(3) Where an application for the renewal of a reconnaissance licence is made under subsection (1), the Minister may, if satisfied that it is in the public interest to do so, renew the licence with or without variations of any of the conditions attached to the original licence.

(4) A reconnaissance licence shall not be renewed at any one time for a period exceeding twelve months.

36. Prospecting licence

(1) A person shall not prospect for a mineral in the Republic unless that person has been granted a prospecting licence by the Minister.

(2) Subject to this Act, the Minister may on an application duly made grant a prospecting licence.

(3) Subject to subsection (5), a prospecting licence shall not be granted for a period exceeding three years.

(4) Except as provided in subsection (5), the size of the area in respect of which a prospecting licence may be granted shall not exceed one hundred and fifty square kilometres in the aggregate.

(5) The President may, in respect of a particular grant of a prospecting licence where it considers it in the national interest to exceed the limits provided in subsections (3) and (4), direct that the grant shall exceed those limits.

(6) A prospecting licence shall not be granted by the Minister unless

- (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 proposal makes adequate provision for the employment and training of personnel who are citizens,
- (d) the applicant is able and willing to comply with the terms and conditions applicable to the prospecting licence, and
- (e) the applicant is not in default.

(7) A prospecting licence shall not be granted in respect of land which constitutes a mining area.

(8) Where an area is subject to a prospecting licence, another prospecting licence shall not be granted over land in that area in respect of a mineral to which that prospecting licence relates.

(9) Where an area is subject to a reconnaissance licence which confers on the holder an exclusive right to carry on reconnaissance in that area in respect of a specified mineral, a prospecting licence shall not be granted in respect of the mineral to which the exclusive right relates to a person other than the holder of the reconnaissance licence.

37. Renewal of a prospecting licence

(1) The holder of a prospecting licence may, not later than three months before the expiration of the licence, apply to the Minister for a renewal of the licence.

(2) An application for renewal of a prospecting licence shall state the period for which the renewal is sought and shall be accompanied by the documents prescribed by the Minister.

(3) On an application duly made under subsection (1), the Minister may, subject to this Act, grant a renewal of the licence for a period not exceeding two years.

(4) Where the holder has made an application for a renewal of the licence over part of the area covered by the prospecting licence and the licence may expire before the application is granted, the Minister may extend the period of validity of the prospecting licence for the period determined by the Minister pending the decision on the application.

38. Extension of period of renewal

(1) The Minister may, on the expiration of the period of renewal, and on an application made in that behalf, grant a renewal of the licence for a further period not exceeding two years.

(2) Subject to subsection (4), and to a modification of the requirements contained in the prospecting licence, the prospecting area shall, in the event of the renewal of the licence in respect of that area, be reduced in size to eliminate from it,

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

(3) The holder of a prospecting licence shall, prior to the end of each of the periods specified in subsection (2), indicate the area or areas to be shed off from the prospecting area and, in default, the Minister shall determine the area to be shed off.

(4) Where a person holds two or more prospecting licences for the same mineral or minerals, the Minister may, for the purposes of subsection (2), consider the area covered by these licences to be one area.

39. Rejection of application for renewal of prospecting licence

(1) Subject to subsections (2) and (3), the Minister shall not renew a prospecting licence if

- (a) the applicant is in default, or
- (b) the proposed programme of prospecting operations to be carried out during the period of renewal of the licence is inadequate.

(2) An application for the renewal of a prospecting licence shall not be rejected on the ground

- (a) that the applicant is in default, unless the Minister has given the applicant notice to remedy the default and the applicant has failed to do so within the reasonable period specified in the notice; or
- (b) the proposed programme of operations is inadequate, unless the applicant has been given an opportunity to make appropriate amendments to the programme and the applicant has, within the reasonable period permitted by the Minister, failed to do so.

40. Discovery of minerals not included in prospecting licence

(1) Where in the course of exercising a right under a prospecting licence, the holder discovers a mineral not included in the licence, the holder may apply to the Minister for an amendment of the prospecting licence to include that mineral.

(2) An application for an amendment of a prospecting licence under subsection (1) shall

- (a) specify the mineral discovered,
- (b) state particulars of the situation and the circumstances of the discovery, and
- (c) have appended to the application a proposed programme of prospecting operations in respect of that mineral.

(3) Subject to subsection (4), the Minister may permit the amendment of the prospecting licence to include the mineral discovered.

(4) An amendment of a prospecting licence shall not be permitted under this section where a person other than the applicant holds a reconnaissance licence in respect of the area with the right to reconnoiter for the mineral discovered.

41. Rights of holder of a prospecting licence

(1) Subject to this Act, the holder of a prospecting licence may in the exercise of rights under the licence, enter on a land to which the licence relates,

- (a) to prospect for the mineral to which the licence relates,
- (b) to make boreholes and the excavations that may be necessary, and

- (c) to erect camps and put up temporary buildings necessary for the prospecting operations.

42. Obligation of holder of a prospecting licence

(1) The holder of a prospecting licence shall

- (a) commence prospecting operations within three months from the date of the issue of the licence, or at the time specified by the Minister;
- (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 through the chief inspector of mines of a discovery of the mineral to which the prospecting licence relates within thirty days from the date of the discovery;
- (e) notify the Minister through the chief inspector of mines of the discovery of a mineral deposit which is of possible economic value within thirty days from the date of the discovery;
- (f) fill back, or otherwise make safe to the satisfaction of the chief inspector of mines a borehole or an excavation made during the course of prospecting operations;
- (g) unless the chief inspector of mines otherwise stipulates, remove, within sixty days from the date of the expiration of the prospecting licence a camp, the temporary buildings or machinery erected or installed by the holder, and repair or otherwise make good a damage to the surface of the ground occasioned by the removal, to the satisfaction of the chief inspector of mines;
- (h) subject to the conditions of the prospecting licence, expend on prospecting not less than the amount specified in the prospecting licence; and
- (i) submit in the prescribed manner to the chief inspector of mines, at the prescribed intervals, reports or any other documents containing the required information and the supporting documents.

(2) The moneys required to be spent under paragraph (h) of subsection (1) and which are not so spent are a debt due to the Republic and recoverable from the holder in the High Court.

(3) The holder of a prospecting licence shall keep, to the satisfaction of the Minister, full and accurate records of the prospecting operations showing the particulars prescribed by the Minister.

(4) The holder of a prospecting licence shall, at least once in every four months, furnish the Minister with copies of the records kept by the holder under this section.

(5) The records furnished to the Minister under subsection (4) are confidential, for as long as the holder or the successor-in-title of the holder retains the prospecting licence over the area to which the records relate, and shall not be divulged without the consent of the holder.

- (6) This section does not prohibit the disclosure of a confidential information
- (a) where the disclosure is necessary for the purposes of this Act or any other enactment;
 - (b) for the purposes of a prosecution under this Act; or
 - (c) to a person who is a consultant to or an officer employed by the President who is authorised by the Minister to receive the confidential information.

43. Amendment of programme of prospecting operations

(1) The holder of a prospecting licence shall notify the Minister of an amendment which the holder wishes to make to the programme of prospecting operations and the amendment shall, unless rejected by the Minister within two months after the holder has been notified, have effect after that period.

(2) The Minister may, on an application made by the holder of a prospecting licence, limit or suspend the obligation of the holder to carry on prospecting operations under the terms and conditions determined by the Minister on the advice of the Minerals Commission.

Mining Lease

44. Minerals found in commercial quantities, mining lease

(1) Where the holder of a prospecting licence has established that a mineral to which the licence relates exists in commercial quantities within the prospecting area, the holder shall notify the Minister of this in writing and may apply to the Minister in writing for a mining lease in respect of the land which constitutes the prospecting area.

(2) An application under subsection (1) shall be made not later than three months from the date of the notice or within a further period determined by the Minister.

(3) Subject to this Act, on an application duly made under subsection (1) the Minister shall grant the applicant a mining lease on the conditions determined by the Minister.

45. Application for a mining lease by a non-prospecting licence holder

(1) Where a person, other than the holder of a prospecting licence, establishes to the satisfaction of the Minister that mineral in commercial quantities exists in a land, that person may apply for a mining lease over that land, although that person does not hold a prospecting licence over that land.

(2) On an application duly made under subsection (1), the Minister may grant the applicant a mining lease on the conditions determined by the Minister on the advice of the Minerals Commission.

(3) A mining lease shall not be granted under this section in respect of a land which is held by another person,

- (a) under a mining lease or a restricted mining lease,
- (b) under a prospecting licence or a restricted prospecting licence, or

- (c) under a reconnaissance licence which gives the holder exclusive rights in respect of a specified mineral and the application for a mining lease has been made in respect of that mineral.

46. Duration, area of mining lease

(1) Except as provided in subsection (3),

- (a) a mining lease is valid for a period not exceeding thirty years, and
- (b) the size of the area in respect of which a mining lease may be granted shall not exceed fifty square kilometres for a grant or in the aggregate one hundred and fifty square kilometres.

(2) The President may, in respect of a particular grant of a mining lease where the President considers that it is in the national interest to exceed the limits provided in subsections (1), direct that the grant shall exceed those limits.

(3) A mining lease shall not be granted to an applicant unless

- (a) the proposed programme of mining operations submitted by the applicant
 - (i) ensures the most efficient, beneficial and timely use of the mineral resources concerned, and
 - (ii) takes proper account of environmental safety factors;
- (b) the area of land over which the mining lease is sought is not in excess of the area reasonably required to carry out the proposed programme of mining operations, or
- (c) the applicant is not in default.

(4) The Minister shall not reject an application for a mining lease made under this Act,

- (a) on the grounds specified in paragraphs (a) and (b) of subsection (3), unless the applicant has been given an opportunity to make appropriate amendments to the application or to the proposed programme of mining operations and has within a reasonable time permitted by the Minister, failed to do so, or
- (b) on the grounds that the application is in default, unless the Minister has given the applicant notice of the default and the applicant has failed within the reasonable time specified in the notice to remedy the default.

47. Land subject to more than one prospecting licence

Where a land is subject to more than one prospecting licence, a mining lease shall not be granted over that land to an applicant for a mining lease unless

- (a) the Minister is satisfied that
 - (i) the rights of any other holder of a prospecting licence over that land would not be substantially prejudiced by the grant of the mining lease, or
 - (ii) it is in the public interest that the mining lease is granted; or

- (b) any other holder of a prospecting licence over that land consents in writing to the grant of the mining lease.

48. Renewal of mining lease

(1) The holder of a mining lease may apply to the Minister for the renewal of the lease not later than one year before the expiration of the lease.

(2) The Minister may grant the renewal of a mining lease for a period not exceeding thirty years on the conditions determined by the Minister.

(3) Where the holder of a mining lease has made an application for the renewal of the lease and the lease may expire before the application is granted, the Minister may extend the period of validity of the mining lease for the period determined by the Minister pending the decision on the application.

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

49. Amendment of programme of mining operations

The holder of a mining lease shall notify the Minister of the amendments the holder intends to make to the programme of mining operations and the amendments shall, unless the Minister rejects them within three months after being so notified, have effect after that period.

50. Rights conferred by mining lease

Subject to this Act, to any other enactment and to the conditions in the mining lease, the holder of a mining lease may enter on the land to which the mining lease relates,

- (a) to take reasonable measures on or under the surface to mine the mineral to which the mining lease relates;
- (b) to erect the necessary equipment, plant and buildings for the purposes of mining, transporting, dressing, treating, smelting or refining the mineral recovered during the mining operations;
- (c) to prospect within the mining area;
- (d) to stack or dump a mineral or waste product in a manner approved by the chief inspector of mines.

51. Discovery of further mineral deposits and other minerals

(1) Where in the course of exercising rights under this Act the holder of a mining lease discovers further deposits of the mineral in respect of which the holder holds the mining lease or any other mineral not included in the mining lease, the holder shall within thirty days of the discovery, notify the Minister in writing of the discovery.

(2) The notification given to the Minister under subsection (1) shall

- (a) contain particulars of the mineral discovered, and
- (b) the site and circumstances of the discovery.

(3) The holder of a mining lease may on notifying the Minister of the discovery of further mineral deposits or any other mineral apply to the Minister for the inclusion in the mining lease of the area of the further deposits or the mineral discovered.

(4) An application made under subsection (3) shall have appended to the application the proposed programme of mining operations in respect of the further deposits or the mineral discovered.

(5) On being satisfied with the proposed programme of mining operations, the Minister may approve the application on the terms and conditions determined by the Minister, and shall accordingly amend the mining lease.

52. Enlargement of mining area

The holder of a mining lease may apply to the Minister for the enlargement of the mining area to which the lease relates and the Minister may, subject to this Act, approve the application if satisfied that the approval is in the national interest.

53. Obligation of holder of a mining lease

(1) Subject to this Act, the holder of a mining lease shall

- (a) commence commercial production on or before the date specified in the programme of mining operations;
- (b) subject to subsection (2), develop and mine the mineral covered by the lease in accordance with the programme of mining operations;
- (c) demarcate and keep demarcated the mining area in the prescribed manner;
- (d) submit to the Minister through the chief inspector of mines, within three months from the date specified in the programme of mining operations, a diagram of the mining area;
- (e) keep and maintain in the Republic an address which shall be registered with the Minister, and to which communications and notices may be addressed;
- (f) notify the Minister as soon as possible of the start of commercial production.

(2) The Minister may, on an application made by the holder of a mining lease, limit or suspend the programme of mining operations referred to in paragraph (b) of subsection (1) for the period and on the terms and conditions determined by the Minister, on the advice of the Minerals Commission, if satisfied that in the circumstances it is fair and reasonable to do so.

54. Recruitment and training of citizens

(1) In pursuance of a localisation policy a holder of a mining lease shall submit for the approval of the Minerals Commission a detailed programme for the recruitment and training personnel who are citizens.

(2) For the purposes of subsection (1) “**localisation**” means a training programme designed towards the eventual replacement of expatriate personnel by personnel who are citizens.

55. Further obligations of holder of mining lease

The holder of a mining lease shall maintain at the address kept in accordance with paragraph (e) of subsection (1) of section 53, the prescribed documents and records and shall permit an authorised officer at a reasonable time to inspect the documents and records.

56. Wasteful mining and treatment practices

(1) Where the Minister considers that the holder of a mining lease is using wasteful mining or treatment practices, the Minister may notify and require the holder to show cause, within the period specified by the Minister, why the holder should not cease the use of those practices.

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

(3) Where the holder of a mining lease, after being ordered to cease using wasteful mining or treatment practices, fails to do so, the Minister may cancel or suspend the mining lease for a period specified by the Minister.

57. Merger of mining lease

(1) Where the Minister, after taking account of the public interest and the interests of the holders of mining leases covering neighbouring or contiguous mining areas, considers that the efficient and economic exploitation of the minerals concerned require the merger of all or part of the mining operations of the holders, the Minister may direct the holders to effect the merger within the time and on the terms specified by the Minister.

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

58. Suspension of production

(1) The holder of a mining lease shall notify the Minister,

- (a) one year in advance, where the holder proposes to cease production from the mine,
- (b) six months in advance, where the holder proposes to suspend production from the mine, or
- (c) three months in advance, where the holder proposes to curtail production, and shall, in all cases, give reasons for the cessation, suspension or curtailment.

(2) Where, for reasons beyond the control of the holder, the holder of a mining lease ceases, suspends or curtails production from a mine, the holder shall notify the Minister, within fourteen days of the cessation, suspension or curtailment.

(3) On receiving the notification under subsection (1) or (2) or if the Minister otherwise becomes aware of a cessation suspension or curtailment of production, the Minister

shall cause the matter to be investigated and shall, subject to a relevant requirement contained in the mining lease,

- (a) grant his approval for the cessation, suspension or curtailment, or
- (b) direct the holder of the mining lease to resume full production at the mine by the date specified by the Minister.

(4) Approval of cessation, suspension or curtailment may be given subject to the conditions determined by the Minister on the advice of the Minerals Commission.

59. Permit for other business in mining area

(1) A person shall not carry on in a mining area a business for which a permit or any other authorisation is required under any other enactment, unless that person has obtained the consent of the Minister to carry on that business.

(2) Subject to subsection (1), a person shall not erect in a mining area a building or any other structure for the purpose of carrying on a business without the consent of the holder of the mining lease.

60. Notification of new or increased control

(1) A person shall not become a shareholder controller or a majority shareholder controller or an indirect controller of a mining company, unless

- (a) that person has served the Minister notice in writing stating the intention to become a controller of the mining company, and
- (b) the Minister, in accordance with the advice of the Minerals Commission, has, before the end of six months beginning with the date of service of that notice, notified that person in writing that the Minister does not have an objection to that person becoming a controller of the mining company, or
- (c) that notice period has elapsed without the Minister having served on that person under section 60A a written notice of objection to becoming a controller of the mining company.

(2) A notice under paragraph (a) of subsection (1) shall contain the information that the Minister may direct and the Minister may, after receiving a notice from a person, by notice in writing require that person to provide the additional information or documents required by the Minister for deciding whether to serve a notice of objection or not.

(3) Where additional information or documents are required by a notice under subsection (2), the time between the giving of the notice and the receipt of the information or documents shall be added to the period specified in subsection (1) (b).

(4) A notice served by a person under paragraph (a) of subsection (1) is not in compliance with that paragraph except as respects that person becoming a controller of the description in question of the mining company concerned within the period of one year beginning,

- (a) with the date of that notification, in a case where the Minister has given a notice that there is no objection to that person becoming a controller, or

- (b) with the expiration of that period, in a case where the period mentioned in paragraph (b) of subsection (1) has elapsed without the notification and without that person having been served with a written notice of objection.³

60A. Objection to new or increased control

(1) The Minister, in accordance with the advice of the Minerals Commission, shall serve a written notice of objection under this section on a person who has given a notice under section 60, where the Minister considers that the public interest would be prejudiced by the person concerned becoming a controller of the description in question of the mining company.

(2) Where a person required to give notice under section 60 in relation to becoming a controller of a description becomes a controller of that description without having given the notice, the Minister shall serve that person with a written notice of objection under this section at any time within six months after becoming aware of that person having done so and may, for the purpose of deciding whether to serve the notice require that person by notice in writing to provide the information or documents required by the Minister.

(3) Where it appears to the Minister that the public interest would be prejudiced by a person who is a shareholder controller or a majority shareholder controller or an indirect controller of a mining company remaining as a controller, the Minister may serve a written notice of objection to that person being a controller.

60B. Contraventions by controller

(1) Subject to subsection (2), a person who contravenes section 60 commits an offence if that person

- (a) fails to give the notice required under paragraph (a) of subsection (1) of that section, or
- (b) becomes a controller of a description to which that section applies before the end of the period prescribed in paragraph (b) of that subsection, unless the Minister has previously given notice in writing that the Minister does not have an objection to that person becoming a controller.

(2) A person does not commit an offence under subsection (1) if that person shows lack of knowledge of the facts or circumstances by virtue of which that person became a controller of the relevant description; but where a person becomes a controller of a description without that knowledge and subsequently becomes aware of the fact of becoming a controller that person commits an offence unless written notice of the fact of becoming a controller is given to the Minister within fourteen days of becoming aware of that fact.

(3) A person commits an offence if that person

- (a) contravenes section 60 by becoming a controller of a description after being served with a notice of objection to becoming a controller of that description, or

3. Sections 60 to 60K were inserted by paragraph (b) of the Minerals and Mining (Amendment) Act, 1994 (Act 475).

- (b) becomes a controller of a description in contravention of that section, whether before or after being served with a notice of objection, continues to be a controller after the notice has been served on that person.

(4) A person convicted of an offence under this section is liable to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

60C. Restrictions on and sale of shares

(1) The powers conferred by this section are exercisable where a person

- (a) has contravened section 60 by becoming a controller of a description after being served with a notice of objection to becoming a controller of that description, or
- (b) having become a controller of a description in contravention of section 60, continues to be one after the notice has been served on that person, or
- (c) continues to be a controller of a description after being served under section 60A (3) with a notice of objection to being a controller of that description.

(2) The Minister, acting in accordance with the advice of the Minerals Commission, may, by executive instrument, order that specified shares to which this section applies shall, until a further order, be subject to one or more of the following restrictions:

- (a) a transfer of, or an agreement to, transfer those shares or, in the case of unissued shares, a transfer of or an agreement to transfer the right to be issued with them is void;
- (b) a voting right is not exercisable in respect of the shares;
- (c) further shares shall not be issued in respect of them or in pursuance of an offer made to their holder;
- (d) except in a liquidation, a payment shall not be made of the sums of money due from the mining company on the shares, whether in respect of capital or otherwise.

(3) The Minister may, on the advice of the Minerals Commission, make an application to the High Court for the sale of specified shares to which this section applies.

(4) On an application to the Court under subsection (3), the High Court may order the sale of the specified shares and where the shares are for the time being subject to restrictions under subsection (2), order that they shall cease to be subject to those restrictions.

(5) For the purpose of effecting a sale under subsection (4), the High Court

- (a) may order the holder or any other person to execute a necessary transfer on behalf of a holder, and
- (b) may order the directors of the relevant company
 - (i) to enter the name of the transferee in the appropriate register despite the absence of a share or any other relevant certificate being lodged in that respect, and
 - (ii) to issue a new certificate to the transferee;

and an instrument of transfer executed by that person pursuant to the order is as effective as if it has been executed by the registered holder of the specified shares.

(6) Neither the Minister nor any other person is liable to a holder or a person having an interest in the specified share or any other person for an act done pursuant to an order of the High Court or for the consequences of that act.

(7) Where shares are sold in pursuance of an order under this section, the proceeds of sale, less the costs of the sale, shall be paid to the High Court for the benefit of the persons beneficially interested in them, any of whom may apply to the Court for the whole or a part of the proceeds to be paid to the applicant.

(8) This section applies

- (a) to the shares, or the rights to be issued with shares, in the mining company of which the person in question is a controller of the relevant description which is held by that person or an associate of that person and were not so held immediately before that person became a controller; and
- (b) where the person in question became a controller of the relevant description of a mining company as a result of the acquisition by that person or an associate of that person of shares in another company, to the shares or the rights to be issued with shares in that company which are held by that person or an associate of that person and were not so held before that person became a controller.

(9) A copy of the instrument referred to in subsection (2) shall be served on the person concerned and on the mining company or company to whose shares it relates and, if it relates to shares held by an associate of that person, on the associate but there is no obligation to serve a copy of the order if the Minister does not know both the identity and the address of the person to be served.

60D. Punishment for attempted evasion of restrictions

(1) A person commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment, if that person

- (a) exercises or purports to exercise a right to dispose of shares which, to the knowledge of that person, are for the time being subject to restrictions under section 60C (2) or of a right to be issued with those shares,
- (b) votes in respect of those shares, whether as holder or proxy, or appoints a proxy to vote in respect of them,
- (c) being the holder of those shares, fails to notify, of their being subject to those restrictions, a person whom the holder does not know to be aware of that fact but does know to be entitled, apart from the restrictions, to vote in respect of those shares whether as holder or as proxy, or
- (d) being the holder of those shares, or being entitled to a right to be issued with any other shares in right of them, or to receive a payment on them, otherwise than in a liquidation, enters into an agreement which is void under section 60C (2).

(2) Where shares in a mining company or any other company are issued in contravention of restrictions under section 60C (2) or payments are made by a mining company or any other company in contravention of those restrictions, the company and every director of the mining company or that other company, who knowingly and wilfully permits the issue of shares or the making of a payment, commits an offence and is liable on conviction

- (a) in the case of the Company, to a fine not exceeding five hundred penalty units, or
- (b) in the case of the director, to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

60E. Prior notification of ceasing to be a relevant controller

(1) A person shall not cease to be a shareholder controller or a majority shareholder controller or an indirect controller of a mining company, unless that person has first given to the Minister a written notice of the intention to cease to be a controller of the mining company.

(2) Subject to subsection (3), a person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

(3) Subject to subsection (4), a person shall not be convicted of an offence under subsection (2) if that person shows lack of knowledge of the facts or circumstances by virtue of which that person ceased to be a shareholder controller or majority shareholder controller or indirect controller in sufficient time to enable compliance with subsection (1).

(4) Despite anything in subsection (3), a person who ceases to be a shareholder controller or a majority shareholder controller or an indirect controller without having complied with subsection (1), commits an offence if, within fourteen days of becoming aware of the fact of having ceased to be a controller, that person fails to give the Minister written notice of that fact.

(5) A person convicted of an offence under this section is liable on conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.

60F. Notification of change of controller

(1) A mining company shall give written notice to the Minister of the fact that a person has become or ceased to be a controller of the company.

(2) A notice required under subsection (1) shall be given before the end of the period of fourteen days beginning with the day on which the mining company becomes aware of the relevant facts.

(3) A mining company which fails to give a written notice required by this section commits an offence and is liable on conviction to a fine not exceeding one thousand penalty units.

60G. Investigations on behalf of the Minister

(1) Where the Minister considers it desirable to do so in the public interest, the Minister may appoint one competent person or more competent persons to investigate and report on the ownership or control of a mining company, and the Minister shall give written notice of the appointment to the mining company.

(2) A person who is or was a director, controller, an employee, agent, a banker, an auditor or a solicitor of a company which is under investigation and anyone who is a significant shareholder in relation to that company,

- (a) shall produce to the person or persons appointed under subsection (1) within the time and at the place as required, the documents relating to the company which are in the custody or power of that person,
- (b) shall attend before the person or persons so appointed at the time and place as required, and
- (c) otherwise shall give that person or those persons the assistance in connection with the investigation which that person as mentioned in subsection (2) is reasonably able to give;

and the person or the persons appointed under subsection (1) may take copies of or extracts from the documents produced to any of them under paragraph (a).

(3) For the purposes of exercising the powers under this section a person appointed under subsection (1), accompanied by a police officer, may enter the premises occupied by a company which is being investigated under this section; but shall not do so without prior notice in writing, unless that person has reasonable cause to believe that if a notice were given the documents, whose production could be required under this section, would be removed, tampered with or destroyed.

(4) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of authority.

(5) A person commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty penalty units or a term of imprisonment not exceeding one year or to both the fine and the imprisonment, if that person,

- (a) without reasonable excuse fails to produce the documents which it is the duty of that person to produce under subsection (2);
- (b) without reasonable excuse fails to attend before the person or persons appointed under subsection (1) when required to do so;
- (c) without reasonable excuse fails to answer a question put by a person so appointed with respect to the company which is being investigated; or
- (d) intentionally obstructs a person in the exercise of the rights conferred by subsection (3).

(6) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against that person.

(7) This section does not require the disclosure by a person of an information or document which that person is entitled to refuse to disclose or provide under the Evidence Act, 1975⁴ or under any other enactment.

60H. Notification of acquisition of significant shareholding

(1) A person who becomes a significant shareholder in relation to a mining company shall, within fourteen days of becoming a shareholder, give written notice of that fact to the Minister.

(2) Subject to subsection (3), a person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

(3) A person shall not be convicted of an offence under subsection (2) if that person shows lack of knowledge of the facts or circumstances by virtue of which that person became a significant shareholder in relation to the mining company, but where a person becomes a shareholder without that knowledge and subsequently becomes aware of the fact of having become a shareholder that person commits an offence, unless written notice of the fact of having become a shareholder is given to the Minister fourteen days of becoming aware of that fact.

(4) A person convicted of an offence under subsection (3) is liable to a fine not exceeding five hundred penalty units or a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

60I. Special share

(1) The Government has the option by notice in writing to a mining company to acquire at any time a special share by whatever name called in the company without the payment of consideration or for the consideration agreed on by the Government and the company.

(2) A special share constitutes a separate class of shares and has the rights that are agreed on between the Government and the company, but in the absence of an agreement,

- (a) the special share is a preference share and does not carry a right to vote, but the holder is entitled to receive notice of and to attend and speak at a general meeting of the members or a separate meeting of the holders of a class of shares;
- (b) the special share may only be issued to, held by or transferred to the Minister or any other Minister of the Government or a person acting on behalf of the Government and authorised in writing by the Minister;
- (c) on a return of assets in a winding up or liquidation of the company, the holder of the special share is entitled to the sum of one thousand cedis in precedence to a payment to the other members, but the special share does not confer a further right to participate in the profits or assets of the company;

4. N.R.C.D. 323.

- (d) the holder of the special share may require the company to redeem the special share at any time in consideration of the payment to the holder of one thousand cedis;
- (e) each of the following matters are a variation of the rights attaching to the special share and shall accordingly be effective only with the written consent of the holder of the special share:
 - (i) an amendment to or removal of a provision in the regulations, by-laws, articles of association, or any other equivalent document regulating the company which reflect or further the intention of all or any of the provisions of this section or of sections 60 to 60H;
 - (ii) the voluntary winding up or voluntary liquidation of the company;
 - (iii) the disposal of a mining lease granted under this Act or of the whole or a material part of the assets of the company.

(3) A mining company which fails to comply for a period of two months with a notice served under subsection (1) commits an offence and is liable on conviction to a fine not exceeding one thousand penalty units.

60J. Modification of application of Act 179

Sections 60 to 60I shall apply and be implemented despite a provision of the Companies Code, 1963 (Act 179) or a provision in the regulations, by-laws or articles of association of a company or in an agreement to which a company is a party.

60K. Supervisory jurisdiction of High Court

An action taken by the Minister under sections 60 to 61 is subject to the supervisory jurisdiction of the High Court.⁵

Radio-active Minerals

61. Prospecting and mining of radio-active minerals

(1) The provisions of this Act relating to reconnaissance, prospecting and mining of minerals in the Republic shall, subject to this section and sections 62 to 65 apply to radio-active minerals with the modifications that are necessary.

(2) Where a radio-active mineral is discovered in the course of exercising a right under this Act or under any other enactment, the holder of the mineral right or that other authority shall immediately notify the Minister or the chief inspector of mines and the Director of Geological Survey of the discovery.

62. Holder of radio-active mineral right to report this operation

The holder of a licence or lease under sections 61 to 65 shall, within the first week of every month, furnish the Minister with a true report in writing of the prospecting and mining operations conducted by the holder in the immediately preceding month with respect to radio-active minerals.

5. The provision making the decision of the High Court final and conclusive and binding on all persons concerned has been omitted as offending article 137 of the Constitution.

63. Export of radio-active mineral

(1) A person shall not export a radio-active mineral except under and in accordance with the terms and conditions of a permit granted by the Minister on the advice of the Minerals Commission for that purpose.

(2) A permit issued under subsection (1) shall be in the prescribed form and is subject to the payment of the prescribed fee.

64. Offence and penalties

(1) A person who contravenes a provision of section 61 to 65 or obtains a permit by means of a false statement or representation commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

(2) The High Court before which a person is convicted of an offence under subsection (1) shall order the forfeiture to the Republic of a radio-active mineral obtained by the person convicted.

65. Powers of search and arrest

(1) A police officer not below the rank of an inspector, a senior officer of the Mines Department, and any officer authorised in writing by the Minister or the chief inspector of mines may, for the purposes of enforcing a provision of sections 61 and 64, without warrant,

- (a) enter and search a place where that officer has reasonable grounds to suspect that an offence under any of sections 61 to 64 has been, or is about to be committed;
- (b) search and arrest a person whom that officer has reasonable grounds to suspect to have committed, or is about to commit an offence under any of sections 61 to 64;
- (c) seize any radio-active mineral which that officer suspects to have been obtained contrary to a provision of any of sections 61 to 64;
- (d) seize a prospecting or mining apparatus which is used or about to be used in the commission of an offence under any of sections 61 to 64.

*Surrender, Suspension and Cancellation of Mineral Rights***66. Surrender of mineral rights**

(1) The holder of a mineral right who wishes to surrender all or a part of the land subject to the mineral right shall apply to the Minister through the chief inspector of mines for a certificate of surrender not later than three months before the date on which the holder wishes the surrender to take effect.

(2) An application under subsection (1) shall be in accordance with the Regulations.

(3) Subject to subsection (4), on an application duly made under subsection (1), the Minister shall, through the chief inspector of mines, issue a certificate of surrender in respect of the land to which the application relates.

- (4) The Minister shall not issue a certificate of surrender
- (a) to an applicant who is in default, or
 - (b) to an applicant who fails to keep records and give reports in relation to the mineral operations of that applicant, or
 - (c) where the Minister is not satisfied that the applicant will surrender the land in a condition which is safe and accords with good mining practice, or
 - (d) in respect of a land if the remaining area of the land after the surrender would not be of the shape or dimension prescribed with respect to the remaining area.

(5) Where a certificate of surrender is issued under this section the Minister shall, where part only of the land subject to the mineral right is surrendered, amend the relevant licence accordingly or cancel the mineral right where the surrender is in respect of the whole area covered by the mineral right.

(6) The Minister shall, through the chief inspector of mines, give notice to the applicant of the amendment or cancellation of the mineral right and where there is a surrender, issue a certificate of surrender.

(7) Land in respect of which a certificate of surrender is issued shall be treated as having been surrendered with effect from the date on which notice of the surrender is given under subsection (6).

(8) The surrender of a land under this section does not affect a liability incurred by a person in respect of that land before the date on which the surrender took effect.

67. Suspension and cancellation of a mineral right

- (1) The Minister may suspend or cancel a mineral right if the holder
- (a) fails to make a payment required by or under this Act on the due date,
 - (b) is in breach of a provision of this Act or a condition of the mineral right or a provision of any other enactment relating to mines and minerals,
 - (c) becomes insolvent or bankrupt, enters into an agreement or a scheme of composition with creditors, or takes advantage of an enactment for the benefit of debtors of the holder or goes into liquidation, except as part of a scheme for an arrangement or amalgamation,
 - (d) makes a statement to the Minister in connection with a mineral right which the holder knows or ought to have known is false, or
 - (e) for any other reason becomes ineligible to apply for a mineral right under this Act.

(2) The Minister shall, before suspending or cancelling a mineral right, give notice to the holder in the prescribed manner and shall in the notice require the holder to remedy a breach of the condition of the mineral right and where the breach cannot be remedied, to show cause to the satisfaction of the Minister why the mineral right should not be suspended or cancelled.

(3) On the cancellation of a mineral right under this section, the right of the holder ceases but without prejudice to the liabilities or obligations incurred by a person in relation to the right prior to the date of the cancellation.

68. Vesting of property on termination of mining lease

(1) Except as otherwise provided in the mining lease, the immovable assets of the holder under the mining lease shall vest in the Republic on the effective date of the termination of the lease.

(2) The movable assets of the holder in the mining area which are fully depreciated for tax purposes shall vest in the Republic without charge on the effective date of the termination, and the property not then fully depreciated for tax purposes shall be offered for sale to the Republic within sixty days from the effective date of termination at the depreciated cost.

(3) Where the Republic fails to purchase the assets offered for sale in accordance with subsection (2), the owner may remove or otherwise dispose of the assets within the period determined by the Minister, and after the expiration of that period the assets shall become the property of the Republic without charge.

69. Delivery of documents to Minister on termination of a mineral right

(1) On termination of a mineral right, the former holder of the right shall deliver to the Minister

- (a) the records which the holder is obliged under this Act or the Regulations to maintain,
- (b) the plans or maps of the area covered by the mineral right prepared by the holder or at the instructions of the holder, and
- (c) any other document relating to the mineral right as directed by the Minister.

(2) A person who fails to deliver, within thirty days from the date of being called on to do so by the Minister, a document which is required to be delivered under subsection (1) commits an offence.

Surface Rights

70. Surface rights

(1) The holder of a mineral right shall exercise the rights of the holder under this Act subject to the prescribed limitations relating to a surface right.

(2) The rights conferred by a mineral right shall be exercised in a manner consistent with the reasonable and proper conduct of the operations concerned so as to affect as little as possible the interest of a lawful occupier of the land in respect of which the rights are exercised.

(3) The lawful occupier of a land within an area subject to a mineral right retains the right to graze livestock on or to cultivate the surface of the land in so far as the grazing or cultivation does not interfere with the mineral operations in the area.

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

71. Compensation for disturbance of owner's surface rights

(1) The owner or occupier of a land subject to a mineral right may apply to the holder of the right for compensation for a disturbance of the rights of the owner and for a damage done to the surface of the land, buildings, works or improvements or to livestock, crops or trees in the area of the mineral operations.

(2) An application for compensation under subsection (1) shall be copied to the Minister and the Land Valuation Board.

(3) The amount of compensation payable under subsection (1) shall, subject to the approval of the Land Valuation Board, be determined by agreement between the parties and if the parties are unable to reach an agreement as to the amount of compensation, the matter shall be referred to the Minister who shall in consultation with the Land Valuation Board determine the compensation payable.

72. Prevention of pollution of environment

The holder of a mineral right shall, in the exercise of rights under the licence or lease, have due regard to the effect of the mineral operations on the environment and shall take the steps that are necessary to prevent pollution of the environment as a result of the mineral operations.

73. Restricted licences and leases

(1) A person shall not

- (a) search for a building or an industrial mineral by reconnaissance,
- (b) prospect for a building or an industrial mineral, or
- (c) mine a building or an industrial mineral,

without a restricted reconnaissance licence, restricted prospecting licence or restricted mining lease respectively granted by the Minister.

(2) Except as provided in this section and sections 74 to 77 and subject to a specific provision made in this Act in respect of building and industrial minerals, the provisions of this Act relating to mineral rights shall apply to building and industrial minerals subject to the exemptions and modifications prescribed by the Minister, on the advice of the Minerals Commission, by Regulations.

Building and Industrial Minerals and Small-scale Mineral Operations

74. Limits on restricted licences and leases

(1) A restricted reconnaissance licence, a restricted prospecting licence and a restricted mining lease shall not be amended to include in it a mineral other than the building or industrial mineral in respect of which the licence or lease was granted.

(2) Subject to subsection (3) of section 46, a restricted mining lease is valid for a period not exceeding fifteen years as determined by the Minister on the advice of the Minerals Commission, and may on an application made to the Minister be renewed for further periods not exceeding fifteen years at any one time.

(3) A restricted mining lease shall not be granted to an applicant unless the applicant holds a restricted prospecting licence in respect of the building or industrial mineral applied for.

75. Qualification for application for restricted licence or mining lease

(1) A restricted reconnaissance licence, restricted prospecting licence or restricted mining lease shall not be granted to a person who is not a citizen.

(2) The Minister may, on the advice of the Minerals Commission, exempt a person from subsection (1) where the Minister is satisfied that

- (a) it is in the public interest that a restricted reconnaissance, a restricted prospecting licence or a restricted mining lease is granted to that person, or
- (b) the restricted reconnaissance licence, the restricted prospecting licence or restricted mining lease applied for is in respect of building or industrial minerals required for specific works, and
- (c) the applicant has given an undertaking that the minerals concerned will not be sold or otherwise disposed of for profit.

(3) The Minister may cancel a mineral right granted under section 73 where the Minister is satisfied that the holder has entered into an arrangement with a person who is not a citizen which arrangement has the effect of transferring to that person the benefit of the mineral right.

76. Special rights of owner, to building and industrial minerals

This Act shall not prevent

- (a) a local authority on land owned by the local authority,
- (b) the owner or lawful occupier of a land owned or occupied by the holder or lawful occupier, or
- (c) the holder of a mineral right on land to which the right relates,

from prospecting for and mining building or industrial minerals to be used by the owner, occupier or holder solely for building, road making or agricultural purposes on the land, so long as the exercise of the right is not inconsistent with or detrimental to the right of any other person holding a mineral right in respect of the land.

77. Small-scale mineral operations

(1) Where the Minister, after consultation with the Minerals Commission, considers that it is in the public interest to encourage prospecting and mining of minerals in an area of land by methods not involving substantial expenditure or the use of specialised technology, the Minister may, by notice in the *Gazette*, designate that area for small-scale mineral operations and prescribe the mineral to be mined.

(2) Where an area has been designated for small-scale mineral operations under subsection (1), the Minister may, on the advice of the Minerals Commission, in respect of that area and in relation to a prescribed mineral exclude or modify by Regulations a provision of this Act which would otherwise apply to prospecting or mining operations in that area and for the minerals prescribed.

(3) Subsection (2) shall not be read or construed as authorising anything to be done

- (a) which has the effect of modifying or extinguishing the rights of a person holding a mineral right over a designated area or a part of that area, or
- (b) which affects the rights of any other person except to the extent that those rights might have been affected if an exclusion or modification had not been made under subsection (2).

(4) The provision in section 75 which relates to the qualification of applicants for building and industrial minerals shall apply to applicants for small-scale mineral operations.

Miscellaneous

78. Preference for Ghana products and employment of citizens

(1) The holder of a mineral right shall, in the conduct of the mineral operations, and in the purchase, construction and installation of facilities, give preference to

- (a) materials and products made in the Republic,
- (b) service agencies located in the Republic and owned by
 - (i) citizens,
 - (ii) companies or partnerships registered under the Companies Code, 1963 (Act 179) or the Incorporated Private Partnerships Act, 1962 (Act 152), or
 - (iii) public corporations,

to the maximum extent possible and consistent with safety, efficiency and economy.

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

79. Records and furnishing of information

(1) The Minister shall maintain records of the mineral rights granted under this Act and, subject to the conditions prescribed by the Minister, the records shall be open to inspection by members of the public during normal official working hours and members of the public may on payment of the prescribed fees be permitted to take copies of the records.

(2) The Minister may, for the purposes of this Act, in writing request a person to furnish the Minister within the period specified in the request, the information and documents that are specified in the request.

80. Offences

A person commits an offence if that person

- (a) conducts reconnaissance, prospects for or mines minerals otherwise than in accordance with this Act;
- (b) in making an application for a mineral right or renewal of a mineral right knowingly makes a statement which is false or misleading in a material particular;
- (c) in a report, return or an affidavit submitted in pursuance of this Act, knowingly includes an information which is false or misleading in a material particular;
- (d) removes or disposes of a mineral contrary to this Act;
- (e) carries on business in contravention of subsection (1) of section 59 or erects a building or any other structure in contravention of subsection (2) of section 59;
- (f) pollutes the environment contrary to section 72;
- (g) removes a building, fixed machinery or any other movable property contrary to section 68;
- (h) places or deposits, or causes to be placed or deposited, a mineral in a place with the intention to mislead any other person as to the mineral possibilities of that place;
- (i) mingles or causes to be mingled with samples or an ore a substance which will enhance the value or in any other way change the nature of the ore with the intention to cheat, deceive or defraud;
- (j) being engaged in the business of milling, leaching, sampling, concentrating, reducing, assaying, transporting or dealing in ores, metals or minerals, keeps or uses a false or fraudulent scale or weight for weighing ores, metals or minerals, or uses a false or fraudulent assay scale or weight or enriched flux used for ascertaining the assay value of minerals, knowing them to be false or fraudulent;
- (k) fails, neglects or refuses to comply with a direction lawfully given under this Act;
- (l) fails, neglects or refuses to allow or provide reasonable facilities and assistance to an officer exercising a power under this Act;
- (m) obstructs, hinders or delays an authorised officer in the performance of a function under this Act; or
- (n) contravenes any other provision of this Act.

81. Offences by bodies of persons

(1) Where an offence is committed under this Act or under the Regulations by a body of persons

- (a) in the case of a body corporate, other than a partnership, every director or an officer of that body shall be deemed to have committed that offence; and

- (b) in the case of a partnership, every partner or officer of that body shall be deemed to have committed that offence.

(2) A person shall not be convicted of an offence by virtue of subsection (1) if it is proved that the offence was committed without the knowledge or connivance of that person and that due care and diligence was exercised by that person to prevent the commission of the offence having regard to the circumstances.

82. Penalty

(1) A person found guilty of an offence under this Act for which a penalty has not been provided is liable, on first conviction, to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

(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).

(3) The Court before which a person is convicted of an offence under this Act may in addition to the penalty that it may impose order the forfeiture to the Republic of a mineral in respect of which the offence was committed.

83. Regulations

(1) The Minister may, by legislative instrument, make Regulations for the conservation and development of mines and minerals and for the purpose of giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may provide for

- (a) the shape of areas over which mineral rights may be granted;
- (b) the examination of a mine or mineral by an authorised officer;
- (c) determining the qualities of the minerals to be extracted;
- (d) the retention of an ore or a specimen of a mineral by a person in charge of a mine or connected with a mine for the identification of the ore or sample and for the taking by an authorised officer of samples of the ore or specimen;
- (e) directions to be given to a person in charge of a mine or connected with a mine by an authorised officer for the conservation and development of mines and minerals;
- (f) the making of returns of minerals won and for the valuation of those minerals;
- (g) the returns to be rendered in relation to accounts, books and plans required to be kept by holders;
- (h) the submission by a person in charge of a mine or connected with a mine of the returns specified by the Minister in the Regulations and for the maintenance by that person of those records;
- (i) the nature and adequacy of a map or plan required for the purposes of this Act;

- (j) the merger of mineral rights;
- (k) the contribution by parties benefited by a fair share of the cost of pumping in cases where pumping in one mine benefits other mines;
- (l) the restriction of prospecting operations in or near a river, dam, lake or stream;
- (m) preventing the pollution of waters, springs, streams, rivers or lakes;
- (n) the manner in which areas and boundaries shall be marked, beacons and surveyed and the fees payable in respect of the survey;
- (o) the grazing of cattle or any other animals on the mineral area;
- (p) the gathering of firewood and the cutting down and use of timber for the purpose of carrying on prospecting and mining operations;
- (q) the renewal, transfer, assignment and surrender of mineral rights;
- (r) the protection of pits, shafts and any other dangerous places;
- (s) the reporting of accidents;
- (t) ensuring the safety of the public and the safety and welfare of persons employed in mines and the carrying on of mineral operations in a safe, proper and effective manner;
- (u) preventing the employment of incompetent persons to be in charge of machinery;
- (v) preventing injury to persons or property in a mining area by chemicals;
- (w) regulating the use of explosives in mineral operations;
- (x) fees payable under this Act;
- (y) forms of applications and licences to be made and issued under this Act; and
- (z) the penalties for offences against the Regulations and anything which is to be prescribed.

84. Interpretation

(1) In this Act, unless the context otherwise requires,

“**associate**”, in relation to a person entitled to exercise or control the exercise of a voting power in relation to, or holding shares in, a company means

- (a) the wife or husband or son or daughter of that person, and for this purpose, “**son**” includes stepson and “**daughter**” includes stepdaughter;
- (b) the trustees of a settlement, including a disposition or an arrangement under which property is held in trust under which that person has a life interest in possession;
- (c) a company of which that person is a director;
- (d) a person who is an employee or a partner of that person;
- (e) if that person is a company
 - (i) a director of that company;

- (ii) a subsidiary or holding company of that company;
- (iii) a director or an employee of that subsidiary or holding company; and
- (f) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or any other interests in that undertaking or body corporate or under which they undertake to act together in exercising their voting power in relation to it, that other person;

“**authorised officer**” means a person authorised by the Minister or the chief inspector of mines to perform a function under this Act;

“**benefits**” includes facilities, entitlements and exemptions conferred on a holder in respect of a mineral right;

“**building and industrial minerals**” means barite, basalt, clay, dolomite, feldspar, graphite, gravel, gypsum, laterite, limestone, mica, magnesite, marble, phosphate, rock, sand, sandstone, slate and talc, when mined for use in the Republic for agriculture, building, roadmaking or industry and any other minerals that the Minister may declare, by notice published in the *Gazette*, to be building and industrial minerals when so mined;

“**capital**” means the cash contributions, plant, machinery, equipment, buildings, spare parts, raw materials and other business assets other than goodwill;

“**chief inspector of mines**” includes the chief inspector of mines appointed under section 9 and an authorised officer;

“**citizen**” means,

- (a) in relation to an individual, an individual who is a citizen of Ghana by virtue of a law in force in the Republic;
- (b) in relation to a partnership or association of individuals, a partnership or association which is composed exclusively of individuals who are citizens of Ghana;
- (c) in relation to a body corporate, other than public corporation, a body corporate which is incorporated in the Republic under the Companies Code, 1963 (Act 179), and
 - (i) which is certified by the Minister to be controlled by the Government,
 - (ii) whose membership is composed exclusively of person who are citizens of Ghana,
 - (iii) whose directors are exclusively citizens of Ghana, or
 - (iv) which is controlled by individuals who are citizens of Ghana;
- (d) in relation to a public corporation, a corporation that is established in the Republic by or under an enactment;

“**Commission**” means the Minerals Commission established by virtue of clause (1) of article 269 of the Constitution;

“company” means a body corporate wherever incorporated;⁶

“continental shelf” or **“exclusive economic zone”** means an area declared by an enactment in force as the continental shelf or the exclusive economic zone of the Republic;

“controller” in relation to a company means a person who is shareholder controller, majority shareholder or controller or indirect controller;⁷

“customs import duties” includes import duty, sales tax and any other related charges;

“director” includes a person who occupies the position of a director, by whatever name called;⁸

“equity shares” has the meaning assigned to it under section 48 of the Companies Code, 1963 (Act 179);⁹

“foreign capital” includes convertible currency, plant, machinery, equipment, spare parts, raw materials and any other business assets other than goodwill which enter the Republic without an initial disbursement of Ghana’s foreign exchange and are intended for or related to mineral operations approved under this Act;

“functions” includes powers and duties;

“holder” means the holder of a mineral right under this Act;

“in default” means in breach of a provision of this Act;

“indirect controller” means a person in accordance with whose directions or instructions the directors of the mining company or of any other company of which it is a subsidiary are accustomed to act;

“majority shareholder controller”, in relation to a company, means a person who, either alone or with an associate or associates, is entitled to exercise, or control the exercise of, more than fifty percent of the voting power at a general meeting of the mining company or of any other company of which it is a subsidiary;¹⁰

“map” or **“plan”** means a document containing geometrical, numerical and verbal representations of a piece of land, which has been signed by a land surveyor and approved or certified in the manner required by the chief inspector of mines;

“mine” when used as a noun, includes a place, excavation or working in a place on which or by which an operation connected with mining is carried on together with the buildings, premises, erections and appliances belonging or appertaining to them above and below the ground for the purpose of winning, treating or preparing minerals, obtaining or extracting a mineral or metal by a mode or method or for the purpose of dressing mineral ores, and a quarry where building and industrial minerals are mined;

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6. Inserted by paragraph (c) of the Minerals and Mining (Amendment) Act, 1994 (Act 475).
 7. Inserted by paragraph (c) of the Minerals and Mining (Amendment) Act, 1994 (Act 475).
 8. Inserted by paragraph (c) of the Minerals and Mining (Amendment) Act, 1994 (Act 475).
 9. Inserted by paragraph (c) of the Minerals and Mining (Amendment) Act, 1994 (Act 475).
 10. Inserted by paragraph (c) of the Minerals and Mining (Amendment) Act, 1994 Act 475).

“mine” when used as a verb, includes intentionally to win minerals, and the operations directly or indirectly necessary for the operations or incidental to the operations;

“mineral” includes a substance in solid or liquid form occurring naturally in or on the earth, or on or under the seabed, formed by or subject to geological process, and building and industrial minerals, but does not include petroleum as defined in the Petroleum (Exploration and Production) Act, 1984;¹¹

“mineral operations” means reconnaissance, prospecting or mining of minerals;

“mineral right” means a right to reconnoiter, prospect for or mine minerals given by the Minister in the form of a reconnaissance licence, a prospecting licence, a mining lease, a restricted reconnaissance licence, a restricted prospecting licence or a restricted mining lease;

“mining area” means the land designated as a mining area in a mining lease;

“mining company” means a company which is or whose subsidiary is the holder of a mining lease granted under this Act;¹²

“mining lease” means the area which is subject to a right to mine under section 44 or 45;

“mining operations” means the mining of minerals under a mining lease;

“Minister” means the Minister responsible for Lands and Natural Resources;

“prescribed” means prescribed by or under this Act or the Regulations;

“programme of mining operations” includes a programme approved on the granting of a mining lease and an amendment to that lease made in pursuance of a provision of this Act;

“programme of prospecting operations” includes a programme approved on the granting of a prospecting licence and an amendment to that licence made in pursuance of a provisions of this Act;

“programme of reconnaissance operations” includes a programme approved on the granting or renewal of a reconnaissance licence and an amendment made in pursuance of this Act;

“prospect” includes intentionally to search for minerals and operations to determine the extent and economic value of a deposit;

“prospecting area” means the land subject to a prospecting licence;

“prospecting licence” means a right to prospect acquired under section 36;

“provided” means provided under this Act, a mining lease, or licence granted under this Act;

11. P.N.D.C.L. 84.

12. Inserted by paragraph (c) of the Minerals and Mining (Amendment) Act, 1994 (Act 475).

“radio-active mineral” means a mineral which contains by weight at least one-twentieth of one percent (0.05 percent) of uranium or thorium or a combination of uranium and thorium, including but not limited to

- (a) monazite sand and other ores containing thorium;
- (b) carnotite, pitch blende and any other ores containing uranium;

“reconnaissance” means the search for minerals by geophysical, geochemical and photo-geological surveys or other remote sensing techniques and surface geology in that connection but does not, unless a licence granted under section 32 so provides, include drilling, excavation or other subsurface techniques;

“reconnaissance area” means the land subject to a reconnaissance licence;

“reconnaissance licence” means a right to conduct reconnaissance acquired under section 32;

“Regulations” means Regulations made under section 83 or otherwise under this Act;

“restricted mining area” means the land subject to a restricted mining lease;

“restricted mining lease” means a lease to mine building or industrial mineral;

“restricted prospecting area” means the land subject to restricted prospecting licence;

“restricted prospecting licence” means a licence to prospect for building or industrial mineral;

“restricted reconnaissance licence” means a licence to search for building or industrial mineral by reconnaissance;

“shareholder controller” means a person who, either alone or with an associate or associates is entitled to exercise, or control the exercise of, twenty percent or more, but not more than fifty percent of the voting power at a general meeting of the mining company or of any other company of which it is a subsidiary;¹³

“shares” in relation to a company incorporated in the Republic, includes equity shares and in relation to any other company, means shares in the share capital of a company, and stock except where a distinction between stock or shares is expressed or implied; and the expression **“shareholder”** includes a stockholder;¹⁴

“significant shareholder”, in relation to a company, means a person who, either alone or with an associate or associates, is entitled to exercise, or control the exercise of five percent or more but less than twenty percent of the voting power at a general meeting of the mining company or of any other company of which it is subsidiary;

“termination” means the lapse of a mineral right by expiry of time, surrender or cancellation.

13. Inserted by paragraph (c) of the Minerals and Mining (Amendment) Act, 1994 (Act 475).

14. Inserted by paragraph (c) of the Minerals and Mining (Amendment) Act, 1994 (Act 475).

(2) The definition of “subsidiary”, “holding company” and “preference share” in the First Schedule of the Companies Code, 1963 (Act 179) shall apply for the purposes of this Act.¹⁵

85. Repeals and savings

*Spent.*¹⁶

86. Transitional provisions relating to existing licences, etc.

*Spent.*¹⁷

87. Modification of existing enactments

The following enactments,

- (a) the Administration of Lands Act, 1962 (Act 123);
- (b) the Concessions Ordinance, 1939 (Cap. 136);
- (c) the Concession Act, 1962 (Act 124);
- (d) the Aliens Act, 1963 (Act 160);
- (e) the Selective Aliens Employment Tax Act, 1973;¹⁸
- (f) the Exchange Control Act, 1961 (Act 71);
- (g) the Income Tax Decree, 1975 (S.M.C.D. 5);
- (h) the Minerals Regulations, 1962 (L.I. 231), and

an enactment relating to minerals as defined under section 84 of this Act shall apply with the modifications that are necessary to give full effect to this Act.

15. Inserted by paragraph (d) of the Minerals and Mining (Amendment) Act, 1994 (Act 475).

16. The section provided that:

- “(1) The following enactments are hereby repealed:
- (i) the Minerals Ordinance, 1936 (Cap. 155);
 - (ii) the Radio-active Minerals Ordinance, 1946 (Cap. 151);
 - (iii) the Minerals Act, 1962 (Act 126);
 - (iv) the Mines and Minerals (Conservation and Development) Act, 1965 (Act 278);
 - (v) the Mining Rights Regulations, 1905 (Cap. 153); and
 - (vi) section 1 of the Minerals Act and Regulations (Amendment) Decree, 1968 (N.L.C.D. 308).
- (2) The Provisions of the Administration of Lands (Amendment) Decree, 1979 (A.F.R.C.D. 61) shall to the extent that they apply to mining rights cease to be operative on the coming into force of this Law and accordingly all references in that Decree to mining rights are hereby repealed.
- (3) Notwithstanding the repeal in subsections (1) and (2) of this section, any regulations made under the repealed enactments shall so far as they are consistent with the provisions of this Law, continue in force as if they were regulations made under section 83 of this Law.”

17. The section provided that,

“Notwithstanding the repeal of the enactments referred to in section 85 of this Law, any licence, lease or permit granted under any of those enactments and subsisting immediately before the commencement of this Law shall continue in force subject to such conditions as the Secretary may determine.”

18. N.R.C.D. 201.

